

Report of: Planning Policy Manager

To: Executive Board

Date: 20th February 2006

Item No:

Title of Report: Consultation on Planning Gain Supplement – the Government's Response to the Barker Review

Summary and Recommendations



Purpose of report: This report summarises the main proposals of a Government consultation document on the introduction of Planning Gain Supplement. It draws out the key issues, comments on the proposals and sets out a recommended response.

Key decision: No

Portfolio Holder: Councillor Ed Turner

Scrutiny Responsibility: Environment

Ward(s) affected: All

Report Approved by: Portfolio Holder (Councillor Ed Turner),
Planning Policy Manager (Mark Jaggard),
Planning Services Business Manager (Michael Crofton-Briggs),
Strategic Director (Sharon Cosgrove)
Financial Management (Emma Burson),
Legal & Democratic Services (Jeremy Thomas)

Policy Framework: Oxford Local Plan 2001-2016

Recommendation(s):

The Board is asked to:

- (1) raise the following concerns about the introduction of a Planning Gain Supplement:
 - there are flaws in the process for triggering the uplift in the land values due to the timescales of full/outline/reserved matters permissions;

- the significant costs and complications of administering the new procedures, potentially involving H.M. Revenue and Customs, the Valuation Office and local planning authorities should be taken into account;
 - the process may be open to abuse as the developer is left to 'self-assess' the valuation uplift of the land;
 - as the uplift in value for brownfield development would be less than that for greenfield development anyway, there is no need to introduce a lower rate for brownfield development as the Government suggests;
 - the majority of the Government's concerns about the existing planning obligations procedure can be addressed by local authorities implementing the guidance in Circular 5/05. If the Government remains concerned about the differences between the range of contributions required between authorities, it could issue further guidance to address this specific issue.
 - the resulting allocation of funding to local authorities from PGS may not be any more than that achieved by the existing planning obligations and would introduce the further complications of:
 - not relating directly to the contributing developments;
 - could result in less funding for district authorities;
 - may threaten the level of future funding secured for affordable housing.
- (2) suggest that funding for regional infrastructure is achieved by adapting the existing system of planning obligations (as set out in paragraphs 16 and 17 of the report);
- (3) convey these comments (together with the specific responses set out in the Appendix to the questions raised in the consultation document) to HM Treasury as the City Council's response to the Government consultation on the Planning Gain Supplement proposals.

Introduction

1. The Government wishes to increase the supply of homes nationally from the current 150,000 to 200,000 homes per year by 2016 to address the level of housing demand. Additional housing will result in infrastructure requirements to support this level of growth to achieve sustainable development. To fund this additional infrastructure, the Government has published a consultation paper on a proposed Planning Gain Supplement as recommended by Kate Barker's independent review of housing supply.

Planning Gain Supplement (PGS) Proposal

2. A Planning Gain Supplement (PGS) would capture a 'modest' proportion of the increase in land value that occurs when full planning permission is granted. This proportion of uplift would be set at a level to continue to preserve incentives to develop.
3. PGS would apply to non-residential as well as residential development land. Home improvements would be excluded from PGS and the Government will also consider how to treat small scale improvements on non-residential property. A lower rate of PGS for brownfield sites will be considered due to the additional costs of development those sites may incur in comparison to greenfield sites.

Paying the Planning Gain Supplement

4. Whilst the valuation of the land would take place at the granting of full planning permission, requiring payment at this stage would not be viable. Not all permissions are implemented, several applications are possible for the same piece of land and no person with clear liability for paying the PGS necessarily emerges at this point. Instead the Government favours the payment of PGS on commencement of development as by the time the development starts, those carrying out the development have either secured sufficient interest in the development site land or have received approval to develop from the landowners and have usually secured financing for the construction.
5. The developer would be required to declare their intention to commence development through the introduction of a Development Start Notice procedure. The Notice would identify the developer as the chargeable person for PGS liability. However, it is anticipated that in most cases, the developer would pass the costs of the PGS back to the landowner through a reduction in the land value.
6. The developer would then be required to make a self-assessed valuation of the uplift in land value and make payment to H.M. Revenue and Customs (HMRC). HMRC and the Valuation Office would assess returns and valuations. There would also be procedures to enforce the submission of Development Start Notices and PGS

returns and payments through interest and penalty charges. If non-compliance continued, a Development Stop Notice would be issued with court action if necessary.

