

# PPS 15: Planning & Flood Risk



## Summary of Consultation Responses

1. On 16<sup>th</sup> December 2004, the Department issued for consultation draft Planning Policy Statement (PPS) 15 setting out the Department's planning policies in relation to planning and flood risk.
2. The Department sent out copies of Draft PPS 15 to approximately 350 interested parties, including district councils, a wide range of public bodies, MPs, MLAs, non-governmental organisations, professional bodies, and business interests. Notices advertising consultation and inviting responses were posted in the Belfast Telegraph, the Irish News and the Newsletter, on 17<sup>th</sup> and the 31<sup>st</sup> of December 2004. The document was also made available on the Planning Service website. Consultation responses were requested by 18<sup>th</sup> April 2005, but a number of responses were received after the closing date. All the responses received were taken into account in reviewing the draft PPS.
3. This report provides an overview of the findings of the consultation process. It is not intended to be a comprehensive report on every comment received but rather a summary of the key issues raised in the responses. A copy of the responses has been retained on file with the Department and is available by appointment for public inspection.
4. The Department received a total of 26 responses to Draft PPS 15 from a range of interested parties, which can be categorised as follows:

Non-Governmental Organisations	8
Government Departments and Statutory Agencies	5
Professional Bodies	4
Local Authorities	4
Interest Organisations	2
Academics	2
Individual Responses	1

5. The majority of responses covered a number of issues and several, particularly those received from environmental NGOs and Local Authorities were detailed in their comments. Five respondents confined their comments to expressing general support for the Statement. Some of the response referred to matters outwith the scope of the PPS consultation exercise, for example, requests that flood plain maps to be provided to local authorities and the preparation of guidance on flood resistant construction techniques. A full list of respondents is provided in

Annex 1.

6. The broad principles informing the policy statement on planning and flood risk and the proposals in draft PPS 15 were supported by the majority of respondents. In particular the adoption of the precautionary approach was welcomed by all but two respondents. The overall structure, content and clarity of presentation of the document were commended and there were a number of suggestions on how this could be further enhanced in the final Statement. Respondents also voiced their appreciation of the aim of raising public awareness about flood risk and the commitment to review the policy within five years of publication. However a significant number of replies reflected a desire for the inclusion of a specific planning policy promoting the use of Sustainable Drainage systems and there was a divergence of views among respondents on the issue of culverting.
7. On the whole comments on the policies in the document were constructive and focussed. The majority of comments requested clarification and/or amplification of particular matters and elements of the text and these are addressed below.

## Specific Issues

### Overall Approach to PPS 15

8. While the PPS was generally welcomed, one professional respondent representing a number of building firms expressed strong disagreement with the draft planning policy statement and refuted the validity of the principles upon which it is based. One local authority considered the proposed constraints upon development within river flood plains could be damaging to the development of some local economies.

**Response:** *The Department is satisfied that the approach set out in PPS 15 is consistent with the wider Government goal of sustainable development, which seeks to achieve inclusive social progress through protection of the environment, prudent use of natural resources and the promotion of a sustainable, innovative and productive economy. This is confirmed in the recently published Northern Ireland Sustainable Development Strategy. The SDS highlights that among the areas for priority action in the Region are responding to climate change and the promotion of sustainable communities.*

9. One local authority and the National Trust, while supporting the broad principles of Draft PPS 15, expressed the opinion that the policy approach should be similar to the sequential approach taken in the English equivalent to PPS 15, Planning Policy Guidance (PPG) 25: Development and Flood Risk.

**Response:** *The Department considers that PPS 15 shares the same core principles and broad strategic approach expressed in PPG25 and*

*its proposed replacement draft PPS 25: Development and Flood Risk. However, PPS 15 varies from these documents and their Scottish and Welsh counterparts (SPP 7 and TAN 15 respectively) in its adoption of a risk avoidance approach to flood risk rather than one of risk management. The Department is satisfied that this is the most appropriate approach for Northern Ireland because of its geography and the differing scale and nature of flood risk. As a result an explicit sequential approach as adopted by PPG25 and its counterparts in the rest of the UK is not considered necessary.*

## **The Precautionary Approach**

10. The adoption of a precautionary approach by the PPS was welcomed, overall with over a third of respondents making explicit mention of their support for it. Some responses did however appear to confuse the term 'precautionary approach' with the 'Precautionary Principle'.

