

Demonstrating Genuine Redundancy of Business Premises

Planning Guidance

Adopted July 2004



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Supplementary Planning Guidance to the Eastbourne Borough Plan 2001-2011

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Price £10.00

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1.0 Introduction

1.1 This supplementary planning guidance explains how the Council will operate the test of genuine redundancy, set-out in policy BI 1 of the adopted Borough Plan 2001-2011, to ensure that land and premises which are capable of continued business use are retained for these purposes. Policy BI 1 reads:

<p>Policy BI 1 Retention of class B1, B2 and B8 Sites and Premises</p> <p>Planning approval for the conversion or redevelopment of land or buildings currently or last in class B1, B2 or B8 use for non-employment use will not be granted unless it can be satisfactorily demonstrated that:</p> <p>a) the site or premises is genuinely redundant and is unlikely to be re-used or redeveloped for industrial or commercial use within the Plan period, having regard to one or more of the following factors:</p> <p> i) The site with or without adaptation would not be capable of accommodating an acceptable employment development;</p> <p> ii) no effective demand exists or is likely to exist in the future to use the land or buildings for employment generating activities including the length of time the property has remained vacant and attempts made to let it and the demand for the size and type of employment premises in the area; and</p> <p> iii) the condition of the property and works required to make it suitable for employment either through refurbishment or redevelopment would be uneconomic; or</p> <p>b) continued use of the premises would cause undue disturbance to residential neighbours; or</p> <p>c) access to the premises does not meet acceptable highway safety standards and cannot be reasonably improved.</p> <p>Where approval is sought for the loss of premises in B2 use to other uses applicants will be required to demonstrate that the premises have been marketed for a B1 use for a period of time that reflects the likely demand for premises of this size elsewhere in Eastbourne.</p> <p>Planning approval will be granted, subject to the criteria in Policy BI 7, for the replacement of existing business and industrial premises which no longer meet market needs with new B1, B2 or B8 uses or appropriate facilities for waste recycling or reprocessing.</p>

This guidance is concerned only with the criterion a) in the policy. Criteria b) and c) are site specific considerations and will be considered within the development control process.

1.2 Policy BI 1 only applies to land and premises currently, or last, in class B1, B2 and B8 use. It does not apply to land allocations for class B1, B2 or B8 use made under policies B1 3 or BI 5 of the adopted Borough Plan 2001-2011 or to commitments for class B1, B2 or B8 uses protected under policy BI 4.

2.0 Using this Guidance

- 2.1 This guidance is aimed at prospective applicants for planning permission to change the use of, or redevelop, business land and premises for residential or other purposes. It sets-out the information the Council will require to assess such applications and the reasons why such information is sought. It will also help prospective applicants establish whether they have a reasonable case for the loss of the business land and premises.
- 2.2 The Council is requiring prospective applicants for planning permission for proposals which involve the loss of business land and premises to complete a special form as part of their planning application. The information requested on this form will enable clear and consistent assessments of why a proposal is acceptable or not. The form is based on the considerations set-out in this supplementary planning guidance. A copy of this form is set-out in Appendix B.
- 2.3 Owners/agents for business land and premises currently being marketed for continued business use are advised to keep a dossier of the steps involved in marketing their site (taking into account the criteria set-out in paragraph 8.4 below) in case they wish to make a later claim for genuine redundancy following unsuccessful marketing over a period of time.

3.0 Consultation

- 3.1 The draft Supplementary Planning Guidance was the subject of consultation with the general public, business and other interested parties. Comments received were considered and taken into account before the guidance was formally adopted by the Borough Council.

4.0 Status of the Supplementary Planning Guidance

- 4.1 Supplementary Planning Guidance may be taken into account as a material planning consideration when reaching a decision on a planning application. Government guidance indicates that substantial weight can be attached to Supplementary Planning Guidance where it has been prepared in accordance with the tests set-out in paragraphs 3.15-3.18 of PPG12.¹ (See Appendix A for further details)

5.0 Background to the Test of Genuine Redundancy

- 5.1 Eastbourne is designated as a priority area for economic regeneration in regional planning guidance. However to provide for economic regeneration and diversification it is necessary to have a stock of land and premises available for the various needs of business² in the town.

