Agenda Item No 13

Subject: Planning Gain Supplement – ODPM Consultation Paper

Director/Head of Service: Head of Regeneration & Economic Development

Decision Issues: These matters are within the authority of the Executive

Decision: Non-key

Classification: This report is open to the public.

Wards: All

Summary: This Report sets out the key proposals from the ODPM, Treasury and HM Revenue for a new Planning Gain Supplement, and sets out the main issues for the Council in responding to the consultation paper.

To Resolve

To respond to the Government consultation on changes to the Planning Gain system as set out in this Report.

Supporting Information

1. Introduction

The Government has recently published its various responses to the Barker Review on housing land supply, including a new Planning Policy Statement 3 (Housing), which is the subject of a separate report to Members.

Among the recommendations of the Barker Review was the establishment of a Planning Gain Supplement (PGS) to assist in ensuring that new critical infrastructure is provided as part of new housing growth. This consultation relates to the Government proposals for such a Supplement.

It is widely accepted that the current system of s106 Agreements has not been transparent or robust, nor as effective as it might have been, for various reasons. The current proposals are intending to address these issues, but also the critical infrastructure issues facing the south-east.

Members will be aware that a draft Supplementary Planning Document (SPD) on Development Contributions has been published for consultation. The purpose of this SPD was to try to bring greater certainty, clarity and accountability to the way development contributions are collected in the district.

2. Consultation Proposals

It is proposed that a Planning Gain Supplement (PGS) would not be introduced before 2008.
The main features of the PGS proposal set out in the consultation paper are:

- It would capture a modest proportion of the value uplift from planning provision;
- It would be payable under a self-assessment regime administered by HM Revenue and Customs;
- Payment of the levy would only be required when development commenced;
- A Development Start Notice will identify the chargeable person;
- It would apply to all developments, non-residential as well as residential, but not include householder applications for improvements to a dwelling;
- The system of s106 planning obligations would continue but would be scaled back and simplified and
- A significant majority of revenues would be recycled to local communities to directly spend on infrastructure.

The consultation states the Government’s commitment that the substantial majority of PGS should be devoted to local provision. This proposes that local communities will receive more overall funding through the combination of PGS and a revised S106 regime in comparison with the current S106 regime. A significant proportion would however be used to deliver strategic regional infrastructure and the Government proposes this is done through an expanded Community Infrastructure Fund.

The principle is that the difference between the land value with the full new planning permission and the value of land in its current use will be the 'Planning Gain' and the basis for amount of liability. The proposal is that the system will operate on the basis of self-assessment, but would be subject to checking by HM Revenue. The Paper states that self-assessment should reduce complexity and costs.

PGS would be paid when development actually commences. This makes practical sense because issues of project ownership and funding agreements may not be resolved at the time of planning permission being granted. Some may argue that the payment should be made later but that would only make the timely funding of relevant infrastructure more difficult. For very large developments the possibility of phased payments should be considered to ease cash flow.

Prior to starting development the developer would be required to declare their intention to commence development, through the issue of a Development Start Notice. A PGS Return would be submitted. Non-compliance would be enforced by interest charges and other penalties. There is a strong element of self-enforcement here, which should reduce complexity and costs.

All development will be controlled by a single rate of levy, maintaining the principle of simplicity. The Government has, however, raised the possibility of a lower rate for development on brownfield land. Whether there is a case for a threshold, possibly to exclude smaller developments from PGS remains under review.

The introduction of PGS would allow the scope of the present planning obligations system to be scaled back to those matters that need to be addressed to ensure that the site itself is safe, of high quality and accessible, together with the provision of appropriate affordable housing. The Paper suggests that such an approach would simplify agreements, reducing time and cost, and the present wide variations in practice.
3. Comments on the Proposals

In principle the City Council is supportive of a system which will more directly achieve wider community benefits, related to the enhancement in site value. Having said this the system must address the following matters:

- the process must be transparent in its operation, in how the contributions are calculated and how they are redistributed

- government needs to clearly define what is ‘local’, our interpretation is that this must be linked to delivery at a level similar to the area in which the contributions are collected i.e. the local planning authority. As a general principle the presumption must be that the majority of the funding is distributed at a local level and a target should be an 80:20 split to the local level.

- The process of allocating the collected revenue must be set out clearly, how will the PGS be redistributed back to the local level and what process could be used? We propose that the local strategic partnership should be given the task of a) setting the strategic objectives and infrastructure developments which the funds levied would be used to deliver, and b) prioritising the funding allocation. The activities of local strategic partnerships are currently the subject of attention by government and giving them a clear role in this area would support the way in which government is proposing that LSPs should develop.

With the above in mind the following appear to be the key pros and cons of the proposed PGS system.

