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Planning Gain Supplement

Volume II

Written evidence

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The ODPM: Housing, Planning, Local Government and the Regions Committee

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List of written evidence

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 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.

Written evidence

Memorandum by Professor David Crichton (PGS 01)

Local authorities in England and Wales face a number of problems which could be addressed using the planning gain mechanism, some of which were described in the Background Papers for the Government's consultation paper "Making Space for Water".

SUDS

Who will adopt and fund the maintenance of sustainable drainage systems? Background paper 8 for the Making Space for Water consultation exercise, "Sustainable drainage systems (SUDS): summary of policy and suggestions for possible future legislative change." Suggests that uncertainty over ownership and responsibility issues constitute a disincentive to their greater use. Defra propose that local authorities have responsibility for above ground SUDS and sewage undertakers be responsible for below ground parts. Another proposal is that a single body be responsible, perhaps the EA, or the local authority or the water company. Possible legislative changes could include amending the householder's right to be connected to public sewers under section 106 of the Water Industry Act 1991 so that unless a suitable sustainable drainage system exists the right of connection for foul water drainage would be removed or made conditional on the granting of planning permission. This would help to reduce the overloading of sewers and encourage SUDS. There would still remain some practical issues such as lack of space, or contamination of groundwater. Use of the planning gain mechanism could be used to fund additional sewage capacity and maintenance of SUDS, thus reducing flood risks.

Relocation

In Background Paper 5 for the Making Space for Water consultation exercise "Payment of compensation, relocation and other issues in relation to flood and coastal erosion risk management" it is argued that compensation would:

1. Distort the insurance market.
2. Provide incentives for people to live in vulnerable areas.
3. Involve greater costs to the taxpayer.

It does however recognise the possibility of compensation arising in some circumstances:

1. Where landowners agree to allow their land to be flooded.
2. Where land has been acquired for the building of flood defences.
3. Where land has been acquired for managed realignment.

It may be significant that Background Paper 5 does raise the possibility that relocation may be the most sustainable economic option and that it is difficult to envisage how that could work without appropriate compensation. The Background Paper states:

> "there may be opportunities for more imaginative solutions to obtain beneficial use of some land, currently developed inappropriately, to help some of those who unwittingly find themselves in an unfavourably exposed position."

Would it not be possible for planning gain to be used to compensate those who are in a high flood risk area and to assist with their relocation?

Planning and Building Requirements

Over the past five years, about 11% of new houses have been built in flood hazard zones. 90% of the 120,000 houses proposed in the Thames Gateway development will be within a high flood hazard area. Consultation is now issued (PPS 25) regarding extending the role of the Environment Agency as a statutory consultee where appropriate. In 2002–03, 24 major applications and 197 minor applications were permitted against advice from the EA. In future, it is unlikely that insurance will be available for such developments following the revised ABI Statement of Principles which came into effect on 1 January 2006. Planning gain mechanisms could be used to support the construction and maintenance of flood management schemes or to better reflect the true economic costs of building in flood hazard areas.

Memorandum by Business in Sport and Leisure (BISL) (PGS 02)

1. Introduction

1.1 Business In Sport and Leisure (BISL). An umbrella organisation for over 100 companies in the private sector sport and leisure industry and many consultants who specialise in this field. Members of BISL listed on the London Stock Exchange have a combined market capitalisation in excess of £40 billion.

1.2 Business In Sport and Leisure has a long established working group on property and land-use planning. We respond on a regular basis to ODPM consultations on such issues as Planning Policy Guidance (PPGs), Upward Only Rent Reviews; Business Rates Revaluation; Transitional Relief, Planning Obligations etc.

1.3 BISL is pleased to be offering evidence to the ODPM Select Committee for this Inquiry and would very much like to be asked to give Oral Evidence.

1.4 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. Our principle concerns about the introduction of such a tax and the proposed mechanics follow, but it should be noted that previous attempts to capture planning and development associated gains have been counter-productive and ultimately failed.

1.5 BISL has concluded that the Planning Gain Supplement should be introduced only for housing to encourage local authorities to release sites for housing. However, to prevent a bidding war to local authorities where high value schemes would be chosen instead of low value schemes which would include sport, leisure, hospitality and tourism, BISL believes that Section 106 Agreements should be retained for our sector. Our comments below explain our concerns for the health of the sport, leisure, hospitality and tourism industry should this tax be introduced and our concerns about the provision of sports facilities at a time when the Government is so keen to encourage physical activity.

2. Planning Gain Supplement for Housing or the Rest of the Industry?

2.1 The Barker review of housing proposed this new Planning Gain Supplement to capture the uplift in value for sites given planning permission for housing and so ensure the required infrastructure. BISL is seriously concerned that extending PGS to other forms of development will be both complicated and may inhibit the ability of sectors like leisure and hospitality to grow further.

3. Disincentive for Low Value Development

3.1 PGS will encourage local authorities to give planning permission and in Local Development Frameworks, zone sites, for high value development which will offer them the greatest amount of PGS.

3.2 In terms of leisure, this could constrain leisure, hospitality and tourism developments. The list below shows the type of facilities operated by BISL which could all fall under the heading of "leisure".

- Health and Fitness to Swimming Pools.
- Hotels to Restaurants.
- Pubs, Bars and Nightclubs.
- Cinema and Ten Pin Bowling.
- Bingo, Betting and Casinos.
- Motorway Services to Fast Food.
- Greyhound Racing to Race Tracks.

3.3 Leisure developments do not generate the revenue of retail, housing or commercial developments and cannot afford to pay high prices for sites to develop.

3.4 The leisure, hospitality and tourism sector currently contribute 4.4% of GDP and employ 2.2 million people. ODPM are in the process of publishing a Guide to "Good Practice for Planning for Tourism". One reason for this guide is that it widely acknowledges that local authorities do not identify sites for leisure or even have policies to support leisure or tourism development. BISL believes that this PGS will restrict such development still further. As the consultation stands local authorities will be looking to encourage housing developments which provide greater funding through PGS, rather than leisure developments which produce very little.

4. Not for Profit Sector

4.1 BISL is concerned that PGS could inhibit the ability of not for profit organisations, particularly in the sports sector, to develop their own sites and/or bring them back to sustainable economic use in their continued ownership. A disused property will have a low value, but that value would increase if it was put to any economic use. Not for profit organisations would not be able to invest in this development if they had to pay PGS on top of other costs.

5. The Current Cost of Section 106

5.1 Section 106 agreements are common and already add considerable costs to development. In housing this is exacerbated by the cost of providing social housing. There is a real concern that adding PGS will reduce development, particularly for sectors like leisure where developers' gain is lowest.

6. Section 106 Agreement's Contribution to Sport

6.1 In the past leisure development has often included, as part of a Section 106 Agreement, the provision of sports facilities like community swimming pools, sports halls and playing fields. There is a real danger that the replacement/alignment of PGS and Section 106 will remove this element of community funding to the detriment of the local community. Given that the provision of sport is not a statutory service for local authorities the provision of these facilities will not be at the top of their priority list for spending any income gained from PGS. Moreover, if revenue from PGS is administered regionally, genuinely local causes, such as sport and leisure, are less likely to benefit. At a time when the cost of upgrading local authority sport and leisure facilities is put at in excess of £500 million, (required immediately over the five years from 2002) and when there is a nationally accepted need for facilities where people can be encouraged to take more exercise, there is a real danger that funding for sport and leisure facilities could be further depleted with the introduction of PGS.

7. Hypothecation and Transparency

7.1 If PGS is to be introduced BISL believes it should be hypothecated to local authorities to spend on priorities determined by the Local Development Framework and Regional Spatial strategy. It is essential that at the end of the year a public record is available showing money collected and how it will be spent.

8. Valuation Concerns

8.1 BISL has real concerns about valuation definitions and what can and cannot be included in the assessment of value. Often land changes hands for more than current value with a "hope" value for future development. Will PGS be based on current value or the actual purchase cost? Will PGS apply to all projects which require planning permission or only new development?

9. Site Conditions

9.1 It is often the case that planning permission is obtained and a start made on site without full knowledge of actual site conditions. If site conditions are found to be abnormal and require costly remedial work, then PGS should be capable of reduction and a proportion returned to the developer.

10. Transition

10.1 Whenever this measure is introduced there will be a period leading up to it which could be termed transition, during which there will be few "valuable" planning consents granted as planning authorities seek to defer consents until after PSG comes into effect and applicants are equally determined to achieve an earlier consent. If the PGS is to be introduced BISL would suggest that at short notice it is announced that all applications by a specified date will be exempt regardless of date of determination and penalties imposed on authorities who seek deferral by unjustified refusals.

11. In Conclusion

11.1 Business In Sport and Leisure is concerned that the PGS system will be complicated to extend to other forms of development other than housing and could disadvantage the development of sport, leisure and hospitality facilities. If PGS is to be hypothecated to local authorities there will be an incentive for the local authority to give planning permission for high development value proposals. If PGS is only extended to housing developments there will be an incentive for local authorities to develop more housing. In both cases leisure development is likely to lose out.

11.2 One solution may be for PGS to be extended only to housing and for the rest of the sector to retain Section 106 agreements. This would help the Government in its aim to increase housing provision and reduce the incentive for local authorities to encourage the development of other forms of high value commercial and retail uses to the detriment of the leisure and hospitality sector.

11.3 In any solution it is essential for the continuing success of the sport, leisure, hospitality and tourism industry that local authorities are encouraged by national guidelines to ensure that such proposals are included in their plans. We also believe that the proceeds of PGS or Section 106 should be used to provide adequate and up to date sport and leisure facilities for the local community.

Memorandum by Diss Town Council (PGS 03)

1. Diss is a small rural market town on the Norfolk/Suffolk border consisting of some 7,000 residents, with a catchment area of up to 40,000 residents from the surrounding area from within both Norfolk and Suffolk.

2. Diss Town Council provides a whole range of facilities and services to this population including regular markets, a cemetery, Diss Park including play facilities and community events, the Mere (one of the defining features of the town) and its associated responsibilities, the Sports Ground and Pavilion, a Skateboard Park, allotments, the Corn Hall, a Cricket Ground, the War Memorial, a large and ancient Village Green, maintenance of the Closed Churchyard, some public footpaths and Manorial Rights, and a Community Information Centre in partnership with other local authorities.

3. The majority of the funding for the Town Council to carry out these activities comes from the 2,000 households that are precepted through their Council Tax.

4. These precept payers are therefore funding services and facilities to the whole catchment area.

5. Diss Town Council relies heavily on funds from s106 agreements to provide funding for improving the services it provides to the people of Diss.

6. The loss of this funding without any replacement options would be severely detrimental to the quality of life for the residents of Diss.

7. The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set include:

— The size of the population from which it is generated.
— The level of services provided by the third tier Council ie the Town or Parish Council in the locality in which it is generated.
— The identified areas of local need ie through the Parish Plan.
— The size of the development and the impact it will have on current infrastructure in the locality.
— Whether the development will bring any benefits (ie revenue, employment) to the parish.

8. How the supplement should reflect subsequent uses such as social housing:

The supplement should reflect identified areas of local need such as:

— Leisure facilities.
— Infrastructure including schools provision, doctor's surgeries, road networks.
— Public buildings.
— Environmental considerations.
— Amenity improvements.
— Identified local projects.
— Affordable housing.

9. How the revenue from the supplement should be distributed and appropriate uses:

— The revenue should be distributed to the local area from which it is generated.
— The supplement should be specifically aimed at improving the facilities in which the development is created.
— It should reflect local improvements from local developments.
— The uses should be appropriate to the uniquely identified needs of the local area.
— It should be distributed by a local body such as a second tier Council which has knowledge of the uniqueness of the area from which the supplement was generated.

10. Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites:

— Brownfield sites should be encouraged through the Local Plan and other relevant Planning regulations.

— If the brownfield site issue is in any way going to impact on the local gain from local developments, then it should not be included at all within the supplement framework.

11. The potential impact of the supplement on s106 arrangements negotiated through the planning system:

— If the supplement is to be considered in conjunction with s106 agreements, then it will have a noticeable impact on the funds available through the s106 agreements, to the local community for improving facilities and amenities.

— If the supplement is to replace the s106 agreements then there is a very strong case to ensure that these funds are distributed locally for the benefit of the community in which it is generated.

— Failing that, the government needs to take an in-depth look at the way funding is distributed to local service providers. After all, in the case of Diss, why should the precept from 7,000 residents pay for the facilities and services that benefit upwards of 40,000 people?

Memorandum by the Quarry Products Association (QPA) (PGS 04)

1. Introduction

1.1 Quarry Products Association (QPA) is the principal Trade Association representing the UK aggregates and quarrying industry and with about 150 members plus associates. Our members produce over 90% of aggregates quarried—sand and gravel and crushed rock. They also produce and supply agricultural and industrial lime, silica sand and marine dredged sand and gravel, secondary and recycled aggregates, slag, ready mixed concrete and asphalt products for roads. Therefore, they have a direct and relevant interest in all aspects of operation of the minerals planning system as planning permissions underpin their principal capital assets. In short the watchwords are "no planning, no business". The consultation paper on the planning gain supplement (PGS) has been extensively discussed within our membership and I have been asked to submit the following Memorandum on their behalf.

1.2 The essence of QPA's response is that mineral working is entirely different to other forms of built development because minerals can only be produced from where they lie and should not therefore be included in these proposals which are almost entirely designed to finance infrastructure to support housing growth. Although there is an uplift in land values when planning permission is granted for mineral extraction, this is far less than the figures shown in Table 1.1 of the consultation paper for other forms of development. Equally important the financial yield from the mineral extraction is spread over the life of the working, perhaps up to 20 or more years and, moreover, as the mineral is extracted the value of the land declines, maybe back to agricultural value. Apart from the Committee's final question in relation to use of Section 106 obligations, QPA's response is not directly relevant to the main question. We do believe, that it is essential for the Committee to hear from the non-housing sector in this respect. These issues are explored more fully in the detailed response, set out below:

2. Detailed Response

2.1 In paragraph 1.14 of the consultation paper the first bullet point makes clear that the principal objective of the proposals is "to finance additional investment in the local and strategic infrastructure necessary to support housing growth . . ." This confirms QPA's view that the whole consultation package has been designed, as suggested in the Barker Report to tax residential development in order to finance additional infrastructure for housing. The taxing of mineral extraction in particular should not have been included in these proposals. Emphasising this view, the "Foreword" is almost entirely about housing.

"Minerals are Different"

2.2 As mentioned, the essence of our response is based on the clear fact that minerals are different to all other forms of development for the following reasons:

— Minerals are unlike any other forms of development because they can only be worked where they are found.

— Mineral working is a temporary form of development, unlike built development.

— Minerals workings are always restored to beneficial after uses reflecting the wishes of the local community.

— The value of the land at the point of permitted use value is far, far less than that of housing land, perhaps for sand and gravel up to £50,000/ha.

— The financial yield from a mineral permission will be realised over perhaps a 20 year period and thus a tax payable in full at the point of start would be inequitable.

— As the mineral is worked, the value of the asset reduces perhaps back to below original, agricultural value. There is, in the end, no uplift in land value.

— Once a mineral working starts there may be numbers of further permissions for added value plant etc. Would all these be separately taxed?

— Most modern mineral permissions are worked on a leasehold/royalty basis with the land reverting to the freeholder on completion. Future permissions are even more likely to be worked on a leasehold basis.

— Mineral workings are largely a rural activity which make minimal impact on the need to upgrade local infrastructure apart from some improvements to local roads. Where such impacts have to be the subject of cash contributions from the mineral operator, these are normally handled effectively through the mechanism of Section 106 obligations which already provide for the wider environmental controls in respect of minerals, such as extended after care, lorry routeing etc.

2.3 These issues are explained, where necessary, more fully below:

(a) *Temporary Development*

— Mineral workings are temporary permissions with an end date based on use of land and are not operational developments. In some cases permissions granted for say 10 years are renewed at the end of the period as not all the mineral has been worked. How would PGS work on renewal of permissions?

(b) *Value of Land and Financial Yields*

— Aggregate minerals are a very low value product, perhaps £3–£8.00/tonne at the gate. The value of the permitted value of land for mineral working is perhaps, in the case of sand and gravel, up to £50,000ha, far less than that for housing. The industry operates to very low profit margins and is thus ill-suited to bear the costs of yet more taxation, as it already pays landfill tax, aggregates levy, monitoring enforcement fees. No other developments carry this tax burden. To then impose a further tax to be paid in full on the date of start when the financial yield is phased over the say a 10–20 year life of a working would be inequitable. To load such a financial burden onto a low profit industry which supplies the basic raw material to the construction industry, including housing would be unwise, to say the least.

(c) *Wasting Asset*

— As the mineral extraction proceeds after an initial uplift in value at the grant of permission, unlike other forms of development, the value of the land declines so that at the end of the process the value could be at or even below the original Current Use Value. This raises the question that if minerals were, nevertheless, subject to PGS, equity would suggest that some form of rebate should be payable as the land value declines. Alternatively, should the permitted use value fully reflect the issue of the wasting asset either specifically or in the form of a much lower tax threshold for minerals?

(d) *Freehold/Leasehold*

— Another reason why minerals are different is that most mineral permissions are leasehold, worked on a royalty basis with cash yields to the lessor and the operator phased over the life of the workings. There is generally, no up-front land transaction and imposition of a tax on the development start would thus be inequitable.

In the case of a freehold quarry, there is no land transaction as such around the time of the permission. The operator will simply receive his income/tonne over the life of the quarry. In the more common case of a leasehold quarry, again there is no basic total lump sum transaction with the freeholder at the outset—the freeholders' income will be derived on a royalty basis/tonne extracted along with usually, a basic rental income. So in both cases it would be inequitable for the tax to be levied on a lump sum at the outset basis. Minerals land transactions and valuation is far more complex than those for housing land. Quite often the terms of the lease and royalty are varied during the life of the working.

(e) *Infrastructure Impacts*

Mineral working is a rural activity and makes minimal impact on the need to improve local infrastructure. It does not create additional demand for schools, shops, recreational and other community facilities. Its only impact on infrastructure is likely to be its use of local roads, something currently sourced either by Section 106 obligations or Highways Agreements.

Where mineral workings do, nevertheless need to contribute to local infrastructure, this has always been a relatively modest activity reflecting the low price of the material and the low demands on infrastructure, for the Section 106 obligation system is entirely appropriate. The prime use of Section 106 obligations in respect of mineral workings has always been to provide additional environmental safeguards beyond those possible from use of planning conditions. Such add-ons have included, off-site lorry routing, extended after care periods, additional environmental safeguards etc. Cash/kind contributions have always formed a very small part of the use of Section

106's for minerals. This important planning tool must remain available for the minerals industry and in view of the powerful case for taking minerals out of the PGS system, should continue to be the vehicle for any cash/kind contributions agreed locally as necessary.

(f) *Conclusions*

Minerals workings therefore differ in many ways from all other forms of development and in our view should not have been included in a proposed form of taxation designed entirely to provide for the necessary infrastructure resulting from new housing. Minerals should either be removed in total from the proposals or at the very least, "zero rated". Where minerals are required to contribute to local infrastructure, this would best be achieved by the traditional and well proven route of Section 106 obligations.

3. General

3.1 In our discussions with Treasury officials it was emphasised that the rationale of the PGS proposals was two fold:

(i) To encourage the new planning system to deliver planning permissions more efficiently.

(ii) To provide more cash for local infrastructure.

3.2 In our expert view, neither will be assisted by these proposals. The planning system under the 2004 Act is far more complex and slower than the previous system. Our statistics show permissions for minerals, taking long and longer year by year. Adding another set of hurdles to overcome—valuation, start notices, stop notices and tax disincentives can only further delay a system already under resourced and creaking. If greater cash is required for infrastructure, this should be achieved by tax incentives rather than tax penalties. In this respect, it is fair to say that the present new, strengthened Section 106 system is far better geared to provide for local infrastructure from those cases which demand it—Taxing all developments would be an unnecessarily heavy instrument to achieve this, particularly with the likely further impact on an already overstrained planning system.

3.3 The proposals in respect of a "Development Stop Notice" are totally unacceptable. At present the planning system has a very sophisticated enforcement system based on enforcement notices, stop notices and temporary stop notices. All these procedures contain rights of appeal and the payment of compensation if procedures are used incorrectly. A development stop notice system must contain the same safeguards as the planning enforcement system. It does, additionally, seem to be a rather draconian way of collecting a bad debt!

4. Conclusions

4.1 QPA thus firmly believes that minerals should be exempted from these proposals on the basis that they were clearly devised to deal with housing and on the basis that minerals are a unique form of development.

