



**Report to:** Town Planning Committee

**Subject:** Consultation on draft Supplementary Planning Guidance on PPS 4 Economic Development

**Date:** 17<sup>th</sup> May 2012

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<b>1</b>	<b>Relevant Background Information</b>
1.1	The Department of the Environment (DoE) on 26 <sup>th</sup> March 2012 released for public consultation draft Supplementary Planning Guidance on Policy PED 8 of PPS 4 'Development incompatible with Economic Development Uses'.
1.2	The draft Supplementary Planning Guidance aims to provide clarity to PPS 4 Policy PED 8 with particular attention paid to clarifying the circumstances when certain economic development uses will be considered incompatible with an existing or approved 'sensitive industrial enterprise' and should be refused planning approval.
1.3	Due to the four week consultation period provided by the DoE a Belfast City Council officer response was submitted pending Committee consideration and ratification by full Council.
1.4	<b>Appendix 1</b> contains the Officer response for consideration by Members. <b>Appendix 2</b> contains the DoE Consultation Document.

<b>2</b>	<b>Key Issues</b>
2.1	During consultation with internal Council Departments a number of issues were identified with the draft Supplementary Planning Guidance. The main issues are summarised below and identified in full detail in Appendix 1.

2.2	The consultation paper seeks to prioritise 'sensitive industries' ahead of other various types of other economic development uses. The DoE list of sensitive industries which would be protected includes pharmaceutical companies; medical products; food processing; electronics; and ICT. There are concerns that in the absence of clarification the proposed approach complicates the decision making process rather than offering clarity for these types of developments.
2.3	For the guidance to be effective it will require the Department to compile, maintain and make publicly available a list of what is considered to be sensitive industrial enterprises. The initial response suggested that there should be engagement with industry regulators to help formulate this list along with local councils.
2.4	The draft guidance recommends that the proposal is considered in relation to its proximity to the sensitive industrial enterprise. The document provides no further information on what will be considered a 'safe' distance in which a development use deemed incompatible will be able to gain planning permission. In this respect the supplementary planning guidance provides less clarity for developers and decision makers.
2.5	Whilst it is recognised that there may be very few cases where this policy guidance will deem a proposed use as incompatible, caution must be exercised in application of the policy in order to avoid any potential unintended consequences such as blighting of land or the migration of industry to less sustainable, more rural locations where there is a perception of better air quality.
2.6	There are a number of issues with the consultation document in terms of the Council's current responsibilities and potential future responsibilities. It is in the context of meeting various EU recycling and energy from waste requirements that there would be concerns in respect of this supplementary planning guidance placing an emphasis against perceived unclean land uses like waste management facilities.
2.7	The Council have received various expressions of interest from research and development companies and institutes keen to locate within the Council area. The Council would want to ensure that new environmental technology dealing with waste or renewable energy production is encouraged as it can create new jobs and generate significant economic activity and could be considered of high value in its own right.
2.8	The initial response advocated that the Department seeks to strike a balance in their approach to ensure new economic development activity is not compromised unnecessarily.

<b>3</b>	<b>Resource Implications</b>
	None

<b>4</b>	<b>Equality and Good Relations Considerations</b>
	None

<b>5</b>	<b>Recommendations</b>
	Members are requested to consider the response in Appendix 1 and agree a final response to be sent to the Department of Environment.

<b>6</b>	<b>Decision Tracking</b>
	Submit an agreed response to DoE

<b>8</b>	<b>Documents Attached</b>
	<b>Appendix 1:</b> Response to Public Consultation on draft Supplementary Planning Guidance on PPS 4 Economic Development
	<b>Appendix 2:</b> DoE Document: Public Consultation on draft Supplementary Planning Guidance on PPS 4 Economic Development

**Response to the DoE public consultation on draft Supplementary Planning Guidance on Policy PED 8 'Development incompatible with Economic Development Uses'**

