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REPORT TO:	Environment and Development Committee	AGENDA ITEM:	14
DATE OF MEETING:	2 <sup>nd</sup> February 2006	CATEGORY:	RECOMMENDED
REPORT FROM:	Deputy Chief Executive		OPEN
MEMBERS' CONTACT POINT:	Gill Hague (5742)	DOC:	
SUBJECT:	Planning Gain Supplement in place of part of Section 106 Agreements Consultation by HM Treasury, HM Revenue & Customs (HMRC) and ODPM	REF:	
WARD(S) AFFECTED:	All	TERMS OF REFERENCE:	ES03

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## 1.0 Recommendation

- 1.1 That the Committee responds to the Government in the terms of paragraphs 4.9 – 4.11 of this report with any alternate/additional views Members think fit.

## 2.0 Purpose of Report

- 2.1 To express views to the ODPM on the consultation document: "Planning Gain Supplement: a Consultation"

## 3.0 Executive Summary

- 3.1 The Government has published a consultation on a new means of financing the required public service infrastructure associated with new development. The full 45 page document is available on request from the Development Control Manager and can be viewed on [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) but the fundamental concepts and main questions posed in the document are set out below.
- 3.2 To help finance vital infrastructure and support growing communities, Kate Barker recommended that the Government should capture a portion of the land value uplift arising from the planning process. This document launches a consultation on a Planning-Gain Supplement (PGS) that builds upon her original recommendation, and in the Government's view, proposes a fair, efficient and transparent levy

## 4.0 Detail

### The Consultation

- 4.1 The Barker review proposed the following principles for consideration:

- information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas;
- Government would then set a tax rate on these values. This tax rate should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from section 106 developer contributions and provides additional resources to boost housing supply;
- the granting of residential planning permission would be contingent on the payment of the supplementary planning contribution of the proposed development;
- Government may want to consider the operation of a (substantially) lower rate for housing development on brownfield land, and the possibility of varying rates in other circumstances, e.g. for areas where there are particular housing growth strategies, or where other social or environmental costs may arise;
- a proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of section 106 planning obligations to take account of this new charge; and
- the Government may want to consider allowing developers to pay their contributions in installments over reasonable time periods so as to ensure that house builder cash flow pressures are sufficiently accounted for.

4.2 The Government accepted the conclusion of the Barker Review that a Planning Gain Supplement (PGS) would be likely to be more effective than other means of capturing land value uplift (such as VAT on new housing on greenfield sites or the current planning obligations regime) in providing resources to support the expansion of housing supply. There are, however, provisos that it is a modest proportion of the uplift in value arising from permission for development and could be successfully designed and implemented.

4.3 The base for calculating PGS would be the “planning gain” —the difference between the land value with full planning permission (planning value or PV) and the value of the land in its current use as permitted by the planning system (current use value or CUV). The charge would be calculated by applying the PGS rate to the difference between the two values. Two separate valuations – one for PV and one for CUV – would be necessary to determine the uplift.

4.4 Issues which arise are:

- How to ensure that the valuations are equitable and reliable and who should conduct them? The Government favours a system of self certification.
- When the payment should fall due – at the grant of permission or on commencement of development? This could necessitate a Development Start Notice, identifying the date and person due to pay.
- Who should collect the Supplement and how payment should be enforced? The Government suggests cooperation between Local Planning Authority's and ODPM and HMRC to solve problems and instituting a Development Stop Notice in the case of persistent non- payment.
- Possible thresholds and or exemptions and lower rates for brownfield land? The Government suggests exempting nothing but householder development/ extensions.

- 4.5 Issues such as financial contributions to Education, Health, Community, Cultural/Leisure facilities would no longer be part of S106 negotiations. However, the following would be:
- the provision of affordable housing
  - replacement/substitution for the loss or damage to a facility or amenity caused by the development; or
  - works necessary to make the development site acceptable in terms of the following attributes:
    - connectivity to access points;
    - physical safety;
    - environmental quality;
    - biodiversity;
    - design or landscaping;
    - archaeological protection;
    - mix of uses; and/or
    - operational effectiveness (of the site and others functionally linked to it).