4.2 QPA is very concerned that the proposals for PGS will impact overly on the minerals industry despite that not being the original intent.

Memorandum by London First (PGS 05)

1. London First is a business lobby group established in 1992 to improve and promote London. London First lobbies for the infrastructure needed by the capital to retain its a world city status, to stimulate growth and facilitate regeneration. An effective planning system is an essential part of this to facilitate the development needed to accommodate economic and population growth in a sustainable way.

2. London First welcomes the Government's recognition in the Planning Gain Supplement (PGS) consultation document that crucial infrastructure investment should be funded by taxation. Infrastructure investment is critical to support and stimulate growth. London needs considerable investment in a range of infrastructure, including transport, to support forecast population and economic growth. Most critical among this is Crossrail which is urgently needed to support London's world city functions in central London and facilitate regeneration in the east. We welcome the inter-departmental review as part of the Comprehensive Spending Review assessing what infrastructure is needed to support growth.

3. London First does not support the proposal for PGS as we do not believe that it will aid more and better development, speed up planning decisions or improve the quantum or certainty of infrastructure funding. We also consider that whilst Kate Barker's proposal was predicated on, and could work for, greenfield urban extensions, PGS would not work for mixed use schemes on brownfield sites in a city like London.

4. London first has responded in full to the consultation on PGS [appendix one]. Our response is summarised as follows:

— Land value uplifts are already captured through the existing taxation regime.

— It is more appropriate for the occupiers of developments to pay for the infrastructure they use rather than seeking to fund it through the development process which represents a low tax base.

— PGS represents an inefficient tax which would be expensive to administer. Although the purpose is to tax land value uplifts, it is charged to the developer and assumes that the cost will be passed on to the landowner.

— PGS is predicated on very specific examples of residential development on greenfield sites previously used for agriculture where a large increase in land value is generated and easily identifiable. It does not work for mixed use developments on brownfield sites in areas such as London. It should therefore be limited to greenfield cases.

— The rationale for and structure of PGS relates to residential development which is one class of development. Government policy promotes mixed use development. Other types of development such as commercial in London are critical to the capital's competitiveness and nation's economic well-being. The effects and impacts in these cases have not been considered.

— The proposal requires developers to pay the tax before any value is realised at the same time that they have to invest considerably in the development process.

— It is not apparent how infrastructure needed to support development and ensure it is sustainable, such as education and health facilities, will be delivered in a certain and timely manner. Any delay in delivery could undermine the Government's objectives of creating sustainable communities by increasing the strain on existing infrastructure such as schools and the transport system.

— In practice Section 106 is unlikely to be scaled back meaning that developers will be expected to pay considerably more. Negotiations are also unlikely to be quicker.

— The cost of PGS and Section 106 is likely to make many marginal developments unviable and will therefore serve to undermine the Government's objectives of increasing housing supply and encouraging regeneration. It will also lead to an increase in refurbishment rather then redevelopment, reducing investment in the built environment, undermining London's competitiveness and reducing productivity.

Committee Inquiry Questions

Factors which should be taken into account in determining the rate of the supplement and the level at which it should be set

5. The rate of PGS should reflect the following:

— The need to increase housing supply and therefore encourage more development: the Mayor is currently proposing to increase London's annual housing target by 36% to seek to meet the needs of population growth and the unmet backlog of demand. Policy should therefore be seeking to encourage rather than discourage further development. Increasing the taxation on the production of a good is unlikely to increase its supply.

— Planning policy which encourages mixed use brownfield regeneration which is more complex and costly than greenfield residential development.

— The need to encourage investment in the built environment to improve the environment as well as improve productivity.

6. If PGS was to be introduced under the rationale of taxing development to fund the infrastructure needed to support that development, those developments that do not create demands on existing infrastructure or require new infrastructure should be not be required to pay PGS.

7. The application of PGS to minor development is likely to deter development and act as a disincentive to invest in the existing built stock. In London where the quality of the commercial stock is critical to attract internationally mobile corporates and the quality of the public realm and other developments such as retail is crucial to tourism, this could have a significant adverse economic effect.

8. If PGS were to be introduced, a minimum threshold should be set to exclude development not creating demands on infrastructure and to ensure that development is still encouraged.

9. The following should therefore be excluded from PGS:

— Advertisements.

— Signage.

— Telecommunications equipment.

— Change of use.

— Temporary uses where planning permission is required.

— External improvements such as to cladding/design/public realm.
— Internal works where planning permission is required.
— Where the increase in net gross floorsapce is less than a specified %.
— Variations of conditions such as hours of operation where a new planning permission is issued.
— Infrastructure development such as landscape works, roads, rail-linked development, waste, energy.
— Development undertaken by or for public bodies.

How the supplement should reflect subsequent uses such as social housing

10. We consider that the likely impact of PGS will be negative on social housing supply. The supply of social housing is in most cases dependent on the provision of market housing, as it is secured through the planning process. If development becomes unviable because of the imposition of additional taxation in the form of PGS this will reduce both the supply of market and social housing, exacerbating existing shortages.

How the revenue from the supplement should be distributed and appropriate uses

11. If PGS were to be introduced the revenue should be collected regionally and distributed to strategic infrastructure necessary to support and promote growth as well as to address local impacts of development. National collection with intra and inter-regional redistribution would be bureaucratic adding large and unnecessarily administration costs. PGS could only ever contribute to broader Government infrastructure investment and would not be able to replace it.

12. 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. The Section 106 process has been effective at visibly demonstrating community benefits. Without this, opposition to development is likely to increase.

13. If communities are uncertain when crucial infrastructure will be delivered to support new development such as schools, healthcare or transport investment, concern over strain on local infrastructure will increase opposition to development. The Section 106 process clearly ties provision of new infrastructure (physically and through funding) to the development process. It is unclear how PGS will ensure timely and certain delivery of key infrastructure, an essential prerequisite to sustainable development.

Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites

14. The rate of PGS should at the very least be substantially reduced for brownfield sites. More appropriately they should be exempt. This would reflect planning policy in promoting brownfield development as well as the increased cost and complexity of such developments.

15. The cost of assessing the liability of a brownfield scheme is likely to be higher because of the inherent complexity of development.

The potential impact of the supplement on s106 arrangements negotiated through the planning system

16. We do not believe that Section 106 negotiations will be quicker as a result of PGS or in practice will be "scaled back." The Section 106 process has improved considerably over the past couple of years including earlier and better co-ordinated negotiations. Whilst practice could be improved further, we remain of the view that negotiated agreements reflecting the nature of the development and its impacts create better agreements and better development. The Government might consider that targets for Planning Delivery Grant be linked to the conclusion of Section 106 Agreements as this marks the point at which the planning consent is implementable, rather than as at present the point of resolution to grant.

17. Under the proposed new regime disputes are likely to centre on what is appropriately covered in the "development site" approach as well as how matters raised in the Transport and Environmental Assessments are addressed.

18. Negotiated planning obligations create better development and better Section 106 Agreements which are reflect individual site circumstances. Where Section 106 Agreements can significantly delay development it is frequently because the local authority does not support the principle of development and uses the process as another mechanism for frustration and delay.

19. How infrastructure necessary for the development, but funded through PGS, will be delivered in a timely and certain manner is a critical issue. This is particularly important for matters raised in Transport and Environmental Impact Assessments and where addressing them is a condition of planning permission. If a condition links infrastructure provision to phasing failure to provide, for example additional school facilities would stall development.

20. Section 106 agreements may include two-way obligations such as to require the local authority to provide crucial infrastructure such as school places. How this would be achieved from PGS funding requires explanation.

21. Timely provision of new education or health infrastructure will be critical for a new residential development to be sustainable and for its occupants, a key Government objective. It will also be critical in allaying concerns of existing residents who may oppose development if they are concerned about local school and health provision. To be sustainable and viable any PGS proposal must address this.

22. Major new developments may include new schools, health centres or transport facilities. How this will be addressed under scaled back Section 106 and through new funding arrangements from PGS is unclear.

Memorandum by Sport England (PGS 06)

1. Who is Sport England?

1.1 Sport England is a NDPB that develops, promotes and invests in community sport. Our aim is to change the culture of sport and physical activity in England in order to increase participation across all social groups.

1.2 We strongly support the Government's aims for sustainable communities. We believe all communities require modern, high quality and well-managed facilities, created in step with growth, and capable of enhancing the quality of life of residents. Sport plays an essential part in helping to ensure the creation of healthy, cohesive sustainable communities, particularly if co-located alongside other vital community services.

2. Relevance of Sport England to the Committee's Inquiry

2.1 Sport England's goal is to increase participation in sport and physical activity and as such we are focussed on protecting and enhancing our sporting infrastructure. Our role in the planning process is to offer advice to local authorities both generally on the development of the infrastructure for community sport and specifically as a statutory consultee to planning applications affecting playing fields.

2.2. Sport England believes that new developments should contribute to meeting the increased recreational needs of our new communities through new and enhanced facilities for sport. To this end, Sport England has actively promoted the use of planning obligations to bring benefits for sport and recreation through:

— Developing a web-based toolkit for local authorities and planners. This "Planning Obligations Kitbag" disseminates up-to-date information and tools to support the use of planning obligations for sport and recreation and the development of local contribution frameworks, helping to provide an evidence based approach to policy frameworks.

— Mounting joint pilot projects to develop new supplementary planning documents and help secure resources from development for sport. This has been done both within the growth areas (such as in Milton Keynes) as well as in other areas, such as South Hams in Devon.

— Running a wide range of awareness raising "dissemination" events within each of our regions to encourage local authorities to use the planning obligations mechanism for sport.

— Advising a large number of local authorities on approaches and suitable methods for securing planning benefits for sport. Our planning managers, operating from our regional offices, have carried out much of this work.

2.3 As a result, we have seen considerable progress in the development of local approaches to securing developer contributions towards sport and recreation. A number of schemes include standard charges and formulae geared to audits of provision needs carried out under the guidance issued by ODPM in PPG 17 Open Space, Sport and Recreation (2002).

2.4 We have been particularly encouraged by, and have supported, the development of tariff approaches in the growth areas. Sport and recreation is included in the tariff recently approved by the Milton Keynes Partnership Committee, building on the work of our Joint Pilot Project with English Partnerships and Milton Keynes Council.

3. New Development Providing for Sport and Recreation—Examples of Achievement

3.1 Sport England believes it is essential to ensure that the reforms to the present system of planning contributions enhance the sector's ability to secure facilities to meet the additional community needs created by new development. It is critical that the reforms do not represent a retrograde step in this regard.

3.2 Some examples of what has been achieved through the current system of planning obligations are provided below. These highlight how funding contributions have been secured to meet the increased sport and recreation needs of local communities:

— Milton Keynes—£3,000 per dwelling (approx £102 million in total if applied to 34,000 new houses) towards the provision of a swimming pool, sports halls and playing fields and open space.

— Newcastle Walker/Riverside Regeneration Pathfinder—£1,000 per dwelling (£3 million in total) towards the redevelopment of the Lightfoot Leisure Centre.

— British Paper Board and Corys Wharf Sites, Purfleet, Thurrock—£1,084,240 towards indoor and outdoor community sports provision.

4. Specific Issues Raised by Introduction of a Planning Gain Supplement

4.1 Sport England believes that a number of steps need to be taken to ensure that the proposals to introduce a planning gain supplement do not represent a retrograde step for sport and instead boost the sector's ability to meet the sport and recreation needs of new communities.

Direct link between the PGS and community needs

4.2 There is need for a direct relationship between the level at which the PGS is set at, and the additional community needs which will be generated by the new development which is being asked to pay the PGS. Sport England believes that the current system that limits contributions to only those facilities which are needed to meet the additional needs created by the development, is sound, logical and fair.[1]

4.3 The current system is clear as to what new development can and cannot be asked to provide and fund. The proposed PGS needs to have similar clarity as to how the PGS will directly reflect the cost of facilities that will be funded. Without this direct link, the PGS simply becomes a generic tax on development and moves away from the principle that new development should meet the additional community needs that it creates.

PGS to be set at a level that will cover the costs of new community needs

4.4 The PGS must be set at a level that will fully meet the costs of the community needs that will be created by new development. Otherwise the financial burden could potentially fall on the Local Authority to meet this funding gap in order for local community needs to be met. Any shortfall may lead to a scaled down community facilities to meet the available funding, rather than what is needed to meet the new community needs created by the new development. This will militate against the creation of healthy sustainable communities, well served by appropriate facilities.

4.5 In order to set the PGS at the correct level, an assessment of the additional needs generated by new development throughout the country will need to be undertaken. This may promote the establishment of a national standard of provision for all communities. However, this is contrary to current planning guidance that advocates local needs assessments identifying local priorities.[2] This contradiction would need to be addressed.

Mechanism needed to define local infrastructure priorities

4.6 There will be a need for new mechanisms to define infrastructure priorities at local level. These may be costly and time consuming to operate, and will involve difficult trade-offs between sport and recreation infrastructure needs and those for other aspects. Full consultation is therefore essential in the development of these mechanisms.

4.7 In the absence of any clearer specification of how revenues are to be recycled "directly to the local level", the proposals offer no guarantee that land development will be accompanied by sport and recreation provision. Indeed the Consultation paper acknowledges that a challenge remains in ensuring that necessary infrastructure is provided under any new system. Local priorities will need to be established, and there is concern that provisions such as sport and recreation may be placed on a lower order of priority than say education or health. Sport England believes that Government should avoid placing large numbers of limitations, or directions on what can be provided, in any centralised system of the sort envisaged.

[1] Circular 0/05 has given further clarity to the tests that need to be applied to development.

[2] PPG17 advises local needs assessments be carried out to identify an areas distinctive sport and recreation needs.

Distribution of the PGS to be based on local needs assessments

4.8 The distribution of the PGS will need to be based on identified local infrastructure priorities, drawn up by each Local Authority. These priorities will be set to meet those additional community needs created by new development. These priorities need to be established through a robust assessment of local needs. Undertaking such assessments is already embedded within planning guidance for sport and recreation (PPG17) and is undertaken within the current system of section 106 agreements and supplementary planning documents. At present, the robustness of these assessments are tested by developers who will be party, or subjected, to the associated costs.

4.9 Within the proposed PGS, the onus to test the robustness of the assessment will pass onto the Treasury (or body who will be charged to distribute the PGS). Without the assessments being tested, the new system may encourage Local Authorities to "over bid", in order to maximise their share of the PGS pot.

Exemptions to be made for the development of community facilities, and not for profit organisations

4.10 There is currently a narrow range of exemptions to the PGS proposal. The consultation does not exempt developments that provide significant benefits to the local community, including sport and recreation facilities provided by public bodies and not-for-profit organisations, such as community sports clubs. Sport England would advocate that these organisations should be exempt form the PGS levy.

4.11 Any additional costs will lead to poorer facilities being developed for the local community. This will work against the overall aim of this proposal, in providing enhanced investment for local community facilities though the development process.

5. Conclusion

5.1 Sport and recreation are already secured substantial rewards through the existing system of planning contributions. Sport England believes there is significant opportunity to build on this work, ensuring that sufficient funding is provided through new development to meet the sport and recreation needs of our new communities. We are committed to working with local authorities and other relevant bodies to maximise the benefits and ensure that sport and recreation needs of our communities are met.

5.2 There is increasing evidence about the wider benefits in terms of community health and well-being that such investment could bring. Sport England believes that amendments to the proposals to introduce a Planning Gain Supplement are necessary to ensure that this these benefits can be maximised—and not put at risk.

Memorandum by Nottinghamshire County Council (PGS 07)

Nottinghamshire County Council welcome the opportunity to have an input into the Inquiry into the Government's proposals to introduce a Planning Gain Supplement (PGS).

It should be noted at the outset that Nottinghamshire County Council object to the proposed PGS and that the responses made in this letter should be considered in this context. Below are the main areas of the letter submitted in response to the Government's consultation which are of relevance to the questions posed by the Inquiry.

How the Supplement Should Reflect Subsequent Uses such as Social Housing

Q4.2 "It is clear from the consultation paper that the only development specifically excluded from PGS liability will be that relating to home improvements. On the basis that all other development may be subject to PGS, a number of issues need to be considered:

- how will permissions for extensions to buildings, for example, for industrial use be treated where the business wishes to expand but there is no intention of selling the premises? Is an assessment made of the land (including the current development, as defined in Box 2.2) before planning permission and another made after planning permission and PGS payable on the difference between to two in this case? This may mean that the jobs created by the expansion of the business and the positive knock-on effects this has on the local economy are put into jeopardy because the company is liable for PGS and this, together with the other development costs make the proposal financially unviable;
- how will planning permissions for change of use be treated?
- thresholds need to be determined in accordance with the objectives and priorities for the locality. For example, if there is a need to regenerate an area, a higher threshold would encourage and facilitate this; and

— in terms of new build development, it can be argued that there should be no threshold and that any factors to be taken into consideration should be presented as part of the valuation and self-assessment.

There appears to have been a lack of consideration of how the PGS can be implemented in relation to any development other than new build which will be sold on by the developer and therefore generate a cash flow, such as housing development."

Additional comment—"no consideration is given to development for community benefits, for example schools, hospitals, health centres, roads. Such types of development should be exempt from PGS liability."

Additional comment—"no consideration has been given to the provision of land for infrastructure required as part of a new development. For example, at present if a residential proposal generates the need for a new school on site, the developer can provide this and the land is transferred to the local education authority to build a new school. Under the proposed system it may not be possible to demand such land to be included within the development site because the developer is then liable to pay PGS on the land and there can be no firm commitment from the local education authority to deliver the school as the funds, which would currently be obtained through a planning obligation, would no longer be directly payable and there is no guarantee of how much will be recycled through PGS. This has implications not only for the delivery of the school but also the securing of land in an appropriate location to serve the development."

How the Revenue from the Supplement Should be Distributed and Appropriate Uses

Q6.1 "The revenues obtained through PGS need to be recycled back to the local level on the basis of the requirements as a result of new development. It would therefore only be appropriate to adopt an approach similar to that proposed in the first option in paragraph 6.6. There is a need to ensure that the full costs of infrastructure required by new development are met by PGS revenues at an appropriate time in order that they can be in place to support the development.

Great care needs to be taken as to how this would work in practice because if service providers have to bid for monies, provide justification, value for money and so on, beyond that which would ordinarily be required through the current system, there is a danger that the costs associated with this approach would outweigh any monies obtained through PGS recycling and the time delay would have serious implications for the deliverability of development. This could clearly result in money being wasted and could lead to delays and may jeopardise development if the infrastructure and facilities required to serve it would be delayed or not forthcoming at all.

The bodies best placed to make the assessment of the needs of the development will potentially be effectively cut out of the loop of assessment in the proposed system."

Q6.2 "The need for revenues to fund regional level strategic infrastructure should be identified in the forthcoming RSSs. This will provide opportunities for requirements to be identified and examined in a manner which takes on board the priorities for the whole region."

Q6.3 "The most appropriate time at which to engage stakeholders in this is through the RSS and LDF process. This will enable full consideration to be given to the overall requirements of all development in the local area and region, assessing both individual impacts of development sites and the cumulative impact of development across the area. Through this approach the consultation and participation of as wide a range of stakeholders as possible can be achieved in a way which is co-ordinated with the formulation of development policies and proposals, and the assessment of reasonable options.

There is one problem with this approach in that there is currently no commitment that the infrastructure identified through such an approach will be funded by PGS. This could lead to a situation where commitments are made by local planning authorities in site development briefs for the provision of infrastructure or facilities but they have no guarantee of being able to deliver, as the PGS funding is uncertain. This problem is exacerbated further where the local planning authority is not the service provider, for example in relation to education or highways, and there is no guarantee of the service provider being allocated with PGS funding to deliver the infrastructure or facility."

Additional comment—"as a County Council and service provider, the issue of allocation of funds is of considerable importance as County Councils are often not the determining authority for planning applications which are currently subject to planning obligations. It is unclear from the consultation document how County Councils will be able to acquire PGS revenues in order to maintain the delivery of services, the need for which has been generated by new development."

Whether and if so, How the Planning Gain Supplement Should be Used to Encourage Development of Brownfield Sites

Q4.1 "The answer to this question can only be drawn on a case-by-case basis. The problem with a universal approach is the lack of assessment of the situation on site and the aims and objectives of the development plan and community strategy. Any reduction will need to take into account the circumstances of the individual case but this will be expensive and lead to delays.