¹ Planning Policy Guidance Note 12: Development Plans

² Defined according to use class classifications B1, B2 and B8

- 5.2 The Borough Plan allocates greenfield sites for business development³ but there is considerable uncertainty as to when these sites will come forward as they need costly infrastructure and compensatory flood storage provision to be made. The best estimate that can be given is that they are unlikely to come forward until towards the end of the time frame for the adopted Borough Plan 2001-2011. This means that the floorspace needs of business are currently being met by the re-use of existing premises; extensions to existing premises and some limited infill on existing industrial estates.
- 5.3 Business floorspace monitoring⁴ indicates that existing business premises have been targeted for residential development, with a significant impact upon the supply of floorspace available for business use. Under the former Borough Plan (adopted in 1998) there were no planning policies available to counter this loss of business floorspace. However the adopted Borough Plan 2001-2011 does provide policy guidance designed to protect existing business land and premises, wherever possible.
- 5.4 There are three reasons why the Borough Council considers it important to protect existing business land and premises:
- Various data sources available to the Council, including the 2001 Census⁵, have indicated that the town is increasingly becoming a “dormitory town” for people working elsewhere. In many instances these residents are commuting significant distances to work, which is not a sustainable option. Loss of further business land and premises will result in further unsustainable commuting by local residents.
 - To provide for economic regeneration and diversification it is necessary to have a stock of land and premises available for the various needs of local businesses. The Council’s own Business Survey⁶ indicated that many local businesses are seeking to expand but further loss of land and premises will make it more difficult to realise their plans, potentially resulting in some of them leaving the Borough. In addition a stock of smaller, cheaper premises are vital for new entrepreneurs seeking to establish in the local market.
 - Local businesses provide services for local residents. Therefore, restricting the supply of business premises indirectly also has an effect on local residents who may find it difficult to find the services they require at a price they can afford.

³ See policies BI 3 and BI 5 of the adopted Borough Plan 2001-2011

⁴ Total net floorspace completions across all categories of business use between 2000 and 2004 equal -3236 m² (an average loss of over 800m² per year) Projecting forward this gives a total floorspace loss of -5600 m² by 2011. Total net floorspace completions in 2003/04 equalled -1850 m².

⁵ The Census showed that almost 10,000 residents of the Borough worked elsewhere and just over 10,000 people worked in the Borough who lived elsewhere. However those residing in the Borough tended to travel greater distances to work, whilst those living outside of the Borough were generally within the immediate area.

⁶ Eastbourne Borough Plan 2001-2011, Background Paper No.6: Business Survey (Feb.2001)

5.5 Policy BI 1 was scrutinised by an independent inspector hearing objections to the draft Borough Plan. These objections centred upon the perceived conflict of this policy with government guidance that housing development should occur on brownfield (i.e. previously developed) land. However the inspector concluded that there are special circumstances prevailing in Eastbourne and that the Council's approach is justified.

6.0 Definition of Genuine Redundancy

6.1 For the purposes of understanding and interpreting policy BI 1 of the adopted Borough Plan 2001-2011 it is important to understand what the Council means by "genuine redundancy". The Council defines "redundancy" as "*being no longer needed*". It, therefore, follows that where an applicant is able to satisfactorily demonstrate that business use (Use Classes B1, B2 and B8) of land and premises is no longer needed, and is unlikely to be needed in the future, then the Council will accept that genuine redundancy has been established.

6.2 It should be noted that the definition of genuine redundancy is couched in terms of the use of land and premises for business purposes, not in terms of the state of disrepair of the building. It, therefore, follows that an applicant will need to fully explore different options for maintaining the business use of the site, to meet local market requirements, before any application for loss of the business use can be considered.

