



Office of the
Deputy Prime Minister

Creating sustainable communities

Planning shapes the places where people live and work and the country we live in. It plays a key role in supporting the Government's wider social, environmental and economic objectives and for sustainable communities.



PLANNING

Planning Policy Statement 23: Planning and Pollution Control



Office of the
Deputy Prime Minister

Creating sustainable communities

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Planning Policy Statement 23: Planning and Pollution Control

Planning Policy Statements (PPSs) set out the Government's core policies and principles on the most important aspects of land use planning. The policies in this statement and the advice in the accompanying Annexes (*Annex 1: Pollution Control, Air and Water Quality*; and *Annex 2: Development on Land Affected by Contamination*) should be taken into account by Regional Planning Bodies (RPBs) and Local Planning Authorities (LPAs) in preparing Regional Spatial Strategies (RSSs) and Local Development Documents (LDDs) – referred to in this Statement as “development plans”. They are also material to decisions on individual planning applications. Where these policies are not reflected adequately in local development documents, or taken into account in relevant development control decisions, the First Secretary of State may use his powers of direction to seek changes to the documents or may intervene in the consideration of planning applications. This PPS and its associated annexes carry equal weight. A third Annex on *Planning and Light Pollution* will be prepared for public consultation in due course.

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Introduction

1. This PPS applies in England only. It replaces the remaining extant parts of Planning Policy Guidance (PPG) Note 23 *Planning and Pollution Control* published in 1994, which is hereby cancelled. Waste Planning, including operations under the Waste Management Licensing Regulations 1994 and the Pollution Prevention and Control Regulations 2000, in so far as they apply to waste management, is now dealt with in PPG10 *Planning and Waste Management* (September 1999), which is currently under review. Noise is covered by PPG24 *Planning and Noise* (1994). The impacts of transport on pollution will be covered in more detail in the forthcoming review of PPG13 *Transport* (2001).
2. This Statement advises that:
 - any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to impacts on health, is capable of being a material planning consideration, in so far as it arises or may arise from or may affect any land use;
 - the planning system plays a key role in determining the location of development which may give rise to pollution, either directly or indirectly, and in ensuring that other uses and developments are not, as far as possible, affected by major existing or potential sources of pollution;
 - the controls under the planning and pollution control regimes should complement rather than duplicate each other;
 - the presence of contamination in land can present risks to human health and the environment, which adversely affect or restrict the beneficial use of land but development presents an opportunity to deal with these risks successfully;
 - contamination is not restricted to land with previous industrial uses, it can occur on greenfield as well as previously developed land and it can arise from natural sources as well as from human activities;
 - where pollution issues are likely to arise, intending developers should hold informal pre-application discussions with the LPA, the relevant pollution control authority and/or the environmental health departments of local authorities (LAs), and other authorities and stakeholders with a legitimate interest; and
 - where it will save time and money, consideration should be given to submitting applications for planning permission and pollution control permits in parallel and co-ordinating their consideration by the relevant authorities.

Sustainable Development

3. The Government believes that planning should become a more strategic, proactive force for economic, social and environmental well-being. The Government's plans for reforming the planning system are set out in the Policy Statement *Sustainable Communities: Delivering through Planning*¹.

¹ *Sustainable Communities: Delivering through Planning* – July 2002.

4. The Government attaches great importance to controlling and minimising pollution. Its commitment to the principles of sustainable development was set out in *A Better Quality of Life – A Strategy for Sustainable Development for the UK*². The strategy is based on four core objectives:
 - maintenance of high and stable levels of economic growth and employment;
 - social progress which recognises the needs of everyone;
 - effective protection of the environment; and
 - prudent use of natural resources.
5. The strategy sets out ten principles and approaches. The following are particularly relevant to the consideration of planning and pollution control:
 - putting people at the centre;
 - taking a long-term perspective;
 - taking account of costs and benefits;
 - respecting environmental limits;
 - applying the precautionary principle;
 - using scientific knowledge;
 - following procedures which are based on transparency, access to information, effective participation by stakeholders and access to justice; and
 - making the polluter pay.

The Precautionary Principle

6. The Government is committed to using the precautionary principle, which was included in the 1992 *Rio Declaration on Environment and Development*³. This states that, “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. As was made clear in *A Better Quality of Life – A Strategy for Sustainable Development for the UK*, precaution is not just relevant to environmental damage, but is relevant also in the fields of health and safety. The Interdepartmental Liaison Group on Risk Assessment (ILGRA), in its 2002 paper *The Precautionary Principle: Policy and Application*⁴, made a number of important points including noting that the:
 - precautionary principle should be invoked when:
 - there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment; and
 - the level of scientific uncertainty about the consequences or likelihood of the risk is such that best available scientific advice cannot assess the risk with sufficient confidence to inform decision-making.

