



**MINISTERIAL ADVISORY GROUP
FOR ARCHITECTURE AND THE BUILT
ENVIRONMENT FOR NORTHERN IRELAND**

**PPS 24 (DRAFT): ECONOMIC CONSIDERATIONS
MAG RESPONSE TO CONSULTATION
06 MAY 2011**



Draft Planning Policy Statement 24: Economic Considerations

A Comment by the MAG

On 17 January 2011, following Executive agreement, the Minister of the Environment published draft Planning Policy Statement 24 (PPS 24) for public consultation. The draft PPS uses wording from the statement previously issued by the then Minister, Sammy Wilson, in May 2009 which was subsequently quashed in the High Court on 1 October 2010 on legal grounds.

Over the past 12 months policy statements have been published aimed at securing economic growth, including PPS 4 (Planning and Economic Development) and draft PPS 16 (Tourism) together with the 10 year review of the Regional Development Strategy. The broad principle of economic considerations is currently set out in PPS 1 entitled 'General Principles' however this draft PPS provides specific guidance on the weight to be accorded to economic considerations in the making of planning decisions. Of particular importance is that it is relevant to any type of development. The statement is not a substantial document and limited guidance is provided as to how it will be applied however it is unique as no equivalent policy in England, Scotland, Wales or the Republic of Ireland exists.

In announcing the publication of the draft PPS the Minister clearly stated that economic considerations will need to be weighed up alongside other material considerations however economics cannot override key environmental issues. It could be argued that the publication of this draft PPS strengthens the importance of economic considerations in accordance with the Executive's agenda to ensure sustainable economic growth and wealth creation. Specifically paragraph 2 of Policy EC 1 states that "*substantial weight can mean determinative weight*" therefore if this draft were to be adopted, economic considerations could be considered to be the determining factor by the Department. As stated in the introductory section of the statement, considering the current economic climate, attracting investment as quickly as possible is fundamental. The MAG expresses concern, however, that design quality may suffer. Such development may not be in the longer term public interest and may not be sustainable. These are important principles of planning legislation and policies and of the Architecture and Built Environment Policy for Northern Ireland.

Unlike other draft policy statements the Minister opted not to afford draft PPS24 any weight in the determination of planning application until formally adopted – post May 2011. Following the adoption of the policy it is anticipated that this statement could impact on a number of pending decisions both currently with the Department and the Planning Appeals Commission.

There is limited guidance as to what information is required to form part of an application for the consideration of the Department, however key economic factors such as the number of direct and indirect jobs to be created and inward investment opportunities will be critical. The Minister has suggested that it will be the role of economists in the Department to assess the positive and negative economic implications of proposals.

Conclusion

Planning decision making involves balancing a wide range of often conflicting criteria, and in this context, guidance as to the relative weight to be attached to individual elements is an entirely proper basis for policy.

This draft policy, however, indicates that this single material consideration can possess "determinative weight."

"Where the economic implications of a proposal are significant, substantial weight shall be afforded to them in the determination of that planning application. In such cases, substantial weight can mean determinative weight."

This appears to contradict case law advice given in the DoENI DC Manual Version 3 (Jan 2008) Section 5.3.42, "Relevant Case Law", which states:

'.....in Re Interface Europe's application for judicial review [1998] Coughlin J held that:

"...while assessing the weight to be given to a particular material factor is essentially a matter for the decision maker and the court will not interfere, even though it disagrees with the decision makers assessment of weight, nevertheless, a decision will be set aside where the decision maker treats a consideration as 'vitally material' to the extent that it displaces all other considerations and operates as a determining factor. In such circumstances, the court may conclude that the decision maker has either mis-directed himself or has acted in a way that is Wednesbury irrational"

The MAG therefore recommends that the phrase indicating that this single policy can have determining weight be removed from the final PPS 24. The MAG believes that such a phrase is misleading to applicants, will result in serious challenges at appeal and in the courts and has the potential to bring the planning system in Northern Ireland into disrepute.

The MAG further recommends that the draft PPS should be amended to require every planning application which submits justification for consideration under PPS 24 to also submit to an independent expert design review, which is treated as a material consideration, to ensure that the important principles of planning legislation and policy as well as the architecture and built environment policy are respected in every successful application. Such design reviews can be carried out at the pre-application discussion (PAD) stage as well as after the application has been submitted.

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Chair of the MAG

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