

COMMITTEE:	Planning and Licensing Committee
DATE:	25 May 2004
SUBJECT:	Supplementary Planning Guidance: Demonstrating Genuine Redundancy of Business Land and Premises
REPORT OF:	Director of Economy, Tourism and the Environment
Ward(s):	All
Purpose:	To seek formal agreement to recommend the draft Supplementary Planning Guidance on Demonstrating Genuine Redundancy of Business Land and Premises.
Contact:	Dinah Elliott, Local Plan Officer Telephone 01323 415251 or internally on extension 5251.

<p>Recommendations:</p>		<p>To agree:</p> <ol style="list-style-type: none"> 1. the modifications to the draft guidance set-out in appendix A of this report; 2. the modified draft Supplementary Planning Guidance on Demonstrating Genuine Redundancy of Business Land and Premises be recommended for adoption.
<p>1.0</p>	<p>Background</p>	
<p>1.1</p>	<p>At the meeting of 10 February 2004 this Committee agreed that draft supplementary planning guidance on demonstrating genuine redundancy of business land and premises should be approved for public consultation. Councillor Harris, as Cabinet member with responsibility for the environment, was also contacted and had no objection to public consultation on the document.</p>	
<p>1.2</p>	<p>The guidance was made available for a six week period and those bodies/organisations with a possible interest were contacted directly about its availability. It was also placed on the Council's web-site.</p>	
<p>2.0</p>	<p>Results of Consultation</p>	
<p>2.1</p>	<p>Appendix A of this report is a schedule of all the comments received on the draft guidance, with an officer response and recommendation for each representation.</p>	

2.2	The comments received from both the County Council and Wealden District Council have highlighted some aspects of the guidance which need to be made more explicit. In this context attention is drawn to the proposed recommendation to specify a sequential test for the consideration of proposals which would mean that alternative uses of the site can only be considered once the potential for refurbishment/redevelopment has been fully explored. Recent negotiations with prospective developers suggest that explicitly setting out the sequential test along these lines will give much greater clarity.	
3.0	Consultations	
3.1	The consultations undertaken in connection with the draft guidance are outlined in paragraph 1.2 above.	
3.2	A consultation seminar for bodies/organisations with a specific interest was held to inform preparation of the guidance before it was submitted to Planning and Licensing Committee.	
4.0	Implications	
4.1	Environmental: failure to retain business land and premises which are capable of continued business use will exacerbate the trend of Eastbourne increasingly becoming a dormitory town. This means that residents are increasingly working elsewhere and making unsustainable, lengthy journeys to work. Retaining and providing for local jobs is, therefore, important for the sustainability of the town.	
4.2	Anti-poverty/ Youth: retention of local jobs is important for those sections of the community who have low incomes and may be unable to afford to commute to work elsewhere.	
4.3	Human Resource, Financial, Community Safety & Human Rights Implications: there are no specific adverse implications resulting from the implementation of the supplementary planning guidance.	

5.0	Summary	
5.1	This report sets-out the responses to the public consultation on the draft supplementary planning guidance and the proposed response to the representations received. It is proposed that this Committee recommend the guidance for adoption, subject to a few minor modifications as indicated in the responses to the representations received. A modified copy of the draft guidance has been placed in the member's room.	
<p>Dinah Elliott</p> <p>Local Plan Officer</p> <p>Background Papers:</p> <p>The Background Papers used in compiling this report were as follows:</p> <p>"Supplementary Planning Guidance "Demonstrating Genuine Redundancy of Business Premises" report to Planning and Licensing Committee 10 February 2004.</p> <p>To inspect or obtain copies of background papers please refer to the contact officer listed above.</p>		
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Appendix A: Representations Received on draft Supplementary Planning Guidance on Demonstrating Genuine Redundancy of Business Land and Premises.

Section/ Paragraph No.	Name/Organisation	Representation	Officer Response
Overall	Wealden District Council	<p>Whilst para.10.1 indicates that the 5 year vacancy rule does not apply to allocated sites, does the rest of the SPG? Clearly the wording of the policy relates to currently or last in use for business, but some confirmation of this in the SPG would be helpful. Clearly there is a concern that using criteria (a)(ii)of the Policy, landowners will be able to argue that long-standing allocations which remain unimplemented should be released for other uses. This would have implications for employment land in the Wealden part of the South Central Policy Area. For this reason, it is important</p>	<p>The SPG gives additional guidance on policy BI 1 so does <u>not</u> apply to allocated sites. The reference in paragraph 10.1 was included for the avoidance of doubt.</p> <p>Recommendation: text to be revised to avoid any element of doubt.(new para. 1.2)</p>