² *A Better Quality of Life – A Strategy for Sustainable Development for the UK* – May 1999.

³ *Rio Declaration on Environment and Development*, made at UNCED 1992.

⁴ *The Precautionary Principle: Policy and Application*, ILGRA, June 2002.

Precautionary action requires assessment of the costs and benefits of action, and transparency in decision-making.

National and International Obligations

7. A number of national and international obligations are important in controlling pollution and land contamination. They have informed the preparation of this Statement, and set the context for plan-making and development control in accordance with it:
 - the Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control Regulations 2000 – which introduced the new regime for pollution prevention and control implementing the Integrated Pollution Prevention and Control Directive (96/61/EC);
 - the Air Quality Strategy (2000) and its Addendum (2003) and the system of local air quality management under Part IV of the Environment Act 1995;
 - the UK Climate Change Programme (November 2000), setting out details of the UK response to the challenge of climate change;
 - the EC Water Framework Directive (2000/60/EC) – which establishes a framework for protecting the water environment, with the aim of achieving demanding chemical and ecological water quality targets by 2015;
 - Part III of the Environmental Protection Act 1990 – which sets out controls over statutory nuisances;
 - the Control of Major Accident Hazards Regulations 1999 (COMAH) – specifying requirements and plans for handling emergency procedures for handling incidents and restoration and clean-up following a major accident;
 - Part IIA of the Environmental Protection Act 1990 – which provides a regime for the identification and remediation of contaminated land;
 - the Environment Act 1995 – which set up the Environment Agency;
 - the EC Directives on the Assessment of Environmental Effects (85/337/EEC as amended by 97/11/EC) implemented by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000) – which requires the assessment of environmental effects of specified public and private projects before development consent is granted;
 - EU Environmental Liability Directive (2004/35/EC) which aims to establish a common framework for the prevention and remediation of environmental damage at reasonable cost to society; and
 - EU Emissions Trading Directive (2003/87/EC), which initially covers emissions of carbon dioxide from certain industrial activities.

Government Policies on Planning and Pollution Control

8. Any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to an impact on health, is capable of being a material planning consideration, in so far as it arises or may arise from any land use.
9. The Government's policy framework for planning was set out in the consultation draft of Planning Policy Statement 1: *Creating Sustainable Communities*⁵. Planning should promote a sustainable pattern of land use that will contribute to meeting the country's economic, social and environmental needs, whilst recognising the precautionary principle. The planning system plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching mitigating conditions to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through conditions. RSSs and LDDs, which set the policy framework for the development of an area, can prevent harmful development and mitigate the impact of potentially polluting developments over the medium to long term. Development control decisions on individual planning applications, particularly those for potentially polluting processes, can have an immediate impact on the local environment, human health and well-being. In considering proposals for development, LPAs should take account of the risks of and from pollution and land contamination, and how these can be managed or reduced.
10. The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it.
11. Close co-ordination between planning authorities, transport authorities and pollution control regulators is essential to meet the common objective that where development takes place, it is sustainable. It is important that:

⁵ Consultation paper on Planning Policy Statement 1: *Creating Sustainable Communities*, ODPM, February 2004.

- Pollution issues should be taken into account as appropriate in planning decisions (having regard to development plan documents and all material considerations). Where, for example, new housing is proposed close to a source of potential pollution, the risk of pollution from the normal operation of the process or the potential impacts and the extent to which the proposals address such risks will influence whether or not development should proceed, as will the availability of sewerage and the drainage infrastructure. The generation of additional pollution from road traffic, the demand on natural resources and the discharges to the environment associated with any proposed development should also be considered.
- Planning decisions can have a significant impact on the quality of air, water and land, and therefore affect the environment. Examples might include proposals for a new riverside oil depot upstream of a drinking water intake or above a vulnerable aquifer, or for any development which gives rise to a significant increase in traffic and associated emissions e.g. an out-of-town shopping centre.

PPS23 Annex 1: *Pollution Control, Air and Water Quality* gives further guidance on the pollution control regimes that interact with the planning system together with good practice in considering these issues in development plans and when determining applications. LPAs and pollution control authorities should take account of the agreed working arrangements and protocols for technical co-operation between the Environment Agency and the Local Government Association outlined in *Working Better Together*⁶.