**Response:** *The Department welcomes the broad support expressed on this matter. It would point out that the PPS of itself represents the adoption of a precautionary approach to the matter of development and use of land in areas at flood risk that takes account of climate change. This approach incorporates the Precautionary Principle which 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."*

11. One local authority did however suggest that a precautionary approach was too strict and suggested that development accompanied by flood defences should be permitted.

**Response:** *The Department does not agree and considers the approach adopted to be a prudent one, particularly in view of the potential future impact of ongoing climate change on flood risk. New development even where accompanied by new flood defences would still serve only to increase the area at flood risk. This is inconsistent with the Department's commitment to sustainable development.*

## **Policy Objectives.**

12. Respondents were generally supportive of the draft policy objectives. However one respondent expressed the view that the adoption of a precautionary approach is unjustified and that the relevance of the fourth objective is unclear.

**Response:** *The Department has indicated above the rationale behind the adoption of a precautionary approach to flood risk in PPS 15 and its commitment to sustainable development. It should also be noted that a precautionary approach to flood risk forms part of the Regional Development Strategy (RDS), the overarching Strategy for the development of Northern Ireland up to 2025. PPSs produced by the*

*Department are required to be 'in general conformity' with the RDS. Furthermore the Department is satisfied that the manner in which the document sets out the fourth policy objective adequately expresses and explains this matter.*

## **The Role of Development Plans**

13. The commitment to sustainability was welcomed, as was the recognition of the need for a joined-up approach to governance in this area.
14. The respondents representing 2 local authorities suggested a number of specific additions to the section on development plans. It was suggested that including a section (or annex) setting out the statutory responsibilities of the principal agencies/departments in relation to flood risk would be helpful. It was also suggested that there should be a requirement that development plans include up-to-date flood risk maps and/or define the extent of flood plains. It was further suggested that the term 'exceptional circumstances' in paragraph 6.3 could be defined.

**Response:** *The Department has now included a new Annex E identifying the main bodies with statutory responsibilities in the area of flood risk.*

*The Department for Agriculture and Rural Development's Rivers Agency is responsible for advising the Department on the extent of flood risks in Northern Ireland. It is currently undertaking a Northern Ireland Flood Mapping Strategy to improve the quality and coverage of information on flooding. Because of this and the inherent uncertainties associated with flood risk estimation the Department does not consider that it would be appropriate for development plans (many of which are for 15 year periods) to provide detailed flood risk maps.*

*The Department considers the term 'exceptional circumstances' does not require specific definition in the PPS. It is used commonly in Government policy documents to indicate conditions or considerations which are not the norm. In any case the PPS indicates that where exceptional circumstance exist sufficient to allow land at flood risk to be brought forward for development then the plan will explain the reasons for so doing. See also response to 15 below.*

15. A number of comments considered that paragraph 6.3 of draft PPS 15 would encourage proposals for development in vulnerable areas.

**Response:** *The Department does not accept that this statement will encourage development in vulnerable areas. Although now located in paragraph 6.4 of the PPS, the text on this point remains essentially the same as the consultation draft. It makes clear that such land will only be zoned or brought forward for development by a development plan in the most exceptional circumstances and that where this occurs full explanation for such zoning or designation will be set out in the plan.*

## Development Control Considerations

16. Comment was received requesting that the draft PPS make an explicit statement on climate change as a material planning consideration.

**Response:** *The Department accepts the suggestion that the PPS should identify climate change as a material planning consideration. The Statement has been amended to reflect this.*

17. A number of respondents highlighted the importance of maintaining strong consultation links between the key Departmental interests within government.

**Response:** *The Department acknowledges the importance of consultation with other interested Departments and Agencies and considers this is reflected in the Statement. In addition the Department would advise that preparation of the PPS has involved significant discussions and collaboration with officials from the River's Agency of the Department for Agriculture and Rural Development.*

18. It was suggested by a number of respondents that site drainage information should be submitted for all development applications with the minimum requirement of achieving a green field standard.

**Response:** *The Department would point out that information on the proposed method of storm and foul drainage of all sites is already required to accompany the submission of a planning application. While the Department does not consider it necessary that a drainage assessment should accompany every planning application it would acknowledge that development proposals of a certain scale should demonstrate that they will not cause drainage problems. PPS15 has therefore been amended to identify a threshold above which Drainage Impact Assessments will normally be required to accompany development proposals.*

19. Concern was expressed that draft PPS 15 placed undue reliance on applicants identifying flood related issues.

**Response:** *The Department would point out that it is the responsibility of the applicant to ensure that the information necessary to facilitate the proper consideration of a planning application is provided. The Development Control Considerations section and Annexes of PPS 15 are intended to help inform interested parties of the nature of the issues and the information that will be necessary to process planning applications where flood risk is a material consideration. Where a submission is inadequate or incomplete, the Department will request the details necessary to process the application. Where sufficient information to determine an application is not forthcoming this may delay a decision or result in the refusal of permission.*

20. One respondent suggested that PPS 15 should state that the requirements of flood risk assessments will depend on the scale and nature of the proposal under consideration.