It is inevitably more difficult to develop a brownfield site than a greenfield one and any assessment of PGS will need to fully take this into account, to ensure that there is an advantage in developing brownfield sites. The valuation of brownfield sites needs to include all of the remediation measures necessary in order to bring the site forward. Some sites will be found to have a negative value because extensive remediation works are necessary, however, they may be in highly sustainable locations and development should be encouraged on them.

Development on brownfield sites may however, place a burden on local facilities and infrastructure and so in many cases a contribution towards mitigating this impact would currently be sought through a planning obligation and this should still be an option through PGS. This is a potential problem of brownfield sites having a lower market value (taking into account the potential problems and remediation works) and therefore a lower PGS liability.

The main issue here is that there will not be one discount to the PGS which can be applicable to all brownfield sites because they are all different."

Additional comment—"unless assessments are made on a case-by-case basis, taking into account all of the relevant factors of the development site and planning permission, the introduction of a PGS is likely to provide an incentive to develop greenfield sites rather than brownfield sites where the development costs are likely to be higher. However, if case-by-case assessments are undertaken, it is difficult to envisage that this will result in a system that is faster overall than the current planning obligations system."

The Potential Impact of the Supplement on Section 106 Arrangements Negotiated Through the Planning System

Q5.1 "The proposed changes to the planning obligations system fall a long way short of considering the necessary environmental impacts that development can have and are unlikely to be able to address the range of matters considered in determining planning applications, for instance, those raised in Environmental Impact Assessments. There can be no consideration of off-site and/or indirect impacts of development. This approach will result in one of two things happening. Either development which would cause harm and would have previously been subject to planning obligations to mitigate or compensate for that harm will be refused or harmful development will be permitted, contrary to the principles of sustainable development.

Two examples illustrate this. The first relates to a planning application which would have a harmful impact on a nationally designated nature conservation site 100 metres from the application site boundary. Under the current system, if the developer entered into a planning obligation to carry out mitigation works off-site which would avoid the harm to the interest of the nature conservation site, planning permission could be granted. Under the proposed system, such a legal agreement would not be possible, therefore planning permission would have to be refused and the development could not take place. This may mean that the site, which would otherwise be suitable for development, could never be developed.

The second example relates to the removal of public transport contributions from the scope of planning obligations. There is considerable evidence that unless public transport provision, for example a bus route, is available for the first users of a new development, it will not be successful. If the PGS approach is introduced with the intention that money for such provision will be available to local authorities, there will inevitably be a time lag between the collection of the PGS, the recycling back to local authorities and the provision of the necessary infrastructure. If a bus route is introduced, for instance, 12 months after completion of a residential development due to the time lag described above, the evidence would indicate that this service will not be used and will therefore fail. It is therefore difficult to see how any such provision can be made to work successfully through the proposed new approach, which will result in less sustainable development being granted planning permission.

From a County Council perspective, the lack of ability to take into account off-site environmental impacts would have serious implications for the consideration of minerals and waste planning applications. For example, MPG3 requires consideration of community benefits to offset the impacts of certain minerals applications and in paragraph 55 states that planning obligations can be used in order to secure such benefits.

The removal of public transport implications from the scope of planning obligations would seriously undermine the delivery of a strategic public transport network. Nottinghamshire County Council is currently very successful in negotiating and delivering public transport contributions throughout the County and the impact of the proposed changes to the system would undermine the ability to achieve this."

Additional comment—"the proposal to introduce a PGS but also to keep a scaled down planning obligation system will further complicate the planning system, increase uncertainty and lead to more delay than is currently experienced. This is particularly true since the provision of affordable housing is retained as a legitimate use of planning obligations. This is, however, one of the most contentious elements negotiated through planning obligations and causes significant delays;"

In conclusion, Nottinghamshire County Council considers that the proposed changes to the planning obligation system through the introduction of a PGS and retention of a scaled-down planning obligation system would not be an improvement to the current system, and indeed would increase uncertainty for the developer, increase the risk that necessary infrastructure is not delivered in an appropriate timeframe, lead to potentially sustainable development being hampered, may encourage greenfield rather than brownfield development and is itself likely to cause delays as a universal charge will not be appropriate and each planning permission will have to be assessed in light of its own circumstances. The County Council is also very concerned regarding the allocation of recycled PGS revenues and the implications this has for the delivery of services.

The County Council recommend that as an alternative to the proposed approach that a modified planning obligations system is put in place which has statutory force and places obligations on the determining planning authority to take into account County Council recommendations in relation to their service areas, and ensure planning obligation monies can be secured by County Councils for infrastructure such a roads, transport and education, for which they are the service provider. Nottinghamshire County Council is keen to work with HM Treasury, HM Revenue and Customs and the Office of the Deputy Prime Minister to formulate a revision to the current planning obligations system.

Memorandum by the National Housing Federation (NHF) (PGS 08)

1. Executive Summary and Recommendations

1.1 We welcome the focus and timing of the Committee's Inquiry, to coincide with the Government's own consultation on its proposals for Planning Gain Supplement.[3]

1.2 Our recommendations in respect of the proposals to introduce a Planning Gain Supplement may be summarised as follows:

1.2.1 We support the principle of a Planning Gain Supplement, but believe that housing associations should be exempt. By charging PGS on affordable housing, the Treasury will simply be pushing money around the public funding system.

1.2.2 The Government should consider very carefully the potential impact of PGS on Section 106 arrangements, so as not to jeopardise the delivery of affordable housing. We therefore welcome the proposal to place Section 106 on a statutory basis and bring forward legislation that deals with the two policies in tandem.[4]

1.2.3 Cash based models such as tariffs or "roof tax" models are not suitable alternatives to PGS and Section 106—they do not capture the full land value uplift and can fail to provide sites for sustainable mixed development.

1.2.4 The effect on the supply of land for housing should be fully considered by the Government before determining the rate and level at which the supplement is set.

1.2.5 The Government should cover the shortfall in revenue required for infrastructure, once planning gain has been extracted from the combination of Section 106 and PGS.

1.2.6 We welcome the fact that the Government is considering a lower levy rate for brownfield land.

1.2.7 Transparent guidance on how the revenue from the supplement is calculated, distributed and its appropriate uses should be introduced.

1.2.8 We urge further consideration of alternative tax models such as land value tax (LVT) to incentivise release of economically viable land for housing.

2. Supporting Evidence

2.1 *General comments*

2.1.1 We accept the principle 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, and agree that the wider community should share in the wealth created by planning decisions in their area.

2.1.2 We accept Barker's view that the negotiation of planning obligations alone will not deliver the necessary increase in funding for infrastructure. A Planning Gain Supplement (PGS) could help provide additional infrastructure, housing and community facilities.

2.1.3 Key tests that the Government must first apply before producing its final proposals for PGS are as follows:

— Is it fair and progressive?

— Will it encourage development of more housing or damage capacity to do so?

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[3] The Federation's full response to the Government's consultation, which expands on these recommendations and the points made in our supporting evidence, is appended to this document.

[4] "Planning Loophole to Close", *Inside Housing,* 20 January 2006.

— Will it provide sufficient infrastructure to support the development of more affordable housing and sustainable communities?

2.1.4 PGS should be viewed as just one of a wider package of measures to address funding uncertainties.

2.1.5 Additional public investment in infrastructure is also essential, to provide community facilities such as local hospitals, schools and transport links, particularly in areas of significant growth.

2.2 *The factors which should be taken into account in determining the rate of the Supplement and the level at which it should be set*

2.2.1 The rate at which the PGS is set will be critical to its success. It should balance the need to raise revenue for infrastructure against the need to boost land supply for housing.

2.2.2 Vitally, PGS must not be allowed to interrupt the delivery of affordable housing. Although, if designed correctly, PGS will raise money for infrastructure, it is unlikely ever to encourage landowners to release land for mixed tenure development.

2.2.3 Previous attempts to introduce development taxes have failed and have been quickly repealed. Landowners know this and, if PGS is introduced at an inappropriate rate, are likely to hold onto land rather than give it up for development. This would mean less housing and therefore less affordable housing. The Government should use this opportunity to explore alternative tax models, such as Land Value Tax (LVT), to tip the balance for landowners between selling land and holding it back as part of a wider review of the property tax system.

2.2.4 Equally, to make the new tax worthwhile, the combined yield from PGS and the "scaled-back" Section 106 needs to be above what would have been provided by current planning obligations anyway. The Government should measure the extent to which PGS is new money.

2.3 *How the Supplement should reflect subsequent uses such as social housing*

2.3.1 Although the value of planning obligations will be discounted from the PGS calculation, the Government should not assume that this will benefit affordable housing providers. Housing associations will be affected by the tax where there is uplift in values, even if the homes are not destined for sale.

2.3.2 For example, a mixed tenure housing association rural development of 30 new homes on a greenfield site, with an estimated value uplift of around £2,000,000, would produce a PGS liability at 20% of over £400,000. The value uplift in this example is particularly significant because of the low agricultural value of the current use. In this case, PGS at 20% would make it unviable to build affordable housing in an area of high housing need.

2.3.3 If PGS is levied on housing associations, a proportion of Housing Corporation grant for social housing will effectively be paid back to the Treasury via PGS, and fewer homes will be provided. Moving funds from one part of the public purse to another is not efficient.

2.3.4 If housing associations are required to pay PGS on new developments, this will limit the sector's ability to lever in borrowing and reinvest surpluses. The cash cost of PGS at the outset of the project will increase interest costs for development. One of the major implications of PGS could be its affect on our ability to compete for land and provide additional investment over and above that provided by Social Housing Grant (SHG).

2.3.5 The increase to project costs will reduce the number of homes the National Affordable Housing Programme (NAHP) can deliver. At a rate of 20%, PGS would add around 5% to the grant cost of a development. Extrapolated across the NAHP as a whole, this potentially means the loss of 2,000 new homes from an annual programme of 35,000.

2.3.6 Housing associations are independent, not-for-profit social enterprises, and many are registered charities. They combine public and private funding, stretching government grant to produce more affordable housing. An additional cost to the sector of this scale severely restrict our ability to help ODPM meet the Government's PSA 5 target to increase the supply of new homes and deliver the Sustainable Communities Plan.

2.3.7 The public subsidy implications of PGS need to be fully considered in consultation with the Housing Corporation.

2.4 *How the revenue from the Supplement should be distributed and appropriate uses*

2.4.1 We welcome the proposal to use PGS revenues to finance regional and strategic infrastructure. However, PGS revenues alone cannot take the take strain for infrastructure funding.

2.4.2 The Federation accepts the need to maintain a link with the source of PGS revenues. Government should track the distribution and use of PGS revenues, and produce regular reports to provide proper accountability at both regional and local level.

2.5 *Whether and, if so, how the Planning Gain Supplement should be used to encourage development of brownfield sites*

2.5.1 Attempting to tax the land value uplift urban or brownfield areas is far more complex than for greenfield development. Development costs in urban areas are relatively high and uncertain which means that planning gain can be relatively low. Many sites require substantial work to be carried out to prepare them for development, including site assembly, remediation and decontamination.

2.5.2 By further increasing the cost of brownfield development, the PGS could undermine development in marginal areas most in need of regeneration and remediation. In some deprived areas, any significant increase in costs may result in no development at all, frustrating delivery of the Government's regeneration objectives.

2.5.3 We welcome the Government's consideration of a lower levy rate for brownfield land, although we recognise this could significantly reduce the PGS yield as 72% of housing developments are now on brownfield sites. In which case, proper provision will need to be made for additional investment in infrastructure.

2.6 *The potential impact of the Supplement on s106 arrangements negotiated through the planning system*

2.6.1 We are concerned that PGS could reduce the supply of new affordable housing or threaten the creation of mixed communities unless it is designed very carefully. Critical to this is how PGS co-exists with the proposed "scaled-back" Section 106.

2.6.2 Section 106 is now working reasonably well, and making an increasingly valuable contribution to mixed-income, mixed-tenure communities. Over the last 18 months, there has been good progress on reforming and streamlining Section 106 Agreements.

2.6.3 A study by the Universities of Cambridge and Sheffield in 2005 estimated that over 15,000 affordable homes a year are now being provided via Section 106, with this figure likely to increase.

2.6.4 We are pleased that the Government has recognised Barker's view that changing the means by which affordable housing is delivered could make it more difficult to meet demand and create mixed communities, and has decided to retain affordable housing within the scope of Section 106 planning obligations placed on a new statutory basis.

2.6.5 We do not want to see the introduction of a system that diverts resources away from affordable housing, or allows private developers to build the affordable housing on cheaper sites away from other homes and amenities.

Memorandum by the Theatres Trust (PGS 09)

1. The Theatres Trust welcomes the opportunity to contribute to the Planning Gain Supplement Inquiry. Our contribution is based upon our response to the ODPM's Planning-gain Consultation and the issues we raise are pertinent to the proposals contained within their consultation document. We ask the Inquiry to consider the following issues that the Planning Gain Supplement would have on theatres in the UK.

Background to The Theatres Trust

2. The Theatres Trust is an advisory Non-Departmental Public Body and a statutory consultee on planning applications that affect land on which there is a theatre. It was established by The Theatres Trust Act 1976 "to promote the better protection of theatres". The Act defines a theatre as "any building or part of a building constructed wholly or mainly for the public performance of plays". The General Development Order (1995) requires under Article 10 (v) that all planning authorities must consult the Trust before a decision is issued on any planning application or development involving land on which there is a theatre as defined in the 1976 Act. Thus the Trust's remit extends beyond buildings currently in use as theatres and includes those not in use. Our main objective is to safeguard theatre use, or the potential for such use, but we also provide expert advice on design, conservation, regeneration, property and planning matters to theatre operators, local authorities and official bodies.

THE IMPORTANCE OF THEATRES TO SUSTAINABLE COMMUNITIES

3. Protection of theatre use contributes to the Government's programme of creating sustainable communities. Theatres are the cultural anchors of communities, offering opportunities for residents, businesses and visitors to be entertained, informed, challenged and educated and we believe that theatres are therefore essential in the creation of sustainable communities. They provide places where people interact not only with the themes and spirit of the play, but with each other, encouraging diversity, reflecting local life and helping to forge communities' cultural identity and cohesion.

4. As drivers for economic development, cultural activities such as theatre, arts and tourism are fast growing sectors, and theatres are a fundamental and dynamic part of this cultural asset base. Culture has been identified as adding value to regeneration within the document Culture in the Heart of Regeneration (DCMS 2004). Most recently, in Sustainable Communities: People Places and Prosperity (ODPM 2005) sees sense of place, good quality community facilities, including cultural assets, as essential components in the development of sustainable communities.

5. There are many examples of theatres sustaining communities through periods of economic decline and growth in town and city centres. In the City Fringe (Corporation of London, Hackney, Tower Hamlets, Islington, Camden) a City Growth Strategy area, theatres including Drill Hall Theatre, Camden People's Theatre, Courtyard Theatre, Shaw Theatre, Teatro Technis, Etcetera Theatre, Almeida, Kings Head, Rosemary Branch, Pleasance Theatre, Hen & Chickens, Old Red Lion, Sadlers Wells, Barbican, Mermaid, Bridewell, Wiltons Music Hall, Oxford House, Hoxton Hall, Arcola Theatre, and the Hackney Empire have ensured continuity of community engagement, helped to promote cultural offer that reflects the values and fashions of their multi-ethnic populations, and provided much needed economic input into the area.

PLANNING GAIN SUPPLEMENT: GENERAL OBSERVATIONS

6. The Theatres Trust supports the overall objective of the PGS to secure additional funds towards the provision of cultural infrastructure. The Trust recognises the importance of ensuring that local and wider communities share the benefits of development created through the PGS. However, it is concerned that the proposals in the consultation paper would not achieve this objective for the protection of theatres and theatre use. In the view of the Trust, PGS as currently proposed is more likely to erode the progress that The Theatres Trust has made with local planning authorities in achieving their recognition of the planning benefits that may be secured from a development for theatre buildings and use. We feel that the proposals, as they currently stand, lack sufficient detail upon which to be assured that increased investment would be channelled into the cultural sector, and in particular into theatres.

7. This response considers protections required:

— for theatres within development-site environments (paras 8–12);

— for existing theatres whose catchments include development sites (paras 13–14);

— within planning policy (paras 15–16); and

— for the provision of new theatres (para 17).

8. *Scaling back s106 planning obligations—protecting theatres replacement/substitution*

The consultation document seeks views on scaling back planning obligations, but reassures us that the principles included in the new development-site approach (Box 5.4 P27) retain the importance of direct replacement/substitution. The Trust would like to see explicit reassurance that where a theatre is directly connected to a development or is within a development site, it will continue to benefit from the (scaled down) s106 obligations.

9. There are many important examples of theatre buildings that have been protected or directly benefited from Planning Obligations that secured replacement/substitution. These include: Barnet's Arts Depot—a new 400-seat theatre; the Custard Factory, Birmingham—a new 200-seat theatre; Hull Truck—£1.6 million offered for the development of a new theatre; Leeds Carriageworks—£12 million theatre complex; Epsom Playhouse—a 400-seat theatre; London Unicorn—where the site was worth £1 million; Middleton Civic Theatre—the replacement building is to be funded by Tesco; Mermaid Theatre—financial contribution towards a new theatre or towards the support of existing theatre in the City of London secured through developer; Edinburgh Traverse—the theatre shell was provided by the retail developers; Aylesbury Theatre—a new 300-seat theatre provided by the sale of residential properties on another site; and the Southampton Mayflower Theatre—which has had substantial signage and landscape enhancements provided by a s106 from an adjoining development. The Trust is aware of many other examples in the past and in the planning, which rely on such an approach including Southampton's New Arts Complex. Scaling back s106 planning obligations to exclude theatres and cultural facilities would have the effect of reducing the level of income afforded to the cultural sector through planning obligations.

10. *Exemption for theatres from PGS—to protect and not discourage their enhancement*

Within the terms of the consultation document proposed improvements to existing theatres in terms of extensions, new front of house facilities, such as restaurant and/or bar areas, new scenery storage etc. would require planning permission. This would give rise to a PGS liability that could adversely and fatally affect the viability of the development. Last year the Trust commented on around 150 planning applications for proposed improvements. The Trust would like to see consideration given to exemption of theatres from PGS where the theatre is the planning permission applicant, as the community benefit would be recycled and costs connected with collecting the PGS liability would be saved. The Trust considers that this would positively promote enhancement of vital community and cultural facilities.

11. *Protecting theatres on development sites*

Existing theatres in theatre use, or in other uses within development sites, are often vulnerable. The land upon which the theatre is built can become a prime target for residential, commercial or mixed use development without any compensation for loss of the theatre. Under PGS the exact nexus between the proposed development and the "compensation" for countenancing the loss of an existing theatre use would be lost. However the costs associated with the valuations necessary to demonstrate that there has or has not been a taxable increase in value will be expensive and complex due to the nature of theatre use.

12. As developments connected to land where there is a theatre may not yield either scaled down s106 or PGS that benefit the theatre, The Theatres Trust would be forced to be more rigid in its approach to planning applications, as this would threaten the existence of theatres. The Trust would have to oppose any attempt to redevelop on or around the land of an existing theatre if there was no certainty that monies from the redevelopment would be dedicated to preserving the surviving theatre, provide benefit to an existing theatre or theatres in the locality, or provision of a replacement in a location which was economically viable. At present the opportunity to persuade a local planning authority to support their local theatre is expressly stated to be outside the new scope of planning obligations, and so by implication it would be illegal for a local planning authority to seek any financial contribution from a development for the improvement of the local theatre facilities.

13. *Implications for existing theatres within development site catchments*

As new developments take place, new houses built and new residents arrive, existing theatres within development areas' catchments will be required to meet demands of increasing audience numbers. The Trust is concerned that theatre buildings will not benefit enough from the use of PGS, and that with the decrease of Lottery funds, Treasury funds and EU structural funds, and the greater likelihood of audiences with lower levels of disposable income, theatres will find it increasingly hard to unlock new sources of funding to help pay for improvements to meet new market demands.

14. The introduction of the Planning-gain Supplement should assist theatre owners to become more self-reliant and obtain better buildings by using the planning system and working with the private sector. However the new planning obligation regime envisaged in Table 5.2 (page 27) would remove the ability to seek planning gain for improved theatre facilities by means of obligations in s106 Agreements. Instead there would have to be reliance upon the allocation of revenues from central government. This also removes the linkage between the developer and direct community benefit. We would wish to see a direct link between planning permission contributions to existing or new theatre provision, which reflects the forecast market demand within the catchment created by any new development.