12. The consideration of an Environmental Statement prepared as part of an Environmental Impact Assessment (EIA) is usually the most convenient way of ensuring the environmental impacts of a significant development proposal are comprehensively considered. Planning authorities should remain alert to the possibility of environmental impacts for proposals of any scale, regardless of whether a formal EIA is required.

Development Plans

13. RPBs are responsible for producing RSSs which set out their policies for the development and the use of land in the region. They provide the opportunity to assess and indicate the scale of regionally important, longer-term demands for land for potentially polluting development, and any regional constraints on development arising from the cumulative impact of existing and proposed potentially polluting developments or uses. LDDs are prepared by LPAs as part of the local development scheme to apply national policies stated by the Government and the policies of the RSS to their areas. LDDs should set out the criteria against which applications for potentially polluting developments will be considered. (Appendix 1 contains a list of matters for consideration in preparing LDDs and taking decisions on individual planning applications.)

⁶ *Working Better Together* (LGA, July 2000).

Pre-application Discussions

14. Planning authorities should have sufficient information on which to base their development control decisions. Where pollution issues are likely to arise, intending developers should discuss their proposals with both the planning and pollution control authorities, and with other authorities with a legitimate interest (e.g. HSE where a major accident hazard may exist) before submitting an application. This will provide an opportunity to consider the principle of development, minimise the potential for conflict and duplication between control regimes, and streamline the application procedure. LPAs should make clear at this stage what information they will require in order to reach a decision, although the form of the application should not be decided with the developer to the extent that it effectively predetermines the outcome. The pre-application discussion can be useful in informing the scope and content of an EIA, should one be required (see paragraph 12). Wherever possible, developers are encouraged to submit applications for planning permission and pollution control permits in parallel. This approach may save time and money and is recommended to avoid unnecessary confusion and conflict and to allow the co-ordination of decision-making by the relevant authorities.

Development Control

15. Development control decisions can have a significant effect on the environment, in some cases not only locally but also over considerable distances. LPAs must be satisfied that planning permission can be granted on land use grounds taking full account of environmental impacts. This will require close co-operation with the Environment Agency and/or the pollution control authority, and other relevant bodies such as English Nature, Drainage Boards, and water and sewerage undertakers, to ensure that in the case of potentially polluting developments:
 - the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
 - the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable. LPAs may wish to set out principles and policies to deal with cumulative impacts when drawing up their LDDs. Decisions on individual cases must always be justified on the facts applying to those cases.

Government Policies on Land Affected by Contamination

16. Central to achievement of the Government's objective of ensuring sustainable development is urban and rural regeneration and the redevelopment of previously developed sites. Such action minimises the need to develop greenfield land. *Planning for the Communities of the Future*⁷ set a Government target which is reiterated in planning guidance on housing, PPG3 *Housing* (March 2000), "the national target is that by 2008, 60% of additional housing should be provided on previously developed land and through conversions of existing buildings". A balanced approach is required which addresses the risk of pollution, whilst recognising the benefits of recycling previously developed land and the damage to community and business confidence caused by failing to remediate contaminated land. PPG3 *Housing* (March 2000), advises LPAs to take account of physical and environmental constraints on the development of land when deciding which sites to allocate for housing⁸.
17. The presence of contamination can affect or restrict the beneficial use of land, though development can present an opportunity to deal with it. Contamination is not restricted to previously developed industrial land but it can occur also on greenfield sites and it can arise from natural sources as well as from human activities. Contamination can create risks to human health, property and the wider environment, including long-term limitations on the use of soils. The real or perceived costs of treatment can act as significant barriers to successful development, particularly if the contamination issues and their solutions are not identified early and integrated into the scheme for development of the site. Where land is affected by contamination, development can provide an opportunity to address the problem for the benefit of the wider community and bring the land back into beneficial use.
18. The Government's objectives for contaminated land are set out in DETR Circular 02/2000, *Contaminated Land*⁹. These are:
 - to identify and remove unacceptable risks to human health and the environment;
 - to seek to bring damaged land back into beneficial use; and
 - to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
19. The approach under Part IIA focuses on the risks caused by land contamination. It recognises that the risks presented by any given level of contamination will vary according to the use of the land and a wide range of other factors, such as the underlying geology of the site. Part IIA of the 1990 Act focuses on voluntary remediation where possible. Much of this will be secured through the planning system rather than through Part IIA, because development provides both the opportunity and resources to carry out remediation.

