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Summary

There is widespread agreement that investment in infrastructure needs to increase if the Government's ambition to increase the supply of housing is to be achieved. A planning gain supplement, levied at an appropriate rate, offers one mechanism for increasing resources for investment. It is however important that PGS is not implemented as a single solution but rather as part of an overall package of measures. It should not be seen as, or treated as, a replacement for existing sources of funding beyond those aspects of planning obligations which it will subsume. Any additional revenue which it generates must remain additional.

Our analysis of the Government's PGS proposals has identified a number of potential benefits. For local authorities these include an opportunity to plan and, critically, to fund infrastructure provision in their area in a more strategic manner, following the lines of local development plans and regional spatial strategies, while at the same time reducing incentives to permit development purely on the grounds of planning gain. Local authorities could also benefit from both additional cash injections and savings resulting from a less demanding planning obligations regime. For developers the potential advantages include greater certainty, greater equity and a less demanding planning regime. There is real value in certainty for developers. Delivering that certainty provides part of the justification for increasing the contribution that developers make towards infrastructure. Central Government too may benefit, in terms of additional resources for investment in the infrastructure required to deliver its commitments on housing supply. And the public may benefit from more strategic provision of critical resources such as schools, housing, transport services and public amenities.

On the other hand, there are significant risks if the details of implementation are not precisely tuned and do not take account of the many justifiable concerns raised by our witnesses. Simplicity in its administration and clarity in its application are essential to the success of PGS. Previous attempts to tax windfall gains have foundered on the costs of administration or been locked in litigation for years. This is the principal reasoning for our rejection of calls for exemptions and discounts. Setting a very low threshold for liability will remove from the scope of PGS those very small-scale developments where the imposition of PGS would be counter-productive. Standard definitions for key aspects of the valuation process are required to make the system workable and to reduce the potential for delay and litigation.

There are advantages in the Government, rather than local authorities, collecting PGS receipts but this needs to be coupled with statutory obligations that the overwhelming majority of PGS revenue is recycled to local authorities and that the majority of PGS revenue should be returned to the local area affected by the development. A clear funding formula should be used to determine precisely how much revenue is returned to each local authority.

As the Government has acknowledged, there is still a huge amount of work to be done before it can implement PGS. This includes not only statistical modelling and cost-benefit analysis to determine the benefits of PGS in specific circumstances but also a range of

negotiations and agreements with interested parties is required to ensure that PGS can operate effectively, efficiently and economically.

The provision of infrastructure to support development is as important a part of the PGS proposals as the tax itself. Preparedness to pay is largely dependent on developers' perceptions of the need for infrastructure to support their projects and on the understanding that PGS receipts will be used to deliver this.

1 Introduction

Planning gain and capturing land value uplift

1. The Government is committed to increasing the supply of housing, a commitment which we endorsed in our recent Report on *Affordability and the Supply of Housing*.¹ In doing so, the Government wishes “to build sustainable communities supported by new investment in transport, schools, health centres and local services”.² As the Home Builders’ Federation (HBF) told us “it is impossible [...] to contemplate increasing house building rates from 150,000 to 200,000 homes a year without putting in place a properly thought through infrastructure that will adequately service the needs of the people who live in those homes”.³ Kate Barker, in her *Review of Housing Supply*, recommended that the Government finance this vital infrastructure by capturing, through a national framework, a portion of the increase in land values—land value uplift—which can occur at the point at which planning permission for a proposed development is granted.⁴

2. The table below demonstrates the extent to which land values vary according to the type of use to which the land is put. Planning gain supplement (PGS), if introduced, would be applied nationally.⁵

Table 1: Value per hectare (£) of land by use

Country	Mixed Agricultural Land	Land for Residential Use	Industrial and Warehousing Land	Business (Class B1)
England	9,287	2,460,000	632,000	749,000
Wales	8,628	2,180,000	218,000	264,000

Source: Valuation Office Agency Property Market Report, January 2005

3. There have been four attempts by previous Governments to secure for the public benefit a portion of the land value uplift resulting from planning permission: the 1947 Development Charge, the 1967 Betterment Levy, the Development Gains Tax introduced in 1973 and the Development Land Tax in 1976. None of these have been sufficiently effective or successful: as Business in Sport and Leisure put it “previous attempts to capture planning and development associated gains have been counter-productive and ultimately failed”.⁶ One factor contributing to the failure of previous attempts to capture land value uplift may have been the high rates at which they were levied: 100 per cent in the case of the Development Charge, 110 per cent for the Betterment Levy; between 52 and 82 per cent

¹ Third Report from the ODPM Committee, Session 2005-06, on *Affordability and the Supply of Housing*, HC 703-I.

² HM Treasury, HM Customs and Revenue and the Office of the Deputy Prime Minister, *Planning-gain Supplement: A Consultation*, December 2005, p. 3 (hereafter *Planning-gain Supplement Consultation*).

³ Q 209

⁴ Kate Barker, *Review of Housing Supply: Delivering Stability – Securing our Future Housing Needs, Final Report – Recommendations*, 2004, p. 87, recommendation 26 (hereafter *Barker Review, Final Report*).

⁵ While PGS would apply to the whole of the UK, its interaction with devolved policy areas, such as local government, planning and housing would vary. Devolved administrations may have, for instance, separate developer contribution regimes, separate policy guidance, or the potential to create new planning provisions.

⁶ Ev 2

for the Development Gains Tax and 80 per cent for the Development Land Tax. In contrast, speculation suggests that PGS would be levied in the region of 20 per cent. This experience has nevertheless resulted in scepticism in some quarters over the viability of any scheme to capture land value uplift. In order to overcome such scepticism, the Government would need to ensure that its proposals for a new tax to capture development gain—a planning gain supplement—are robust, practical and effective, and seen to be so.

4. At present, developers may be required to make a contribution to infrastructure provision through a system of agreements with the local planning authority. The legal basis for these agreements is set out in Section 106 of the Town and Country Planning Act 1990.⁷ Section 106 agreements are the result of negotiations between developers and planning authorities and operate alongside statutory planning permission. They can impose specific requirements, for instance for the provision of affordable housing, open spaces, transport or travel to work schemes, or education or community facilities, which must be met by developers when implementing associated planning permissions. The intended scope of Section 106 agreements is set out in Government planning guidance, which states that obligations secured under Section 106 should be relevant, necessary, reasonable, fairly and reasonably related in scale to the proposed development and “directly related to the proposed development”.⁸ Local authorities have, however, “been encouraged to experiment with formulae and standard charges”, allowing, for instance, the use of Section 106 powers to permit alternatives to conventional planning obligations such as the tariff-based systems developed for use in Ashford and Milton Keynes.⁹ One of the most prominent benefits of the Section 106 system is its inherent flexibility and its ability to be adapted to local circumstances and needs.

5. Criticism levelled at Section 106 agreements has centred on the unpredictability of the system, its lack of transparency, the time taken to reach agreements and, particularly, the divergent practices of different planning authorities. We received evidence that the existing system of Section 106 agreements was not working satisfactorily, failing in some instances to provide sufficient financial support for either strategic or local infrastructure.¹⁰ A recent study by the Audit Commission found that “one of the most striking characteristics of the Section 106 system is the degree of variation between councils in terms of the levels of contributions secured through planning obligations [...] the value of developer contributions ranged from around £500 to over £30,000 per dwelling, including affordable housing”.¹¹ More controversially, there had been a tendency on the part of local authorities to use Section 106 agreements to secure benefits for the community which go beyond matters ‘directly related’ to the proposed development. Thus planning obligations are now being used for two different purposes: as a means of compensating the community for any

⁷ The terms planning obligations, planning agreements and Section 106 agreements tend to be used interchangeably however technically a planning or Section 106 agreement refers to the legal document which results from the process of planning obligations.

⁸ ODPM Circular 5/2005, *Planning Obligations*, July 2005, para B5

⁹ Department for Communities and Local Government, *Valuing Planning Obligations in England: Final Report*, May 2006, para 1.5

¹⁰ Ev 67, 70, 106

¹¹ Audit Commission, *Securing community benefits through the planning process: improving performance on Section 106 agreements*, August 2006, paras 21-2 (hereafter “*Securing community benefits*”).

negative consequences of a development and as an informal, variable and unpredictable tax on land value uplift.¹²

6. Planning obligations are intended to secure the provision of facilities based on need in order to make developments acceptable. The Government's PGS proposals represent a conceptually different approach: PGS is designed to raise money according to the financial benefit derived from the granting of planning permission. By retaining planning obligations, albeit in a reduced form, within its PGS proposals, the Government has combined these two approaches. While this makes comparisons between the existing scheme and the reformed structures proposed by the Government less than straightforward, the Government's belief "that it is fair [...] for the wider community to share in the wealth created by planning decisions in their area" was broadly supported in principle by our witnesses, although some were not convinced that PGS was the best way to do this in practice.¹³

The Government's proposals

7. The Government set out its proposals in a consultation document in December 2005. These proposals are designed to address perceived weaknesses in the operation of the planning obligations regime as well as to generate additional revenue for investment in infrastructure. They involve splitting the compensatory and revenue-raising functions of the current system by, first, retaining developer contributions to mitigate the impact of development and to provide for affordable housing within a scaled-back range of Section 106 agreements and, secondly, levying PGS to capture a portion of any land value uplift consequent upon the granting of planning permission. The Government has consistently made it clear that its PGS proposals should not be viewed in isolation but considered within the context of its existing investment commitments and its cross-cutting review of infrastructure.¹⁴

8. While the focus of our work has been to examine the effectiveness of the Government's proposals for a planning gain supplement rather than to consider a range of alternative options, we note that a number of our witnesses did not believe that, in principle, PGS was the best way forward, some favouring retention and improvement of the current arrangements.¹⁵ The Government has not considered, in its consultation document, the potential of broadening the scope and reforming the implementation of Section 106 agreements, for instance through the mandatory adoption of existing best practice across all local authorities or a wider roll-out of tariff-based systems, as an alternative means of capturing development gain in a more equitable and universal manner than at present. Our evidence has not revealed any indication that developers would be broadly resistant to the more widespread deployment of fully effective Section 106 agreements. Indeed, the British Property Federation told us that it would prefer to see an amalgamation of the

¹² For a fuller discussion of this point see, Corkindale, J., *The Land Use Planning System: Evaluating Options for Reform*, Hobart Paper No. 148 (Institute of Economic Affairs: London, 2004)

¹³ *Planning-gain Supplement Consultation*, para 1.10

¹⁴ See, for example, Q 298

¹⁵ See, for example, QQ 70-4

extension of best practice in Section 106 and wider use of innovative local solutions.¹⁶ Planning obligations have been widely held to delay decision-making in the planning system but a recent study by the Audit Commission found “many examples where this was not the case. With well-organised policy and procedures, planning obligations can be completed within the 8 to 13 week timescales for a straightforward planning application”.¹⁷ Similarly, there may be scope for resolving other weaknesses in the current arrangements which stop short of levying a new tax such as PGS and which could more easily build on existing strengths and the good work that has been done by some councils in effectively capturing a portion of development gain through traditional Section 106 negotiations or through the development of innovative tariff-based approaches under existing Section 106 powers. We welcome the research that the Department for Communities and Local Government has commissioned on the effectiveness of the current system, the recent publication of the Audit Commission’s study and the Minister’s undertaking to pursue the option of reform further.¹⁸ **We urge the Government to consider a range of means to secure for the public benefit a portion of land value uplift which results from the granting of planning permission. Such consideration should include comparative cost-benefit analyses of PGS and scaled-back Section 106 arrangements on the one hand and, on the other, a fully effective utilisation by local authorities of Section 106 powers, including possible reforms and enhancements.**

Our inquiry

9. Our task has been to examine the Government’s proposals for PGS rather than to assess other means by which a portion of planning gain might be captured for the public benefit. We published our terms of reference and issued a call for evidence in February 2006. We received 49 memoranda and held four oral evidence sessions in April and May 2006. We would like to thank all those who have contributed to our inquiry either through the provision of evidence or more informally. We are particularly grateful to our two specialist advisers for this inquiry, Richard Bate, a partner in the planning consultancy, Green Balance, and Liam Bailey, Head of Residential Research at Knight Frank LLP.

¹⁶ Q 70

¹⁷ *Securing community benefits*, para 28

¹⁸ Q 326

2 Chapter Two: Establishing PGS liability

The levy base

10. The Government has indicated that it believes the most appropriate point in the planning process at which to levy PGS is the granting of full planning permission, which it defines as “permissions granted under all enactments, including final reserved matters approval where outline consent has been given, the making of a Local Development Order or permission under other legislation such as the Electricity Acts”.¹⁹ A number of our witnesses pointed out that sometimes full planning permission, as defined by the Government, is not granted prior to the commencement of development. The Royal Institution of Chartered Surveyors (RICS), for instance, said that “Reserve matters can often not be agreed until the end of a development, or ever in some cases”.²⁰ Leaving the assessment of liability, however, until the completion of a development project would not provide certainty for developers nor provide the funds required for infrastructure provision in a timely manner. Moreover, such an approach could encourage prolonged negotiations on outstanding reserve matters as a means of deferring payment. Some witnesses suggested that PGS should be assessed at the point at which the land is sold for development or that there should be several tax points within the planning process.²¹ Neither suggestion is practical. In many instances, there is no transfer of land ownership and multiple tax points would reduce certainty and add to administrative costs. **We agree with the Government that the granting of planning permission is the most appropriate point at which to calculate PGS liability as it is a clearly identifiable point in the planning process and would capture the majority of any land value uplift. It should, however, be defined as the point at which sufficient planning permission has been granted in order for development to commence.**

Calculating PGS liability and valuation methodology

11. The Government proposes that PGS liability would be calculated by subtracting the current use value (CUV) of a site from its value at the moment after full planning permission has been granted (its planning value or PV) and then multiplying the difference, the land value uplift, by whatever percentage rate PGS is set at:

$$PV - CUV \times \text{PGS rate (\%)} = \text{PGS liability}$$

Thus two separate valuations would be required to determine PGS liability: one to establish CUV and a second to establish PV.

12. The Government defines CUV as “the market value of the land the moment before full planning permission is granted assuming that it is and will continue to be unlawful to carry out any development other than development permitted under the General Development Order 1995 or development in accordance with planning permissions granted before an

¹⁹ *Planning-gain supplement consultation*, para 2.2

²⁰ Q 82

²¹ See, for example, Q 84

appointed day”.²² It adds, in respect of PV, that “the expected costs of developing the land, including remediation costs, could affect PV. Contributions made under a reformed planning obligations regime [...] would be taken into account for the PV and therefore would be factored into the land value uplift calculations made to determine PGS liability”.²³

13. In the Barker report, it was suggested that these calculations might be based on average land values in a particular area. The Government discounted this approach in its consultation document, stating that “analysis of the potential accuracy of average valuations has shown that, while they were potentially credible for residential developments on agriculture greenfield land, it was not feasible to apply average valuations to non-agriculture greenfield land, brownfield sites or commercial sites”.²⁴ Nor in general were our witnesses persuaded of the benefits of using average valuations: as the HBF told us, in any one area “there is a whole spectrum of sites and, therefore, land values. Some have substantial value and some could have a negative land value; so to have an average applied to that would be clearly neither fair nor very sensible if you were to try to promote more land coming forward” for development.²⁵

14. Several witnesses suggested actual sale prices as a basis for valuation.²⁶ This proposal has the merit of simplicity and would reduce the potential for disputes but it neglects the fact that many developments do not involve a transfer of land ownership and therefore that there is no actual market price. Moreover, actual market prices may reflect a range of external factors, including hope value which may never be realised. This means that CUV, the calculation of which excludes hope value, will frequently be below market value.

15. The Government favours basing CUV and PV on actual valuations. This, it argues, would “prove fairer for PGS payers and would be more cost-effective to administer”.²⁷ Some witnesses, such as the City of London Corporation and the Confederation of British Industry, agreed but many also had concerns over the administrative practicalities that would be involved and upon which the consultation document is sketchy.²⁸ (We discuss these issues in paras 20-39 below.) **We agree that actual valuations should be used in the calculation of current use value and planning value for PGS purposes.**

Valuations

16. Valuation is frequently referred to as more of an art than a science.²⁹ One witness explained that:

The imprecise nature of valuation is clearly demonstrated by the different market values house builders bid for a residential site in a competitive tender. Each bids a

²² *Planning-gain consultation*, Box 2.2: Definitions of planning value and current use value, p. 12.

²³ *Planning-gain supplement*, para 2.8

²⁴ *Planning-gain supplement*, para 2.11

²⁵ Q 231

²⁶ See, for example, Q 236

²⁷ *Planning-gain supplement*, para 2.13

²⁸ On actual valuations, see, for example, Ev 107, 124. On concerns over administrative practicalities, see for example, Ev 29, 111, 124; QQ 231–7

²⁹ See, for example, QQ 52, 63; Ev 2

‘market value’, but because of different assumptions about likely sale prices and sales pace, different estimates of land preparation, infrastructure and build costs, and different assumptions about overheads and profit, different companies arrive at different residual values.³⁰

As a result, without a robust set of standard definitions and procedures for establishing CUV and PV, the scope for disputes is huge.³¹ South West Property Industries, for instance, saw potential for “extended wrangling”.³² Other witnesses agreed.³³ The risk is that developers expend time and effort to reduce their PGS liability thus replacing one set of protracted negotiations with another, devaluing PGS receipts, delaying payment and, ultimately failing to secure the provision of infrastructure that PGS is intended to stimulate. Our evidence reveals, and the Government accepts, that the definitions of CUV and PV outlined in the consultation document are not sufficiently developed. For instance, while it is clear that hope value should be excluded from the calculation of CUV, it is not clear precisely which costs can be offset against calculations of PV.³⁴ The Government needs to be absolutely clear on the definitions it will accept for both CUV and PV and on the procedures to be used to determine them. Without such a scheme, the potential for developers to minimise liabilities, thus reducing PGS revenues, for disputes over the level of liability to delay payments, for increased uncertainty and for an unnecessary additional administrative burdens on all parties, is too great. **Standard definitions and procedures will be critical to the success of PGS and thus will determine the extent to which it can contribute to the provision of infrastructure and growth in the housing supply. We recommend that the Government conduct a further round of consultation with industry and other stakeholders specifically on definitions and procedures relating to current use value and planning value. Such consultation has to be concluded prior to any implementation of PGS.**

17. Indeed, some questioned whether, even with strong procedures and definitions, it was possible to reach sufficiently robust calculations for CUV and PV. We reject that argument. As the Town and Country Planning Association (TCPA) pointed out, valuations may involve complex processes, but “they are carried out on a regular basis already”.³⁵ The Government, too, is convinced that the required expertise exists. John Healey MP, Financial Secretary to the Treasury, stated that “developers already obtain valuations on the land that they are using, and they do it as part of their normal business planning”.³⁶ The HBF pointed out that similar “valuations are carried out day in, day out, in the market place; done by trained experts with a wealth of experience”, although it was less convinced that Government itself had the required skills.³⁷ If the valuation skills required to establish CUV and PV were lacking in Government, (although we note the Financial Secretary’s

³⁰ Ev 110

³¹ Q 52

³² Response to the Government Consultation on the Planning-gain supplement by South West Property Industries, para 4.4 (PGS B/P 03)

³³ See, for example, Q 241

³⁴ Ev 29

³⁵ Q 45

³⁶ Q 294

³⁷ Q 238

comment that “in Government we are involved with businesses of all types, including developers, in regularly checking valuations of property and land as part of other tax regimes”), such skills could be bought in.³⁸ This would, however, be an expensive operation and add to the administrative burden PGS would impose. **We prefer the Government’s proposal that developers should be responsible for calculating current use value and planning value, drawing on the existing expertise within the private sector, through a system of self-assessments monitored and endorsed by the Valuation Office.**

18. We fully endorse the Government commitment to encourage brownfield development. Some witnesses pointed out that valuations relating to brownfield sites, where a complex web of land interests and ownership may be involved, could prove particularly difficult.³⁹ We do not dispute the additional complexities associated with brownfield sites but, given the fact that at present some 70 per cent of all development takes place on brownfield sites, it is clear that the market can reach a valuation.⁴⁰ The PGS proposals imply, and Ministers confirmed, that if redevelopment of a brownfield site results in a negative land value, this would be reflected in PV.⁴¹ As English Partnerships argued, if the Government were to set a minimum value for CUV of zero, there would be no liability for PGS for that portion of any land value uplift to bring PV to zero.⁴² **We recommend that the Government set a minimum value of zero for current use value. This would reduce any perverse disincentive to brownfield site development which PGS could otherwise represent.**

19. The Government’s proposal that both CUV and PV should be “assessed on the basis of an assumed unencumbered freehold interest with vacant possession” was also objected to by a number of witnesses. English Partnerships pointed out the weaknesses in assuming freehold value: existing tenancies and leases could produce an income stream, or the value of a particular site to a particular occupier—such as a specialist factory—could mean that actual value would exceed current use value.⁴³ Similarly, liabilities or patterns of land interests and ownership may make it impossible for developers to realise the full freehold value. Thus, as RICS pointed out, “not valuing what is there” could represent a significant disincentive to brownfield site development.⁴⁴ **We recommend that calculations of current use value and planning value reflect actual site conditions, including implemented planning permissions, as well as actual patterns of land ownership and actual liabilities and interests. No assumption of freehold vacant possession should be made.**

Self-assessment approval

20. The granting of full planning permission can be the trigger for payments for land or for the start of development works. Developers, however, are unlikely to wish to commence development works while their self-assessed liability for PGS is still subject to Government

³⁸ Q 294

³⁹ See, for example, QQ 50, 217

⁴⁰ Q 209

⁴¹ *Planning-gain supplement*, para 2.8; Q 307

⁴² Ev 29

⁴³ Ev 30

⁴⁴ Q 63

approval. Thus, if Government is to avoid imposing unnecessary additional uncertainty upon developers and risking a delay in development, the period within which it can challenge self-assessments will have to be short and finite. Even so “it would still leave the developer and land owner in limbo until either the challenge period had lapsed, or any dispute had been resolved”.⁴⁵ Potentially, this is a significant risk. It could deter development or delay the commencement of works (and thus reduce and delay PGS receipts). The HBF advocated a pre-clearance system in which the Government agreed PGS liability with developers, subject to planning permission, in advance of such permission being granted, to be coupled with a very short challenge period.⁴⁶ This would remove much of the uncertainty surrounding self-assessments and mitigate the risk of delays in development. **We recommend that the Government work with the Home Builders’ Federation and other stakeholders to develop a pre-clearance system for PGS self-assessments and that such a system be incorporated into the PGS regime.**

PGS liability and option agreements

21. The Government will also need to consider how PGS will affect sites where developers have existing option agreements with the landowners which may limit their ability to reflect PGS costs in reduced payments for land. Typically, under option agreements, landowners agree to sell to a particular developer at a discount—typically around 80 or 85 per cent of market value—if and when planning permission is granted. The discount reflects the fact that the developer can incur substantial costs in obtaining planning permission. The Government have not yet indicated how these arrangements would be reflected in the PGS regime. If the discount on optioned land is not reflected in calculations of CUV, in effect developers would be liable for PGS on the costs associated with obtaining planning permission as well as any land value uplift. Many option agreements have ‘get out’ or deferment clauses which release developers from their obligation to purchase and landowners from their obligation to sell if land prices rise or fall beyond certain limits. English Partnerships predicted that, without adequate arrangements for land with option agreements, there would be widespread tax avoidance or, more probably, that such land would not be brought forward for development in the first place, “causing housing supply to move sharply downwards”.⁴⁷ One possibility would be for the Government to introduce transitional arrangements which exempted land with options from the provisions of PGS but the timescales for such exemptions would have to be long: option agreements often last for 10 years but can be as long as 21 years.⁴⁸ Moreover, we are concerned that excluding such developments from PGS could both distort the market and significantly reduce PGS receipts for the period of the exemption. We put these issues to the Minister who told us that the Government was considering both the role of option agreements in the development market and considering what transitional arrangements would be required.⁴⁹ **We welcome the Government’s willingness to consider the impact of PGS on**

⁴⁵ Ev 111

⁴⁶ Q 241; Ev 111

⁴⁷ Q 157

⁴⁸ Q 158, 230

⁴⁹ Q 295

development on land with option agreements. Any special arrangements will need to be agreed and promulgated prior to the implementation of PGS.

Scope

22. A recent Government study indicates that in England, in 2003–04, Section 106 planning obligations were attached to just 6.9 per cent of all planning permissions granted (up from 1.5 per cent in 1997–98) and to 40 per cent of all major residential developments (up from 25.8 per cent over the same period).⁵⁰ In her review of housing supply, Kate Barker recommended the introduction of a planning gain supplement on “the granting of planning permission” in respect of all land released for housing development.⁵¹ The Government’s proposals for a planning gain supplement extend the scope of Kate Barker’s recommendation, encompassing all land in respect of which planning permission is granted regardless of the nature of the development (but see paras 47–8 below, relating to minimum development value thresholds). A number of our witnesses were critical of this extension. Business in Sport and Leisure, for instance, told us that “the sport, leisure and hospitality industry is hugely concerned that this new development tax may seriously damage the future expansion of our sector and be a barrier to economic growth” and that as a result it had concluded that PGS “should be introduced only for housing” developments.⁵² We are not persuaded. We discuss the case for PGS exemptions and discounts for low value developments below (see paras 40–8) but we recognise the advantages of broadening the scope of land value capture: to do so will result in a fairer regime which treats all developers equally; it avoids potential market distortions between different types of development; and, most significantly, maximises potential revenue. These advantages appear to outweigh concerns regarding the extension in the scope of PGS. **We welcome the proposed broadening in the scope of development gain capture and endorse the proposal that liability should be based on the land value uplift achieved rather than on the nature of the development.**

The PGS rate

23. The Government has not proposed a specific rate at which PGS would be applied. In its consultation document, it indicated that “PGS would be set at a modest rate to capture a portion of the land value uplift created by the planning process”.⁵³ As the Government told us, the rate at which PGS needs to be set will be affected by decisions on the scope of the tax and any exemptions or discounts in respect of particular types of development.⁵⁴ Moreover, PGS is intended as just one part of a package of measures designed to promote growth in the housing supply and support the provision of infrastructure, including the current cross-cutting review of infrastructure being undertaken ahead of the Comprehensive Spending Review. The Government will also need to establish the impact

⁵⁰ Department for Communities and Local Government, *Valuing Planning Obligations in England: Final Report*, May 2006, p. 17, table 2.4 Major residential developments include schemes of more than ten units or carried out on a site of half a hectare or more.

⁵¹ *Barker Review, Final Report*, p. 70

⁵² Ev 2

⁵³ *Planning-gain supplement*, para 1.9

⁵⁴ Q 279

of PGS on the markets for housing and land before determining a precise rate. The Minister assured us that this work was in hand.⁵⁵ **We recommend that the Government provide us with regular updates on the progress of its research into the impact of PGS on the markets for housing and land.**

24. A rate somewhere between the VAT rate of 17.5 per cent and 20 per cent has been widely considered.⁵⁶ South East England Regional Assembly (SEERA) told us that “research recently undertaken for the Assembly suggests that even at a rate of less than 20 per cent [PGS] could be expected to raise significantly more resources than present section 106 arrangements”.⁵⁷ It told us, for instance, that its research indicated that a PGS system in the South East would raise about £4 billion over the 20 year period covered by the South East Plan whereas Section 106 arrangements, even if operated more efficiently, would generate only about £1 billion.⁵⁸ Similarly, modelling undertaken by English Partnerships, based on greenfield sites, indicates that with PGS set at 15 per cent, the resources raised would be less than under current arrangements but that with a rate of “20 per cent the take from PGS and section 106 under the new system is greater than the existing section 106 take”, although it also noted that, depending on the nature of the site, the actual rate required for PGS take to equate to the current take even for greenfield sites ranged from 7 to 22.5 per cent.⁵⁹ Certainly a rate within this range would be in keeping with the Government’s commitment to modesty in comparison with previous attempts to capture development gain, where the rate ranged from 52 to 110 per cent.⁶⁰

25. The Government’s primary purpose in proposing the introduction of PGS is to increase the resources available for investment in infrastructure overall, above and beyond those produced within the existing planning regime. The rate at which the tax is set will be a key factor in determining whether, and how much, additional revenue is generated. Some witnesses—National Grid Property Holdings and Northamptonshire Chief Planning Officers Group for instance—questioned whether PGS would result in any increase in overall resources.⁶¹ Even so, several factors make this a difficult hypothesis to prove or disprove conclusively: not knowing the rate at which it will be set is one factor but the dearth of robust statistical information on the current level of planning obligations and the capital value of the infrastructure that is delivered is another (we discuss this point further at para 65). We set out here some of the issues that the Government will need to consider when determining the rate at which to set PGS.

26. There are already instances where developers claim that the burden imposed upon them by Section 106 agreements threatens the viability of a particular development. The implication is that the profit in such developments is so slim that there is no additional margin which PGS can lever into the public sector without forcing either the landowner or the developer to pull out of the project and consequently that PGS will not generate any

⁵⁵ Q 279

⁵⁶ See, for example, QQ 11, 14, 88, 140-4, 237

⁵⁷ Ev 49

⁵⁸ Q 106

⁵⁹ Q 141-4; See also Ev 38-43

⁶⁰ Q 279

⁶¹ Ev 56, 63

additional capital and may indeed generate less (even though Section 106 agreements were never designed to be revenue raising). No doubt this argument has been used by developers and others as a bargaining position but nevertheless there are instances where it holds true (see para 30 for example). If Section 106 agreements were exploited to their full potential nationwide, as the recent Audit Commission report advocates, this circumstance would arise more often. Thus, **while we accept that in some specific instances PGS may generate less revenue than the current regime would, the important question is whether PGS can generate additional revenue overall.**

27. If local authorities, however, followed Government policy rigidly, only using Section 106 agreements to meet site specific needs, it would be less likely that there would be many cases in which the viability of the scheme was threatened by infrastructure requirements, though there will always be some specific marginal cases. Difficulties are therefore more likely to arise where local authorities stretch the scope of Section 106 agreements beyond the Government's intentions. On this basis, we believe that PGS could represent a fairer and more even-handed approach than the arbitrary, sporadic and unpredictable imposition of broad planning obligations.

28. The fact that in a minority of cases PGS would generate less revenue than current arrangements has to be balanced against the broadening in the tax base that is inherent within the proposals (see para 22). That so many more developments would be subject to PGS than are currently captured by planning obligations provides a prima facie case that PGS must raise additional revenue, and in many instances this would be raised in addition to Section 106 requirements. Despite the lack of data to form a basis of comparison between PGS and current arrangements, the scale of the extension of scope (from the current 6.9 per cent of planning permission grants to encompass all but home improvements) means that those who believe that PGS will raise less revenue will need to present far more convincing evidence than they have done to date to persuade us to their point of view.

29. There are a number of approaches that the Government could take to quantifying these assumptions to form a basis for determining the optimal PGS rate. The Sheffield University and Halcrow Group study for the Department for Communities and Local Government (DCLG) suggests that some five per cent of gross development value is typically absorbed by affordable housing and that, taken together with other planning obligations, some 10 per cent of development value typically is captured.⁶² Figures from the Audit Commission are similar to these estimates: it states that at most some 10 per cent of development value is applied in this way.⁶³ This implies that land value increases arising from the granting of planning permission must be at least and probably much more than 10 per cent if a development is to proceed. If land purchase costs account for 50 per cent of all development costs—not an unreasonable assumption for the South and East of the country—then PGS would have to be levied at 20 per cent to raise exactly the same amount as existing arrangements. This analysis suggests that PGS could be levied at a rate a little

⁶² Department for Communities and Local Government, *Valuing Planning Obligations in England: Final Report*, May 2006, paras 1.8 and 5.18

⁶³ *Securing community benefits*, para 23

higher than 20 per cent without stifling development but where the land value was modest only, PGS at 20 per cent would struggle to match Section 106 results.

30. Rather than using development value, PGS could be compared with the current regime on the basis of cash value but here the complexities go beyond a dearth of statistical data: those figures which do exist do not appear to be consistent. Research commissioned by SEERA suggests that PGS at 20 per cent would raise £4 billion over 20 years in the South East, whereas Section 106 agreements would capture just a quarter of that over the same time period and geographic area. Sheffield University and the Halcrow Group reported that in 2003–04 Section 106 agreements raised a cash equivalent of £1.2 billion nationwide. This figure is some 25 times higher than that implied by the SEERA research which, unless we accept that the South East accounts for only one twenty-fifth of the national total, is hard to reconcile with the national pattern of development. Both studies make numerous assumptions and are based on small samples which may account for such a difference: both make a valuable contribution to the debate but do not provide an adequate basis for robust tax revenue projections or comparisons. As Knight Frank noted in its *Planning-gain Supplement Audit: Final Report*, published in September 2006, “there is little empirical evidence of how PGS would impact on the actual viability of different types of developments”.⁶⁴ Nor is there any data available upon which to appraise the potential for Section 106 to be extended and improved and thus to compare the benefits of PGS against those of a reformed system of planning obligations. **It is clear that extensive further research and statistical analysis is required to enable the Government to determine the rate at which PGS should be set.**

31. Several witnesses argued that the strength of the Government’s commitment to recycle PGS receipts into infrastructure investment should be a key factor in determining the rate at which the tax is levied. The TCPA, for example, told us that

One of the key things for the development industry is whether whatever level of tax is put in place does deliver the investment that they see on occasion holding up development, whether it is from additional money for the housing corporation to allow their affordable housing to come forward or whether it is funding for the infrastructure, [...] rather than the money being immediately available to free up the development. I think those are going to be some of the key tests, that if some of those barriers are removed then that will be one of the implications on which the development industry will judge whether or not it is worth bringing forward their sites.⁶⁵

The implication is that the development industry is prepared to pay PGS provided that the funds raised are used to support development through the provision of infrastructure and that the better the additional provision of infrastructure, the higher the rate of PGS that could be imposed without representing a disincentive to bring land forward for development.

⁶⁴ *Planning-gain Supplement Audit: Final Report*, p. 16

⁶⁵ Q 14

32. In making its determination of the PGS rate, the Government will need to strike a balance between setting the rate too high, which could discourage development and encourage avoidance, and setting it a rate which will cover the additional costs of administering the tax, generate a surplus over current arrangements and provide a contribution to investment in strategic infrastructure. It will need to make a strong case to support its determination if the rate does not fall within the anticipated range if the proposals are to retain credibility. In any case, we would expect the analysis and statistical modelling supporting the Government's determination to be made publicly available and open to widespread scrutiny.

Changing the PGS rate

33. Certainty over PGS liability would be a valuable asset for the development industry. That certainty may be undermined, particularly for long-term development projects, if the PGS rate were to change frequently.⁶⁶ We asked the Financial Secretary to the Treasury how frequently he expected the PGS rate to be changed. He told us that, while in principle the Government kept the operation of every tax under annual review, the Government wanted “to ensure a degree of stability and certainty” because it too recognised PGS’s “potential impact in some long-term planning business investment decisions and markets”.⁶⁷ **We welcome the Government’s understanding that it would be impractical to vary the PGS rate frequently. The need to keep revisions to a minimum makes it all the more important to establish a workable rate at the outset.**

⁶⁶ Ev 146; QQ 16, 240

⁶⁷ Q 281

3 Chapter Three: Paying PGS

Point of payment

34. The PGS consultation document indicated that the Government intends that PGS liability would be established at the point at which full planning permission is granted but that payment would not become due until development had started.⁶⁸ The Government argue that “Requiring payment of PGS at the commencement of development would better address [the] cash flow problems [...] that would arise if the payment of PGS was required earlier in the development process” and that “at the point development commences the developer and the landowner(s), if not now the same person, share an economic interest in the benefits deriving from development. Requiring payment of PGS when development commences therefore ensures that the chargeable person is most likely to be the active party implementing the planning permission”.⁶⁹ **None of our witnesses favoured requiring payment at the point at which full liability is established. We agree with the Government that to do so would be impractical.**

Definition of commencement of start of works

35. If the commencement of development is to be the trigger for PGS payments, it is important that all concerned agree, precisely, what constitutes ‘commencement of development’. The Government propose that the definition of commencement of development provided in the Town and Country Planning Act 1990, s54(4) should be used as the trigger for PGS payments.⁷⁰ Some witnesses questioned whether this definition of commencement of development was sufficiently unambiguous. English Partnerships, for instance, questioned whether remediation work or access improvement would count as start on site.⁷¹ **We recommend that the Government and stakeholders reach a mutually agreeable and robust definition of commencement of development prior to the introduction of PGS.**

Deferred payments

36. The proposals require developers to make their PGS payment before they realise any value from their development and at a time when development work itself will require considerable investment. Several witnesses told us that, as a result, the cash flow implications of PGS were a major concern particularly if initial development comprised expensive demolition or decontamination works before construction could begin.⁷² The HBF, for example, explained that

⁶⁸ *Planning-gain supplement*, para 3.3

⁶⁹ *Planning-gain supplement*, paras 3.5-6

⁷⁰ The Town and Country Planning Act 1990 defines “material operation” as any work of construction in the course of erecting a building; the digging of a trench which is contain foundations, or part of foundations, for the construction of a building; the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench; any operation in the course of laying out or constructing a road or part of a road; or any change in the use of any land which constitutes material development.

⁷¹ Ev 30

⁷² Ev 22, 105

in cases where a large site is broken down into phases, each with a separate detailed planning permission before work commences, payment of PGS would be automatically phased. However, it is sometimes in the interests of developers to submit a single planning application for a large site, even though the site may be developed over many years. If so, the PGS liability would be very substantial [...] coinciding with the usually substantial up-front on-site infrastructure payments required for a housing development [...] PGS could influence the way in which sites were submitted for planning and developed.⁷³

English Partnerships argued that “the payment should be phased; it should not all be up front at the point of starting on site [...] it should be 25 per cent up front and 75 per cent upon completion so you can give an incentive through the operation of the system for the developers to come forward with sites”.⁷⁴

37. The PGS consultation document indicates that “the Government may want to consider allowing developers to pay their contributions in instalments over reasonable time periods so as to ensure that house builder cash flow pressures are sufficiently accounted for”.⁷⁵ **We recommend that the Government permit phased PGS payments particularly in relation to those large sites where development itself is phased.**

38. Permitting deferred payments would, however, increase the time delay between development and the availability of PGS receipts to finance the infrastructure required to support those developments. We discuss the issues surrounding the timing of provision of infrastructure in detail below (see paras 51–7) but for the moment we note that **one implication of a deferred payment scheme would be to increase the gap to be bridged by forward funding and therefore increase the size of the initial dowry required from Government.**

Revenue collection

39. The benefits of central Government collecting PGS revenue and redistributing the funds raised to local authorities has been questioned but the majority of our witnesses favoured this arrangement. Because retention of a portion of PGS revenue by central Government for strategic infrastructure provision is a key element in the PGS proposals, **we concur that it is appropriate for central Government to collect PGS payments.**

⁷³ Ev 114-5. See also, for example, responses to the Government consultation from Lawrence Graham and The Grundon Group.

⁷⁴ Q 153

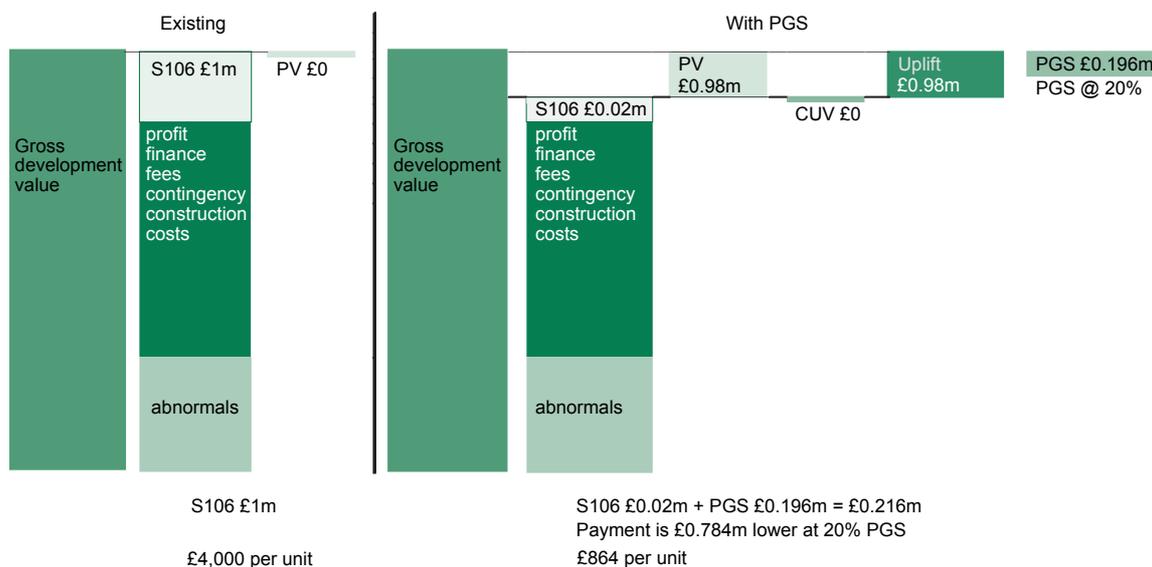
⁷⁵ *Planning-gain Supplement Consultation*, para 1.6 (Box 1.1)

4 Chapter Four: Exemptions and discounts

Marginal sites

40. Several witnesses made arguments in favour of discounts for sites where the proposed development is of only marginal economic viability. BISL, for instance, argued that the introduction of PGS would have a negative impact on developments in the sport, leisure and tourism sector in part because such developments were typically low value and therefore would be less attractive to local planning authorities which may be tempted to favour high value developments in order to maximise PGS returns; and in part because such developments were typically of only marginal viability in the first place.⁷⁶ As a result, it argued, the Government’s proposals for PGS should be limited in scope to affect only housing developments and the existing pattern of Section 106 arrangements should be retained for all other developments.⁷⁷ Sport England told us that “any additional costs [on community facilities] will lead to poorer facilities being developed for the local community” and that “these organisations should be exempt from the PGS levy”.⁷⁸ These arguments, however, overlook the fact that because PGS would be levied as a proportion of land value uplift, the marginal nature of some developments would automatically be reflected in the liability: the lower the land value uplift, the lower the PGS liability. Indeed, a series of projections undertaken by English Partnerships, which assumed a PGS rate of 20 per cent, showed that “on some of the most marginal sites, because there is only a marginal uplift in land values, there would be an overall reduction in the PGS/Section 106 burden under the new system (see table 2, below).⁷⁹

Table 2: Case study showing the impact of PGS compared to the current system on a marginal development.



Note: This case study is based on a real, not a theoretical, development. It relates to a site in London Thames Gateway with planning permission for 250 homes of which 35 per cent are to be affordable. The site is currently used. Source: Ev 39

⁷⁶ Ev 2

⁷⁷ Ev 2

⁷⁸ Ev 12

⁷⁹ Q 137

41. Moreover, as PGS is intended to increase the overall pool of resources available for investment in infrastructure, far from undermining the provision of community sporting, leisure and other facilities, it should provide local authorities with an opportunity to improve provision. **We find no grounds for PGS exemptions or discounts for developments of marginal viability.**

42. The Quarry Products Association made a similar argument relating to the application of PGS to developments where any land value uplift was temporary and short term in nature. We are not persuaded that there should be a general exemption for temporary developments. We recognise that there may be a risk of increased bureaucracy in capturing very short-term temporary developments.

Brownfield sites

43. It is clear from the consultation document that the Government is willing to consider discounting PGS rates for developments on brownfield sites. Our witnesses were divided on this suggestion. Some, like RICS, believed that without discounts or an exemption, “the Government’s object of generating more housing on brownfield sites would be hindered rather than helped” by PGS.⁸⁰ Several witnesses argued that the marginality and complexity of development on many brownfield sites meant that such developments should be exempt from PGS or at least liable at a substantially discounted rate. London First, for instance, told us that “The rate of PGS should be substantially reduced for brownfield sites. More appropriately they should be exempt”.⁸¹ The Treasury Committee has advocated full consideration on the part of the Government of a discounted rate or exemption for brownfield site developments.⁸²

44. Other witnesses, such as the TCPA argued that the Government already operates sufficient incentives to make brownfield site development viable.⁸³ Indeed, such measures have had some success. In 1997, 57 per cent of new housing was built on brownfield land. By 2004 the percentage had increased to 70, exceeding the Government’s own target by some 10 percentage points.⁸⁴ Others pointed out that some brownfield site development was potentially lucrative and therefore that no blanket exemption or discounts were warranted.⁸⁵ Indeed, 72 per cent of all development takes place on brownfield sites, and the proportion is rising, which not only reinforces the point that such developments can be profitable but also means that any exemption or discount would have a significant effect on PGS revenue.⁸⁶

⁸⁰ Q 49

⁸¹ Ev 9. See also, Ev 13-4

⁸² Treasury Committee, Fourth Report of Session 2005-06, *The 2006 Budget*, HC 994-I, para 111

⁸³ Ev 86

⁸⁴ Land use change statistics in England to 2004, in *Planning- gain consultation*, para 4.4

⁸⁵ Q 213. See, for example, Q 10

⁸⁶ Q 220

45. There would be a number of practical problems associated with the introduction of exemptions or discounts for brownfield sites. The first would be reaching a robust definition of ‘brownfield’, which the HBF said “could prove very difficult”.⁸⁷ Additional complexities arise over assessments of developments on a mixture of land types and disputes over classifications would also be hard to avoid. We accept that the costs of development on brownfield sites, particularly those sites where extensive remediation work is involved, would be significantly higher than the costs associated with equivalent developments on greenfield sites. These additional costs, however, are already reflected in the price a developer is prepared to pay for the land in the first place, and thus would be reflected in any calculation of CUV. Where the land value uplift is minimal, so too will be the liability for PGS. In those instances where land retains a negative value after the granting of planning permission the PGS liability would be zero.