15. *Ensuring policies for theatre protection within LDFs and planning guidance*

Coupled with this is an increasingly worrying policy vacuum. The consultation document makes reference to the inclusion of policies within LDFs (Box 5.2, page 24). We agree that Local Development Frameworks should include high-level policies about the principles and use of planning obligations. However the cultural infrastructure of town and city centres where theatres are normally located has been inadequately recognised in policy statements, for example, PPS6: Town Centres, and PPS12: Local Development Frameworks which omits any guidance on the formulation of cultural policies that could encompass the protection and promotion of theatre use. If Local Planning Authorities follow the LDFs, they will have no basis for the formulation of planning obligations related to theatre. The Theatres Trust has made representations to the ODPM about this policy vacuum. (This has included drafting further guidance for PP6 Town Centre Planning Guidance; Supplementary Information for Theatres which has been provided to ODPM). Local planning authorities and regional planning authorities have not received sufficient guidance on the importance of supporting the cultural infrastructure through the policies to be formulated in the Regional Spatial Strategies and in the Local Development Frameworks. The apportionment of the revenues from PGS regionally and locally, as appears to be suggested in the consultation paper, would mean that no monies would be likely to be forthcoming from the various authorities for theatres, because there would not be an adequate policy basis for doing so. In this regard we support the work being undertaken by national cultural sector NDPBs and partners to develop a comprehensive cultural planning toolkit which can help inform the framing of regional spatial strategies and local development frameworks.

16. To address potential policy vacuums, The Theatres Trust would like to see a commitment within the revenue allocation principles (Chapter 6, p 31) whereby as a national Statutory Body, The Theatres Trust is a stakeholder, and has a role in the determination of infrastructure priorities and eligibility criteria of the Community Infrastructure Fund or other revenue allocation vehicle. The Theatres Trust's work engages directly with pre-application discussions and The Trust would be able to identify the location of theatre buildings within a 20-mile catchment of a proposed development. Where planning policy had not addressed theatre provision, The Trust would provide information on the existence of theatres and any current proposals for improvements to theatres within the catchment. As a statutory consultee on the Planning Application, The Theatres Trust would be in a position to put forward recommendations on the local benefit to be gained from PGS contributions towards theatre building(s) in the area.

17. *The provision of new theatres—forecasting theatre provision, securing the facilities*

The Theatres Trust is pleased that the standardisation of planning obligations in Milton Keynes is provided as an example of good practice (Box 5.3, page 25). Included within the 'prospectus' was the creation of Milton Keynes Theatre, a multi-purpose theatre and art gallery constructed in the centre of Milton Keynes in 1999. The theatre element of the scheme cost £10.5 million and was part funded by a major retail redevelopment of central Milton Keynes and supported by a National Lottery bid. Experience of the development of Milton Keynes shows that the creation of a sustainable community benefits from cultural requirements being considered from the outset. The Trust would welcome a similar approach within all Growth areas and where other partnership standardisation approaches are adopted.

18. *Further consultation*

Much of the practical application of the supplement will depend upon advice in the form of good practice guidance and the mechanisms for allocating PGS revenues. The Theatres Trust would be pleased to be invited to give oral evidence to the Select Committee and illustrate, as important cultural and leisure facilities within communities, the implications that introduction of PGS would have on theatres in the UK.

Memorandum by The Natural England Partners (PGS 10)

Background

1. This evidence has been produced jointly by English Nature, the Rural Development Service and the Countryside Agency's Landscape, Access and Recreation division ("The Natural England partners") who are working to create Natural England, a new agency for people, places and nature. Our comments relate largely to those aspects of the natural environment which are a concern for the Natural England partners, ie in this context principally biodiversity and geological conservation, landscape access and recreation. Where relevant we make more general comments relevant to wider sustainability considerations. We have included comments not only on a PGS but also on a scaled-back planning obligations ("Section 106") process as contained in the HMT/ODPM consultation.

Summary and Principal Comments on the Proposals for a PGS

2. We welcome this opportunity to comment on the proposals for a Planning Gain Supplement (PGS) by HM Treasury and ODPM, which we believe could be designed so as to make a substantial contribution to environmental infrastructure. Environmental enhancement including the provision of multifunctional "green infrastructure", is now recognised in Government policy as an important factor in achieving sustainable communities. We believe that if properly designed, a PGS has the additional potential to work alongside a scaled-back Section 106 (S106) agreement to deliver on-site environmental mitigation and enhancement, as well as off-site compensatory measures when required.

3. It is the Government's intention for the planning system to play a significant role in reversing the decline in the UK's biodiversity. The role of the planning system is now not only to protect the natural environment, but to enhance it (for example see PPS9 principles (ii), (iii) and (iv)). It is in the context of this positive environmental role for the planning system that we view the opportunities provided by the PGS. If there is a general rationale for the PGS for infrastructure development, it is essential that this opportunity is taken to integrate environmental objectives into its design. The PGS is an excellent opportunity to integrate environmental objectives into measures in support of the overall Barker review.

4. We believe that in delivering "infrastructure needs", PGS revenues must be used to deliver "green infrastructure" such as parks and natural greenspace, and for addressing local landscape and nature conservation priorities, such as landscape and habitat restoration and recreation projects. Infrastructure must not be narrowly interpreted solely as "hard" infrastructure; nature and landscape restoration and enhancement projects can really help make places where people want to live and work and serve wider functions. Using PGS revenues for this purpose would make an important link between the PGS and other Government priorities for the natural environment such as the England Biodiversity Strategy.

5. We would like to see a principal objective of the PGS being to deliver a healthy natural environment as an important component of the development of long term sustainable communities.

6. We welcome the proposed continued use of the reduced s106 for "environmental improvement" but we are concerned that the geographically reduced scope proposed in the HMT/ODPM consultation may be too limiting to take account of all the direct effects of the development.

7. We are concerned that a differential rate of PGS for brownfield land could establish a perverse damaging incentive to destroy important urban wildlife sites. It is essential that care is taken over the definition of brownfield in any differential rate in order to avoid this effect.

8. We suggest that in designing a PGS, serious consideration is given to how environmental incentives could be created through a differential rate; in particular, whether lower rates for compliance with the Sustainable Buildings Code could be a feature of the PGS. There will no doubt be design issues but we urge serious consideration of this point.

9. We consider that a clear link needs to be established between communities affected by development and the benefits to be delivered by the PGS. A substantial proportion of PGS revenues should consequently be recycled to the local level to fund projects directly benefiting local communities. The remainder of the PGS revenues should fund regional level infrastructure , including green infrastructure projects.

Memorandum by the Royal Institute of British Architects (RIBA) (PGS 11)

1. Introduction

1.1 The Royal Institute of British Architects welcomes this opportunity to comment on the Government's proposals for a Planning Gain Supplement (PGS).

1.2 The RIBA is one of the most influential architectural institutions in the world, and has been promoting architecture and architects since being awarded its Royal Charter in 1837. The 30,000-strong professional institute is committed to serving the public interest through good design. It also represents 85% of registered architects in the UK through its regional structure as well as a significant number of international members. Our mission statement is simple—to advance architecture by demonstrating benefit to society and promoting excellence in the profession.

1.3 The RIBA greatly welcomes the Committee's inquiry and considers it an extremely timely and useful contribution to the current debate on the Government's proposals. We would be very happy to provide oral evidence to the Committee if the Committee feels that would be useful.

2. Summary

- While the PGS concept initially seems fair, we cannot support the Government's proposals as currently presented.
- Without an indication of what the PGS might be, PGS may result in a block on development.
- PGS could threaten the quality of housing design.
- PGS liability should be calculated from the beginning of construction work and alternatives to the proposed Development Stop Notice should be considered.
- Proposals for a lower PGS rate on brownfield development are welcome.
- PGS should not be allowed to threaten the encouragement of mixed use development.
- More detail is needed about the anticipated split between retained planning obligations and PGS.
- More detail is also needed about the Government's proposals for distributing and allocating PGS revenue. Investment in infrastructure needs to be timely and PGS should not plug gaps in investment from existing taxation.

3. The Concept

3.1 The concept of PGS—that a portion of the land value uplift arising from the planning process should be used to finance local and regional infrastructure, and to support sustainable communities, is at first glance entirely sound. The corresponding scaling-back of planning obligations to matters relevant to the environment of the development site and local housing is certainly a proposal that many built environment professionals would be happy to support as s.106 agreements have become greatly discredited.

3.2 However, a refusal by Government to indicate its preferred level of PGS to be levied on sites, taken together with an unhappy history of efforts by previous governments to capture land value uplift through taxation, leaves us unable to support the Government's proposals as currently presented. Like many others, we are fearful that PGS could result in a block on development. Without further work by the Government to clarify its proposals, we would prefer to see the continuation of the current s106 system, despite its flaws. We would deplore the introduction of two flawed systems.

4. Valuing Planning Gain

4.1 The consultation document states that the base for calculating PGS would be the "planning gain"—the difference between the land value with full planning permission and the value of the land in its current permitted use. The charge would then be calculated by applying the PGS rate to the difference between the two values.

4.2 A fundamental problem with the Government's proposals is a failure to indicate what the PGS might be beyond a statement that PGS would capture "a modest portion". Such a reference is a clear indication that the Government is anxious to avoid a repetition of previous failed attempts to introduce similar land taxes. But without a clearer indication of what the rate might be, or an impact assessment of different rates, it is conceivable that landowners may well be dissuaded rather than encouraged to bring sites for housing development forward with a consequent impact on the Government's objective of increasing housing supply. The threat that many developers would not release land in the hope that PGS was repealed by the Government or a different administration is real.

4.3 From a design point of view it is crucial to determine whether the PGS "simplification" will be seen as an added "burden" to development. Under the current s106 system, high land costs and expensive planning obligations remain a critical factor to the delivery of quality housing. There is a danger that a new system would still make the development of sites too costly in the eyes of developers and hence affect the design quality of the final product. This would harm the Government's objective in draft Planning Policy Statement 3 (Housing) of creating sustainable, inclusive, mixed communities in all areas which are attractive, safe and designed and built to a high quality.

4.4 Another possible unintended consequence, if the PGS rate is in fact modest, is that sites *would* be brought forward for planning permission to a position of increased land value but then taken up by a separate development organisation. This would, however, sever the continuity of a design team, which is of paramount importance in delivering high quality residential developments.

5. Paying PGS

5.1 The Government proposes that while the grant of full planning permission is the right event to measure the land value uplift created by the planning process, payment of PGS should not be required until development commences.

5.2 The commencement of development, as defined by s56 of the Town and Country Planning Act 1990, is the carrying out of operations, at the time when those operations are begun, or the time when a new change of use is instituted, whichever is the earlier. This could cause major problems for those developers operating on low margins. The commencement of development could mean demolition of existing buildings on a site—which in many cases takes place long before the completion of a building or the generation of any profits from the development. In those cases a large PGS liability at the beginning of a project could severely affect its viability. There is a risk that PGS could cause many developers severe financial hardship and perhaps force them to abandon projects.

5.3 We would therefore suggest that, in order to mitigate any such unintended consequences, liability should be calculated from the beginning of construction work on site.

5.4 We feel that the ultimate penalty of a "Development Stop Notice" in the event of PGS non-compliance could also blight neighbourhoods with abandoned, unfinished developments—doing nothing to tackle housing under-supply. The Government should consider alternative means of securing compliance after development has been completed.

6. Scope

6.1 Kate Barker's Interim Report examined the VAT rates between all forms of housing construction. She recognised that the current system, whereby new housing is zero-rated while other housing construction work is subject to VAT at 17.5%, creates a disincentive for developers to undertake more brownfield development at the expense of greenfield. She concluded, however, that applying VAT to new housing would have no material impact on house prices and would not represent the best method of capturing land value uplift. She recommended that Government may want to consider the operation of a lower rate of PGS for housing development on brownfield land.

6.2 We are pleased that the Government has said it would consider introducing a lower rate of PGS for brownfield sites. There remains, however, a need for a more detailed economic "tool kit" to help developers and local planning authorities understand the complexities of undertaking brownfield regeneration and therefore enable the negotiation of sensible levels of planning obligations and/or PGS in order to prevent development becoming stifled.

6.3 Again we must warn of unintended consequences. If a lower level of PGS were to be levied on brownfield sites yet local authorities are anticipating greater revenue for local projects from PGS, there may be a scenario where local authorities will endeavour to bring greenfield sites forward where possible to maximise infrastructure investment, thus doing little to discourage unnecessary development on greenfield land.

6.4 Ultimately, however, the Government's suggestion that PGS may be levied at a lower rate for brownfield development amounts to an admission of failure to address the VAT anomaly. The recent decision by the EU Council of Ministers to extend the 6th VAT Directive perpetuates that anomaly and we remain convinced that the Government must do all it can to address the issue through further negotiation with its EU partners. Equalising VAT to the lower rate on all forms of construction would encourage regeneration, discourage unnecessary sprawl and protect the historic environment.

6.5 While the consultation document states that it would be unfair to levy PGS on home improvements, it is unclear about the impact of the ODPM's Householder Development Consents Review. This would, if implemented along the lines of the Department's existing thinking, expand the remit of the General Permitted Development Order to remove many small developments—around 50% of all development—from planning control. We would like to know whether, and if so how, HM Treasury has factored this into its proposals.

6.6 It is worth noting that the proposals for PGS focus solely on housing while purporting to be in the context of a sustainable communities policy that encourages mixed use development. It is important that all aspects of development are dealt with on the same basis (if necessary at potentially different rates) so that PGS does not discourage investment in housing and encourage instead an imbalance of light industrial development, or alternatively makes commercial activity less attractive to planners in an area simply because it will generate less PGS than using the equivalent land for a monoculture of housing.

7. Financing Infrastructure through the Planning System

7.1 The Government has stated that, should PGS be introduced, s106 agreements should be scaled back. Any reduction in negotiation costs and timescales for both developers and local authorities appears to be a positive step forward. Planning obligations have become largely discredited owing to s106 "creep" and the complexity—not to mention the unpredictability—of negotiations between developers and local planning authorities with consequent delays to development. Any commitment to simplifying s106 with the specific intention of targeting the necessary local, regional and national infrastructure should be encouraged as part of the aspiration to deliver sustainable residential neighbourhoods.

7.2 Our concern arises from the lack of detail in the consultation document about the anticipated split between retained planning obligations (such as affordable housing) and PGS. We are fearful of further complexity adding to what is already a bureaucratic maze.

7.3 While it is difficult to be precise in the absence of a clear picture of how PGS and planning obligations would operate alongside each other, we would argue that contributions already made, or liable to be made, under s106 should be taken into account where relevant when assessing PGS liability. Developers will be right to be wary of any attempt to squeeze additional revenue from their resources. There is certainly a case to be made for the difference between existing s106 obligations and any future combination of s106 and PGS to be zero. If not, the same unintended consequences of a PGS rate that is too high—unreleased land or stalled development—would follow.

7.4 We welcome the statement in the consultation document that the ODPM should issue guidance, or new legislation, to scale back s106 in the event of PGS being adopted. We would welcome that latter. Creating statutory limits to planning obligations would prevent future "creep"—the extension of obligations on developers in a way which has led to the current system losing much of its credibility. The RIBA would be very happy to assist the Government in mapping any new system of planning obligations.

8. Allocating PGS Revenues

8.1 The Government states that, as an essentially local measure, a significant majority of PGS revenues will be recycled directly to the local level for local priorities. We would welcome greater explanation of the Government's proposals here as the administration of PGS fund at local and national level remains unclear. It is uncertain which bodies would be responsible for infrastructure investment where the document states that "a significant proportion would be used to deliver strategic, regional as well as local infrastructure".

8.2 The Government says that PGS revenues will ensure growth is supported by infrastructure in a timely and predictable way. There may, however, be significant time-lags between infrastructure investment and the collection of PGS revenues. In those cases, Government should commit to bridging any such gaps in order to allow infrastructure investment—upon which many developments depend for their marketability—to proceed.

8.3 As part of its response to the Barker Review, the Government announced a cross-cutting review in the run-up to the 2007 Comprehensive Spending Review to ensure that Departmental resources across Government are targeted appropriately to provide the national, regional and local infrastructure necessary to support future housing and population growth. That by itself is to be welcomed. But observers will be watchful of any efforts to use PGS to plug gaps in investment that should be funded by HM Treasury through the Comprehensive Spending Review from existing tax sources.

Memorandum by Children's Play Council (CPC) (PGS 12)

Background

Children's Play Council (CPC) welcomes the opportunity to submit evidence to the ODPM Committee Inquiry into Planning Gain Supplement. CPC is an alliance of national and regional voluntary organisations, local authorities and partnerships promoting children's right to play and the development of play provision in England. As the holder of a government contract, with the Department of Culture, Media and Sport, for research and children's play policy development, we aim to develop the consensus view of the play sector—as represented by our members and wider networks of play professionals—and advocate to government for a higher profile, more recognition, and greater investment for play provision as a public service to children.

This response is based on comments received by members of CPC and of the Children's Play Policy Forum (CPPF). CPPF is a national discussion forum for emerging policy issues, which brings together leading play agencies, Government departments and other bodies. Its membership includes the voluntary, community and private sectors, the LGA and representatives of government departments.

Members of CPC and CPPF are interested in the proposals for Planning Gain Supplement (PGS) as a considerable amount of funding for children's outdoor play provision currently comes from Section 106 agreements. Unlike other services for children, local authorities have no statutory duty to fund provision for children's play. As a result funding is patchy and often insecure but, in the local authorities where funding from Section 106 agreements is used for play provision, it has a marked effect on opportunities for children to play outdoors.

Outdoor play is essential for children's health, development and well-being and research shows that children get more exercise playing out than in any other form of free-time activity, including organised sport.[5] In addition, being able to play out offers children opportunities to develop their independence, learn about the environment and discover the world they live in. The Chief Medical Officer has recommended that children regularly play out for at least four hours a week as part of the drive to promote health thorough activity.[6]

Over the past 30 years there has been a steady decline in the numbers of children playing out and the time they spend doing this. In 2003 a study commissioned by the Home Office showed that one in three 8–10 year old children never play out with their friends without an adult being present.[7] In 2005 a survey, commissioned by CPC for National Playday,[8] found that 39% of 7–14 year old children did not play out as much as they would like to and that only 52% of the respondents played out more than four hours a week during term-time. One in five played out for less than one hour a week. A number of studies have shown that the reasons children do not play out more are their parents', and their own, fears for their safety and the fact that there are few good places for them to play.

[5] *Making children's lives more active*, Prof R Mackett, Centre for Transport Studies, University College London 2004.

[6] Report of the Chief Medical Officer, "At Least Five times a week: Evidence on the impact of physical activity and its relationship with health." Table 8.

[7] *2003 Home Office Citizenship Survey: Top level findings from the children and young people's survey* (2005) Home Office and DfES.

[8] British Market Research Bureau, (2005). Playday 2005 Survey for the Children's Play Council and The Children's Society.

Local Provision for Children's Play

Although not a statutory requirement most local authorities make some provision for children's outdoor play opportunities. This is because they realise the necessity for this and because there is always considerable local demand.

Inspection of local authorities under Comprehensive Performance Assessment (CPA) and Best Value require some assessment of local provision for children and young people and in the future CPA is likely to include a performance indicator relating to children's access to play spaces. This indicator is currently being piloted by CPC, on contract to the Department for Culture Media and Sport. The indicator will describe children's access to a variety of different types of spaces for play and informal recreation which are within straight-line distances of approximately 60m, 250m and 600m from children's homes.

Evidence to the Committee

CPC urges that Committee to consider how Planning Gain Supplement could be used for providing and maintaining spaces and facilities for children and young people's play and informal recreation, and how the system currently in use for Section 106 agreements can be protected—or even enhanced—through the revised system.

1. *What factors should be taken into account when determining the rate of PGS?*

Funding from Section 106 agreements is currently a crucial source of money for play services in many areas. This money is used both for capital and revenue expenditure, for on-site play areas and for provision likely to be used by children from local developments—but not necessarily located in the development. A number of examples of how funding from Section 106 agreements is currently used for play provision are given in Appendix 1.

However, the space provided for play provision, on many new developments, is not always the most suitable for the purpose. It is often merely the least suitable area for houses. Planning policy could consider this aspect of the provision—not simply the monetary terms but also the provision of suitable spaces.

The experience of most play providers is that planning and funding for capital expenditure on play spaces within a development is usually an after-thought and often under-resourced. It is not always possible for funding from Section 106 agreements to be used for revenue expenditure and we would expect that to be explicitly allowed in the revised system.

> We recommend that real costs of capital and revenue expenditure on play spaces, required for children and young people living in new developments, automatically be considered when setting the level of PGS. The need for play and open spaces in both small-scale and large-scale developments should inform the level at which the threshold is to be set.
>
> In addition, any PGS funding to be made available for play and open space development should be allocated in phases in line with the residential development it is associated with so provision exists as soon as families move into the area.