⁷ *Planning for the Communities of the Future*, DETR, February 1998.

⁸ The recent consultation (July – October 2003) on changes to PPG3 did not propose any changes to these particular policies.

⁹ *Environmental Protection Act (EPA) 1990: Part IIA Contaminated Land*, Circular 02/2000, DETR, 2000.

20. Contamination of land may threaten public health and safety, the natural environment, the built environment and economic activities, through its impacts on the users of the land, and on neighbouring users. Land contamination, or the possibility of it, is therefore a material planning consideration in the preparation of development plan documents and in taking decisions on individual planning applications. It remains the responsibility of the landowner/developer to identify land affected by contamination and to ensure that remediation is undertaken to secure a safe development. PPS23 Annex 2: *Development on Land Affected by Contamination* gives brief details of the roles of the different parties in the development process, on the relationship between planning control and the contaminated land regime and on the requirements and good practice in dealing with these issues through planning control.

Development Plans

21. LDDs should include appropriate policies and proposals for dealing with the potential for contamination and the remediation of land so that it is suitable for the proposed development/use. RSSs and LDDs have a positive role to play in steering development onto appropriate previously developed land, some of which may be affected by contamination, and to protect greenfield land from avoidable development. At regional level, depending on whether there are regionally important concentrations of land affected by contamination, a RSS may need to have specific policies relating to development in these areas. In other cases, it may be more appropriate to address this issue within a section dealing with pollution matters generally, as long as this does not merely repeat national policy. At local level, the extent to which LDDs need to deal with land contamination issues will clearly depend on their extent and significance in the LPA's area. Where there are substantial concentrations of land affected by contamination, more detailed attention should be given to this in LDDs, possibly through action area plans.

Pre-application Discussions

22. Where land is known or suspected to be affected by contamination, intending developers should hold informal pre-application discussions with the LPA, the environmental health departments of local authorities, and other authorities with a legitimate interest (i.e. building control departments of LAs, and the Environment Agency where necessary). The application of waste management controls to waste associated with land contamination make it particularly important to establish what statutory environmental protection controls may apply. Pre-application discussions should thus help to identify whether the land may be affected by contamination and implications for the development proposal, and will inform the content of an EIA where this is required.

Development Control

23. In considering individual planning applications, the potential for contamination to be present must be considered in relation to the existing use and circumstances of the land, the proposed new use and the possibility of encountering contamination during development. The LPA should satisfy itself that the potential for contamination and any risks arising are properly assessed and that the development incorporates any necessary remediation and subsequent management measures to deal with unacceptable risks,

including those covered by Part IIA of the EPA 1990. Intending developers should be able to assure LPAs they have the expertise, or access to it, to make such assessments.

24. LPAs should pay particular attention to development proposals for sites where there is a reason to suspect contamination, such as the existence of former industrial uses, or other indications of potential contamination, and to those for particularly sensitive use such as a day nursery or housing likely to be used by families with children. In such cases, it should normally require at least a desk study of the readily-available records assessing the previous uses of the site and their potential for contamination in relation to the proposed development. If the potential for contamination is confirmed, further studies by the intending developer to assess the risks and identify and appraise the options for remediation should be required.
25. The remediation of land affected by contamination through the granting of planning permission (with the attachment of the necessary conditions) should secure the removal of unacceptable risk and make the site suitable for its new use. As a minimum, after carrying out the development and commencement of its use, the land should not be capable of being determined as contaminated land under Part IIA of the EPA 1990.

Conclusion

26. In accordance with national policies, the Government expects RPBs and LPAs to adopt a strategic approach to integrate their land use planning processes with plans and strategies for the control, mitigation and removal of pollution, as far as it is possible and practicable to do so. The overall aim of planning and pollution control policy is to ensure the sustainable and beneficial use of land (and in particular encouraging reuse of previously developed land in preference to greenfield sites). Within this aim, polluting activities that are necessary for society and the economy should be so sited and planned, and subject to such planning conditions, that their adverse effects are minimised and contained to within acceptable limits. Opportunities should be taken wherever possible to use the development process to assist and encourage the remediation of land already affected by contamination.

