



Executive
13th February 2006

**Report from the Director of
Environment and Culture**

For Action

Wards Affected:
ALL

**Response to HM Treasury Consultation on Planning Gain
Supplement**

Forward Plan Ref: : E&C- 05/06-054

1.0 Summary

- 1.1 The Treasury have released a consultation paper that proposes a Planning Gain Supplement (PGS) in line with the Barker review on improving housing supply. This proposes replacing Section 106 agreements with an infrastructure levy or supplement that is set, collected and controlled by central government and is returned in part to local government to provide infrastructure needed as a result of new development. A draft response to such proposals is set out in the report that argues for greater local control over the imposition, collection and use of such a supplement.

2.0 Recommendations

- 2.1 That the Executive agrees the proposed response as set out in para. 3.10 to HM Treasury on their consultation document on a Planning Gain Supplement.

3.0 Detail

- 3.1 The Planning Service is working on proposals for introducing standard charges on S106's to largely replace a system of negotiations over separate items. The purpose is to:
- Simplify procedure and make it clear what developers will need to pay so they factor this into land negotiations
 - Save time over protracted negotiations and legal documentation

- Help give flexibility over expenditure so S106 better aligned with corporate priorities

The timetable for to consider a Supplementary Planning Document on Standard Charging was agreed at the last planning committee that considered planning matters on 16 November 2005

- 3.2 However, proposals from HM Treasury (Planning Gain Supplement: a Consultation, December 2005) who are consulting on a Planning Gain Supplement has cut across this work. The Barker Review of Housing Supply recommended that some form of tax or levy be put in place to capture the increase in the value of land that the government was helping to create. This approach should raise more funds than the traditional S106 approach to make a greater contribution towards the infrastructure (transport, schools, local services etc.) required by the new housing and other development. It was also hoped that by getting infrastructure paid for, and removing the cumbersome aspects of S106, a significant barrier to producing more homes could be overcome.
- 3.3 The PGS consultation report sets out the uplift in Land value from the grant of planning permission on average in the UK. Note that in Brent industrial and other land uses are likely to be 3-4 times higher (Guinness land was sold at £4.8m per hectare) and residential land at least two and often, with higher density development, four-five times higher than the averages set out in the table. The PGS would capture some of this uplift in value (to be returned to councils to fund infrastructure) and S106 would be confined to local environmental matters.

Table 1.1: Value per hectare (£) of land by use type, in England, Scotland, Wales and Northern Ireland.¹

Country	Mixed agricultural Land	Residential Land Use	Industrial & warehousing Land	Business Class (B1)-offices
England	9287	2,460,000	632, 000	749,000
Wales	8628	2,180,000	218, 000	264,000
Scotland	4858	1,680,000	235, 000	588,000
Northern Ireland	17290	1,675,000	000 n/a n/a	

¹ Source: Valuation Office Agency Property Market Report, January 2005.

² Class B1 is for use as an office other than for financial and professional services, for research and development of products or processes or for an industrial process which can be carried out in a residential area without detriment to the amenity of that area.

- 3.4 The consultation paper lists the main features of the Planning Gain Supplement (PGS) as follows:
- PGS would not be implemented before 2008;
 - PGS would capture a modest portion of the value uplift arising on land for housing which at least covers estimated S106 gain under the current system
 - PGS will capture some of the difference between land value with planning permission against its current use value (this has been suggested as being around 20% of the uplift in land values)

- Local authorities would receive a share of the PGS revenues, either a fixed proportion or allocated according to a formula
- Local authorities have flexibility over spend but the purpose is to fund additional infrastructure
- S106 Planning obligations would be scaled-back to matters relevant to the environment of the development site and affordable housing
- PGS would be payable under a self-assessment regime administered by HM Revenue and Customs (HMRC)
- Payment would not be required until the commencement of development
- PGS would apply to non-residential as well as to residential development land
- PGS revenues would be dedicated to local communities and the provision of infrastructure, but only at a rate equivalent to its current S106 contributions.
- Some PGS would be used on regional/sub –regional infrastructure
- Home improvement would be outside PGS
- Brownfield sites are likely to be taxed at a lower rate than greenfield sites

Main Issues

- 3.5 The council would welcome a system that allowed the wider community to share more fully in the development gains that its actions and plans create. A system is to be welcomed if it more fully meets the community costs of that development. At the moment S106 Planning Obligations raise only a small contribution of the community costs or infrastructure costs (schools, transport, health & community facilities and environmental mitigation) of development in Brent. For example Brent has, as a maximum, achieved around £6000 per residential property in S106 contributions (plus the value of affordable housing). More commonly it is £1000-2000 Milton Keynes has introduced a “Roof Tax” as a test case and are seeking approval to set this at £18,500 per residential property plus developer contributions to new school provision in the form of land plus the normal affordable housing requirements. Even accepting that Milton Keynes will largely be Greenfield development, there is a substantial disparity between the estimated infrastructure costs there and those that Brent has been able to recover.
- 3.6 Your officers would clearly recommend any system that provided even an increased proportion of the true infrastructure costs of development in an easier and more transparent way and one that allows more flexibility over how those contributions can be used. Chapter 6 of the consultation document looks at the options for allocating PGS back to authorities. It proposes grants that would be returned to the local authority either in proportion to the number of housing schemes permitted or alternatively in relation to the infrastructure needs they have. The difficulty of either approach is that Brent has no control over the amount of grant it receives and when it receives it. The link between the level and timing of PGS grant are crucial.