6.3 The Council has adopted a sequential approach to option identification and applicants will be required to follow this approach to demonstrate genuine redundancy. The sequential approach is as follows:

Stage 1 : Measures designed to retain business land and premises:

- refurbishment;
- redevelopment;

Stage 2: Options which may be preferable to a total loss of business space:

- mixed use development, retaining an appropriate level of business use;
- live/work units;

As a last resort, and only in exceptional circumstances, will off-site delivery of new/improved business premises be considered. Either directly by the applicant or in the form of an in lieu payment to the Council to be used for these purposes.

Proposals for stage 2 "solutions" will not be acceptable unless the applicant has demonstrated satisfactorily that retention of business uses, under stage 1, cannot be achieved.

6.4 In effect policy BI 1 requires applicants to demonstrate that land or premises are genuinely no longer needed for business use under one or more of the following considerations:

- Inability of the site to accommodate acceptable business development (criterion a (i));

- Lack of market interest (criterion a) (ii));
- Business use of the site would not be financially viable (criterion a) (iii)).

The sequential approach set-out above applies to both lack of market interest considerations and to financial viability considerations.

6.5 In the following text the word “site” is used to refer to either land or premises.

7.0 Acceptable Business Development

7.1 Whether an acceptable business development can be realised will depend on specific site circumstances and the Council will judge each application on its planning merits. Relevant Borough Plan policy considerations will include:

- Policy NE28 (environmental amenity);
 - Policy UHT4 (visual amenity);
 - Policy HO20 (residential amenity);
- together with criteria b) and c) of policy BI 1.

7.2 Applicants with properties currently in B2 use should note that policy BI 1 requires them to demonstrate that the land or premises have been marketed unsuccessfully for a B1 use before genuine redundancy can be established. B1 uses are, by definition, acceptable within a residential area.

8.0 Lack of Market Interest

8.1 A key consideration in determining genuine redundancy will be the manner in which the site has been marketed for business use. There are two stages to this marketing process which applicants should follow:

- Marketing the re-use of the site;
- Marketing the redevelopment of the site for business purposes.

Marketing the re-use

8.2 Existing business land or premises which are currently in use are not, by definition, genuinely redundant and should be marketed for business use before they can be considered for an alternative use.

8.3 The Council expects business land and premises to be marketed for a reasonable period before an application for loss to alternative use can be considered. It accepts that it is difficult to set precise requirements about the length of time sites should be marketed before genuine redundancy can be established because this will vary according to:

- a) Site size;
- b) Location;
- c) Particular characteristics of the site;
- d) The state of the wider economy;
- e) The terms/conditions on which the site is being made available; and
- f) The wider marketing strategy.

However as a rule of thumb the Council does not consider that genuine

redundancy can be demonstrated without active marketing of a site for at least nine months when the economy is strong, and up to two years when the economy is in recession.

- 8.4 A simple statement, such as “the site has been on our books for nine months and no interest has been expressed”, will not demonstrate genuine redundancy. The Council requires greater detail on which to make a judgement. Typically this will include a breakdown of the marketing strategy employed in bringing the availability of the site to the notice of the local business community⁷, including:
- a) The market price and an indication of this price relative to those prevailing for similar premises in the local market ;
 - b) Any reductions in market price made during the course of marketing;
 - c) The marketed use of the site;
 - d) Any variations in the marketed use introduced in the course of marketing;
 - e) Where and how often the site was advertised;
 - f) Types of client advised of its availability with contact details for them;
 - g) Any variations in terms/conditions on which the site is made available;
 - h) Whether the site availability was referred to relevant support agencies: Eastbourne Borough Council’s Regeneration Team; East Sussex County Council Economic Development Unit; Wealden District Council, Sussex Enterprise and SEEDA (South East England Development Agency).
- 8.5 In instances where the Council considers that the marketing strategy employed has been inadequate the applicant will be advised that the planning application cannot be recommended for approval. The applicant will be given the following options:
- a) To withdraw the application⁸ and further market the site addressing the concerns identified by the Council;
 - b) To withdraw the application and submit the marketing strategy to independent arbitration by a suitably qualified commercial agent agreed by both parties (in the absence of such an agreement to be nominated by the President of the Royal Institute of Chartered Surveyors) with the cost to be borne by the applicant;
 - c) To continue with the application in the knowledge that a refusal of planning permission is likely.
- 8.6 Applicants should note that the Council will not lightly make a decision that the marketing strategy is inadequate where applicants have adequately addressed the issues identified in this supplementary