46. Encouraging the use of brownfield sites is a critical element in sustainable economic development and sustainable urban regeneration. The Government has, however, a range of other policy instruments in place already to promote brownfield development, instruments which can be more finely attuned to specific development and specific local circumstances than a blunt-edged discount, while maintaining a uniform PGS rate across all developments will help to ensure that the levy is transparent and predictable and can be efficiently assessed and collected. **We are not persuaded by the case for discounts against or exemptions from PGS liability in respect of developments on brownfield land.**

Small-scale developments and a minimum threshold

47. The Government proposes that home improvements, where such works require planning permission, should be exempt from PGS.⁸⁸ We agree that it would be impractical to bring home improvements into the scope of PGS — the costs of liability assessment and payment collection on a host of very small-scale projects would be likely to exceed any revenue derived. We are not convinced, however, that a blanket exemption for home improvements alone is the most sensible option. The Government will also need to consider how to treat very small-scale improvements to non-residential property where the costs of assessment and collection may also exceed liability and where the application of PGS may serve as an unnecessary disincentive to desirable enhancements.

48. Professor Hennebury, Professor of Property Studies at the University of Sheffield, told us that “an automatic low threshold will increase take and reduce administrative costs”.⁸⁹ RICS suggested that one way to implement a minimum threshold involved artificially inflating CUV by, perhaps, 10 or 20 per cent, thus reducing the difference between CUV and PV and, in turn, PGS liability.⁹⁰ Any development which resulted in a land value uplift which was less than CUV plus the inflated element would therefore have zero PGS liability. This proposal is attractive, particularly as it would exclude a number of marginal developments while avoiding the need to define any further exemption criteria. We are, however, concerned that it may entail detailed valuations to establish CUV and PV, the

⁸⁷ Ev 114

⁸⁸ *Planning-gain supplement consultation*, para 4.6

⁸⁹ Q 6

⁹⁰ Q 77; Ev 91

costs of which could represent a significant proportion of the overall costs for the very small-scale projects which a minimum threshold would otherwise protect. **We recommend a minimum threshold for PGS liability which puts very small-scale developments, including home improvements, outside the scope of PGS liability. This threshold should be set at a very low level to preserve PGS revenue and to prevent market distortions.**

Sustainable development

49. Development, including housing growth, could have a major impact on the environment in terms, for instance, of energy consumption, water demand and transportation usage. Several witnesses drew our attention to development on flood plains in particular. Between 2000 and 2005, 11 per cent of all new houses were built in flood hazard zones. This is not just an historic problem: ninety per cent of the 120,000 planned houses in the Thames Gateway development, for instance, are expected to be in high flood hazard zones.⁹¹ We do not wish to understate the seriousness of the difficulties to which these circumstances give rise. This is not only a risk for individual householders who may be subjected to flooding and, following revised guidance from the Association of British Insurers in January 2006, unable to secure insurance against flood risk; it also makes the task of flood risk management more complicated. Several witnesses suggested that developers should be entitled to a discounted PGS rate in respect of developments which meet high sustainability standards. This would, however, create a perverse incentive for sub-standard developments to be favoured by local planning authorities over those matching exacting environmental standards: only those developments which did not meet the standard would generate the maximum in terms of PGS receipts for the local authority. We are in no doubt that the Government needs to take these issues seriously to protect householders. Indeed, we have already voiced our commitment to managing the environmental impact of development and suggested that the Government considers ways in which the planning system can contribute to tackling climate change.⁹² We do not, however, believe that PGS is the appropriate vehicle to effect such change.

Conclusions on exemptions and discounts

50. **The Government should resist all calls to grant exemptions and discounts other than for very small-scale developments. To do so would increase the complexity of the tax and risk market distortions. There is a risk that financial advantages for developments desirable in policy terms will have the perverse effect of encouraging local authorities to permit the kinds or locations of development being discouraged in order to increase their revenue-take. Where exemptions and discounts have been sought to drive certain desirable behaviours, other mechanisms can be used to achieve the same ends. Where exemptions and discounts have been sought to maintain project viability, the arguments that PGS threatens viability are not convincing. The Government should keep PGS as transparent, straightforward and cost effective as possible.**

⁹¹ Ev 1

⁹² Third Report from the ODPM Committee, Session 2005-06, *Affordability and the Supply of Housing*, HC 872, paras 143-

5 Chapter Five: Investing in infrastructure and affordable housing

Timing of the provision of infrastructure and forward funding

51. Existing Section 106 arrangements can stipulate when critical infrastructure will be delivered, either physically or through the provision of funding. Some witnesses identified this as one of the strengths of the existing regime: it can provide a degree of certainty to both developers and the local community over the timing of provision which in turn can reduce community concerns regarding the over-burdening of existing provision and ease tensions between local communities and developers.⁹³ Not all witnesses agreed. SEERA, which identified the provision of infrastructure as one of the key constraints on the provision of housing in its area, has given a cautious welcome to PGS on the grounds that existing Section 106 arrangements are not delivering the infrastructure required when it is needed.⁹⁴ It is unclear how the Government envisage such certainty over timing of delivery being replicated within the PGS regime. While it is intended that PGS liability will be assessed at the point at which full planning permission is granted, it will not be collected until development begins. This means PGS monies will not be available for investment in infrastructure until after development has started yet in many instances infrastructure needs to be provided prior to start on site (or at least prior to occupancy of the development). In other instances, funding may need to be secured for key infrastructure before full planning permission can be granted, yet PGS funds will not be available until after development work has started, which cannot take place until planning permission has been granted.⁹⁵ Indeed the Government acknowledges in its consultation document that “a challenge remains in ensuring that necessary infrastructure [...] that may no longer be provided directly through planning obligations, is delivered by alternative means in a timely manner to service new development”.⁹⁶ It also states that “the Government commits to the following key principles for allocating revenues if PGS is implemented: [...] PGS revenues will ensure growth is supported by infrastructure in a timely and predictable way”.⁹⁷ However, **the Government is silent on how it will ensure that PGS supports infrastructure in a timely and predictable way. We would welcome clarification from the Government on this specific point.**

52. Our witnesses were keen to ensure that the significance of this issue was not underestimated. The TCPA, for instance, argued that forward funding was a key requirement of the PGS proposals, stating “the Government would have to make provision for forward funding infrastructure schemes [...] otherwise the risk is that the impact on the development industry will be to slow it down and slow down the supply of housing”.⁹⁸ The British Property Federation told us that the absence of forward funding “could have a very

⁹³ See, for example, Ev 9

⁹⁴ Ev 50. See also Hewdon Consulting, *The Administration of Planning Gain Supplement: Final Report*, June 2006, para 1.5

⁹⁵ Ev 56, 63

⁹⁶ *Planning-gain supplement*, para 5.18

⁹⁷ *Planning-gain supplement*, para 6.4

⁹⁸ Q 23

serious slowing down effect on the development process” and that pump-priming “undoubtedly would be of assistance and would overcome a degree of the timing issues, the commercial issues”.⁹⁹ English Partnerships illustrated the problem by reference to a particular development near Bedford where the inability to secure advance funding for a by-pass had delayed a project to build 2,250 homes for 10 years (see para 55, below).¹⁰⁰

53. We asked both John Healey MP, Financial Secretary to the Treasury, and Yvette Cooper MP, Minister for Housing, how the Government intended to ensure that an inability to provide infrastructure in a timely manner would not undermine development and growth in the housing supply should PGS be implemented. Both assured us that the Government was aware of the problem.¹⁰¹ Mr Healey told us that “the solution is not necessarily strongly to be found within the potential for a planning gain supplement system” although he noted that there was flexibility with PGS for local authorities to pool resources to provide forward funding.¹⁰² Both **Ministers suggested that local authorities could secure funds to provide timely infrastructure through a “prudential borrowing regime” in which they could take out loans against expected PGS receipts.**¹⁰³ **If the Government is to proceed with this suggestion, we will require regular updates on progress and further clarification on the details of the operation of the scheme.**

54. We accept that PGS is not intended to be the sole vehicle for providing infrastructure investment. Even so, neither of the proposals put forward by Ministers—pooling or borrowing—seems satisfactory. Local authorities may well choose to pool PGS resources—and we welcome the flexibility within the system which allows this—but that does not change the fact that those resources will not be available at the point at which much investment in infrastructure is required to stimulate and support development until PGS begins to generate revenue. **The proposal that local authorities should borrow against expected PGS receipts is entirely unattractive. It would be an unnecessarily expensive option for local authorities. Moreover, the primary purpose of PGS is to provide the resources for infrastructure to free up land for development and support housing growth, not to enable local authorities to acquire debt. That would be a retrograde step from the existing arrangements. Servicing debt is not an appropriate use for PGS revenue.**

55. Even under the current Section 106 arrangements, a degree of additional forward funding has proved essential and a number of locally tailored solutions have been developed in recent years. In Milton Keynes, where a tariff-based approach to planning obligations has been adopted, English Partnerships, through the Milton Keynes Partnership Committee and with approval from DCLG and the Treasury, have provided forward-funding to “support infrastructure provision for wider community benefits”.¹⁰⁴ Jane Hamilton of the Milton Keynes Partnership told us that it is “critical that English

⁹⁹ Q 65

¹⁰⁰ Q 122

¹⁰¹ QQ 229, 325

¹⁰² Q 229

¹⁰³ QQ 229, 325

¹⁰⁴ Ev 28. The Milton Keynes Partnership is a sub-committee of English Partnerships and the local planning authority for the Milton Keynes expansion areas.

Partnerships [...] is able to forward fund because there is simply not the mechanism to get any sort of rolling fund up and running in advance of development [...] even this year, before there is any development on the ground in Milton Keynes, English Partnerships is funding in the order of £8 million worth of infrastructure”.¹⁰⁵ Similarly, in West Bedford, English Partnerships has provided forward funding to build the required by-pass in return for a share of the land value uplift created by the development.¹⁰⁶ The South East England Regional Assembly has proposed a Regional Infrastructure Fund—a revolving loan fund—to advance fund the delivery of infrastructure”.¹⁰⁷

56. Part of the strength of these innovative solutions to timely infrastructure provision is that they have been specifically tailored to local needs and local circumstances. In Milton Keynes, for instance, an unusual set of circumstances prevail: there is a single consortium of landowners, a single body capable of providing forward funding and the sites designated for development are primarily greenfield, where issues of discounting against the costs associated with regeneration and land remediation rarely arise.¹⁰⁸ Ms Dear of Nottingham County Council told us that tariff-based models, such as those developed in Milton Keynes and Ashford and under development in Reigate & Banstead, would not work in her area because “there are too many factors to take into account”.¹⁰⁹ Indeed English Partnerships told us that it was not convinced that any one single solution could work nationwide.¹¹⁰ The Audit Commission did not wish to lose the benefits to local communities of Section 106 agreements and proposed that the current system should be retained in parallel at least for a transitional period.¹¹¹ **Local solutions to forward funding could be permitted to persist alongside the national PGS regime. This may be a particularly appropriate solution for growth areas and areas where there is a single body able to provide forward funding, as there is in Milton Keynes.**

57. **A substantial element of Government forward funding to enable infrastructure to be provided in a timely manner is essential to the successful operation of PGS. Without substantial forward funding there is no way that PGS can deliver the certainty for local authorities and developers which is essential if the tax is to be effective and to carry the confidence of stakeholders. We are adamant that the Government should not proceed with PGS unless and until it has made provision to bridge the time difference between the need for expenditure and the receipt of PGS funding.**

Funding strategic infrastructure

58. In its consultation document the Government states that “while the majority of PGS revenues would be recycled directly to the local level, a significant proportion would be used to deliver strategic regional, as well as local, infrastructure. The Government proposes

¹⁰⁵ Q 120

¹⁰⁶ Q 122

¹⁰⁷ Ev 50. See also QQ 115-20

¹⁰⁸ QQ 104, 107

¹⁰⁹ Q 107

¹¹⁰ Q 124

¹¹¹ Ev 53

that this be done through an expanded and revised Community Infrastructure Fund”.¹¹² Established under the 2004 Spending Review and endowed with £200 million over two years, the Community Infrastructure Fund (CIF) supports housing growth in the four Growth Areas by investing in transport infrastructure.¹¹³ The consultation document seeks views on revising the geographic coverage and eligibility criteria of the CIF to make it an appropriate vehicle to support strategic infrastructure more broadly.¹¹⁴ At the same time, the Government announced a cross-cutting review, to be undertaken as part of the 2007 Comprehensive Spending Review, to “determine the social, transport and environmental infrastructure implications of housing growth” and to ensure that Government resources were effectively targeted to support housing and population growth.¹¹⁵

59. Funding strategic infrastructure, whether or not the chosen vehicle is a revised form of the CIF, is an essential aspect of the Government’s PGS proposals. As English Partnerships said, “PGS pivots on the distinction between site-specific infrastructure and the broader specific infrastructure which the Community Infrastructure Fund will make available”.¹¹⁶ **We welcome the Ministers’ commitment that the PGS revenues allocated to strategic infrastructure will be additional to rather than instead of funds already provided through other means.**¹¹⁷

60. To date, CIF resources have been allocated by the DCLG and the Treasury. Several of our witnesses argued that, if the CIF were to be broadened beyond its current scope of funding transport infrastructure in the Growth Areas, a wider range of organisations would need to be involved in determining funding criteria and local and regional planning requirements would need to be reflected in funding decisions.¹¹⁸ The Minister for Housing agreed that it would be appropriate to involve regional and sub-regional bodies in the funding process, stating that “the more you can get that kind of local centred prioritisation, either a sub-regional or regional sense of prioritisation; you will be far more effective in terms of allocating funding”.¹¹⁹ Involving other statutory consultees as well as regional interests in defining the processes and funding criteria and in determining allocations of strategic infrastructure funds, would provide greater assurance that all interests are considered and ensure that funding decisions will more closely reflect Local Development Plans and Regional Spatial Strategies. This would be consistent with the model for regional input into funding decisions on major transport projects. It may also go some way to alleviate the concerns of those who argue that the proposed mechanisms, “although offering the local area the opportunity to express their priorities” would result in decisions being made “at a level too remote from the community’s needs”.¹²⁰ **We recommend that the criteria and priorities for strategic infrastructure funding are determined through a**

¹¹² *Planning-gain consultation*, para 6.8

¹¹³ The four growth areas are Thames Gateway, Milton Keynes/South Midlands, London-Stansted-Cambridge-Peterborough and Ashford.

¹¹⁴ *Planning-gain consultation*, para 6.10

¹¹⁵ *Planning-gain consultation*, para 6.10

¹¹⁶ Q 169

¹¹⁷ QQ 315, 324. See also Q 171

¹¹⁸ See, for example, Ev 20, 59, 109

¹¹⁹ Q 314

¹²⁰ Ev 72

broad and inclusive process, incorporating the views of not only regional and sub-regional bodies but all statutory planning consultees.

61. We note that strategic infrastructure funding supported by PGS revenue will be subject to the same time delay between the need for investment and the availability of resources as we identified for those PGS receipts recycled to local areas. **The Government will need to provide a significant element of pump-priming in respect of strategic infrastructure as well as forward funding local infrastructure requirements.**

Impact on the supply of affordable housing

62. The Government's proposals for PGS and scaled-back Section 106 arrangements include retaining the provision of affordable housing within the scope of planning obligations. In its consultation document, it said that "Affordable housing delivery is a Government priority and changing the means by which it is delivered could make it more difficult to meet demand and create mixed communities".¹²¹

63. Ministers told us that there were two reasons why it was considered appropriate to retain affordable housing within the scope of planning obligations when all other matters not directly related to the immediate site environment are to be excluded. First, if affordable housing was removed, it would prove very difficult to create the sort of communities which the Government seeks. The Minister for Housing said that the Government "made the decision to keep affordable housing within the section 106 approach because in practice you really want it to be considered as an on site delivery. If you are going to deliver mixed communities, you want affordable housing to be built into the developer's attitude and conception of the site from the beginning".¹²² In general our witnesses agreed. SEERA, for instance, argued that "severing the link between the planning application and the provision of affordable housing would limit the ability of a local authority to secure on-site provision of affordable housing, essential for the creation of sustainable mixed communities".¹²³ Secondly, Government did not want to take any action that might jeopardise current performance, especially over any transitional period.¹²⁴ The Audit Commission agreed, telling us that it supported the retention of affordable housing within the scope of planning obligations "because affordable housing, as an exception to the normal 'mitigation' rule of section 106, is working reasonably well".¹²⁵ The National Housing Federation agreed.¹²⁶

64. Certainly planning obligations currently make a considerable contribution to the supply of affordable housing. In 2003–04 around half of the 26,541 affordable houses provided were the result of Section 106 agreements.¹²⁷ Data from the Housing Investment programme indicates that 16,380 affordable homes were delivered in 2003–04 through

¹²¹ *Planning-gain consultation*, para 5.20

¹²² Q 289

¹²³ Ev 50. See also, for example, Ev 97; Q 18

¹²⁴ Q 305

¹²⁵ Ev 53

¹²⁶ Ev 17

¹²⁷ Ev 64

planning obligations and that in addition developers, in lieu of physical provision, contributed land to the value of approximately £37 million and made direct payments to local authorities amounting to £32 million.¹²⁸ Sheffield University and the Halcrow Group estimate that this equates to a total value of affordable housing obligations delivered in 2003–04 of some £600 million.¹²⁹ In the absence of planning obligations this investment would have to be funded by the Government from general taxation.

65. There is, however, a significant difference between the value of affordable housing delivered and the value of obligations agreed. While developers contributed some £600 million to affordable housing through Section 106 agreements in 2003–04, the value of obligations entered into in the same year is estimated to be twice that, some £1.2 billion.¹³⁰ The Minister told us that there was “no certainty” within Government on why such a gap existed although, as several witnesses pointed out, it may in part be accounted for by an increasing rate of development as agreements are entered into some years before delivery. A shortfall on such a scale however suggests that planning obligations may not be realising their full potential in terms of affordable housing. **We welcome the Minister’s assurance that the Department of Communities and Local Government was working to establish the reasons behind the shortfall between Section 106 affordable housing commitments and delivery.**¹³¹ **We look forward to seeing the outcomes of this research.**

66. There are also wide variations in the contributions secured by local authorities through planning obligations to affordable housing.

¹²⁸ Department for Communities and Local Government, *Valuing Planning Obligations in England: Final Report*, May 2006, para 3.4 (hereafter *Valuing Planning Obligations*)

¹²⁹ *Valuing Planning Obligations*, para 3.13

¹³⁰ *Valuing Planning Obligations*, para 3.21

¹³¹ Q 289

Table 3: The number of and variations in planning agreements

		Dwellings	Offices and light industrial	General industry and warehousing	Retail distribution and servicing	All other major developments
ALL	No. of agreements	883	89	41	73	111
	Average per Local Authority	8.1	0.8	0.4	0.7	1
Urban England	No. of agreements	151	28	3	19	25
	Average per Local Authority	9.4	1.8	0.2	1.2	1.6
London	No. of agreements	75	18	1	4	12
	Average per Local Authority	9.4	2.3	0.1	0.5	1.5
Rural England	No. of agreements	206	7	18	9	24
	Average per Local Authority	6.2	0.2	0.5	0.3	0.7
Rural towns	No. of agreements	136	3	6	14	13
	Average per Local Authority	9.1	0.2	0.4	0.9	0.9
Established urban centres	No. of agreements	59	1	5	4	5
	Average per Local Authority	7.4	0.1	0.6	0.5	0.6
Prosperous Britain	No. of agreements	256	32	8	23	32
	Average per Local Authority	8.8	1.1	0.3	0.8	1.1

Source: Department of Communities and Local Government, Valuing Planning Obligations: Final Report, May 2006, table 2.5

Such variations confirm the impression that in many instances planning obligations at present are not delivering their full potential for affordable housing.

67. As planning obligations are to be taken into account in the calculation of planning value (PV), the higher the value of affordable housing secured, the lower the land value uplift upon which PGS liability will be assessed. The better a local authority does in securing affordable housing, the lower the PGS receipts will be, thus creating a perverse incentive for local authorities to minimise rather than maximise affordable housing

provision through planning obligations.¹³² To mitigate this risk, SEERA proposed that an upper limit be set on the value of affordable housing which could be offset against calculations of PV.¹³³ We do not favour this approach as it would infringe upon local authorities' ability to reach arrangements with developers which best meet the needs of their local area. **We recommend strongly that the Government, through planning guidance and target setting, ensure that meeting affordable housing targets is not jeopardised in favour of revenue raising.**

68. At present Section 106 agreements relating to affordable housing are typically only reached in respect of residential developments over a certain, often locally set, size threshold. PGS will extend the scope of land value capture to a much broader range of developments (see para 22). In some instances, such as certain industrial developments, it may not be appropriate or desirable for affordable housing to be delivered on site. It is nevertheless appropriate that these developments should also make a contribution to the supply of affordable housing. As the RTPI argued, "there is a strong case for requiring commercial development to contribute to development of the types of housing that many workers will need in order to staff that particular development".¹³⁴ **We recommend that the local authorities remain free to require developers' contributions to affordable housing even where such provision is not co-located with the related development. Local authorities should also be able to use PGS revenue to support affordable housing where appropriate.**

69. Overall, the provision of affordable housing under the proposed mix of scaled-back Section 106 arrangements and PGS depends not so much on the detail of how affordable housing is delivered as on the success of the overall package itself. If the additional cost which PGS will impose on developers outweighs the benefits it offers to them in terms of certainty, transparency and infrastructure provision to the extent that land is not brought forward for development, there will be a detrimental effect on affordable housing as well as on all other forms of development. **Retaining affordable housing within the scope of planning obligations is wholly appropriate: it will serve to ensure that affordable housing has the first call on any land value uplift and it will provide a means to deliver sustainable mixed communities. Even so, if the potential for PGS to increase the supply of affordable housing is to be fully realised, the Government needs to increase the scope of developments subject to Section 106 agreements beyond the current limits, to ensure affordable housing is eligible to benefit from PGS receipts and to facilitate more local authorities making fully effective use of planning obligations.**

¹³² Ev 50. See also, for example, Ev 74; Q 111

¹³³ Q 111

¹³⁴ Ev 97

6 Chapter Six: Allocating PGS revenue

70. PGS payments are to be collected centrally. The Government then has to consider how best to allocate the revenue generated among local authorities. Diss Town Council said that there was “a very strong case” for ensuring that PGS revenue is “distributed locally, for the benefit of the community in which it is generated”.¹³⁵ Similarly, London First told us that “at a time when Government policy is to increase development and community involvement in the planning process, it is critical that communities see direct benefits from development, beyond the development itself [...] Without this, opposition to development is likely to increase”.¹³⁶ Many other witnesses agreed that it was important to maintain a local link between revenue generation and investment in infrastructure.¹³⁷ We recognise that the Government proposals for PGS would, if implemented, make more opaque the link between development and the provision of local facilities funded through locally negotiated Section 106 agreements. It seems to us however that this will have advantages as well as disadvantages. It will, for instance, reduce the pressure on local planning authorities to permit otherwise undesirable developments solely to gain specific local benefits.

71. The Minister for Housing told us that “you would expect most areas to be seeing something of an increase overall in the resources that they would get” but the Financial Secretary added that “you cannot say in the short term that every local authority will gain from this”.¹³⁸ Within the South East, for example, there is no correlation between the amount of housing growth, the cost of infrastructure and the likely yield from PGS. Unless there is a redistribution mechanism the impact of PGS will be widely variable. SEERA proposes that the redistribution should be handled through a Regional Infrastructure Fund, based on priorities set by the Regional Assembly, following the model successfully developed by the Regional Transport Board. Similar proposals are under consideration in the South West and East of England.¹³⁹

72. Maintaining a direct link between the locality in which revenue is generated and that in which investment is made—local gain for local pain, as the TCPA put it—is not incompatible with an element of redistribution.¹⁴⁰ The Chartered Institute of Housing and Bedfordshire Councils Planning Consortium agreed.¹⁴¹ PGS is expected to result in higher returns overall than the existing Section 106 arrangements, not least because a large proportion—some 93 per cent—of developments at present is not subject to any planning obligations at all.

¹³⁵ Ev 5

¹³⁶ Ev 9

¹³⁷ See, for example, Q 22

¹³⁸ Q 287

¹³⁹ The Hewdon Group, *The Administration of Planning Gain Supplement: Final Report*, June 2006, paras 8, 30-31; Q 116

¹⁴⁰ Q 3

¹⁴¹ Ev 73, 89

Table 4: Proportion of planning permissions with planning agreements

Type of development	Major		Minor		All	
	1997-8	2003-4	1997-8	2003-4	1997-8	2003-4
Dwellings	25.8%	40%	3.5%	9.2%	7.1%	13.9%
Offices and light industry	13.1%	20.4%	1.3%	2.6%	2.6%	5.8%
General industry and warehousing	5.6%	12%	0.6%	0.9%	1.4%	3.4%
Retail, distribution and servicing	18.9%	21.4%	1.5%	1.8%	2.7%	3.7%
All other major developments		7.5%		1.8%	0.7%	2.3%
North	14.8%	18.3%	1.5%	1.7%	1.4%	4%
South	22.9%	29.4%	1.9%	6.4%	1.6%	8.9%
Permissions with planning obligations					1.5%	6.9%

Source: Department for Communities and Local Government, *Valuing Planning Obligations in England: Final Report, May 2006, table 2.4*

73. We expect a small surplus to be available after a portion has been top-sliced for strategic infrastructure projects and each local authority has been allocated funds at least equivalent to those which they would have expected under the current system. The allocation of this remaining portion of PGS revenue provides the Government with the opportunity to target resources: as the RTPI argued “some mechanism must be found to redistribute; otherwise [...] two effects may happen: first that one might ratchet up development pressure within those areas that are already experiencing development pressure but, secondly, that those areas in need of infrastructure [...] will not receive the benefit from Planning Gain Supplement unless there is some redistributive mechanism”.¹⁴² The Minister for Housing argued that there was already a strong correlation between those areas in need of infrastructure investment and those areas where the most PGS revenue was likely to be generated. Working on this basis however seems to us to be missing an opportunity to support development in those areas where development has historically been set back by poor infrastructure.¹⁴³ As the RTPI told us “infrastructure helps to make markets and to shape markets in areas where markets are not working very well”.¹⁴⁴ The

¹⁴² Q 2

¹⁴³ Q 318

¹⁴⁴ Q 2

TCPA and others supported an element of redistribution in PGS revenue allocation.¹⁴⁵ This view is supported by the SEERA-commissioned report which made a strong case for the inevitability of a proportion of revenue raised needing to be redistributed out of the area of origin, even if the funds are required to meet infrastructure requirements relevant to the needs of the area in which the funds were generated. **The entirety of any surplus after allocations to local authorities and to strategic infrastructure should also be allocated to development-related infrastructure and not absorbed into general Government funds. The local authority distribution formula should allow for an element of targeting resources to areas of greatest need. It is essential however, that any targeting is not undertaken to the extent that it would risk undermining the link between particular developments and local infrastructure provision. There should be a statutory undertaking that a majority of PGS revenue is returned to the local area affected by the development. A clear funding formula should be used to determine precisely how much revenue is returned to each local authority.**

74. Providing demonstrable benefits for local areas will be a key element in the implementation of PGS. This process should be as transparent as possible. Local authorities, and the communities which they represent, should be able to see precisely how much revenue has been raised in their area and how much has been made available for investment in infrastructure. **John Healey MP, Financial Secretary to the Treasury, said that the Government “would have to find a way, I think, of making sure that [PGS] operated transparently so that it was obvious to those in any local authority area what the gains were from any potential development”.**¹⁴⁶ We agree. We recommend that the Government also, through transparent means, make available data enabling comparisons between the hypothetical benefits that would have accrued in a particular area under Section 106 and that are realised under PGS.

75. Some witnesses were concerned that if the amount of PGS revenue allocated to individual local authorities were directly linked to the amount of PGS revenue generated in their area, developments with a low PGS liability—which are often those of significant value to local communities such as sporting or leisure facilities, redevelopment of brownfield sites or remediation of contaminated land—would be disadvantaged if local authorities sought to maximise their returns.¹⁴⁷ Other witnesses, when questioned did not see this as a significant risk: the RTPI acknowledged the risk but said that it was “not a main fear”.¹⁴⁸ Similarly, the TCPA argued that at present “local authorities do not prioritise raising revenue from Section 106 over resisting greenfield development. It seems to us that a number of authorities are quite able to resist that temptation in the current system and they should be able to resist the temptation in the new system”.¹⁴⁹ **We agree with the Minister in this regard: perverse decision-making for financial gain is no more likely to occur under a PGS regime than under current arrangements and that “ultimately, local authorities have to take responsible decisions in the interests of the whole community**

¹⁴⁵ Q 3

¹⁴⁶ Q 285

¹⁴⁷ See, for instance, Ev 2

¹⁴⁸ Q 7

¹⁴⁹ Q 8

and they are democratically accountable for those decisions [...] to the extent that sports and recreation ought to be part of other planning systems and planning strategies”.¹⁵⁰

7 Chapter Seven: Other issues

Transitional arrangements

76. Some witnesses were concerned that once PGS had been confirmed there would be an interim period where local planning authorities were disinclined to grant planning permissions, conscious that if they waited until it was implemented, there would be greater revenue. This is not entirely convincing: it is already within the power of local authorities, through Section 106 agreements, to determine the extent to which they capture land value uplift. One could equally argue that there may be a rush on the part of planning authorities to grant permissions because current Section 106 arrangements offer them the potential to ensure that all the captured value is spent in the local area and on projects under their discretion. Both these scenarios are, however, equally undesirable. The Government has to ensure that effective transitional arrangements are in place which will avoid any distortion of the development market. **We recommend that these arrangements include a short period only between any announcement that PGS will be introduced and the date on which the scheme comes into effect, with special transitional arrangements for those areas committed to a tariff-based model where a longer timeframe of preparation may be required. All applications for planning permission made before the announcement should be exempt from PGS (and subject to the existing range of Section 106 arrangements) regardless of the date of determination.**

Impact on the planning system

77. London First and others questioned the Government's assumption that Section 106 negotiations would be less protracted under the new arrangements and, indeed, whether in practice the scope of such negotiations would be scaled back.¹⁵¹ Such scepticism is understandable given the history of Section 106 arrangements to date which has seen, in some instances, their scope going well beyond initial intentions and little action on the part of the Government to encourage local planning authorities to adhere to centrally issued guidance. While such a permissive regime has enabled local matters to be dealt with according to local priorities, it has made the process unpredictable, opaque, subject to geographical variation and, as the Government points out, "could cause competitive or market distortions". **Ensuring that the scope of scaled-backed Section 106 arrangements is not subject to the same vagaries of interpretation will be critical to retaining the credibility of the new tax. We welcome, therefore, the Government's statement that "the scope of planning obligations would be defined on a statutory basis".**¹⁵²

¹⁵¹ Ev 9

¹⁵² *Planning-gain supplement consultation*, para 5.15

List of abbreviations

BISL	Business in Sport and Leisure
CIF	Community Infrastructure Fund
CUV	Current Use Value
DCLG	Department of Communities and Local Government
HBF	House Builders' Federation
PGS	Planning Gain Supplement
PV	Planning Value
RICS	Royal Institution of Chartered Surveyors
RTPI	Royal Town Planning Institute
SEERA	South East England Regional Assembly
TCPA	Town and Country Planning Association
VAT	Value Added Tax

Conclusions and recommendations

The Government's proposals

1. We urge the Government to consider a range of means to secure for the public benefit a portion of land value uplift which results from the granting of planning permission. Such consideration should include comparative cost-benefit analyses of PGS and scaled-back Section 106 arrangements on the one hand and, on the other, a fully effective utilisation by local authorities of Section 106 powers, including possible reforms and enhancements. (Paragraph 8)

The levy base

2. We agree with the Government that the granting of planning permission is the most appropriate point at which to calculate PGS liability as it is a clearly identifiable point in the planning process and would capture the majority of any land value uplift. It should, however, be defined as the point at which sufficient planning permission has been granted in order for development to commence. (Paragraph 10)

Calculating PGS liability and valuation methodology

3. We agree that actual valuations should be used in the calculation of current use value and planning value for PGS purposes. (Paragraph 15)

Valuations

4. Standard definitions and procedures will be critical to the success of PGS and thus will determine the extent to which it can contribute to the provision of infrastructure and growth in the housing supply. We recommend that the Government conduct a further round of consultation with industry and other stakeholders specifically on definitions and procedures relating to current use value and planning value. Such consultation has to be concluded prior to any implementation of PGS. (Paragraph 16)
5. We prefer the Government's proposal that developers should be responsible for calculating current use value and planning value, drawing on the existing expertise within the private sector, through a system of self-assessments monitored and endorsed by the Valuation Office. (Paragraph 17)
6. We recommend that the Government set a minimum value of zero for current use value. This would reduce any perverse disincentive to brownfield site development which PGS could otherwise represent. (Paragraph 18)
7. We recommend that calculations of current use value and planning value reflect actual site conditions, including implemented planning permissions, as well as actual patterns of land ownership and actual liabilities and interests. No assumption of freehold vacant possession should be made. (Paragraph 19)

Self-assessment approval

8. We recommend that the Government work with the Home Builders' Federation and other stakeholders to develop a pre-clearance system for PGS self-assessments and that such a system be incorporated into the PGS regime. (Paragraph 20)

PGS liability and option agreements

9. We welcome the Government's willingness to consider the impact of PGS on development on land with option agreements. Any special arrangements will need to be agreed and promulgated prior to the implementation of PGS. (Paragraph 21)

Scope

10. We welcome the proposed broadening in the scope of development gain capture and endorse the proposal that liability should be based on the land value uplift achieved rather than on the nature of the development. (Paragraph 22)

The PGS rate

11. We recommend that the Government provide us with regular updates on the progress of its research into the impact of PGS on the markets for housing and land. (Paragraph 23)
12. While we accept that in some specific instances PGS may generate less revenue than the current regime would, the important question is whether PGS can generate additional revenue overall. (Paragraph 26)
13. It is clear that extensive further research and statistical analysis is required to enable the Government to determine the rate at which PGS should be set. (Paragraph 30)
14. In making its determination of the PGS rate, the Government will need to strike a balance between setting the rate too high, which could discourage development and encourage avoidance, and setting it a rate which will cover the additional costs of administering the tax, generate a surplus over current arrangements and provide a contribution to investment in strategic infrastructure. It will need to make a strong case to support its determination if the rate does not fall within the anticipated range if the proposals are to retain credibility. In any case, we would expect the analysis and statistical modelling supporting the Government's determination to be made publicly available and open to widespread scrutiny. (Paragraph 32)

Changing the PGS rate

15. We welcome the Government's understanding that it would be impractical to vary the PGS rate frequently. The need to keep revisions to a minimum makes it all the more important to establish a workable rate at the outset. (Paragraph 33)

Point of payment

16. None of our witnesses favoured requiring payment at the point at which full liability is established. We agree with the Government that to do so would be impractical. (Paragraph 34)

Definition of commencement and start of works

17. We recommend that the Government and stakeholders reach a mutually agreeable and robust definition of commencement of development prior to the introduction of PGS. (Paragraph 35)

Deferred payments

18. We recommend that the Government permit phased PGS payments particularly in relation to those large sites where development itself is phased. (Paragraph 37)
19. One implication of a deferred payment scheme would be to increase the gap to be bridged by forward funding and therefore increase the size of the initial dowry required from Government. (Paragraph 38)

Revenue collection

20. We concur that it is appropriate for central Government to collect PGS payments. (Paragraph 39)

Marginal sites

21. We find no grounds for PGS exemptions or discounts for developments of marginal viability. (Paragraph 41)

Brownfield sites

22. We are not persuaded by the case for discounts against or exemptions from PGS liability in respect of developments on brownfield land. (Paragraph 46)

Small-scale developments and a minimum threshold

23. We recommend a minimum threshold for PGS liability which puts very small-scale developments, including home improvements, outside the scope of PGS liability. This threshold should be set at a very low level to preserve PGS revenue and to prevent market distortions. (Paragraph 48)

Conclusions on exemptions and discounts

24. The Government should resist all calls to grant exemptions and discounts other than for very small-scale developments. To do so would increase the complexity of the tax and risk market distortions. There is a risk that financial advantages for developments desirable in policy terms will have the perverse effect of encouraging

local authorities to permit the kinds or locations of development being discouraged in order to increase their revenue-take. Where exemptions and discounts have been sought to drive certain desirable behaviours, other mechanisms can be used to achieve the same ends. Where exemptions and discounts have been sought to maintain project viability, the arguments that PGS threatens viability are not convincing. The Government should keep PGS as transparent, straightforward and cost effective as possible (Paragraph 50)

Timing of the provision of infrastructure

25. The Government is silent on how it will ensure that PGS supports infrastructure in a timely and predictable way. We would welcome clarification from the Government on this specific point. (Paragraph 51)
26. Ministers suggested that local authorities could secure funds to provide timely infrastructure through a “prudential borrowing regime” in which they could take out loans against expected PGS receipts. If the Government is to proceed with this suggestion, we will require regular updates on progress and further clarification on the details of the operation of the scheme. (Paragraph 53)
27. The proposal that local authorities should borrow against expected PGS receipts is entirely unattractive. It would be an unnecessarily expensive option for local authorities. Moreover, the primary purpose of PGS is to provide the resources for infrastructure to free up land for development and support housing growth, not to enable local authorities to acquire debt. That would be a retrograde step from the existing arrangements. Servicing debt is not an appropriate use for PGS revenue. (Paragraph 54)
28. Local solutions to forward funding could be permitted to persist alongside the national PGS regime. This may be a particularly appropriate solution for growth areas and areas where there is a single body able to provide forward funding, as there is in Milton Keynes. (Paragraph 56)
29. A substantial element of Government forward funding to enable infrastructure to be provided in a timely manner is essential to the successful operation of PGS. Without substantial forward funding there is no way that PGS can deliver the certainty for local authorities and developers which is essential if the tax is to be effective and to carry the confidence of stakeholders. We are adamant that the Government should not proceed with PGS unless and until it has made provision to bridge the time difference between the need for expenditure and the receipt of PGS funding. (Paragraph 57)

Funding strategic infrastructure

30. We welcome the Ministers’ commitment that the PGS revenues allocated to strategic infrastructure will be additional to rather than instead of funds already provided through other means. (Paragraph 59)

31. We recommend that the criteria and priorities for strategic infrastructure funding are determined through a broad and inclusive process, incorporating the views of not only regional and sub-regional bodies but all statutory planning consultees. (Paragraph 60)
32. The Government will need to provide a significant element of pump-priming in respect of strategic infrastructure as well as forward funding local infrastructure requirements. (Paragraph 61)

Impact on the supply of affordable housing

33. We welcome the Minister's assurance that the Department of Communities and Local Government was working to establish the reasons behind the shortfall between Section 106 affordable housing commitments and delivery. We look forward to seeing the outcomes of this research. (Paragraph 65)
34. We recommend strongly that the Government, through planning guidance and target setting, ensure that meeting affordable housing targets is not jeopardised in favour of revenue raising. (Paragraph 67)
35. We recommend that the local authorities remain free to require developers' contributions to affordable housing even where such provision is not co-located with the related development. Local authorities should also be able to use PGS revenue to support affordable housing where appropriate. (Paragraph 68)
36. Retaining affordable housing within the scope of planning obligations is wholly appropriate: it will serve to ensure that affordable housing has the first call on any land value uplift and it will provide a means to deliver sustainable mixed communities. Even so, if the potential for PGS to increase the supply of affordable housing is to be fully realised, the Government needs to increase the scope of developments subject to Section 106 agreements beyond the current limits, to ensure affordable housing is eligible to benefit from PGS receipts and to facilitate more local authorities making fully effective use of planning obligations. (Paragraph 69)

Allocating PGS revenue

37. The entirety of any surplus after allocations to local authorities and to strategic infrastructure should also be allocated to development-related infrastructure and not absorbed into general Government funds. The local authority distribution formula should allow for an element of targeting resources to areas of greatest need. It is essential however, that any targeting is not undertaken to the extent that it would risk undermining the link between particular developments and local infrastructure provision. There should be a statutory undertaking that a majority of PGS revenue is returned to the local area affected by the development. A clear funding formula should be used to determine precisely how much revenue is returned to each local authority. (Paragraph 73)
38. John Healey MP, Financial Secretary to the Treasury, said that the Government "would have to find a way, I think, of making sure that [PGS] operated transparently

so that it was obvious to those in any local authority area what the gains were from any potential development”. We agree. We recommend that the Government also, through transparent means, make available data enabling comparisons between the hypothetical benefits that would have accrued in a particular area under Section 106 and that are realised under PGS. (Paragraph 74)

39. We agree with the Minister in this regard: perverse decision-making for financial gain is no more likely to occur under a PGS regime than under current arrangements and that “ultimately, local authorities have to take responsible decisions in the interests of the whole community and they are democratically accountable for those decisions [...] to the extent that sports and recreation ought to be part of other planning systems and planning strategies”. (Paragraph 75)

Transitional arrangements

40. We recommend that these arrangements include a short period only between any announcement that PGS will be introduced and the date on which the scheme comes into effect, with special transitional arrangements for those areas committed to a tariff-based model where a longer timeframe of preparation may be required. All applications for planning permission made before the announcement should be exempt from PGS (and subject to the existing range of Section 106 arrangements) regardless of the date of determination. (Paragraph 76)

Impact on the planning system

41. Ensuring that the scope of scaled-backed Section 106 arrangements is not subject to the same vagaries of interpretation will be critical to retaining the credibility of the new tax. We welcome, therefore, the Government’s statement that “the scope of planning obligations would be defined on a statutory basis”. (Paragraph 77)

Witnesses

Monday 24 April 2006

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Supplementary written evidence

The following written submissions were received after the publication of *Planning Gain Supplement: Written Evidence*, HC 1024-II, Session 2005–06. They are reproduced in the back pages of this Report.

