



Department of the
Environment

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Draft Planning Policy Statement 23

Public Consultation

'Enabling Development'

January 2011

Public consultation: give us your views

You are invited to send your views on this draft Planning Policy Statement (PPS) 23 on 'Enabling Development', and the accompanying Section 75 Equality of Opportunity Screening Analysis Form attached as Annex 1.

Comments should reflect the structure of the documents as far as possible with references to paragraph numbers where relevant.

All responses should be made in writing and emailed to:

planning.policy@doeni.gov.uk or sent by post to:

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The consultation period will end on Friday 6 May 2011.

This document is available on the Planning Service website: www.planningni.gov.uk or can be obtained by telephoning (028) 9041 6747, textphone at (028) 9054 0642, e-mail from planning.policy@doeni.gov.uk or by writing to the above address.

The document is available in alternative formats, please contact us to discuss your requirements.

In keeping with our policy on openness, the Department may make responses to this consultation document publicly available upon request.

At the end of the consultation period the Department will consider all comments received. Following this, the draft document will be amended as necessary and, having referred the revised document to the Northern Ireland Executive Committee for consideration, it will be published in final form.

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Preamble

The Department of the Environment (the Department) has a statutory duty, laid down in Article 3 of the Planning (Northern Ireland) Order 1991, to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. The Department is required to ensure such policy is in general conformity with the Regional Development Strategy (RDS).

The Department's planning policies are normally issued through Planning Policy Statements (PPS) and PPS 1 'General Principles' advises that:

"Planning Policy Statements set out the policies of the Department on particular aspects of land-use planning and apply to the whole of Northern Ireland. Their contents will be taken into account in preparing development plans and are also material to decisions on individual planning applications and appeals."

This Draft Planning Policy Statement, PPS 23 puts in place policy for assessing proposals for enabling development.

The PPS has been subjected to an equality impact screening exercise in line with statutory obligations contained in Section 75 of the Northern Ireland Act 1998. The outcome of this exercise indicates that the PPS is unlikely to have any significant adverse implications for equality of opportunity or community relations.

Nothing in this document should be read as a commitment that public resources will be provided for any specific project. All proposals for expenditure by the Department are subject to economic appraisal and will also have to be considered having regard to the overall availability of resources.

1.0 Introduction

- 1.1 'Enabling development' is a development proposal that is contrary to established planning policy and in its own right would not be permitted. Such a proposal may however be allowed where it will secure a proposal for the long term future of a place of heritage significance, or scheme of significant regional or sub-regional public benefit (the principal proposal), and may also be acceptable to secure the future of a non-listed building of local significance.
- 1.2 Enabling development typically seeks to subsidise the cost of maintenance, major repair, conversion to the optimum viable use of a significant place¹, or of a development of significant public benefit, where this is greater than its value to its owner or market value.
- 1.3 The justification for allowing the enabling development lies in the overriding public benefit to be derived from the implementation of the principal proposal which otherwise would have little prospect of being carried out.

¹ any part of the historic environment that has heritage value including scheduled monuments, archaeological remains, historic building (both statutorily listed or of more local significance) together with any historically related contents, industrial heritage, conservation areas or an historic park, garden or demesne

2.0 Policy Context

Programme for Government

- 2.1 The Northern Ireland Executive published its Programme for Government 2008 - 2011 in January 2008. The Programme identifies the following key priorities: economic growth; promoting inclusion and health; protecting the environment; investing in infrastructure; and delivering high quality and efficient public services.

Sustainable Development Strategy

- 2.2 The Northern Ireland Executive's 'Everyone's Involved - Sustainable Development Strategy' (SDS) aims to build a future characterised by economic prosperity; equality and social cohesion; strong, confident communities; and a high quality environment.
- 2.3 These aims are underpinned by two overarching guiding principles, namely: Living within environmental limits; and Ensuring a strong, healthy, just and equal society. A supporting principle, 'Promoting Opportunity and Innovation' identifies the successful exploitation of new and existing ideas to deliver economic, social and environmental benefits, as a necessary condition to the achievement of sustainable development.
- 2.4 To assist in achieving these principles, the SDS puts forward a series of strategic objectives including:
- Driving sustainable, long-term investment in key infrastructure to support economic and social development; and
 - Improve the quality of life of our people by planning and managing development in ways which are sustainable and which contribute to creating a better environment.