⁷ The local business community is identified as coterminous with the South Central Employment Area (Eastbourne and South Wealden) as defined in the adopted East Sussex and Brighton & Hove Structure Plan 1991-2011.

⁸ any subsequent planning application would be fee exempt provided that it was in accordance with the requirements of the Town and Country Planning (Fees for Applications and Deemed Applications (Amendment) (No.2)) Regulations 1992.

planning guidance. However it may secure independent advice on difficult, more complicated sites.

Redevelopment for Business Purposes

8.7 The Council expects applicants to provide evidence that they have carefully considered how the site could be redeveloped for business purposes and that they have marketed it accordingly. A reasoned justification, including the results of marketing, is required as to why an applicant considers that new business development cannot be achieved on site. Where this claim is made on financial viability grounds applicants are required to address the considerations set-out in paragraphs 9.3 to 9.6 below.

9.0 Viability Considerations.

9.1 There are two stages to establishing that a site is in such a poor condition that it is uneconomic to either refurbish or redevelop it for business purposes:

- a) Establish from marketing that prospective occupants are not proceeding with the purchase because of the condition of the premises;
- b) Establish that the detailed costs involved in refurbishing or redeveloping the site for business use are greater than the return that could be anticipated.

9.2 The Council are unlikely to concede that the site is in poor condition unless this conclusion can be drawn from site marketing evidence (this evidence to be provided in line with section 8 of this supplementary planning guidance). In considering marketing evidence the Council will pay particular attention to the market price at which the site has been offered. It will expect the price to reflect the current state of the property.

9.3 The following evidence will be required to demonstrate a case that the costs of refurbishment/redevelopment exceed the likely returns from the site:

- a) A full structural survey of the existing premises highlighting the matters that require refurbishment or which are incapable of refurbishment;
- b) A survey of the site from an operational point of view indicating any intrinsic problems;
- c) A detailed cost breakdown of the works required to refurbish/redevelop the site. These costs to be prepared by a suitably qualified professional consultant;
- d) Written evidence from 3 recognised separate financial institutions of the likely cost of borrowing over a fifteen year period to fund these costs;
- e) Written evidence from 3 recognised separate financial institutions that they would not be prepared to advance finance for refurbishment/redevelopment, with the applicant to bear any costs involved in obtaining this information; and
- f) An indication (in the case of a prospective landlord) that the

anticipated rate of return from the premises would not cover the costs of refurbishment/redevelopment ; or

- g) An indication (in the case of a prospective owner occupier) that the level of income needed to cover both the costs of refurbishment/redevelopment and other necessary overheads would be unsustainable.

The Council will seek to verify any such information submitted under these criteria. It is recognised that some of this information is of a confidential nature and the Council will take steps to ensure that it is not made publicly available or used for purposes other than those set-out in this supplementary planning guidance.

- 9.4 Where it can be demonstrated that redevelopment for business purposes alone cannot be achieved on financial grounds, the Council expects applicants to consider:
- a) Approaching support agencies to see whether additional funding may be available to assist the redevelopment; and
 - b) Preparing alternative schemes which can deliver some business floorspace on the site.

9.5 Alternative on site provision

The Council expects applicants to have examined the possibility of developing either mixed use schemes, including some residential or other elements to cross fund, or live/work units⁹ on the site. In assessing such proposals the Council will normally expect, at least, the equivalent amount of business floorspace to be delivered on site as exists under the present use. Where this cannot be achieved the Council will expect that the other elements of the scheme should be the minimum necessary to support a viable business development on the site. Applicants will be required to submit a reasoned justification as to why the floorspace cannot be replaced in full.