The exact nature and scale of the obligation requirements could still be governed by tests of relevance to planning; direct relationship to the development, reasonableness and proportionality.

- 4.6 The Government considers that the advantages of adopting this approach are that it:
- significantly reduces the scope of matters covered by planning obligations, making negotiations simpler and easier to conclude;
  - reduces disparities between local planning authorities as all or most of the matters that could be addressed under the new scope would be necessary wherever a similar development was proposed on a similar site across the country. It is envisaged that planning obligations would be factored into the planning value for any site (as described in paragraph 4.3) and that this would lead to a more equitable PGS take from all sites.

- 4.7 The Government commits to the following key principles for allocating revenues if PGS is implemented:
- as an essentially local measure, a significant majority of PGS revenues will be recycled directly to the local level for local priorities. This will help local communities to share better the benefits of growth and manage its impacts and will ensure that local government overall will receive more funding through PGS than was raised through s106. However, a significant proportion would be used to deliver strategic regional, as well as local, infrastructure through an expanded and revised Community Infrastructure Fund (CIF);
  - PGS revenues will be dedicated to financing additional investment in the local and strategic infrastructure necessary to support growth. The Government anticipates that an overwhelming majority of PGS funds will be recycled within the region from which they derived; and
  - PGS revenues will ensure growth is supported by infrastructure in a timely and predictable way. Local and regional stakeholders, including businesses, will play an important part in determining infrastructure priorities, to help unlock development land.

4.8 The Government offers a choice of methods for delivering the revenue from the PGS. The first option is to distribute PGS revenues to the local level as grants in direct proportion to the revenues raised. This would require the PGS return to identify the local area in which the development site was located. The appropriate proportion could then be recycled back to the local level. An alternative approach would be to recycle revenues back to the local level as grants on the basis of a formula not specifically connected to PGS revenues raised.

4.9 The consultation seeks views on the following issues:

- What further clarifications to the definitions of planning value and current use value would be helpful to provide further certainty to developers?
- How can the self-assessment of PGS valuations and liability be made as easy to comply with as possible?
- What information on the condition of land at the granting of full planning permission should be made available to the chargeable person?
- Should payment of PGS occur at the commencement of development or another point in the development process?
- Should the Development Start Notice be submitted to the local authority or HMRC?
- How should the proposed approach to compliance fit with larger, phased developments?
- To encourage regeneration, should a lower rate of PGS be applied to brownfield land? What might be the drawbacks?
- How should a PGS threshold for small-scale development be set? What factors should be considered?
- Does the development-site environment approach proposed here represent an effective and transparent means of reducing the scope of planning obligations?
- How should infrastructure no longer funded through planning obligations be provided, including through the use of PGS revenues?
- How should PGS revenues be recycled to the local level for local priorities?
- How should PGS revenues be used to fund strategic infrastructure at the regional level?
- How can local and regional stakeholders, including business, help determine the strategic infrastructure priorities most necessary to unlock housing development?

#### **How should the Council respond?**

4.10 Changing the system in favour of a more obvious tax oriented system, based on profit from land sales and development has had a, hitherto insuperable, disadvantage. The Treasury wishes to remain firmly in control of the tax system and its distribution and must account for the overall proportion of GDP absorbed into public expenditure. The current procedures avoid having to do this but at the expense of an arbitrary and very complicated system from the Local Planning Authority point of view. However, the widening gap between household formation and supply is forcing a new approach to all aspects of delivery and the delays and uncertainties of the current system warrant a radical review.

4.11 When the Committee considered this matter in the light of a previous consultation document, officers recommended and Members accordingly advised the Government that a local tax was the appropriate way to resolve the S106 difficulties. Indications in the Planning press now suggest that the current consultation is provoking a very

bad reaction from all sides because of fears that in areas where development is not proceeding anything like as fast as it is here, the supplement will constitute a significant disincentive to much needed development/regeneration of run down areas. Officers consider this criticism to be ill considered and that in principal, the proposals would work at least as well and probably better than the current one. Experience in administering the current system suggests that it is overly time consuming, resource hungry and lacking in any guarantee of effectiveness. Removing the financial elements would make it work better, even if (as is acknowledged in the consultation) other matters must still be considered for inclusion in S106 Agreements. For instance the process of collecting, accounting for and disbursing contributions to the organisations implementing the public infrastructure works, itself raises issues internally as well as externally that are testing procedures beyond their normal level of accountability.

