
Report to
Cabinet
Planning Committee

7th February 2006
16th February 2006

Report of the Director of City Development

Title Consultation Paper on Planning Gain Supplement

1 Purpose of the Report

- 1.1 The purpose of this report is to consider the document Planning-gain Supplement: a consultation published in December 2005. It is a joint consultation by HM Treasury and the Office of the Deputy Prime Minister.

2 Recommendations

- 2.1 Cabinet are recommended to indicate that they do not support the proposals as outlined and believe that they will not meet the intended objectives of encouraging development and/or facilitating the provision of infrastructure.

3 Information/Background

- 3.1 As part of the modernisation agenda there have been a number of options considered relating to how the planning system should seek to ensure that developers meet the costs of providing infrastructure necessary to serve their development and how Local Authorities manage the process of change. Agreements made under Section 106 of the Town & Country Planning Act 1990 (as amended) have to date been the principal source of funding although guidance and case law has limited the extent of obligations that can be sought to that reasonable related to the development permitted. This has been interpreted widely and as well as infrastructure extends to the provision of affordable housing. The Community Land Act in the 70's was the last attempt to introduce a tax that recognised the enhanced value arising from the grant of planning permission and/or allocations.
- 3.2 There have in the last couple of years been proposals for a tariff approach towards infrastructure contributions where Local Authorities, through the development plan process would have been able to set tariffs whereby all development would be required to provide specified amounts towards infrastructure provision. The Barker Review into housing supply recommended that the supply of housing land should be increased significantly but also recommended that infrastructure provision should be funded by a gain supplement or tax by any other name based on the uplift in value arising from the grant of planning

permission. As a result the Government is seeking a levy to help finance the infrastructure investment needed to enable more people to own their own homes.

- 3.3 This consultation document now proposes a planning gain supplement (PGS) and a reduced scope of planning obligation statutorily defined to relate only to those matters that need to be addressed in order for the environment of the development site itself to be sustainable, safe, of high quality and accessible and the provision of affordable housing. The PGS would be set as a “modest” proportion of the increase in land value arising from the grant of permission so that there remains an incentive to develop land. At present no figures identify what 'modest' means. There could be a differentiation between green field and brown field sites. It would be payable on implementation of the development and the developer would have to provide the necessary valuations to Customs and Excise to define the extent of any PGS. The developer would also have to provide notice of commencement and penalties would be imposed or powers available to stop development proceeding if the necessary returns and funding had not been provided. What is not clear is whether there would be an appeal process which would enable a developer to challenge the Customs and Excise should the department not agree with the figures put forward by the developer which would impact on when the SPG would be returned to local authorities.
- 3.4 The consultation document indicates that “ a significant majority of PGS revenue would be recycled to a local level to enable Local Authorities to provide infrastructure for growth ... The remainder of PGS revenues would be ring fenced for strategic infrastructure”. PGS would apply to both residential and non residential development. The table below sets out how it is suggested that the scope of obligations and the use of PGS would apply:

Included in new scope	Outside new scope of planning obligations
Provision of Affordable housing	Education provision
Any requirement for direct replacement/substitution for the loss or damage to a facility or amenity caused by the development	Health provision
On-site landscaping	Community centre
On-site roads and traffic calming	Bus service
Access road	Fire station
Open space	Employment and training
Mix of uses	Labour initiatives
Mix of housing types	Town Centre management
Flood defence	Cultural facilities
Street lighting	Leisure facilities
Phasing and timing of development	
Landscaping	
Design coding	
Environmental improvements	
Operational effectiveness	