10.0 Other procedural matters

Vacant Sites

- 10.1 Where it can be demonstrated that sites which have been occupied in the past have been vacant for, at least, five years before the date of the adoption of this supplementary planning guidance the Council will accept genuine redundancy has been proven, provided that the vacancy can be verified from business rate information.
- 10.2 For all other vacant business sites the Council expects applicants to demonstrate genuine redundancy according to the tests set-out in this supplementary planning guidance.

⁹ Live/work units are units where the residential accommodation is occupied by a person solely or mainly employed in the business occupying the linked workspace within the unit. (The Council will condition approval for such units so that they cannot be sub-divided).

Applications for Change of Use of Existing Premises.

- 10.3 Where business uses lie within a property in multiple occupation and the applicant is seeking to demonstrate genuine redundancy for part of the premises on financial viability grounds, the Council will only require information on the viability of partial refurbishment.
- 10.4 Applications for the change of use of premises solely within the control of the applicant will be required to address redevelopment considerations, where appropriate.

Appendix A: Conformity with Planning Policy Guidance Note 12.

This draft SPG is considered to have been prepared in accordance with PPG12 for the reasons set-out below:

Requirement	Relevant paragraph of PPG12	Comment
SPG must be consistent with national and regional planning guidance and the adopted development plan.	3.15	This SPG is consistent with relevant guidance including PPG12: Development Plans and the adopted Eastbourne Borough Plan 2001-2011.
SPG must be cross referenced to the relevant plan policy which it supplements	3.15	This SPG specifically relates to policy BI 1 of the adopted Borough Plan 2001-2011.
SPG must be issued separately from the Plan.	3.15	The Borough Plan 2001-2011 was adopted on 17 September 2003. This draft SPG was adopted on 28 July 2004.
SPG must be made publicly available	3.15	Copies of the SPG are available from Development Planning, 68 Grove Road, Eastbourne BN21 4UH. It can also be viewed and downloaded from www.eastbourne.gov.uk
Status of the SPG should be made clear	3.15	This is explained in the introduction to the SPG
Consultation should be undertaken with the general public, business and other interested parties with their views being taken into account before the SPG is finalised.	3.16	This SPG was subject to consultation, and a list of the main consultees is included in the report to Planning and Licensing of 10 February 2004.
A statement of the consultation undertaken, the representations received and the local authorities response to those representations must be made available with each copy of the SPG.	3.16	The report to Cabinet of 27 May 2004 provides details of the consultation undertaken. This report can be made available with each copy of the SPG.
SPG must be subject to a council resolution to adopt it as supplementary planning guidance.	3.16	Full Council of 28 July 2004 formally resolved to adopt this SPG.

Have you attached:

- a) details of the marketing strategy employed for the re-use of the site as set-out in paragraph 8.4 of the supplementary planning guidance?
 - b) details of the marketing strategy employed for the redevelopment of the site?
6. Please set-out below why you consider that:
- a) Refurbishment of the site is uneconomic?

Have you attached marketing information to substantiate this claim?

- b) Redevelopment of the site is uneconomic?

Have you attached relevant evidence (as set-out) in paragraph 9.3 of the supplementary planning guidance to substantiate your claim?

Have you also supplied relevant information to demonstrate that:

- i. Funding would not be available to assist refurbishment/redevelopment (para. 9.4 applies)
 - ii. Alternative on site provision is not feasible (para. 9.5 applies)
7. Please provide evidence that the premises have been unoccupied for, at least, the five years before [the date of adoption of the supplementary planning guidance]. This ground is not applicable to sites allocated for business purposes in the adopted Borough Plan 2001-2011.

Please return this form to Development Control Manager, Planning Division, 68 Grove Road, Eastbourne BN21 4UH.