General	Wealden District Council	<p>If a proposal relates to an existing business site - to what extent should the reasons for an occupier vacating the site be taken into account? Clearly, it was a viable proposition for the use to remain until that time.</p>	<p>Paragraphs 6.1 6.2 and 8.2 make it quite clear that it is the business use which is under consideration (not the specific circumstances of an individual user) and that a site cannot be redundant if it is currently being used.</p> <p>To relax the policy to enable personal circumstances to be taken into account would significantly undermine employment potential within the town, as many applicants can evidence a personal case (e.g. they are retiring and want to maximise capital, they are wishing to gain residential land value so that they can move to larger premises).</p> <p>Recommendation: no change</p>
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<p>General</p>	<p>RPS Planning, Transport and Environment on behalf of BT Plc and Fairview New Homes Ltd.</p>	<p>In light of the recently published Barker Report and PPG3 consultation on supporting the delivery of new housing consider that it will be inappropriate for the Council to sterilise land that could be potentially developed for residential use through seeking to apply inflexible standards such as those contained within the SPG.</p>	<p>Neither the Barker report or the revisions to PPG3 are government policy (a consolidated PPG3 is due later this year).</p> <p>This Council considers that a fully reasoned case was made at the Borough Plan Inquiry as to why there are exceptional circumstances prevailing in Eastbourne. This case was endorsed by the inspector and subsequently supported at s.78 appeal. The Council does not believe that the wider planning background has changed so significantly that exceptional local circumstances no longer prevail and adopted policy BI 1 is no longer material.</p> <p>The wider planning circumstances will be reviewed as part of the LDF process but until that time, given the importance of local regeneration and economic diversification, policy BI 1 and the supplementary guidance should prevail.</p> <p>Recommended: No change</p>
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5.4	East Sussex County Council- Transport and Environment (Strategic Policy)	<p>Bullet point could be clarified to include reference to 2001 Census figures which show almost 10,000 residents work outside the Borough, with just over 10,000 people employed in the Borough who live elsewhere.</p>	<p>Agree that clarification would be helpful but crude figures do ignore the fact that residents tend to commute further to work than those working in Eastbourne who tend to come from the more immediate area.</p> <p>Recommended: new footnote to be inserted</p>
6.2	East Sussex County Council- Transport and Environment (Strategic Policy)	<p>A sequential approach seems to be implied:</p> <ul style="list-style-type: none"> · Measures designed to retain business uses; and · A set of “compromises” which may be preferable to a total loss of business space. <p>It could be helpful to make this approach explicit as it would avoid unnecessarily eroding the stock or supply of premises for business use and maintain employment potential.</p> <p>In terms of the “compromises”:</p> <ul style="list-style-type: none"> · Might like to consider the mix of uses in mixed schemes that may be appropriate; · Introduction of residential use as part of live/work units should be treated with some caution and you may wish to consider this only for small sites; · Off-site provision or a financial payment should be towards stock or supply that is truly additional and not land already allocated for business use (although could possibly bring forward allocations where 	<p>This is a fair point and borne out by recent experience where applicants have submitted proposals for live/work units rather than actively market the site for refurbishment or redevelopment.</p> <p>Recommend: text be revised to address this.</p> <ul style="list-style-type: none"> · Will depend on each individual site so do not want to be too prescriptive; · Will depend on each individual site so do not want to be too prescriptive but in reality it is likely to be small sites where this is appropriate. · At the present point in time the Council is only intending that the in lieu payments should be used as a last resort, in exceptional circumstances. It is not, therefore, proposed to give guidance on this at the moment but we will be assessing the situation and will, if necessary, bring forward additional guidance. It is recognised that this is an extremely complicated issue and we do not feel able at the present time to provide detailed, workable

6.2	Wealden District Council	<p>A cross-reference to paras 9.4 and 9.5 might be useful in para 6.2 to ensure that there is no doubt that other and mixed uses can only be contemplated once the redundancy case has been demonstrated. It is not clear the extent to which alternative/mixed use provision has to be tested before the redundancy case is accepted fully, i.e. is there a sequential test here before all business can be lost?</p> <p>The link between any sequential approach to viability also needs to be made to marketing.</p>	<p>In part this is a similar concern to that of the County Council and can be addressed in the proposed revision.</p> <p>Recommendation: text be revised to address this.</p> <p>Agree.</p> <p>Recommendation: paragraph 6.3 to be revised to address this. [new paragraph 6.4 applies]</p>
6.2	Wealden District Council	<p>Interested to read about the principle of "off-site" delivery but the rest of the document was silent on this point. The compensation for losses of business land seems to be a concept in ESCC's recent SPG on developer contributions but that document is quite vague about how this would operate. Wealden has always expressed concerns about the concept of allowing business sites to be redeveloped if some form of compensatory payment is made since it could make the possibility more likely and it is doubtful that off-site provision could be achieved.</p>	<p>At the present point in time the Council is only intending that the in lieu payments should be used as a last resort, in exceptional circumstances. It is not, therefore, proposed to give guidance on this at the moment but we will be assessing the situation and will, if necessary, bring forward additional guidance. It is recognised that this is an extremely complicated issue and we do not feel able at the present time to provide detailed, workable guidance.</p> <p>Recommendation: no change.</p>
6.3	Wealden District Council	<p>Is the intention of the viability test to also employ a sequential test to different categories of business use, since the financial considerations could be quite different?</p> <p>There will be different degrees of viability, but the viability test appears only to relate to refurbishment and redevelopment in (a)(iii) and I am not clear how it is incorporated within (a)(ii).</p>	<p>There is no explicit intention to employ a sequential test to different categories of business use although these considerations may well emerge from either the consideration of the marketing or the consideration of the costs of refurbishment/redevelopment. Whilst such a test might be considered in the future the Council has no experience at the present time on how it might be</p>