Regional Development Strategy for Northern Ireland 2025

- 2.5 The Regional Development Strategy (RDS) provides the flexibility to accommodate unforeseen imaginative proposals for economic development that are clearly in the public interest.
- 2.6 Appendix 11 in the 'Adjustments to the Regional Development Strategy, June 2008' recognises that no regional strategy, or detailed local plan, can anticipate every major development requirement or new entrepreneurial initiative to allow the private sector to bring forward original development proposals which are of significance to the whole or a substantial part of Northern Ireland and create employment, wealth and important assets for the Region. Similarly, major economic development proposals which

contribute to meeting local needs and provide wider public benefits may also be acceptable.

- 2.7 The intention is to facilitate development projects in tune with the spirit of the Spatial Development Strategy for the Region. This approach should enable the private sector to present a significant development project, or put together a major development package, which meets their entrepreneurial objectives and at the same time delivers wider public resource by providing, for example, desirable improvements to regional infrastructure and community services. Such proposals would be a matter for further consideration and judgement through the major planning application process, involving public consultation and environmental, transport and other relevant assessments.
- 2.8 In line with current budgetary constraints, the RDS encourages a more equitable distribution of public and private investment and promotes social inclusion and target interventions at economic blackspots. In advocating the development of a long term investment strategy supportive of the regional economy involving both the public and private sectors, Strategic Policy Guideline ECON 5.1 aims to: maintain and enhance the standard of community, cultural, educational, social and health infrastructure and a range of leisure facilities; and facilitate unlocking the economic potential of the creative industries.
- 2.9 The RDS recognises that the implementation of the Strategy depends on investment by the public and private sectors and given the heavy competing pressures on public expenditure, new approaches to the funding of some development, will have to be examined.

3.0 Policy Objectives

- 3.1 The objective of this Planning Policy Statement is to provide the flexibility to accommodate unforeseen imaginative proposals for development that are clearly in the public interest; whilst aiming to maintain and enhance the standard of community, cultural, educational, social and health infrastructure, the historic built environment, the restoration / creation of wildlife habitats; and a range of leisure facilities.

4.0 Planning Policies

In exercise of its responsibility for development management in Northern Ireland, the planning authority assesses development proposals against all planning policies and other material considerations.

The planning policy in this statement must therefore be read together with the relevant contents of development plans and other planning policy publications, including the Regional Development Strategy. The planning authority will also have regard to the contents of published supplementary planning guidance documents.

Policy ED 1 – Enabling Development

Proposals involving enabling development will only be permitted where all of the following criteria demonstrated by the applicant in the submission of a Statement of Justification to accompany an application for planning permission:

- a. the principal development to be subsidised by the proposed enabling development will bring significant long-term benefits according to its scale and location;
- b. the principal development would otherwise be either operationally or financially unviable;
- c. the impact of the enabling development is precisely defined at the outset;
- d. the scale of the proposed enabling development does not exceed what is necessary to support the principal proposal;
- e. sufficient subsidy is not available from any other source; and
- f. the public benefit decisively outweighs the disbenefits of setting aside other planning policy.

Enabling development may be considered in the following instances:

- the provision of cultural activities;
- the refurbishment of an historic building;
- the refurbishment of industrial heritage;
- the restoration of an Historic Park, Garden or Demesne;
- the restoration / creation of a publicly accessible wildlife habitat;
- the provision of community facilities;
- the provision of educational facilities;
- social and health infrastructure;
- a range of leisure facilities; or
- the cessation and removal of undesirable use elsewhere on land in control of the applicant, where appropriate.

In addition, proposals involving enabling development and which relate to the re-use, restoration or refurbishment of significant places, i.e. any part of the historic environment that has heritage value including scheduled monuments, archaeological remains, historic building (both statutorily listed or of more local significance) together with any historically related contents, industrial heritage, conservation areas or an historic park, garden or demesne, will be required to demonstrate all of the following in its Statement of Justification:

- (i) it will not materially harm the heritage values of the significant place or its setting;
- (ii) it avoids detrimental fragmentation of the management of the significant place;
- (iii) it will secure the long term future of the significant place and, where

applicable, through sympathetic schemes for their appropriate re-use; and

- (iv) it is necessary to resolve problems arising from the inherent needs of the heritage asset, rather than circumstances of the present owner, or the purchase price paid.**

The Best Practice Guidance ‘Assessing Enabling Development’ accompanying this PPS will be taken into account in considering proposals.