2. *Appropriate use of PSG*

As demonstrated in Appendix 1, money from Section 106 agreements is currently used in many areas to make or maintain both on- and off-site provision for children and young people's play and informal recreation. Standards for access to play opportunities (NPFA 6 Acre Standard and standards currently being piloted by CPC) acknowledge that, especially for older children, spaces do not always need to be located within the parameters of a new development.

However—it is essential for the young people, their families and the community that they do have access to facilities and spaces within easy walking or cycling distance of where they live. The presence of children and young people in any new development will increase the need for provision for play and informal recreation outside the boundaries of the new development. It therefore seems reasonable that those benefiting from the development should support the provision of these.

Play and informal recreation should be treated differently from other recreational and leisure activities as it is different in its nature. It is, by definition, free of charge, children are free to come and go as they choose and are free to do what they like whilst there.

Spaces for children and young people's play and informal recreation are as important in small residential developments as large one.

We welcome the proposals in the consultation document that allow for more local input into the way in which PGS is to be spent as, from our experience, one of the main concerns of local communities is lack of play opportunities. This is another reason for our concern on the limitation of its use to on-site provision. If local communities request money to be spent on provision for their young people (whether on- or off-site) this should be allowable.

> One way of doing this might be for PGS money to go to local level, not into a communal budget and then be re-allocated. This would ensure there is no dilution of funding for local projects, as the importance of Local Development Frameworks cannot be overlooked, particularly as these provide for consultation and local input processes.

3. *The impact of PGS on Section 106 agreements*

The proposals may also have a major negative impact on capital investment in play facilities and contradicts the government's stated commitment to drive up the quality of the public realm. They also seem to contradict the Companion Guide issued with PPG17 and some of PPG17.

> As they stand the proposals are likely to result in a reduction in funding for children's play opportunities. We are very concerned that the development site approach, recommended in the consultation document, will reduce the flexibility local authorities currently have to provide off-site play opportunities for children and young people. It can only work properly for the children and young people if funding for development and maintenance of off-site play provision is allowable.

At present the negotiations carried out between developers and local authorities to establish the amount of S106 funding for a particular development are prolonged and complicated.

> If the revised system is designed to clarify and streamline the process we would be in favour of it—as long as it does not restrict opportunities to spend funds on children's play spaces.
>
> In some parts of the country, local communities have embraced the government's Town & Parish Plan procedure, thus providing researched local information to District Council level. This local level planning and knowledge could be embraced within the system.
>
> It is essential that PGS funding is an additional resource for a local area—to provide additional facilities required as a result of a development—and not a replacement for funding that should already be allocated by the local authority.
>
> We would welcome a system where the local authorities develop strategies with supporting investment development plans as a basis for negotiating PGS agreements as this would allow for more strategic planning. If, through the revised system, the local authority is able to pool small amounts of funding in order to develop neighbourhood provision, or for projects benefiting the borough or wider area, this could be very beneficial to children's play opportunities. It is unclear, though, how this would sit with the Development Site Environment approach.

4. *The role of PGS in the development of brown-field sites*

Our main concern about the use of brown-field sites for re-development is that, in areas with little or no other provision, they are often informal play spaces for children and young people.

> Any consideration of re-development of brown-field sites should include an audit of current use of these sites by children and young people for play and informal recreation. Funding and spaces should be found to replace these play opportunities.

APPENDIX 1

SECTION 106 AND FUNDING FOR PLAY

Below are some examples of the valuable contribution to play provision, made be Section 106 agreements, both on- and off-site (but related to) new developments.

- In one northern city approximately 60% of the Section 106 funding is used for equipped children's play areas and this funding makes a crucial contribution to the budget invested in play. Typically the council spend between £100,000–£150,000 per annum of Section 106 funding on children's play facilities.
- One district council in Devon have a play facilities expectation written into the local plan, which is amplified in the draft Supplementary Planning Guidance. As well as capital provision there is a revenue funding formula which is applied where possible. This model has been used as something of a model for other Councils.

- In one district council in the north-east Section 106 funding is used to support the development of both informal and formal recreation areas including play-sites, Multi Use Games Areas and Skate areas and has been the main source of capital funding for new provision for the last 10 years. In 2005–06 the contribution from Section 106 agreements to this type of provision was approximately £750,000.
- One borough council in the North West have used funding from Section 106 agreements for play for about 10 years now it is crucial part of their funding as there is little other money available.
- One borough in the West Midlands has always included play provision on new development. In recent years they have been successful in securing funding from planning gain via a calculator based on the number of dwellings on a new development—this money finances on site provision or contributes to the emerging council priorities.
- In another borough in the West Midlands the authority has successfully utilised Planning Agreements to derive both on and off site investment in Children's Play facilities and Open Space provision (increasingly in off site but still related to the development) and additionally to extensively use such funding as matched funding to draw in significant additional external funding from a wide range of sources into such provision. In the last two years the Parks and Countryside Department of the local authority has received over £300,000 in off site sums for play and open space provision. On site investment required from developers in play areas/open space provision has been approximately £200,000 per annum.
- In York and Humber Region, one authority Section 106 money is used to refurbish existing sites which are near to the development in lieu of on site works. Based on Independent Playground Inspections the most needy sites are prioritized and, the money is allocated in agreement with Ward members and the Planning Committee. Whilst each individual site may not generate sufficient monies to refurbish a site it goes a long way and helps secure partnership funding from Area Committee and Parks own capital and in some cases external grant funding. The council operate a formula which ensures that even a single new dwelling would generate approximately £1,200 for play and other development. This funding is used to refurbish existing playgrounds and expand facilities to include Skate and ballgames areas. In addition S106 funding is used for on site development where housing schemes are either very large or remote from existing play sites. This includes a commuted sum for revenue purposes, normally for a ten year period.
- In the South East one District council seek contributions from Section 106 agreements for play provision. If the facility is to be provided on-site the council generally ask for a maintenance commuted sum for a 10 year period. We also sometimes ask for contributions towards off-site provision for nearby facilities. Where planning applications are large enough to require on site provision play officers are then asked to consider whether on-site provision is required or whether it is more appropriate to seek contributions towards the enhancement of nearby off-site play facilities. One recent planning application for approximately 134 dwellings provided £60,640 to be paid to the Council towards provision and enhancement of a nearby recreation ground and £25,000 towards enhancement of a district park. An equipped Local Area for Play was provided on-site together with £11,500 to cover maintenance for a 10 year period.

Memorandum by English Partnerships (EP) (PGS 13)

1. Introduction

1.1 English Partnerships is the National Regeneration Agency with an overall aim of achieving high quality, well-designed, sustainable places for people to live, work and enjoy. We do this by:

- Developing our portfolio of strategic sites.
- Acting as the Government's specialist advisor on brownfield land.
- Ensuring that surplus government land is used to support wider Government objectives especially the Sustainable Communities Plan.
- Helping to create communities where people can afford to live and want to live.
- Supporting the urban renaissance by improving the quality of our towns and cities.

1.2 How English Partnerships operate:

- We always work in partnership with the public and private sector.
- We insist on the highest standards of design, construction and environmental sustainability.
- We act as a catalyst for development, involved at an early stage to prepare sites for development by our public and private sector partners—eg land acquisition, site assembly, land remediation, and masterplanning.

— We devise and encourage innovative methods of dealing with difficult problems.

— We insist on early and active involvement by the local community.

1.3 English Partnerships therefore has a great deal of experience in working with the development industry and strongly supports the principle of capturing an equitable portion of the land value uplift, created by planning permission and public sector investment, to support infrastructure provision for wider community benefit. This is why EP has developed and pioneered innovative solutions such as the tariff alongside the Milton Keynes Partnership Committee and the brokering role in West Bedford to deliver our and Government's objectives. These models minimise the cost to the public sector whilst increasing certainty and reducing risk for the private sector.

1.4 English Partnerships therefore welcomes the consultation on Planning Gain Supplement and the opportunity to respond on this key part of Government policy.

1.5 To inform its response, English Partnerships has undertaken a number of case studies to illustrate the potential impact of the PGS proposals. These case studies and examples do not reflect the actual complexity found in the projects but represent a look at the basic values and costs associated with the schemes to illustrate the potential impact of PGS.

1.6 The structure of our response reflects the Government's consultation document and is set out as follows:

— Key issues and conclusions.

— Valuation.

— Paying PGS.

— Scope.

— Financing through PGS.

— Allocating PGS revenues.

— Partial regulatory impact assessment.

— Conclusions.

— Annexes—case studies.

Key issues and conclusions

Basics

(i) The consultation document lacks detail in a number of important areas and English Partnerships' response raises concerns about moving forward quickly with PGS while these issues lack clarity.

(ii) Much depends on the rate at which PGS is to be levied. Case study work shows that consequences vary across different schemes.

(iii) Our calculations suggest that a low rate of PGS could be accommodated. However, we suggest the Government test the rate on real case studies rather than the general market data used in the consultation.

(iv) EP believes that the use of Current Use Value (CUV) and Planning Value (PV) to calculate PGS liability would be confusing and complex in the early period. This is because the first sites to be liable will have been purchased (or agreed under option arrangements) at market values that reflect hope values. Few sites in the market are purchased at CUV. We suggest how the valuation approach could be clarified.

(v) PV should be assessed at the point of start on site when the bulk of the attributable costs (including S106) have been realised and the PV can be accurately assessed.

(vi) We recommend that payments should be phased in relation to cashflows and disposals (as value is realised by developments). The Milton Keynes Partnership Committee model—where 25% is paid upfront and 75% on completion—is recommended.

(vii) We argue that self-assessment and residual valuation could be imprecise and open to challenge. Clear guidance and the use of standard forms, methods, and documentation will need to be provided as we offer to help with these.

Exemptions

(viii) EP recommends that option agreements with an outline planning consent should be exempt.

(ix) All reserved matters applications granted pursuant to the outline planning consent within tariff frameworks agreed prior to the date of introduction of PGS should be exempt.

(x) EP recommends that tariffs can be retained alongside PGS by exempting from PGS, areas which can agree to a prospectus on the Milton Keynes model where the tariff will raise at least as much and preferably more than PGS. Alternatively is might be possible to allow for a tariff arrangement to continue whilst still paying a reduced amount of PGS to cover the contribution for strategic infrastructure—with the tariff adjusted accordingly.

(xi) We suggest that lower value sites may exempt themselves from PGS. However, the costs required to bring forward a brownfield site for development (eg remediation, etc) should be classified as attributable costs to be set against the PGS liability. This would reflect the actual costs of bringing forward such sites for development. No brownfield (ie: Previously Developed Land) exemption is required. CUV should be no lower than zero.

(xii) EP recommends that developments attracting a high standard under the proposed Code for Sustainable Homes (eg: 5 Stars or equivalent) should attract a reduced rate of PGS to encourage quality and environmental sustainability.

Funding

(xiii) The separation of issues to be covered by scaled back S106 and PGS are generally sensible but detailed guidance will be required to ensure any overlaps are removed. Funding of certain infrastructure cannot be differentiated from the site development and needs to be local and can often be expensive (eg: schools). Further investigation on the potential impact, both in terms of raising and distributing funding, of taking education out of the scaled back S106 should be undertaken.

(xiv) We propose a thorough discussion of the role PGS can play in supporting the Community Infrastructure Fund (CIF), which EP can help the Government to develop based on our experience with infrastructure projects such as West Bedford. EP further recommends that it could develop and operate the modified Community Infrastructure Fund (CIF) in support of the Sustainable Communities Plan.

(xv) The local link between the development and the funds for major infrastructure should not be entirely broken. We therefore believe that funds to support infrastructure through PGS ought to be hypothecated, and ring-fenced to the local level to ensure they support the infrastructure identified as necessary to support growth/regeneration. PGS should not be used to substitute for existing sources of public sector investment in infrastructure.

(xvi) The Government's crosscutting review on infrastructure has a key role in establishing the priorities for government's spending plans and should also inform how PGS revenues will be distributed.

(xvii) Initial investment in infrastructure will be required over the transitional period before PGS revenues come on stream.

2. Valuation (Chapter 2)

Current Use Value and Planning Value

2.1 EP notes that the use of Planning Value (PV) and Current Use Value (CUV) will require further detailed consultation as outlined below.

2.2 The Government proposes that land value uplift is to be calculated on the basis of the difference between PV and CUV. It is important to recognise that Current Use Value will frequently be significantly lower than the Market Value of land, which takes account of hope value and other factors. In the long run the impact of PGS should be absorbed by landowners but there could be significant impacts in terms of land supply in the time taken for markets to adjust.

2.3 Particular issues relate to sites which are currently unused but which are zoned for development in the local plan. Whilst CUV as defined in the consultation document is zero (or agricultural value for greenfield sites), these sites have a substantial Market Value reflecting the fact that it is extremely likely that full planning permission will be granted.

2.4 The transitional position in respect of sites already under legally binding option agreements to developers in anticipation of a planning consent being granted in future is unclear. Whilst option arrangements vary most would have been entered into on the basis that the landowner would achieve a profit margin on a land value significantly greater than its CUV. The agreement between landowners and developers would allow for normal s106 costs to be deducted and offset against the landowner's profit margin. Our recommendations on transitional arrangements include proposed arrangements for options which have already been entered into (see section 3).

2.5 PGS should not be payable on the uplift relating to the extinguishment of negative value. Where the redevelopment of a brownfield site creates a negative land value, this is reflected in the Planning Value. Government should state that the minimum value of CUV for PGS calculations is zero, meaning that no PGS is payable on costs incurred to bring Planning Value to zero. Where the redevelopment of a brownfield site creates a surplus, PGS should be payable on the uplift above zero. Where site reclamation has taken place prior to planning permission, the cost of reclamation should be an allowable cost in calculating the uplift, this is particularly important for a site with a relatively high CUV, eg currently used for storage.

Definitions

2.6 The Consultation recognises that clear definitions of CUV and PV are essential and that further guidance will be needed to ensure the requirements are clear and easily understood.

2.7 In preparing our case studies we have assumed that the calculation would be based on a residual valuation (ie after development costs have been deducted). The Government should clarify this in guidance. As such, we suggest that the guidance should fully clarify the costs which can be taken into account when calculating values. This could include:

— Whether reasonable developer's profit, taking account of the specific project and associated risks.

— Cost of Section 106 contributions towards Local Planning Gain.

— The cost of affordablity against the development and the availability, or otherwise of housing grant to subsidise affordable or rented sector housing.

— The cost of money.

— Fees, including planning fees (the more complex a deal, the more prescriptive the brief the greater the cost).

— Environmental costs.

— The cost of reclamation, access and site servicing.

— The impact of existing options on land secured with landowners.

— Current tenancies and constraints to development.

2.8 On the calculation of PV, the time difference between planning permission and start on site can be substantial where the value can change as a result of a variety of factors. EP recommends that it is best to assess PV at the point of start on site, when the actual attributable costs will be largely known and an accurate valuation and assessment of the liability can be made. This will also take account of any uplift or reduction between the granting of planning permission and start on site.

2.9 Furthermore, on larger sites with phased development, there is likely to be a change in value from the first phase to the final phase. If full planning permission is granted for the full site there might be substantial time lags between the first phase and future phases being brought on stream. There are two approaches to dealing with this—the whole site may be valued and an equalisation equation carried out over the site to ensure the phases are treated equally or there could be an opportunity to revisit the Planning Value as each phase is brought on stream.

2.10 The consultation notes that the start on site point would become a statutory chargeable point and clarification would be needed whether start on site would count as remediation works or access improvement, for example (in some cases, EP has sought planning permission to put in access/spine road infrastructure and we would argue that this would result in nil uplift in PV for the road and no PGS would be due. However, the surrounding land would increase in value with the uplift triggered once it received full planning permission), or whether it would reflect a point further along after these costs have coalesced. EP recommends that it is the latter which would be the proper point to identify as a start on site, although the definition of this would need to be clearly established.

2.11 CUV and PV assume unencumbered freehold interest with vacant possession in the whole of the sites covered by the planning permission. This is not always the case. For example this would ignore existing tenancies and leases (which have an existing income stream and could be reflected in CUV). Similarly where a property has a particular value to an occupier (eg a specialist factory), its book value will be in excess of its Current Use Value. Both rental income streams and specialist value should be taken into account when calculating the uplift, in order to promote the re-use of brownfield sites.

Self Assessment

2.12 The proposed arrangements for valuation and self-assessment will need to be clarified including the arrangements for policing and appeal (if any). Without a robust system there is scope for developers to minimise PGS and for disputes to arise in respect of the developers' liabilities, in particular in relation to assumptions underlying the CUV and PV valuations. Under self-assessment there would be the potential for disputes to arise between the developer and HMRC regarding the amount of the liability, leading to delays in raising revenue. Standard forms and definitions of terms would need to be very clear if self-assessment is to be effective along with an open book approach to residual valuation. Detailed guidance on the operation of such a system, clearly setting out the roles and responsibilities of the various organisations (HMRC, Local Authorities, the Valuation Office, the person issuing the Development Start Notice, etc) will be vital to the operation of the self assessment system. Planning Circular 05/05 is already progressing this way with S106 and it is hoped that best practice and lessons from that system can be transferred as well as from the Stamp Duty Land Tax system which also uses self-assessment. An appeals system might also be required.

3. Paying PGS (Chapter 3)

Level of PGS

3.1 It will be important that, as PGS is developed, it does not act as a disincentive to growth. Landowners may be reluctant to bring forward their development land if the level at which PGS is set too high. Conversely, if the level at which PGS is set is not high enough to match or exceed current S106 arrangements including the MK tariff, there is a risk that essential investment in strategic infrastructure will not be properly funded causing uncertainty and delay. The case studies at annex A demonstrate that the land value in some areas does have the capacity to absorb modest rates of PGS but they also show the variability of PGS take in comparison with the current S106 system across a range of projects, locations and scenarios.

(i) On unviable brownfield sites, no PGS will be payable.

(ii) On some of the most marginal sites, because there is only a marginal uplift in land values there will be an overall reduction in the PGS/S106 burden on a site. This will increase its viability and/or reduce the need for public sector gap funding. Little PGS revenue would be receivable but the likelihood that development occurring that would not otherwise take place would increase.

(iii) On more viable brownfield sites, PGS would be payable but because of the reduction in S106 payments, the combined S106 and PGS payment could be lower than current S106 payments (based on PGS at 20% or below). This would again assist brownfield development.

(iv) On greenfield sites, the rate at which combined PGS and new S106 equals the level of S106 receivable under the current regime varies but rates of between 7% and 22.5% have been identified.

3.2 Four factors affect whether the payment under PGS is greater than or less than the current S106 payment—the PV, the change in S106, CUV and the PGS rate.

3.3 The biggest reason for the difference between current S106 and the reduced scope S106 under PGS is the removal of education from the eligible costs. In the case study projects, education comprises between 45% and 80% of total S106 costs in the current situation.

Timing of payment

3.4 The upfront payment of the PGS will have a potentially major impact on the cashflow of the project. Clearly the cashflows of some projects are more sensitive than others. The burden of a single upfront payment of PGS liability could especially cause some problems for housebuilders who work on tight cash flow predictions. Annex B looks at the impact of this requirement on a development that is known to have a relatively tight cashflow. In this example the requirement places the cashflow into deficit for the first two years.

3.5 EP's experience—through MKPC, in setting the tariff level for expansion areas in Milton Keynes has sought to optimise the per unit contribution by allowing for 75% of the tariff to fall due on practical completion of phases of the development. Annex B shows that in the example project considered, this approach does not lead to a cashflow deficit at any point.

3.6 The delayed payment reduces developers' liabilities at the front end of the process, to provide a much stronger inducement to delivery than may be the case under a "front-loaded" payment trigger which occurs before any income from sales is received. If the cost of borrowing to fund PGS is treated as a development cost in the assessment of PV this could ultimately reduce the amount received by the Treasury.

3.7 There is a risk that the PGS could encourage "land banking" if market conditions soften or enter a downturn, as developers will seek to defer PGS payment until markets stabilise or improve. The proposals could lead to an increase in unlinked planning consents so that developers are not hit by a significant upfront payment on a large multi phase development. With developers bringing forward development in smaller parcels to minimise or phase PGS payments, it could work against government's intention of comprehensive planned development including the co-ordination of infrastructure and facilities within the Sustainable Communities Plan growth areas.

Transitional Arrangements

3.8 A smooth transition will be essential to the success of any model for PGS, given that the earliest possible date for legislation is 2008, with implementation some time after that.