Section 8	East Sussex County Council- Transport and Environment (Strategic Policy)	Marketing aspects are generally supported but may wish to make more explicit the reasonableness of the price at which the premises are marketed.	Agree. Recommendation: paragraph 8.4 be revised to address this.
8.3	Wealden District Council	<p>Agree that it is difficult to specify a single time limit. But question whether 9 months is long enough. Would it be more appropriate to adopt a more conservative approach by suggest a minimum of say 18 months, but that this could be longer depending upon</p> <p>There is also the issue of how far into the future the marketing should consider - given that the policy applies to the plan period. It will be difficult to demonstrate that there will be no demand within the entire Plan period - given how quickly circumstances can change.</p>	<p>The 9 month period identified was derived from a consultation seminar with a number of interested parties. Our experience at the present time is that the market for business premises within Eastbourne is extremely buoyant and we believe the 9 month figure to be appropriate. We consider that to successfully defend the policy at appeal we need to be realistic about the local market, otherwise we may well be criticised for maintaining business premises just for the sake of it.</p> <p>Given that the Plan period is in reality only 5 years (existing development plan arrangements) and 3 years (new development plan arrangements) we do not consider that this presents an issue (although it would for a longer time frame).</p> <p>Recommend: no change.</p>

8.3	RPS Planning, Transport and Environment on behalf of BT Plc and Fairview New Homes Ltd.	Unacceptable for industrial and employment land or premises to lie vacant for 9 months to two years.	<p>This statement presumes that there will be no market interest in business use. Our experience shows that the market for most business premises is buoyant, because of supply shortages, so the likelihood of prolonged vacancy across the Borough is not likely to be significant.</p> <p>Recommend: No change</p>
8.4	Wealden District Council	Think point (h) is very important and a good idea, but it might be worth including Wealden District Council in this list for the reasons set out above. Any marketing should consider the needs of the Wealden part of the Policy Area;	<p>Agree</p> <p>Recommendation; text to be revised to address this and additional footnote added to para 8.4</p>
8.5	Wealden District Council	(b) - is there a need for the applicant to withdraw first - it must depend upon the outcome of the arbitration?	<p>It is the Council's preference for the application to be withdrawn because the arbitration will likely delay the decision on the planning application and affect planning performance figures.</p> <p>Recommend: no change.</p>

9.3	Wealden District Council	confidentiality is going to be a serious issue particularly in relation to point (g). Some reference about how the information will be used etc would be appropriate.	<p>Agree that confidentiality is an issue but not just in respect of g). It is proposed to include a general sentence on how confidential information will be handled.</p> <p>Recommendation: text to be revised.</p>
9.3	RPS Planning, Transport and Environment on behalf of BT Plc and Fairview New Homes Ltd.	Requirement for applicant/developer to provide written evidence from three recognised financial institutions is onerous and unduly restrictive. Should be for the LPA to prove if they have doubt about the professional opinion of the relevant financial institution instructed by the applicant/developer.	<p>Do not agree that this is an onerous requirement. Indeed we believe that it is sound business practice for the applicant/developer to contact more than one financial institution.</p> <p>Recommendation: no change.</p>
9.5	Wealden District Council	Other uses should be the minimum necessary to support a viable business development on the site – i.e. more stringent than a reasoned justification about why the same amount of floorspace cannot be delivered.	<p>This is implicit in the text but can be made more explicit.</p> <p>Recommendation: text to be revised to address this.</p>
10.1	Wealden District Council	What evidence have you used to suggest that 5 years is the right time limit on genuine vacancy? It seems a relatively short period of time in the development industry. Support the view that this only applies to sites vacant prior to the adoption of the SPG as this will prevent developers building landbanks in the future.	<p>No direct evidence but is based on the view that 5 years will usually cover the economic cycle.</p> <p>Recommendation: no change</p>