**Response:** *The Department has amended the information provided in paragraph 8.12 and Annex D of PPS 15 to further clarify that the requirements for the assessment of flood risk will depend upon the scale and nature of the proposal under consideration.*

21. One respondent requested the revocation of all extant permissions not yet enacted within floodplains.

**Response:** *The Department considers that the revocation of extant planning permissions within floodplains would be inappropriate. It is a general tenet of planning that new policy provisions are not applied retrospectively.*

22. A number of respondents referred to paragraph 7.3 of the draft PPS which outlined examples of the circumstances in which Rivers Agency and Environment and Heritage Service will be consulted and requested that the term 'adjacent' be defined.

**Response:** *The Department has reassessed the role of Rivers Agency and EHS in the consultation process to clarify the circumstances in which consultation will normally take place. Paragraphs 7.3 and 7.4 now identify the approach to consultation and have addressed the perceived ambiguity caused by the reference to the term adjacent.*

23. It was suggested that advice on environmental assessment and on developer contributions be included.

**Response:** *The Department has amended the PPS to take account of the comments on environmental assessment.*

*As regards developer contributions for drainage infrastructure no change is proposed to the PPS primarily because the Rivers Agency is currently considering this matter as a separate exercise. In addition the Government is also consulting on the introduction of a Planning Gain Supplement across the UK which is likely to impact on the matter of developer contributions.*

*It should also be noted that as part of the Precautionary approach adopted by the PPS offers by developers to provide or contribute to new flood defences will not be accepted as a means of securing permission to develop in a flood plain.*

## Policy FLD 1 Development in Flood Plains

24. Most respondents indicated support for draft Policy FLD 1. However, the responses highlighted the following matters of concern.
25. One NGO suggested that the definition of flood plain used in paragraph 8.2 could be made simpler and requested it be clarified.

**Response:** *The Department notes this comment and has simplified the definition. It remains the case that the definition of flood plain in the PPS is for the purpose of applying the planning policies set out in the document.*

26. One respondent requested that Policy FLD 1 be removed from the document on the basis that it represented an unreasonable restriction of human rights.

**Response:** *The Department does not agree that Policy FLD 1 represents an unreasonable restriction on human rights; rather it represents a reasonable and proportionate response to flood risk taking account of climate change. It further considers that FLD 1 is consistent with a sustainable approach to building development and the use of land that is supportive to the well being and safety of people and in conformity with the Regional Development Strategy and the NI Sustainable Development Strategy.*

27. Other comments suggested changes to and/or clarification of the Policy.
28. One respondent requested that the Department clarify the term 'proposals of overriding regional importance' referred to in the opening paragraph of the Policy.

**Response:** *The Department considers that such proposals are by their nature readily identifiable and do not require further definition within the statement.*

29. One NGO requested that the re-development of previously developed land within floodplains should not be permitted

**Response:** *The Department does not agree and considers the redevelopment of previously developed land is appropriate where it would not involve a material increase in flood risk. The RDS identifies the promotion of urban renaissance as one of its guiding principles. This can only be achieved by the re-use of previously developed land. When this can be achieved without materially increasing flood risk, a presumption in favour of approval will remain. To do otherwise would be to undermine strategic regeneration objectives and establish the potential to blight significant areas of urban land.*

30. One local authority suggested that land raising within flood plains should be permitted to “deal with floods in areas of open recreation space”.

**Response:** *The Department remains of the opinion that land raising in undefended flood plains is unacceptable. Regardless of its purpose it undermines the natural ability of flood plain to mitigate flood events by reducing or removing their capacity to store and /or convey floodwater. This carries with it the potential to worsen the impacts of flooding elsewhere and to adversely impact upon biodiversity.*

31. It was suggested that, as in Scotland, policy FLD 1 should define coastal and riverine flood plain by use of a 0.5% annual probability of flood risk.