General transitional issues

3.9 With regard to transitional arrangements there is a need to consider the impact on sites where developers have entered into option agreements with landowners as these may limit the developers ability to pass on PGS to the landowners through reduced land acquisition payments. EP recommends that option agreements already in the system should be exempt. Renegotiation between developers and landowners could cause lengthy delays in delivery and in some cases landowners may choose not to sell.

Tariffs

3.10 The consultation does not provide much detail on the subject of transitional arrangements and, given Government is encouraging tariff arrangements to be set up in the interim, urgent work on establishing clear and straightforward transitional arrangements is vital to give developers the certainty to commit to tariff systems and also to plan for the new arrangements. EP has a number of proposals on which to base transitional arrangements.

3.11 Ministers are continuing to advocate new tariff arrangements but they have not explained how they can be reconciled with PGS. They could be seen as transitional arrangements, but this diminishes the strong arguments in favour of tariffs in the long term. This will leave large comprehensive development sites negotiating S106 but uncertain as to whether these will be overtaken by PGS which will become more acute as the implementation of PGS nears. To avoid this situation impacting on delivery, clear transitional arrangements are required as soon as possible. EP therefore recommends that tariffs can be retained alongside PGS by allowing areas which can agree to a prospectus on the Milton Keynes model to be exempt from PGS providing that the income raised will be at least equal to that which would be raised by PGS.

3.12 The tariff arrangements are seen by developers as providing a high level of certainty regarding the future funding streams from section 106 and provide confidence with regard to how their contributions will be applied, at both the local and strategic level. To sustain the pace of development required in the growth areas these conditions will need to be maintained.

3.13 There is a need for clarity on the potential impact for Milton Keynes, where a tariff has already been agreed and other areas developing tariffs (especially in the growth areas). EP recommends the transitional arrangements should ensure that those who have already agreed a tariff do not have to pay again since this would result in the tariff having to be renegotiated.

3.14 EP's view is that the overarching S106 agreement covering the tariff arrangement should be exempt from PGS. All reserved matters applications granted pursuant to the outline planning consent within the Tariff Framework should also be exempt.

EP response to specific questions raised in the consultation

Q3.1 *Should payment of PGS occur at the commencement of development or another point in the development process?*

EP recommends that payments should be phased in relation to cashflows and disposals, possibly using the MK Tariff model where 25% is paid upfront and 75% on phase completion. Other phasing examples are suggested in the valuation models as proposed in Annex A.

Q3.2 *Should the Development Start Notice be submitted to the local authority or HMRC?*

Although HMRC are the collecting agency, local authority input will be needed as they will have the necessary knowledge of the local situation. Although a priority will be to make the Development Start Notice (DSN) procedure as un-bureaucratic as possible, given it is based around the planning system, the local authority should be informed first or at least simultaneously with the HMRC as they will need to be notified to ensure compliance with S106 triggers and planning conditions and on this basis should be the one to issue the DSN. The Local Authority could also act as an initial check on the PGS return although this would have implications on timing. Clear performance standards would have to be established to ensure that PGS returns are expedited in an efficient manner.

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

The monitoring of major development sites can be a complex task especially with phased developments on major projects. Phasing of developments is also likely to increase to enable the developers to spread their PGS liability over a longer time period. The possibility of resubmissions on phases, sites and even plots when development might already be underway further complicates the monitoring process and adds to a further burden on the local authority.

Presumably any revised reserve matter applications (if granted) would result in a revised PGS liability being calculated.

4. Scope (Chapter 4)

4.1 The consultation asks whether the PGS rate be varied for regeneration/brownfield areas as it was for stamp duty. Stamp duty exemptions had resulted in a deadweight effect. Also, there have been problems regarding the agreeing of definitions (regeneration areas, etc) for the application of Derelict Land Tax, there would likely be similar problems in defining the scope of PGS.

4.2 It should be noted that recent Government figures state that over 70% of residential development is on brownfield sites which would indicate that there has been enough value in brownfield sites to continue to develop them. Where there would be problems is with those brownfield sites with extensive abnormal costs which would probably not be developed without public sector intervention anyway. As stated in section 1, where there is a negative PV and CUV is zero, PGS will not be payable. As recommended above, Government should explicitly state costs incurred in bringing a site up to a PV of zero should be exempt from PGS. In effect this means that the minimum value of CUV will be zero for PGS calculations.

4.3 If an exemption were to be considered, stricter definitions to distinguish between different types of brownfield land would be necessary. However, EP recommends that the essential costs required to bring forward a brownfield site for development (eg remediation, etc) should be classified as attributable costs to be set against the PGS liability and we would welcome the opportunity to discuss with ODPM and HMT how this might operate. This would reflect the actual costs of bringing forward such sites for development. No brownfield exemption is recommended.

4.4 Furthermore under the current regime, relatively substantial S106 charges are placed on even unviable brownfield projects, adding to the gap and the need for substantial public sector intervention. The scaled back S106 under the proposed system would reduce the payments to be made by these sites, improving their viability. It should be noted that a consequence of this is that lower combined PGS and S106 payments will be made by these sites, thereby reducing the contribution that they are able to make to education, public transport, etc.

Thresholds

4.5 The consultation asks whether thresholds of a certain scale should be set. This would complicate the system but would probably be supported by small-scale developers and small-scale exemptions could benefit small portfolio approaches such as The Housing Partnership. There are many developments in the urban area (infill, small sites) which only provide a small number of houses and whose individual impact on wider infrastructure would be minimal and would be covered by S106 (either in the current or proposed scaled back regime) as the bulk of the impacts would be site specific. However, the cumulative impact of a series of small developments can have an impact on wider infrastructure and if also seems fair that small high value developments showing a large uplift pay a contribution and any establishment of thresholds would require safeguards to be put in place to ensure that projects cannot be fragmented to take advantage of these thresholds. On balance, EP recommends that a threshold should not be set.

4.6 There is also a case to argue that an exemption should be applicable to those bodies which deliver social objectives (eg RSLs, certain Charities). However, given recent changes, with RSLs becoming more private sector orientated and delivering a wider range of housing including market sale there might be an argument that this would distort the market and also may be open to state aid issues. It is recommended that this issue be explored further and that the possibility of exempting the product should be explored—ie certain types of affordable housing (social housing). However, affordable housing, would of course, be already included in the scaled back S106 which is taken account of in PGS calculations.

4.7 It is also recommended that housing produced to a certain standard as set out in finalised Sustainable Code for Homes (at the 5-star rating for example) should attract a reduced rate from PGS to promote improved environmental performance and standards. This would also help in promoting the Code within the development industry and also assist with wider marketing across the general public.

EP response to specific questions raised in the consultation

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

No exemption should be made for brownfield land provided that it is clarified that CUV will be zero as a minimum and that the essential costs required to bring forward a brownfield site for development (eg remediation, etc) should be classified as attributable costs to be set against the PGS liability. This would therefore reflect the actual cost of bringing forward such sites for development.

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

A threshold should not be established for small developments for the reasons outlined in paragraph 4.5 above.

5. Financing Infrastructure Through the Planning System (Chapter 5)

5.1 PGS proposes to take a number of areas outside the scope of section 106 to increase certainty, reduce delays and improve consistency between local authorities.

5.2 Areas taken outside the scope of section 106 would then be funded through PGS revenues. This appears to be a sensible approach but there are concerns that this does break the local link between the development and the funding paid by the developer for the infrastructure to support that development. This could lead to a lack of certainty about infrastructure provision not being related to PGS payment. A good example of this the issue that has been raised by the Highways Agency in Milton Keynes, Ashford and elsewhere where existing motorway capacity cannot support new development. As a result junction improvements are required before sites can be developed. The developer therefore wishes to see any payment it makes spent on that strategic infrastructure and this transparency could be lost under this approach.

5.3 It is recommended that the PGS revenues will need to be hypothecated and ring-fenced to whatever level they are recycled to ensure that they support the infrastructure identified to sustain growth/development rather than be recycled back into the general "pot" where it might be used for purposes other than supporting growth/development. PGS should not be used to substitute for existing sources of public sector investment in infrastructure.

Tariffs

5.4 The MKPC tariff utilises the current section 106 planning obligations as a means for securing developer contributions to the funding of infrastructure required to enable the proposed development to proceed and ensure that essential facilities are provided for the incoming residents without imposing an unacceptable burden on local or central governments. Where local authorities have clear Supplementary Planning Guidance and other approved policies in place the system has been shown to work well and is accepted by the development industry as a legitimate means of raising capital to help fund the infrastructure and facilities which support growth. This acceptance has been demonstrated in the recent agreement of the Tariff in Milton Keynes where approximately half of the £18,500 per unit contribution will help fund strategic infrastructure whilst the remainder will be applied to a range of local infrastructure in accordance with the Council's approved SPG documents. The tariff funds will be managed by MKPC (who have development control planning powers in the Expansion Areas) and applied to funding projects within a Delivery Plan agreed with the Council. Because the tariff operates through a conventional Section 106 Agreement there are direct links between the revenues raised and the application of the funds to infrastructure needed at the local level.

5.5 In outline, such a tariff system could have a wider application, where local authorities or groups of local authorities agree a prospectus and business plan on the pattern of MKPC which matches growth with a costed infrastructure plan. The prospectus would have to assessed by an appropriate body (EP with its experience relating to infrastructure provision and planning could be one such body or the Planning Inspectorate could be another) and a view given before approval would be granted for a local authority to apply a tariff instead of PGS, demonstrating that the tariff would collect at least as much as PGS. The approval would be time-limited and subject to review on the same timetable for the review of local development frameworks. The tariff could also include some of the features in the MKPC tariff (eg indexation) which allow it to be sensitive to market changes.

5.6 The tariff would need to include all local authority infrastructure requirements, including affordable housing and would be used to meet local infrastructure requirements as identified and prioritised through the local development framework. Alongside the tariff, work should continue in streamlining, clarifying and scaling back section 106 as site specific section 106s would still be required to meet site-specific impact mitigation.

5.7 Where an exemption is granted, a smaller portion of PGS (covering the strategic portion of PGS) may still be payable but further work would be needed on whether this would represent an excessive additional burden on the development industry. This would allow for greater targeting of and matching of funding in the local areas but still allow a portion being made available through a regional or central enabling fund for strategic infrastructure. This provision of strategic infrastructure fund could also help meet any re-distributional requirements to support strategic infrastructure need in low-value areas.

5.8 This approach could also be piloted/targeted in conjunction with the wider growth points agenda as outlined in Government's response to the Barker Review.

Free land

5.9 Under the current system and with tariffs, the treatment of free land is well understood but it is not clear from the consultation how free land will be treated under PGS. At the moment section 106 can require that land is made available for community uses for free. As the scope of section 106 is to be reduced under PGS, free land for education, community, housing and infrastructure uses can no longer be required under PGS. Clearly the planning approval will designate uses of land and in some instances planning designation will be enough to reduce land value to zero (possibly education) but in others (eg leisure), the land will retain significant value. Further thought should be given to the scope to continue to capture free land for community uses under PGS.

EP response to specific questions raised in the consultation

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

The separation of issues to be covered by scaled back section 106 and PGS is generally sensible but detailed guidance will be required to ensure any overlaps are removed. There will be concern that the local link between the development and the funds for infrastructure will be broken, especially where it deals with infrastructure taken out of the scaled back section 106 such as education provision where this will be set locally and driven by large scale developments. Funds to support infrastructure through PGS will need to be hypothecated and ring-fenced to ensure they support the infrastructure identified as necessary to support growth.

Affordable housing can already extract a great deal of value in some cases, especially if set high in Local Development Frameworks. Levels of affordable housing need will have to be clearly set by local authorities and again take account of need and markets.

More widely, increased advice and guidance in the vein of Planning Circular 05/05 and resources such as EP's Advisory Team on Large Applications (ATLAS) can also help with increased clarity, speed and transparency of the section 106 system. Again, tariff models can assist in a more collaborative public-private sector approach to assessing the level of growth and infrastructure required to support it.

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

The Government's cross-cutting review on infrastructure has a key role here in establishing the priorities for government spending plans and priorities and should also inform how PGS revenues will be distributed.

Further investigation of investment vehicles (such as English Cities Fund (ECF) and East Midlands Property Investment Fund (EMPIF)) and other delivery bodies, as well as the outline proposals regarding the use of PGS revenues as an asset to borrow against should also form part of the cross-cutting review.

The new system will have to be able to demonstrate that it will collect at least as much, and preferably more, than the current section 106 system so as to be able to fund what would normally be met through section 106 and to also provide additional funds for redistribution and also to support the "modified CIF".

6. Allocating PGS Revenues (Chapter 6)

6.1 The consultation is unclear about how PGS revenue will be allocated, but it does promise a "modified Community Infrastructure Fund" (CIF).

6.2 To achieve clarity regarding the allocation of PGS revenues the following questions need to be addressed to demonstrate how the PGS revenues will be allocated:

- what criteria will apply in determining how revenues are apportioned between the local, regional and national level;
- will this involve cross-departmental working;
- what will be the mechanisms; and
- to what extent will national policies for enabling growth in the growth areas or supporting regeneration in areas of market failure be a factor in the decision making?

Timing

6.3 The development of the Milton Keynes Prospectus has highlighted the issue that expenditure on both local and strategic infrastructure is needed prior to payments falling due. Strategic infrastructure, such as off-site highways capacity can be required before development commences to open up sites and in some instances to overcome Highways Agency objections. Similarly to create sustainable communities, local infrastructure such as schools and hospitals may be required before payment by developers is due.

6.4 Neither the current system nor PGS would allow for funding would allow for infrastructure to be provided in advance or in support of development. One of the key elements of the MK tariff and West Bedford is the "banker" role being played by EP. CIF could play a similar role for the strategic infrastructure but would again require an initial pump priming from central government with the fund then being topped up through PGS revenues. This would not solve the problem of providing the initial investment for more local schemes unless similar regional CIF type mechanisms are also established although this might be spreading PGS resources thinly. In addition to these timing issues, local authorities can use section 106 for the agreed purpose once it receives it. Centrally collected and distributed PGS to LAs on an annual or even relatively periodic basis will mean that there will be an increase in the time lags with a resulting impact on development. Again once sufficient PGS revenues are being received then it would be possible to provide a more timely response or advance from the a regional "CIF" pot referred to above but there would still remain a problem until PGS revenues are established. Initial investment in infrastructure will therefore still be required over the transitional period before PGS revenues come on stream.

Allocating PGS based on local infrastructure needs

6.5 All areas (especially those experiencing growth) should develop a costed plan of their infrastructure requirements, using the Milton Keynes Prospectus as a model. These should be prepared in wide consultation with stakeholders—public and private sector. The infrastructure requirement and priorities will be established in the local development framework which could provide one of the factors for allocation of PGS revenues along with other requirements such as the amount of PGS raised in that local authority. Through this a gap or a surplus could be identified and decisions taken on that basis (with alternative funding sought from other bodies if a gap and if the local authority has potentially raised more than is required, the surplus could possibly be redistributed into a regional pot). This approach may have resource implications to local authorities initially but it should result in a better articulation of the infrastructure requirements to support development and a better position on which to seek additional funding.

6.6 Further guidance will be required to demonstrate how the proposed allocation of funding at the local level will work. For example, the MK tariff is raised and applied locally, so the level of funding to support growth is clear. It is unclear if PGS collected in the growth areas will be ring fenced so that it can be applied directly within those areas via local authorities or other local or regional delivery vehicles. A much greater level of certainty will be required in relation to the government's ability to ring fence the funding for growth in direct proportion to the revenues raised for this mechanism to operate effectively and be accepted as an alternative to the current S.106 tariff arrangement. Without this certainty it is possible that developers who are supportive of the tariff mechanism may seek to minimise their PGS liabilities, or find ways of avoiding the payment through the valuation and self-assessment process.

National view on infrastructure requirements

6.7 Work undertaken locally to assess infrastructure requirements should complement and feed into the cross-cutting review of infrastructure as part of the 2007 Comprehensive Spending Review. This will also form a key part of the identification and agreement of infrastructure requirements and priorities and hence decisions on the distribution of PGS revenues and the operation of new programmes such as the modified CIF.

Allocating funding to local and strategic infrastructure

6.8 The initial guidance establishing the role of CIF would need to clearly set out what it can and cannot support. It may be valuable to draw on the Milton Keynes Prospectus approach of separating clearly local infrastructure (eg education and primary health) and strategic infrastructure (reservoirs, universities, highways). Different allocation processes may be appropriate for local and strategic infrastructure. It should be noted that local authorities may introduce grampian conditions until certain conditions (such as the provision of infrastructure) are met which would result in no development and therefore no payment of PGS.

Strategic infrastructure

6.9 A portion of CIF would have to be allocated against national and regional strategic priorities as set out in the RSS, possibly mirroring the mechanism established for distributing Housing Corporation Approved Development Grant through Regional Housing Board priorities, but it would also have to allow for enough flexibility to allow investment decisions to be made where it can make the most difference or where there are significant barriers to growth and/or regeneration.

Local infrastructure

6.10 From the case studies it can be seen that the education makes up at least 45% of the current section 106, with public transport the next most important. With these items being taken out of the scaled back section 106, there is a problem in that this breaks the link between the development and the necessary education and health provision required as a result of the development. Given the money will now be collected centrally, there is uncertainty on how much will go back to the relevant local authority and whether this will be sufficiently hypothecated and ring-fenced to ensure the PGS revenues are spent on the relevant and necessary infrastructure. Furthermore on those sites where payments under PGS will be lower than under section 106, less revenue will be raised to support the education needs of those developments. This will be particularly true in London where affordable housing (which remains within section 106) policies are such that development surpluses will be assessed for contribution to the London target of 50% affordable housing before the uplift can be calculated, which could potentially increase levels of affordable housing whilst reducing the uplift available for PGS to be calculated.

6.11 Central government could consider several options in relation to such items including leaving some items, possibly education, within section 106 and setting a lower level of PGS on large development to fund strategic infrastructure or provide some form of per dwelling contribution to education from funds raised through PGS so that the allocation of funding through CIF is targeted on strategic infrastructure only (transport, utilities, strategic flood risk, etc).

Operation of CIF

6.12 Further thought also needs to be given to ways of streamlining the bidding process to ensure PGS is returned to the local level quickly to reduce the potential for delays in infrastructure provision and therefore growth. It is also unclear how government intends to forward fund infrastructure to facilitate growth in advance of PGS contributions where such infrastructure is necessary to facilitate development and therefore trigger PGS. Existing CIF bidding would have to be broadened in scope to cover a far wider range of infrastructure projects including health, transport and any other essential items which might be required.

6.13 With regard to the modified CIF, EP is proposing that it would be a suitable body to operate the national element to support the provision of infrastructure of a national strategic importance. The CIF would also need to be ring-fenced within EP's programme so that additional calls cannot be made on the core EP programme to meet any sudden/unforeseen changes in a scheme.

6.14 There is also potential to look at CIF as a fund which recycles PGS contributions targeted at pump priming infrastructure to unlock sites and add value (which would be partly captured through PGS), possibly used as an asset against which additional finance could be borrowed to lever in additional private sector investment and also be utilised as a re-distributional tool to help support strategic infrastructure provision in low value areas.

6.15 Obviously further and much more detailed work would be needed on the above proposals and EP would be willing to work with ODPM and Treasury colleagues in developing these suggestions further. It is further proposed that the recently convened Urban Finance Group could be tasked with taking this forward as well as looking at how such a strategic infrastructure fund could be used to attract additional private sector investment to support growth and regeneration (for example how could it interact with investment vehicles such as English Cities Fund and East Midlands Property Investment Fund).

7. Partial Regulatory Impact Assessment

7.1 The consultation paper states that there will be some minor administrative costs to set up and run the system for both the public and private sectors. The only other specific public sector costs are potential loss in some revenues or in-kind benefits that were received from the use of negotiated agreements. No mention is given of the cost to major landholding public agencies such as EP which could be significant through the reduction in land values and EP's disposal proceeds (on which EP is increasingly reliant to fund its programme). Although it can be argued that there would be a corresponding reduction in the price EP pays for land, EP is moving away from site acquisition and assembly and into fuller facilitation and brokering role which would mean that we would not always receive this benefit.

8. Conclusion

8.1 Planning Gain Supplement can be made into an effective method of land value capture. There remain a number of important issues to be resolved and English Partnerships offers its assistance to developing proposals and in carrying out additional research and analysis to support this work, in particular:

- Assistance to help develop the PGS proposals given EP's wide experience in planning, valuation and development.
- Developing the proposed EP Community Infrastructure Fund model.
- Developing the proposal to allow areas to choose either a tariff-based system or PGS.