National Grid plc (PGS 45)	Ev 59
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List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

PGS 05(i) – Response to the Government Consultation on the Planning-gain Supplement by London First

PGS 07(i) – Response to the Government Consultation on the Planning-gain Supplement by Nottinghamshire County Council

PGS 08(a) – Letter regarding Housing Associations and the Planning-gain Supplement

PGS 08(i) – Response to the Government Consultation on the Planning-gain Supplement by the National Housing Federation

PGS 10(i) – Response to the Government Consultation on the Planning-gain Supplement by the Natural England Partners

PGS 14(a) – Draft response from West Berkshire District Council to Government Consultation on the Planning-gain Supplement

PGS 14(i) – Article by David Curry MP in favour of ALTER’s alternative policy

PGS 14(ii) – Response to the Government Consultation on the Planning-gain Supplement by ALTER

PGS 16(a) – Response to the Government Consultation on the Planning-gain Supplement by the British Property Federation

PGS 18(i) – Response to the Government Consultation on the Planning-gain Supplement by the South East England Regional Assembly

PGS 18(ii) – *‘Financial Impact of the Proposed Planning Gain Supplement’*, South East England Regional Assembly, March 2006

PGS 20(i) – Response to the Government Consultation on the Planning-gain Supplement by National Grid Property Holdings Ltd

PGS 22(i) – Response to the Government Consultation on the Planning-gain Supplement by the Commission for Rural Communities (CRC)

PGS 23(i) – Response to the Government Consultation on the Planning-gain Supplement by Northamptonshire Chief Planning Officers Group

PGS 28(i) – Response to the Government Consultation on the Planning-gain Supplement by the Wildlife Trusts

PGS 29(i) – Response to the Government Consultation on the Planning-gain Supplement by the Campaign to Protect Rural England (CPRE)

PGS 29(ii) – *Housing in England: Key Facts*, CPRE Factsheet, Jan 2006

PGS 29(iii) – *Planning Obligations: delivering a fundamental change*, CPRE's response to the Government consultation paper, March 2002

PGS 29(iv) – CPRE's response to the Government consultation paper, Jan 2004

PGS 41(i) – Response to the Government Consultation on the Planning-gain Supplement by the Environment Agency

PGS 44(i) – Article on the Planning-gain Supplement by David Reed BSc DipTP DMS MRTPI, Director of Community & Environment Services, Canterbury City Council

PGS 45(i) – Response to the Government Consultation on the Planning-gain Supplement by National Grid plc

PGS 46(i) – Response to the Government Consultation on the Planning-gain Supplement by the Charities' Property Association

PGS B/P 01 – Planning Gain Supplement: A consultation, HM Treasury/ODPM/HM Customs & Excise, December 2005

PGS B/P 02 – Response to the Government Consultation on the Planning-gain Supplement from the East of England Regional Planning Obligations Officers Group

PGS B/P 03 – Response to the Government Consultation on the Planning-gain Supplement by South West Industrial Properties

PGS B/P 04 – Response to the Government Consultation on the Planning-gain Supplement by North Kesteven District Council

PGS B/P 05 – Response to the Government Consultation on the Planning-gain Supplement by Buckingham Town Council

PGS B/P 06 – Response to the Government Consultation on the Planning-gain Supplement by London Assembly Planning and Spatial Development Committee

PGS B/P 07 – Response to the Government Consultation on the Planning-gain Supplement by Lawrence Graham LLP

PGS B/P 08 – Response to the Government Consultation on the Planning-gain Supplement by The Grundon Group of Companies

PGS B/P 09 – Response to the Government Consultation on the Planning-gain Supplement by Cushman & Wakefield

PGS B/P 10 – Response to the Government Consultation on the Planning-gain Supplement by the British Chambers of Commerce (BCC)

PGS B/P 11 – Response to the Government Consultation on the Planning-gain Supplement by the Mayor of London and Transport for London

PGS B/P 12 – Response to the Government Consultation on the Planning-gain Supplement by Network Rail

PGS B/P 13 – Response to the Government Consultation on the Planning-gain Supplement by the British Urban Regeneration Association (BURA)

PGS B/P 14 – *Implementing the Planning Gain Supplement*, A BURA Steering and Development Forum working paper, Jan 2005

PGS B/P 15 – Response to the Government Consultation on the Planning-gain Supplement by the Professional Land Reform Group (PLRG)

PGS B/P 16 – *Labour's Flawed Land Acts 1947–1976*, by V. H. Blundell

PGS B/P 17 – Response to the Government Consultation on the Planning-gain Supplement by the Law Society of England and Wales

PGS B/P 18 – Response to the Government Consultation on the Planning-gain Supplement by the Arts Council England (ACE)

PGS B/P 19 – Response to the Government Consultation on the Planning-gain Supplement by Clarke Willmott

PGS B/P 20 – Response to the Government Consultation on the Planning-gain Supplement by the Environmental Industries Commission (EIC)

PGS B/P 21 – Response to the Government Consultation on the Planning-gain Supplement by Le Vaillant Owen

PGS B/P 22 – Response to the Government Consultation on the Planning-gain Supplement by the Central Council of Physical Recreation (CCPR)

PGS B/P 23 – Response to the Government Consultation on the Planning-gain Supplement by the National Landlords Association

PGS B/P 24 – Article by Colin Rickard, Chief Financial Planning Officer, Cambridgeshire County Council

Formal Minutes

Monday 23 October 2006

Members present:

Dr Phyllis Starkey, in the Chair

Sir Paul Beresford
Mr Clive Betts
John Cummings
Mr Greg Hands

Martin Horwood
Mr Bill Olnier
Alison Seabeck

Planning Gain Supplement

Draft Report (*Planning Gain Supplement*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 77 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Several Papers were ordered to be appended to the Minutes of Evidence.

Ordered, That Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 24 October at Four o'clock.]

Reports from the Communities and Local Government Committee in the current Parliament

The following reports have been produced by the Committee in the current Parliament. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

On 27th June 2006, by Order of the House, the ODPM Committee was succeeded by the Communities and Local Government Committee and all proceedings of the former Committee were deemed to be proceedings of the latter.

Session 2005–06

First Report	ODPM Annual Report and Accounts	HC 559 (<i>HC 1072</i>)
Second Report	Re-licensing	HC 606 (<i>Cm 6788</i>)
Third Report	Affordability and the Supply of Housing	HC 703–I (<i>Cm 6912</i>)
First Special Report	Government Response to the Committee's Fourth Report of Session 2004–05, on the ODPM Annual Report and Accounts 2004	HC 407
Second Special Report	Government Response to the Committee's Eleventh Report of Session 2004–05, on the Role and Effectiveness of The Local Government Ombudsmen for England	HC 605
Third Special Report	Government Response to the Committee's Seventh Report of Session 2004–05, on the Role and Effectiveness of the Standards Board for England	HC 988
Fourth Special Report	Government Response to the Committee's First Report of Session 2005–06, on the ODPM Annual Report and Accounts 2005.	HC 1072
Fourth Report	The Fire and Rescue Service	HC 872–I (<i>Cm 6919</i>)

Oral evidence

Taken before the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee

on Monday 24 April 2006

Members present:

Dr Phyllis Starkey, in the Chair

Sir Paul Beresford
Mr Clive Betts
Lyn Brown
John Cummings
Mr Greg Hands

Martin Horwood
Anne Main
Mr Bill Olnier
Alison Seabeck

Witnesses: **Mr Kelvin MacDonald**, Director, Policy and Research, Royal Town Planning Institute and **Professor John Hennebery**, Professor of Property Development Studies, University of Sheffield, Royal Town Planning Institute, **Mr Gideon Amos**, Director, and **Mr Nick Freer**, Director, David Lock Associates, Town and Country Planning Association, and **Mr David Waterhouse**, Town and Country Planning Association, gave evidence.

Q1 Chair: You will appreciate that there are a lot of witnesses in this session and we would like to try and keep to timing, although we have not started off very well since we have slipped at the very beginning. There is absolutely no necessity for witnesses to repeat a matter which is in the written submissions that you have made because, obviously, we will be taking those into account. Can I ask you briefly, starting at the right hand end, to say who you are?

Mr Waterhouse: David Waterhouse, Town and Country Planning Association.

Mr Freer: Nick Freer from David Lock Associates but with the Town and Country Planning Association today.

Mr Amos: Gideon Amos, Town and Country Planning Association.

Mr MacDonald: Kelvin MacDonald, Royal Town Planning Institute.

Professor Hennebery: John Hennebery, University of Sheffield.

Q2 Chair: Can I start with the first question to the RTPI and pick you up on a point you have made that you see there is a danger that those communities most in need of infrastructure investment will lose out to those with development pressure? Do you think therefore it is justified for national government to intervene and redistribute revenues to those areas in greatest need of infrastructure investment?

Mr MacDonald: We think that some mechanism must be found to redistribute; otherwise, I think, two effects may happen: first that one might ratchet up development pressure within those areas that are already experiencing development pressure but, secondly, that those areas that are in need of infrastructure, because infrastructure helps to make markets and to shape markets in areas where markets are not working very well, will not receive the benefit from Planning Gain Supplement unless there is some redistributive mechanism.

Q3 Chair: Does the TCPA have any comment on that?

Mr Amos: If redistribution for national infrastructure was not right at all we would have to do something about national government generally, but clearly it is important that there is a small degree of redistribution. We would like to see the vast majority of Planning Gain Supplement revenues, around 80%, we would suggest, go back to the local authorities where it was raised. There needs to be some local gain for the local pain, but that should leave, let us say, around 20% of the revenues to be available for redistribution.

Q4 Anne Main: On that point can I ask you where you think a local authority is? Is it regional, national, district, county?

Mr Amos: A local authority would be the local planning authority, which usually in a county shire system would be the district council and in a unitary authority would be the unitary authority.

Q5 Lyn Brown: This is to the Royal Town Planning Institute. You argue that the Planning Gain Supplement will not be able to raise much more money than section 106 agreements. Do you think that this is because greater taxing of land value is impractical in that it would discourage development or is it because the Planning Gain Supplement proposals need somehow restructuring?

Mr MacDonald: On the general point, but then I am sure Professor Hennebery will want to come in, it is not necessarily that the overall scheme is impractical in itself, but there are a number of barriers that we see embodied in the scheme as it is set out. That makes it doubtful as to how much extra revenue will be raised. We have set these out in our evidence but they include the difficulties of establishing the uplift in value against which you set the tax. They include the fact that naturally developers will be pessimistic about the eventual value of the scheme, quite rightly, when you

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and Mr David Waterhouse

have got a time gap of up to three years between the point at which the value is set and the point at which the tax is taken.

Professor Hennebery: I want to suggest a slight alteration in the question because the short answer is that there is considerable potential for getting income greater than the existing take from planning obligations but it could be done in at least two ways. One of them is to improve the way that the current planning obligation system works, and from previous research we know there is an enormous variation in local practice, so you can get two local authorities which are very similar in all other ways and one of them is achieving 10 times as much income in planning obligations as the other, so that just by improving the way that the current system operates, whether that is through standard charging or through tariff systems or whatever, you would considerably increase the take. Comparing the current system with Planning Gain Supplement, you need to compare Planning Gain Supplement with what the current system might achieve if it was improved.

Q6 Alison Seabeck: Very quickly on the back of that, one of the criticisms of section 106 is that it does not bite into particularly very small sites, and one of the advantages of the PGS is that it potentially could if they take it down to one property, and also that there is value sharing between sites and therefore that is one of the justifications for PGS. What would be your arguments on both those counts?

Mr MacDonald: Certainly we welcome the fact that PGS potentially does go beyond the thresholds. We feel that the thresholds at the moment are fairly artificial anyway, so we do welcome that aspect of PGS, that it does have the potential to bite below the thresholds.

Professor Hennebery: Over time the threshold that some local authorities have introduced as the minimum before they seek planning obligation benefit has lowered and some authorities are operating at the level of a handful of housing units. Again, there is a huge variation between authorities as to what their threshold is and so it is very difficult to know the implications of that. Clearly, an automatic low threshold will increase take and reduce administrative cost.

Q7 Martin Horwood: RTPI suggests that the proposed scheme seems to have been written with a greenfield development model in mind. In fact, you could say that since the majority of the value uplift would be on the greenfield sites and therefore the majority of the tax would be from greenfield sites, you might be worried about discouraging developers, but you might also be worried that this is a huge financial incentive to the Treasury and to local authorities to encourage development on greenfield sites because that is where they will raise the most money. Which are you more worried about?

Mr MacDonald: Both in a way. Past experience has shown that there may be a tendency under some of the previous systems for local authorities to be better inclined to give permission on greenfield sites if they

can see the link between that permission and revenue accruing back to that local authority. I speak from some experience of working in the DoE when the community land tax was in operation, so there is that fear, but that to us is not a main fear. The point we are making about being based on a greenfield system is that this is not the way that the majority of development takes place, certainly the way that the majority of housing development, and therefore we are worried for the Government that they may not achieve what they seek to achieve because they are basing it on just one part of the market.

Q8 Martin Horwood: So if we are talking about brownfield sites would you, for instance, be in favour of a zero rate for brownfield sites which might encourage development on urban areas?

Mr Amos: To some extent the perverse incentive, if that is what it is, is really that, because the land value increases are that much greater on greenfield sites already. By and large I think we would argue that local authorities do not prioritise raising revenue from section 106 over resisting greenfield development. It seems to us that a number of authorities are quite able to resist that temptation in the current system and they should be able to resist the temptation in the new system. In terms of a differential rate, as you said in the introduction to your question, the yield would normally be much bigger on greenfield anyway because of the land value differences. The TCPA does believe it would be worth prioritising brownfield but through how the revenue is spent in terms of cleaning up more contaminated land and bringing forward more brownfield sites that currently are unsuitable for development.

Q9 Martin Horwood: But surely that will hit the exact areas that the RTPI is talking about which are in need of investment and development, will it not, because there will still be a financial disincentive even if there is infrastructure promise?

Mr Amos: If the tax was levied on brownfield sites?

Q10 Martin Horwood: Yes.

Mr Amos: If there is no profit with a percentage tax there is no tax to be paid, so tax is relative to the profit being made. There are sites in Mayfair which will be brownfield sites. The question is, do you really want to exempt those because they are brownfield even though the profit would be very large?

Q11 Mr Oler: How much more revenue for infrastructure and affordable housing can be raised from developers without causing land banking? If we go back to the Community Land Act, and I can remember that well, is this Community Land Act II?

Professor Hennebery: The way that it is designed, I suppose the short answer is no, not least because the original levy under the Community Land Act was 80% and the proposals here are for a very modest level. There is not an exact figure but it has been suggested to be no more than 20%. The principle is not dissimilar, as with all taxes on development value.

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and Mr David Waterhouse**

Q12 Mr Oler: How do you propose dealing with the very thorny issue of when does a piece of developed land become brownfield? I am talking about perhaps an old commercial usage that is now no longer appropriate to being in commercial usage and perhaps should be a residential one? Is there anything in the system that makes a difference in this or gives any guidance as to how it should be treated?

Professor Hennebery: The short answer is no. If we are assuming that the level of the tax set is the same for any land (and this was referred to in the previous question), that we are setting the same rate for brownfield and greenfield, the tax will be relative to the development value uplift which is achieved, so if you are talking about, for example, an urban site which is in former industrial use, with the decline in manufacturing that is worth very little now.

Q13 Mr Oler: I said commercial use.

Professor Hennebery: If you move from, say, low quality office to high quality apartments you are going to get a value uplift and that can be taxable, so the principle will apply in all circumstances.

Q14 Mr Oler: Do you think there is no problem about land banking being caused?

Mr Amos: From the TCPA point of view I think we would argue that the rate that has been talked about, so it is in the region of 20%, is a lot less than the development land tax. According to parliamentary written answers from that time, when it was abolished in 1985 it was raising what in today's terms would be between £50 million and £100 million. By the mid eighties there was little evidence that this was holding back development by that stage, but my colleague, Nick Freer, from the commercial world may have another take on it.

Mr Freer: I have not seen research which identifies the particular figures and it is probably difficult for them to undertake that research. One of the key things for the development industry is whether whatever level of tax is put in place does deliver the investment that they see on occasion holding up development, whether it is from additional money for the housing corporation to allow their affordable housing to come forward or whether it is funding for the infrastructure, which at the moment is part of either a bidding process or an allocation process, rather than the money being immediately available to free up the development. I think those are going to be some of the key tests, that if some of those barriers are removed then that will be one of the implications on which the development industry will judge whether or not it is worth bringing forward their sites.

Mr Oler: I would suggest that the Community Land Act was scrapped for political motives.

Chair: There is no answer to that.

Q15 Mr Oler: One of the things that it started to find, however, was the number of exemptions that were put on the land. Do you say categorically that this will not work if there are exemptions? Are you saying to us in giving evidence that there should be no exemptions, that every developer should pay?

Mr Amos: I think, Chair, that we are all a little anxious to see some more detail from the Treasury. Certainly the TCPA is sympathetic to Planning Gain Supplement and we want to see a move forward to the next stage, but we are not giving it our unreserved support until we know what the rates are, what the exemptions might be. Until we receive that information it is very difficult to make pronouncements on where the exceptions should be and so forth.

Mr MacDonald: And certainly we would say that there should be exemptions but again we would agree with the TCPA that we will want to know what. Just a simple greenfield/brownfield exemption is not sophisticated enough. If we are going into exemptions we need a far more sophisticated approach which maybe looks at the need for remediation, for example, of land, or maybe looks at particular uses that you need to bring into an area if you are going to create these things called sustainable communities.

Q16 Mr Betts: The RTPI have expressed some concerns about the possible effects of excluding affordable housing from the PGS and instead leaving that under section 106 arrangements. The Government say on the other hand that section 106 will continue to work for affordable housing as it always has done so there should not be any impact. What adverse effects do you perceive?

Mr MacDonald: Two, I suppose, initially: first, that we are coming into the realm of certainty or uncertainty for the development industry. If this scheme is to work then one of its attributes must be certainty for the development industry to help the development industry not to bank land and withdraw land. If a fairly significant part of a development is still subject to negotiation through section 106 then that certainty will not be there in the system. Secondly, and perhaps more importantly, there is no certainty from the consultation document that affordable housing will benefit from any of the revenues accruing from Planning Gain Supplement. We do not know how it is going to be redistributed. We do not know, for example, in this case whether the Housing Corporation will be a beneficiary of the revenues of Planning Gain Supplement but if it is not then one part of the equation, affordable housing, remains static, subject to negotiation with, as Professor Hennebery has said, local authorities not necessarily gaining the most value that they could through these negotiations while other bits may benefit from any increased revenue that does come from Planning Gain Supplement.

Q17 Chair: Can I just pick you up on something you said there? You said that essentially you were not keen on more being open to negotiation, that you wanted the system as clear as possible, and yet you are suggesting that section 106, which essentially is entirely negotiation, should be modified instead of the PGS which is non-negotiable. Can you square the circle?

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and Mr David Waterhouse

Mr MacDonald: Just about, I hope. What we are trying to do is look at the Government's intentions behind this particular scheme, Planning Gain Supplement, and one of the intentions is to bring more certainty into the system. We are saying that that certainty will not necessarily be brought into the system but at the same time we are saying that within the existing system there is a lot of scope for improvement if you do not go down the PGS path. There is still an awful lot of scope for improvement.

Q18 Mr Betts: I am still a little bit lost by that. Both organisations seems to be saying that there should be some benefit to affordable housing from PGS, but there is going to be a finite amount of money you can get in the end from any site. Is not one of the advantages of section 106 precisely that, that on each side there can be a look at the particular requirements and nature of that site and an ability to get some mix of tenure on the site by negotiation? One of the worries some of us have if you went down the road of PGS being the way forward for affordable housing is that many developers are going to be very happy. They just pay a sum of money over, they build their executive houses on the site, and the local authority can go and build its rented houses somewhere else well away where they will not depress the values of those houses.

Mr Amos: We are very concerned about that as well. I do not think we are suggesting that housing should be funded any other way than through 106 because you have to get that mix on site. If the Government did take a small proportion of redistribution of the revenues and decide to put some of that into housing corporation then that would be some extra, but the TCPA is saying that we want to see generally affordable housing agreed on site through section 106.

Professor Hennebery: The evidence from the work that some of my colleagues have done on affordable housing for ODPM and Joseph Rowntree is precisely in support of those two points, that local authorities overwhelmingly prefer to obtain affordable housing through in-kind contribution on site, because if they get a cash contribution instead they are bidding in the local land market and often are not able to find sites themselves simply because of the availability of land, and that private sector house builders, quite understandably, have bought in most of the land available, so it is extremely difficult for them to achieve affordable housing development unless it is delivered through section 106 agreements and in-kind contribution.

Q19 Anne Main: The TCPA stress the need to ensure that the proposed systems raise significant revenue. Do you have any practical examples of similar systems working that the Government can encouraged to investigate? You also say that you would like to see a close link between the places where funds are generated and where they are spent. I would like you to expand on that a bit further please because I am still getting a lot of messages about brownfield sites possibly being exempt or even being helped to

become ready for development and they already have infrastructure deficits in those areas. How do you propose those would be dealt with? How far do you see revenue being generated in another area being moved?

Mr Amos: We tried to answer that at the beginning, saying that in the region of 70-80% of the revenues raised should be returned to the local authority where they are raised, which would leave a much smaller proportion for redistribution. That redistribution could and should go into prioritising brownfield site clean-up to bring forward more brownfield land in local authority areas where they may not be likely to receive much planning gain generally. There would be that proportion available to central and regional government to redistribute but we are suggesting that something in the region of 70-80% of all revenues should go directly back to the local authority.

Q20 Anne Main: Do you believe there is a model somewhere that the Government should be looking at? I notice you said 70%, 30% going to central government in there. I presume you are thinking there will be a bidding pot that people go for and so can you see a model you can suggest to us and how would you not have a bidding scramble for this 30% that would be centrally located?

Mr Freer: One slight concern about how you deal with that is straightforward, through a bidding process. The suggestion in the paper is that it goes into the community infrastructure fund and at the moment that is a sort of bidding process and there is uncertainty for the industry as to whether or not you receive that money or you do not. It is part of a bidding process, so I think it would probably be helpful as part of the introduction of a system to have more certainty in the allocation of funding for particular requirements if they be in the areas which you would identify as having an infrastructure deficit and the identification of funds particularly for remediation or otherwise to help to deliver that.

Q21 Chair: Who would identify those needs? Would it be local government, central government?

Mr Freer: At the moment some of those investment funds are being identified through regional frameworks and the various sub-regional studies and efforts that are being identified as part of that process.

Q22 Alison Seabeck: The RTP1 highlighted the problems that could be caused by breaking the direct link between payments and the provision of infrastructure, but at the same time you are in favour of some level of redistribution. Are those two objectives compatible?

Mr MacDonald: We feel so. We do think first that this break is very important. The TCPA has talked about payment for gain for the pain and we would support them in this. Local authorities at the moment in effect, and sometimes in fact have a contract with the developer to deliver certain benefits—pieces of infrastructure, a health centre, whatever, as part of the development, and this must be part of the Government's drive to creating sustainable

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communities. If the uplift in value of the revenue disappears somewhere through the Treasury or through HM Revenue and Customs then that contract is broken and we fail to see how a local authority can require, for example, the staging of a development until certain things have been provided if that link has been broken. We see the need for that link but we do not see that as being incompatible with some degree of redistribution at national level with the local authority perhaps, and one thing we suggest, coming back to the previous question, is far more explicit investment plans by local authorities and then at regional level, and then in fact a national spatial investment plan.

Q23 Alison Seabeck: That starts getting to the complexities of how PGS once levied will be spent in terms of managing up-front infrastructure development. Some of these decisions need to be taken nationally, regionally and some locally. You have got local authorities trying to levy this at a fixed point. Do you have a view as to whether or not the fixed point which is currently being proposed for levy of this will enable infrastructure to be brought on stream and started prior to developments in a way that is physically workable? You could, for example, have a big housing scheme that required a new road, which may have implications at regional level as well, but the funding, of course, will not come until the final phase there, so you are very reliant on negotiations through the pot that hopefully will have developed over time, and I think we all have worries about how those negotiations will be managed and how these projects will be prioritised. Your views on that would be helpful.

Mr Amos: We would want to see gap funding as one of the key requirements to enable the PGS to go forward. In other words, if PGS was brought in in 2008, it would not be good enough to wait until 2010 for the first bit of infrastructure to come on stream and therefore the Government would have to make provision for forward funding infrastructure schemes that is going to unlock housing supply, and the Government needs to have planned for that introduction process. Otherwise the risk is that the impact on the development industry will be to slow it down and to slow down the supply of housing, which is one of the key factors, we believe, that this scheme will be judged on.

Q24 Alison Seabeck: So gap funding is obviously vital because otherwise it potentially could grind to a halt. Has anybody done any work on what that level of gap funding ought to be? Has anybody done any assessment, if you take a fixed point like now, on projects that are in hand prior to other proposals? Has anybody done any work, do you know?

Professor Hennebery: No. I was involved in some research for the then DoE in 1993 on the introduction of impact fees into the British planning system, which has raised many similar principles, and one of the major problems we had was that the requirements for infrastructure and the cost of its provision varied so much by site that it is virtually impossible to come up

with any reliable estimate other than some gross average, which may not be particularly helpful in a scheme like this where you have huge local and regional variations.

Q25 Mr Olnier: Just a quick supplementary on that. These things can get out of sync, can they not? Usually, talking from the shire counties' point of view, the district authority is usually the planning authority. The district runs the infrastructure improvement. It starts that bidding process three or four years earlier and the infrastructure—and I am talking about highway infrastructure in particular—gets ramped through the regional office and then through the county council. How on earth can we use the Planning Gain Supplement to effect that sort of infrastructure if granting the planning permission is some way down the line?

Mr Freer: Perhaps one of the things that helps a little bit in that debate is that there are one or two examples now around the country where we are beginning to move towards revolving infrastructure funds which identify pots of money that will forward-fund infrastructure and investment, and that at the moment is being identified by some of the regional bodies as a requirement which then allows development that would otherwise have to wait for infrastructure to be delivered to come forward on the basis of this pot of regional investment fund that is available. As development PGS contributions are fed into that progressively over time, and the ODPM has already raised the point about the gap funding in the short term and the transitional arrangements, then there is funding that does potentially free up the development prior to that development having made its contributions through the system. It is a sort of fund that would enable individual development schemes and individual proposals to be drawn down to allow them to go ahead.

Q26 Mr Olnier: Yes, but very often what you think the infrastructure is going to cost now some 10 years down the road will be completely different and there is a shortage of funds to fill that gap. How is that going to work in the system? I am showing my age by coming back to the old Community Land Act. It was to provide social amenities and not so much for infrastructure. The infrastructure was a very difficult kettle of fish for us to move forward together with.

Mr Amos: I gather you are hearing from the Milton Keynes Borough Council in due course and they may be able to give you more information about figures and the amount of money in terms of gap funding and forward funding that is needed. Certainly, we have been active in supporting that development of the tariff, the super 106 approach. We believe that it is important to bring forward these other mechanisms notwithstanding the fact that there is a consultation paper on Planning Gain Supplements being debated.

Q27 John Cummings: In a nutshell, could you tell the Committee how well the current section 106 arrangements have worked in order to provide infrastructure in an efficient and timely manner.

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Mr Amos: The words “nutshell” and “section 106 agreement” do not usually go together.

Q28 John Cummings: Why are you all laughing? It is not a trick question.

Mr Amos: I think Professor Hennebery mentioned that various studies have shown how variable section 106 practice is. In some authorities there are well experienced negotiators with good experience of section 106 and the system works well.

Q29 John Cummings: I understand that, that has been said. Should I assume it has not worked well, it does not work well, or it can never work well?

Mr Amos: We believe that it presents serious delays to the system and we do not think it works well.

Q30 John Cummings: Any application causes delays. It is quite a simple question. Do you believe it is working well?

Mr Amos: No, we do not believe it is working well.

Q31 John Cummings: Why?

Mr Amos: We want to see improvements. We believe this could be one improvement to PGS but also, as I mentioned a bit earlier, the Milton Keynes tariff would be another improvement. Essentially, we are saying that the current 106 system does cause delays, it needs to be looked at seriously, there must be ways to find improvement. PGS is one and Milton Keynes is another.

Q32 John Cummings: Very briefly, what would you do to improve it?

Mr Amos: We would look at the Milton Keynes tariff system.

Q33 John Cummings: Without looking at anything, not Milton Keynes but what is your idea?

Mr Amos: We would roll out that scheme. We believe that is a good scheme and we would roll that out much more widely.

Q34 John Cummings: You have not got a better one yourselves?

Mr Amos: We helped to come up with that scheme.

Chair: A T CPA tariff.

Q35 Martin Horwood: We are facing the prospect here of having two systems running concurrently, section 106 and PGS, of having a whole new system of valuations and more centralisation. Does either of you think this is going to be a cost-effective and confidence-inspiring alternative to the current system?

Mr MacDonald: First can I say that anything we have said to this Committee, and in our evidence, is not to say that we do not support the principle and we do not see the desperate need for more funding in infrastructure. If we can have a Planning Gain Supplement system that can be made to work, then we would whole-heartedly welcome it because there is the need for this investment. We are saying that upfront.

Q36 Martin Horwood: Is this proposal what you have got?

Mr MacDonald: We believe this system has a number of deficits and defects within it and I think the Government would be hard pressed to achieve its own objectives through the system that it has set out.

Q37 Anne Main: Without going down a whole list of the deficits, do you think there is a risk that the PGS will turn planners into tax collectors? As you say, some parts of land would look immensely attractive in terms of if you could see yourself with a bit of a deficit in terms of a hospital, or a road, or whatever it is. Will that pervert their role in development? Will that mean that they are looking at the purse rather than what is best for the community?

Mr MacDonald: We would be certain, of course, as the RTPI, the professional body, that planners would fulfil their professional obligations. We have long argued, even with section 106, that the revenue generating function needs to be separated from the planning function. I will go back to a previous question, very briefly, about the ability to deliver affordable housing and the necessity to do it on site. One of the ways of doing that is through very strong policy guidelines, not only the funding guidelines, but very strong policy guidelines. We are meant to be creating sustainable communities, which means a sustainable community on a site. We need to strengthen the policy guidelines as well as doing this through a funding mechanism.

Q38 Anne Main: You said the revenue function is separate from the planning function. Are you envisaging a whole new tier of inspectors or people who are going to administer this? Is this a whole new subsection of Government?

Mr MacDonald: I think that is inevitable in any new taxation system even though it is self-assessment. We know within the normal taxation system, a large part of that is self-assessment but we still have a significant number of civil servants dealing with the existing taxation system.

Mr Amos: In the 1980s when town and land tax came to an end, the estimated collection cost was between five and 10% of revenue, so although it is serious, it is still a relatively small percentage. I think the separation of policy functions and the tax collection functions are probably best handled by the Valuation Office Agency that already have this land valuation expertise in handling the collection rather than local authorities. The consultation paper is seriously defective in not giving local authorities that reassurance about what happens to the revenue. We do not see the need for local authorities to be collecting the Planning Gain Supplement but we think the consultation is defective in not giving assurances about what local authorities would gain by way of revenues.

Q39 Anne Main: Is it centrally collected and honestly given back 70% of it?

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Mr Amos: Yes.

Q40 Mr Betts: There is one further issue which I am concerned about, and this is the issue of trying to determine what the value of the land is before it gets its uplift so it is going to be taxed. There are two issues. It is difficult enough to determine what the value of land is before permission is given but if there is, as I understand there is, a serious intention to take that value to include hope value, is that not going to be a very difficult mechanism to deal with? Secondly, is it not the case that in looking at the value of land before the public authority changes the potential value, it is not the giving of the permission for the individual site that is the important stage—and that is where I understand the current value is going to be determined—but say at the strategic development framework stage where the zoning of land may be changed from industrial or agricultural to residential, that is the real point where the uplift takes place and that is not going to get taxed under the system, is it?

Professor Hennebery: I must admit reading the consultation I was not clear. It depends on the statutory definition of existing value and planning value which I was uneasy about myself for precisely the reasons you say.

Q41 Chair: If you are saying the definition in the consultation paper is not clear, what would you suggest the definition should be, notwithstanding the fact that you are not in favour of it anyway.

Professor Hennebery: It depends what you want to do, if you want tax development value, that is defined normally as the difference between existing use value and market value for an alternative, permitted use. If it is agricultural land, for agricultural use and a new alternative use for which planning permission is granted, such as housing, the issue of hope value would not come into it if that is how you define it.

Q42 Chair: Can I clarify the example that Mr Betts was giving, if you have got agricultural land which is designated in the local plan to be suitable for residential development and then, subsequently, a planning application is put in. At which point do you think the value should be captured? Where should the start point be?

Professor Hennebery: I cannot say. The point that you choose depends upon the objective which you have.

Q43 Chair: Which would you choose?

Professor Hennebery: If you want to maximise revenue then you would define the start point for the uplift to be “existing use value”. You create all sorts of problems by that because people will be trading in land on hope values, for example, which will be considerably higher but there may not be any permission or zoning. People will trade white land, which is land with no planning allocation, with considerably higher values than existing use value if they think there is a chance of being allocated. It is an absolute minefield.

Q44 Chair: Do they not do that already?

Professor Hennebery: Indeed, yes but, of course, now because there is no tax developers are doing this on the basis that they factor in the risk of not achieving planning permission which affects the price they bid.

Q45 Chair: Does the TCPA want to comment on that particular question?

Mr Amos: Only that these valuations, yes of course they are complicated but they are carried out on a regular basis already by surveyors and so forth. In the past that did not seem to be a show-stopper in terms of the operation of this kind of taxation.

Chair: Thank you very much indeed.

Witnesses: **Ms Liz Peace**, Chief Executive, **Mr Mike Gunston**, Director and Chief Surveyor, British Land Corporation Ltd, British Property Federation, **Mr Louis Armstrong**, Chief Executive, **Mr Chris Hart**, Vice-chair, RICS Taxation Policy Panel and **Mr Ted Westlake**, Chartered Surveyor, Edwin Hill Chartered Surveyors, Royal Institution of Chartered Surveyors, gave evidence.

Q46 Chair: Can we start off by you briefly explaining who you are starting from my right?

Mr Gunston: Good afternoon. I am Michael Gunston from the British Land Corporation helping with the BPF today.

Ms Peace: I am Liz Peace. I am the Chief Executive of the British Property Federation which represents the commercial property industry.

Mr Armstrong: I am Louis Armstrong. I am Chief Executive of the Royal Institution of Chartered Surveyors which represents all sections of land property construction with 110, 000 members in every aspect of public and private real estate.

Mr Hart: I am Chris Hart. I am a fellow of the Royal Institution of Chartered Surveyors.

Mr Westlake: I am Ted Westlake. I am also a fellow of the Royal Institution of Chartered Surveyors.

Q47 Martin Horwood: Can I ask you to start by expanding on how you think the proposals for Planning Gain Supplement are going to impact on different kinds of development and I draw you specifically to brownfield against greenfield and commercial against residential.

Mr Armstrong: May I start with that. The general view is that we would find every aspect of the Government’s proposals to fund infrastructure through some form of tax to be a very good thing for society. The difficulty is in the detail. I think as far as greenfield is concerned, the classic case of a farmer selling land and the uplift being something that should be taxed is not as simple as it sounds. I am going to ask one of my colleagues to address that point. As far as brownfield is concerned, it sounds attractive to have encouragement for brownfield

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development by some form of differentiation of any taxation on brownfield but, again, it is not as simple as it sounds and I am going to refer that to the expert. The same is the case when we are trying to find out ways in which we can deliver the Government's objectives through some form of tariff arrangement or some form of supplement which would generate the infrastructure needed to go with development.

Q48 Martin Horwood: Precisely on the differential rate, given that the differential rate for brownfield sites presumably is at a lower rate, would that mean that you would get less revenue and, therefore, it would become more and more a greenfield scheme?
Mr Armstrong: I think the risk is that you would have unviable brownfield schemes so that it would not get done at all because the viability is marginal at best and if there were not some form of differential treatment, you might find you would get no revenue because there would be no development.

Q49 Martin Horwood: Surely if it is a percentage uplift tax, marginal sites would have very little uplift and therefore very little tax, is that not the argument against that? The main problem is that effectively it would have no revenue value so there is a financial incentive to develop greenfield sites both for the Treasury and the local authority that was going to benefit from this.

Mr Armstrong: That is certainly the risk. There is a real risk that the Government's objective of generating more housing on brownfield sites would be hindered rather than helped by a Planning Gain Supplement. There is no doubt about that in our view.

Q50 Chair: Is that the BPF's view as well?

Ms Peace: I should say our members, on the whole, do not do wide scale development on greenfield sites and the original Kate Barker proposal looking at housing development on greenfield was something that we did not see as being hugely applicable. What we now have is a proposal which it is suggested will apply across the board to all development including the sorts of things that commercial developers do, which tends to be buying a site with a building on it, knocking it down and building a better building that will yield a bigger income. When you try and apply this concept of a Planning Gain Supplement based upon an uplift in value to that sort of development, in our view it becomes hugely complicated. We think it will bog the process down in complexity around the issues of valuation, that you will end up with delaying payment from the site, if you ever get it at all, it may reduce it in some cases and it will not facilitate the provision or the necessary infrastructure.

Q51 Martin Horwood: We will come back to those detailed questions but can I draw you back to the original question which was about the impact on greenfield and brownfield and also residential against commercial.

Ms Peace: In terms of an impact, I have no doubt that this will, if you apply it to a commercial development, deter an element of commercial development. People will find it disadvantageous to be dragged into the whole PGS system when they are looking at doing a commercial development. What we will see is a slowdown in the sorts of development we want to see from our members' perspective in urban areas. British Land will be put off doing developments like this.

Mr Gunston: It is absolutely feasible and it will certainly slow down the process. That is the issue that one has to be concerned about.

Q52 Anne Main: You mentioned the differential between the valuation of the site with the old building on and the site with the new building on. Who do you envisage will be doing the valuation?

Ms Peace: I am going to defer to our valuation experts on the right. Effectively, the current owner under the system being proposed has to work out what that number is going to be and have it certificated by his valuer and put it forward. This is not a precise science and you said you wanted to come on to that later, but the scope for disagreement around that is huge.

Q53 Anne Main: I want to park that a bit. Talking about the differential between the sites, if the Government does treat brownfield sites differently would you like to give us a definition of what you think a brownfield site should be considered to be and, after that, can I ask you to consider should there be a difference between brownfield and contaminated land? If there was, do you think there would be even more hurdles being introduced into the system?

Mr Westlake: The first question is a widening of the definition of brownfield.

Q54 Anne Main: What would you consider to be an acceptable definition of brownfield? Do you think there should be a differentiation between that and contaminated?

Mr Westlake: Obviously we take brownfield to be synonymous in the Green Paper with previously developed land, i.e. land which has previously or actually has a building or permanent structure on it.

Q55 Anne Main: And its curtilage?

Mr Westlake: Yes, indeed, its immediate curtilage. It would not necessarily be the whole area that you would want to develop. It needs to be wider than that because there are all sorts of moribund tracts of land in this country, old mineral workings, waste tips and so forth, that have not been remediated as such and look pretty bad. We call them brownfield but they are not technically brownfield. I think they would need to be swept into that particular pot, that is point number one. Should there be a differential, is that what you are saying?

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Q56 Anne Main: Should you differentiate between brownfield and contaminated? If so, what would you suggest should be done but then would that make more hurdles and more complexity?

Mr Hart: It is difficult to differentiate what you mean as contaminated. We already have land remediation relief which relates to a tax break on land which has to have remediation to make it developable so long as the work carried out on the land is not work that we carried out as part of the development as a whole. A classic case here is the removal of asbestos in an existing building. The way you have to remove asbestos, take it off site and dump it on hazardous waste sites, is something on which you can already get land remediation relief. It is quite hard to draw the point at which you say something is contaminated and is not contaminated. We know when something is sufficiently contaminated to predicate against a particular form of development but trying to draw a differentiation between brownfield and land that was then contaminated on brownfield would be pretty difficult.

Mr Westlake: Basically, I think the point is the purpose of that is presumably you are saying you want something that will help encourage brownfield development.

Q57 Anne Main: I am not saying anything. I want to know what you want.

Mr Westlake: Fair enough.

Q58 Martin Horwood: There is a site in my constituency which has large gas bullets in which are removing from possible development use a large area within an urban area which otherwise would be very good for both housing and commercial development. It is not exactly contaminated but certainly it is not appropriate for residential development at the moment. Is that the kind of area that you think would be appropriate for PGS revenue to be used in remediation work if that can be converted?

Mr Hart: The way that we understand, it is proposed to calculate PGS revenue would be on the uplift of the value of the site at the point of the gaining of planning consent. When you ascertain that value you would take into account the development cost of the site. If you had to remediate the site or remove contaminated material, those would be taken into the costs. The bigger the costs of development, the more difficult the development and the lower the uplift. It is, to a certain extent, self-balancing. There is a lot of land in the UK which is redeveloped using central Government or EU grants where the basic concept is that the land value does not increase as a function of the planning consent.

Q59 Martin Horwood: It would be a very brave developer who took on that kind of site in its current state.

Mr Hart: Places like Tyne Valley in Newcastle are ones where this happens but supported by EU grant.

Mr Westlake: The big difficulty of that is a brownfield site such as that may well not have a very high value for development, it may have a very low uplift, it may even be "negligible" therefore it is not going to be self-sustaining on financing in terms of providing money for its own infrastructure, that money under the PGS system is going to have to come from the central pot. The big problem is, and it is really the cardinal concern that we have, if central Government is collecting the money and redistributing it, how, when, why and where will it be spent? Your brownfield site might be waiting an awful long time because it is not self-sustaining in its own PGS. That is your big problem. With the greatest respect, this is not a political case for one second but there is a concern that public sector provision and control over infrastructure provision could well lead to uncertainty and delay more so than when the private sector is able to do it and seek to provide it. That is the big problem for brownfield land; any major development land but particularly brownfield if that is what you are asking about.

Q60 Mr Oler: Just a quick supplementary connected to a question that I asked the group giving evidence before. Do you favour any exemptions for the quarrying industry, for the minerals industry or for the sports industry? The Barker Report only spoke about housing but this planning thing is going to be all-embracing. Do you think we ought to stick to housing?

Mr Westlake: Anything that is an exemption for any category of property or development spells distortion in the market, it spells favouritism of one type of development over another. We do not think that is particularly desirable.

Q61 Mr Oler: A simple yes or no to stick the Planning Gains Supplement to housing only.

Mr Westlake: It would be a nice idea in one way but you then have problems in mixed use development. Where does your housing begin or end in apportioning values, et cetera. It is rather uncertain and airy fairy, I am afraid.

Mr Hart: I think the answer as far as I would be concerned would be no because a lot of development now is mixed, particularly in the areas you are talking about, for example sports development. A sports stadium will often have a great deal of infrastructure around it. It may have residential but it usually needs commercial to make it pay for itself. Once you get into composite development it is very hard to split out what is and what is not exempt. As a generality, I would say the answer to the question would be no.

Q62 Chair: Ms Peace, firstly, to pick up on something you said before, which was you seemed to be suggesting that land values would be extremely difficult to value, although my understanding is valuers are doing it all the time on complex sites, why did you think that would be so complicated for commercial brownfield sites? Secondly, I understand your position that you would prefer commercial sites not to be within this at all but if they are going

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to be covered by PGS, how does PGS disadvantage commercial development when it would be taken into account in the land price and how do you think the proposals should be modified in order to ensure that commercial development is not unduly disadvantaged?

Ms Peace: In terms of commercial development quite often you would not be looking at a purchase, you would be looking at a developer who has owned a site for a length of time and decides at some point in his ownership of it to redevelop it. In the whole development process you would then, through a PGS system, be taking quite a large chunk of money out of the site just at the time when it was probably not very helpful to the viability of the actual development. Mike will expand on a typical type of development site. We do not think PGS is the sensible way to extract the contribution for infrastructure, it fundamentally misunderstands the stages at which value is added to development in commercial development sites and there are other better ways of extracting the contribution to infrastructure, which I would have to stress we do not dispute. We accept that development needs to make a contribution but we feel that PGS is the wrong way to do it. I am sorry, I have forgotten your first question.

Q63 Chair: Why you thought that valuers would have such a problem in valuing property when they do it all the time.

Ms Peace: Can I defer that to one of our valuation experts here because of the technicalities, a quick survey.

Mr Hart: One of the real sticking points from a valuation perspective is an assumption to be made that everybody is freehold with vacant possession. That is a major sticking point because we are not valuing what is there, we are not valuing the leasehold interest, the interlocking interest, the marriage value between the various leasehold interests available to the freehold, we are valuing on a presumption that it is freehold with vacant possession. An extreme example of where this would predicate against the potential developer would be a farmer looking to diversify who might have a three-year tenancy, he might be half way through a rolling three-year tenancy and he wants to redevelop some outbuildings for offices or for holiday homes or cottages. He does not have a freehold interest with vacant possession. Therefore, PGS applied to the small-medium sized enterprise which had a leasehold occupation could prevent development because of the presumption in valuation that you have a profit which you can grasp. On the other three year farming tenancy you do not have a freehold, you could never realise the freehold value.

Q64 Chair: Mr Gunston, would you like to give an example of how a complex commercial development works?

Mr Gunston: I was going to say that there is another twist to that as well. The presumption in the consultation paper is that the granted planning consent will lift the value but you may not have the

frontage of the site or whatever, you may still have to acquire it, so there will be a lot of value tucked away in that particular interest still to be acquired. There is somewhat of a presumption in the proposals as set down so far. It is true also that we do not necessarily go out as an industry and buy buildings every time. Quite often they are within a portfolio for an established period. We have examples in our organisation where we have developed after 30-odd years gradually acquiring interests. If you have got to that stage, the addition of PGS might distort the equation, the risk factors may not have been included in that example.

Mr Armstrong: If I can interject before I come back to the residential point that Martin Horwood made. Ted Westlake, who has written a book on development land tax based on the previous 50 years' experience, could demonstrate, and we are happy to submit more evidence on this, how difficult it is in practice and how previous attempts at some form of capture of uplift in value have failed partly because it did not have all-party consent and partly because of the difficulties and long lengthy process of advisers conspiring with each other over these sorts of issues, valuation in this case being more an art than a science. Might I come back to Mr Horwood's point on residential. Although Kate Barker had hoped that there would be much more development land coming forward for housing, and affordable housing would be made easier and there would be more of it, everything we hoped for, in practice the RICS's view is that there would be disincentives to bring forward land and the extra costs of PGS that would not otherwise have been paid under the existing regime where so many smaller developments are below the threshold for section 106 tariffs, would then have to add the cost to the housing. Therefore, not only would you not get a lot of land coming forward, as Kate Barker had hoped, but you would also run the risk that housing itself would be more expensive because of the additional cost of the tax, so it would not seem to the RICS to be a natural way of achieving that particular residential objective.

Chair: If you want to provide additional evidence can I suggest that more helpful than a detailed history of the debate would be some positive suggestions as to how the PGS could be improved.

Q65 Lyn Brown: Can I ask why you think it is so important to retain the link between the developers' contributions and the provision of infrastructure at a local level, and can I also ask what you think would be a reasonable or acceptable amount for the Government to obtain to invest in national infrastructure projects?