**Response:** *The Department notes the comment but considers that the less expansive nature of our riverine flood plains at present precludes the necessity for the stricter constraint suggested. Re-assessment of the Departments position on this issue may however be appropriate when the proposed review of PPS 15 is undertaken.*

32. It was suggested that Policy FLD 1 should specifically preclude the construction of new hard flood defences.

**Response:** *The Department is satisfied that policy FLD 1 which advises that new hard engineered flood defences will not be accepted as justification for development in a flood plain is an appropriate response on this matter.*

33. One respondent suggested that the Policy should explicitly permit the use of flood plain to provide for open space in the context of meeting the requirements of Planning Policy Statement 7 ‘Quality Residential Environments’.

**Response:** *The Department has amended the draft PPS to identify the circumstances in which the flood plain may be used to provide public open space requirements generated by new residential development.*

34. A respondent suggested that an exception be made to allow buildings of innovative design, which do not increase flood risk to be located within a flood plain.

**Response:** *The Department would confirm that any new structure in a flood plain even where not intended for human occupation will by definition increase flood risk.*

35. A number of respondents highlighted an ambiguity between the flood risk assessment requirements of draft policy FLD 1 and that expressed in paragraph 8.21 of the Justification and Amplification. It was suggested that an assessment of flood risk should accompany all applications for development within a flood plain.

**Response:** *The Department notes the ambiguity and has amended the text to remove it.*

36. Northern Ireland Environment Link (NIEL) recommended that policy FLD 1 make reference to the requirements of the Strategic Environmental Assessment (SEA) Directive (2001/42/EC).

**Response:** *The Department accepts this recommendation, but considers that reference to SEA would be most appropriately located within section 6 of the PPS on the role of development plans.*

37. NIEL also suggested that the impact of climate change should be accommodated in assessing the potential severity of flood events.

**Response:** *The Department would advise that potential climate change impacts and their associated inherent uncertainty are already taken into account by the flood risk advice provided by Rivers Agency.*

38. One respondent suggested that the Policy be accompanied by supplementary guidance on flood resilient construction techniques.

**Response:** *The Department would advise that provision of guidance on flood resilient construction techniques falls outside the professional remit of Planning Service. While general advice on dealing with drainage issues associated with individual properties can be obtained from local Building Control Departments, it should be noted that the NI Building Regulations do not currently provide statutory direction on matters of flood resilient construction.*

39. Some of the comments received highlight that the intention and wording of category (e) of the Policy regarding flood defence structures is unclear.

**Response:** *The Department would point out that category (e) sought to facilitate the construction or reconstruction of flood defences by the Department of Agriculture and Rural Development's Rivers Agency in furtherance of their obligations under the provisions of the Drainage (NI) Order 1973. Such works do not however require express planning permission. With this in mind and in the interests of clarity category (e) has been removed from the policy.*

40. One respondent suggested that PPS 15 should differentiate between static and touring caravans in the 'Camping and Caravan Sites' section.

**Response:** *The Department accepts that such differentiation is reasonable and has amended the camping and caravan site section of the document to take account of the comments received.*

## **Policy FLD 2 Protection of Existing Flood Defences**

41. A number of respondents suggested that the draft policy was awkwardly phrased and the wording unclear.

**Response:** *The Department has amended the document to take account of these comments*

42. One respondent queried whether exceptional circumstances would justify temporary interference with flood defences.

**Response:** *The Department considers that any interference with flood defences that could result in an increase in flood risk to people, property or the environment would be unacceptable.*

## **Policy FLD 3 Development Beyond Flood Plains.**

43. One respondent, representing a group of developers, expressed an objection to the inclusion of policy FLD 3, on the basis that it was unfair.

**Response:** *The Department considers it appropriate that where a flood risk is known to exist development should not proceed without proper consideration of that risk and the measures that may be necessary to mitigate it.*

44. Three respondents suggested that the document include an explanation of how areas of flood risk beyond river and coastal flood plains will be identified.

**Response:** *The Department has amended the text of the PPS to make it clear that policy FLD 3 applies to areas of known flood risk beyond flood plains. These will primarily be identified by Rivers Agency and Water Service.*

45. One respondent requested that the PPS address the issue of the loss of water storage caused by mineral working such as peat extraction.

**Response:** *Proposals for commercial peat extraction will generally require to be accompanied by an Environmental Statement which should assess and identify mitigation measures for significant environmental effects such as the loss of ground water storage.*

## **Policy FLD 4 Flooding and Land Drainage**

46. While a number of responses from environmental interests expressed strong support for the principle of a presumption against culverting and canalisation, some respondents raised matters of concern.