— Assistance with the cross-cutting review of infrastructure as part of the 2007 Comprehensive Spending Review. This will also form a key part of the identification and agreement of infrastructure requirements and priorities and hence decisions on the distribution of PGS revenues and the operation of new programmes such as the modified CIF.

Annex A

LEVEL OF PGS

Case Studies

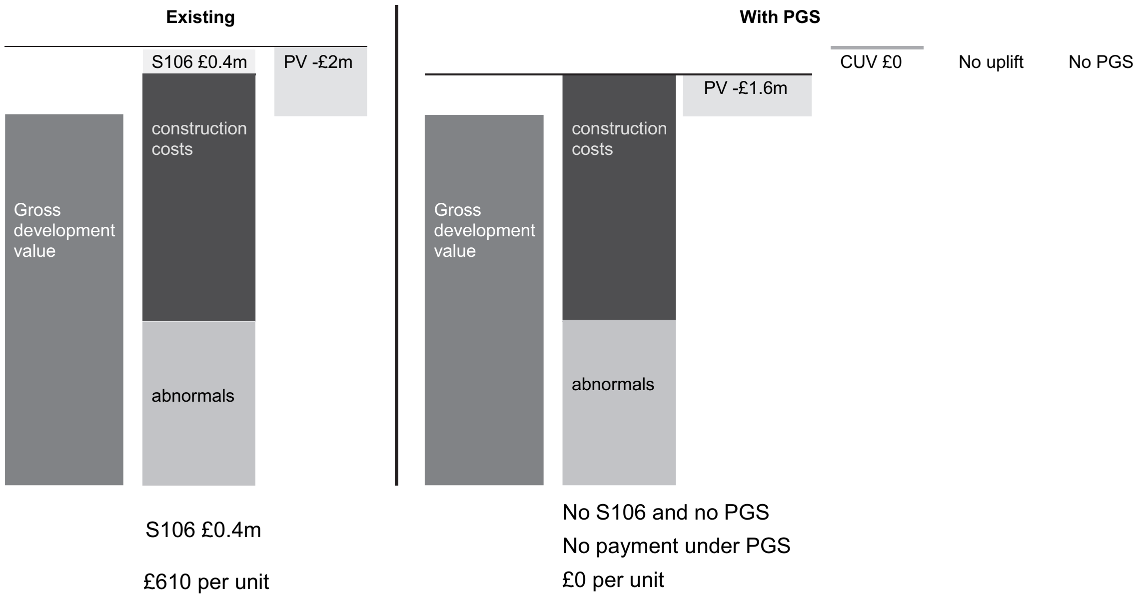
These case studies illustrate graphically the impact of moving from the current system of section 106 to PGS.

Charts are not to scale and numbers have been rounded for ease of reference.

In all case studies levels of affordable housing are assumed as constant between the existing and new system. The impact of affordable housing in each case study is represented through the Gross Development Value and is not shown as a section 106 cost.

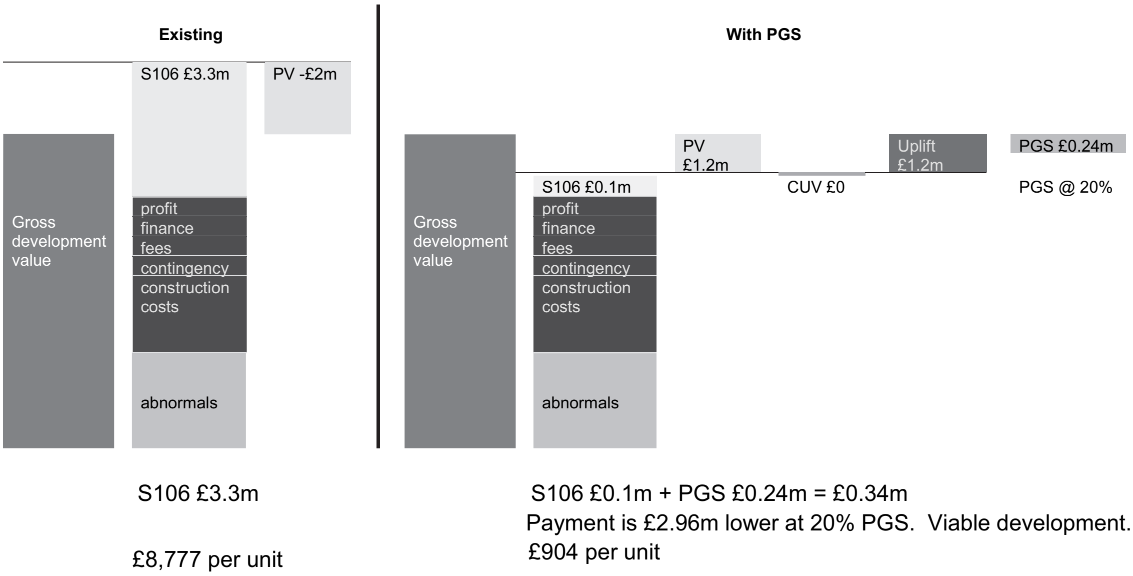
Case Study 1—Negative Planning Value

Coalfield site in North East with planning permission for 656 homes (of which 32 affordable). Site is currently unused.



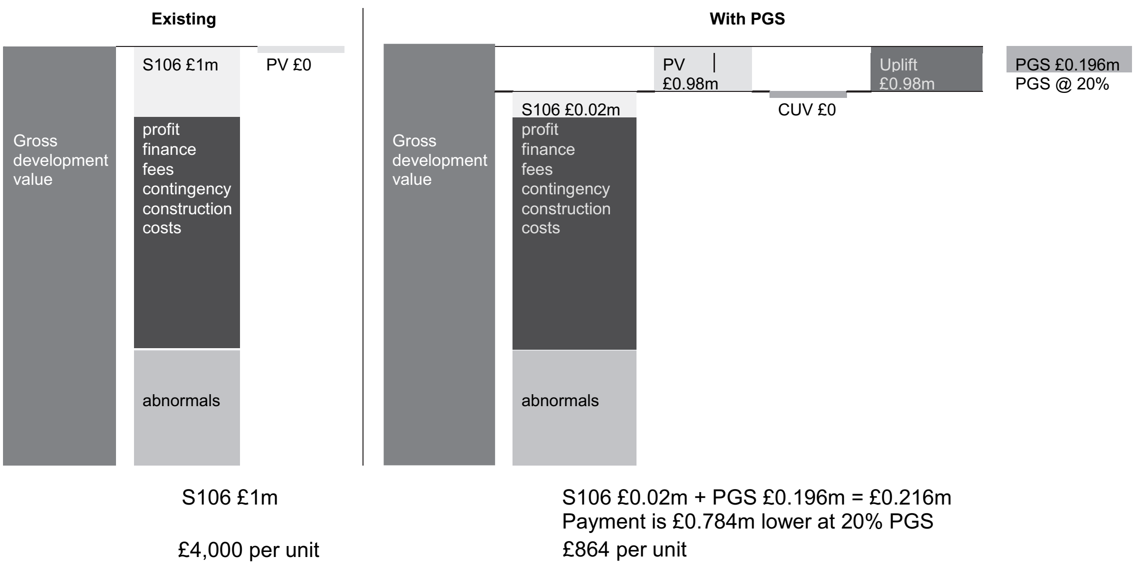
Case Study 2—Negative Value Under Current System

Coalfield site in Yorkshire with planning permission for 376 homes (of which 25% affordable). Site is currently unused.



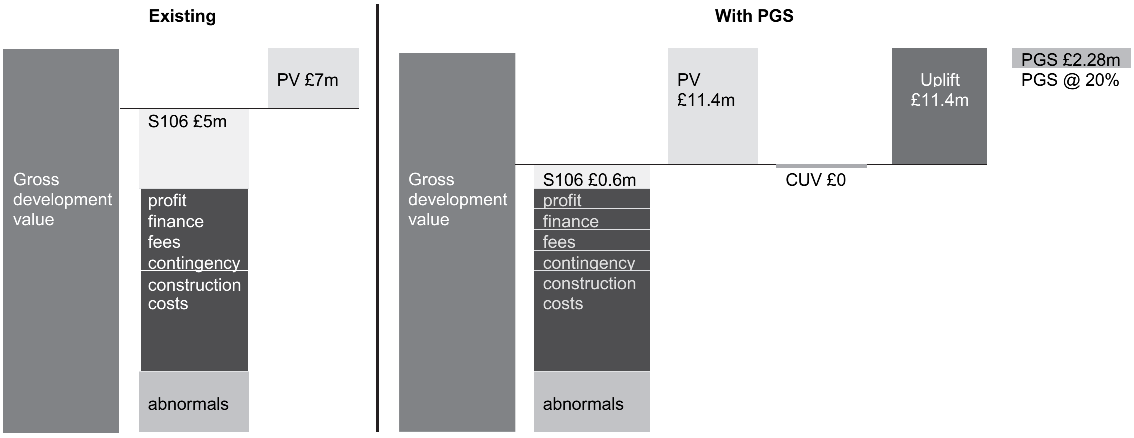
Case Study 3—Marginal Development

A site in London Thames Gateway with planning permission for 250 homes (of which 35% affordable). Site is currently unused.



Case Study 4—Viable Brownfield Site

Former hospital site, Essex. 420 home development (25% affordable housing). No demand for health uses in this location, so current use value is zero.



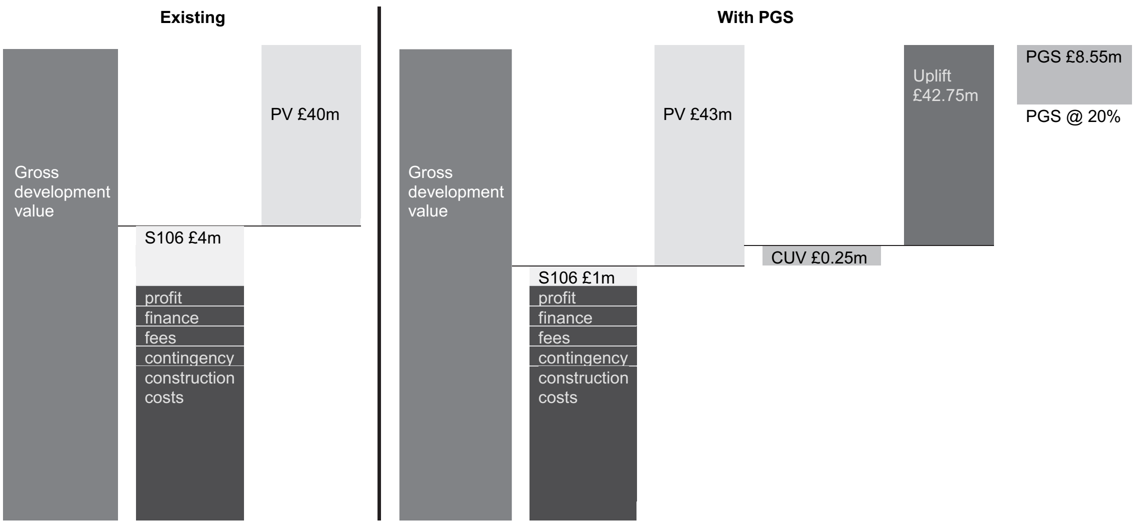
S106 £5m

£11,904 per unit

S106 £0.6m + PGS £2.28m = £2.88m
Payment is £2.12m lower at 20% PGS
£6,857 per unit

Case Study 5—Greenfield Development #1

Greenfield site, Milton Keynes, 720 homes (30% affordable). Current use agricultural.



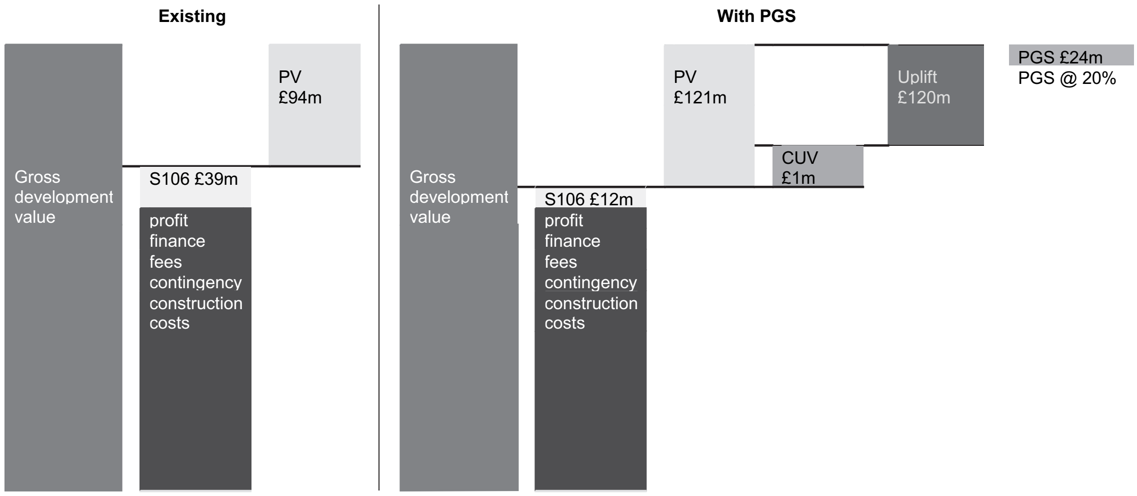
S106 £4m

£5,555 per unit

S106 £1m + PGS £8.55m = £9.55m
Payment is £5.55m higher at 20% PGS
£13,264 per unit

Case Study 6—Greenfield Development #2

Greenfield site, MKSM growth area. 2,250 homes (30% affordable). Current use agricultural.

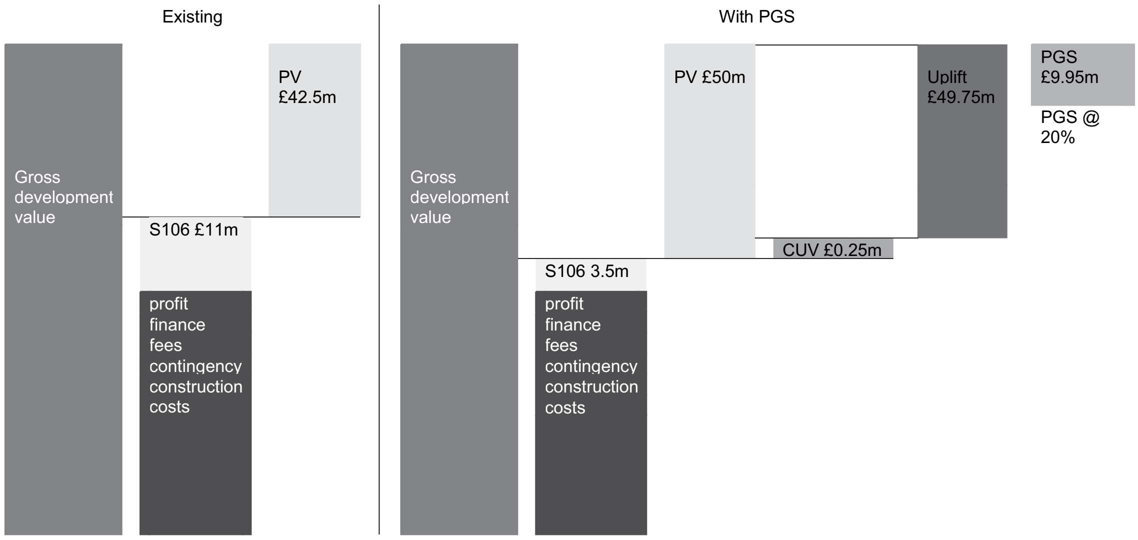


S106 = £39m
£17,333 per unit

S106 (12) + PGS @ 20% (24) = £36m
Payment is £3 million lower at 20% PGS
£16,000 per unit

Case Study 7—Greenfield Development #3

Greenfield site, MKSM growth area. 1,000 homes (30% affordable). Current use agricultural.



S106 £11m

£11,000 per unit

S106 £3.5M + PGS £9.95M = £13.45m

Payment is £2.45m higher at 20% PGS
£13,450 per unit

Annex B

TIMING OF PGS

Based on case study 7 (above)—a development of 1,000 homes (of which 30% are affordable) and associated facilities on a greenfield site in the Milton Keynes/South Midlands Growth Area. Numbers in Annex A were rounded for ease of reference but exact numbers are presented here. PGS of 20% has been assumed.

CASHFLOW "NO PGS"
(£'000)

	Total	*Year 1*	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Later years*
Units built pa	1,000	72	72	115	115	115	115	396
Gross land value	**53,114**	**3,824**	**3,824**	**6,108**	**6,108**	**6,108**	**6,108**	**21,034**
Section 106 existing								
Community hall	579			10	569			
Health	20			20				
Play (on site) and open space	1,361	38		1,323				
Education	5,176			2,588	2,588			
Flood protection	1,750	875	875					
Pedestrian and cycle	45	5	5	5	5	5	5	15
Ecology and landscape	70		70					
Public transport	1,716	11	27	58	74	91	781	674
Road access	78		78					
Management and maintenance	112			14	14	14	14	56
Total Section 106	**10,907**	**929**	**1,055**	**4,018**	**3,250**	**110**	**800**	**745**
Net land value	**42,207**	**2,895**	**2,769**	**2,090**	**2,858**	**5,998**	**5,308**	**20,289**

CASHFLOW "WITH PGS"
(£'000)

	Total	*Year 1*	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Later years*
Gross land value	**53,114**	**3,824**	**3,824**	**6,108**	**6,108**	**6,108**	**6,108**	**21,034**
Section 106 "with PGS"								
Play (on site) and open space	1,361	38		1,323				
Flood protection	1,750	875	875					
Pedestrian and cycle	45	5	5	5	5	5	5	15
Ecology and landscape	70		70					
Road access	78		78					
Management and maintenance	112			14	14	14	14	56
Section 106 "with PGS"	**3,416**	**918**	**1,028**	**1,342**	**19**	**19**	**19**	**71**
PGS	**9,893**	**9,893**						
Net land value	**39,805**	**−6,987**	**2,796**	**4,766**	**6,089**	**6,089**	**6,089**	**20,963**
Cumulative		−6,987	−4,191	575	6,664	12,753	18,842	39,805

CASHFLOW WITH PGS, 25% AT START ON SITE, 75% AT COMPLETION OF PHASES
(£'000)

	Total	*Year 1*	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Later years*
Gross land value	**53,114**	**3,824**	**3,824**	**6,108**	**6,108**	**6,108**	**6,108**	**21,034**
Section 106 "with PGS"								
Play (on site) and open space	1,361	38		1,323				
Flood protection	1,750	875	875					
Pedestrian and cycle	45	5	5	5	5	5	5	15
Ecology and landscape	70		70					
Road access	78		78					
Management and maintenance	112			14	14	14	14	56
Section 106 "with PGS"	**3,416**	**918**	**1,028**	**1,342**	**19**	**19**	**19**	**71**
PGS phased	**9,893**	**2,473**		**1,484**		**1,484**	**1,484**	**2,968**
Net land value	39,805	433	2,796	3,282	6,089	4,605	4,605	17,995
Cumulative		433	3,229	6,511	12,600	17,205	21,810	39,805

Memorandum by ALTER (Action for Land Taxation and Economic Reform) (PGS 14)

ALTER is a group within the Liberal Democrat Party but works with others in all parties and none who believe that effective and equitable land reform and tax reform go hand-in-hand. We are grateful for the opportunity to bring to the attention of members of Parliament the concerns that we share with many in all sectors— especially in local government and the property industry—that the proposals in the Government's consultation on a Planning Gain Supplement (PGS) are deeply flawed.

We enclose a copy of our response to HM Treasury's consultation, in which we attempt to focus on the specific issues raised in their paper. However, much of our response deals with a totally different approach to the problems which Kate Barker addressed but which she felt constrained to pursue under the narrow remit she was given.

It is apparent to anyone dealing with HM Treasury at this time that an opportunity is being lost to achieve vitally necessary joined-up thinking on several fronts:

— housing supply (PGS);

— local government finance (Balance of Funding/Lyons Inquiry); and

— new funding sources for strategic infrastructure projects (CrossRail, Thames Gateway, Coastal Protection, etc).

In each of these areas, currently vexing Ministers and officials in both ODPM and Treasury but also in other Departments, the potential for tapping into the "unearned increment" in land values that accrues to owners has been looked at narrowly. We are in danger of arriving at a complex bureaucratic mixture of fiscal solutions, each component of which will probably fail to achieve its discrete aims. Meanwhile, we are unjustifiably dismissing the one solution that has potential to satisfy all these aims—and at the same time satisfy wider national land management and property market aspirations: an annual Land Value Tax (LVT).