- 3.7 The argument with government is over control of those resources and providing that sufficient and timely funding are available to deal with the development impacts and new infrastructure requirements from large developments. For example new housing development in Brent triggers the need for new school provision- how would PGS from a housing site be translated into the timely provision of new schools without time delays or uncertainty that any funding will be forthcoming for such infrastructure. The best way is to give control to local authorities over collection and spend of PGS revenues. This could be way of an agreed local element to the PGS and it should allow authorities to be able to deliver infrastructure ahead in a timely fashion. Grant received on start on site may be too late to build the school that accommodates the new population for example.
- 3.8 The consultation paper actually puts forward three options (1) 'Do nothing', (2) the Optional Planning Charge, and (3) the PGS. The Optional Planning Charge is similar in conception to the standard charges being developed by the council's Planning Service in that it addresses planning impacts as single charges but would allow S106's to be negotiated individually. This is not favoured by the Treasury as it does not secure uplift but would be a fallback option if PGS is not implemented. However there is no reason why the legal framework for optional planning charges could not be amended to include a fuller element for infrastructure costs, which may or may not have a regional component. This would give local control over the acquisition and use of funds to best meet local needs.

Other Implications

- 3.9 It is proposed that the standard charging model for S106's discussed at last Planning policy committee should still be progressed with as there is no certainty that PGS will be supported into legislation. It will also be important to maintain S106 receipts at a high level if PGS was given back to authorities at its current S106 level.
- 3.10 **Proposed Response to consultation document**
1. The council supports any system that captures an increase in Land Value for the benefit of the local community over and above S106 contributions. This is to be welcomed.
 2. The main concern the council has is over the management and control of these funds and seeks that this control should be given locally.
 3. Any Planning Gain supplement (or a significant proportion) should be under control of local government as the effects and solutions are largely local
 4. Local authorities could levy, collect control & manage any planning Gain Supplement as they do S106. A formula that releases a proportion to the region for strategic infrastructural projects could be agreed.
 5. Local authorities do extract less planning gain than they could but that is clearly related to their powers and restrictions under current

- legislation – local authorities could command a better share of infrastructural costs if the current legislation were changed.
6. It is anticipated that Local authorities will only receive an equivalent to current S106 funding from PGS, although greater funding will be secured overall. Since current s106 funding does not meet anywhere near the infrastructure required to support new development, PGS to local authorities should be significantly increased too, in whatever final guise it takes.
 7. There must be more certainty that the grant of permission leads to PGS in a timely manner, otherwise the council will have to fund infrastructure costs until PGS arrived. The benefits of S106 and also an Optional Planning Charge is that the council has some element of control over the development and certainty over the nature, scale and timing of infrastructural funding.
 8. Section 106 must retain its ability to secure current affordable housing requirements.
 9. PGS should be spent locally as proposed in 6.4 of the consultation report- under the consultation report a significant proportion would be used to deliver strategic regional infrastructure.
 10. Flexibility over how PGS could be spent is welcomed.
 11. PGS should be related to the amount of development in a borough.

4.0 Financial Implications

- 4.1 The Council has concluded S106's worth over £50m in the last 20 years and currently accrues an average of £2- £5m p.a S106 funding. Some £10m sits in the S106 account awaiting expenditure. This is part of our pooled balances (unless required to be held in a designated interest bearing account) and the interest earned is part of the General Fund budget for interest on balances. If this income is received later under PGS then there will be a budget impact on the General Fund in terms of reduced interest earned. Under the PGS S106 would be restricted to minor environmental and local works of moderately low value. The S106 funds would therefore diminish but not until at least 2008 when any system may be implemented.
- 4.2 Under the new PGS the funding may not be in place to cover the required expenditure i.e. if a new school is required this will require expenditure to be incurred prior to PGS grant being received and this will put pressure on the Councils scarce capital resources.

5.0 Legal Implications

- 5.1 Agreements made under section 106 of the Town and Country Planning Act 1990 (planning obligations) are intended to mitigate the impacts of development and allow developments to go ahead that would not otherwise be approved. They are not intended to supplement the Council's General Fund or be a "price" for development. Circular 1/97 on Planning Obligations sets out rules for their use, notably that they must serve a planning purpose and be reasonably related in scale and kind to the development. The Government is currently reviewing the role and scope of planning agreements as was reported to Planning Committee on the 26 January 2005.
- 5.2 A developer can challenge a council's insistence on planning benefits by way of an appeal to the Planning Inspectorate, and once concluded can legally challenge the Council if S106 funds have been spent on items not set out in the agreement or if the time limit for spending the funds (where one is specified) has passed.
- 5.3 If the proposed PGS is implemented, legislation will be required to provide for payment of this and amendments will be required to section 106 of the Town and Country Planning Act in order to restrict the scope of planning obligations under this section as set out above in the body of the report.

6.0 Diversity Implications

- 6.1 The Report will better enable effective planning to meet the particular needs of Brent's diverse communities as it will assist the identification of any ethnic, gender or other culturally specific, positive or negative, development trends.

7.0 Staffing Implications

- 7.1 None specifically arising from this Report.

8.0 Environmental Implications

- 8.1 It is not clear from the consultation paper how the PGS will mitigate some of the direct environmental impacts of new development, particularly at a local level.

9.0 Conclusions

- 9.1 The council welcomes a PGS type system which captures more of the uplift in value (that its own planning policies create) in order to fund a greater share of the infrastructure, the need for which the development creates. However any system should be managed and controlled at a local level because this is where the main impacts are created. The council would therefore want to see PGS's collected and mostly used by the local authorities in which the development takes place. The Council would also support greater freedom and flexibility in using funds accrued under the PGS or other system.

10.0 Background Papers

- 10.1 Planning Gain Supplement: A consultation, HM Treasury December 2005

Report to Planning Committee, 16 November 2005 on Planning Obligations and Standard Charging

- 10.2 Any person wishing to inspect the above papers should contact Dave Carroll, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex HA9 6BZ, Tel: 0208 937 5202

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