In considering enabling development proposals developers are encouraged to enter into pre-application discussions with the planning authority.

The public benefit to be derived from the principal proposal will be secured either by conditional grant of planning permission or conditional grant accompanied by a planning agreement.

Justification and Amplification

- 4.1 It is intended that this policy will only be used where the long-term public benefit of securing a place of heritage significance or scheme of significant regional or sub-regional benefit decisively outweighs the disadvantages of setting aside normal policy presumptions. It allows for assessment of these proposals as a preliminary requirement and is not to be implemented if the planning authority is not convinced that the public benefit will be gained.
- 4.2 Enabling development will often be located close to the principal development. In some instances however it may be more appropriate for the enabling development to be located elsewhere, as long as cross-funding measures are secured by way of a planning agreement. A proposal for enabling development will also generally be located within the same planning authority boundary as the public benefit it facilitates.

Pre-application discussion

- 4.3 Developers are encouraged to enter into pre-application discussions with the planning authority: to assess the impact of the enabling element of the proposed development; to establish the level of detail required; to discuss the need to submit a ‘full’ as opposed to ‘outline’ planning application; and to avoid unrealistic expectations.
- 4.4 In some instances, planning conditions attached to a permission will be sufficient to ensure that the public benefits are delivered. In other, more complex cases, and where there is a need to secure the long-term management arrangements, a planning agreement as set out in Article 40 of the Planning (Northern Ireland) Order 1991 will be required. The pre-

application process will assist in identifying which option is best suited to the particular proposal.

Statement of Justification

- 4.5 Applications incorporating enabling development should be accompanied by a Statement of Justification. This statement should include sufficient, detailed financial information as is necessary to allow the planning authority, and/or its consultees to make an informed decision upon the application. In particular, the information provided on the enabling development component should be sufficiently detailed to allow the planning authority to validate the need for, and assess the scale of the enabling development; and consider the impact on private concerns where this coincides with the public interest.
- 4.6 The information supplied by the developer should cover all the financial aspects of the proposed enabling development, at a sufficient degree of detail to enable scrutiny and validation by the planning authority in consultation with its economists. This applies both to the assessment of need and the assessment of the scale of the enabling development necessary to meet that need. The onus is on the developer to demonstrate that sufficient funds are not available from any other source, such as grant aid.
- 4.7 Enabling development must always be justified by the inherent lack of viability of the asset, not an owner's inability to fund a commercially viable scheme.
- 4.8 Before purchasing a site, a developer will typically undertake an appraisal to determine the appropriate purchase price that will provide the desired capital return upon their investment. In some cases, a developer may pay a higher price for a development opportunity (hope value) than is justified by market conditions. Alternatively, market conditions may change to such an extent that the developer may not be able to realise the anticipated return on their investment. Both of these scenarios may give rise to calls for enabling development proposals, but cannot justify them.
- 4.9 Since this financial assessment is central to the question of whether enabling development is required, failure by the applicant to provide such information may result in refusal of planning permission. Developer concerns regarding the disclosure of commercially sensitive information do not outweigh the need for accurate financial information to be provided, as it is the financial case for the enabling development which forms a key part of any assessment.
- 4.10 Planning policies will not be set aside for only short-term or temporary public gains. The Statement of Justification will demonstrate that the benefits to be derived from the principal proposal shall be retained. Therefore, it must be clear therefore that once completed, the principal proposal can meet

recurring costs or, if it cannot, that suitable financial provisions are in place to provide sufficient funds to guarantee its long term sustainability.

Annex 1: DOE Section 75 Equality of Opportunity Screening Analysis Form

Section 1

1.1 Please insert below a brief description of the policy/legislation, including the title and all the main aims and objectives

Title Planning Policy Statement 23 (PPS23) 'Enabling Development'
Aims The objective of this Planning Policy Statement is to provide the of flexibility to accommodate unforeseen imaginative proposals for development that are clearly in the public interest; whilst aiming to maintain and enhance the standard of community, cultural, educational, social and health infrastructure, the historic built environment, the restoration / creation of wildlife habitats; and a range leisure facilities.

It is essential that all the aims/objectives of the policy be clearly and fully defined.