Ms Peace: Shall I kick off on activity and then again I will ask Mike to come in with specific examples? This is speaking now very much from the commercial perspective. When a commercial developer or a commercial landlord wants to do a development he almost inevitably meets a degree of opposition in the area in which he wants to do it. After prolonged negotiation usually a deal is reached and as part of that deal there is a section 106 payment which brings some amelioration of the

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impact of the development to the local authority, so that the local authority which is going to feel the effects of the development also gets the benefits of the development and the developer himself will almost certainly have a hand in providing that degree of mitigation and that infrastructure. The whole thing means that at the end of the process—and not everyone is perfect, I hasten to add—there is a degree of win/win: the developer gets his development, the local authority get the amelioration and it is done within a timescale that both parties can agree. Then a few years later the developer comes back again for another tranche of development and the inclination of the local authority is to think that this chap means well, he is okay, he has got the local interests at heart, so you create a sort of community of interest between developer and local authority. If you break that link, if local authorities cease to receive back the full benefit arising from the development that has been done, they are going to be less inclined to favour the development and we certainly envisage from the commercial development perspective a lot more contested developments, a lot less development, a lot less rebuilding of our somewhat derelict town centres and also a delay in the provision of any infrastructure that is agreed because it is all going through this loop through central taxation.

Mr Gunston: There is an undoubted nexus between the development company and the individuals, the local people, where the development might be situated. There are undoubtedly out of that discussion all sorts of advantages that the community might extract out of the scheme have a degree of appeal and I think, as Liz Peace says, that there are extensions. We have ten-acre sites, we have larger sites, but there is frequently the question of going back to renegotiate a new scheme, an additional scheme, for an extension or whatever, and I think that out of that relationship it is undoubtedly much smoother. If that debate is removed, or largely removed, I do really see that the process will be slowed down. I guess above all the biggest concern is that if there is this central pot of money the recirculation of it to that community has commercial ramifications as well largely because, if it is being negotiated at the locality within the scheme, often a lot of those improvements that have been negotiated will be undertaken by the developer. If the funds are coming out of a central pot and then getting redistributed there is a question of timing as to when those items are delivered and it could have a very serious slowing down effect on the development process going forward.

Q66 Chair: Evidence that we have received before you got here, from the Treasury, is the absolute opposite, that the national infrastructure fund could precisely forward-fund and that the difficulty with section 106 is that the development has to be complete before the infrastructure can be funded. Would you not accept that that is as likely as your experience?

Mr Gunston: If the process was pump-primed and there was a substantial amount of money therein going forward which could be then utilised straightaway, that undoubtedly would be of assistance and would overcome a degree of the timing issues, the commercial issues.

Q67 Lyn Brown: You did not tell me what percentage you thought would be reasonable to take out of the Planning Gain Supplement and put into national projects, but the second thing I think I heard you say was that you fear that commercially there will be less profit for the developer because the infrastructure that might be accrued by the Planning Gain Supplement would not be undertaken by that specific developer but the business might go elsewhere.

Mr Gunston: I apologise if I gave you the impression I was even alluding to profits. That was furthest from my thoughts. It was purely the deliverability: if you had got a scheme that was dependent on a piece of infrastructure, a new roadway or something that had to go in before the scheme was built, and if that roadway was not delivered, whereas the developer in the present situation would probably build a road as a preliminary and then move forward. What I am suggesting is that under the proposals, as I understand them, that may not be the case and the timing is not spelt out in the paper as to when it might become the case.

Q68 Lyn Brown: A percentage is an answer that I would like to hear, but the second question is, you have talked about how important it is to have local relationships, local partnerships for ongoing projects for speed and ease when the project is on the table. Do you think that could be in any way constrained or made more difficult by the money going to the regional authority rather than the local authority?

Ms Peace: Yes. For as long as the local authority are the planning authority and decide the planning applications they will find it equally difficult if the money is hauled back into the regional level. There is not a great deal of commonality of interest between the tip of Cornwall and what is happening in the suburbs of Bristol, for example.

Q69 Mr Olnier: You are absolutely right but it has taken several years to get section 106 arrangements into some sort of order and some sort of recognition. Is it going to take as long to get the new arrangements into order?

Ms Peace: We would rather we did not proceed with the new arrangements.

Q70 Mr Olnier: So you do not want the new order to go forward at all?

Ms Peace: We do not want Planning Gain Supplement at all. We would like to see an amalgamation of building on the improvements that have started to be put in place of section 106, and they have barely had any time to take root, together

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with, where appropriate, the development of a tariff based option, so we would rather not have PGS at all.

Q71 Chair: Is that predicated on the basis that PGS would not raise any more money than 106?

Mr Westlake: It would have to.

Q72 Chair: Is your view predicated on—

Ms Peace: It is predicated on the basis that it would take a lot longer and be more difficult to raise a sum equivalent to or even bigger than section 106, and therefore the development process, for instance, would be slowed down.

Q73 Chair: What is the evidence for that?

Ms Peace: The simple practicalities of how this scheme, that we have seen only very roughly outlined in the consultation document, would work in practice and the knowledge of how difficult it is to arrive at an agreed valuation. It does not have to be done at the moment.

Mr Westlake: In terms of the valuation process and why I do not think there can be a fixed proportion, to go back to your question, you will not know for several years if the scheme comes what your tax take is going to be and what your infrastructure costs are going to be. You could have quite a lot of development which, taking the brownfield site, is not self-sustaining off its own bat in PGS terms, and therefore it will be several years before you know that you could have deficits in certain areas and you could have surpluses in certain areas. To give a very quick example, if you are planning a tax take based on largish schemes as being the prime sources of revenue, take, say, King's Cross, the London Olympic site, when that starts development how are you going to value that if that comes under the new regime? It is very uncertain what the tax take is going to be, and however they work their figures the fact that the Treasury is working on a valuation based scheme rather than anything related to actual sales or disposals where money changes hands and you know what values and prices are is where you get your big difficulty.

Q74 Mr Betts: This almost makes an assumption that everything is fine now, is it not? There is no problem with section 106 agreements. Developers never ever complain about the delays that happen with them. Is that not one of the reasons this is happening, because of all the complaints about 106 agreements and the amount of time and the inconsistency between one authority and another?

Mr Armstrong: I think there are special solutions. If one is looking for a better way of funding infrastructure, which we all agree is needed to provide the houses we all agree are needed, using methods to make it as certain and transparent and fair and quick as possible, we believe, and I think the BPF do as well, that it would be better to have a closer look at further improving the section 106 agreements, helping the local authorities who do not have experience in making a really successful 106 agreement with developers, extending perhaps the

106 remit a bit more widely, and then you have a direct relationship between the infrastructure needed and the money being provided locally to provide that infrastructure. PGS will have no direct link between the money raised and the cost of the infrastructure, and whilst the Treasury can be optimistic at its ability to hypothecate, ring-fence and distribute quickly centrally, regionally and locally, I do not think those in the market place with previous experience of the way the funding of infrastructure has worked will think that that is a likely runner. It is not a better solution. The better solution would appear to be to allow further consultation on 106 and the Treasury in its consultation paper has not allowed for that possibility, to see whether, with more detailed modelling, that could be made to work to satisfy local authorities that they will get the infrastructure directly funded within their remit—and the nexus point is important—and to try and make sure the Treasury do not take an over-optimistic view of the realities of providing the funding through the mechanism that they have raised.

Q75 Mr Betts: Let me just come back on that. I suppose the argument might be that just having a tax, paying a sum of money out, might actually be easier for developers and not having a minute to argue about how much contribution they make to a 106 but the nature of it. We do not think things can get bogged down in those sorts of detail. Just coming back further on what you have just said, is the implication there that by improving section 106 we can get more contributions from developers out of it and, if it is, that is probably a slightly different view than the BPF would have of the situation.

Ms Peace: If I can pick up both that and your earlier point, yes, indeed, it is true the industry has complained extensively about the way section 106s are handled, but there is a huge amount of difference between local authorities who handle it well and local authorities who handle it badly and a great raft of local authorities who do not do it at all, so there are quite a lot of developments that are probably of a size such that there could legitimately be some degree of section 106 where it simply does not happen. I believe there is a study that has been commissioned by the Government looking at the scope of section 106. We did one of our own about five years ago so it is substantially out of date, and I think we found that there were only about 10% of developments that actually did attract a section 106 negotiation and settlement. I think there is scope for huge improvement. I think also the reforms that have been introduced to the planning system through the Planning and Compulsory Purchase Act facilitate that by requiring a greater degree of strategic planning and thinking up front when you are planning for development in an area. If indeed you are going to do that and a local authority is going to do it well that makes it a lot easier to start thinking strategically also about the infrastructure you need and how you can then allocate the costs of that infrastructure, thereby turning your section 106 effectively into a form of tariff, but I would stress a

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very flexible form of tariff; I do not think we want a rigid five pounds per square foot across the country. That would not work. It has to be tied to local circumstances, local strategic planning, local development, local infrastructure needs, so I think basically what we are saying is that you carry on with the improvements to section 106 and perhaps accelerate those improvements and look at imposing a greater degree of strategy on how it is developed.

Q76 Mr Betts: But again we come back to the point: does that mean getting more value for the taxpayer for local authorities out of that system? Presumably we are not suggesting that the authorities that do 106 well should get less money in the future and those that are not doing it should get more?

Ms Peace: Absolutely. There is capacity for more to be negotiated out of the system, yes.

Q77 Chair: Can I ask a very specific question on one of the RICS proposals? You suggest on PGS that it should be assessed at the difference between planning permission value and 120% of current use value rather than 100%. Can you briefly explain the rationale for that?

Mr Hart: Yes indeed. This in fact is one way of imposing a *de minimis* provision, by uplifting the CUV. This was the way it was done for DLT and other taxes of that nature. It allows the marginal schemes to drop out. We talked about brownfield land earlier; heavily contaminated brownfield land could be the point. As long as there is a sensible *de minimis* limit then it would be a lot easier to work the tax. There are a number of ways of doing it but one is to take 120% of CUV or a similar figure, and another one is to have a tax based *de minimis* limit, to say that if the tax payable is less than a figure then it falls out of PGS, because you get into valuation margins where it becomes very hard to prove whether or not some of the uplift is taxable or not. The valuation margins should be probably on a situation like this plus or minus 10%, and valuations done on the basis for taxation valuation generally used by the Valuation Office Agency on big and complex estates can be plus or minus 30%, and this was discussed during consultations in 2000.

Q78 Anne Main: Just on that point, the *de minimis*, we were given advice earlier on that the *de minimis* level being considered possibly was down to a single unit. You could possibly be even thinking of a large extension. I do not know if that would be captured by a single unit, transforming a two-bedroomed house into a four-bedroomed house. Do you have a view whether that would cause more chaos to the system if we did go down to a *de minimis* unit or even large extensions on individual units?

Mr Hart: We found during the consultation process that the position was changing all the time. Originally it was small home improvements that would be omitted and then it got to be all residential improvements would be omitted. It is very difficult when you get into small valuations to make them stick. If somebody had a house, for example, worth £500,000 with a single garage, and they demolished

the single garage and put a very splendid double garage there, reworked around the front of the house, put in new parking areas, generally speaking smartened the place up and spent £50,000, they would need the planning consent to put the double garage up. They have spent £50,000 in expenditure. The house is now worth £575,000. Is that £25,000 gain due to the planning consent or the expenditure and works that have been carried out? You have got an immediate argument. If you are too tight on the uplift for planning gain it will be very hard to sustain the valuation argument.

Anne Main: Yes, I can see that.

Chair: We are really running up against time. There is one more major question.

Q79 Mr Betts: Looking at the issue of current use value, and we have been told before that that is going to include an element of hope value, is that not going to be incredibly complicated?

Mr Westlake: We assume you are actually not going to include hope value in current use value as drafted.

Q80 Mr Betts: This is not the information we have been given.

Mr Westlake: The way it is drafted it says no.

Q81 Mr Betts: Right, but if there were to be an element of hope value included would that be a big complication?

Mr Westlake: It would be a valuation complication, yes, a large one.

Mr Hart: It would not be a large complication. It would just make the arguments rather more drawn out.

Q82 Martin Horwood: I feel I need to declare an interest because I have just had my garage demolished. I have a question about the timing of the valuation. Mr Westgate seemed to be suggesting that any system that was not based on real sale values but on valuations was problematic, but the RICS position seems to be that you want the liability for PGS to be established well before development commences. Our information is that the valuation is likely to take place at planning permission stage. Is that something you are in favour of or would you prefer it to be closer to the actual sale?

Mr Hart: It depends what you mean by planning permission stage, because this is something else that came out during the consultation process. As drafted, it suggests that it is a full planning consent, which will be that all reserve matters have been agreed. Reserve matters can often not be agreed until the end of a development, or even in some cases, so on the basis of how it was originally drafted we took the view that we had to have a point and we were getting the impression during the consultation that we had now moved to a point where the valuation date would be when sufficient planning consent had been achieved in order for development to commence, which is a different ball game.

Q83 Chair: Would that be acceptable? Would you prefer that?

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Mr Hart: As we pointed out, if you had to wait until complete planning consent was achieved it might be after the development had occurred, in which case there would be no planning application.

Q84 Chair: So you would prefer it?

Mr Hart: We pointed out that it would not work in the way drafted.

Mr Westlake: In other words, I think what we are saying is that you should have several tax points, not just one tax point, not just when you start development as your date for due payment with a retroactive valuation date to when you had planning permission. It should be at the time of sale or disposal by the landowner to the developer and then onwards.

Q85 Martin Horwood: This seems to be so likely to create a lot of work for chartered surveyors that I think you ought to be available.

Mr Armstrong: It is a planning interest, not necessarily of any particular sector.

Q86 Martin Horwood: If we link it to the commencement of work, as Mr Hart just said, what if you do not commence the work? What if you just get planning permission and sell the plot with planning permission?

Mr Hart: As drafted, you value at the point the planning consent is achieved and then, a bit like the way stamp duty and land tax now work, you effectively buy a development certificate by paying the tax at the point of development, which is something we do not agree with, by the way, because it means that you would go into the commencement of the development with having an uncertain tax liability, which the bankers would not fund. Yes, we have been commenting on the way it is drafted, not necessarily the way we suggest it would be done.

Chair: I am conscious that we could go on and on for hours but we cannot because we have another evidence session. Thank you very much indeed.

Witnesses: **Mr John Best**, Chief Executive, Milton Keynes Council and **Ms Jane Hamilton**, Chief Operating Officer, MK Partnership, **Councillor Keith Mitchell**, Chairman of the Assembly, and **Mr Martin Tugwell**, Planning Implementation Director, South East England Regional Assembly (SEERA), and **Ms Natalie Dear**, Policy, Performance and Development, Nottinghamshire County Council, gave evidence.

Q87 Chair: I am sorry for the slippage in time but, as you will have seen if you were in the evidence session, we were enjoying ourselves. Could we start off this session as before, if you would not mind saying who you are?

Ms Dear: I am Natalie Dear, Nottinghamshire County Council Strategic Planning.

Ms Hamilton: I am Jane Hamilton. I am the Chief Operating Officer for Milton Keynes Partnership Committee.

Mr Best: John Best, Chief Executive of Milton Keynes Council.

Councillor Mitchell: Keith Mitchell, Chairman of South East England Regional Assembly and Leader of Oxfordshire County Council.

Mr Tugwell: I am Martin Tugwell, Planning Implementation Director with the South East England Regional Assembly.

Q88 Chair: Do not all feel obliged to answer every question; otherwise we will never get down the list. To what extent do you feel that the Government's consultation on the PGS proposals has been undermined by the fact that no proposal has been made for the rate at which it would be levied?

Councillor Mitchell: I think, Chair, it gives us an opportunity to make some suggestions and so I am not entirely unhappy about it. It makes one feel that there is some flexibility. I have listened to the rumour mill and I have an idea of what the rumour mill says it might be and it sounds a fairly sensible level. I think we need to keep it low. The figure I have heard bandied about is the VAT rate up to 20%. This feels as if it might work because there is history here when

high rates have led to subsequent abolition and I think we need to remember history if we are going to take this Planning Gain Supplement seriously.

Q89 Chair: Is that based on research that SEERA have done that you are suggesting 20%?

Councillor Mitchell: No, I am sorry. It is the Westminster rumour mill.

Chair: The Westminster rumour mill; okay.

Q90 Martin Horwood: Twenty per cent is a low rating.

Councillor Mitchell: It is compared with previous attempts to introduce Development Land Tax, as I understand it.

Q91 Chair: It was 100%. Is that generally speaking the view of the rest of you?

Mr Best: Chair, could I offer a Milton Keynes view, which is that we are against the principle of the Planning Gain Supplement because we think that the tariff that we worked up jointly with Milton Keynes Partnership is a much more effective mechanism, so our preferred rate would be zero, for reasons that we can go into in the context of how the tariff would work.

Q92 Chair: We will come later if we may to why you think the tariff is great and I am not going to ask it; somebody else is, so can we put that to one side?

Ms Hamilton: Chair, I think the extent to which there is no predetermined rate does cause some difficulties in terms of certainty in the system. Certainly in talking with developers that we are working with at the moment that is one of the main concerns, that it is very difficult to make any

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comparisons with any alternatives, whether it is a tariff or whether it is existing section 106, in the absence of any clear information on the level of the rate that might be set.

Q93 Mr Betts: Have you got a view when you come to collect Planning Gain Supplement as to what proportion should be retained locally if that is the sort of system we are going to end up with and what should be distributed through the national pot? There is some nodding of heads that someone wants to contribute to the debate.

Councillor Mitchell: The Regional Assembly has given a cautious welcome to this consultation and it is on the basis that 100% will be distributed locally; none will be taken by the Treasury, and our view is very clear, that this should be a low tax and a local tax. I am going to give you some mnemonics during this discussion and the first mnemonic is KILL: keep it low and local.

Q94 Chair: What do you mean by “local”?

Councillor Mitchell: I think it should be collected by the authority that issues the planning application and section 106 works very well in two-tier areas—well, it does in the ones I know—in terms of the distribution and the negotiations between the county council and the district council because the district council grants planning application, the county council take most of it for its schools and highways, and I believe if the section 106 can work in terms of the allocation then a Planning Gain Supplement can. There is incentivisation here. If planning permission is seen as getting funding there is strong incentivisation for the local authority. Given where I come from, my Party’s national stance on Planning Gain Supplement is not the same as mine, one of my views is around the incentivisation that it brings.

Q95 Martin Horwood: Is there not then a huge problem that some areas with overwhelmingly greenfield sites with large amounts of uplift and therefore large amounts of revenue will raise pots of money for this and local authorities which have predominantly brownfield sites with little uplift will raise almost nothing?

Mr Best: That is a very good point and I think you can probably test it, although not yet, in Milton Keynes because Milton Keynes has got a much higher proportion of greenfield than elsewhere.

Q96 Martin Horwood: Does your tariff distinguish between—

Mr Best: The tariff is applied,—and Jane Hamilton may be able to go into more detail as devised so far—is applied to greenfield areas where basically there is a very simple proposition to say that it is a blank canvas with no infrastructure. There is nothing to clear away, no community to negotiate or wrestle with, no existing organisations to manage greenfield. Even in that environment, where we have, through the tariff, increased roughly three-fold the amount of contribution from development, the contribution is not sufficient to cover the costs of infrastructure that

would be required to support the level of housing growth. Even in that most favourable of circumstances the tariff and the sorts of levels that we are pitching it at,—and we believe we have got as far as the market will bear before starting to discourage development, which would be counter-productive—there is still not enough. I do not have an answer to your point because in all the areas that I can see, not only the greenfields in Milton Keynes but also the brownfields in Milton Keynes—and I would say there is a third category which is existing estates, which do not really count as despoiled brownfield or contaminated land but nonetheless come with a very different mix of costs and liabilities to them—in no case is a tariff or an equivalent level through Planning Gain Supplement plus section 106 going to be sufficient to meet the needs for infrastructure.

Q97 Martin Horwood: Does the tariff differentiate between brownfield and greenfield sites or is it flat?

Ms Hamilton: The way in which the tariff is set up at the moment it only applies to defined expansion areas in Milton Keynes, of which I think I am right in saying there are no brownfield elements at the moment. It does have a remnant of some existing communities but all of the areas covered by the tariff are greenfield. It is set up under the planning powers of Milton Keynes Partnership and our planning powers do not extend to any existing communities and therefore it does not hit on any defined brownfield sites.

Q98 Martin Horwood: So if you demolish something and replace it on a brownfield site there is no tariff whereas if you build an extra building on a brownfield site there would be a tariff in theory even though there are not many locally, you are saying?

Ms Hamilton: The tariff applies outside of the existing area within Milton Keynes, the existing built-up area. In fact, English Partnerships itself is carrying out various regeneration projects within the built-up area of Milton Keynes, but the tariff does not apply there because the partnership committee is not the planning authority there; the council is the planning authority, and so the tariff which has been quoted a lot is really a broad section 106 agreement but only under Milton Keynes Partnership’s planning powers which are in a very clearly defined greenfield area and therefore the question of whether or not this tariff applies to brownfield or to other sorts of projects simply is not there.

Martin Horwood: Would you like it to be?

Chair: Since we have got on to this can we deal with this now? Lyn, would you like to ask the questions about how the Milton Keynes model might or might not apply elsewhere?

Q99 Lyn Brown: Is there anything more you would like to say about the Milton Keynes model that you have not so far covered and, if so, can you do it now? The second bit is can you tell me if you think it would easily apply to other bits of the country and, if so, why?

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Ms Hamilton: It is something that I have not covered. It covers a defined area. That area will include about 15,000 homes and about 500,000 square metres of commercial development. The tariff itself is set at a level which has been quoted at £18,500 per dwelling or about £66 per square metre of commercial floor space. What it does not include, in addition to that, and this is quite relevant in relation to some of the issues you have been discussing, is provision for affordable housing so affordable housing must be provided on top of any payment of tariffs and also free land for schools, open spaces and community purposes must also be provided on top of any tariff payments, so the real cost is around about £35,000–£40,000 per dwelling. It does apply within a defined area. It is very much a broad strategic section 106 payment and it is set against very clearly defined master plans that could be costed up so it is set against a pre-defined planning agenda in Milton Keynes where the costs of growth can be clearly set out. When the monies are to be applied back in to the locality they are divided 50/50 between what is loosely called strategic and local facilities. The local facilities are the normal ones that you would expect under a section 106 payment, such as schools, open spaces, community facilities, and those are facilities within the areas from where the tariff is drawn. The strategic facilities are ones such as higher level strategic transport, higher education, further education and health, the payments that would feed into facilities that operate at the city or town level rather than just within the localities from where the payments are drawn.

Q100 Lyn Brown: Can I ask you if you have done comparators with other authorities and what they are getting out of section 106 to see whether or not you are doing well with that investment.

Ms Hamilton: We have done some comparative analysis. It is difficult, I think largely because the level of affordable housing, and in particular the level of social rent housing, varies from area to area and that has a major impact on the costs of development. We have done some comparators and in our view what has been achieved in Milton Keynes probably is a very good level of payment. I think it partly depends on one last point I wanted to add which is the fact that Milton Keynes Partnership is a sub-committee of English Partnerships and via English Partnerships we have secured approval from Treasury and ODPM to provide an element of forward funding which a normal section 106 agreement, via local authority, could not do and that is a big difference between a normal section 106 at whatever level and the way in which the tariff has been set up in Milton Keynes.

Q101 Chair: I think the key question is how far that approach can be applied elsewhere in the country as an alternative PGS. One of the witnesses that we had before was sort of suggesting that they would prefer the tariff approach across the whole country so if either Jane, John or Martin can clarify that.

Mr Best: I wanted to clarify the question that Martin Horwood answered before about whether it is transferrable to brownfields, also clarifying Jane's answer about it only applies on greenfield. Outside the greenfield areas where we have the two types of previously used land that I mentioned, we do start from the same figure that the tariff prescribes but we interpret it in the light of particular local circumstances on that site. There is a particular site that I have in mind where we started at £18,500 and we have ended up, because it has got contaminated land and heritage buildings that need to be restored, achieving nothing unless the income received by the developer on that site proves to be above the threshold.

Q102 Martin Horwood: You effectively discount the tariff for heritage and for contamination?

Mr Best: You discount for extra over costs.

Q103 Chair: That was under your section 106 powers especially?

Mr Best: Yes, it is the same powers. The tariff is under section 106 powers within the MKP area and elsewhere the local authority, Milton Keynes Council, has full planning powers.

Q104 Chair: Without the forward funding?

Mr Best: Without the forward funding, although in that specific case it did have sustainable communities plan funding in order to get it off the ground because of its involvement strategically.

Mr Tugwell: I think our view is the circumstances in Milton Keynes are quite unique. You have primarily one single landowner and a very clear mechanism within which to operate. The progress that has been made with Milton Keynes and its tariff is very commendable. Whatever happens in terms of Planning Gain Supplement it should take allowance of the fact that there is a tariff system already in place and should not undermine the work that has already been done within Milton Keynes to develop that. Having said that, as I say, the circumstances there are quite unique. If you look at other locations around the region, you are often talking about areas where there is growth, where there is a multiple number of landowners, and a number of deals are going to have to be brought together and that does complicate the situation. Also, there is not the vehicle, if you like, that you have within Milton Keynes where you have a single body that is able to forward fund. That is why within the regional funding allocation document that the region submitted earlier this year, we identified the crucial part that a Regional Infrastructure Fund would play in allowing the public sector to act as a catalyst to forward fund investment in infrastructure that enables development to come forward the cost of which can then be recovered partly through a Planning Gain Supplement. I think you need to think about Planning Gain Supplement very much as part of a wider process, one that involves setting up this type of Regional Infrastructure Fund. It also means recognising that it sits within the planning system and, going back to your point about

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brownfield sites, greenfield sites and recognising that planning is looking at areas much bigger than one individual local authority because we do live and work in different areas. Within regional planning you have sub-regional strategies looking at the needs and the issues in a particular sub-regional area and looking to understand what the infrastructure requirements are. It may be, and we have the examples within our region where there are some major greenfield sites potentially going to come on-stream as part of a sub-regional strategy which may indeed generate a substantial amount of uplift but that may need to be used to fund investment and infrastructure in other parts of that sub-region.

Q105 Chair: Can you give an example?

Mr Tugwell: The example I am thinking about is what we call the South Hampshire sub-region where we have proposals as part of the South East Plan for two major strategic development areas that are programmed to come on-stream towards the middle part of the plan period. These are quite substantial greenfield sites. They will, if you had a PGS system in place, generate potentially quite significant sums of money. Equally there are needs for investment in infrastructure in support of the urban areas where there is a re-generation agenda where the uplift will not be as great as it would be on the greenfield sites. You have a strong sub-regional partnership in the South Hampshire area under the name of PUSH—the Partnership for Urban South Hampshire—which is starting to provide a sub-regional delivery vehicle that can work together across local authority boundaries to deliver growth in a sustainable way.

Q106 Chair: Can I clarify, do you have further documentation of this idea of a Regional Infrastructure Fund that you can provide us with?

Mr Tugwell: I have brought along copies of some work that we had commissioned by consultants looking at the scale of funding that might arise as a consequence of PGS. In broad terms the work that was undertaken indicated that making some reasonable assumptions you could look at a PGS system in South East England generating something in the order of about £4 billion over the 20-year period covered by the South East Plan. In comparison, the consultants estimated that a section 106 approach may generate about £1 billion, so there is about a four to one difference there. We have also got some additional work under way at the moment looking at the relative merits of local versus central collection of a PGS system. That work is under way at the moment, it is scheduled to report by the middle of May. We can make that available to the Committee as well if it so wishes.

Chair: Can I ask that you leave that document with the clerk and that we get a copy of the other report when it comes through.

Q107 Lyn Brown: I have heard from Mr Tugwell what he thinks about the transferability of the Milton Keynes Programme. I would like to hear

from Milton Keynes whether or not they think that their programme is, in fact, transferable to other areas?

Ms Hamilton: I think there are two fundamental differences in terms of transferability elsewhere. One is that we are working with a number of landowners, not just one but a consortium and they are a known quantity, they have been working with us very positively. The difference in trying to apply it to other areas where there could be much more of a patchwork quilt approach is it would be very difficult to identify all the landowners, all the various partners and all the various development interests who might be able to contribute to a tariff. It would be quite difficult if you had not got a straight greenfield site or a very big site to develop a tariff approach if you were working with a whole range of very small sites. I think the second one is this whole issue of discounting against abnormal costs associated with regeneration and contamination as compared with greenfield. I would have thought that a tariff elsewhere would need to discount and would probably need to discount if you were dealing with smaller infill sites where, for example, some of the facilities were already there. It could work but it would need to be a lot more complex and it would need to be embedded in the local planning policy in some form so that there was a high degree of transparency and certainty associated with it.

Ms Dear: Can I start by making a point in relation to the Milton Keynes tariff and the transferability. As a county council we did not support a tariff-type approach because we think that, certainly within our county, there are so many differences between the different local authority areas and even within the different local authority areas that to have one tariff even across the county would not be able to work in practice because there are too many factors to take into account. What we have been trying to work on is producing a clear formulaic approach, if you like, but even across our county, the Nottinghamshire County Council, we have developed a tariff in relation to integrated transport measures where we collect monies for things like the bus service and improving walking and accessibility. Even then we have got seven different levels of tariff depending on exactly the area and exactly where the development is in relation to, say, the town centre. Even on that one particular issue we have a number of different levels. I wondered also if I might be able to come back to the point about how much of the funding should be retained locally or kept centrally. Obviously on the premise that we would not support the PGS if it was to go ahead, in terms of any monies that were to go back to the local level, we would feel that it would have to at least cover the section 106 monies that we would have been able to achieve had the PGS not been in place. We would not want to be in a position where the infrastructure and the services that we could provide at the moment through section 106 we were not able to do because the funding was not coming back to us.

Q108 Mr Betts: I am sure there would not be lot of folk in the country who would want to see themselves with less money coming out of the new

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system then they have now. The presumption, therefore, is that if there is going to be some central money to distribute looking at national and regional priorities for infrastructure, the total take for the new scheme is going to be higher. Is that the general presumption most people are working on?

Mr Best: I would not assume that because generally I would expect that the section 106 process should, and I think it does in Milton Keynes, extract as much out of the development value as is consistent with the development going ahead. It may be that is an optimistic assessment and we could get more out. I think if we were able to get more out we could do that through section 106 and it does not follow that a Planning Gain Supplement will necessarily get more out. If there is more to be got out, section 106 should be able to abstract it. The pre-condition of that is whether there are too many thresholds and hurdles in the section 106 process that could be liberalised or eased, and there are some fairly precise rules about what is an acceptable principle of abstracting planning gain, it has got to be relevant, proportionate and so on. If there could be a reconfiguration of that so the local planning authority is able to abstract up to the threshold beyond which the development is no longer viable in order to further the general well-being of the area, possibly in terms of the power of general well-being rather than the more limited criteria that are applied currently through section 106, then there should be no difference with what can be got from section 106 and what might be abstracted through planning gain and so on.

Q109 Mr Betts: Is there not a danger that there will be a change of approach, a change of climate, with Planning Gain Supplement, that authorities which now do negotiate section 106 on the basis of the particular needs and requirements that are made of them by that particular development will in the future start to look at planning permissions being given as a way of putting money into their coffers and maybe funding the deficits from their pool, keeping the council tax down that year as opposed to particular planning requirements that are there as part of the development?

Ms Dear: I do not think that would be the case. I think our concern is that because the link is being broken between the impact of the development and the services and infrastructure that could be achieved through section 106 there is a danger that planning permissions will be granted which would be refused at the moment because if you had a planning permission for a development that would cause an impact, be it a need for more school places or it might even have an impact on a nature conservation site because mitigation and compensation measures can be achieved through section 106 in relation to that too, is that because you are not able to secure those particular issues through section 106 in the new proposals, you either get planning permission being refused for something that at the moment could be achieved or you are going to be getting planning permission for something that is causing an impact and you have

this hope that you will get some Planning Gain Supplement monies back, because there is no guarantee in the consultation paper as to how that is going to be recycled, in the hope that you can mitigate and offset the impacts. Because the link has been broken, it is based on a hope rather than on anything concrete.

Q110 Anne Main: On that very point, do you think you would have to bid again into wherever the **central pot** is, there is that worry that you might have to make the case a second time? So you make the case the first time with the developer and he gives over the money, but not to you, and then you have to make the case strongly a second time and you may not get all the money that you would have got under the 106, is that your concern?

Ms Dear: Very much so. That is exactly the concern.¹

Cllr Mitchell: The danger here is that you are thinking of Planning Gain Supplement as the only source of infrastructure funding. You are approaching it as if everything else is going to be abolished and that will be the sole source, it will not be. You will have section 106 for affordable housing and for site specific items. You will have central Government funding, some I hope, for infrastructure. This is another bit to add on to those. That is why I am inclined to welcome it. On the particular question, I think if the electorate got the feeling that they were seeing huge development everywhere because their council was pouring money into its revenue base, I think they might be punished. On the other hand, there is a serious and growing issue around the acceptability of the planning system among the public and their feeling of being divorced from it. I think if they believe that planning is being connected back to the delivery of infrastructure locally through this funding mechanism, there is a chance that we might get a slightly less anti development society than we currently have. I think that is a very serious issue that makes Planning Gain Supplement worth considering.

Q111 Mr Betts: Can I pick up on an issue there and if you want come in on that general point. Is there not a danger that if an authority is faced with a planning application and it has a choice of insisting on a reasonably high level of affordable housing on the site, that reduces the potential increase in the development value of the land and, therefore, the Planning Gain Supplement is less. If there is a system where the Planning Gain Supplement, say a proportion of it, maybe 80%, is going to be directed to that particular authority and that permission, there will be a feeling in that authority if we do not require affordable housing on the site we are going

¹ We are also concerned that as a County Council we are not the determining authority for most planning applications, however, we are often the service provider, yet it is unclear how, and indeed if, any PGS monies are payable to us in these circumstances.

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to get more Planning Gain Supplements and if we have not got a problem on the revenue budget this year, that is a way of solving it?

Cllr Mitchell: I have a serious issue with the linking of section 106 with affordable housing because levels of affordable housing are rising generally in the planning process and if that pre-empts so much planning gain from the beginning then, yes, there is less left to provide the Planning Gain Supplement levy for infrastructure. I have always had a worry about the apparent pre-empting of affordable housing through section 106.

Q112 Mr Betts: That is the proposal.

Cllr Mitchell: It is and it worries me. I think it needs to be addressed. It may be in terms of a maximum proportion of affordable housing there is for pre-emption otherwise the higher the level rises, the less there is available for infrastructure generally.

Mr Tugwell: Just to echo Councillor Mitchell's point and a point that John Best made earlier. This is not going to solve the infrastructure gap and the funding of infrastructure more generally because we need within the South East to deliver affordable housing, we need to deliver in the South East the infrastructure that supports that affordable housing and other types of housing development within the region. You are not going to get away without the need to invest in either one of those just because you have a different way of collecting a contribution from the private sector. As we have made clear in the contribution to this debate, PGS does add value and it does add, we believe, additional resources to the pot but it is only part of a wider pot and there is still the problem, we believe, that there is the issue of how do you fund the transport infrastructure that supports all of this because I think that is one of our greatest concerns within the consultation document, it really is quite silent on how we address that particular funding issue.

Q113 Alison Seabeck: Are those parts of section 106 arrangements which the Government proposes to retain adequate to address all the environmental impacts which a development could have on a site? On the back of that, I have got a niggling query in my head about flood plain development and whether or not the guidance under PPG 25, which a developer has to consider in terms of protecting whatever he is building on a particular site, is remedial work because of the nature of the site, or is it something which ought to be addressed by the national infrastructure pot because it is usually a much bigger picture if you start tinkering with a bit of drainage, or river, or whatever? You invariably have a knock-on effect further down or upstream which needs further protection and works. Do you have a view on that?

Mr Tugwell: If I may I am going back to a point I made earlier that you need to think about the infrastructure needs to support development in the context of the planning system that we now have established. We have, within the South East Plan, a draft of an implementation plan which for the first time is trying to bring together not just the transport

infrastructure but all the other forms of infrastructure necessary to support and deliver sustainable communities. That, for the first time, is starting to look at issues about water resources, water quality, flooding, issues of utility provision and health provision in a way that we have not been able to look at before. There is a long way to go with it and we need to work carefully with the delivery agencies themselves to understand the size of the investment that needs to be made and, more importantly, the timing of that investment. It reinforces the point that PGS is not the solution to all the problems, it is part of a mechanism. If you combine it, as I said earlier, with this idea of a Regional Infrastructure Fund, you may find it will be able to act as a catalyst to allow some of these remedial works off-site that have been identified in the planning system to be delivered, to allow the development then to take place and some of the costs of that to be recovered through the contributions made by PGS.

Ms Dear: I think our concern in relation to reliance on the development plan process is in relation to smaller scale developments which might have environmental or other impacts off-site. Whilst the major impacts can certainly be highlighted in local development documents, or even at regional level if the developments are of that scale, certainly smaller developments and the incremental impact of a number of smaller developments cannot be anticipated in the development plan process. It is not geared up to be that swift to turn around documents that quickly and be that sensitive. It cannot foresee all of the eventualities. Because the scope of the new section 106 is proposed to be limited to on site environmental impacts, again it goes back to what I was saying previously, you might have an instance where you could grant planning permission at the moment subject to a number of off-site mitigation or compensation measures but because you are not able to do the off-site measures under the new section 106 proposals that planning permission would either have to be refused or you would grant damaging permission in the hope that the money would come back through the PGS funding.

Q114 Alison Seabeck: There are flaws in the current system but clearly flaws in the proposed system which we need to look at and take forward. I assume they fall on the basis of Mr Tugwell's comments that you would have worries about the removal of public transport implications from 106 obligation?

Mr Tugwell: There is an outstanding issue about how revenue funded schemes are delivered which, goes beyond the debate about PGS and looks at the costs and the balance, if you like, of funding for infrastructure provision in the round rather than just any one particular system.

Mr Best: The origin of PGS is around a review of the housing market and it is geared around generating more homes in the UK and particularly in the South East. I think the reality in a place like Milton Keynes is that even in Milton Keynes there is quite a lot of equivocation about growth because there is nervousness that there might not be enough of the

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related infrastructure to make the communities that result truly sustainable. Picking up Alison Seabeck's question about "is what is proposed to remain within section 106 sufficient?". I think if you reduced the remit of section 106, which is the primarily local mechanism, you would reduce the confidence that the community would have that, yes, the infrastructure is likely to be developed. You would also by the process of only part of what was being taken through Planning Gain Supplement being returned, albeit the majority but it is still not the entirety, into the local authority for the spend, reduce the confidence in the local process, which should be an integrated process whereby the community supports where it is going. It would be undermined and diluted.

Chair: Can I return to the Regional Infrastructure Fund that the South East Assembly were talking about. Can you clarify, in the Regional Infrastructure Fund, who, if anybody, provides the initial pump-priming and how does it link in to the Regional Spatial Strategies and the Regional Economic Strategies?

Q115 Alison Seabeck: Can I link in the issue about public transport coming in, in advance of development because it does, in fact, depend on that pump-priming to an extent and how that works?

Mr Tugwell: The role of the Regional Infrastructure Fund we would see as being a catalyst, a way of forward funding. In the same way that you have within the specific locality of Milton Keynes, you would have English Partnerships, in effect, acting as a forward funder. The idea of the Regional Infrastructure Fund would be that it would act as a catalyst which would allow infrastructure investment to be made.

Q116 Chair: Is it the Treasury that would be forward funding because it is the Treasury that is doing it for EP?

Mr Tugwell: We would envisage it to be public sector led and it would be looking to see how interventions made by the public sector would allow the strategies set out in the Regional Spatial Strategy of the South East Plan and the Regional Economics Strategy to be delivered more effectively and more quickly. The cost of the investment, as we said earlier, would be recycled by the revenues recovered through PGS. We have been promoting this and we are looking at how we can develop the structure to support that. Our colleagues in the South West have been doing a similar piece of work looking at how a Regional Infrastructure Fund might be established and I believe they are in a situation where they will have a potential financial model available for examination as to how that might work. There is thus now a body of work, if you like, looking at the financial model, being led by the South West, the Regional Development Agency and Assembly, and issues about the structure that might be associated with the Fund that we have an interest in and colleagues in the East of England have also been looking at. There

is an opportunity with PGS to act as a way of transforming the way in which we deliver and implement the plans.

Q117 Martin Horwood: Thank you for tipping me off that the South West Regional Assembly is planning a Regional Infrastructure Fund, I had not picked that up yet. On the whole idea of Regional Infrastructure Funds, you said earlier on that in unique areas like Milton Keynes, there were not the bodies at effectively sub-regional level to carry this kind of thing out. What on earth is wrong with unitary authorities, county councils and consortiums of local authorities? We do have a democratically elected structure at a more local level. Is that not a much better way of doing this kind of thing than a nationally or regionally centralised approach? Subsidiarity should apply, should it not?

Mr Tugwell: I do not believe I said that we do not have the structure. What I said was the situation was complicated in other locations because you have a multitude of landowners, you have a multitude of delivery agencies, potentially you have a multitude of authorities who have an interest in delivering the infrastructure because, taking the example from South Hampshire, the investment may be across a broader area reflecting the fact that people live, work and have other activities beyond any one particular boundary.

Q118 Martin Horwood: It is even more complicated at regional level, you have even more stakeholders and partners.

Mr Tugwell: What I highlighted was that within the South Hampshire area there is a strong partnership involving the local authorities, both unitary, district and county, who are working together to identify what the Spatial Strategy for that particular sub-region would be and the infrastructure requirements that are necessary to support and deliver it. In some respects they are following a model that is not dissimilar to the approach by Milton Keynes but, as I mentioned earlier, in terms of delivering, if you are going to capture the greater proportion of the contribution from the private sector then it is more difficult to establish the sorts of arrangements that you have in Milton Keynes simply by virtue of the fact that you have a larger number of landowners and a larger number of deals that would have to be made to enable the tariff type approach to work within that area. It is simpler in that situation to have a Planning Gain Supplement situation being administered locally with, the priorities for investment being identified locally through the sub-regional work and being delivered locally through the local authorities working in partnership with the delivery agencies.

Q119 Martin Horwood: If it is being planned and delivered locally why do we need the regional infrastructure fund?

Mr Tugwell: Because there may be occasions where the timing issue is such that yes, you may get the funding from the Planning Gain Supplement but only once the development is in place, but to allow

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that development to take place you have to have the infrastructure available and that is where the infrastructure fund could act as a catalyst to allow a planned development to take place. We have an example of it, as I say, within the South Hampshire Area, where it is clear that there is a need for investment in infrastructure to take place and for sites to come forward for planned levels of development, but until the development is actually on the ground and constructed you will not get the contribution from the private sector. The public sector, the regional infrastructure fund, could allow the infrastructure to be in place and allow the planned development to come forward.

Martin Horwood: I am still mystified as to why public sector infrastructure funding could not be generated bottom-up instead of trickled down from regional level, but perhaps we should leave that for another day.

Q120 Chair: It is not big enough. Mr Best, I think we probably should draw this to a close. It has been a marathon session.

Ms Hamilton: I was just going to make the point in terms of delivery vehicles. The Milton Keynes tariff is actually being delivered by a business plan which is cross-agency, so it is not just the local delivery vehicle which is handling everything. It is a matter of pulling together all the various sources of funding, of which the tariff is one. In terms of, say, transport programmes, for example, we would look for matched funding from the LTP or the SIF funding, so I think that is one point which is similar to a regional infrastructure fund. It is very much a multi-agency approach where Milton Keynes Partnerships is working with all the partners to put this programme together. The key issue that I feel is still important is that by far the major need for funding up front is in relation to transport infrastructure whereas some of the other aspects that are being funded out of the Milton Keynes tariff, such as schools, open space and so on, will only come on stream once development is there and can be funded more easily by a traditional section 106 arrangement. I think that is why it has been so critical that English Partnerships via Treasury and ODPM approval is able to forward-fund because there is simply not the mechanism to get any sort of rolling fund up and running in advance of development being on the ground, and even this year

before there is any development on the ground in Milton Keynes English Partnerships is funding in the order of £8 million worth of infrastructure, I think the majority of which is transport and highways related, some of it public transport related.

Mr Best: I want to come back to the question about whether the Milton Keynes model is transferable elsewhere. Think the Milton Keynes proposition in general is not as simple and as simplistic as has been described. Part of it is around greenfields but it does, as I have explained, have an application, which we are evolving because we are in an early stage of it, for wider use. I think the sort of environment in which it could transfer is to those authorities or groups of authorities where there is a combination not only of the difficult brownfield regeneration challenges but also some greenfield and high value generators which I believe would apply to the South Hampshire area because they have that combination. What I think would be a problem would be trying to transfer it and apply it to an area where basically there was market failure and you were not generating the sorts of values that would allow development to proceed if it was being over-taxed, which is why I think the solution has to be clear assessment related to the circumstances of development in order not to frighten it away.