4 Proposal and Other Option(s) to be Considered

- 4.1 The consultation asks a series of questions and the recommended responses are set out in Appendix 1. The questions range from whether or not definitions are appropriate to the practicalities of who notice should be served on the document making clear that the government having considered alternative options and believe the PGS is the best approach.
- 4.2 Obligations attached to major developments in the city have provided significant contributions towards highways infrastructure and towards improving bus provisions to serve developments. An example of this is the new hospital. However, should the new PGS proposal be implemented it would not be possible to obtain sufficient PGS to provide the essential improvements to the local transport network to the same degree because there would be little no increase in the land value (to which the PGS is identified) to warrant any PGS being payable.
- 4.3 Obligations have also required contributions towards improving educational facilities, and to provide and maintain open space within developments and to provide funding for training initiatives to maximise the opportunity for jobs for local people. For consistency and to provide greater certainty to the developer latterly work on reviewing our approach to 106 agreements has looked towards providing formulae that can be applied to specific developments.
- 4.4 Considering the table above at Para 3.3 it does seem that the vast majority of matters that would be included in the revised scope of agreements are matters that are properly currently addressed through planning conditions. In respect of the matters to be the subject of the PSG these take no account of the extent to which the development would generate requirements. For example, a development in an inaccessible location may justify extensive obligations to address travel by means other than car and it seems unreasonable that in these instances the costs directly attributable to the development should be cross subsidised in the manner proposed.
- 4.5 Inevitably there will be significant issues raised by these proposals and is it is important to ensure that they do not deter development and particularly regeneration. In this respect as on many regeneration schemes there is, when development costs are taken into account, no or very little uplift in land values there must be a real risk that there will be less opportunity for income generation to fund the necessary infrastructure than at present. Under the current regime developers do expect to meet costs directly related to their developments like contributions for schools should this be demonstrated to be necessary.
- 4.6 The consultation document makes clear that all monies will not be returned directly to the Local Authorities within which area the development scheme that generated the tax had been. Thus there must be a real risk that the government will divert resources to major strategic growth areas and it therefore seems probable that the effect of the PSG would be to reduce the monies available to provide the necessary infrastructure locally. This could have a negative effect on regeneration of brownfield sites even if a different tax rate is applied.
- 4.7 Not only would there be less certainty to the local authority as to the amount of funding to be received but timing is also unclear as a result of which Local Authorities would be less able to plan to deliver the necessary infrastructure. There are examples elsewhere where agreements have looked for developers to provide initial infrastructure provision in advance of developments and then receive contributions phased related to other developments in the locality. The proposals indicate that the tax would be payable on implementation but there is no indication of when Local authorities could expect to receive allocations.

4.8 Two options have been proposed as to how the SPG is allocated to the local level. The first (and preferred Government option) is to provide a grant to the local authority but which must relate to the actual level of SPG generated by local authority. This is based on the assumption that there will be will sufficient SPG funds to satisfy all infrastructure costs required. The other option is also to provide a grant for infrastructure required but which is not connected to the level of SPG raised. This would offer the potential to make accessible to local authorities addition SPG funds. However, in practice it is anticipated that this would be difficult to administer and with no guarantee that there would be sufficient SPG funds available to satisfy all local authorities needs within their region.

4.9 The PGS is based on the uplift in land value and there will inevitable always be dispute as to how precisely this should be calculated. Uplift in land values takes place at a number of points of travel on the development process i.e. identification of areas as growth areas; allocation from green field sites to development sites; outline permissions and detailed permissions. This can take place over a period of time and yet no funding would be received until implementation and this may be on a phased basis.

4.10 The proposed scheme also seems to take no account of the value or scale of the building project other than utilising the very wide definition of major developments that include all housing schemes on more than 0.1 hectare of land or 10 dwellings; 1000sqm of floorspace. Inevitably the scale of the permitted development will have an impact on the uplift in value of land and also potential generate more infrastructure requirements. It could be argued that the thresholds presently proposed are too low or at least that there could and should be exemptions for extensions to existing commercial buildings.

4.11 In conclusion the proposals in the consultation document seek to replace a system of section 106 obligations, which are currently locally determined both in terms of the amount of contribution and how it is spent related to the impacts of a specific development, to a national system based on value increase which would go directly to the Exchequer. It would then be for the government to distribute the monies received back to Local Authorities. Whilst the consultation paper indicates that the majority of the money received would go back to the local authority in which it was generated, it is clear that this would not be the total contribution and that a percentage would be redistributed elsewhere. In effect this means that a proportion of the funding arising from increased value of a particular development in Coventry could be diverted to provide infrastructure in major growth areas.