**1. Introduction and Background**

- 1.1 In March 2012 the Department of the Environment (DoE) released for public consultation draft supplementary guidance on Policy PED 8 of PPS 4 'Development incompatible with Economic Development Uses'.
- 1.2 This document is a response from Belfast City Council to the DoE's Planning Policy Division on the above consultation.
- 1.3 The background to this draft Supplementary Planning Guidance is that in November 2010 Planning Policy Statement (PPS) 4 'Planning and Economic Development' was published by the DoE, which contained amongst other things, Policy PED 8 'Development incompatible with Economic Development Uses'.
- 1.4 The draft Supplementary Planning Guidance which is being consulted upon aims to provide clarity to PPS 4 Policy PED 8 with particular attention paid to clarifying the circumstances when certain economic development uses will be considered incompatible with an existing or approved 'sensitive industrial enterprise' and should be refused planning approval.
- 1.5 Policy PED 8 of PPS 4, which will remain unchanged, currently states that a proposal in the vicinity of an existing or approved economic development use may be refused if it is deemed incompatible with that use or would prejudice its future operations. Policy PED 8 allows the Department to refuse planning permission for new development to avoid jeopardising employment in the existing / approved enterprise.
- 1.6 The Council, having considered the consultation document, have identified a number of issues which are detailed in the response below.

**2. Content of the Consultation Paper**

- 2.1 The consultation paper, with reference to the public interest, seems to prioritise 'sensitive industries' ahead of other various types of other economic development uses. The Department's list of sensitive industries includes pharmaceutical companies; medical products; food processing; electronics; and ICT. The Council is of the opinion that the proposed approach complicates the decision making process rather than offering clarity for these types of developments.
- 2.2 The draft Supplementary Planning Guidance considers that waste management uses would be one type of development to be considered incompatible with 'sensitive industries'. Whilst waste management uses such as open landfill sites could perhaps be

considered as a source of air contamination modern waste processing activity is changing with emerging cleantech technology. Where waste management proposals can demonstrate that they meet the regulations on emissions, odours and dust and have no adverse impact on the surrounding environment there should be no issue of incompatibility.

- 2.3 There is an assumption that 'sensitive industries' are of higher value to the local economy. In this respect it must be recognised that waste management facilities are an integral part of local economies that have a crucial role to play in meeting of EU Targets and avoidance of EU surcharges related to waste diverted to landfill and energy from renewable sources. The value of waste management facilities to the economy must be considered both in terms of employment, sustainability and resource savings from avoiding EU charges.
- 2.4 Paragraph 1.5 of the consultation document states that the Department will consider the application of Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 at an early stage of the application. The Council would consider that EIA screening should already take place for all applications likely to give rise to the prescribed emissions, not just applications in the vicinity of a 'sensitive industry'. Inclusion of this paragraph seems unnecessary and risks complicating the EIA screening process.
- 2.5 In paragraph 1.6 of the consultation document it is suggested that the requirements of existing non-planning legislation may not be of a sufficient standard to limit the contaminants in the air. It must be noted that the Council's Health and Environmental Services, a statutory consultee, can only consider planning proposals against the relevant legislation such as the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 and relevant EU Directives such as Directive 2008/50/EC of the European Parliament and of the Council of 21<sup>st</sup> May 2008 on ambient air quality and cleaner air for Europe, and cannot expand its comments to potential impact on the output of adjacent economic uses. In this light it must be clarified how the Department will assess what standard of air will be acceptable, how the acceptable level of air quality will be established and what will prevent existing uses demanding unreasonable levels of air quality. If the existing legislation is met in terms of odours and other emissions should the responsibility not lie with the existing business to take steps to ensure suitable working environments.
- 2.6 The draft guidance expands upon the three tests established in Policy PED 8. The first test considers whether the proposal is in the vicinity of an existing or proposed economic use. The Council would consider that it is essential for the Department to compile, maintain and make publicly available a list of what is considered to be sensitive industrial enterprises. The Council would recommend engagement with industry regulators to help formulate this list along with local councils. Clearer guidance is required to assist the categorisation and identification of 'sensitive industries' in order to provide greater certainty for developers and effective decision making.