Councillor Mitchell: As the only politician on this side can I make one observation about the process, that is, if it is to go forward? If you do not know the history of past Development Land Taxes get the briefing from the House of Commons library and see why they failed. They were repealed by a successive government. If it is going to work, and I think it is quite important that there are improvements to the current planning circumstances, I think it needs all-party support, because if something is put in and there is a commitment to abolish it at a later stage, as there was previously, then it will fail and development will dry up until it fails. I do think we need to look very seriously at getting cross-party support. I have heard George Osborne talking about something that is not a million miles away from Planning Gain Supplement, so I think there is some hope. If there was a willingness to look at this cross-party you might get something that would give us the ability to fund infrastructure better, to deliver things like the South East Plan that matter to us, and I think that is quite critical.

Chair: That is very helpful. As you know, we are a cross-party committee. Thank you all very much.

Monday 8 May 2006

Members present:

Mr Clive Betts
John Cummings

Mr Bill Olnier
John Pugh

In the absence of the Chairman, Mr Betts was called to the Chair

Witnesses: **Mr John Calcutt**, Chief Executive, **Mr Trevor Beattie**, Regional Director, and **Mr Dennis Hone**, Chief Operating Officer, English Partnerships, gave evidence.

Q121 Mr Betts: Welcome to the Committee for our session on planning gain supplement. Can I first of all give the apologies of the Chairman of the Committee, Dr Phyllis Starkey MP, who unfortunately has a visit in her constituency today at which she has to be present. With that I will first of all ask if you would, for the sake of our records, identify yourselves.

Mr Calcutt: Good afternoon, gentlemen. My name is John Calcutt and I am the Chief Executive of English Partnerships, I will add by way of a rider of four days' standing. I have my colleagues here, Dennis Hone and Trevor Beattie who I will ask to respond I think to the majority of your questions.

Q122 Mr Betts: I hope that was not a plea for easy questions—the fact you have been there for only four days. We accept that you will pass to your colleagues, that is only appropriate. Could we begin by dealing with the issue of the West Bedford scheme and also eventually the Milton Keynes scheme as well. You referred to your role in brokering the West Bedford scheme to deliver yours and the Government's objectives. Could you explain how the model works and the role that you played in developing it?

Mr Hone: In simple terms, there is a situation in Bedford where 2,250 homes have been granted outline consent but subject to funding of a by-pass road that was beyond the abilities of fragmented land ownership, so English Partnerships was asked by the Government Office if we would look into how we could assist the situation. We worked with ODPM, the Department for Transport as well as the land owners, to broker a funding arrangement whereby we would forward-fund the road but subject to a share of land value capture over and above the section 106 obligations of the land owners. So in simple terms, we were acting as a banker in some respects who is investing in the road contract but then taking a share of land values at a later date.

Q123 Mr Betts: So is it a collective form of section 106 in a way?

Mr Hone: It is over and above the section 106 obligations which are placed on the land owners. They are obviously funding the normal requirements but because the road spreads over a number of different land interests it was not possible for them to fund the infrastructure, it had to bridge various areas and the local river there on I think two occasions, and there would have been

disproportionate impacts on different land owners. This issue had actually held up development for over 10 years.

Q124 Mr Betts: Do you think that sort of approach could be replicated for similar schemes or even for different schemes of a significant size in other parts of the country?

Mr Hone: I think it is possible depending on the individual circumstances. I would add that although English Partnerships were involved, we would not necessarily say there is a single solution which is applicable without looking at the individual circumstances. The principle of looking at forward-funding infrastructure to unlock difficult planning areas and permissions is something we could carry forward in other areas.

Q125 Mr Betts: If we had planning gain supplement, would you not simply be able to collect the planning gain supplement from all the different land owners, put it into a pot and do what you have done?

Mr Hone: There is a timing issue in that the planning permissions could not come forward until, in this case, the funding solution had been found for the road. That was the impasse. There may have been other niceties to the discussions but the reality was that the planning permissions could not be unlocked until the road was funded, the land owners were unable to have viable schemes with funding the road upfront, and it needed a public sector injection to meet the initial costs to make it come forward. The planning gain supplement would come after, as they went to start on site, but it would not provide the road necessarily, although the exact mechanics of planning gain supplement have not been worked out through the consultation document and it may be possible through some of the monies which go into central government that monies could be set aside either through the Communities Infrastructure Fund or other sources to enable those types of strategic transport works to come forward in advance of development.

Q126 Mr Betts: Moving on to the Milton Keynes tariff system which we had some evidence on previously, is this scheme preferable to planning gain supplement? Are you suggesting a tariff scheme should run parallel to planning gain supplement? Is Milton Keynes not really a unique situation which means that approach probably is not applicable to many other parts of the country?

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Mr Hone: The tariff situation, as you will be aware, is based on looking at the infrastructure, both local and strategic, that is required to support a fairly defined number of houses in terms of their growth and employment opportunities. In Milton Keynes we know in terms of designated areas for growth, 33,000 houses have to come forward by 2016 and from the areas which are going in you can plot the infrastructure that is required, look at the total costs and available sources and then work back to a tariff which can be applied against individual housing units and employment, so we end up with a calculation which says we need £18,500 per house and something like £260,795 per hectare on employment to fund all the infrastructure necessary to support the growth of Milton Keynes. There are three issues which I think are fundamental to make the tariff work. One is the co-operation of the land owners. We are somewhat fortunate in the Milton Keynes situation that over 90% of the land required is in the ownership of five owners. The co-operation of land owners is important. Second, you need a co-ordinated planning approach because it has to be based in planning allocations which are coming forward. Third, similar to the West Bedford scheme, you need the ability to forward-fund infrastructure, so that in terms of the role English Partnerships is playing we are still forward-funding elements of infrastructure in co-operation with the highways authority and the Highways Agency to support growth and then receiving payments back from developers as consents are granted and development takes place.

Q127 Mr Betts: You indicated there is a backward working out of how much we need to invest in infrastructure, divide it by how many houses, and that is the amount per property, but when Milton Keynes came to speak to us they said they had not got enough money for infrastructure and an additional residue of funding was needed. Does that suggest that the tariff was not set at a high enough level?

Mr Hone: The thing with the tariff is that it has to be set at an amount which enables development to come forward and does not set an artificial barrier to development, and it has to be done, as I said before, in co-operation with the land owners. It is cemented through an over-arching section 106 arrangement, and that has to be defensible. That is why the calculations are done to show that it is a defensible sum. Under the Milton Keynes model, some 100% of strategic infrastructure is funded and 75% of all the local infrastructure needs are funded. The Council therefore on a bill of £1.6 billion has to find some £40–50 million to make up the 25% in local infrastructure, but they already receive substantial amounts in terms of capital allocations from DfES for education and through other government funding streams. So in terms of the calculations we made, we believe it was a fair and equitable funding arrangement which enables existing funding sources to continue but also for development to not be adversely affected. Just to make a final point in closing on this, I think it is really important whether

it is a tariff arrangement or a PGS arrangement that it does not substitute for existing government funding streams, and that is the way the MK tariff has been calculated. Milton Keynes Council's point is that they have no certainty in the long-term government funding streams which have been anticipated under the MK tariff.

Q128 Mr Olnier: On the West Bedford one, are we talking about land which was zoned for residential use or green belt land or agricultural land, where there is a massive uplift in the value of the land? Or are we just talking about land which was zoned residential where planning permission has been granted?

Mr Hone: It is land which is zoned for residential development. There is a substantial uplift. I have to stress that there are very complicated arrangements in terms of both the road that is going through and also the requirements the local authority have placed on the developers through section 106 arrangements. The issue here is very much that to meet the obligations under section 106, which involved meeting all of the costs of affordable housing without housing corporation grant, and building of the schools and so forth in advance of development, they could not viably bring forward the cost of the road as well. As I say, there has been an impasse there for some 10 years.

Q129 Mr Olnier: Milton Keynes have given us evidence, as Mr Betts alluded to, and were fairly sceptical as to whether the scheme they had got for the tariff would work anywhere else. Milton Keynes is a new town compared to many areas of the UK, have they got a unique position with the housing corporation and the fact they were a new town?

Mr Hone: I would not say they have a unique position; not entirely. The position is where you have a comprehensive area for development, you can plan out exactly across that area what is required to support growth and the different funding sources and infrastructure requirements to make it happen sustainably. I would have thought there are examples in other places where that could happen in terms of new towns, as you have alluded to them, without naming places but within the growth areas.

Q130 Mr Olnier: Could you make a stab at one?

Mr Hone: It is invidious to do that but Harlow is within the growth area where it may work in terms of the growth to the north of Harlow. But the point I wanted to make is that you have to have a willing land owner who wants to enter into these arrangements, and if you have a fragmented approach where you have umpteen land owners it is going to be very difficult to construct a tariff arrangement in that situation. At Milton Keynes we were very fortunate that you could get the five major land owners who hold over 90% of the land allocated for the expansion of the town into this arrangement and then, because it is based very much on local and strategic needs, you could enforce that against other planning applications as they come forward.

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Q131 Mr Olnor: You did say, Mr Hone, that there are varied interests in the provision of infrastructure to increase areas of residential housing. There is the local one, there is the regional one, there is a national one. Given that this tax is going to go firstly to the Treasury, how do you see that being redistributed to all of the players ie local, regional and national?

Mr Beattie: English Partnerships' contention of course is that there would be scope under PGS to run a tariff alongside the PGS mechanism. Where local authorities and groups of local authorities can get together, where the conditions which Dennis has mentioned would be satisfied, where the right relationship exists between the uplift to be captured on the site and the cost of the infrastructure, there is scope to get together to produce a tariff. In our consultation response, we have suggested in that situation the top slice, the 20% Communities Infrastructure Fund, should still be chargeable but otherwise the area should be exempt from planning gain supplement so it should not go up to the Treasury in the first place.

Q132 Mr Olnor: But most of us who have been representing coalfield communities for many years know about the problems we had with additionality with the money we had from Europe to boost the infrastructure. It would be very easy, would it not, for national government to keep to itself some of that planning gain supplement instead of feeding into the infrastructure they would normally fund?

Mr Beattie: That is why our contention right at the front of our consultation response is that this should be seen as additional, and what is raised should be additional to and there should be no take from central government.

Q133 Mr Olnor: What would you do about the geographical problems of some people being able to raise more planning gain supplement but have a harder fist to fight for a better section 106 than others? How would you smooth out within the planning gain supplement the differences between the North East and the North West, and the South East and South West?

Mr Beattie: Planning gain supplement generates more value where there is a higher value uplift to be achieved, but that is already the case in the coalfield areas where English Partnerships spends disproportionately more, where values are low and there is very little value to be unlocked. We already do that in support of section 106. We will continue to do that in support of planning gain supplement. That is one of the merits of a national agency like English Partnerships.

Q134 John Pugh: You favour a mixed economy—section 106 agreements, planning gain supplements and tariff based systems. It could be argued that is slightly confusing for the developers, they do not have predictability, they do not have clarity, they do not know what they are going to be hit by. Is that a fair surmise and does it matter anyway?

Mr Beattie: Certainty for developers is the key to this. Whatever system of planning gain supplement comes out, it should be based around giving a clear, transparent and certain system for developers. It is our contention that you can implement PGS to provide such certainty, although a lot of the details are not in here yet, but that the tariff is a very simple arrangement of developers using enlightened self-interest effectively to get together to define what they need and get the resources for what they need; a very clear prospectus. It is perfectly possible to achieve the same through PGS but the consultation as it stands at present has not sketched that out.

Q135 John Pugh: What would be the consequences of a degree of uncertainty?

Mr Beattie: There would be a possible reduction in the amount of land coming forward for development.

Q136 John Pugh: You argue for greater research to be done on the impact of removing education from section 106 agreements. Why do you do that?

Mr Beattie: Our response included seven case studies and when we ran them we found that education accounted for the vast majority, between 45 and 80%, of the section 106 which English Partnerships would no longer be paying under the new system. A lot of what we currently do centres around the provision of new primary schools—for example the new school at Greenwich, the new school at Northampton—because we find you need the school to attract the high quality development, you cannot wait for the development to come along and provide the school later. It determines most people's choice of community and where they want to live. So we think that education funding is very central to this. If you included education funding within the site-specific section 106, you would in effect be acknowledging the way people treat and relate to their local primary school; it is a local, site-specific facility servicing that community.

Q137 John Cummings: In your memorandum you include a number of case studies which show that the impact of the introduction of PGS would vary greatly depending on the rate at which it is set. How adequate can any assessment of the impact of PGS be without the knowledge of the rate at which it is to be set?

Mr Beattie: We had to take a series of assumptions and our case studies are based on assumed rates of PGS of 20%. We have made a number of other assumptions as well just to work it through, but we worked it through on a consistent basis. What I would say about those case studies is that they are real sites, they are seven real sites, and what they show is on unviable brownfield sites, as we know, no PGS is payable, on some of the most marginal sites, because there is only a marginal uplift in land values, there would be an overall reduction in the PGS/section 106 burden under the new system. In other words, part of my answer to the coalfield site issue is actually the amount of take from them will reduce increasing their viability.

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Q138 John Cummings: So you are quite confident in the studies you have carried out?

Mr Beattie: We are confident in the studies we carried out on the basis of the assumptions which we have taken where the information did not exist in the consultation document. We have made assumptions.

Q139 John Cummings: If the Government were to proceed with its proposals for PGS, at what level do you think the rate should be set? What do you consider to be a modest amount?

Mr Beattie: It is not for us to speculate on what a modest amount is, it is for ministers to set the rate.

Q140 John Cummings: But you argue that a modest rate of PGS can be absorbed in some areas. What would be a modest rate for my area in the North East, do you think?

Mr Beattie: It is not for us to take a view on that. We have run it through at a rate of 20% and the figures are there in our consultation response.

Q141 Mr Betts: You are the experts in development, are you not? You know what works and what does not work, so I think we have an interest in knowing what your view is of the rate.

Mr Beattie: We think at 20% it works. Can I give an example of why I think at 20% it works which I know reasonably well? One of our examples is a greenfield site where at 20% the take from PGS and section 106 under the new system is greater than the existing section 106 take. If you run at a rate of 15%, interestingly the old and the new system takes are exactly the same. That is for a greenfield site needing substantial infrastructure. That suggests to me that for that sort of site, that is roughly the right area.

Q142 John Cummings: I am trying to tease a bit more out of you here. Is the rate of PGS which could be absorbed before PGS becomes a disincentive to investment consistent across the country or does it vary with different types of development and different locations?

Mr Beattie: It varies very dramatically. On page 8 of our consultation document we show that the PGS rate at which PGS and new section 106 would equate to the old 106 for greenfield sites actually varies between 7% and 22.5%. So it is very variable site to site.

Q143 John Cummings: You have mentioned the PGS rate set at 20%, is this a cash equivalent of developers' contributions to infrastructure provision, or would it actually be less under PGS than it is at present?

Mr Beattie: That depends on the site, it depends on the section 106 obligations already on the site. As I was explaining, on some sites the new system under our figures shows you will be paying less, on some it shows you will be paying more.

Q144 John Cummings: Why do you argue that only a low rate of PGS can be accommodated?

Mr Beattie: Because the new system will apply comprehensively to development across the piece. It is equitable in that respect in that it applies to development across the piece, whereas currently only about 40% of development is subject to section 106 obligations.

Q145 Mr Betts: Is there a case for a variable rate?

Mr Beattie: I do not think so, no. We were talking about clarity and certainty and a complex range of different rates would obstruct that clarity and certainty. We have, however, suggested there might be a case for a discount of the rate for five-star environmental developments, actually linking up fiscal policy and environmental policy. We think there is a great opportunity to do that here. But a framework of different rates—no.

Q146 Mr Oler: It is okay having planning gain supplement if that raises more revenue for infrastructure than 106 does, but if you are going to have a rigid 106 system and it is argued the reason for bringing in planning gain supplement is that some authorities are better at negotiating 106 agreements than others, there is going to be some disparity. How do we bridge that? Mr Hone is nodding so he knows what I am saying.

Mr Hone: It is obvious if you apply a constant rate across the country, it will have different impacts in different areas. English Partnerships are not saying it will not. What we are saying is that if you are bringing in planning gain supplement, you need to do it in a way which gives absolute clarity to the developers. We are sub-dividing, as it were, the section 106 negotiations because certain elements are staying under section 106 and others are going under planning gain supplement. From a development point of view, that is a benefit if they gain certainty through that and there is a value to that certainty. When we look at the consistency argument, it is important we have a consistent rate.

Mr Calcutt: To add slightly on that, I think you substitute the characteristics of the site for the planning skills and abilities of the local authority which is doing the negotiations. In other words, obviously you are going to lose the input of what I would call key negotiators, but on the other hand you are going to more equitably distribute the tax insofar as its impact, as I understand it, is going to be those intrinsically difficult sites with low inherent land values which are automatically going to have a lesser tax payment than those which are intrinsically more valuable in areas where you need less infrastructure. That seems to me to be a level of equity that is wholly desirable rather than, as it were, key negotiating powers bringing about an anomaly.

Q147 Mr Oler: But in shire counties the major planning authority is the district, and it is usually the district which does the negotiation on 106. How widely is that going to be spread in the future? As I said before, you have local infrastructure to provide, the local authority ones, you have regional, the shire county ones, and then you have national ones. At the moment you have one clear negotiator for the

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section 106 stuff. It seems to me that this issue is going to be clouded in the future in providing infrastructure because it does not only rest with one set of people.

Mr Beattie: There will continue to be one clear negotiator for the site-specific element of section 106, but for the national infrastructure there will be the Communities Infrastructure Fund.

Q148 Mr Oliner: So it is essential that as well as planning gain supplement there is also section 106 agreement as well?

Mr Beattie: Under this new system, site-specific infrastructure will continue to be negotiated in the same way but for a narrower range of facilities.

Q149 John Pugh: I think we are reaching a view that you accept there is going to be a degree of diversity, although we are not in a position to be able to say how much diversity and what degree of clarity we are going to have here, but taken in the round you also seem to be saying that the new system will generate more money by increased land values for the public good than the previous section 106 agreements by themselves. That is fairly common ground, is it not?

Mr Beattie: Yes.

Q150 John Pugh: Do you think it is going to be significantly more to the extent there will be a real substantial uplift in the amount of money available for strategic infrastructure?

Mr Calcutt: Can I start and then let my colleagues come in? I think it depends how you are drafting the tax. We have seen previous attempts to tax windfall gains and they have run into enormous efficiency problems insofar as the cost of administration and all the rest, and things get locked up in litigation for years, and the actual take is poor. I think there are two sides to whether you achieve it. Does it in principle, yield more and everybody paid their due amount? The numbers equation is, as I understand it, that it would raise significantly more revenue. On the other hand, if in fact practically the way the tax is administered results in it being bogged down with every chartered surveying company and legal firm inside the country and offshore, then clearly as a matter of practice you are not going to get the revenue take you want. So the devil is in the drafting of detail which enables this thing to be what I would call efficiently administered.

Q151 John Pugh: So when the regulation and legislation come forward, there is a need for real scrutiny?

Mr Calcutt: As a former lawyer, I would say this is going to be a parliamentary draftsman's either nightmare or paradise, I know not which. Certainly the devil is in the detail here.

Q152 John Pugh: If the planning gain supplement raises less than section 106 does at present, does that mean in fact the tax rate is too low or that the purpose of the introduction of PGS itself is frustrated?

Mr Calcutt: I am going to push my luck here and say to you that the dilemma is that if you set the tax rate too high then clearly the incentives people have for going down the route that I have described in terms of trying to avoid paying this thing with schemes or just withholding it in the hope that it will change in the future, which is a common one, and again go up on a curve, and so part of the cleverness of this, I think, is first the drafting but also setting rates at a point at which perhaps people's incentive for avoidance is not going to be as high as it otherwise might have been.

Q153 John Pugh: So the Government, like a good parasite, should not kill off its host?

Mr Beattie: One or two of the proposals in our consultation paper were designed exactly to hit this point. We argue that the payment should be phased; it should not all be up front at the point of starting on site but, as happens as present in Milton Keynes, it should be 25% up front and 75% on completion so you can give an incentive through the operation of the system for developers to come forward with sites.

Q154 John Pugh: How long do you think it is going to take the land markets to adjust to the new regime?

Mr Beattie: One of our submissions is that the transitional arrangements for this are going to be absolutely crucial. I do not think it will take the markets terribly long to adjust. I think the short term impact will in many cases be a reduction in the value of sites because the PGS will in effect be taken off the site value. That might work in favour of those of us trying to bring forward major strategic developments but there is going to be a period of transition, it is going to be very important to protect the tariff arrangements in that transition and markets will certainly swing around before they stabilise under the new system.

Q155 John Pugh: In arguing for greater simplicity and clarity, as you have, do you think there should be a scheme that allows a very few exemptions rather than a lot of well argued, cogent exemptions?

Mr Beattie: Yes. I do not see the need for exemptions. If you have a site with very little or no value you will pay no tax. On brownfield sites, as we have shown in our case studies, where there is very little uplift, there will be little planning gain supplement to pay, and by and large on serious brownfield sites there is less tax under the new system than under the old system. It is to some extent a self-regulating tax: the more uplift, the more tax.

Q156 John Cummings: What is the merit of exempting sites with option agreements from PGS liability?

Mr Calcutt: As a former developer perhaps I am qualified to answer on this one.

Q157 John Cummings: I thought you said you were a lawyer.

Mr Calcutt: I was the company solicitor and subsequently I became chief executive of a major house builder, and so I do both, I am afraid. I think

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that “option” is a generic term for those parcels of land that have been secured on fixed terms that we are holding at the moment, so it will cover conditional contracts, options, uplifts and the like. The only point there is that lots of developers and house builders have entered into agreements that provide for a specific sum to be paid on the grant of planning permission and in the event that a tax is then levied on that those contracts will probably plunge the developments themselves into deficit or sub-normal profits which again will have one of two effects. You will either have people carrying out the very sorts of avoidance tricks they can get away with or, much more probably, simply sitting on land, not bringing it forward for development, causing housing supply to move sharply downwards, trying to wait out the consequences of a bad contract. I think it would have very undesirable effects and would damage the house building industry. Whether that is a good or a bad thing I do not know.

Q158 Mr Betts: Would there not be a case then for saying that if sites with option agreements on them are going to be exempt that exemption only applies for a period of time to encourage the development of those sites because once the time runs out there is not going to be the exemption?

Mr Calcutt: That does sound as though it would have quite a lot of merit in it. The only thing I would say is that quite a lot of options and conditional contracts take land now 10 years before it comes forward and it is then promoted through the planning system and therefore we are talking about very long timescales here. I think the sort of thing that you are talking about might well be able to be achieved by other means.

Mr Beattie: Linking the planning system to it.

Q159 Mr Betts: You might like to reflect on that and let us have a note about it because I understand it is a technical issue. Perhaps you would like to give us a note after the meeting on your further thoughts on that. Let us come back to the point we were discussing before about your general commitment to hypothecating planning gain supplement going to the local authority where the development is taking place. I heard what you said about English Partnerships being the knight in shining armour that goes into places like the coalfields and assists where there is not the money for infrastructure development around, but is there not a danger that if we concentrate all or the vast majority of the resources from planning gain supplement in those areas with high land values we are simply going to add to the overheating in those areas?

Mr Beattie: We are also going to provide more resource in order to tackle the consequences in terms of strategic infrastructure of that overheating. You will be generating more resources where you need more strategic infrastructure. You have to have a body like English Partnerships in existence to deal with areas like the coalfields, but this generates resource where it is needed.

Q160 Mr Betts: We are quite convinced that we have sufficient, say, in the south east to provide all the sewage and the water and the transport infrastructure that is needed?

Mr Beattie: The Treasury has said that the Community Infrastructure Fund will be an additional sum and on their figures that is 20% of the total planning gain supplement, albeit a substantial amount of additional resource, to deal with strategic infrastructures.

Q161 Mr Betts: You do say that there might be an element of redistribution, that essentially most of it should go to the local planning authority.

Mr Beattie: Yes.

Q162 Mr Betts: Have you got an idea of the proportion? Have you got a figure in mind?

Mr Beattie: About 80% going back to the local area and 20% for the Community Infrastructure Fund, and that certainly seems to be about the right level from where we are coming from.

Q163 Mr Betts: If we are then going to hypothecate and ring-fence most of the money is there any case for keeping existing tariff systems?

Mr Hone: Obviously we are a little while away from the planning gain supplement coming into force and therefore the tariff is a mechanism that promotes and accelerates development at this point in time. The point was previously made about transitional arrangements and I think it needs to be looked at very carefully through the transitional arrangements for PGS because nobody will enter into tariff arrangements unless they get some sort of conditions regarding how planning gain supplement will impact on the tariff arrangements. For instance, in Milton Keynes the tariff arrangements are entered into by the landowners but only on the basis that they do not get doubly taxed through planning gain supplement, so if planning gain supplement comes in in a number of years' time to the extent that that duplicates the arrangements under the tariff there will have to be some system of refund to them. The sooner the transitional arrangements are clear the more confidence people will have to continue entering into tariff arrangements to accelerate developments in the meantime.

Mr Calcutt: The point that I think we are making is no more than, when circumstances permit and enlightened self-interest bring the public and private sectors together to try and cut a deal to bring development forward or do things more efficiently by agreement, then it would be a shame if that opportunity were no longer available and there was some mechanism for saying, okay, you have struck a good deal here, maybe more than you might get under the tariff for an accelerated programme or some such economic bargain, and in those circumstances should you be precluded from doing so? That is, I guess, the only logic that you can apply.

Mr Beattie: That is why our consultation response says that tariffs should only be allowed to run alongside PGS where they would raise at least as much as PGS.

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Q164 John Cummings: You appear to be wary of the extent to which self-assessment is likely to work. Do you not think it is a valuable way of reducing bureaucracy or do you believe it is just a recipe for tax avoidance?

Mr Beattie: We are wary because we think that the detail and the information is not in the consultation document. There was a pledge to consult further on self-assessment. A lot more detail is necessary. Self-assessment as it stands is a perfectly good mechanism for doing this; indeed, you would probably need an army of inspectors to do it any other way, but the information simply does not exist on self-assessment. There will be a natural check and balance in the system, ensuring that developers will want to put a proper assessment down of their PGS liability because they will not want to be hit subsequently with any uncertainty over the land or the development and so we think that self-assessment can work very well but the information just is not there and a lot more guidance is needed.

Q165 John Cummings: What mechanism for assessment would you prefer?

Mr Beattie: I think we have said that self-assessment would work very well but we need more guidance on it. I do not think it could work with a central inspectorate assessing it.

Q166 John Cummings: So you are quite happy with self-assessment?

Mr Beattie: We need more details on it. The principle of self-assessment is fine.

Q167 John Cummings: Do you have any alternatives in mind?

Mr Calcutt: No. I think that any alternative would be a bureaucratic nightmare, so I think what you need to have is self-assessment backed up with the very clearest guidelines on how those assessments are carried out and some fairly interesting penalties should that system be abused. That is the best you can do.

Q168 John Cummings: What appeals system would you envisage?

Mr Calcutt: I would go along the line that, where applications were made, in the circumstances where people made valuations or views that had no reasonable basis in reality then I would be expecting very significant penalties for clear, dishonest behaviour to be imposed, like multiples of the tax.

Mr Beattie: The Valuation Office will take a view on all these matters, and they will be running the system and checking self-assessments.

Q169 John Pugh: Is the Community Infrastructure Fund, together with regional funds, an essential ingredient for the PGS proposals to work effectively?

Mr Beattie: Yes, we think it is fundamental to PGS working because PGS pivots on the distinction between site-specific infrastructure and the broader strategic infrastructure which the Community Infrastructure Fund will make available. One of the

fundamental pieces of logic behind here is, as I have said before, the additional resource it will free up for that essential strategic infrastructure.

Q170 John Pugh: You cannot think of any other mechanisms that might be used to overcome the gap between the point at which investment is required and the PGS revenue flows?

Mr Beattie: You are talking about phasing and timing?

Q171 John Pugh: Yes. Were it not there, what other mechanisms are perceivable?

Mr Beattie: Plenty of other mechanisms are conceivable. It would be perfectly practicable to use the existing section 106 procedure to create a Community Infrastructure Fund. There are plenty of other ways of doing it but the good thing about this is that it is built into the structure of PGS and the Treasury have said it will be additional.

Q172 John Pugh: With regard to the national element of the Community Infrastructure Fund who do you think should be administering that? Would English Partnerships seek a role?

Mr Beattie: We could certainly be one candidate, yes. It will need a body with a more than just a local or regional overview in order to distribute that money fairly and take a view on major cross-regional infrastructure.

Q173 John Pugh: So you would not mind dispensing capital or helping to distribute that?

Mr Beattie: Certainly we would be one candidate for that role.

Mr Calcutt: Obviously, it can be used in an integrated manner to the extent that one can have infrastructure pump-priming viable regeneration, and we can bring those together. I think we would have something to offer in that particular circumstance.

Q174 Mr Betts: You have looked into certain exemptions to PGS and you have talked about the Code for Sustainable Homes and that the land on which homes that met that might be exempt from PGS. Again, it is another exemption into the system. Is it reasonable for developers which, for example, install grey water recycling to say that they are exempt from PGS when surely the demands those developments place on the infrastructure are not actually much different?

Mr Beattie: Can I just talk you through what we propose? We do not propose a complete exemption. We propose a reduced rate. We do not propose that such developments—and for the sake of consistency let us call them five-star developments—should be exempt from the Community Infrastructure Fund because they make just as big a draw on strategic infrastructure, but it does seem to us self-evident that developments that have a very high level of environmental sustainability, that use less water, that are more energy efficient, should be encouraged and they will by definition make less demand on local services than inefficient forms of development.

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Therefore we think this is a great opportunity to tie up environmental and fiscal policies and provide incentives for high quality development that we need particularly in the growth areas, for the reasons you have given.

Q175 Mr Betts: So would a calculation have to be done in some way to ensure that the reduction on demand on local infrastructure that came from having these environmentally friendly homes was no different from the reduction in the planning gain supplement?

Mr Beattie: No. We would create a whole industry if we allowed some kind of proportionality. We are proposing quite a simple reduction for homes that meet a five-star rating under the proposed code. It would be a set reduction.

Q176 Mr Betts: How much would it be?

Mr Beattie: We have not made proposal. It would be a discount. We would need to model that and it is one of the areas we have said we are going to do further work on.

Q177 Mr Betts: Do you really think that the current Draft Code for Sustainable Homes is sufficient to merit a reduction or do you think it ought to go further?

Mr Beattie: I am talking about very high quality developments, whether they are EcoHomes excellent. However they are measured, we are talking about high quality developments.

Mr Calcutt: We would have a single standard. For the purposes of the proposition one would stay with the only game in town at the moment, which is EcoHomes. We would just say that if this was EcoHomes excellent, or excellent plus as the hurdle rate rises, then against that single top standard there would be a discount for those that were able to achieve it and whatever elements it would have to contain in its new and expanded form.

Q178 Mr Betts: In terms of housing and non-housing, if this discount were offered for certain housing schemes do you think there is a danger that that might skew the market in favour of housing development or would you consider offering some discount to eco-friendly non-housing schemes?

Mr Beattie: It should relate to commercial as well, but we are trying to skew the market in favour of high quality environmentally friendly development.

Q179 Mr Betts: Does that mean you would have to have therefore a set standard for eco-friendly commercial development as well?

Mr Calcutt: There is one. The same system in principle applies to both. The Building Research Establishment has EcoHomes for domestic and something called BREAM for commercial, so all the standards are there and all the measuring equipment is available to do that.

Mr Betts: We probably will have one or two more questions to follow up on in writing to you on technical points as well the one we asked you to come back on about option agreements. Thank you very much indeed for giving your evidence.

Witness: Ms Brigid Simmonds, Chief Executive, Business in Sport and Leisure Limited, gave evidence.

Q180 Mr Betts: Welcome and thank you for attending our session. Can I begin, as I did before, by giving apologies for Dr Phyllis Starkey, Chair of the Committee, who is in her constituency on important business this afternoon. Would you for the sake of our record like to introduce yourself?

Ms Simmonds: Thank you, Chair. My name is Brigid Simmonds. I am the Chief Executive of Business in Sport and Leisure, which is an umbrella organisation for sport, leisure and hospitality companies. I would also like to give evidence on behalf of the Tourism Alliance of which I am Chairman, which represents 46 different trade associations, very much the voice of tourism, and I am also Chairman of the CCPR, which represents 270 voluntary bodies and governing bodies of sport.

Q181 Mr Betts: You wear a number of hats. If we restrict PGS in any way on commercial-type developments is that not going to skew the market? If PGS is charged, say, on housing developments would that not be more fair?

Ms Simmonds: Our concern is the opposite, particularly if you are going to give the PGS to local authorities to distribute, that local authorities are only going to be interested in receiving planning applications from those types of development which

produce high value and that is everything other than sport and leisure. There is not a value in sport and leisure types of development. They struggle to pay the site costs you would spend on retail, commercial or offices, and that is our main concern, that you would be further restricting a market that already suffers from the fact that very few local authorities think about it when they are putting together local development frameworks and regional spatial strategies.

Q182 John Cummings: Why do you believe that PGS is inherently more complicated for commercial sites than for residential sites?

Ms Simmonds: I do not think it is inherently more complicated, although I have various reservations about how the scheme would work. Our concerns are mainly to do with the fact that you have to recognise where that value lies. Most of the things that I represent are things that should be provided for the community anyway. BISL has given evidence twice to ODPM when they have been considering their planning guidance on housing. Both times they failed to put into that guidance the requirement for the sorts of facilities in leisure or in sport which are needed by people if they are going to have new housing development. You need a community pub,

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you need a sports centre, and whilst section 106 agreements have worked in some places very well they have been patchy. You need those types of development and there needs to be leadership from the top to ensure that happens.

Q183 John Cummings: If a distinction has to be made between residential and non-residential development for PGS assessment, how should the Government deal with mixed-use sites?

Ms Simmonds: Kate Barker only recommended that this planning gain supplement applied to housing, so I think that is the starting point, and I think it is obvious that there is a planning gain uplift when you develop a housing site. That planning gain uplift is not so obvious when you come to leisure or some other forms of commercial development. We would prefer to stick with the section 106 agreements which we already have. If I could give you some examples, particularly where it has worked well for sports, in Catterick on a £196,000 project for new pitches and for drainage section 106 contributed £38,000. In Sandy Town, that place on the A1 that you come to in Bedfordshire, again for drainage and changing rooms, the total project cost £800,000 and £250,000 came from section 106 agreements. We believe that we would be better off keeping the section 106 agreements. The alternative, if you keep planning gain, is that you have a system specifically for sports-based projects where part of that distribution is mandatorily providing sports facilities.

Q184 John Cummings: Do you have any suggestions or ideas for how the Government should deal with mixed-use sites?

Ms Simmonds: If the planning gain supplement only worked for housing and it was a mixed-use site then obviously it would not apply to other forms of development within it. I agree with the previous witnesses that if you have a phased development you should only be paying your planning gain supplement as the various phases continue. A further complication is how you value those sites. A lot of sites are bought with hope value in mind. Are they going to have the planning gain supplement based on the value they bought it for or the current value which is assessed by somebody when they come to develop the site? The alternative for us is that either you only apply planning gain supplement to housing or you apply it to the rest of the scheme but have something that specifically encourages sport and leisure development.

Q185 John Pugh: You argue, and we had some difficulty in following the point here, that leisure developments do not generate the same revenue as retail and housing developments and “cannot afford to pay high prices for site development”, but is that kind of disparity not taken into account in the way the PGS is calculated in the first place? In other words, if the land uplift is greater then so is the PGS liability. I do not see how it makes any difference.

Ms Simmonds: It only makes the difference because the sorts of development we are talking about you want to encourage and if PGS acts as a disincentive then there will not be any encouragement for those facilities to be provided in the first place.

Q186 John Pugh: But why would it act as a disincentive?

Ms Simmonds: Because it does not provide the value and therefore the local authority is not going to receive the sort of value that it requires in order to do the rest of its infrastructure developments.

Q187 John Pugh: I see; so it is going to alter the behaviour of local authorities in terms of what they will allow to be developed or not?

Ms Simmonds: Yes.

Q188 John Pugh: Why particularly should they do that, because after all local authorities have a lot of interest in providing leisure facilities for their communities because they are the voters, they are the constituents, they are the people who turn out at elections and so on, whereas housing is often for people who are not currently part of that community?

Ms Simmonds: One reason is that there is no evidence at the moment that local authorities do provide, particularly at planning officer level or in local development frameworks, planning guidance which is specific to leisure developments. In fact, I mention in my evidence that I hope later this month ODPM will be publishing their good practice guide—

Q189 John Pugh: That in a sense is a separate point. Under the current section 106 agreements local authorities make far more from giving the go-ahead to a supermarket or a housing development than they will for allowing leisure development. I do not see why PGS would change that in any way because local authorities at the moment get more money out of allowing those sorts of developments and yet do go ahead in allowing, presumably, a fair number of leisure and community developments as well.

Ms Simmonds: They do, but in our view they do not provide enough. Many pubs provide CCTV for town centres all over the place under section 106 agreements. I think the scheme has been given more certainty over the last few years. There have been two reviews of section 106 agreements. I think the scheme works very well, so why do we need to introduce a further scheme which can only be seen as a tax on development?

Q190 John Pugh: But if your thinking is correct and local authorities have an opportunity to acquire funds which possibly they cannot at the moment, would not the average local authority, looking at local authority expenditure currently on leisure, which is by their own acknowledgement fairly low, want precisely those sorts of funds to put back into community provision and leisure facilities, not necessarily private facilities but nonetheless good public leisure facilities?

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Ms Simmonds: The South West Regional Sports Board three years ago put out a policy that they would only fund certain local authorities if they put section 106 agreement funding into sport. I telephoned them this morning and they agreed that it has had almost no effect at all on their local authorities. Some local authorities are very good, maybe the top 30%, but an awful lot of local authorities do not see it as a priority, and I think particularly where we have a situation such as now where it is a government objective to increase participation in healthy activity by 1% a year, and in fact it is even a target for both the Departments of Health and Education, there is a concern about how sport and leisure fit into it. If you look at page 27 of the consultation draft it actually suggests that leisure facilities will be outside the remit of planning gain supplement and if that were the case maybe we would not need to have this conversation. What is perhaps stark in this is that there is no mention of sport at all one way or the other. It may be that there was a consideration that it was included within leisure facilities but otherwise if you have no exemption to this there are going to be in many cases taxing developments that are funded by the National Lottery, or are funded out of the public purse.

Q191 John Pugh: Is a fair way of summing up what you are saying that there are some authorities who are authorities who are virtuous, who give priority to leisure, use section 106 agreements and planning gain if they get it for the right causes, in order to provide community and leisure facilities, and there are other local authorities who are profiteering, if you like, and will try to get what gain they can wherever they can and will give priority to retail and housing? Given that point, are you saying that the new regime will accentuate or encourage the bad authorities to be worse, if I can put it like that, and the virtuous authorities to cease to be so virtuous?

Ms Simmonds: Yes, absolutely.

Q192 Mr Betts: Sport England apparently have argued that the public sector and not-for-profit organisations might well be exempt from planning gain supplement but you seem to be going an awful lot further and arguing for some quite significant businesses. My understanding is that your organisation represents businesses with around £40 billion of capital. Is that not special pleading?

Ms Simmonds: Can I differentiate between some leisure facilities, like hotels, for example, which probably would be included within your planning gain supplement and the other end of the scale, dare I say it, with health and fitness facilities particularly with sport, which are very much needed. It is my belief that we should not be taxing people who are providing what I would call and like to define as “active leisure” facilities. If you were going for an exemption you would exempt all facilities which are providing “active leisure”, whether they be private sector, voluntary sector or, indeed, community amateur sports clubs, so they would not have to pay this planning gain supplement. It is hugely difficult and we are already seeing some of our members

developing abroad because they find it so difficult to get planning permission in this country. There are various complications in the way that particularly ODPM sees health and fitness which exacerbates that problem within PPS6. This is not a sector that is often thought about either nationally in terms of planning—I am talking specifically here about planning—or, indeed, locally by the local planning officer. In a sense, we are arguing for some better guidance here which we are about to have, for tourism, because ODPM recognises the problem.

Q193 Mr Betts: The exemption level could still apply to some quite profitable large companies.

Ms Simmonds: If you had an exemption for active leisure. The alternative would be to define it just for community amateur sports clubs which, as you know, are defined by the Treasury. There are just over 4,000 of them at the moment and the Government is keen for more clubs to become community amateur sports clubs. You could define it as not-for-profit organisations and that would run across the cultural sphere. You could define it as anyone who is in receipt of a National Lottery grant because the rules around that on not-for-profit could be exempted from this scheme. I do have a concern that you do have people who own facilities which have no economic use but want to bring them back into economic use. If they keep that ownership should they pay a planning gain supplement? Yes, there will be an uplift, maybe a small uplift, and therefore the tax will be small, but it may mean those types of developments never come forward in the future. If I can give you the example of the Docklands in Portsmouth where they have a whole series of buildings which are unusable: if the Docklands Trust wanted to bring it back into economic use, would they find the planning gain supplement as a real barrier to that type of development going forward? There are lots of non-profit making organisations who would have the same problem.

Q194 John Cummings: What other mechanisms, other than exemption from PGS, could be used to encourage local authorities to identify sites for leisure development? Why is exemption from PGS your preferred method?

Ms Simmonds: I think the exemption from PGS may not necessarily be the preferred method if you then had some funds coming out of the other end for actually funding those sorts of things which would not naturally get funded otherwise. I do believe that maybe it is time for some good practice national guidance from ODPM to encourage local authorities to put together sites particularly for sport. I do think that it is important where we have housing developments and we have section 106, and I think there is a danger they may disappear over a period of time for sporting developments, that that mechanism is somehow kept. If I could give you another example of the Harrods Repository which was developed in West London: this part of the section 106 improved dramatically the towpath that runs along from Putney to Hammersmith and is very

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well used for recreational use. Our concern is if section 106 is only concerned with things that are actually around the site and if the local authority does not identify that scheme as something they want to put the supplement towards then it will lose out. I think local authorities would be more interested in putting together funding for something that was infrastructure based but not perhaps as good for its local community.

Q195 John Cummings: Is your organisation contacted on a regular basis by respective government departments to seek your advice on such matters?

Ms Simmonds: Yes, it certainly is by ODPM. We have tried very hard, particularly through the Tourism Alliance where we wrote to every authority that was putting together a Regional Spatial Strategy and asked them to contact us and, in fact, we had absolutely no response at all. In the past Whitbread have tried to talk to every local authority where they wanted to develop sites for their David Lloyd leisure centres. It is very difficult for national organisations or, indeed, individual companies to fit in and make contributions to Local Development Frameworks.

Q196 John Cummings: Would including community sports facilities in Local Development Frameworks adequately mitigate against the risk of local authorities no longer prioritising such developments?

Ms Simmonds: Local Development Frameworks are quite different from local plans and they are not as site specific as they used to be, they are much more about general policies. The whole idea was that the system would become more flexible and it would also be faster. In many ways we lost the ability for local authorities in their Local Development Frameworks to give that sort of advice and to be very site specific.

Q197 John Cummings: Are you saying it does mitigate or it does not mitigate?

Ms Simmonds: I think some guidance could make it easier but I do not see any evidence from the way the system is evolving at the moment that it would.

Q198 John Cummings: Would an inability to provide community sporting facilities under section 106 arrangements jeopardise planning permissions for other developments?

Ms Simmonds: Specifically, since this is very much about housing, if you are going to put in new houses for people to live they must have adequate sport and leisure developments to go with them otherwise you are not providing for the fabric of people's lives and you are just encouraging people to spend all their leisure time at home, which is neither good for them nor for our economy.

John Cummings: Thank you.

Q199 Mr Betts: If you consider the planning gain supplement, surely local politicians are still going to be under pressure when they grant planning

permission for developments to use the planning gain supplement money they receive for exactly the purpose, ie providing community sports facilities, that they would have used section 106?

Ms Simmonds: It is not our view, or our experience of section 106, that that is the case. There are too many local authorities who never think along those sorts of lines at all. There is an urgent need for more cycleways and more walkways within local authorities. As an Olympic legacy we should be thinking along those lines throughout the country now. There is no evidence that many local authorities do think along those lines. Many of them think of things which may be hugely necessary for the infrastructure in that particular area and also possibly that do not cost as much to maintain, because there is a maintenance and revenue issue here as well.

Q200 John Pugh: If I was a director of leisure in a local authority and I was looking at the local authority getting section 106 agreement, planning gain supplement and so on, I would be seeing that as an opportunity to invest further in leisure facilities within the community, for which wherever you go there is a demand. The only people who I think would be troubled by the prospect of a planning gain supplement would be big commercial leisure parks who are looking at the possibility of an additional commercial cost which would reduce their profit margins. Could I ask you how many of your members operate in the not-for-profit sector?

Ms Simmonds: We have all the major operators of local authority sports facilities which are operated by the private sector. If you look at local authority facilities, they are either operated by a trust or provided in-house or by the private sector. All those who operate in the private sector are members, as are most of the large sport health and fitness clubs.

Q201 John Pugh: You can see that they might react differently to the prospect?