5 Other specific implications

5.1

	Implications (See below)	No Implications
Area Co-ordination		
Best Value		
Children and Young People		
Comparable Benchmark Data		
Corporate Parenting		
Coventry Community Plan		
Crime and Disorder		
Equal Opportunities		

	Implications (See below)	No Implications
Finance	⇒	
Health and Safety		
Human Resources		
Human Rights Act		
Impact on Partner Organisations		
Information and Communications Technology		
Legal Implications		
Property Implications	⇒	
Race Equality Scheme		
Risk Management		
Sustainable Development		
Trade Union Consultation		
Voluntary Sector – The Coventry Compact		

Finance

It is not possible to quantify the financial effects on the Council if the Government decide to opt for the proposals contained in the Consultation Paper. As indicated in para.3.2 it is estimated that a significant majority of PGS revenue would be recycled to a local level to enable Local Authorities to provide infrastructure for growth. A "significant majority" is not quantified in percentage terms. The balance would be ring-fenced for investment in the strategic infrastructure. The risk is that all monies will not be returned directly to the Local Authorities within which area the development scheme that generated the tax had been. The likely effect is that the PGS would reduce monies available to provide the necessary infrastructure. This could have a negative effect on regeneration of brown field sites.

There is less certainty for the Local Authority as to the amount of funding receivable. Tax would be payable on implementation but there is no indication when Local Authorities could receive allocations. Coupled with that there are likely to be delays caused due to the complexities of calculating the uplift in land value. No funding would be received until implementation. The existing arrangements whereby S106 Agreements provide the principal source of funding for meeting the costs of infrastructure provision are relatively easier and faster to implement.

6 Monitoring

6.1 Monitoring would be an essential part of any proposed scheme.

7 Timescale and expected outcomes

7.1 The Government has asked for responses to the consultation paper by 27 February 2006.

	Yes	No
Key Decision		
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		
Council Consideration (if yes, date of Council meeting)		

List of background papers

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Papers open to Public Inspection

Description of paper	Location
None	

APPENDIX

Q1. What further clarifications to the definitions of planning value and current use value (as described in Box 2.2) would be helpful to provide further certainty to developers?

A The issue is not one of clarity of definitions. The approach is fundamentally flawed

Q2. How can the self assessment of PGS valuations and liability be made as easy to comply with as possible?

A Through a clear statement of methodology

Q3. What information on the condition of land at the granting of full planning permission should be made available to the chargeable person?

A All information supplied as part of the Environmental and sustainability assessments in the planning application process.

Q4. Should payment of PGS occur at the commencement of development or another point in the development process?

A If this approach were to be adopted then there needs to a basis for requiring PGS at the point of allocation and then staged between outline and detailed permissions. This may also have the effect of minimising purely speculative applications that are a waste of Local Authorities time and resources.

Q5. Should the Development Start Notice be submitted to the local authority or HMRC?

A Both simultaneously

Q6. How should the proposed approach to compliance fit with larger, phased developments?

A This is a key issue as indicate in response to Q4. Major proposals may require extensive infrastructure including for example roads and schools and their provision are of themselves major building projects that may have significantly longer implementation programmes than the development they need to serve.

Q7. To encourage regeneration, should a lower rate of PGS be applied to brownfield land? What might be the drawbacks?

A Yes but in many regeneration schemes there is minimal uplift in value and indeed many rely on grant funding for deliverability.

Q8. How should a PGS threshold for small-scale development be set? What factors should be considered?

A Should exclude extensions to existing buildings in most circumstances but a size threshold should be set in relation to larger commercial buildings e.g. an increase in excess of say 30% should be subject to the supplement

Q9. Does the development-site environment approach proposed here represent an effective and transparent means of reducing the scope of planning obligations?

A The matters described are with the exception of affordable housing and other specific mitigation measures are matters that can satisfactorily be addressed through planning conditions. It is unclear why the scope of planning obligations should be reduced and how the proposals provide more transparency or certainty. It also seems highly unlikely that the recommendation of Barker that "the share of PGS should at least broadly equal estimates of the amount LA's are currently able to extract from 106 agreements" will be achieved by the proposal

Q10. How should infrastructure no longer funded through planning obligations be provided, including through the use of PGS revenues?

A By the totality of revenues being returned and with local priorities being determined via appropriate LDP's and SPD's

Q11. How should PGS revenues be recycled to the local level for local priorities?

A By the totality of revenues being returned and with local priorities being determined via appropriate LDP's and SPD's

Q12. How should PGS revenues be used to fund strategic infrastructure at the regional level?

A Via the regional prioritisation process which seeks to link transport, housing and economic development benefits

Q13. How can local and regional stakeholders, including business, help determine the strategic infrastructure priorities most necessary to unlock housing development?

A via the RSS and LDF process