Advantages

There are some significant advantages to adopting a PGS-style approach:

1. It should provide a greater degree of certainty and consistency in terms of development contributions. As mentioned above, it is widely accepted that the current system of s106 agreements is uncertain and unpredictable, and the level of development contributions collected by local authorities varies widely. This is illustrated at Table 5.1 of the Paper, which shows the variability of contributions collected by local authorities. However, it should be borne in mind that a reduced system of s106 agreements will remain, so that developers would have to deal with two systems of contributions.

2. It should also be less susceptible to developer challenge. This would be a significant advantage. At present, it takes a considerable period before developers accept new contributions as being part of the normal planning process. This is starting to change, but there is still a tendency amongst some developers to challenge either the principle of the contribution or the amount, and to attempt to “wear down” local authority requirements for contributions, occasionally resulting in challenges through the Courts.

3. The consequence of points 1 and 2 is that development control case officers and legal officers can become embroiled in long-winded negotiations and discussions, and there is no doubt that s106 agreements are increasingly taking up the time of case officers. However, once again it should be
remembered that a reduced s106 system will still be in place, which will occur some delays. One of the main reasons for developing the draft Supplementary Planning Document was to try to provide a greater degree of certainty, and to give greater legal weight to the Council’s requirements for contributions.

4. The PGS should lead to a greater overall level of development contributions towards infrastructure. The Government believe that the PGS approach will bring a greater level of funding from developers towards infrastructure requirements. As mentioned in point 1 above, the amount of development contributions collected by local authorities is very variable, and because far more development would be contributing to the PGS, this should result in a significant overall increase in infrastructure funding from developers. There are some caveats to this point, and these are set out below.

Disadvantages

However, there are also some significant disadvantages:

1. The introduction of a PGS system would lead to a significant loss of local control over development contributions. This is reinforced by the fact that the Planning Minister has said that local authorities will need to work with stakeholders at a "regional level". It is clear that local authorities will not have the final say in how it is all spent, and this will clearly undermine the Council’s priorities in collecting development contributions.

2. Given the emphasis on the Barker Review, it seems very unlikely that a PGS system will result in significant funding for locally-important projects in Canterbury district. It is more likely that PGS will be used to deliver major infrastructure for the designated growth areas, such as Ashford and Thames Gateway, where major infrastructure constraints exist. It is not clear what level of “top-slicing” will occur to fund “regionally important infrastructure”, but it is likely that funding for items like District Transport Action Plan measures will be greatly reduced.

3. There are also have major concerns about how the “local” element of PGS would be apportioned. There is a wide range of service providers, including County and District Councils and other agencies that presumably will all have to “bid” for a share of PGS. The administration of a PGS system will be extremely complex and may well delay the recycling of funding to local authorities. Furthermore, no account appears to have been taken of the cost and time involved in administering the system or assessing what funding will be made available.

4. Given these complexities, these proposals may slow down development. A PGS system is unlikely to be able to allocate funding any quicker than the s106 Agreements, particularly if contributions have to be recycled through central government and back to local government.

5. There is a concern that, rather than being additional to government spending arising through the taxation system, development contributions may start to become absorbed into general government spending. If a PGS, or similar scheme, is to be introduced, it is essential that the funding raised maintains its “additionality” to the mainstream tax system.
6. A PGS system would reduce the scope for planning gain at local level via s106 Agreements, essentially to site-based matters only. This means that contributions to off-site measures, such as those for transport infrastructure and open space proposed in the Council’s draft SPD, would not be permitted. A PGS system would therefore weaken the Council’s approach to development contributions. There would also be two different systems for developers to deal with. Having developed a clear prioritisation and methodology for development contributions through the draft SPD, these local priorities will be undermined as contributions are directed towards regional infrastructure and the scope of s106 agreements is reduced. The new system would in particular therefore seem to limit the scope for off site solutions to the delivery of affordable housing.

7. The Paper is also confusing in its approach to the provision of local needs housing. It is considered that a PGS system would significantly reduce the level of local needs housing completions, as this would be part of a s106 element that would be “squeezed” by the PGS, and because local needs housing is generally a contribution “in kind”, rather than a commuted payment.

8. The Consultation Paper is also somewhat unclear about the provision of open space, and its long-term maintenance. Para 5.15 and Table 5.2 seem to indicate that while on-site open space is an acceptable part of the scope of s106 agreements, off-site provision (eg: through the provision of “strategic” open space) is not. The Consultation Paper is silent on whether commuted payments for maintenance are acceptable. From this, it seems unlikely that the PGS system would be able to deliver the same level of provision that the Council is seeking through the draft Supplementary Planning Document.