47. It was suggested that the phrase “part of a flood relief scheme” be defined.

**Response:** *The Department has amended the PPS to facilitate this.*

48. One respondent felt that a lack of awareness of the fact that culverting requires planning permission might undermine the Policy.

**Response:** *The Department would confirm that the installation of culverts constitutes development under Article 11 of The Planning (NI) Order. This is now explicitly stated in the Justification and Amplification of policy FLD 4.*

49. One respondent suggested that the use of examples to illustrate the exceptional circumstances under which culverting will be acceptable weakens the presumption against culverting or canalisation of a watercourse.

**Response:** *The Department considers it appropriate to indicate those circumstances when an exception to this policy would be accepted. Beyond this it is considered that policy FLD 4, as amended, provides a clear expression of the intended presumption against culverting.*

50. A number of NGO’s strongly supported the presumption against culverting and/or canalisation set out in policy FLD 4. Concern was however expressed by respondents from the development sector about not being able to culvert watercourses adjacent to residential developments. They expressed the view that culverting should be permitted in urban areas where open watercourses are the cause of drainage problems or where they pose a health and safety hazard.

**Response:** *The Department notes the opposing views held on this matter and recognises that it will not be able to satisfy the expectations of all those who commented. It considers that FLD 4 is in line with the broad objective of promoting a more sustainable approach to development and therefore provides appropriate planning guidance on the difficult issue of culverting.*

51. One respondent suggested that paragraph 8.34 of the Justification and Amplification to policy FLD 4 was ambiguous and might present difficulties in practical application. It suggested that a maximum acceptable length for the culvert be specified.

**Response:** *The Department is satisfied that the approach outlined in paragraph 8.34 offers an appropriate level of control without being unduly inflexible or restrictive.*

## Annexes

52. Respondents were generally satisfied with the structure and content of the annexes and that they provided useful and clearly expressed support information. However some comments highlighted perceived ambiguities in the text and limitations in the explanation of some matters.
53. One district council respondent suggested that Annex A (The Causes of Flooding and the Impacts of Climate Change) identify the frequency and geographical spread of each source of flooding in Northern Ireland.

**Response:** *The Department considers the provision of such detailed information to be beyond the scope of this Planning Policy Statement.*

54. It was suggested that it in paragraph B4 of Annex B (Development and Flood Risk) it be made explicit that the availability of insurance will impact upon the availability of mortgage finance.

**Response:** *Paragraph B4 has been amended to take account of this comment.*

55. Regarding Annex C Sustainable Drainage systems (SuDs), while substantial support for the principle of SuDs was voiced from the full range of respondents, reservations were expressed about its use without guarantees on future maintenance.

**Response:** *The Department notes that research into the applicability of SuDs in Northern Ireland including the achieving of the long term maintenance and management of such schemes is incomplete at present. Although EHS led research in the use of SuDs is under way its findings remain to be published. Without a clear understanding of potential problems or a consensus on the way forward the Department concludes it cannot include a policy on SuDs within this PPS at this time.*

56. In commenting on the draft Annex D (Assessing Flood Risk), one respondent highlighted the need to put in place a procedure to facilitate analysis of flood risk assessments accompanying planning applications.

**Response:** *The Department accepts that the expert analysis of flood risk assessments is both desirable and necessary. This matter will be addressed through the development control process, however it is considered inappropriate to set out the detail of the consultation procedures needed to facilitate in the PPS.*

## ANNEX 1: Respondents

Ballymena Borough Council

Lisburn City Council

Coleraine Borough Council

Strabane District Council

Council for Nature Conservation & the Countryside

Royal Society for the Protection of Birds

Lough Neagh Advisory Committee

Lower Bann Advisory Committee

National Trust

Northern Ireland Environment Link

Ulster Society for the Protection of the Countryside

World Wildlife Fund

Northern Ireland Freshwater Task Force

Construction Employers Federation

Council of Mortgage Lenders

Prof. Julian Orford (Queens University Belfast)

Prof. David Crichton (Visiting Prof. Benfield Hazard Research Centre & Middlesex Uni. Flood Hazard Research Centre.)

Ulster Angling Federation Ltd

John Burke R I B A

Brennan Associates [Representing of group of 22 small building companies]

Mr Don Shields

Northern Ireland Housing Executive (NIHE)

Department of Agriculture & Rural Development (DARD) – Rivers Agency

Department of Enterprise, Trade & Investment (DETI) – Geological Survey

Department of Environment (Environment & Heritage Service)

Department for Regional Development (DRD) – Central Management Branch, Regional Planning & Transportation Division and Roads Service