1.2 On whom will the policies/legislation impact? Please specify

This policy is designed to benefit the wider community at large at a regional or sub-regional level.

1.3 Who is responsible for (a) devising and (b) delivering the policy, eg is it DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

(a) The Department's Planning Policy Division;

(b) Implementation by the Planning authority.

1.4 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

Policy devised within the context of the Budget 2010, and the Regional Development Strategy 2025.

1.5 What data are available to facilitate the screening of this policy/legislation?

Policy development has been informed by established case-law.

1.6 Is additional data required to facilitate screening? If so, give details of how and when it will be obtained.

None.

Section 2 – Screening Analysis

The following criteria must be considered when screening.

2.1 Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?

	Yes	No
Religious belief		✓
Political opinion		✓
Racial group		✓
Age		✓
Marital status		✓
Sexual orientation		✓
Gender		✓
Disability		✓
Dependants		✓

Please give details

Policy devised to derive planning gain to all sections of society including all identified Section 75 groups.

2.2 Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No
Religious belief		✓
Political opinion		✓
Racial group		✓
Age		✓
Marital status		✓
Sexual orientation		✓
Gender		✓
Disability		✓
Dependants		✓

Please give details

Policy devised to derive planning gain to all sections of society including all identified Section 75 groups.

2.3 Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		✓
Political opinion		✓
Racial group		✓
Age		✓
Marital status		✓
Sexual orientation		✓
Gender		✓
Disability		✓
Dependants		✓

Please give details of any consultations carried out, and any problems identified.

Due to the generic nature of this policy and the perceived benefits to be derived to the wider public benefit, it was not considered necessary to engage with specific Section 75 Groups through the initial policy development – however as with all planning policy documents, Section 75 Groups will be invited to comment.

2.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?

~~Yes~~ No

Please give details

Policy devised to derive planning gain to all sections of society. Any responses received through the public consultation exercise will help determine the final version of this planning policy.

2.5 *It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:*

None.

2.6 *Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.*

Please give details

Policy devised to derive planning gain to all sections of society including all identified Section 75 groups.

2.7 *In relation to Departmental obligations under Section 49A of the Disability Discrimination Act 1995 (DDA) (as amended by the Disability Discrimination (Northern Ireland) Order 2006), please consider if there is any way of adapting the policy to show due regard to the need to promote positive attitudes towards disabled people and/or encourage participation by disabled people in public life.*

Please give details

Policy devised to derive planning gain to all sections of society including all identified Section 75 groups.

Section 3 – EQIA Recommendation

3.1 Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation.

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			✓
Effect on people’s daily lives.			✓
Effect on economic, social and human rights.			✓
Strategic significance		✓	
Financial significance		✓	

Please give details

Policy devised to derive planning gain to all sections of society including all identified Section 75 groups.

3.2 In view of the considerations in Section 2 and 3 do you consider that this policy/legislation should be subject to a full EQIA? Please give reasons for your considerations. If you are unsure, please consult with affected groups and revisit the screening analysis accordingly. ~~Yes/No/Unsure~~

PPS23 aims to promote development that will secure a place of heritage significance or scheme of significant regional or sub-regional benefit.

3.3 If an EQIA is considered necessary please comment on the priority and timing in light of the factors in table 3.1.

Not applicable.

3.4 If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?

Please give details

Not applicable.

Main Groups Relevant to the Section 75 Categories	
<u>Category</u>	<u>Main Groups</u>
Religious belief	Protestants; Catholics; people of non-Christian faiths; people of no religious belief
Political opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Black Caribbean people; people with mixed ethnic group
Gender	Men (including boys); women (including girls); trans-gendered people
Marital status	Married people; unmarried people; divorced or separated people; widowed people
Age	For most purposes, the main categories are: children under 18, people aged between 18-65, and people over 65. However, the definition of age groups will need to be sensitive to the policy under consideration
“Persons with a disability”	Disability is defined as: A physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities as defined in Sections 1 and 2 and Schedules 1 and 2 of the Disability Discrimination Act 1995
“Persons with dependants”	Persons with personal responsibility for the care of a child; persons with personal responsibility for the care of a person with an incapacitating disability; persons with personal responsibility for the care of a dependant elderly person
Sexual orientation	Heterosexuals; bi-sexuals; gays; lesbians