Implications for Planning Obligations

7. The Government is considering a reduction in the scope of planning obligations to those matters that relate specifically to the environment of the development site and affordable housing. This would mean that in addition to affordable housing, planning obligations would be confined to direct replacement/substitution measures (eg. if development was on sports field land, its equivalent off-site replacement) and largely on-site measures to make the development site acceptable. Outside the scope of planning obligations would be:
 - Education Provision
 - Health Provision
 - Community Centres
 - Bus Services
 - Fire Services
 - Employment and Training
 - Labour Initiatives
 - Town Centre Management
 - Cultural Facilities
 - Leisure Facilities

8. Instead local authorities should receive a direct share of the development gain generated by PGS in their areas, to compensate for a reduction in Planning Obligations. Local authorities 'should be free to spend this money as they see fit'. This share should at least broadly equal estimates of the amount local authorities are able to extract from Section 106 agreements. While the majority of PGS measures would be recycled directly to the local level, a significant proportion would be used to deliver strategic regional, as well as local infrastructure.

What Happens Next

9. The Government is consulting on its proposals of PGS and responses are invited by 27th February. A copy of the full document has been placed in the Members' Room. The document asks for responses on a series of questions. A draft response to these questions is set out in the Appendix. If the Government decides to proceed with implementing PGS, further consultation may be necessary, for example on the proposed reforms to the system of planning obligations. PGS would not be implemented earlier than 2008 and transitional arrangements made.

Comments on the Planning Gain Supplement Proposals

10. In addition to the responses (see Appendix) to the questions set out in the consultation document, further comments/key issues are:
11. Taking a broader view, infrastructure investment to support the significant housing growth proposed in the South East should be supported in principle. The question is whether the procedure proposed is the most effective and efficient to achieve the objective of securing additional revenue for regional infrastructure.
12. In terms of the proposed procedure:
 - i. The trigger of using the granting of full planning permission for valuation is less clear cut than it first appears. The document does not mention the appropriate trigger point for outline permissions. Should this be when outline permission is granted, or at the reserved matters stage? However, reserved matters can be dealt with by more than one application and this could take place over a time period of 3 years from the granting of outline permission.
 - ii. The procedures for administering, collecting and enforcing the PGS appear complicated and could prove costly. It is unclear what role local authorities will have, if any, in this process, although to work effectively it clearly needs local knowledge to police the proposed trigger of commencement of development.
 - iii. It then follows that if it is accepted local authorities are in the best position to administer and enforce the Development Start Notice, administrative complications are likely to arise if separate bodies (the H.M. Revenue and Customs and the Valuation Office) administer the self-assessment regime and payment. Would it not be far more streamlined for local authorities to be responsible for all of the processes (with appropriate mechanisms in place to cover the additional administrative costs)? On the other hand, enforcement by HM Revenue and Customs might be more effective for the Treasury.
13. Turning to examine the Government's concerns about the existing planning obligations system resulting in its proposal to reduce the scope of obligations:-
 - i. The Government states it is introducing these changes :
 - to 'speed up and improve efficiency';
 - to 'reduce negotiation costs';
 - to address perceived 'problems of lack of certainty and transparency';

- because it believes developers find the system ‘confusing and unpredictable, particularly because the range of contributions required can differ between authorities.’
 - ii From Oxford’s experience, as the provision of affordable housing is on the whole the most contested element of infrastructure provision and often takes the longest to negotiate, it is difficult to see how taking away other infrastructure requirements from obligations will necessarily speed up or reduce the costs of the negotiation process (although the adoption of the Local Plan and the processing of the Supplementary Planning Document on affordable housing will help to address past problems).
 - iii. Allowing relevant local matters to be dealt with according to local policies is beneficial for communities. Local Plans set out clearly the policies for local priorities where mitigation requirements may need to be met by planning obligations. In line with Circular 5/05, the City Council is drafting a Supplementary Planning Document that will further clarify and elaborate on the Local Plan policies that will be implemented through planning obligations. It will include standard formula for applying appropriate infrastructure measures and standard legal agreements and clauses. These measures should achieve a transparent and certain procedure for developers to know the infrastructure expectations from the first initiation of planning projects. Therefore the Government’s concerns about the existing system should be addressed by local authorities applying the new Circular advice.
14. In assessing the Government’s processes for allocating PGS revenue to local authorities.
- i. It is difficult to judge whether this “modest” rate of PGS will raise revenue equivalent to that achieved under the existing system as no indication is given of the level of charge or the proportion that will be retained for regional infrastructure.
 - ii. The proposed system would divorce the PGS collected from the infrastructure requirements of the specific contributing development. Whilst local authorities would receive a share of the development gain generated by PGS in their area they would ‘be free to spend the money as they see fit.’
 - iii. It is of concern how the Government would share the PGS generated in two tier authority areas. The priorities at County level for infrastructure requirements could be a significant distance away from the development generating the PGS or for other service areas and hence not creating sustainable developments.