Ms Simmonds: Yes, I can. One of the concerns I would express is there are now very few directors of leisure within local authorities, many have amalgamated them and they have gone into bigger departments and that expertise is fast disappearing. I will give you the example of Cambridge Parkside where the director of leisure put out a brief for the development of a new swimming pool, which eventually was built but first time around the planning department said, "There is no chance you are going to get planning permission to build this on that site". That does happen. There is not that co-ordination internally within local authorities between planners, who are very hard-pressed to do the job they want to do anyway, in terms of planning expertise and development planning expertise. That co-ordination does not exist.

Q202 John Pugh: In terms of your fears, have you factored in that some obligations under section 106 will disappear as other possibilities for charging appear on the horizon?

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Ms Simmonds: Yes.

Q203 John Pugh: Have you factored that in?

Ms Simmonds: We have. That was my example of the Harrods Repository and the towpath. Would improvements to a towpath used by hundreds of thousands of people be the sort of thing that planning gain supplement money would be used for? I think there is a great danger that it would not and yet the developers of that housing site would equally say, "That is not immediately necessary to the success of this site in infrastructure terms, therefore we are not providing the funding".

Q204 John Pugh: Assuming that the new regime is inevitable, what level of planning gain supplement could be sustained by organisations in your sector, or does it vary depending upon the organisation?

Ms Simmonds: I think it varies. As you rightly say, the commercial end of the market may be able to sustain a planning gain supplement. It is the not-for-profit end particularly within the membership of the CCPR that I would be very concerned about. Sports clubs which are meant to be making that link and keeping people healthy and fit over a period of years is the area where we would be concerned.

Q205 John Pugh: Your general perception is that the burden will be greater across the industry, as it were?

Ms Simmonds: No. I think my general perception is the concern that you are not going to be funding the sorts of sports and leisure facilities to make people active in the future. I would still maintain that even if they are provided by the private sector, which of course then has no revenue impact on the public purse, they still deserve special—

Q206 John Pugh: You are not saying you expect the burden to grow, you are saying the nature of the new system will encourage local authorities to do different things?

Ms Simmonds: Yes.

Q207 Mr Betts: Just for clarification: you have given evidence on behalf of BSL but could you say this afternoon whether you also represent the views of Tourism UK and CCPR?

Ms Simmonds: They cover both the Tourism Alliance and CCPR. Yes, I have taken into account all of those views and they have all made submissions to this inquiry.

Mr Betts: Thank you very much for that.

Tuesday 16 May 2006

Members present

Dr Phyllis Starkey, in the Chair

Sir Paul Beresford
Mr Clive Betts
John Cummings

Mr Greg Hands
Martin Horwood
John Pugh

Witnesses: **Mr Stewart Baseley**, Executive Chairman, **Mr John Stewart**, Director of Economic Affairs, and **Mr John Slaughter**, Director of External Affairs, Home Builders' Federation, gave evidence.

Q208 Chair: Can I welcome you to this afternoon's session and ask you to introduce yourselves from the right? When we get into questions I will leave it entirely up to the three of you to decide which one of you responds to individual questions.

Mr Slaughter: I am John Slaughter, the Director of External Affairs for the Home Builders' Federation.

Mr Baseley: I am Stewart Baseley, Chairman of the Home Builders' Federation.

Mr Stewart: John Stewart, Director of Economic Affairs for the Home Builders' Federation.

Q209 Chair: Can I start by asking whether you would agree that the Planning Gain Supplement proposals are inherently fair in that every developer would pay the same proportion of land value uplift and that it would do away with the lottery of section 106 negotiations?

Mr Baseley: Perhaps I could answer that by saying that we do inherently agree that if we are going to increase the supply of new homes in the country, which is the Government's fairly ambitious agenda, we have to have an adequate infrastructure to enable those homes to go ahead. It is impossible for us to contemplate increasing house building rates from 150-200,000 homes a year without putting in place a properly thought through infrastructure that will adequately service the needs of the people who will live in those homes. The question you ask as to whether PGS is potentially fairer than the existing section 106 agreements is actually quite a difficult one to give you a completely straight "Yes" or "No" answer to. One of the problems that we have with the whole concept of PGS is whether or not raising revenue to provide infrastructure in a one-size-fits-all approach actually is possible. The reason that I say that is because development sites come in all shapes and sizes across the land with a variety of different issues that are attached to them. Greenfield sites, of which there are very few these days—as you know nearly 70% of all construction that takes place in England is on brownfield land—typically speaking are much easier to figure out how to realise development gain from than some brownfield sites. I guess one of our fundamental concerns is that, as a house builder until just six months ago, so having recently come into this area of life, I know that my experiences were that actually a lot of brownfield sites are very complex, require a high degree of risk taking by the companies that are going to develop them and often, frankly, do not throw up a huge increase in value over their current use value, which

can be quite high depending upon what that use is. One of the fundamental concerns we therefore have about this tax is the rate at which it gets potentially set. Our concern would be that if the rate is too high, and we can talk about that in a lot more detail perhaps, the reality is will the tax enable or help to facilitate an increase in the supply of land with planning permission to meet the Government's relatively ambitious house-building targets or is it likely to actually lead to a frustration, a reduction if you will, in the supply of land coming forth. Our own conclusions, as a result of the consultation exercise and the deliberations we went through before we submitted our views back in February, is that it is likely to lead to less land coming through rather than more and, therefore, will not actually assist the Government's housing programme.

Q210 Chair: Are you making the point that, unless certain changes are made to the detail of the Planning Gain Supplement, it would have those effects or that inherently it would have those effects?

Mr Baseley: I do not think we know enough about the detail to be able to answer that question honestly either. What we do know is that the current system, the section 106 agreement system which we have had in place for many years, fundamentally is not necessarily a bad system. What has happened over the last several years is that section 106 agreements and the use to which they were put to extract planning gain and development gain from development sites has extended, and the time attached to negotiating section 106 agreements has extended quite substantially. I repeat, I do not think that the section 106 system is necessarily a bad system. It can and does deliver Planning Gain Supplement for developments across the country at the moment. The problem with it is that, as I say, it has extended beyond its original remit.

Q211 Sir Paul Beresford: Along the same line, this tax is going to be collected nationally and redistributed. If you look at the Government's past performance and habits of redistribution, even the Audit Commission have been a bit concerned about this and the way in which they have taken capital receipts from some councils and distributed them elsewhere, do you have concerns that this sort of thing is not going to happen with this tax?

Mr Baseley: Yes, we do. Not because we have any particular reason to suppose that what the Government says will not happen, but just because

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at the moment one of the advantages of the section 106 system is that it is negotiated locally, it is negotiated between the developer and the local people through their representatives, be they officers or councillors in a particular district, and the people, of course, can touch and feel in a very real way the benefits that development might bring to their particular locality. I think we all know that building homes is not that popular amongst certain sections of the population, and there are concerns particularly in the south, about the rate and scale of home building that is being proposed. At the moment it is possible for local residents to identify real and tangible benefits that come from section 106 agreements and contributions that developers make. Clearly one of the concerns we have through the introduction of PGS is that the money, as we understand it, is going to be remitted to the Treasury. The Treasury is going to despatch the majority of it, but we are not quite sure what “the majority of it” actually means, whether that is 51% or 91%, back into the community. We do not know whether that will be back into the local community, back into the regional community or whether, ultimately, cross-subsidisation could occur as certain areas help other areas of the country.

Q212 Chair: Can we explore that point a bit more later on. Do you think that one effect of the Planning Gain Supplement might be to improve local planning authorities’ understanding of “development economics”, and would that be helpful?

Mr Baseley: I think it would always be helpful for local authorities or, indeed, anybody to understand better development economics. I cannot really see an instant answer—my colleagues may have a view on this—whether it is PGS, a tariff system or section 106 agreements that is necessarily going to help local authorities to understand the issues any clearer.

Mr Slaughter: I think it could possibly do in principle, in the sense that, if a system like Planning Gain Supplement was linked to transparency of information about what infrastructure requirements were and how those related to development, then there may be a case that that could assist with understanding development economics, but I do not think that area has been looked at in any depth so far. It could be an advantage, but I think it is one that probably will be a longer term advantage rather than an immediate one.

Q213 John Pugh: Seventy per cent of output is currently on brownfield sites, so an appreciable amount of development there. Does that not by itself indicate that there is plenty of profit in developing brownfield sites and that some of your conditions about its capacity to absorb PGS payments are a little overstressed?

Mr Baseley: I would not pretend for one moment there is not a profit to be made out of developing brownfield sites or greenfield sites or, in fact, other house building or development generally in the UK. It would be a foolish man who sat here and tried to persuade you otherwise. The real question is to what

extent the land owner is going to be encouraged or discouraged to bring forward brownfield land, bearing in mind that, as a result of the intensification of brownfield land development over the last 10 years, an awful lot of what you might call the simpler brownfield sites have now been built out and quite a few of the more complex ones, by definition, have been left further behind. I think what I foresee, and, indeed, I am already seeing in some parts of the country, is land owners very concerned about this potential tax, very concerned about the rate at which it could be struck and actually questioning in their own minds whether or not the whole exercise—getting planning permission on a piece of land can be very timely and very expensive, involving lots of consultants and experts that are required to facilitate the development—is actually worthwhile. I think it is a major concern that we have that it is creating uncertainty in the market. Of course the impact of that, potentially, is that already we are beginning to see certain land vendors sitting on their hands and not bringing their land forward whilst this process that we are now all involved in unfolds.

Mr Slaughter: I was going to add perhaps two other remarks. First, I think it is worth bearing in mind that the proposal the Government has put forward is to increase the overall amount of revenue coming from land uplift. We are talking about a qualitatively different situation in principle to what has existed up to now; so any consideration of the impact on brownfield needs to look at that. The second issue I think that we want to raise in discussing this area is that there is a problem with the volume of land coming through the planning system, it is actually tending to go down rather than increase, and the essential requirement here is that we find a mechanism that will enable the flow of land through the planning system to increase because without that we are not going to be able to meet the housing supply objectives that we share with the Government. I think on both counts one has to be very cautious about saying that there is a significant additional capacity for brownfield development to absorb additional taxation.

Mr Stewart: Chairman, could I add a comment to that? I think the key variable is the land value that is left there to be taxed, not the profit margin of the development, and that is where our concerns lie. You are quite right; development on brownfield land is profitable, as it is on Greenfield, in many cases. The issue is how much land value is there that can be taxed.

Q214 John Pugh: Is it quite hard to generalise about brownfield now. Brownfield can be anything from a back garden to a heavily contaminated site. Is that part of the problem, the fact that “brownfield site” is too global a term?

Mr Baseley: Sure, because back garden developments, frankly, are not terribly different to greenfield developments in lots of cases. They do not have nasty, horrible substances under the ground from factories that existed 150 years ago that have to be removed in a very safe manner, for obvious reasons.

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Q215 John Pugh: Do you need recognition of that factor in how Planning Gain Supplement is pitched, whether or not it is a brownfield or a greenfield site we are talking about, the fact that sites themselves are intrinsically quite variable even though they have the same headline description?

Mr Baseley: That is one of the difficulties we had when we were producing our submission in deciding whether or not a one-size-fits-all approach was possible.

Q216 John Pugh: Do you have any other concerns about the operation of the Planning Gain Supplement on brownfield sites apart from the issue of definition and financial viability?

Mr Stewart: When you say “definition” you mean valuation.

Q217 John Pugh: Yes.

Mr Stewart: That is a very complex area. I am not a valuer, but when you talk to valuers and when you talk to the developers who do it day-to-day, it is an extremely complex area. One of the requirements that the Treasury had in mind when it drafted the tax was that it would be simple, and one suspects that when they were drafting it they had a picture in their mind of a greenfield site.

Q218 John Pugh: Is there anything you could suggest that would make it simpler and less complex?

Mr Stewart: If you were to adopt a valuation approach, you are going to need a very clear set of rules which are agreed by both the industry and the valuation office, or HMRC, whoever is going to levy the tax, because without an agreed set of rules you can see all sorts of problems, disputes, delays and delays is what we do not want because that will mean a sidestep coming on. The point you made a moment ago about brownfield sites varying is very valid—greenfield and brownfield—across the whole spectrum of sites. Some brownfield sites have a negative land owner and to actually make them develop there is a cost in getting them to that point, right through to some greenfield sites. The Milton Keynes example is an obvious one.

Q219 John Pugh: With some sites you are actually adding value by building on them?

Mr Stewart: Indeed, and even greenfield, there is a whole spectrum from a completely unencumbered extension of a settlement where very little infrastructure is required through to our Milton Keynes example, where there are enormous infrastructure costs involved; so it is very difficult to generalise.

Q220 Martin Horwood: In terms of the brownfield sites that are complex and difficult to develop, surely, by definition, there would not be much planning gain and therefore there would not be much Planning Gain Supplement. That is the thing that is being put to us by government.

Mr Baseley: I accept that in principle, but where I struggle to square the circle is that we have been told, I think fairly categorically, this has to be revenue raising. Seventy-two per cent of development, I think it is now, is on brownfield land and rising.

Q221 Martin Horwood: Overwhelmingly the income for this is clearly going to come from greenfield sites, is it not?

Mr Baseley: Is it? Is there going to be greenfield land released?

Q222 Martin Horwood: It is hardly going to raise anything from complex brownfield sites?

Mr Baseley: In which case, one imagines, there will have to be quite a substantial increase in the rate of greenfield land being released to generate more money than is currently being generated. I struggle economically to square that circle. John can tell you precise numbers on this—I am sorry, I do not have them exactly right in my head—but I think the amount of land that has actually been coming through the planning system over the last five years or so has been going down, despite the fact that housing numbers have been going up.

Q223 Chair: You would accept that not all brownfield land is the same, that there is complex, extremely expensive brownfield land and there is other brownfield land where there would be planning permission.

Mr Baseley: As there, frankly, are greenfield sites. It would be equally wrong to put all greenfield sites into one bucket, because quite often the infrastructure that is required to develop greenfield land is much more substantial and significant than the infrastructure required to develop brownfield land. By definition, greenfield sites are often extensions of towns or adjacent to towns and require a heavy commitment to services and roads, which, quite frankly, brownfield sites sometimes do not.

Q224 Sir Paul Beresford: I would have thought one of the advantages of the 106 is that you know where the money is going. If you are a developer and you have struggled, you have developed a brownfield site and you have been taxed and it just goes on and it comes back, at least in part, to the local authority to be used for one of your competitor’s sites, et cetera, is it going to warm the cockles of the heart?

Mr Baseley: I think it is a very important point that we know where the money is going, and that helps us in our negotiations with local authorities in being able to demonstrate to the broader public in those areas the value of the scheme that ultimately people are going to be able to see take place, because, as you know, local councils typically make decisions for their own planning applications that are consented or refused. The broader point is also that some of the 106 negotiations that I have personally been involved with over the years can get extremely complex and often involve a very detailed agreement between the developer and the local authority about the time of payments in return for certain things being provided. Quite often, 30–40% of the

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development takes place and then certain payments are made in return for which by that stage certain highway works have been put in place, or whatever it may be. The funding is transparent for everybody. The local authority can see it is getting the money at a certain stage, it knows therefore it can commit to spending the money on a roundabout. You know that the school can be provided for before there are more children than there are school spaces available, and that kind of thing. The fear I have is, as the money goes into the Treasury and comes back (the mechanism for that), how the local authority will know how much it is going to get and when it is going to get it, how we will know that we are not going to end up with a development stopped halfway through because highways improvement funding has not come through, the highways improvements have not happened and from a safety point of view, for whatever reason, the development has to stop at that point. It is a recipe for disaster.

Q225 Chair: The situation you have got at present in some developments with section 106 is precisely that, that the Highways Agency has put a stop to development because no money is coming through for the highways. Would not the PGS at least sort that out in that it also funds regional infrastructure, not simply local infrastructure directly related to individual developments?

Mr Baseley: It could do potentially if I could be satisfied, and I guess I am not at the moment, that the money will come back in a timely fashion in adequate numbers to make that happen. I totally accept the point that you make that the present system is not perfect. I should add, we have long been arguing to simplify and reform the 106 system, and Kate Barker's report, which is where the whole concept of PGS emerged from, was partly on the back of submissions or representations we made to her about the frustrations we have dealing with the lack of responsiveness, from a timing point of view, of existing planning systems. I am not advocating the 106 systems as a perfect system or as incapable of being significantly improved. The way we looked at this, just to step back, we would have quite liked to have been able to come forward and say the PGS is the perfect panacea to all our problems because, as we have been calling for change for a number of years, then it would be perfectly reasonable for us to do that. We looked at this long and hard but concluded, on balance, that it is not likely to increase the supply of land with planning permission coming through. Therefore, we struggle to see how it is going to help the Government attain its housing targets.

Q226 Sir Paul Beresford: You have also accepted there is going to be a top slice. You said 50% or 96%. Presumably you have accepted there is going to be a stealth tax on this?

Mr Baseley: If the word majority is used rather than totality, then by definition, I expect some of it is not coming back. If they had said it was all going to come back, that would be different to a majority.

Chair: Can we move on.

Q227 Mr Betts: You are saying that you want to see change. Presumably, therefore, in principle some form of simpler approach to taxing the operative value on land is not one you are opposed to; it is the way that this is proposed in detail to happen. I want to try and deal with some of the concerns you have raised. You have raised some concerns about option agreements and, effectively, where they have already taken place, that the PGS will be an unfair tax on those, but if we had a transition period and an exemption for those, would that not deal with the problem?

Mr Baseley: Potentially a transition period is going to be very important, without doubt, not just for option agreements but for historically held land. I think the option agreement point is an interesting one and one you might want to pick up on from a valuation perspective. My concern there is about double count really.

Mr Stewart: I will try and be simple. I am sure you all know what an option agreement is. If I agree to buy a portion of land from you, at some point in the future when I get planning permission, I will pay you, let us say, 85% of the current value at the time of the planning permission. The discount is: can you offset that against the payment of the PGS? The developer incurs substantial costs when progressing a site through the planning system to be able to realise that value. Would those costs be offset against the PGS calculation? It appears at the moment they could not be. That was our main concern about options. You are quite right about transition arrangements: they would be extremely important.

Q228 Mr Betts: Could you explain how you think transition arrangements might work? You are saying you want them for more option agreements. Perhaps you could elaborate on that point as well and how long do you envisage a transition arrangement lasting for?

Mr Stewart: We have not come down on a hard and fast figure. You would have to have a cover point, but we had five years in mind for sites which were already in the ownership of the developer. I am not quite sure how it would work in practice. The concern is that you could end up double taxing sites, obviously, and a site which, let us say, got planning permission on section 106 and was signed a day before the new tax came in, clearly to impose the PGS on top of that would be onerous. Local authorities are not going to wind down their section 106 demands as we get up to the point at which the PGS comes in; they will carry on requiring them until the last day; so there would have to be a period and that period would have to cover the period to build-out the site, and that could be many years or it might be one year; it depends on the size of the site. There would have to be a period of many years to allow that to happen.

Mr Baseley: It is a difficult question to answer because options are put in place and sometimes take 15 to 20 years to come through the planning system.

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The way that they work is that the developer takes the risk of promoting the site which may or may not ever get planning permission, but typically options are used on land which is a long way in the future in terms of anybody's thinking, and it is part of the speculative risk of being a developer, which is totally understood by the development industry. The way it pays for that risk is through the discount it achieves on market value. In calculating market value, surveyors and advisers to vendors will very strictly define, within option agreements, the mechanism that is going to be used to define market value and the deductible items that the developer will have to take off. Section 106 costs, for example, would typically be a deductible item; so one would calculate the land value taking into account the fact that a million pounds, or whatever it might be, is going to be paid by the developer towards the section 106 agreement. Effectively, the land owner is paying for that. A lot of option agreements have tax either "get out" or deferment clauses in them such that, if the rate of the cost to the developer of actually bringing the land forward rises above a certain threshold (and individual sites will vary as to what that threshold will be) or the purchase price per acre falls below a certain number—that is another way of doing it (it has got a minimum price point put into the option)—then the option dies and the vendor is not obliged to sell. Unless transitional arrangements are put in place that circumnavigate that, the reality is that a lot of land would come through the system over the next five to 10 years, and, if this is intended to raise more money than the current 106 system and, therefore, the burden on that site, bearing in mind options are most typically used on greenfield sites, is going to be greater than was envisaged when the option was entered into, it could well trigger either the minimum purchase price not being met or the cost of deductibles being exceeded because of the tax hit, which could lead to the vendor being able to withdraw from the sale and choosing to do so. It kind of brings me to another point which I should have made earlier, which is why we said in our submission that political consensus on this is so crucial; because what we see already at the moment in the market place is owners of complex sites, which may take many years come to fruition, simply sitting on their hands taking the view that, if there were to be a change in government and the Government was to change colour at that point, an incoming Tory Government would, as they did with development land tax in the past, simply repeal the tax. Therefore, you can understand why owners are saying, "If that is likely to be the case, we will wait until there is not a tax around and sell our land then."

Q229 Mr Betts: Having a transition period when you could deal with these option agreements but, say, after that time there would not be any specific rebate or concession for them would not encourage, in your view, those sites to come forward more quickly?

Mr Stewart: It could do, as long as the transition arrangements were sufficiently long.

Q230 Mr Betts: How long?

Mr Stewart: It could be five to 20 years. The longest site I have had under option taken through the planning system was 21 years.

Q231 Mr Betts: Moving on to the method of valuation, which is one of the issues, I think, you raised, you have got concerns about the calculations of CUV and PV as one of your fundamental concerns about the system. Presumably, therefore, you are even more opposed to using average valuations. I think one of the proposals that was floated, but rejected, in the consultation document was using added valuations on agricultural greenfield sites and other systems for other developments.

Mr Stewart: Yes, we did reject it ourselves as well. It was originally floated, I think, in Kate Barker's report, the idea that you could have an average across a district, but it is the point we discussed earlier that there is a whole spectrum of sites and, therefore, land values. Some have a substantial land value and some could have a negative land value; so to have an average applied to that would be clearly neither fair nor very sensible if you were trying to promote more land coming forward.

Q232 Mr Betts: What about the residual approach. Do you want to say anything about that: taking the 106 and then maybe a tax on the remainder?

Mr Stewart: Do you mean take out the section 106 and just have a very modest PGS?

Q233 Mr Betts: Yes.

Mr Stewart: That is a possibility, I suppose. We do not have a definitive answer as to what is the alternative. What we try to do is look at the pros and cons of all of it. The section 106 does have benefits, but over time the practice of the section 106 has become onerous.

Q234 Mr Betts: One of the things I am beginning to struggle with is that you do not like section 106, you want to change it, you think that the PGS is some form of taxation which is applicable across all sites and people can see they are being treated fairly and, similarly, might be the right way to go, but you cannot tell us how to do it.

Mr Slaughter: That is a fair point to raise, but perhaps it is worth explaining. One way that we have tried to look at this is if we go back to the brownfield issue and focus on that. I think you have to be clear about what the objective is here. If the objective is to raise more revenue overall in the current system, then there are certain fundamentals that you cannot buck, one of which would be the issues we have already discussed about brownfield. In that sense, at a very high level, you have got certain issues you have to deal with, whether it is a reformed version of section 106, whether it is a tariff approach or whether it is PGS. What we are saying is that we think there are certain generic issues, and there are certain generic criteria that should inform any system that we adopt. We can see the problem areas with the various options the Government put

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forward in December for consideration, but we have not yet been able to establish a whole set of positive proposals as to how we would solve the problems we are identifying. We can see some high level criteria that any system should apply about transparency, predictability, a rate that does not prevent brownfield sites coming forward, but, as we have already discussed, there is a stack of quite difficult technical, political and distributional issues that have to be worked through whether we go down any of the particular routes, and that is where we are at.

Q235 Mr Betts: One of the things that has been pointed out to me is that for Capital Gains Tax purposes the Valuation Office does, on a regular basis, make retrospective assessments of value. If they can do it for that tax, can we not do it for PGS?

Mr Baseley: Capital Gains is typically paid by owners directly on the gain from acquisition to sale and it is, therefore, based on the transaction value at the point at which you sell your piece of land. It is pretty black and white and pretty difficult for anybody to disagree what that number is. You sold that piece of land for two million pounds, you bought it for a million pounds, you have a gain of a million pounds, less any relief you are entitled to when you pay your tax. Market value is, frankly, very difficult and not a precise science. If you ever put a piece of land on the market, and I have done many, the range of offers that you receive for that piece of land can be huge. How do you determine the market value?

Q236 Mr Betts: Can you not use sale price? Is that not a possibility?

Mr Baseley: That would be one potential way of doing it, but that is not actually, I do not think, how it is set out at the moment.

Q237 Mr Betts: Could you actually develop a better way of doing it based on that?

Mr Baseley: We may be able to. We are working on that. We do not have an answer for you today on that, because one of the things we set out in our submission was a call for the time we have between now and 2008, which is the earliest this tax can be introduced, as I understand it, from what the Government has said, for us to work with valuation experts and others on some of these points that we had concern about, and we are doing that separately from here. We have convened what we call a coalition of the willing to sit down and see if we can come up with some answers to some of the questions that you have raised and discuss those and agree those with the Treasury. We are not valuation experts; nor are we tax experts in that sense; so we do not necessarily have, at this hour, cast iron solutions to some of the problems, but we can see some of the problems.

Mr Stewart: It is a fair point that you put to us, but there are some very detailed technical issues and there are some quite high level issues. I scribbled down the generic areas. The whole issue of valuation is a very technical area, and, having listened to valuers, it is quite an extraordinarily technical area

that needs a whole set of rules. What would the rate be? We have no idea what the rate will be. Twenty per cent is being banded around, but we do not know whether that is what the Treasury is thinking on. There is the issue of infrastructure delivery. A key point about the tax is that it is a revenue raising instrument, but it says nothing about and it is not about delivery. Without the delivery you are merely talking about a tax on land, which will reduce the supply of land; so half the circle has not been addressed at all. There is the whole issue of scale-back to section 106, which in simple terms in the consultation document looks pretty straightforward, but, as soon as you start talking to developers, there are lots of complexities there. There is the whole issue of affordable housing and then there is the political consensus; so for us to come up and say: "Here is the definitive answer", it is a very complex area, and I can see why the Treasury are struggling with it.

Q238 Martin Horwood: One of the other plethora of difficulties that you see with Planning Gain Supplement is that those responsible—this is paragraph six of your submission—for checking and challenging self-assessed valuations have to be adequately qualified to understand, not just valuation but the nature of residential development, the difference between residual valuation of housing land, very different valuation processes involved in residential and non-residential. Is it really this complex? Surely these kinds of valuations are done every day of the week.

Mr Baseley: Not really, no. I wish they were some days, but, no, they are not, because as we started to think through those issues, the issues which we mentioned in paragraph six of our submission to you are the ones which spring to mind instantly which we can see causing grey areas. The concept of this is a self-assessment tax, as I understand this particular point. The valuation of land is carried out, obviously, in the market place on a regular basis by experts who are trained and have spent their life doing just that, valuing land, and they do understand the complexities of the valuation process, which can be quite vast. Our concern is whether the Revenue actually has the staff in place to be able to deal with that. Frankly, the process that could then unfold, I can see developers effectively swapping two years of uncertainty whilst they negotiate section 106 agreements for two years of uncertainty whilst they negotiate their tax payment.

Q239 Martin Horwood: Could they not employ the same kind of planning consultants that your members employ?

Mr Baseley: The Revenue or us?

Q240 Martin Horwood: The Revenue.

Mr Baseley: They could, but I do not think that is what is currently proposed because of the cost basis attached to it.

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Mr Stewart: My understanding is that the Treasury and HMRC do not envisage any significant increase in the resources required, whereas our feeling is that, at least in the initial period while the development industry (not just residential but everyone) and officials in government get used to the system, there will be an enormous amount of uncertainty because you are learning a whole new set of rules, so there would be additional resources required. Then there is the issue of delay, which you have not touched on, which is extremely important. If the actual calculation of the payment is not agreed until the day you get the planning permission, most developers will want to get on site the following day, give or take. If there is uncertainty as to what exactly that is and then there is a period after which that could be appealed, you make your submission, your self-assessment submission, there could be a long period. How long would that be? Two or three months, during which time HMRC could come back and challenge that, and, if it was challenged, how long could it be before that was resolved? Could there be a six month delay just sorting out what the tax payment is?

Q241 Martin Horwood: I think HMRC are getting quite used to adapting to new rules under this Government. One of the other things you say is that there is a need for a pre-clearance system, because developers will not even start work until they know what their PGS liability would be. Why would the onset of a PGS liability be any more off-putting to developers than the current uncertainty over section 106 negotiations, which are even more complex surely?

Mr Slaughter: One point that has just been made on that is that effectively you are extending the period of uncertainty. As I said, the problem with section 106 is that it has to be resolved before you can actually go ahead with development, as things stand, and you are wrapping that up with the planning permission process, but the potential uncertainty that my colleague was just talking about stems beyond that point: because if there is not the certainty of evaluation, and that can affect the viability or nature of the development going forward, and that is open for a further period after planning permission is granted, you are effectively adding a further period of delay and uncertainty to what currently exists for developers.

Q242 Sir Paul Beresford: Mr Stewart, you mentioned concerns over the level of taxation. Are you going to be sitting chewing your fingernails with concern at every budget: because we do have a Chancellor who does seem to shift taxation around, particularly in his direction?

Mr Stewart: We do have concerns about what might happen in the future. The rate could be set modestly initially. If the tax is going to be there for five, 10 or 15 years, certainly there is a worry that in the future it could be raised, a government 10 years from now might be pretty strapped for cash and decide to raise the rate.

Sir Paul Beresford: It is strapped now. What about next year?

Q243 Chair: Presumably, if the tax is pushed too high, development does not occur, so a government has to make a choice between whether it wants the money or it wants the development?

Mr Stewart: Indeed.

Q244 Chair: Any government.

Mr Baseley: Absolutely.

Mr Stewart: Yes, of course, but there is always a residual fear, I guess, for anyone who pays the tax, that that tax could go up. There is another concern too, that by making it transparent how much each local authority is raising through the PGS rather than at the moment, which is a fairly opaque system, might a future Treasury decide to cut local authority grants by the same amount as is being raised through the PGS? I am not saying it would happen, but those kind of thoughts cannot help popping into your head.

Q245 Chair: What about a variable rate of tax, so that you have a higher rate the longer the time that the land actually sits in the land bank of the developer, which is certainly a criticism of some of your members, that you sit on land for a long period of time and do not actually develop it?

Mr Stewart: It is a criticism; it is not a valid criticism. We assembled a lot of evidence for Kate Barker and her team in the review and it is there in the Barker Report.

Mr Baseley: Business models just do not allow companies to sit on long land banks and not develop them. What you see in land banks is large sites being developed at a certain rate, because in any market there is a market level at which you can sell homes and, if you are a large company and you buy a site of 1,000 or 1,500 homes, by definition, you are not going to build and sell them all in one year, so what you see is longevity of sites. The mechanics of how the city operates the demands of shareholders for return on capital employed, particularly in the more benign economic of low interest rates, low inflation and, frankly, now low house price inflation as well, makes the concept of sitting on land not viable, and that is one of the reasons why developers use options rather than outright acquisition to promote longer term land.

Q246 Mr Hands: Looking at your submission in paragraph 30, you seem very critical of the way in which affordable housing provision is made with an existing 106 agreement. I am unclear as to whether you are suggesting that under Planning Gain Supplement affordable housing should not be retained within a scaled down 106 regime but funded from PGS revenue. How do you see affordable housing being funded in the future?

Mr Stewart: Our concern really was that, talking to the developers, there are major worries, or major concerns, about the current section 106 system, and if you try and delve into that and find out what are the major causes of those delays and uncertainties,

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affordable housing is probably the biggest single element within that, causing delay and uncertainty. What the Treasury has proposed is a PGS scaled back 106 but in a sense left behind unchanged the current major cause of problems. Our proposal here is you have actually only half, if that, addressed the problem. I appreciate that the issue is to raise additional money and fund infrastructure and so on, but if the issue is also to try and have a simpler, more efficient system, you also should address the issue of affordable housing, which is a major cause of delay and uncertainty at the moment.

Q247 Mr Hands: My question is that about 30,000 units of social housing a year is provided through section 106 agreements, which seems like quite a lot. Do you think a lot more could be realised through PGS?

Mr Slaughter: I think there is a wider issue here, which is what is the most efficient way to provide affordable housing. One of our concerns is also that we think the focus, when people talk about affordable housing, is too often just on social rented housing. What we prefer to talk about is affordable housing solutions, which include shared equity and low-cost market housing, and so on. When we talk about it, I think that is how we would look at it. There is a case for a different approach in thinking. Effectively, we are talking about subsidy in some form from the private sector and the developer, and the question is, if you take into account that subsidised element, however it is represented through the planning system, it is a question of how that ties up with other funding streams, what the total overall efficiency is. There is a case for looking at things differently, where you would effectively say, “We want a quantum, in broad terms, of affordable housing defined in its broadest sense”, and the developer has more flexibility to tap into funding mechanisms, including the element that might come from the uplift in land value, but also

other pots of government money, to provide the best overall result, including the low-cost housing, the low cost in market housing that they can provide. Part of the concern we have at the moment is that under the Government’s proposal, as we understood it—this is part of the revenue raising aspect of it—you would have a tripartite take, you would have a residual section 106, a separate funding stream for affordable housing, however that should be interpreted, and then the Planning Gain Supplement. I think that is both complex and potentially worrying in terms of adding to the funding take without making it clear how you could gain more efficiency in terms of delivery and provision. Again, we have not got the full answers, but we would like to see a more flexible approach that gave the developer more scope to develop solutions and tap into available funding streams to deliver affordability objectives but not in too specific a fashion.

Mr Stewart: Our comment really was to undertake a thorough review. We think the Government should undertake a thorough review of how affordable housing is provided, because the current system, where you have grafted affordable housing provision onto the planning system, because affordable housing inherently has nothing to do with planning, it has been made so by government, which is fine, but it has created this enormously complex, slow, inefficient system. We are saying the current system is not working very well. You have proposed a reformed system, but you have left one of the biggest causes behind, so surely you should look at that as well?

Chair: I am conscious of the time. There are two or three other questions that we want to ask, but we will provide them in writing, if we may. Could you respond in writing? If there are additional points that you feel have not been brought up, we will be more than happy to receive an additional submission in writing from you.

Witnesses: Mr Mark Southgate, Head of Planning and Local Government, and Mr Clive Bates, Head of Environmental Policy, Environment Agency, gave evidence.

Q248 Chair: In a minute, I will be asking Mr Cummings to ask the first question, but it is up to the two of you which one of you answers the questions. Before we start, could you introduce yourselves?

Mr Bates: I am Clive Bates, I am the Head of Environmental Policy at the Environment Agency.

Mr Southgate: I am Mark Southgate, the Head of Planning and Local Government at the Environment Agency.

Q249 John Cummings: You argue that the PGS revenue should be spent on environmental protection measures. Is that not a bit sly on your behalf? Why should developers and land owners pay for these measures?

Mr Bates: Our view is that the priorities for spending PGS revenue should be determined locally and include environmental expenditures, but it would be

unrealistic, and we would not consider it desirable, that they were exclusively spent on environmental investments.

Q250 John Cummings: If we were to take your advice on board, or the Ministry was to take your advice on board, then surely this would be at the expense of strategic infrastructure, such as schools and transport.

Mr Bates: There is a case for spending on environmental improvements as part of the package surrounding a development, and providing green space, providing a good environment, in many cases, is inherent to developers’ activity. It goes on at present—there are environmental expenditures made under planning obligations—so I do not think we would be venturing into a new area of principle by suggesting that part of the planning gain is

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captured and spent on improving the local environment. In fact, developers tend to like that because it improves the value of the development as well, it is a sensible recycling planning gain into improving the overall development.

Mr Southgate: It also depends on how you define infrastructure, and, of course, there are aspects of environmental protection that are key parts of infrastructure; so flood defence and flood reduction, treatment waste from large scale developments are a key part of the infrastructure necessary for those developments.

Q251 John Cummings: Can you tell the Committee how your demands for PGS revenue to support large scale environmental protection measures is consistent with your arguments that the majority of PGS revenue should be returned to the area in which it was generated?

Mr Bates: Our view is that the PGS should be seen as part of a bargain struck between the developer and the communities affected by development, and, therefore, that most of it should feel as though it is a kind of local tax on development, spent locally with priority to determine by local planning authorities consistent with local development frameworks. I guess we also say that on top of that there is a case—so that is the majority—for spending some of it on further afield, on wider infrastructure projects that benefit the development and that local community as well. Flood defence type expenditures that happen away from the precise location of the development would be an example of that.

Q252 John Cummings: Another example would be river and coastal restoration projects, contaminated land transfer, air quality monitoring and waste management. We have one very long shopping list?

Mr Bates: These are all important things to development and the community and can be part of the package, part of the bargain that is struck between the developer, or between the development and the local community, and there is nothing that says that those things are not important. There is nothing, in our view, that says that they should be mandatory either.

Q253 Sir Paul Beresford: It all sounds nice, but the reality is that the money is going to be collected centrally and redistributed by the Government. This is a government that dictates to local authorities, etcetera. They are going to vary the money, the grants and the distribution according to their diktat; so the nice cosy work with the local authorities and the developers is not going to happen, is it?

Mr Bates: The consultation asks for views on how the money should be redistributed, according to a sort of needs-based formula, which is how local government finances are arranged at present.

Q254 Sir Paul Beresford: That has changed three times since this government has come in. The needs-basis has changed three times.

Mr Bates: That is right. We have erred much more towards the idea that it should be redistributed back to the community, or the community where the development is actually taking place; in other words it should be seen as part of a bargain between the development and the community affected by the development.

Q255 Sir Paul Beresford: All of it?

Mr Bates: Not necessarily all of it, but a high proportion. You could weight it. We have not been so precise and exact like that. You might want a different approach to distributing PGS revenue.

Sir Paul Beresford: If the Government were going to do that, they would not collect it centrally, would they?

Q256 Chair: Can we stick to questions that are within the remit of the Environment Agency to answer.

Mr Bates: They have put that forward as an option, so they are clearly considering it and they have asked for views on it. I think one of the reasons for organising it as a tax like this is, in a way, to take some of the heat out of planning obligation negotiations. There is only a certain amount of planning gain that can be extracted and turned to good works around a development. What this is saying is that a formula will be applied that taps a certain proportion of that. At the same time, the amount that can be tapped through planning obligations will be reduced and that should take some of the heat and complexity out of extracting planning gain, notwithstanding the comments about the complexity of making land valuations.

Q257 John Pugh: I do not have any problem with the principle of what you are suggesting, it is how it is going to work out in detail. If you have a tax value, it has been suggested a rate of about 10%, or something like that. Are you suggesting that you, the Environment Agency, get a fixed slice of that or would it vary from site to site or be site specific depending upon what were the environmental requirements of the development?

Mr Bates: Very much the latter. I do not think you could nail that down to a fixed proportion going particular agencies, and so on.

Q258 John Pugh: We are having difficulty trying to understand how you would be involved in the process. If you are allocating the funds what process are you going to go through?

Chair: We have got a division in the House of Commons, unfortunately. Could I suspend the Committee for 10 minutes.

The Committee suspended from 5.30 pm to 5.40 pm for a division in the House

Q259 John Pugh: You argued for having a role in allocating PGS funds on the basis of clear infrastructure plans, obviously a very attractive role, and most people would welcome such a role. How

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do you think you are going to play it? What criteria are you going to use for disposing of all of this ill-gotten gain, as it were, or well-gotten gain?

Mr Southgate: We see that role very much within the wider planning system. PGS is part of the wider planning system in terms of the local definition of what they think PGS should be spent on. We see that as part of the local development framework. The Environment Agency is a statutory consultee on local development frameworks, regional spatial strategies and the sustainability appraisals which apply to those; so we see our role as being no more than an environmental adviser in those, arguing that some of the things we pointed to, for example in terms of flood risk infrastructure should be part of that overall settlement. We do not think we should have a special place at the table, it is part of our statutory advisory role, and there will be others who will be making that same point, and so in that respect we are like any other lobbyist, if you like. We are merely arguing that those environmental aspects are important parts of the infrastructure for those developments and should be included.

Q260 John Pugh: It crosses my mind that planning gain will occur wherever and whenever, but infrastructure plans are often de-played, well-established, have timetables and all that kind of thing. You would need to have a sort of steady cash flow coming to you to be disposed of in a rational pattern, would you not?

Mr Southgate: Again, part of it is saying, "Yes", ultimately the planning gain will be realised when the sites come forward, but the whole point about changing the system is to try and get it into a context where it is the development plan which makes the decision about the locations of development and the planning gain is realised as part of the eventual planning application. The one thing we would not want to see is an application for planning permission perhaps being put forward by developers saying, "We need some flood infrastructure with this, and this will be a good use of planning gain", driving the decision about where that development should go, because that might be the wrong place. The plan should decide on where the right place for the development is and the debate about the planning gain which then arises from that and how it should be spent would be part of that plan-led process.

Q261 John Pugh: So a stable and not an opportunistic approach?

Mr Southgate: Absolutely. I think one of the arguments against the section 106 is that it is a bit ad hoc, it is not clear, there is lot not of community buy-in in terms of what gets settled, and if you do that through the local development framework process and equally at the RSS level, you can basically set out what is intended. The infrastructure plan would need to come with it, and in some cases that is not clearly available, so that would be key part of deciding what infrastructure is necessary, particularly in a places like the growth areas where you could then decide what was necessary and how you would fund it.

Q262 Chair: Can I explore how what you have just said is consistent with your call for a higher rate of PGS to apply to developments in the floodplain? You seem to be suggesting that as a way of discouragement about this, and yet you have just pointed out that, as statutory consultees, you would advise against development on a floodplain. Could you explain?

Mr Bates: This is simply adding an economic instrument on top of the planning system's presumption against inappropriate development in the floodplain. That presumption is not absolute and our advice is not always concurred with, often for reasonable reasons, but I think this would provide an additional incentive not to develop in the floodplain and it would also, in part, recover some of the additional external costs that arise when development does take place in the floodplain; in other words there are liabilities incurred by others for building and maintaining flood defences associated with that development.

Q263 Chair: But elsewhere in your submission you have said that revenue allocation should not give perverse incentives to planning authorities to bring forward inappropriate land. If the planning gain was greater on land in floodplains, it would perversely incentivise local authorities to give planning permission in floodplains to get more money, despite the fact that you will be telling them that they should not be giving planning permission for developments in floodplains.

Mr Bates: Again, there are a couple of points to say about that. If that money was essentially hived off for flood defences, the position would be neutral, but remember, there is only a certain amount of planning gain in total. It can either be tapped through Planning Gain Supplement or through planning obligations; so the capacity to add planning obligations would be diminished by having a higher level of PGS for development in the floodplain.

Mr Southgate: The important point is, again, that the Planning Gain Supplement is operating within a plan-led system. You use the plan to identify where sites are and are not acceptable. There is strong central government guidance which says, in looking for development at flood risk, you go for the areas which are the lowest risk first and those which are highest risk last, and there are certain tests under the new proposals that you would have to pass to get there. Should you have gone through all of that, then it seems ultimately reasonable that you might have to pay an additional element of Planning Gain Supplement to overcome the issues in terms of the flood defence which might be required, but generally the Agency's view is that you do not want to defend in those areas would act both as an extra disincentive but also, if that is determined to be right way forward having gone through the policy hoops, then you would actually get additional funding on the flood defence, because that is what is required. I think it is very important seeing the operation of the

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Planning Gain Supplement within that clear Government policy and that clear approach in the plan.

Q264 Chair: Can you say what proportion of proposals for development in flood risk areas the Environmental Agency is consulted on, how often do you advise against development and how often is your advice accepted?

Mr Southgate: I will do that. In some ways it is very difficult to know what you are not consulted on, so any calculation on what we are not consulted on is a bit *ergo* “finger in the wind”. We did do some rough and ready calculations quite a number of years ago and probably prior to PPG25, (so in some ways a bit unhelpful), which indicate it may be as much as 40% which we were not being consulted on. I do not think that is the case now, because the PPG on development and flood risk has made it very clear to local authorities that they do need to do that. However, from our experience of rolling out something called “flood risk standing advice” to local authorities, some of them were alerted to the fact they should have been consulting us on aspects related to development and flood risk, which they were not; so there is clearly some of that going on. More important now is the area where they are not taking advice or evidence, and that has been a steady improving curve. In the last report we made, 92% of the decision notices we received indicated that our advice had been taken on board, and that is a pretty good success rate, I would say, with only 4% of appeals going against us. One of the issues there is that we only received about 66% of the decision notices on those cases where we have objected; so you are talking about a two-thirds survey level effectively, but there is a growing trend. The issue is there are a few major cases coming through against our advice, and that is related to something which we may come on to, which is the flood risk “call-in direction” which has been discussed by government.

Q265 John Pugh: We were having a discussion earlier on about how broad brush in a sense terms like brownfield site were. I feel that “floodplain” will be similarly interpreted and it needs to be more fine-grained than that, because obviously I think your way of looking at things can be anything from wrapping around your shoes to around your neck in times when rivers overflow. Is there not a danger that charging extra Planning Gain Supplement in floodplain areas will actually not reflect the real flood risks that exist in those areas, because technically a flood does not have to be anything very considerable?