9. With PGS payable upon the commencement of development it will not in itself be available to forward fund the delivery of infrastructure, although it should be noted that the current system is also not very effective in this respect. Developers would have to bear the costs of financing this, which would potentially reduce the amount available for positive contributions. Furthermore, this may deter some developers from looking at “brownfield” sites, or lead to developers holding land banks waiting for land values to rise. The proposals also do not indicate how changes in land values between the planning consent and the start of development might be assessed.

The Consultation Paper also asks whether a PGS approach should include a differential rate for “brownfield” sites, which may have abnormal costs associated with them, and to encourage an increase in “brownfield” development. However, this would probably not be appropriate, for the following reasons:

(1) “brownfield” sites differ widely in character, and do not all necessarily carry abnormal costs; and

(2) the new system is based on a valuation of the site, so any abnormal costs should be identified through the valuation process, in any case.

If the Government wishes to encourage more “brownfield” development, a more effective step would be to equalise VAT rates between “brownfield” and “greenfield” development, or even introduce a preferential VAT rate for “brownfield” development. This would incentivise developers to look at such sites.
4. Conclusions

There are clearly some significant advantages associated with the introduction of a PGS system. Government must address the key questions set out above before we could support the introduction of this system.

As an alternative government may also wish to consider a system which would underpin its new ‘localism’ agenda and move instead to locally-based tariff system, like those approved by the Government for the Growth areas of Milton Keynes and Ashford. This is the approach which the City Council was working towards in our recently prepared draft SPD, before the Circular on Planning Obligations (Circular 5/05) was published last year.

This approach would have numerous advantages:

1. local control and focus – a locally-based tariff system (LTS) would have a clear local focus and respond to local needs, rather than be determined largely by central government;

2. clarity and certainty for developers – developers would clearly be able to see the relationship between their contributions and the provision of local services and facilities, as well as a clear indication of likely contributions; and

3. speed – if an adopted LTS was supported by the Government, it would be a quicker system of collection that either the current arrangements or those proposed by the Government.

This approach is favoured by the Royal Institute of Chartered Surveyors (RICS), and by many Local Planning Authorities in Kent.

A tariff system is also favoured by the Planning Officers’ Society (POS), which is concerned that the Planning Gain Supplement, as proposed, could put at risk Local Authorities’ infrastructure and local needs housing provision by restricting their ability to facilitate legitimate development in their localities through planning gain. The POS believes tariffs would allow better local solutions without introducing a complex development land tax, which may inhibit development.

If, however, the Government do press ahead with proposed PGS approach, it is essential that the process is clear, and that the recycling of contributions to local authorities is fair, transparent and related to local priorities, not based solely on the need to service the growth areas, or on the levels of development accommodated by different areas. These principles should guide the detailed development of the PGS.

2. Relevant Council Policy/Strategies/Budgetary Documents

(a) Community Plan – the Consultation Paper addresses development contributions that might normally be sought for priorities identified in the Community Strategy.

(b) Local Plan – the draft Local Plan contains a commitment to prepare supplementary planning guidance relating to developer contributions. A draft Supplementary Planning Document is currently out to consultation, but the scope of such guidance may be affected by the final outcome of the Planning Gain Supplement consultation.
(c) Corporate Plan - the Consultation Paper addresses development contributions that might normally be sought for priorities identified in the Corporate Plan.

3. Consultation

(a) Other officers/Councils/Non-governmental Organisations and Government bodies – Development Control; Transport; Housing; Countryside; Outdoor Leisure; Finance and Estates; Kent Planning Policy Forum/Kent Planning Officers’ Group (a forum of all Kent Local Planning Authorities, which meets quarterly to discuss such issues).

4. Options available

The proposed response is set out in the main body of the report.

5. Implications

(a) Financial Implications – if the Guidance is correct in its financial assessment, there may be more funding available overall. However, the exact level of funding will depend on the detailed procedures, yet to be announced. There may indeed be less funding available for specific local priorities than might be gained through the Council’s draft SPD, or through a locally-based tariff system, discussed in this report.

(b) Staffing/Resource Implications – this proposal is unlikely to have significant staffing implications.

(c) Property Portfolio Implications – if carried forward, such a scheme may have implications for Council-owned land, but until greater financial information is made available, it is not possible to make a detailed assessment.

(d) Legal Implications – further legislation will be required to implement the new scheme.

(e) Environmental/Sustainability Implications – not known

(f) Planning Implications – the proposals suggest that a PGS scheme will largely replace the current S106 system

(g) Human Rights Issues (Legal) - no direct implications

(h) Equalities - no direct implications

(i) Crime and Disorder Implications – no direct implications

6 Conclusions

The Conclusions (and reasons) are set out in the main body of the Report.

Contact Officer: Ian Brown Direct Dial: 01227 862193