15. On the issue of affordable housing, the consultation document includes reference to 'rationalising the affordable housing requirements imposed by local authorities so as to ensure greater consistency.' It would be very worrying if after all the City Council's efforts to pioneer leading affordable housing policies to address the acute problems of Oxford, any Government 'rationalising' resulted in a reduction in resources for affordable housing.

Conclusion

16. In conclusion, it is recommended that the Board reflect the concerns expressed in paragraphs 12-15 above in the response to the Government consultation. As an alternative to a Planning Gain Supplement, if the nub of the problem is securing a mechanism to enhance Government funding for regional infrastructure, this could be achieved by adapting the existing system.
17. With local authorities going down the standard charges/formula route for local infrastructure and backing this up with an evidence based assessments of likely infrastructure needs, the same approach could be applied to regional infrastructure. This approach has already been used in Milton Keynes. Regional infrastructure requirements from new development could be identified, costed and prioritised and the proportion of the costs could be applied according to the scale of development per local authority area. Contributions towards regional infrastructure requirements could then be sought through the existing system of planning obligations and the contributions received passed on.

Name and contact details of author: Lyn Lawrence (telephone 252166 – e-mail llawrence@oxford.gov.uk)

Background papers: None

Planning Gain Supplement (PGS) – Government Response to Barker Review

Response to Questions Asked in Consultation Document

Q2.1 What further clarification 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?

Further clarification is needed at what point the uplift in value of the land should be assessed in the case of outline permissions. Should this be when outline permission is granted or at the reserved matters stage? However, reserved matters can be dealt with by more than one application and this could take place over a time period of 3 years from the granting of outline permission.

The uplift value of the land may also vary considerably on mixed-use development sites dependent on the proportion of the mix of uses.

There may be factors outside the development site that could significantly affect its value at the time permission is granted such as ransom strips for access.

The level of affordable housing secured will also impact on the uplift value and this in turn will be dependent upon whether there is social housing grant and how much registered social landlords pay for the units.

Q2.2 How can the self-assessment of PGS valuations and liability be made as easy to comply with as possible?

By supplying the chargeable person with a self-assessment form and guidance. However, it will be difficult to administer for brownfield sites, which may have bespoke development costs. This would place a huge administrative burden on the Valuation Office assessing the accuracy of the valuations submitted.

Q2.3 What information on the condition of land at the granting of full planning permission should be made available to the chargeable person?

- Soil evaluation to determine if the land is contaminated in any way.

- Information on the condition of any property to be converted as part of the development.
- Any factors in the vicinity of the land that could have an impact on its value.
- Any information on a history or potential for flooding.

Q3.1 Should payment of Planning Gain Supplement occur at the commencement of development or another point in the development process?

We recognise the arguments for not requiring payment at the point of granting planning permission. However, the time lag and change in interests in the land between valuing it at the granting of permission and requiring payment on commencement could be problematical. Information on the condition of the land affecting its value may not have been passed on to the chargeable person.

Payment on commencement may place an undue burden on the developer with construction costs and no revenue from sales.

On larger schemes, even after commencement there may be applications to vary the permission to accommodate changes to the design/layout, which could in turn affect the value of the site together with possible changes to the types of uses on mixed development sites. A further procedure would be needed for this scenario.

Is there an argument for payment on completion of the development? It would be easier to administer as it would be clearer to assess the value of the development based on the actual buildings/uses constructed. Developers may favour payment at this stage when they have, or are closer to receiving a return for the development. However it would, particularly for large scale developments, mean a considerable time lag to receive funding for implementing infrastructure projects. Infrastructure needs to be 'front-loaded' but it may be possible to address this by borrowing against predicted revenue. Enforcement may be more problematical at the stage of development completion.

Q3.2 Should the Development Start Notice be submitted to the local authority or H.M. Revenue and Customs (HMRC)?