Mr Southgate: Absolutely. “Floodplain” tends to be the shorthand which is used. Actually we tend to talk about flood risk and developments at flood risk, and there is as much flood risk to be received from overflowing drains or from development which in themselves would create flood risk downstream. So flood risk is not just a matter of those built in

floodplain areas, but clearly there are mapped areas which are most likely to receive flooding from coastal floods and from river floods.

Q266 John Pugh: There is a difference, is there not, between areas like Carlisle where you get very dense floods, if one can put it like that, and areas like East Anglia where if you get a flood it spreads so diversely the impact will be far less?

Mr Southgate: Yes. The Agency does a national flood mapping programme which helps provide the zones I was talking about—I do not want to get technical, but zones one, two and three, which are the low risk, medium risk, high risk respectively—but the Government’s approach, and one which we support, is to then encourage local planning authorities to undertake what is now being called a “strategic flood risk assessment”, which is to map, in those places where they are at most risk, what the flood pattern is likely to be. For example, Boston in Lincolnshire has looked at its flood risk purely because, if you look at our maps, 95% of Boston is at high flood risk. As you go on and understand that more locally, by doing local surveys, you realise there are some areas which are at more risk than others, and that is what is we are trying to differentiate in terms of development.

Q267 John Pugh: So the flood everywhere will be a one inch flood then?

Mr Southgate: That is the other issue. There are two issues. One is about the probability of flooding, and the second is about the consequence of flooding. Clearly the probability may be high, but if it is going to go to one inch and that does not even go into the property, then insurance damage is nothing. If it is very high and there is risk to life, then that is an entirely different issue. Flood risk is a combination of the likelihood of it happening but, more importantly, the consequence should it happen.

Q268 Chair: Can I take you back to the remarks I think you made at the beginning about the retained section 106 agreements being used to promote the site specific environmental issues and to have an approach which guarantees environmental quality. How do you suggest that the environmental quality of the proposed development should be measured?

Mr Bates: I think, again, it is a local decision. It is a matter for the local planning authority and the developers to determine how they want these places to look and feel. There have been attempts to measure environmental quality, but I do not think they really apply to the issues you are raising here. Essentially that question is about how a given development is embedded in the surroundings and that is what planners spend a lot of time on and devote a lot of expertise to.

Mr Southgate: One of the areas we called for potential spend of the Planning Gain Supplement was river restoration and coastal restoration. Clearly, if you have a series of developments happening in one of those areas, if you can link them up more effectively in terms of their contribution, you can get more bang for your buck in terms of

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making sure you have got a leading development going across the local authorities. That is one of the issues: if it is purely local, then one local authority might take one approach and one might take another. That is where you need a bit more strategic overview to see a river system in its entirety and you want to link these things up to make that restoration more attractive, as an example, but it is that need to think more than local in some circumstances that is important.

Q269 Chair: Who would give this strategic overview then?

Mr Southgate: We think in those circumstances that would be a lead from the Regional Spatial Strategy.

Q270 Mr Betts: English Partnerships in their memorandum to us called for properties which achieve a five-star rating under the proposed Code for Sustainable Homes to be exempt from PGS. Is it a bit surprising, therefore, that your memorandum does not mention anything on this matter at all?

Mr Bates: First of all, we support very strongly the Code for Sustainable Homes and want to see it used as widely as possible. The question is: is this the right instrument to use to promote it and, given the objectives of keeping it fairly simple, there might be other ways to do it. We favoured the right of local planning authorities to insist on and essentially apply obligations to go to the highest levels of the Code. We thought that was a more flexible way of tapping into the available Planning Gain to fund the additional expenses that would be required to achieve those higher levels of the Code. We are open-minded about this proposal by the way, but our sense was that this would be better done simply by a direction from the planning authority saying, "We would like higher levels of the Code to be achieved". The developers were doing it anyway because they wanted to build that kind of development. There is not a particularly good reason to give some kind of tax break for it.

Mr Southgate: Just to give a context, that would be in the context of plans that would have to be argued on the basis of soundness in front of inspectors, and the local authority in doing that would have to say, "We think there are particular reasons in this area why we think the Code should apply because of certain issues". It would be for the local authorities to argue that and for that to go in front of the inspector, but that is one way of making the Code bite a little bit more than it might otherwise do, for example.

Mr Bates: We are not standing here in opposition to English Partnerships' proposal; we just thought that the approach to getting a higher penetration of the use of the high levels of the Code could be done differently.

Q271 Mr Betts: In your view, if this system came in, where there was some form of exemption or reduced rate or whatever where homes achieved this particular standard, would there be any less demands on infrastructure, on the things were being

paid for out of the Planning Gain Supplement or out of section 106 for that matter but by building homes this time?

Mr Bates: Yes. That is the idea of it in many ways.

Q272 Mr Betts: Could you elaborate a little more?

Mr Bates: If you build to the highest levels of the Code, you have a reduced water demand, a reduced energy demand and, potentially—it is a bit questionable—reduced waste requirements. Essentially the Code provides a very strong demand-side measure in reducing the demand on supporting infrastructure.

Q273 Mr Betts: Is it awkward to quantify that?

Mr Bates: Quantify it?

Q274 Mr Betts: Yes. Could you say, "This is how much less Planning Gain Supplement we would get. This is how much less demand on the infrastructure there would be because we are building homes to that particular standard"?

Mr Bates: You could certainly make an attempt to look at how much reduced water and energy demand you would have from each house built to the highest level of the Code and that would translate back into a reduced demand for water and energy infrastructure. In terms of how that would interact with PGS, that is a different question in a way. I think the proposal that they are floating, and you are putting to us, is the use of PGS as an incentive structure for getting a wider uptake of the highest levels of the Code. What we are arguing is that there may be other ways to do that which are a bit simpler, which is to insist on it as a planning obligation or a condition of planning permission.

Q275 Mr Betts: The public purse, for example, I do not think would want to see a developer ended up paying £100,000 less in PGS but the infrastructure demands from the particularly high standard development were reduced by £80,000; that would not seem a terribly good deal. Would it be possible for you to produce a further note showing these quantifications? Can you demonstrate them for us?

Mr Southgate: One thing we can quantify is water saving in relation to future household projections. We have done work with the South East England Regional Assembly to look at how the reductions in water demand would enable the housing projections to come forward. Basically, we did various models, but take the 8% reduction in water use, that means you have to provide less infrastructure in terms of reservoirs and, of course, in theory reservoirs take a long time to come on-stream in planning terms anyway. You can immediately see the advantage that you require less of that large-scale infrastructure to bring the balance of housing supply and water demand.

Q276 Mr Betts: Is it just water or are there other things as well?

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Mr Southgate: Water is probably the clearest one from the Agency's responsibility. We mentioned waste, but there is a less clear relationship there, and energy obviously is another one as well.

Mr Bates: Where a development places a high infrastructure cost, it costs more to connect, we have tended to favour that cost being channelled through the charges that developers pay to connect to networks rather than through some other mechanism. If the developer then cannot sell the property for any more money, that extra cost, the connection charge or the developer charge, still has to be recovered from the available Planning Gain; it comes out of the profit that the developer would otherwise make on the land. That is another way of consuming the available Planning Gain, but it would be through that route of charging for the connection to infrastructure. You could vary that charge according to the quality of the building at the other end of the pipe, so if it was a high consuming household, they would pay more for it.

Q277 Mr Betts: Perhaps, on the possibility of measuring the savings, it might be helpful if you could do a further note for us.

Mr Bates: Yes.

Q278 Mr Betts: If we have this skew of some kind, some concession brought in for housing schemes, presumably we are going to have to have it for non-housing schemes, for other types of development as well, otherwise you are going to skew the market in favour of one particular type of development over another.

Mr Bates: There is a kind of polluter pays-type argument behind this which is that when a development places a higher burden on the infrastructure the developer bears those costs. Conversely, if they are more efficient in the design of a house, or whatever the building is, and the water and energy requirements are lower, they pay a lower cost. That seems to me to be the best way of aligning the decisions about how big the burdens are and how big the demand is with the mechanism for cost recovery.

Chair: Has anybody got any further questions or have we covered everything? I think we have exhausted ourselves if not you. Thank you very much.

Thursday 18 May 2006

Members present

Dr Phyllis Starkey, in the Chair

Mr Clive Betts
Lyn Brown
Mr Greg Hands

Mr Bill Olnier
Alison Seabeck

Witnesses: **Yvette Cooper**, a Member of the House, Minister for Housing and Planning, Department for Communities and Local Government; and **John Healey**, a Member of the House, Financial Secretary, HM Treasury, gave evidence.

Q279 Chair: Can I welcome you, Ministers, to this final session on our investigation into the Planning-gain Supplement. Can I say right at the outset that we have only just received this document from the Department for Communities and Local Government, *Valuing Planning Obligations in England*, so clearly we have not read it and it is in any case embargoed. It may be that, when we have read it, we might wish to return to you with some more questions. We understand that Mr Healey has to leave, so we are going to be asking questions to begin with mainly relevant to the Treasury in order to make sure we have dealt with that and then obviously we will deal with other questions afterwards. If I can, therefore, start with a question to you, Mr Healey, it is about the rate of PGS. What will the PGS rate be, what do you consider a modest amount and how effectively can the implications and the consequences of the Planning-gain Supplement be assessed without knowing the rate at which it is going to be set?

John Healey: Thank you, Dr Starkey. Can I just say, before answering those three questions you have posed in one, thanks for the invitation to give evidence; we welcome that, and we welcome the inquiry. We have got a great deal of work to do following around 800 responses to the consultation and the views of the Committee will help us in that respect. I do apologise that I have to leave. You know that I have to be at the Finance Bill Standing Committee at 1.45 and I know you did not want to change the time, so, if there are any questions specifically to me and the Treasury that Committee members do not get to ask in the time before I have to leave, I am very happy to write to the Committee on that basis. On the question of rate, we have said from the outset, and we are clear in the consultation document, that we are looking to set the rate at a modest level for two reasons. Firstly, we want to ensure that, if we introduce a Planning-gain Supplement, and it is a proposal at the moment and no final decision has been taken on whether we introduce it and, if so, how precisely we do so, then the importance of the rate is to ensure that it does not affect the incentives to bring forward the supply of land for development in the first place. Secondly, we want to avoid the problems that perhaps predecessor-style supplements of this nature have encountered in the past, so we have been quite clear that we are not looking at anything like what have been punitive rates in the past of, perhaps some

would say, similar approaches, and they have ranged from anything from 40 to 100%. On the question of setting the rate, there are a number of components that we have to try and analyse in order that we can get anywhere close to assessing the right sort of level to propose if we go ahead with the Planning-gain Supplement. Any decision on rate or any proposal on rate will interact with decisions and proposals on scope and on exemptions. They will need to be taken in the context of some of the macroeconomic factors that will affect the operation of any supplement, including the market in housing, the market in land, and that is work that we are doing at the moment and, as the Committee will know, we have confirmed that we will, and have undertaken to, make further announcements on the PGS by the end of the year.

Q280 Chair: Are you intending for there to be further rounds of consultation as you refine the PGS system, assuming you go ahead with it?

John Healey: We would confirm that, if we decide to go ahead, in any announcement by the end of the year. My own view is that we would have to, and want to, ensure that there is further consultation. At this point, I cannot say to the Committee whether that will appropriately be on the basis of draft legislation, proposed draft legislation or on the basis of further policy documents, but the principle that we would need, and would want, further consultation and views, including the opportunity for this Committee to have a further look if you chose, I think would be an essential part of any decision we might take to pursue a Planning-gain Supplement.

Q281 Mr Hands: Specifically there are a couple of points on that. First of all, how exactly would we envisage the mechanism for changing the rates of Planning-gain Supplement? Would it be something which would probably be looked to be potentially changed each year in the Budget or would it be more flexible than that in, say, a fast-moving property market, let us say, a situation like the early 1990s where values are moving around quite rapidly and you may need to bring down the Planning-gain Supplement rate quite abruptly? How do you see the mechanism is likely to work on that?

John Healey: Well, you are tempting me to speculate and to move into an area which is quite well down the track. In principle and in practice, the Treasury, in this Government as in every Government, has

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kept every rate of every tax and the operation of every tax under review each year, so, to that extent, in principle we keep a very close eye on the way that it works. Secondly, this is not potentially a type of levy which I think one would compare, say, to excise duties which have, by tradition, been a form of tax which Chancellors have made decisions on an annual basis and for which a degree of inflation increase is often required, as in other taxes, to maintain their real value. This, in a sense, would not be a levy of that nature, so I would expect, particularly in the way that we would want it to work, that we would introduce it and want to ensure a degree of stability and certainty because of its potential impact in some long-term planning business investment decisions and markets, so I would not see it, if one likes, with that first general caveat that I suggested as the sort of thing that would lend itself to certainly annual change or of course any uprating.

Q282 Mr Hands: What about the scope for introducing a degree of independence in this? Have you looked at what other influences there are on, say, the housing market? Obviously one of the biggest influences in the past has been the Government setting of interest rates and the view was taken, correctly in my view, in 1997 to make that an independent decision-making process. What about the merits of making Planning-gain Supplement a degree of independent, outside decision-making there?

John Healey: First of all, I welcome your endorsement of the Chancellor's decision to set up the Bank of England in that independent role. I think it has been an important part of the success and stability of the British economy over the last decade. I think I would answer it in this way: that, whenever we are considering questions of tax design or tax rates, we go out of our way to try and make sure that we get the views of experts, those affected who can contribute points of view which help us with the assessment that we need to take. In the end, however, it falls to the Treasury, and this is in part the nature of government, I think, that we, as politicians, ultimately elected and therefore accountable to a wider electorate and the public, have to make decisions which often balance a number of competing interests. In any tax decisions, the Treasury and the Chancellor have to weigh up a range of factors, a range of pressures and often quite competing interests. Now, in those circumstances, it is theoretically possible to franchise out that responsibility. It is not something that I would necessarily advocate and in the end I think it is part and parcel of the responsibility of government to make sure that we do the analysis, we gain the evidence, we give those affected or with an expert view the chance to contribute, but in the end somebody has to take those decisions and be accountable for their impact and their effect. That is properly a role, in my view, of elected politicians forming an elected government.

Q283 Mr Hands: Just more generally on PGS receipts, is it your intention to retain any proportion of PGS receipts for central government?

John Healey: What we said in the consultation, and amplified in the Budget, is that we essentially see this as a local measure, in part to ensure that local areas benefit and have the revenues required to build up the infrastructure where there is growth in their local communities, so we have said that a significant majority of the revenues will be devoted to the local authority area in which the PGS is raised. Clearly, if the principal purpose, as we have made clear again, is to support infrastructure development in order to support growth, then there is infrastructure that sometimes crosses local authority boundaries and may be of wider regional or sub-regional significance, so we have said that there may be a minority of the PGS revenues that could be applied at a regional level and that is the undertaking we have given.

Q284 Mr Hands: What about the costs of raising the PGS in the first place? Surely something would have to be offset against that and the central government costs of raising it?

John Healey: If we get the design of any PGS right, and I think we have been quite clear in looking at potential designs that we are looking for something, again, I suppose, learning some of the lessons of predecessor policies, that is essentially based on self-assessment, and developers and businesses are used to self-assessment, and which draws on the expertise we have already in the Valuation Office Agency who undertake 55–60,000 property valuations each year, and, if we set this up in a way which is simple, then the costs of administration, enforcement and compliance should be relatively modest.

Q285 Mr Hands: Will there be a clearly identifiable cash trail in all of this? Let us say, a certain amount is raised from a particular local authority in Planning-gain Supplement over a particular year, will that figure be available versus what is given back to that authority in terms of resulting central government monies to fund infrastructure? In other words, will people be able to say, "Our authority's put in £100 million and got back only £80 million"?

John Healey: I think it is an important point, if I may say so, Mr Hands. It is a detail we have not made a decision on yet, but, if you take one step back to the principle that we set out here which is to say that one of our criticisms and concerns about section 106 is that it often is not transparent, it is not clear to local people what they have got from developments that may be taking place, then, if this is to function not just as a potential source of additional revenue that can be devoted to local infrastructure development, but also as something that local communities can see benefiting them directly, then clearly I think it means that we will have to find a way, although, as I say, we have not taken decisions on that sort of detail yet. We would have to find a way, I think, of making sure that it operated transparently so that it was obvious to those in any local authority area what the gains

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were from any potential developments that were given the go-ahead under the planning regime by their local planning authority.

Q286 Mr Hands: What scope do you see for there being a redistributive element in all of this, in being able to take back any supplement and move it towards more less advantaged and deprived areas?

John Healey: Well, there is an element of more flexibility for such redistribution, if that is the decision locally, than there is currently with section 106 which basically is site-specific. There is, for instance, the potential flexibility for a local authority area to be able to pool funds from PGS raised through their area to devote to particular necessary infrastructure they felt was important in their area, and they could choose to do that with their proportion of the significant majority of the PGS revenues that would flow. There is potential also for using a portion of the PGS revenues on a regional basis where there are important infrastructure developments that may help unlock further growth potential, but, above all, I think the important thing here is that it is principally a local measure and, secondly, that it is something we have been very clear that is devoted to the development of infrastructure that is necessary to support the growth of housing and local communities.

Q287 Mr Hands: I have two very quick questions on section 106. You said in the consultation document that you are expecting more money to go to local government overall through PGS than through section 106. Would that be every local authority or will some be more likely to benefit than others?

Yvette Cooper: I would apologise, first of all, Chair, for the fact that you have only just received the research on section 106 today and we should have probably sent it to you in time for you to grill us on it, but it does raise some interesting issues which I think will help us to be able to answer that over the long term. I think you would expect most areas to be seeing something of an increase overall in the resources that they would get because, if you look at the section 106 research that we have sent you, what it shows is that on a very large number of sites there are no section 106 agreements at all. For example, even though the proportion of sites with section 106 agreements has increased since 1997, 60% of residential developments of more than 10 homes still do not include section 106 agreements, 90% of smaller residential developments do not include section 106 agreements and some of the calculations we have done on the basis of this would estimate that, out of around 140,000 homes built in 2003–04, over 95,000 were built on sites without section 106 agreements. Therefore, there are a considerable number of sites on which planning gain takes place, so there are planning gains, but at the moment there are no section 106 agreements, so that evidence, I think, would strongly suggest that there is a tax base out there within every local authority, whether it is planning gain that is taking place, which is not tapped into by the current system.

John Healey: The short answer to your question is that you cannot say that in the short term every local authority will gain from this because the current situation, as Yvette Cooper has said, is extremely patchy, but overall there will be net additional revenues available and hypothecated to infrastructure development at the local and regional level. Finally, and importantly, we have made clear that any PGS revenues to local government and local authority areas will be in addition to, and separate from, the local authority settlements.

Q288 Mr Hands: Just on transparency, you mentioned that you thought that PGS would be more transparent than section 106 agreements, but there is little that can be more transparent than section 106 agreements: the development is granted, planning permission is given and, in return, up pops the local park, the local school, the local transport development, et cetera, and everybody says, “Thank you” to Chelsea Village or whoever it was who provided that particular new facility. What can be more transparent than that?

John Healey: I am not sure whether you have had a particularly excellent council up until very recently in Hammersmith and Fulham which does not operate like elsewhere, but generally a very common criticism that all of us, as local Members, come across is that there is not, for local people, often a very great clarity about how section 106 operates. It depends very much on how skilled the local authority planning department often is at negotiating those and it is a common criticism actually from all quarters or certainly a common perception that section 106 can often serve as a form of somehow buying and selling planning permissions which is terribly opaque, and I think one of the advantages of the planning gain system would be that it would be clearer and it could be more transparent.

Q289 Mr Betts: Section 106 is still going to be allowed for affordable housing on housing sites. Does that mean that the contributions towards affordable housing under the new system will remain the same as they are now or are you going to encourage or allow for an extra element from PGS revenue to fund affordable housing as well as the 106 contributions?

Yvette Cooper: We are doing some further work on the interaction between scaled-back section 106, which is what we would envisage, and a potential PGS and, in particular, looking at what the impact would be on affordable housing. At the moment the research that we sent you suggests that the value of planning obligations that were agreed for affordable housing in 2003–04 was £1.2 billion and the amount that was actually delivered in that year was £600 million, and there is a series of possible reasons, but no certainty as to why there is such a gap between those two figures. What we want to do, I think, is to look further at what the interaction might be. What we are clear about is that we need to keep on delivering affordable housing and actually we need to be able to increase the affordable housing that we

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deliver. We think there may be a lot of potential in many areas to deliver more affordable housing and, for example, we have just responded to the Affordable Rural Housing Commission's report looking at the issue of the amount of affordable housing that comes through planning obligations in rural areas, and there is some significant evidence to suggest that we could get rather more affordable housing out of planning obligations, out of section 106 agreements effectively, within rural areas compared to what is coming through the system at the moment. We are clear that we want to increase the delivery of affordable housing, however, what we want to look further at, and we are doing some further work on at the moment, is exactly what the interaction would be between a section 106 approach and the PGS approach. We made the decision to keep affordable housing within the section 106 approach because in practice you really want it to be considered as an onsite delivery. If you are going to deliver mixed communities, you want affordable housing to be built into the developer's attitude and conception of the site from the very beginning. That was why we thought it would be more appropriate to deliver affordable housing through the section 106 route rather than taking it out of section 106 and putting it into PGS instead.

Q290 Mr Betts: I am interested in the interaction because presumably it depends on whether the section 106 is negotiated and the planning gain is then somehow levied on the residual value which remains, or whether, in fact, you have a Planning-gain Supplement and then you negotiate what you can out of the 106, the Planning-gain Supplement having already been paid.

Yvette Cooper: Section 106 would take place first.

Q291 Mr Betts: It is a residual element?

Yvette Cooper: Yes, but the Planning Use Value would be calculated after the section 106 agreement had taken place.

Q292 Mr Betts: Presumably there is going to be a great incentive for most authorities to try and maximise their section 106 which is going to come to them rather than leave anything left for planning gain which might go somewhere else, or at least a percentage of it, in the process?

Yvette Cooper: We did register that point as part of the consultation document and that there might be a need to look further at the approach to affordable housing taken by local authorities, so you had some consistency and you did not end up with perverse incentives causing problems. Bear in mind, if you have a very transparent approach to the PGS, local authorities will also know what their infrastructure requirements are in their area and also what the consequences will be for PGS and the consequent resources they are likely to get from PGS for infrastructure as well. Local authorities will have to take a series of judgments about this. I cannot give you a conclusive answer at this stage because it is

exactly one of the areas which we are looking at. I do recognise the point you are making and it is exactly why we are doing more research into it.

Q293 Mr Betts: Is one of the intentions of the whole approach, as I understand it, to try and simplify arrangements? Would it not have been easier to try and improve the operation of 106 by indicating your methods of good practice to those authorities that are already going to operate them, say at least on housing sites, and not have a complicated dual arrangement on those sites in the future?

Yvette Cooper: You could take that approach. We have looked at that and that is why I think the research we have sent to you is quite interesting on this. What it does show is even where you have got the residential developments of more than 10 homes, you have still got only 60% of those having section 106 agreements in place. We have a large number of homes that are delivered on very small sites where there are very rarely any section 106 agreements that are to take place. Ninety per cent of them do not have section 106 agreements in place. To apply section 106 agreements to all of those sites would be adding an additional process of negotiation into a very large number of sites, where we think the idea of a Planning-gain Supplement, which is something that is very simple, to such a wide number of sites would be the simplest way of being able to capture planning gain on what are a very large number of very small sites, but each of which will have some significant planning gain in them and, therefore, could be captured through a Planning-gain Supplement much more easily and much more smoothly than having a huge expansion of section 106 agreements. The other factor about section 106 agreements is that there are a whole series of conditions currently attached to section 106 agreements. They are about negotiations, about the site needs and so on, so clearly you would need to substantially change the section 106 agreement process if you were to do that. I think the conclusion that we came to, the reason we decided to consult on the PGS, was because it was really felt that having an approach that provided some clarity for developers, and some clarity for local authorities, which could be smooth and simple would be better than a huge number of individually negotiated deals on a very large number of relatively small sites.

John Healey: We are consulting on the proposal for a Planning-gain Supplement following the recommendations which Kate Barker set out. In her report—and I know you studied that very carefully, Mr Betts—she looked at the other possible mechanisms. She looked at VAT on greenfield sites, at section 106 and at capital gains tax as well, and in the end came to the conclusion that she thought the concept of the Planning-gain Supplement was likely to be the fairest and most efficient way of capturing what she called the unearned gains from selling land for development.

Q294 Mr Betts: We had the Home Builders' Federation in front of us the other day. We probably take it as a given, as I am sure you do, Minister, that

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most potential taxpayers would rather pay less tax than more, so you take their submission probably with at least regard to that as an issue. They were saying a couple of things to us. Firstly, there were major difficulties with section 106, they felt it was inconsistent and complex. They were saying, "We are still going to have the inconsistencies and complexities because we are still going to have the 106". They welcomed the principle of Planning-gain Supplement because they could see, of itself, it might be simpler, but then went on to say that they thought the whole issue of the way valuations would be done on the Current Use Value and Planning Value was virtually impossible to work, in their view. They thought the clauses were unworkable and would delay house building and make it more difficult to get planning permissions through. They had not got any alternatives because they recognise that they have not got a scheme which works either. Are you concerned about that evidence we received?

John Healey: I have not looked at their evidence, but on the specific point about unworkability, it is the case that developers already obtain valuations on the land that they are using, and they do that as part of their normal business planning and investment and they do it as part of their procedures. I have explained also how in government we are involved with businesses of all types, including developers, in regularly checking valuations of property and land as part of other tax regimes. I will certainly take a look at their evidence, but without being clear from you what their particular objections are and why they do not think it is workable, then it is quite difficult to answer that question. We will certainly take a look at it.

Q295 Mr Betts: One of the issues they did raise with us was about the complexities of arrangements that are done between owners of land and developers, particularly options, whereby you could end up taxing the costs of getting the land fit for development as part of those arrangements. They were arguing very strongly about the need for transition arrangements which would allow for a period of time when those options perhaps would not be taxed at PGS. Then they went on to point out that some of those options on land could take from 15 to 20 years to come to the point where they were ready for development and get planning permission. Is that not a real problem?

John Healey: First of all, we are looking at the role of options in the current land and development market, secondly, we are considering, as we indicated in the consultation, the question of transition arrangements, and, thirdly, what we want to ensure we do not do with any potential Planning-gain Supplement is introduce a system which discourages the sort of remediation and land preparation which has to take place on some sites before you can get to the point where they become viable for development.

Q296 Mr Betts: You are going to look at a transitional period, and you are going to consult on that?

John Healey: We are looking at the whole area of whether or not, and in what circumstances, transitional arrangements might be appropriate. As I said at the start, this is work in progress, there is a huge amount of ground we have still got to cover and we aim to do much of this in order to be able to make further announcements by the end of the year.

Q297 Alison Seabeck: I have been listening to your comments on VAT and PGS. Originally I think you were in favour of a national single figure for the PGS. Kate Barker's rationale rather preferred the potential for regional variations. Are you softening on that view in light of the responses to the consultation?

John Healey: We asked in the consultation whether there was a case for an exemption or a reduced rate for brownfield sites. We do have quite an important starting point, which is to try and make this as simple and as comprehensive as possible. It is likely to be an advantage to developers, to local communities and their authorities, and to us in trying to administer this. The whole question of the detailed design of this is what we are working through now as we work through the 800-odd responses that we had in the consultation. We are doing so also in further detailed work with many of the bodies that have got expertise to help us with this.

Q298 Alison Seabeck: Is your evidence suggesting that PGS could levy more than the potential £1.3 billion that VAT might levy?

John Healey: We have said from the outset that our intention is to see any PGS as producing net additional revenue over what currently is delivered by section 106 in order that we can then contribute to the additional infrastructure costs which are required to support the growth; that is a purpose behind the proposal and very clearly so. Chair, can I caution the Committee not simply to be looking at PGS in isolation, there is clearly a potential Planning-gain Supplement for us and it is being considered also in the context of the package of commitments we gave at the Pre-Budget Report and, also, in particular, alongside work we are doing in the cross-cutting review as part of our preparations for the Comprehensive Spending Review. If the Committee would find that helpful, I would welcome the opportunity to give the Committee a note on that cross-cutter because I think it helps set the context for the Planning-gain Supplement and probably will help keep this proposal in perspective and be of more general interest to your work.

Q299 Chair: I think that would be extremely helpful, Mr Healey. I am conscious of the time, but just before you go there is one more issue which would be useful to have your view on. It is the extent to which the Treasury is prepared to forward-fund some of the infrastructure costs, then recovering the costs afterwards, either regionally or locally, through the Planning-gain Supplement. Obviously the Milton Keynes tariff is an example of this where

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there is forward-funding. Can you give us an indication of the extent to which the Treasury might be considering such forward-funding?

John Healey: Of course, it was the Treasury that gave English Partnerships the go-ahead to forward-fund in Milton Keynes, which indicates to you that we recognise this is an important part of local authorities and local areas being able to see the development infrastructure they need to support the growth. In a sense, it picks up the point I just made about the cross-cutter and the broader issue because the solution is not necessarily only to be found within the potential for a Planning-gain Supplement system. However, within a Planning-gain Supplement there is clearly—and we touched on this a moment ago with Mr Hands—some flexibility within a local authority area for pooling PGS revenues, for being able to use those to forward-fund infrastructure in areas which may not be related to the specific sites that PGS has been raised on. Secondly, there is a potential that we are looking at further and it may be of interest to the Committee. If PGS provide a revenue stream for local areas and local authorities, then clearly there is the capacity to look at using those as part of the prudential borrowing regime. Clearly that might be a mechanism for raising some of the capital that might be required for the forward-funding of infrastructure needs.

Q300 Chairman: Minister, we will probably have to let you go to your committee.

John Healey: If there are any further questions, particularly to me, then I would be delighted to answer them and I am happy to do so now. Thank you very much.

Q301 Chairman: I suspect there will be quite a few. Thank you very much. Minister, I am sorry to have kept you waiting. Can we go back to one of the points that we have explored slightly before. How important do you think it is that there is a visible link between the places where the funds are generated and where they are spent?

Yvette Cooper: I think that is why we have said we think the majority needs to go back to those local authority areas, that there is very considerable advantage to people feeling that the resources that are raised, the planning gain that comes from having new developments, new houses in that area, are also used to benefit that local community. We do also know that within an individual local authority area there might be a greenfield site where there is a very high planning gain, for example, but only a limited infrastructure requirement, and very close by a brownfield site with some very difficult remediation costs or some infrastructure requirements. Therefore, we think local authorities should be able to have the flexibility to look at using gains from one site to have an impact on another and to use the infrastructure for another as well. It is because we think there is very considerable value in the sense of local communities themselves being able to share in the planning gain within that area, which is a result of growing the local community and providing

additional houses or additional development, which is why we have said that we want the link to be very clearly to those local authority areas.

Q302 Mr Olnier: Being one of these elderly ones who can remember the Community Land Tax many, many years ago and it failed basically because of the exemptions that were given then. Have you any views on whether and what land should be exempt from the Planning-gain Supplement? In your own mind, do you see a differential between planning gain on land that is used for residential and land that is used for industrial or commercial?

Yvette Cooper: We propose that it should apply to all kinds of land rather than simply to residential, partly because we thought it was important not to distort the market, not to have a distortion and an incentive to use land in one particular way rather than another. Therefore, that was the reason for applying a PGS approach across the board, but obviously that is something which we are consulting on. As part of the consultation we also raised the potential to have a different rate for greenfield and for brownfield sites. Again, that is something where we are looking at the consultation responses. The reason for this—which was something that Kate Barker had also considered—was if we want to continue to prioritise brownfield land, and given that we also know that there can be additional remediation costs and additional costs which need to be taken into account for brownfield land, therefore having differential rates might be a good way to promote the brownfields development further. Therefore, that was something we thought we should consult on. There have been a series of exemptions which have been proposed in some of the responses to the consultation. We have not proposed specific further exemptions because we thought the approach should be as simple and as broad-brush as possible, but obviously we will consider the responses to the consultation.

Q303 Mr Betts: You mentioned previously, Minister, the estimates you have done and I was slightly surprised—I think I have got the figures right—that 1.2 billion has been negotiated in section 106 agreements but only £600 million has been spent as a result of them. Have you got any estimates, therefore, as to what the figures will be under a changed arrangement? For example, how much less will be the scale of such section 106 arrangements compared with what they currently are and how much more will be raised through PGS as a replacement or, indeed, as an additional revenue stream?

Yvette Cooper: The figures I gave you, the 1.2 billion and the 600 million, were just for affordable housing. That was just the section 106s for affordable housing. Obviously we have said that affordable housing will continue to be in the revised section 106. This is for 2003–04 and obviously it will vary from year-to-year depending on development new build levels in that year. The total value of planning obligations was 1.9 billion in 2003–04, of which 1.1 billion was actually delivered. The 1.9 billion was

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what was agreed in planning applications and 1.1 billion was what was delivered through planning obligations. At this point we have not got a figure for what a revised section 106 would gather because that depends on a whole series of further estimates about exactly the way in which you draw up a revised restricted section 106 as well as a whole series of other estimates and assumptions about PGS as well. It is something that we are working on.

Q304 Mr Betts: If you are going to retain section 106 for affordable housing then presumably one could assume that the affordable housing revenue in the future will be no less than it is now and, indeed, by encouraging those authorities which do not pursue it to pursue it in the future there will be an increase. Is that your intention?

Yvette Cooper: I do not think that is an unreasonable assumption but, equally, what I cannot say at this stage is exactly what figures we will be working to because it is a work in progress.

Q305 Mr Betts: It is rather peculiar, is it not, that we will be keeping section 106 in place for affordable housing when it looks as though the delivery of affordable housing is running at about 50% of what was agreed and the rest of section 106, therefore, comes to about 700,000 a year, of which 500,000 is delivered, so the delivery rate is actually higher on that element you are proposing to scrap.

Yvette Cooper: I think this raises some very interesting further questions and this is why I am not able to give you definitive answers at this stage. We are in the process of looking a lot further at what the consequences might be for affordable housing delivery. You could make the argument that affordable housing should come out of this, affordable housing should all be done through PGS, you could take that approach, but the reason we did not was because we felt that affordable housing was so important we did not want to do anything where in transitional arrangements there might be any risks to affordable housing, but also in particular because of this idea that we do want developers to think of affordable housing as being part of the costs of their delivery, part of what they should be doing on those sites because they should be building mixed communities and in those mixed communities they should be including affordable housing. Rather than seeing affordable housing as something which is a bill they have to pay that is separate from them, that is not an obligation on them, that goes through and ends up with the authority, they should have some responsibility for delivering affordable housing on their site and that should be inbuilt into the process. Those were the thoughts behind affordable housing. The tenor of your question is can we be confident about delivery levels and what is going to happen in terms of delivery of affordable housing. We are very conscious of that and our clear aim in this is to make sure that over time we are able to increase the delivery of affordable housing, so that is a fairly important question that is driving the additional work and research that we are doing.

Q306 Lyn Brown: Given that affordable housing provides for difficult and lengthy section 106 negotiations, and you are retaining this in the scope of your planning applications, how do you think PGS will result in a faster and more efficient planning process?

Yvette Cooper: It will take other things out. It will take some of the offsite issues out of the section 106 agreement. It might be possible to better smooth the process of agreeing affordable housing in section 106s as well and that might be something you could look at as part of this whole debate. We do raise the issue in the planning consultation and in the consultation on the planning gain supplement about whether we should have a more standardised approach to the provision of affordable housing as part of revised section 106 agreements. That is something we are looking at as part of this.

Q307 Lyn Brown: We have had witnesses who have argued that PGS will make marginal projects more unviable and thwart your intention of increasing housing supply. Do you agree with that analysis? If you do not, what is your evidence base?

Yvette Cooper: Kate Barker's interest in the Planning-gain Supplement from the beginning was that it was value sensitive. If you have a site on which there is not much gain through the planning system because of the marginality of the project, because of the costs, the remediation requirements, for example, for a brownfield site, the complexity of the site and so on, or because of what it was used for before, maybe it was already used for a whole series of commercial or retail developments or housing and residential developments, and maybe for all sorts of reasons there is hardly any gain through the planning system, under those circumstances as a result there will be hardly any Planning-gain Supplement paid. The benefit of the PGS approach is that the amount that is paid is proportionate to the value uplift as a result of the planning system. Given that the planning system itself imposes value on sites, it is because we have a value system that the values of a lot of sites are what they are and without the planning system the value would be completely different, and given that it is the planning system that creates a lot of that value it therefore seems appropriate that a proportionate share of that increase in value should be shared by the local communities as well.

Q308 Mr Betts: Have you made any estimates as to how much revenue you think you could raise from the new system without causing land-banking and actually reducing that amount of development?

Yvette Cooper: Work is being done at the moment to look at different revenue consequences and that sort of modelling, so that work is underway at the moment. Also, what you need to look at is what the impact is on development and so on. That work is underway and will inform the decisions that are taken.

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Q309 Mr Hands: I have two questions. First of all, all of your talk is about value uplift in the market but has any consideration been given to what would happen if property prices, land values, were in a downturn? In such a scenario the UK would almost certainly be in a recession, or about to enter a recession. If a lot of the infrastructure development that you have got proposed is dependent on Planning-gain Supplement to finance it and it suddenly dried up because there no longer was any value uplift, at precisely the same time as Britain would need infrastructure development to avert the costs of the recession do you not see that being a potential danger that Britain could effectively grind to a developmental halt at that time?

Yvette Cooper: Obviously the first thing to say is we should all be grateful for those critical decisions, that I know you supported, to make the Bank of England independent and the greater stability that we have had in the property market as well as the market overall. The second thing to point out is that the planning gain is not based on long-term market increases in the value of land, it is based on the increase in value that takes place as a result of the planning system. So it is the comparison between the current use value under the current market conditions and the planning use value under the current market conditions. It is not like capital gains tax, for example. It is not based on what happens to a piece of property or a piece of land during the market. It is based on the difference that takes place as a result of a planning system. You can envisage ways in which market conditions might affect that but, nevertheless, it is the planning system that increases value at every point in the market whatever the market conditions might be, so therefore it would be less cyclical than you were initially suggesting.

Q310 Mr Hands: Nevertheless, if you take a scenario like the early 1990s or the mid 1970s your planning gain would have been very, very small, minimal if anything, compared to the infrastructure needs or the desire to reflate the economy.

Yvette Cooper: If you think about the difference in value between agricultural land and residential land—those are the most obvious extremes—where agricultural land at the moment in current use is something like £9,000 per hectare and residential use is currently around £2.4 million per hectare, that is a pretty massive gap. Whatever position you are in in the cycle you are still going to have a very significant gap between agricultural land value and residential land value. There are cyclical factors that always have to be taken into account in tax systems, are there not? There are cyclical factors that always have to be taken into account in the fiscal decisions that governments make. That is why we have the fiscal rules which are all about managing expenditure over the cycle. You always have to take those sorts of things into account. I think this is less cyclical than you are suggesting for exactly the reasons that I have suggested, but to the extent that any income is cyclical then those are the sorts of decisions that treasuries always take into account.

Q311 Mr Hands: My understanding of this system would be that it probably could not be introduced before about the year 2008 and obviously at that time we are working on the assumption that we will be approaching a General Election. If another political party were to pledge to abolish the PGS system is there not a risk that you could bring all development to a halt for one or two years while land-banking went on because developers would figure they were better off waiting until the result of an election?

Yvette Cooper: We said in the consultation that the earliest that we could introduce this would be 2008, not least because of the amount of work that we need to do in advance but also because of the issues around transition that need to be taken very seriously as well. I think it would be very unwise for an opposition party to pledge to reverse a PGS or to get rid of a PGS given that the opposition parties are now, at least in theory, committed to increasing the level of housing across the country and recognising that there is huge need for additional homes across the country. Frankly, the infrastructure for those homes has to be funded somehow and you will have to get the resources from somewhere.

Q312 Lyn Brown: Given that PGS has the potential to create fairly good revenue streams for local authorities, do you think there is a risk that local authorities will favour developments that will produce a higher monetary yield rather than other developments that might be more important for sustainable communities, for instance things like sports facilities? How might you ensure this does not happen? Given that things like leisure and sports facilities are so important to sustainable communities, do you think they should be included in regional spatial development plans or local development plans?

Yvette Cooper: To the extent that PGS becomes an incentive to take one decision rather than another, you could argue that section 106s would have the same effect. Ultimately, local authorities have to take responsible decisions in the interests of the whole community and they are democratically accountable for those decisions anyway, so they ought to be able to take account of there are much needed sports facilities and so on, and not end up rejecting applications for those on the wrong basis. To the extent that sports and recreation ought to be part of other planning systems and planning strategies, if I may I would like to think about that further and write to you.

Q313 Lyn Brown: Can I take you a little bit further on that. Thank you for that answer. Sport England created a system whereby they came up with a figure of how many swimming pools per population were needed. Do you think that within the sustainable communities development programme, given the complexities of the section 106 and PGS, we might look at a system that took that methodology and applied it to other leisure and sporting facilities for communities so that a local authority has a yardstick against which to judge whether or not the decisions

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they were taking with regard to planning permissions and planning applications were, in fact, in the best interests of their communities?

Yvette Cooper: I do not know the detail of the Sport England research, so what I will do is look at that before I write to you on the issue. We do build into the planning system obligations for green spaces and open spaces. I have been advised that the practice guidance that we are drawing up on section 106 supports the Sport England approach.

Q314 Lyn Brown: Excellent.

Yvette Cooper: A nice simple answer. I will write to you further about it. We do already have much more detailed planning guidance, however, about the issue of open space, sports playing fields and things like that. That is already strongly embedded in one of the main policy statements. The only other thing I would add is that with some of the investment for growth areas we are funding sports and leisure facilities as well.

Lyn Brown: Fabulous. I will just say that sports and leisure includes culture as well.

Q315 Alison Seabeck: I want to ask a question about the Community Infrastructure Fund. In Barker it talks about what is the entitlement at local level that goes into the Community Infrastructure Fund. Can you give us some reassurance that this will be additional money and there will not be a government sleight of hand where PGS goes in but actually the level of funding does not increase?

Yvette Cooper: We only set up the Community Infrastructure Fund on a short-term basis. It is a £200 million short-term fund. We have not set out a long-term future for the Community Infrastructure Fund. What we have been clear about from the very beginning of this is this is about funding the additional homes that we need and increasing the number of homes from around 150,000 a year to 200,000 a year by 2016. That requires additional investment on top of what we are investing at the moment, on top of the funding that the Government is putting in and on top of the funding that section 106 is putting in. What we have been clear about is that the overall funding for infrastructure will need to increase. How much of that comes through PGS and how much of that comes through Communities Infrastructure is not something that we would be in a position to say at this stage. It will depend on how much you are able to raise through PGS and what alternatives there might be as well.

Q316 Alison Seabeck: That is an interesting answer but in terms of the infrastructure who is going to arbitrate on this fund? Roads are required all round the country, are government departments going to be at war with each other? Will the CIF, or whoever, be at war with the Department for Transport over who pays for which bit of road? Is there any clarified thinking on how the non-local funding will be dealt with?

Yvette Cooper: On the CIF that we have run so far, which is resources supplied by the Treasury, the £200 million, the decisions have been made by the former

Office of the Deputy Prime Minister and our department with the Department for Transport. They have been made on the basis of really looking at which were the most important strategic pieces of infrastructure that were needed to support the additional homes. It was predominantly about the growth areas that have been identified and homes that were needed. There were broad criteria for making those decisions. Clearly you need to continue to do that. Potentially, however, there are other things you need to look at like what the role of the regional bodies might be taking a view about priorities. You ought to have far more of a sense of prioritisation at both the sub-regional and regional levels about where the most important needs for investment might be. We are having discussions on the Thames Gateway as part of the Thames Gateway Strategic Forum where all of the local authorities involved in the Thames Gateway, all of the UDCs and different agencies involved in the Thames Gateway, are coming together to try and have a much clearer sense of their priorities across the Gateway for the infrastructure rather than it simply being Government taking decisions on the basis of the bids that come in. To be honest, the more you can get that kind of local centred prioritisation, either a sub-regional or regional sense of prioritisation, you will be far more effective in terms of allocating funding.

Q317 Mr Betts: If we bring the new system in, replacing the traditional section 106 with an amalgamated form of some kind, it is quite possible on some sites that the amount of planning gain captured for the public good will be different from what it would have been under the old system. In terms of how that would operate in practice, presumably any site with planning permission already given when the new system comes in would have to abide by whatever agreements had been reached on 106 and there would not be a Planning-gain Supplement. At some point if that land was not developed after three years the planning permission would lapse, as I understand it, and now it is not automatically renewable. Would it be the case that if the site was put up for planning permission again it would be subject to the new regime which had come in in the meantime?