- 2.7 The consultation document provides further guidance on the second policy test which will assess compatibility of the proposed use. Local Councils' Environmental Health Departments are identified as a key consultee for this policy test. As stated above the Council's Health and Environmental Services Department will comment on the planning application on the merits of the specific proposal as it would any other similar application regardless of the proximity of 'sensitive industries'; with consideration of the relevant legislation and council responsibilities in relation to public health, noise and odour issues. It is not within the Council's remit as part of the statutory planning consultation process to consider whether productivity and future operations of adjacent business uses could be impacted upon. In this regard, unless the Department indicates otherwise, the Council's role remains unchanged.
- 2.8 The draft guidance recommends that the proposal is considered in relation to its proximity to the sensitive industrial enterprise. The document provides no further information on what will be considered a 'safe' distance in which a development use deemed incompatible will be able to gain planning permission. In this respect the supplementary planning guidance provides less clarity for developers and decision makers. Whilst the Council acknowledges the Department's assertion that there will be very few cases where this policy will deem a proposed use as incompatible, caution must be exercised in application of the policy in order to avoid any potential unintended consequences such as blighting of land or the migration of industry to less sustainable, more rural locations where there is a perception of better air quality.
- 2.9 In addition to consulting with NIEA the Council would recommend that the relevant industry regulator is also consulted. This will enable the Department to ascertain if a certain use should be considered a sensitive industry, suitable for protection by Policy PED 8, whilst assisting the assessment of the potential impact of the proposed use on the existing / approved business.
- 2.10 The third policy test seeks to assess the potential impacts of the proposed use on the future operations of existing or approved sensitive industrial enterprise. Land acquisition and site availability are likely to be only two of the many challenges to be encountered by the Department when assessing the potential for diverting proposed investment to alternative sites as recommended in the draft guidance. The draft guidance suggests that the existing enterprise may be willing and able to take remedial steps in order to render the proposed use acceptable / compatible. How this would work in practice and be enforced is unclear and could prove extremely problematic from the perspective of both the existing business and the proposed development. There could be situations where the existing business decides not to take the necessary remedial action and could therefore be able to veto or stymie the proposed development. A suitable alternative to planning conditions for this type of arrangement has not been suggested but is required. The sensitive industry should take responsibility for all necessary measures to ensure the requisite working environment is present regardless of adjacent uses, this should be

encouraged in future planning approvals or support provided to sensitive industries by the Department.

- 2.11 The Department must be cautious in relation to placing economic interests above social and environmental interests. Compatibility with existing industries does not preclude compliance with all other planning policy and other requirements such as those in PPS 1, PPS 3 and PPS 11.
- 2.12 Paragraph 1.13 of the consultation document states that the planning authority will, along with the applicant, consider alternative sites. As referred to earlier in this response consideration of an alternative site will not be a straightforward process and obstacles such as land ownership, site acquisition and site location will have to be overcome and in many cases there may not be a practical solution as proposals are often developed on the basis of existing ownership or land availability. It is not clear how the potential differential costs between alternative sites would be considered or addressed.
- 2.13 Future planning approvals by the Department of sensitive industries must take into consideration the potential impact of future development of surrounding lands. The Department must be clear on how it intends to ensure approval of one sensitive development will not prejudice the development of large areas of land in the vicinity.

### **3. Operational Issues for Belfast City Council**

- 3.1 The Council note a number of issues with the consultation document in terms of our current responsibilities and potential future responsibilities. The Council recognise that the Supplementary Planning Guidance does not change Policy PED8 of PPS 4 however it does place an emphasis on protection of what might be considered 'clean industries' compared to what seem to be perceived as 'dirty' industries of waste management and agri-food which could rightly be considered of extremely high value and very much in the public interest.
- 3.2 The Department will be aware that the Council are responsible for waste collection, amongst other things. The Department should also be aware that the EU Waste Framework Directive and Landfill Framework Directive require certain targets to be met on recycling rates and diversion of waste from landfill respectively, upon which the Council are obliged to act. It is in the context of meeting the aforementioned EU requirements that the Council would be reluctant to see this supplementary planning guidance placing an emphasis against perceived unclean land uses. There is a recognised need for Waste Management Facilities identified in the RDS and the EU requirements, not only on landfill and recycling but also in relation to renewable energy sites for waste management facilities, that should translate into adequate protection of lands for this use. As long as waste management proposals can demonstrate that they can meet the regulations on emission, odours and dust, and have no adverse impact on

the surrounding environment as required by PPS 11 there should be no issue of incompatibility except in very exceptional circumstances.