Appendix A: Matters for Consideration in Preparing Local Development Documents and Taking Decisions on Individual Planning Applications

The following matters (not in any order of importance) should be considered in the preparation of development plan documents and may also be material in the consideration of individual planning applications where pollution considerations arise:

- the possible impact of potentially polluting development (both direct and indirect) on land use, including effects on health, the natural environment or general amenity;
- the potential sensitivity of the area to adverse effects from pollution, in particular reflected in landscape, the quality of soil, air, and ground and surface waters, nature conservation (including Sites of Special Scientific Interest (SSSIs), National Parks, Areas of Outstanding Natural Beauty (AONBs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs), Wetland of International Importance (RAMSAR sites), agricultural land quality, water supply (Source Protection Zones), archaeological designations and the need to protect natural resources;
- the environmental benefits that the development might bring, such as:
 - resulting reductions in the need to travel;
 - accompanying improvements to transport infrastructure;
 - restoration of former habitats;
 - enhancement or creation of habitats; and
 - the remediation of past contamination.
- the economic and wider social need for development (including potentially polluting development) such as the provision of a product or service, the generation of secondary trade with local businesses, the creation of new jobs and meeting regional or national environmental objectives including:
 - the need to identify land, or establish criteria, for the acceptable location of potentially polluting developments and the availability of alternative sites; and
 - the need to separate necessary but potentially polluting and other land uses (recognising the potential conflict with sustainable development over mixed-use developments) so as to reduce conflicts, for example by identifying where necessary areas around existing sources of pollution (including roads) in which proposed new developments and uses should be carefully considered in terms of their potential as pollution receptors.
- the existing, and likely future, air quality in an area, including any Air Quality Management Areas (AQMAs) or other areas where air quality is likely to be poor (including the consideration of cumulative impacts of a number of smaller developments on air quality, and the impact of development proposals in rural areas with low existing levels of background air pollution). The findings of air quality reviews and assessments will be important in the consideration of local air pollution problems and the siting of certain types of development;
- the need for compliance with any statutory environmental quality standards or objectives (including the air quality objectives prescribed by the Air Quality Regulations

2000 and Amending Regulations 2002, the water quality objectives prescribed in EU legislation including the 1991 Urban Waste Water Treatment Directive and Nitrate Vulnerable Zones identified under the 1991 Nitrates Directive (see Appendix 1D of Annex 1 on *Pollution Control, Air and Water Quality*);

- the need to ensure that land, after development, is not capable of being determined as contaminated land under Part IIA of the EPA 1990 and that all unacceptable risks have been addressed;
- the need to limit and where possible reduce greenhouse gas emissions and take account of potential effects of climate change;
- the possible adverse impacts on water quality and the impact of any possible discharge of effluent or leachates which may pose a threat to surface or underground water resources directly or indirectly through surrounding soils;
- the need to make suitable provision for the drainage of surface water;
- the provision of sewerage and sewage treatment and the availability of existing sewage infrastructure;
- existing action and management plans with a bearing on environmental quality including: Air Quality Management Area Action Plans (prepared by LAs under Part IV of the Environment Act 1995), inspection strategies and programmes for contaminated land (prepared by LAs under Part IIA of the EPA 1990), River Basin Management Plans (Water Framework Directive 2000/60/EC), Catchment Abstraction Management Strategies (prepared by the Environment Agency), Catchment Flood Management Plans (prepared by the Environment Agency), Biodiversity Action Plans (prepared by English Nature, local partnerships and the UK Biodiversity Steering Group), Noise Management Plans and Noise Action Plans (prepared by the LA, and in London, the Mayor's London Ambient Noise Strategy), Local Agenda 21s (Sustainable Development initiatives prepared by the LA), Community Strategies (prepared by the LA under the Local Government Act 2000), State of the Environment Reports (prepared by some LAs and the Mayor of London)¹⁰;
- the possibility that (whether or not some aspects of the development are subject to pollution control), emissions of smoke, fumes, gases, dust, steam, smell, vibration or noise from the development might nevertheless be seriously detrimental to amenity in addition to constituting a statutory nuisance under Part III of the Environmental Protection Act 1990;
- the possibility that the development might present a Major Accident Hazard under the Control of Major Accident Hazard Regulations 1999;
- the objective perception of unacceptable risk to the health or safety of the public arising from the development; and
- the need to limit and, where possible, reduce the adverse impact of light pollution, e.g. on local amenity, rural tranquility and nature conservation.

¹⁰ The Government White Paper *Strong Local Leadership – Quality Public Services*, November 2002, contained proposals to reduce and rationalise the requirements for authorities to prepare plans to central government specifications.

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