Enforcement of the Development Start Notice will be easier if it is a local planning authority function. Local planning authorities are already aware of commencement of developments through the network of case officers, building control, monitoring officers, enforcement officers etc. Drawing on our own experience, we know there are very few occasions when developers inform us of commencement of development to trigger planning obligations, despite 'notifying us of commencement' being written into the S106 legal agreements. HMRC will need to tap into the local knowledge of local planning authorities, in this way it

would be able to check that developers had submitted the Development Start Notice on commencement. The control mechanism proposed for non-payment etc. would only be effective once HMRC were aware commencement had started without the proper notification in the first place. However, HMRC should present a greater deterrent to evasion by developers.

Involving local planning authorities in administering the Development Start Notices and separate bodies HMRC/Valuation Office in the other part of the process (of PGS assessment and payment) will require special consideration to avoid:

- confusion for the development industry;
- confusion, expense and potential lack of co-ordination by the three separate organisations involved.

It may be considered more efficient to elect one body to administer the whole procedure, ie. local planning authorities with appropriate mechanisms in place to cover the additional administrative costs.

Q3.3 How should the proposed approach to compliance be made to fit with larger, phased developments?

It is likely that the development industry will ask for a system of phased payments to spread the burden of payment more evenly. To do this agreed triggers for payment within the development will need to be agreed. But this will add additional administrative costs and further result in a need for enforcement controls to ensure compliance.

Q4.1 To encourage regeneration, should a lower rate of Planning Gain Supplement be applied to brownfield land? What might be the drawbacks?

The uplift in value for a brownfield site would be less than that for greenfield development so the PGS payable would be reduced anyway. Therefore there should not be a lower rate for brownfield land.

Applying a uniform reduced rate for brownfield land would be difficult to administer as the costs of development could differ so widely depending on whether the development involved the conversion of buildings, or say contaminated land in comparison to a cleared site. Therefore bespoke assessments may prove necessary adding to the administrative costs.

Q4.2 How should a PGS threshold for small-scale development be set? What factors should be considered?

Paragraph 4.3 states “645,000 planning applications were made in 2004/05.” It also states that “around half of these were for home improvements.” If these are excluded this still means around 322,500 Development Start Notices, Planning Gain Supplement developer self-assessments and payments to administer as well as all the enforcement procedure!

The threshold level needs to be set at a level where the ‘modest levy applied’ is cost effective to administer. Using the Oxford City Council Local Plan definition of major development (10 or more dwellings or 0.25 hectares, or buildings with a floorspace of 2,000 sq.m.) may be a more appropriate threshold.

Q5.1 Does the development site environment approach proposed here represent an effective and transparent means of reducing the scope of planning obligations?

Further clarification would be needed on whether open space also included provision of on-site children’s play areas and whether it would extend to play area provision/sports facilities off-site in the vicinity of the development. Are work of art contributions either on-site or in the vicinity of the development still permissible?

Q5.2 How should infrastructure no longer funded through planning obligations be provided, including through the use of PGS revenues?

Funding infrastructure not covered by planning obligations through PGS revenues may prove to be more expensive in some instances. For example on a large residential development site where provision was needed for a new school, under the existing system land for this need would be earmarked and the developer would be asked to pay towards the construction of the school and in effect the land would be ‘free’. Under the new system, the uplift would value the site at residential land value and the local authority would incur the additional cost of purchasing the land as well as constructing the school.

Given that the Government’s concerns about planning obligations will be largely addressed by local authorities implementing the measures advised in Circular 5/05 (see paragraph 13 of main report), would it not be better to continue to administer all infrastructure through the planning obligations procedure?

Q6.1 How should PGS revenues be recycled to the local level for local priorities?

Option 1 would be favoured for grants to be in direct proportion to the revenues raised. This would at least retain some link between funding for infrastructure in proportion to the level of development growth.

It is easy to see how this system can be effective in the identified Growth Areas. Its application in unitary authority areas is also straight forward. Ensuring that grants are recycled directly to the local level for local priorities is less clear cut in two tier authorities. The local priorities at County level may be infrastructure some distance away from the development originating the PGS and hence not creating sustainable development. How will the Government determine the proportion of grant allocation between County and Districts?

Q6.2 How should PGS revenues be used to fund strategic infrastructure at the regional level?

There needs to be some assessment of regional infrastructure requirements, costings and priorities then funding allocated in proportion to the additional needs the increased development is likely to generate.

Q6.3 How can local and regional stakeholders, including businesses, help determine the strategic infrastructure priorities most necessary to unlock housing development?

Some form of consultation exercise initiated by the Regional Assemblies/Regional Planning Board.