- 3.3 In respect to the Northforeshore site which has employment & industrial land use zoning with a key site requirement for waste management uses in the dBMAP, the Council would want to ensure that economic development is not prevented if the private sector developers are prepared to co locate waste management facilities i.e. Anaerobic Digester or bio-mass CHP Plant with glass houses for hydroponic / aquaculture food growing purposes. This is an emerging sector where there are business synergies between the two activities i.e. utilization of heat for growing and plant waste recycled into power.
- 3.4 The Council have received various serious expressions of interest from research and development companies and institutes keen to locate within the Council area in a business cluster that could have a mix of cleantech waste management activity with R&D, data storage, renewable energy, manufacturing and similar uses. It is important to ensure that not all R&D activity is considered to be incompatible with waste management / renewable energy activity. The Council would want to ensure that new environmental technology dealing with waste or renewable energy production is encouraged as it can create new jobs and generate significant economic activity and could be considered of high value in its own right. This is very much a new sector, and the Council would encourage the Department to strike a balance in their approach to ensure new economic development activity is not compromised.
- 3.5 In terms of the Council's Health and Environmental Services Department role as a statutory consultee on many planning applications the supplementary planning guidance does not change the remit of the Council Department's response. As mentioned above, impact of a proposed use on an existing operator in terms of its economic output, is not a consideration for the Environmental Health team.

#### **4. Conclusions and Recommendations**

- 4.1 Belfast City Council welcomes attempts to clarify existing policy where there will be a clear benefit to developers, decision makers, and the public interest in general. However as identified above the Council has a number of issues and questions about the draft supplementary planning guidance.
- 4.2 The Council recognises the need to grow the NI economy but it also wants to avoid priority being unfairly given to one particular type of economic use above another. With the improvements in environmental technologies and the growth in that sector as a high value industry the Council do not want to see the planning system unintentionally deter this type of development. The Council would therefore request that this supplementary guidance is only used in exceptional circumstances where all the detailed information has been considered by the Department and suitable consultees. In cases where sensitive industries are involved the Council see it as beneficial to consult with the relevant industry



regulator to aid the decision making process and the establishment of baseline information.

- 4.3 The draft supplementary guidance lacks a suitable definition of what will be considered a sensitive industry. The examples of sensitive industries provided in the consultation are extremely wide ranging and vague. It would be beneficial for the final document to be more precise either in its list of potential sensitive industries or in how it will identify the existing sensitive industries. In relation to compiling a list of the existing sensitive industries the Council would see this as essential and would consider again that engagement with relevant industry regulators could enhance this list before being made publicly available.
- 4.4 The list of potential sources of 'harmful air contamination' takes no account of the advances in waste management and renewable energy technologies. Refusal of planning permission on the basis of incompatibility must only be issued after all relevant information has been considered. Suggesting certain types of industries are incompatible with some high value uses could have serious consequences for existing sites, including reducing the development potential and land value because of existing uses.
- 4.5 The draft guidance provides very little information on what will be considered as an acceptable distance away from a sensitive industry for a potentially incompatible use to locate. The worst case scenario in his respect would be for large swathes of land adjacent to sensitive industries to be considered incompatible and therefore blighted. It will be a difficult task for the Department to assess the economic benefit of the existing use against the loss of development of land adjacent to this use.
- 4.6 It is unclear how the Department will process situations where there is an extant approval for a sensitive industry which has not yet been developed and a potentially incompatible use applies for planning permission with the intention of developing the proposal as soon as possible. It is not clear whether or not the Department could refuse a planning application based on the existence of a planning approval that has not yet been built and is close to expiring.
- 4.7 There are some key sites within the Council boundary which have the potential to accommodate a range of uses including a mixture of R&D, waste recovery and industry. It is with sites like this mind that the Council would request the guidance states that all applications will be considered on its own merits. What might be incompatible in one location and for one enterprise may not be incompatible in a different location.
- 4.8 The draft proposals for the planning authority to seek specialist advice when assessing applications (para 1.10, 1.11, 1.12), may be a prudent suggestion. However, the cost implications, together with the additional staff resource that may be required to assess these proposals would place an extra burden on the planning authority. The DoE do not currently have the specialist resources and Councils may not have the resources or the funding to assess the applications as per the guidance either now or on the transfer of planning functions under RPA.