Yvette Cooper: A lot of this will depend on what transitional arrangements were put in place. The principle of any approach you would take is if the PGS applies at the point at which planning permission is granted then obviously previous planning permissions have been granted in advance of that regime and, therefore, would not be covered. In the situation you are describing of having to go through the process again, clearly it would depend on what transitional arrangements were in place. There is a whole series of things you have to work through with the transitional arrangements: how do you treat things where you have got options; how do you treat things where you have got hope value built into previous decisions to buy land. Kate Barker's analysis was that in the long-term the impact of the PGS would be passed on to the landowner because

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of the way in which the planning system works. What you need to do is to look in the transitional period exactly how that would work.

Q318 Mr Betts: Could I come on to the point you were raising a minute ago. I think most people have sympathy with the idea of trying to keep things local or at least sub-regional so there is a relationship between the development and the resources raised. Clearly you can identify parts of the country where there is a mismatch between the potential to raise resources through planning gain, perhaps because of fairly low land values, and the need to build infrastructure. When they came to see us English Partnerships said that they saw a major role for them in helping and assisting in that sort of situation. Do you see that continuing and, if so, do you see the resources for English Partnerships to do that coming from the Planning-gain Supplement or from somewhere else?

Yvette Cooper: I think it depends what you are talking about. If the argument is that there is some regional infrastructure needed that is important for regional economic development, for example, which would not come out of planning gain from housing then you might be looking at whether it is through English Partnerships or Regional Development Agencies or different sources of funding if you were making a different kind of argument as to why the infrastructure was needed. The only thing that it is possible to say at this stage is that we are looking at the Planning-gain Supplement alongside the cross-cutting spending review. As well as looking at what the different consequences might be of different kinds of approaches to a PGS and where the resources might be raised, we are also looking at where the infrastructure needs are. Broadly, the evidence is that the infrastructure needs, particularly for new homes, are in the areas where land values are highest because those are the areas where demand is greatest so broadly, even at this stage, it is possible to identify quite a strong correlation between infrastructure requirements and the needs in terms of the new homes for the future. We are doing a lot more detailed assessment of that and we are looking at that alongside the wider spending review decisions as well.

Q319 Mr Betts: The concern then would be that, therefore, you have a demand led process whereby there is demand for new homes in the South so infrastructure follows. I am not saying some of that should not happen but just take the coalfields area of the Dearne Valley, spending more on infrastructure in terms of communication and links to the nearby job centres in Sheffield or Leeds might promote the desirability of those areas to build new homes in.

Yvette Cooper: Which is why I think you are talking about other kinds of bodies there as well, things like the Regional Development Agencies. You are talking about regional development and a wider issue than simply about the needs for infrastructure for new homes.

Q320 Mr Betts: One issue that has been raised in relation to that has been dealing with brownfield sites that might exist in those areas having a different rate of Planning-gain Supplement, perhaps a lower rate for brownfield sites or sites that are contaminated land, than there would be for greenfield sites. Is that something that is in your consideration?

Yvette Cooper: It is definitely something that is in our consideration. We have had a lot of consultation responses on that. What we have not yet done is reviewed all of the consultation responses and come to any conclusions, but it is clearly something we want to consider, should we do a different rate for brownfield and greenfield.

Q321 Mr Betts: Presumably you considered the point that there should not be a tax on any land with a negative value where the planning gain brings it up to a nil value?

Yvette Cooper: I think that is probably at a level of complexity that I am sure if John were here he would be able to answer easily, but perhaps we will ask him to write to you on that.

Q322 Mr Olnier: Just a quick question, Minister, and it touches on the answers you have given. Given that there are a number of agencies, Regional Development Agencies, city councils, shire councils and what have you, and all have an input into determining the priorities of what infrastructure is needed, could I ask are the regional offices going to sift these priorities as they do now and stack them up so that they can get government funding? I am fearful that there will be a huge, huge temptation not to look at this money as additional money for doing infrastructure. I am rather frightened that it is going to go into the black hole in the Treasury and not come out to help specific projects.

Yvette Cooper: The reason for us coming up with the PGS in the first place was because Kate Barker recommended it as a way to fund the additional homes we need. We need the additional homes. We have to build the extra homes for all of the issues that we have discussed as part of your other inquiry.

Q323 Mr Olnier: I do not have any problem with that, Minister, but—

Yvette Cooper: I do not think we can do the homes unless we do the infrastructure.

Q324 Mr Olnier: Exactly.

Yvette Cooper: It is not going to be possible. Given that we are clear on our commitment to deliver the extra homes, we are going to have to come up with the investment for the infrastructure. That is why I think there is a strong disincentive on the Government and on everybody else to see this as just replacing other resources. We have made it very clear from the very beginning that we need this to provide additional resources for that infrastructure.

Q325 Chair: Minister, can I just press you on a question that we have explored before, which is about the mismatch between when the housing

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development occurs and when the money comes through to pay for the enabling infrastructure or the infrastructure that is required in parallel. Could you explain how the local authority will get the money if it has to come through being paid through a central fund and coming back again and how that will be delivered on time? I think this takes us back to the forward-funding question again.

Yvette Cooper: We have not set out any precise mechanisms about the way in which the resources would flow through or what the timings of the processes would be and obviously that is the kind of thing you have to work up. If you are going to take the PGS forward you have to do that sort of detailed design and consult on the way in which that would work as well. If you have a transparent process and you know what it is that is coming and if you know the way in which it is going to work then that does give you all sorts of flexibility to use prudential borrowing, to use other routes, to be able to make sure the infrastructure is there on time. Also, if you have a situation where you have a PGS that has been in place for, say, five to 10 years then you have got a resource of money that is coming through a PGS process in a rolling way so that also gives you considerable flexibility. There may be issues in transition that you may have to look at but, again, that is another question about how transitional arrangements would work.

Q326 Alison Seabeck: I want to follow up on the point the Chair made in relation to a successful section 106. If you look at the Greenwich Millennium Village which negotiated the 106 way back in 1999 when the Dome was built, in that deal the road junctions were put in place for potential future housing, the bus terminuses were put in. Potentially section 106 can achieve what you are doing through PGS. In a sense, I would like the assurance that you have not entirely ruled out how you improve and get better use of 106s if PGS does not stack up.

Yvette Cooper: We are very genuinely consulting on this and looking at all of the responses that have taken place. We have not taken firm decisions in terms of this process at all, we are genuinely looking at all of the different alternatives. All I would say on that is you are right, you can get some excellent results from section 106 processes and there are some local authorities who are brilliant at it. Greenwich has been particularly good at doing section 106 deals on very big sites. The thing that is very interesting about the research we have just sent you is how many homes and developments are coming through on small sites. I think part of the explanation for some of the responses we have had is that people are still thinking in terms of the big sites where they have experienced section 106s and how the PGS applies to those sites. Yes, that does raise a series of important questions and you have to think that through but also you have to think through how PGS would apply to the majority of sites where you are getting no section 106 arrangements at all. I think there are serious questions about our ability to do section 106 agreements on all of those sites

because many of them will be small and, therefore, a section 106 process will be much more cumbersome than a simple PGS process. Yes, you are right, there are some very good things about the section 106 process that you would not want to lose and, yes, there are some sites on which section 106s have been very successful, but there also a huge number of alternative sites where we are not capturing any planning gain at all.

Q327 Chair: Can I just follow that up. Are you considering a hybrid system where, for example, you might have a variant on the infrastructure tariff system on very large new developments but PGS as a backstop for everybody else?

Yvette Cooper: The main approach that we are working on is the one that we have consulted on. That is our central proposal and that is what we believe at this stage would be the best way forward. As I said, we are going through the consultation responses in some detail. As you know, we have already set out proposals for an optional planning charge as an alternative and we have looked at that as well. For many of the reasons that John and I have both given, we do think that the Planning-gain Supplement has the greatest advantages of all of the alternatives. There are issues in the interim as well. One of the reasons we wanted to promote the Milton Keynes tariff approach is there are an awful lot of growth areas where a lot of planning decisions will have been taken by the time the PGS could come in where consents will have been given and the tariff approach may be extremely useful in the interim regardless of what decisions are taken about PGS.

Q328 Mr Betts: Can I follow up on one or two points that Alison Seabeck was raising. Even if the Planning-gain Supplement comes in we know that the section 106 agreement will be there on housing sites for affordable housing and we also note from what you said, and I think all our constituents would agree with you, that local authorities are very different in how well or how badly they deal with the current situation. As well as looking at how the Planning-gain Supplement might operate, are you going to give details of how it will improve the operation of section 106? Particularly, are you going to issue some guidance to local authorities? That does not mean to say, "There is section 106, use it if you want", but actually points them in the way they ought to be using it to improve and increase the number of affordable houses being built.

Yvette Cooper: We have practice guidance already that we have been drawing up to try to improve the existing system but that is the existing system separate from how it might operate with the PGS. What we would certainly need to do is to have some very clear approach to section 106 with a PGS alongside it and we might well do that as part of the legislation, for example, around the PGS. That could be one approach to it. You could also consider much clearer guidance, a much clearer framework,

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for example, about the way that affordable housing is done through section 106. All of these are the sorts of things that we are looking at where your recommendations would be very helpful to us but we have not taken decisions.

Q329 Mr Betts: In the interim we might get some interim guidance on section 106 use under the current arrangements?

Yvette Cooper: Yes.

Q330 Mr Betts: It would be really helpful if we could have that. In terms of the money coming into the local authorities and how it is going to work, currently if you get section 106 it tends to get spent on a specific infrastructure project of some kind, whether it be affordable housing or traffic arrangements, playgrounds, community facilities or whatever, but if Planning-gain Supplement comes into the treasury of a local authority I think most of our concerns would be the rubbing of hands in the city treasury and the money disappearing to reduce the council tax or plug the gap in social services spending that year and much less getting spent on infrastructure and some of those projects. Is that a real possibility or will something be done to stop it?

Yvette Cooper: Again, that is one of the issues that you need to take into account when designing what the mechanism is for returning resources to the local authorities. You would want it to be infrastructure funding so you could think of that as being capital funding, as being resources. One option might be to ring-fence it for infrastructure. Another approach might be to say local authorities should have the flexibility, and ultimately that is what they are elected to do and they should be democratically accountable for those decisions. Again, we have not set out the way in which that should work and there are arguments from different points of view as to how you should do it.

Q331 Lyn Brown: One could argue that the failure to put in a basic infrastructure in order to enable a community to be sustainable causes calls on the public purse for other services, ambulance, the police, doctors, et cetera.

Yvette Cooper: Some of the stakeholders involved here have very strong views that it should be ring-fenced; others, you can imagine, are quite keen for it not to be.

Q332 Mr Betts: One point that has not been raised is the two different approaches people have taken. Quite a bit of the evidence has said if you have a system make it as simple as possible, we do not want any discounts, we do not want exemptions, and then lots of other evidence has said if you give exemptions this is where you draw the line. One point that has been raised, I think by English Partnerships as well as others, is if housing meets the five star rating in the draft Code for Sustainable Homes because those homes would pose less demands on the infrastructure they should be exempt from Planning-gain Supplement, or at least the land they are built

on or the value should be exempt in those cases. Have you got a view on that? Is that something you are considering?

Yvette Cooper: I think this is a really interesting idea. There may well end up being a series of practical difficulties with it, not least that it might be sensible, as you say, to have a very simple process with very limited exemptions. There are some difficulties about having something which has to be paid at the point before development begins but the standards that you want to put in place would be put in place as part of the development. If you want to build to a particular standard of building regulation or a particular standard in terms of the Code for Sustainable Homes, that building has not taken place at the point at which you would be paying your supposedly discounted rate of Planning-gain Supplement. There would be a whole series of questions like that. Also, there are some interesting issues about whether you could use the Code for Sustainable Homes as the test or whether you would look at some of the other issues which are more easily built into the planning system. For example, a lot of local authorities are now looking at requiring a certain amount of micro-generation or onsite renewables to take place, so requirements of 10% of the energy to be provided on onsite renewables on new developments. It might be easier to look at the sorts of things that you build into the planning system than the kinds of things you traditionally tend to build into building regulations and the Code for Sustainable Homes. I think this is a really interesting area and it is far too early to be able to take decisions. This might be something that you might have to look at again over time and it might not be something you could build in initially but something that you could consider over time as it becomes clearer in terms of the way you might measure things or take them into account.

Q333 Mr Betts: Do you have a timetable yet for introduction or are you waiting for the cross-cutting review on the implications on housing growth and the infrastructure costs and then perhaps you could fix the rate of planning gain to fill the cost of the infrastructure?

Yvette Cooper: The timetable is we want to say a lot more about the Planning-gain Supplement by the end of this year, so effectively our response to the consultation by the end of this year. The spending review timetable takes us through to next summer and that will be the timetable for the cross-cutting review. The earliest that we could introduce a PGS if we took it forward would be 2008. Beyond that, I do not think we have set any further timetables.

Q334 Alison Seabeck: The Law Society believes you are going to have to introduce primary legislation to make changes to the planning law. Is that your understanding and is that factored into your timetable?

Yvette Cooper: We have not taken final decisions about how we would do it. We might need to look at

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paving legislation in order to be able to do some of the preparations. John might be able to give you a better answer to this because a lot of these are Finance Bill considerations and there would be implications for section 106. We have not come to any firm decisions on this but we have anticipated the fact that legislation will be needed.

Chair: Thank you very much, Minister.

Memorandum by National Grid plc (PGS 45)

We were interested to see that the ODPM Committee is about to begin taking oral evidence on the recent consultation to introduce a Planning Gain Supplement. For infrastructure companies such as National Grid, the proposed levy could cause major problems which in turn would have a serious impact on the company's ability to support one of the main objectives of the proposal: to support and develop local infrastructure.

In relation to your focus on the factors which should be taken into account in determining the rate of the supplement, it may be that the Government would be prepared to consider a zero-rate for critical infrastructure developments (such as laying new gas pipelines) as well as for other infrastructure investment (such as extending wireless networks). However, given that our assessment is that the proposal will cost National Grid several million pounds (possibly hundreds of millions depending on the level at which it is set), our argument is that all such developments should be exempt from the levy on the grounds that it will reduce our ability to deliver high-quality services both nationally and locally. A zero-rate band (as opposed to an exemption) would not be an ideal solution because it would still involve the company in significant administration costs, including those relating to valuations. It is possible (as highlighted in our submission to the consultation) that the cost of the levy that arises from the development of our gas and electricity networks can be passed on to the consumer (which is the case with other costs legitimately and efficiently incurred in the development of our networks). This would not be welcomed by the Government at a time when energy prices continue to rise.

Memorandum by the Charities' Property Association (CPA) (PGS 46)

The CPA believes the PGS will have a seriously detrimental impact on the financial position of property-owning charities. This includes both charities which have significant land holdings as part of their endowment, charities which have invested in land and which use the income to fulfil their charitable purposes and charities which develop their own land in order to fulfil their charitable purposes, for example by providing affordable housing.

The Government has claimed that the PGS will be a "tax on developers", but it will of course have a financial impact on charities as they are paid less for their land by developers if they sell it. It will have an even more serious impact on charities developing their own land to fulfil their charitable purposes because in these cases the charities will not have received any income in terms of a price paid for the land against which they can offset the PGS. The PGS will have to be paid by the charity from its own resources and this will add directly to the cost of any development they undertake, for example if Abbeyfields were to build a residential home for old people on its own land or if a school were to build a new sports hall for its own and community use. Barnados has estimated that the PGS could cost them as much as £250,000 a year if the levy rate is set at 20%.

We hope the Committee will help charities by pressing the Government to exempt land owned by charities from the PGS because charities are not profit-making organisations: all the income they earn is applied directly to fulfilling their charitable purposes. There are also good practical reasons for exempting charities from the PGS. Many charities are working to achieve the same objectives, which the Government claims is the basis for introducing the PGS: the provision of affordable housing and social infrastructure. Moreover, it is widely agreed that charities spend money more cost effectively than Government because of the involvement in their work of volunteers. Certainly in this case it is arguable that the revenue foregone by exempting charities will be spent more cost effectively by allowing charities to keep it than by taxing charities and then recycling that revenue from central to local and regional government.

At the very least, if the Government will not allow a general exemption for all charities from the PGS we hope it will exempt charities pursuing self-development on their own land (where no transaction is involved). This could be achieved very simply by means of a self-assessment portable exemption certificate for charities (as happens with the self-certification for VAT zero-rate reliefs). If the developed land were later sold at a profit by the charity for purposes outside its charitable objectives a tapering clawback provision could apply, again similar to the VAT clawback provisions.

Memorandum by Graham Hughes, Director of Sustainable Infrastructure, Cambridgeshire County Council (PGS 47)

Thank you for allowing the County Council the opportunity to submit evidence to the Select Committee considering the Government's proposals for a Planning Gain Supplement. The comments below have been drafted by officers and reflect the Council's formal view as provided in Cambridgeshire's response to the consultation carried out earlier this year.

The Government's stated intention is to ensure that increases in land value created by planning decisions are released more effectively, to help finance the infrastructure needed to stimulate service growth, as well as ensuring that local communities share the benefits that growth brings.

It is very questionable whether growth areas in particular will receive more funding from a Planning Gain Supplement than they would using the existing Section 106 powers for transport, education, libraries, leisure etc. The present proposals appear to be directed at capturing a relatively small proportion of the "gain" by sacrificing the existing arrangements for funding the infrastructure needed to support the development. The cost of this infrastructure will in many instances far exceed the "planning gain supplement".

We also have concerns regarding the timing of funding and whether it will be possible under the proposed arrangements to ensure that payments will be received to enable provision of infrastructure to be synchronised with new development. Under current arrangements this can be built in to S106 Agreements.

To achieve what appear to be the Government's objectives, by far the best way forward in our view would be for local authorities to retain Section 106 powers for all items, which have a valid land use planning purpose. Many of these facilities will, of necessity, require provision off-site. Indeed, this in itself is generally a way of ensuring that sites appropriate for housing are fully used for that purpose. Therefore, the vast majority of the items proposed for exclusion from planning obligations in the consultation paper should continue to form part of planning agreements, to ensure that the requisite services are properly funded and provided, so long as they meet the tests set out in Circular 05/2005.

There already seems to be very strong evidence that the Sheffield University survey did not collect full information on planning obligations already being secured across the country. A very small proportion of authorities appear to have sent in returns and many of these appear to be incomplete, for example County Councils in some cases returned only minerals and waste information. They have failed to include schools, roads etc. There is no record, for example, within this authority of either receiving a request for information or of any information being provided.

Across the country, there are authorities, which, for various reasons, have not adopted robust Section 106 policies. In some cases, a joined-up approach in the shire areas between the counties and the districts still needs to be put in place. Steps can be taken to remedy this situation. Influence should be exerted via Government Regional Offices to ensure that the new Local Development Frameworks have core policies which ensure that development cannot proceed until appropriate arrangements are in place to provide the necessary schools, transport and community facilities, as well as affordable housing.

These matters are completely separate and distinct from the matter of taxing "gains". The net "gain" per hectare can be expected to vary significantly from site to site. In areas where high levels of infrastructure are necessary to open up land for development, the gain itself will be fairly modest. High gains will occur in situations where little infrastructure is needed and in areas which have an intrinsically high level of land values.

An alternative to PGS might be to give consideration to changing to the Capital Gains Tax Rules. The curtailment of the roll-over relief in certain circumstances might be the best way forward.

Memorandum by HM Treasury (PGS 48)

POLICY CONTEXT

1. Kate Barker's independent review of housing supply, commissioned jointly by the Chancellor and Deputy Prime Minister in April 2003, identified long-term structural weaknesses in UK housing supply as threatening the UK's future economic and social success. The Review identified rising demand for housing, driven by prosperity and demographic change, and highlighted how housing supply was failing to keep pace, leading to increasingly unaffordable housing.

2. The Government's Response to the Barker Review, published alongside the 2005 Pre-Budget Report, concluded that improving affordability for future generations of homebuyers required housing supply to become much more responsive to demand. Drawing on the 2002-based household projections, the response concluded that for Government to meet its aim of improved affordability, new housing supply in England would need to increase over the next decade to around 200,000 net additions per year. This compares with a net additions figure of around 160,000 for 2005, up from a post-war low of around 130,000 in 2001.

3. To address the demographic and wider socio-economic challenges posed by housing under-supply, the Government's Response to the Barker Review announced the following key measures:

- further reforms to the planning system to ensure that local and regional plans prepare and release more land, in the appropriate places, and at the appropriate time, to meet our future housing requirements;
- a consultation on the Planning-gain Supplement (PGS) to help local communities fund and deliver the infrastructure necessary to support housing growth and share in the benefits it will bring. The Government is now considering responses to the consultation and further announcements on PGS implementation will be made by the end of the year; and
- to inform the 2007 Comprehensive Spending Review, a cross-cutting review to determine the social, transport and environmental infrastructure implications of housing growth in different spatial forms and locations, and to effectively co-ordinate the strategic delivery of infrastructure investment across departments necessary to enable the additional housing required.

4. Progressing this reform programme will enable the Government to set out at CSR07 its detailed plans for achieving a significant and sustainable increase in housing supply over the next decade, helping extend home ownership to another million people in the next five years and taking the country towards the Government's aspiration of 75 per cent home ownership.

SCOPE OF THE REVIEW

5. Flourishing communities are not created by new housing alone. Increased demand for housing, especially in the areas most affected, comes with the need to provide public services, such as schools, health centres, waste disposal, public transport, green space and policing. There is likely to be increasing water and energy demand, while flood defence and transport infrastructure may well be needed. In addition, wider policy objectives require that a proportion of overall housing growth be in the form of affordable housing.

6. To address these issues, the Government's Response to the Barker Review established a cross-cutting review into supporting housing growth, as part of CSR07, with the following terms of reference:

"To ensure that appropriate infrastructure will be provided to support housing and population growth, the Government is today announcing, to inform the 2007 Comprehensive Spending Review, a cross-cutting review into supporting housing growth to:

- *determine the social, transport and environmental infrastructure implications of housing growth in different spatial forms and locations;*
- *establish a framework for sustainable and cost-effective patterns of growth, including by examining the use of targeted investment through the Community Infrastructure Fund and Growth Areas funding to support the fastest-growing areas; and*
- *ensure that departmental resources across government are targeted appropriately for providing the national, regional and local infrastructure necessary to support future housing and population growth."* (PBR paragraph 3.115)

7. The Review's scope covers all significant social, transport and environmental infrastructure necessary to support sustainable housing growth. Drawing on the above terms of reference, specific objectives for the review are to:

- develop a firmer understanding of the different infrastructure needs and costs of housing growth in different spatial forms and locations;
- determine some of the wider economic, social and environmental costs and benefits of different spatial forms of growth;
- assess the broad availability and potential housing capacity of different land types and locations, as well as the existing infrastructure capacity of broad potential areas of housing growth;
- determine the most efficient and effective delivery mechanisms for housing growth-related infrastructure provision, including by examining central government planning and allocation processes, specific programme funding through the Growth Areas and Community Infrastructure Fund, and the appropriate role of developer contributions—taking into account ongoing work on the Planning-gain Supplement and s106; and to
- develop a funding and policy framework for delivering cost-effective and sustainable patterns of housing growth over the next CSR period and beyond.

8. The review will not seek to determine the detailed spatial distribution or location of housing growth. This is an issue for the planning system.

TIMETABLE

9. The review will report to the Chief Secretary to the Treasury ahead of the 2007 Comprehensive Spending Review. It will engage over the coming months with a wide range of stakeholders within government and externally as part of a comprehensive process of evidence and information gathering.

Memorandum by the Department for Communities and Local Government (DCLG) (PGS 49)

**PLANNING-GAIN SUPPLEMENT INQUIRY—FURTHER INFORMATION
ON SPORT AND LEISURE**

When I gave evidence to your inquiry on the Planning-gain Supplement on 18 June, I said that I would write to you about whether leisure and sports facilities should be included in regional and local development plans and also about whether it would be appropriate to apply Sport England’s methodology to planning decisions. This was in response to a question from Lyn Brown (nos. 312 and 313)

Having further considered the question, I believe that our national planning guidance is clear that the provision of sports and recreation facilities should be properly addressed through the development plan system. I would expect the matter of proper provision of facilities to be addressed in both regional spatial strategies (RSS) and local development frameworks (LDFs).

It is a key principle of RSS that, as set out in our Planning Policy Statement 11, they should both shape and be shaped by other regional strategies such as those for culture and sport. The regional plans for sport, prepared for each region by Sport England will inform the emerging RSS to ensure it contains an appropriate framework for provision of sport and recreation facilities in the region.

Our guidance on Planning for Open Space, Sport and Recreation (PPGI 7), requires planning authorities to set locally derived standards for the provision of open space, sports and recreation. These standards should be based upon robust assessments of the existing and future needs of their communities.

The companion guide to PPG17 advises authorities on how to undertake this work. It refers to Sport England’s facilities planning model, which has subsequently become the “sports facility calculator”. Planning authorities can use this as part of their work to assess the demand for particular sports facilities and to set standards of provision for particular facilities. These standards can then be applied in practice to ensure that new developments contain the level and type of sports and recreational facilities that communities require, or that they make suitable contributions towards them.

I hope that this letter helps in clarifying the important role of the planning system in providing an appropriate framework to meet new communities’ sport and recreation needs.

Supplementary memorandum by the National Housing Federation (PGS 08(a))

Further to our submission to your Inquiry and in recognition that we are not being called to give evidence, we are taking this opportunity to make the case for housing associations being exempted from Planning Gain Supplement (PGS).

We support the principle behind PGS that the government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for development to benefit the wider community. And whilst PGS can not hope to meet all the country’s need for local and regional infrastructure funding requirements, we believe it can make a valuable contribution.

However, we think that housing associations should be exempt from paying PGS. If HMT enable local authorities to levy PGS on associations they will simply be raiding the ODPM’s coffers for affordable housing. In effect we will be taking money from one part of the public purse to pay another. Our modelling on the basis of PGS being levied at 20% and extrapolating typical land-value uplifts, where affordable housing is being built, across the whole of the Housing Corporation’s programme suggests that PGS could add 5% to grant costs and reduce the number of new affordable homes built by 2,000 homes per year set against the current programme of about 35,000 homes.

Given the unmet demand for affordable housing and the impact this loss will have on the lives of people who are homeless or otherwise living in unsuitable housing, we feel this is a price too high to pay. Surely this was not the government’s intention behind PGS?

Above we have made the case for exempting publicly funded new affordable homes whether they are for rent or low cost home ownership. But, we believe that there is a broader case for exempting all housing association developments.

Associations are increasingly building homes for market rent or sale. The surpluses they earn from these schemes are ploughed back into the delivery of more affordable homes or the refurbishment of existing properties, whereas private sector surpluses are distributed to shareholders. The Housing Corporation estimates that the sector’s current total “added value” is about £450m per annum. This extra income provides an additional 6,000 homes and the repair and improvement of a further 4,000 without subsidy.

The value of the not-for profit social business model of associations should not be cut into by PGS.

Some people argue that as affordable housing deflates land values that PGS will not impact on housing associations on the ground and thus policy makers do not need to go to the trouble of making an exemption. This assumption is simply wrong. The experience of housing associations is that land value uplifts, post planning permission, where affordable housing is an element can be significant as set out in our submission.

We believe that all housing associations developments could be exempted from PGS without over complicating the administration and costs of collecting it. The benefits of doing this in terms of sustaining the delivery of affordable homes surely outweigh the costs?

In any case we think that PGS should not be levied on rural exception sites where land value uplifts from current agricultural uses to land with planning permission for homes are usually significant. The levy of PGS could make affordable housing unviable on such sites and deter landowners from making land available. Surely it is not the intention of PGS to undermine the much needed delivery of affordable homes in rural areas?

We included detailed modelling in our full submission to make our case that unless associations' developments are exempted in some way from PGS we face a reduction in the number of affordable homes.

Supplementary Memorandum by English Partnerships (PGS 13(a))

Thank you for your letter of 22 May. I detail below in tabular form the estimated cost of achieving sustainable growth in Milton Keynes.

	£m	
Strategic Infrastructure	1281	
Local infrastructure	391	
Total requirement	1672	
M1 Junction 13- Highways Agency	553	Committed
M1 Junction 14 and other works — Highways Agency	80	Uncommitted
Local Transport Plan	272	Local Authority Schemes
Health (PCT)	93	Assumed Allocations
From Government Funding	998	
Required from Local Resources	674	
S106 contributions to Milton Keynes Council (MKC)	316	On existing allocated land in Milton Keynes
Milton Keynes Tariff	358	
From MKC Capital programme or other Government funding	311	
	47	To be identified.

As the table shows, the Milton Keynes Tariff is estimated to raise £311m and Milton Keynes Council will need to find £47m from its capital programme over the period to 2016. I should just make clear that all figures are quoted at today's prices and will vary over time including the Milton Keynes Tariff which is subject to indexation.

Should you require any further information or clarification, please do not hesitate to contact me.

Supplementary Memorandum by the Royal Institution of Chartered Surveyors (RICS) (PGS 34(a))

The Royal Institution of Chartered Surveyors (RICS) represents the views and interests of 110,000 Chartered Surveyors worldwide covering all aspects of land, property and construction. Under the terms of its Royal Charter, RICS is required at all times to act in the public interest.

We welcome this opportunity to provide the ODPM select committee with supplementary evidence on the proposed Planning Gain Supplement (PGS). As requested, this paper is directed to how the proposed PGS could best be made to work, notwithstanding the RICS's position that a reformed planning tariff and section 106 base system is preferable. This is because we believe PGS is likely to involve more uncertainty and/or delay for developers in knowing when or whether they can proceed with a project. This conflicts with the cyclical nature of market conditions, particularly as seen in commercial development markets over the past 30 years.

VALUATION ISSUES

1. PGS is to be based upon the value uplift of sites which receive planning permission. Development site valuations are imprecise. This applies even to those properties that do not have development potential where the variation in opinion between experts can frequently be up to 10 per cent. The valuation of development sites comprises of making assumptions about different variables, six of which can have a big impact on the opinion of value. A change of around 5 per cent in each of these variables can result in an overall change in the valuation of the site of over 25 per cent. When this is applied to larger schemes, a difference of expert opinion could be at a significantly greater level. Therefore, it can be seen that accurate assessment of PGS is only possible when valuation has been agreed upon. Developers must be able to discuss and agree the value uplift of the site for PGS purposes with the Valuation Office Agency at as early a date as is possible after planning permission has been granted.

2. PGS assessment will be badly flawed if it is assumed that the developer, who is perhaps owner occupier of the property, owns a freehold even if he is a tenant. An occupational tenancy under which a full rent is payable is usually worth little or nothing and may even have a negative value. The freehold in the same property is usually worth between 12-20 times the rent payable and often runs into millions of pounds. In such situations, even a relatively small increase in value would saddle the tenant with a significant PGS payment, the result of which could be that improvements needed by tenants needing planning permission become unviable because of the PGS requirement. Even if the tenant has a long lease, the terms of which facilitate viable development, the rent payable and other terms will make it worth considerably less than a freehold. Therefore, it is essential that the actual interest held by the developer is valued.

3. The definition of current use value, as set out in the green paper, excludes hope value. If this were to be included, it would considerably reduce PGS revenue and make its assessment uncertain as hope value is difficult to define and there is little market evidence of how the valuation would be assisted.

EXEMPTIONS AND VARIATIONS

1. We do not favour different rates of PGS or special exemptions for any particular type of development site, including brownfield, as such variations or exemptions would create market distortion. Furthermore, it should be noted that much moribund land is not technically brownfield.

2. The development of brownfield land, particularly in relatively low value areas, will provide little uplift for PGS and may not be self-sustaining in terms of the cost of infrastructure provision. At present, grants are often obtained to make such development viable and deal with infrastructure provision but how this arrangement operates after PGS is unclear.

3. In order to exclude low value brownfield development from PGS and also to ease the administrative burden for small schemes, a robust minimum threshold for PGS should be set. There are a number of different ways of setting a de minimis threshold. This can be achieved either by size, area or unit number, a threshold calculated on the tax payable, or by an uplift of the current use value. All have their own particular merits and we would be pleased to discuss this further.

REDISTRIBUTION OF PGS TO LOCAL AUTHORITIES

1. PGS will only be effective in providing additional infrastructure if it yields more than the current section 106 system. Due to the issues outlined above, the exact proportion of PGS revenue that will be available for retention by a central government fund will be unknown for several years.

2. Local authorities must be able to commit firmly to the provision of infrastructure when planning permission is granted. By doing so, they ensure that there can then be no subsequent retraction for reasons such as cost overruns, even if the infrastructure is to be provided several years ahead. Under the current arrangements, this risk is quite often taken on by the private sector. If uncertainty still exists around the provision of infrastructure via PGS at the time planning permission is granted, the value of the site and subsequent PGS uplift would be reduced.

3. The cyclical nature of property markets should be recognised and the role that correct timing for new developments plays within this. There are examples of excellent regeneration schemes with large off site infrastructure provision which has been privately funded, even by the backing of compulsory purchase schemes when necessary. These schemes would probably not have occurred if PGS as proposed had been in force.

4. Central and regional government should not become heavily involved in infrastructure provision on the basis that this will inevitably slow up and/or make uncertain process of its delivery. PGS should only be used to raise revenues for large infrastructure schemes of at least sub-regional importance. The scope of the existing section 106 regime should be retained at its current level or even extended. This will enable private enterprise to play its part in initiating and undertaking development as it does at present.

THE CALCULATION OF PGS

In addition to the points raised under valuation issues, we would make the following observations:

1. For any scheme there should be one valuation date when the originating planning permission for a scheme is issued. PGS should be recalculated as of that date if development is subsequently approved and undertaken outside the scope of that originally envisaged.
2. The actual interest of the developer should be valued rather than assumed as a freehold.
3. If appropriate, the tax payer should be able to deduct the cost of his acquisition as an alternative to current use value. For example, if the interest was acquired through an arms length transaction.

GENERAL CONCLUSION

By seeking to remove uncertainty and delay from the development process, the above recommendations will, if implemented, give PGS the best chance of success. However, we remain of the view that it is difficult to see how the provision of infrastructure will be improved and how development can be brought forward any more quickly through the introduction of PGS.

In particular, we are concerned as to how quickly and flexibly central government will be able to reallocate PGS. Apart from the additional administrative burden, public sector procurement has a poor record in terms of speed and efficiency of delivery. The introduction of any PGS system must therefore use private sector construction procurement as much as possible in order to allow the industry's entrepreneurial spirit to drive the development process.

Supplementary memorandum by the Environment Agency (PGS 41(a))

1. INTRODUCTION

The committee asked for a note on the implications for infrastructure costs of widespread implementation of the Code for Sustainable Homes in new buildings.

The Code for Sustainable Homes is to be introduced in autumn 2006. The compliance with the Code will be mandatory for all publicly funded buildings; for the private sector the compliance will be voluntary and the government is currently examining ways of increasing the take-up of the Code. The government signalled that the assessment against the Code may be mandatory for all new domestic buildings. However, at the time of writing this has not been made certain, nor have the levels of the Code been finalised.

Even if the terms of the Code were settled, it would be difficult to estimate infrastructure savings because the impacts on infrastructure are geographically specific — it would be necessary to know the geography of new development and match these with the constraints in infrastructure. We do not yet have the data to make that assessment.

Only a limited amount of work has been carried out to assess the impact of improved water efficiency on avoided costs of future infrastructure. None has been carried out on energy. This note can therefore only give a very rough estimate of some of the benefits. Further work on these issues is being carried out by the Environment Agency and we have provided some of the available information here.

2. ISSUES

2.1 *Infrastructure needs of the planned development*

HMT has recently commenced a review of infrastructure needs. The outcome is expected in time for Comprehensive Spending Review 2007. Environment Agency is collecting available evidence on the environmental infrastructure needs (ie water, wastewater, drainage and flood risk management) and we intend to publish our findings in spring 2007. Work is also about to start on the long-term strategy for managing environmental infrastructure in the South East, which will deliver interim findings in November 2006.

In many areas where development is planned the existing infrastructure is at its capacity limits already. Where this is the case, efficiency as well as additional infrastructure development will be necessary. The infrastructure costs are likely to vary according to:

- location and local constraints
- resource efficiency of the planned development (whether it complies with the basic requirements, or the top level of the Code (which are yet to be finalised)).

Many infrastructure needs (wastewater and flood prevention, for instance)—are going to remain unchanged regardless of efficiency of new buildings. In many cases improved efficiency of new developments is necessary for the development to take place in given area.

2.1.1 Water resources

The opportunities for developing sustainable new water resources in the South East are limited. Water efficiency, therefore, is a must, not an option. GOSE¹ states that at least 25% efficiency must be achieved in all new homes, but, as well as that, new resource development will be necessary — this means five new reservoirs at a costs of around £800 million. The same conclusions on resources and efficiency are reached for the East of England region².

2.2 The impact of the revised efficiency standards

Both the review of the regulations and finalising of the Code are very much work in progress. Until the levels are determined it's difficult to assess the levels of efficiency they are likely to deliver, the reduction in the running costs of the buildings and, consequently, the gap in infrastructure that will have to be filled and the costs associated with provision of this infrastructure.

The government's own assessment of costs and benefits³ of the Code points to uncertainties in assumptions, but concludes that the introduction of the Code is economically beneficial.
[C1]

2.3 The benefits of the Code to future infrastructure needs

How much of the infrastructure need can be avoided by applying the Code for Sustainable Homes to new developments?

Estimates of infrastructure costs per home range⁴ from around £44,000—£185,000.

Estimated costs of implementing the Code also vary widely⁵. However, the figure of around £1,000 for the Code level 3 and EcoHomes Very Good and Excellent is quoted in several sources. For water and energy only, the RSPB⁶ estimates the costs of the EcoHomes Excellent standard to be £160.

RSPB estimates the avoided infrastructure costs of new water resource capacity (ie reservoir costs) by reduction in average water consumption. Reduction in water use of 15% to 40%, gives the avoided infrastructure costs between £111 — 739 per household. Taking a 25% reduction, which is most reflective of the Code Level 3, the cost avoided is £462/household. There are no direct estimates of avoided energy infrastructure costs that we are aware of.

To illustrate the locational differences with the costs, it can also be estimated that water efficiency savings of 15%—40% can lead to reductions in water infrastructure costs by 2-27%, based on different infrastructure costs that exist for the four Growth Areas.

	15%	25%	40%
Ashford	10%	17%	26%
Cambridge	10%	17%	27%
Milton Keynes	2%	4%	6%
Thames Gateway	5%	8%	14%

These figures were calculated using each area's total infrastructure costs. Estimating the specific water infrastructure costs by multiplying by 6.2% (DETR, 1998 — % of total construction work in UK undertaken in water and rainwater sectors). Using RSPB figures for infrastructure savings at different efficiency levels can then calculate the overall water infrastructure savings as a percentage of water infrastructure costs. Note that these are extremely rough estimates.

¹ Infrastructure in the South East (2005), GOSE

² A report to inform the EA's response to RSS14 consultations (2006), EA

³ Draft partial regulatory impact assessment (2006), ODPM

⁴ Environment Agency calculations from, — Infrastructure costs for Ashford, Cambridge and Milton Keynes from Select Committee on ODPM, Eighth Report submission by Roger Tym & Partners. <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/77/7707.htm#note88>

— Infrastructure costs for Thames Gateway from WWF (2003), "One Planet Living in the Thames Gateway", One Million Sustainable Homes Campaign Report, June.

— House building projections from DCLG internet site, <http://www.odpm.gov.uk/index.asp?id=1140039>

⁵ See for example:

— 4, above,

— WWF (2003), "One Planet Living in the Thames Gateway",

— One Million Sustainable Homes Campaign Report, June.

⁶ RSPB (2005), "Resource Savings and EcoHomes", Discussion Paper, September.

2.4 *Reductions in utility bills*

Water and energy bill reductions vary by efficiency savings. A report by the Environment Agency⁷ gives water savings of £55 per annum through a 25% water efficiency savings and £83 through achieving EST best practice standards. This totals £138 per annum. Estimates from other studies vary significantly⁸. Higher energy costs will make these savings even greater, of course.

2.5 *Combined benefits*

Using the figures above we have calculated that the benefit to cost ratio from avoided water infrastructure and reduced water and energy bills in the first year is almost 4:1, ie the monetary benefits are almost four times greater than the costs. This is based on EcoHomes Excellent compliance for water and energy improvements. It also does not include any savings on energy infrastructure.

Over five years, the monetary benefits from avoided water infrastructure costs and reduced bills are greater than the cost of all improvements to EcoHomes Very Good levels.

Compliance with lower standards generally means lower capital costs, but more reliance on additional infrastructure. The range of estimates we found is much wider and therefore the overall benefits are much more ambiguous.

3. *Conclusions*

The figures quoted above are based on a range of publications quoting a range of estimates. Inevitably they are uncertain and we accept that further work is necessary.

The initial results indicate that the gains from avoided water infrastructure costs are greater than the capital costs of water and energy efficiency improvements to the Code standards. Over a longer time period the gains from avoided water infrastructure costs and reduced utility bills may be greater than the all the capital improvements required for certain levels of the Code.

However, costs of infrastructure needed (and avoided as a result of better efficiency of new buildings) will vary depending on location and local resource availability, as well as on level of resource efficiency adopted in building standards. No one figure can adequately describe infrastructure needs in different locations across the country.

Regardless of the level of efficiency adopted in new developments some new infrastructure will be needed. However, high level of efficiency is imperative in new developments in areas where there are already water resources constraints.

More research is needed to assess the costs of infrastructure, and several studies are already under way. By 2007 we should have a better and more specific range of estimates available.

Supplementary memorandum by the Confederation of British Industries (CBI) (PGS 43 (a))

As the Committee prepares to hear oral evidence from ministers Yvette Cooper MP and John Healey MP, the CBI would like to raise some key concerns, which have arisen since the end of the Treasury's consultation. We would also like to highlight how the CBI, along with industry partners, is taking our work on PGS forward.

The CBI represents probably the widest range of business interests in this review. The CBI speaks for retailers, inward investors, companies involved in research and development and businesses across all sectors who seeking to expand in the UK in addition to the property and housing industries. And the message from business is clear — PGS should not be pursued.

The CBI has very much welcomed the detailed questioning of all witnesses by ODPM Committee members which has covered many aspects of the proposals that business is concerned about. However the Committee has not really questioned whether PGS can be made to work at all, and therefore whether the proposals should be pursued. The final evidence session with ministers offers an important opportunity to grapple with some of the fundamental questions which have not so far featured strongly in the debate:

⁷ Horton, (2005), "Sustainable Homes — The Financial and Environmental Benefits", Environment Agency, March

⁸ Palmer (2005), "Reducing the environmental impact of housing, Draft Report — Literature Review", December".
[C1]Can someone summarise the cost case in the RIA please...

- Why has the Treasury not published any modelling of the PGS proposals?
 - PGS could cost business several billion pounds with huge implications for the property market. If the Treasury has modelled the likely impact of PGS on the market (beyond the scope of the original Barker recommendation) it should be made publicly available so that all stakeholders can analyse it.
 - Similarly the “modest” rate at which PGS could be set should be revealed so that we can have an open debate about the implications of the Treasury’s proposals.
- How will the significant amount of public land, which the Government is committed to releasing be treated under PGS?
 - The Government seems to assume that the cost of PGS will come off the cost of land. Given this assumption we encourage the Committee to question Ministers on whether public land would be discounted, thereby distorting the market, or whether the Government would accept the recycling of public sector funds in this way with potential implications for those agencies or departments disposing of land?
- Ministers should be asked how they propose to ensure that the delivery of infrastructure on which vital developments rely is not delayed?
 - There is an emerging consensus amongst the business community and beyond that the certainty and “directness” of delivery of infrastructure that the section 106 system now allows would be lost if PGS goes ahead.

Ultimately we encourage the Committee to question whether a new tax on development, based on intrinsically complex and ambiguous land values can deliver the step-change in housing supply that the Government and indeed business seeks. Instead the CBI suspects that PGS would hinder the UK economy in terms of discouraging inward investment, would disincentivise the release of land and therefore development across all sectors and would ultimately not achieve the Government’s core objectives.

At the same time we recognise that the Committee seeks positive suggestions about how PGS could work. And we agree that there are problems to be tackled: the lack of housing supply in certain areas impacts on the ability of business to recruit and the lack of infrastructure is an obstacle to business productivity. For these reasons, and in the absence of any published data from the Treasury, the CBI is jointly commissioning some research with the British Property Federation, Home Builders’ Federation and Royal Institute of Chartered Surveyors. The research will look at a number of real life case studies across a range of sectors and regions to explore the implications of PGS in more detail and how the mechanics of the proposed system would work. We would be very happy to share this research with the Committee in due course.

Section 106 agreements have suffered criticism in the past but there are now some positive signs of improvement which bear testament to the work that has been done to tackle key issues. We are however concerned that the attention being paid to PGS should not detract from efforts to continue improving planning obligations at the local level. The positive work of those local authorities which have pursued a tariff system could also be built upon in other areas perhaps through an expanded section 106 system with more extensive pooling arrangements. We will be continuing to focus efforts on how else key objectives may be delivered more effectively