#### 4.12 In formulating a response, Members may like to include the following:

- Land and property valuation, for all the professional expertise applied to it, is an imprecise undertaking. It should clearly be seen that the, hopefully modest, contributions from PGS will not redress all infrastructure needs occasioned by the development process. They have not done so hitherto, particularly where facilities are already inadequate to meet the needs of the existing population before the development takes place. The co-relation between income from PGS and expenditure should not be pushed too far, to the point of failure on the part of the Government to fund public capital works appropriately. Too high a rate of contributions would indeed be a disincentive to development. On the other hand, the lower the contribution from PGS the more the requirement for general funding from other forms of taxation.
- Self assessment would be a useful way forward and may be monitored and enforced by HMRC in association with its own valuers or contractors. Making Local Authorities responsible for enforcement would have resource implications in the field of valuation, let alone debt recovery.
- Payment directly to HMRC would simplify the process and force Government to accept responsibility for funding in a clearer way. There would be less opportunity for dispute as to who was failing to deliver infrastructure. However, Local Planning Authorities are in a good position to advise on the start of development that would incur payments. Start notices should be sent to HMRC to activate the recovery process. Phasing can be managed by the development industry in the way developers submit applications for development and thereafter make a start on them.
- The system should have the advantage of ensuring that even very small-scale developments contribute proportionately in the same way as larger ones do.
- Land condition surveys are a feature of the system now and the condition of sites should not prove an obstacle. If necessary, provision for revaluation in the case of unforeseen large scale site restoration costs can be built in where appropriate.
- Payment on start of development would prevent the criticism that the grant of permission is itself a taxable event, particularly after a substantial fee is levied for processing the application. Also the valuation would reflect up to date land prices and building costs, which have a tendency to rise rather than the reverse.
- If properly designed the system should take account of the difference in value before and after permission is obtained for any site anywhere. This would affect site conditions, market variations in different parts of the country let alone

whether sites was previously developed or not. So long as self assessment were based on clear guidance all these variances should be capable of being factored in. However, it must be accepted that the system will not generate equal amounts of revenue in different parts of the country or types of site and thus cannot be expected to meet all associated costs of infrastructure.

- Taxation provides for public investment in infrastructure. This principle must not be allowed to be subverted. The Government must not attribute to Local Planning Authorities responsibility for any shortfall in funding associated with new development. The ordinary voter cannot be expected to appreciate the nuances of this process and Local Authorities must not be held accountable where they are manifestly not in control.
- Local Authorities already monitor new development and appropriate returns to HMRC, ODPM and if necessary the Treasury should ensure that the commensurate level of funding is factored into the grant assessments. Prioritising expenditure is for the provider, however.
- The Government must determine what expenditure is required at regional level based on Spatial Strategies. The process may become more sophisticated by more extensive consultation but the Regional Bodies can advise.
- The last question posed above is a red herring. The market determines provision unless Government intervention skews it. Mechanisms already exist for redressing market failures. This should not be allowed confuse the issue, which should be confined to raising contributions associated with development not the full costs of infrastructure provision.

## **5.0 Financial Implications**

- 5.1 Section 106 Agreements produce income that must be devoted to works associated with/necessary to development. Currently the Council acts as banker for contributions to works it undertakes, e.g. in Recreation facilities and external providers such as the Derbyshire County Council and the PCT.
- 5.2 Under the proposed system funding would be from a new form of taxation based on the uplift in land value following grant of Planning Permission.

## **6.0 Conclusions**

- 6.1 There is merit in the proposals, subject to working out details of the proportion of uplift, that would be taxable and how the process is to be managed, equitably, efficiently and effectively. The proposals accord with principles that the Council asked the Government to consider last time it was consulted on this issue.