We support what seems to be the consensus in responses to the PGS consultation in the short term: an Optional Planning Charge (OPC) refined from the best examples of the use of existing section 106 Agreements (developers' obligations). However, we realise that this will not meet the infrastructure funding gap (which Ms Barker was not asked to address) in Growth Areas, which it has become clear is the real purpose of PGS: taking money from developers in one area to help finance infrastructure completely unrelated to that area. LVT will achieve that equitably and transparently.

We therefore urge you to recommend to Government a wider study of the merits of LVT (and its local version Site Value Rating) as a fiscal instrument available to all levels of government. We are convinced that the drawbacks of this policy have been overestimated and the wider benefits ignored, because in every recent study there has been too narrow a remit.

Memorandum by Friends of the Lake District (PGS 15)

We would wish to restrict our comments on the consultation paper to rural issues and in particular to any implications that could arise in developing brownfield sites and in the provision of affordable homes. We recognise PGS as a means to an end in so far as securing investment into infrastructure to secure more houses, and that it is a way of sharing out gain made to land value by the grant of planning permission. However, will it work for rural areas with little or no growth? Whilst in growth areas the tax may create a cyclical building/investment environment, in rural areas the tax may deter builders and delay housing development in situations where small sites are already relatively costly to develop and this could adversely impact on exception sites and sites allocated for affordable housing. We would wish to see the development of brownfield land in advance of greenfield. Many brownfield sites have a variety and complexity of problems eg contamination that has to be overcome, at additional cost, to activate the site. A further charge on that development could be a disincentive and encourage developers to turn to greenfield land as a first option. There is very limited information available at present on PGS to give confidence that the scheme would achieve its objective of creating community benefit. For rural areas the delivery of affordable houses and local infrastructure to support sustainable communities may only be achieved if a substantial reduction or exemption in the tax is introduced to encourage the development of small sites and the re-use of brownfield land. In summary, whilst we support the principle we have real concerns over the practical implications and possible outcomes for rural areas.

Memorandum by British Property Federation (BPF) (PGS 16)

Introduction

1. The British Property Federation (BPF) is the voice of property in the UK, representing companies owning, managing and investing in property. This includes a broad range of businesses comprising commercial property owners, the financial institutions and pension funds, corporate landlords, local private landlords, as well as all those professions that support the industry. The British Property Federation estimates that its members manage property assets worth approximately £200 billion.

2. The property industry is a vital component of a successful economy. As an industry, commercial property contributes 6.2% of UK GDP, which makes it larger than the financial services industry and, combined with residential property, the sector employs nearly two million people. In 2003, net investment in productive property was £52 billion—32% of total investment in the UK. Just over 20% of commercial property in the UK is held by UK-based pension and insurance funds, meaning that most people in the UK have a stake in our industry as pension fund members.

3. The BPF welcomes the opportunity to submit evidence to the ODPM Committee's inquiry into the planning-gain supplement. Whilst we have commented on the points of evidence raised by the Committee we believe that the focus of the inquiry may be too narrow given the scope of the consultation document, in order to form a complete picture the Committee may also wish to consider views on the means of valuing and collecting the levy, as this these are both central to achieving the outcome of greater infrastructure provision.

4. The BPF's full response to the PGS consultation is published as PGS 24(a).

Our Key Concerns

5. The British Property Federation (BPF) does not believe the Planning-Gain Supplement proposals will achieve the Government's intended objectives.

We believe a Planning-Gain Supplement:

- Is not suited to brownfield or previously developed sites;
- Removes the linkage between the developer, the development and direct community benefit;
- Can provide for uncertainty in the development process;
- Is unworkable on most commercial developments;
- Will slow the rate of developments coming forward;
- Will discourage regeneration schemes;
- Will lead to more partial refurbishments (outside the need for planning permission)
- Will create a blockage in the planning system;
- Will not result in the revenues required and will potentially reduce receipts from other land and property taxes, such as capital gains tax;
- Could lead to lengthy disputes in the courts over the self-assessment forms; and
- Does not give any certainty that the necessary infrastructure will be provided.

Overview

6. The BPF accepts the need to find a mechanism which can extract some of the increase in value of land often seen in cases of residential development on greenfield sites only. This echoes the recommendation Kate Barker made in her Review in 2004[9] and our paper on planning tariffs versus land tax published in September 2005.[10] We also recognise the Government's objectives in achieving the sustainable communities agenda which requires the provision of supporting infrastructure and the necessary funding to achieve this goal. However, we do envisage potential tensions that may arise between some of the objectives which we outline in our response.

7. It is understood that government cannot deliver the necessary infrastructure on its own. However it is not clear from the consultation paper the extent of the deficit in public funding. Without this information it is difficult to ascertain whether any new taxation instrument will deliver the kinds of returns required to meet this deficit and thereby deliver the necessary infrastructure. This may be symptomatic of the fact that there is currently no strategic master plan across government outlining what infrastructure is required and at what cost (although we are aware this may be covered in the cross cutting review). This means it will be difficult to gauge the level of contribution required from any sort of centralised taxation vehicle. It is difficult for the BPF to comprehend how PGS revenues will fund all the necessary infrastructure costs.

8. The BPF have carefully considered the merits of the planning-gain supplement (PGS) proposals in a practical context. With the omission of key information such as the PGS rate, it is difficult to ascertain the exact financial impact the proposals will have on commercial development. Furthermore, the consultation paper has been too vague to make an assessment on how the revenues will be distributed. However, in our response, we have tackled the issue by responding to how we think this will work in practice given the suggested proposals presented to us in the consultation paper.

Points of Evidence

The factors which should be taken into account in determining the rate of the supplement and the level at which should be set

6. The stated objectives of planning-gain supplement proposed in the consultation document are as follows:

- to finance additional investment in the local and strategic infrastructure necessary to support housing growth, while preserving incentives to develop;
- to help local communities to share better the benefits of growth and manage its impacts;
- to provide a fairer, more efficient and more transparent means of capturing a modest portion of land value uplift; and
- to create a flexible value capture system that responds to market conditions and does not inappropriately distort decisions between different types of development.

7. In order to effectively comment on the PGS rate, further information is required as to what the identified infrastructure needs are, what the funding gap is, and how much of the gap the government foresee raising from PGS revenues.

8. The PGS as proposed will capture a portion of residual uplift value, the BPF believe that there is little or no residual uplift value in the vast majority of developments across the UK, especially those that take place on brownfield land. If the Government persist in pursuing a PGS it will only serve to distort the property market, slowing development and removing the incentives for development.

9. Furthermore, the PGS model appears to be aimed at residential development, where dwellings are built and then sold, with the developer realising returns in the very short term. This will does not at all fit with commercial developments for the following reasons.

10. Firstly, the consultation document recognises that brownfield land is different from greenfield and suggests that there will be a reduced rate for developments on such land. The BPF have strongly supported the Government's commitment to brownfield regeneration, in order for this policy priority to continue to be a success the BPF recommends a PGS rate of 0% for brownfield land (in effect a full exemption of PGS liability). The residual uplift value achieved on most brownfield sites is marginal, by adding any additional costs it will act to remove the incentives for such development to continue.

11. Secondly, the commercial development model is very different to that of residential development as:

- It almost always takes place on brownfield land—where residual or "planning value" is minimal or even negative,
- The developer will usually hold an interest in the site for the long term, not realising the uplift in value; and

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[9] Review of Housing Supply: Delivering Stability—Securing our Future Housing Needs, Final Report—Recommendations, Kate Barker, 2004.

[10] Don't Kill the Goose—A Case for Tariffs and Not Tax, British Property Federation, 2005.

— Commercial development is frequently speculative and could potentially be vacant for some time after completion, only seeing positive revenues in the medium term to long term (after incentives designed to encourage occupation, such as reduced rents or rent free periods have lapsed).

12. For these reasons the BPF believe that any levy that is designed to capture residual uplift value will have a negative affect upon development. There could be a slowdown in the release of land, brownfield in particular, with commercial development and regeneration projects being specifically hit.

How the supplement should reflect subsequent uses such as social housing

13. Under the current proposals affordable housing will still be provided as a part of section 106 agreements. Moreover, affordable housing and other site environment aspects (see table 5.2 of the PGS consultation for full details) still included in planning obligation negations will be deducted from the sites planning value, reducing the potential PGS liability. It is envisaged that when taking into account the affordable housing provision, the cost of preparing the land and the other aspects of the section 106 agreements that the residual uplift valuable then subject to the PGS will be nominal.

14. All subsequent uses of the PGS, including social housing, will probably be subject to a set of infrastructure priorities deemed necessary following local and regional research and the completion of strategic plans (including the regional spatial strategy, the regional economic strategy, the local development frameworks etc).

15. The problem in delivering this infrastructure is then two fold; firstly, the amount of revenue raised by the PGS will most likely be less than the current take from section 106, for the reasons outlined above, meaning that funds will not be able to deliver the infrastructure deemed necessary in local and regional plans respectively.

16. The second problem is the issue of redistribution of the PGS revenues. The current proposals are not clear on the amount of revenue that will be returned to the locality in which it was raised. This will lead to both an increase in the uncertainty of the revenues that local authorities will eventually receive, and most likely a reduction in the amount of infrastructure that they will be able to deliver. We will go into greater depth regarding our concerns in this area in response to the next point.

How the revenue from the supplement should be distributed and appropriate uses

17. The consultation paper provides little detail on how much it expects the PGS to yield, nor does it really give enough information on how the funds will be redistributed other than a few hints at the way it might be apportioned at a local level and/ or the possibility of expanding the Community Infrastructure Fund.

18. We believe that any PGS revenue generated must predominantly go back to the originating local authority and no higher than the region. The link should not be lost between the developer, the development and the local authority. This is particularly important in areas where the land value is high and the need to win over the community in bringing forward associated infrastructure is essential. To not recycle a "significant majority" back to the locality it was generated could result in less development being granted planning permission as resentment within the local community grows over the redistribution of funds.

19. The BPF are concerned that redistributing a significant amount of PGS return away from the originating local authority could have serious consequences in bringing forward development, particularly in high value areas. However, we are equally concerned that without a clear and equitable solution to fund infrastructure requirements in areas of low value where the necessary growth in such areas will not be realised. Without some detailed analysis of the total amount of revenue that the PGS is expected to generate, it is difficult to model how an equitable redistribution mechanism may work, if at all.

Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites

20. Whilst the consultation paper recognises the need to set a lower PGS rate for brownfield sites, it must be acknowledged that in most cases the "planning value" will be nominal if not non existent. Therefore, as stated above, in order to encourage the development of brownfield sites, any PGS rate must be 0%.

The potential impact of the supplement on section 106 arrangements negotiated through the planning system

21. It is envisaged that when taking into account the affordable housing provision, the cost of preparing the land and the other aspects of the section 106 agreements the residual uplift valuable that will be subject to PGS will be nominal.

22. In Circular 05/2005 the policy tests are defined as being "necessary in planning terms", and the PGS consultation states that the Government intends to ensure that the reduced section 106 will be limited to this through the use of legislation. The problem is that case law has superseded the Secretary of State's policy tests and allows for a wider provision of infrastructure through section 106 agreements. The readjustment

of local authorities and developers alike to agree measures that will mitigate and enhance the environment of the site will be a difficult process. For example, developers will no longer be able to control the delivery of critical aspects of infrastructure in a timely fashion. This will potentially lead to a double whammy, whereby;

- The LPA, for whatever reason, does not rein back its section 106 demands; and
- The developer is forced to bow to this, and pay the PGS levy as well. As to go to appeal is a lengthy and costly process that could potentially upset the local authority.

23. Achieving compliance with the revised system will require clear definitions of what can be included (ie in depth guidance of what can be provided through the items in the left hand column of table 5.2 of the PGS consultation) and to ensure compliance by local planning authorities they must be backed by legislation. If one or other of these are not stringent enough then there is a strong likelihood that section 106 agreements will consume what little residual uplift value exists.

24. The Government is encouraging the development of the strategic use of section 106 obligations as an interim measure. Though the BPF support a local tariff based solution we foresee that most local authorities that are not already someway down the road in developing a tariff will not set out to do so. This is because it is estimated that it takes approximately 10 years to reap the full benefits of a tariff system, and with Local Authorities working on developing Local Development Documents for their Local Development Framework, as well as day-to-day planning applications, it is very unlikely that many will be able, or indeed willing, to spend the time and money to a develop a system that could then be replaced by PGS.

Memorandum by Thames Gateway London Partnership (PGS 17)

Introduction

1. The Thames Gateway London Partnership represents those London Boroughs in East and South East London, parts of whose areas make up London Thames Gateway. London Thames Gateway is characterised by major development programmes reflecting its role as London's key growth area. Typically sites are brownfield with relatively low values given remediation and infrastructure provision requirements. The boroughs make substantial use of section 106 arrangements to help ensure that development proposals are appropriately mitigated and provide relevant and related benefits, together with support for social and physical infrastructure.

2. The Partnership is therefore very concerned that the proposed Planning Gain Supplement cuts across section 106 provisions and arrangements. Little evidence is provided in the consultation paper about these arrangements and how they work in practice, nor how PGS would represent an improvement. Indeed, the Partnership considers that PGS would be difficult to administer, would raise limited revenue in brownfield areas such as London Thames Gateway and would erode community mitigation and benefit opportunities.

Capturing Development Value

3. The Partnership supports the principle that a proportion of land value gain associated with development should be captured. This helps ensure that development proposals contribute to infrastructure provision and to appropriate physical and community context. This is what section 106 negotiations seek to ensure.

4. The history of charges and taxes associated with development gain is not encouraging. The 1947 Planning Act nationalised development gain. The 1967 Land Commission Act interposed a public interest body in the planning and development process and introduced the betterment levy. The 1974 Finance Act introduced development gains tax. The 1976 Development Land Tax Act introduced DLT. The associated 1975 Community Land Act enabled local authorities to intervene in the land market for development but this did not lead to any significant local authority activity in its five years of operation.

5. All these pieces of legislation were short lived and were repealed within a few years of their enactment. Essentially what appears to be a sensible proposition—trying to capture on behalf of the community some of the development gain associated with the developments process—raises very difficult issues:

- Inherent complexity.
- Disincentive to development.
- Perceived inequity.
- Legal disputation.
- Administrative overload.
- Expectation of legislative repeal and therefore further disincentive to development activity.

6. What has enabled section 106 and predecessor arrangements to gain general acceptance have been their inherent flexibility. Both parties, developers and local authorities, generally accept that it is reasonable for contributions to be made and that such contributions support the success of the development itself. Section

106 negotiations take on board the inherent, practical characteristics of each development proposal. There is a specific connection between the development and the section 106 mitigation and local benefit. There is a mutual understanding that the incentive to develop must be maintained.

Scope of PGS

7. The Government's PGS consultation paper refers to the need to secure growth in housebuilding and for better quality homes and refers to the need to finance vital infrastructure, both physical and social, to help promote housing growth. The planning gain supplement, however, would not be limited to residential development but would cover all development proposals, and both by the private and public sectors. It is therefore a very wide ranging proposal.

8. It is proposed that there would be some *de minimis* provision to avoid capturing, for example, house extensions but the general intention would appear to be to capture all development proposals above a modest *de minimis* level. It follows, therefore, that the administration of PGS would deal with minor as well as major development proposals, adding to complexity and administrative burden.

Brownfield Development and Relative Values

9. The consultation paper acknowledges that brownfield development is inherently more complex than greenfield and there could be a lower rate of levy associated with brownfield development. Given the inherent cost and generally lower values associated with brownfield development it is likely that the money raised through the PGS would be relatively modest and this would also call into question whether the scheme would be inherently worthwhile.

10. Further, the difference in general values between areas of predominantly brownfield and other areas would require significant transfers between regions and sub-regions of PGS if PGS were to be a major source of significant infrastructure funding. The consultation paper touches on these region and sub region distribution issues but there is no elaboration of their complexity nor whether they would be perceived to be fair.

11. It is well known that development on straightforward greenfield sites which do not require major infrastructure to make them developable would typically give rise to large increases in development gain. The relevance of such examples, however, are very limited particularly in areas such as the Gateway.

12. Reference is made to the Milton Keynes roof tax. What is given less emphasis is the fact that in the Milton Keynes case there is a vast generally contiguous area planned for development. It is largely under the control of English Partnerships. English Partnerships is forward funding the strategic infrastructure to bring this large area into use and will recoup this forward funding from the roof tax which is simply a unit of development tariff. The Milton Keynes example is quite different from the typical brownfield development opportunities in the Gateway where sites are often in multiple ownerships, where infrastructure requirements have to be fitted to the existing utility and other networks and where the forward planning of development outcomes is much more complex and speculative. Milton Keynes is not an example of practice that can be sensibly applied elsewhere but is simply sui generis.

PGS and Section 106

13. The Government has only recently issued new advice to local authorities (ODPM Circular 05/05) on how to administer section 106 arrangements. This advice has re-emphasised what mitigation and benefit proposals it is appropriate to include within section 106 arrangements. It has emphasised the need for clarity and transparency in local authorities' policies. The advice allows for pooling arrangements to help fund more significant physical and social infrastructure. It acknowledges the practice often adopted by local authorities and developers to share development cost and development gain calculations so that section 106 arrangements are fair, reasonable, and maintain the incentive to develop.

14. It is clear therefore that the Government has given full recognition to these arrangements. In the case of brownfield development there is likely to be little value that can be captured through PGS without eroding the value captured through section 106 arrangements.

15. Not only that, PGS would be payable on the grant of planning permission as a cash sum. Section 106 arrangements recognise that cash values are often only generated in the course or towards the end of development. Section 106 arrangements are often not expressed as cash payments but as development related requirements which are intrinsic to the carrying out of the development, for example affordable housing, local public realm or riverside walkway. The most practical way to achieve these outcomes are to ensure they are associated with the development itself. PGS does not appear to encompass this possibility.

16. For reasons stated above section 106 and predecessor arrangements are now of long standing compared to the history of various attempts to capture value through levies or taxes. The Government proposes that section 106 arrangements would no longer be able to fund the following local amenities and benefits: Education, Health, Community Centre, Local Transport, Employment and training, town centre management, cultural facilities, leisure facilities. Section 106 arrangements should fund affordable housing,

access, landscape, street seeing design and mix of development. These major proposed constraints on the scope of section 106 arrangements do not fit well with the recently issued advice on section 106 by Government.

17. The Government has recognised in the PGS consultation paper that this reduction in the scope of section 106 arrangements means that there is a challenge to ensure "that necessary infrastructure and the provision of land for public facilities is delivered in a timely manner". There is also a reference to the need for timely provision of road infrastructure improvements and highways agreements.

Allocation of PGS Revenues

18. The PGS consultation paper summarises the ways in which PGS revenues might be deployed to support local social and physical infrastructure provision. Clearly the incidence of PGS revenues will not necessarily be a good fit with the requirements for such infrastructure. In their section 106 advice, the Government considered that section 106 pooling arrangements could represent a useful way forward in helping to fund such infrastructure. For PGS there may be a need for complex mediating distribution arrangements to help match local infrastructure provision with revenues generated.

19. The Government has identified two options for returning PGS revenues to the regional/level. The first would be to distribute PGS revenues in grants in direct proportion to the revenue raised at local level. An alternative approach would be to return revenues as grants based on a formula relating to infrastructure requirements and the further stimulation of development. This would be more complex but may tend to benefit communities delivering housing growth in areas of lower housing values.

20. In parallel to considering how best to recycle PGS revenues the Government has also announced a cross cutting review to determine the social and transport infrastructure implications of housing growth. The review would also establish a framework for sustainable and cost effective patterns of growth. It would ensure that Departmental resources across Government are targeted appropriately to help provide infrastructure. These issues and arrangements, however, should be part of a an initial study to assess whether the recently reviewed section 106 arrangements require yet a further review, an initial assessment of infrastructure funding arrangements, and whether any further value capture arrangements are feasible. It seems inappropriate to make proposals on PGS without these important prior assessments.

Memorandum by the South East England Regional Assembly (PGS 18)

The South East England Regional Assembly welcomes the opportunity to submit evidence to the ODPM Committee's inquiry into the proposed Planning Gain Supplement (PGS).

The Regional Assembly has responsibilities in the three key areas of advocacy, accountability and regional planning. In our advocacy role we provide a strong credible voice for the region, engaging and representing our member organisations and, through them, the wider public, and working to influence Central Government. As Regional Planning Body, the Assembly is responsible for proposing strategic planning and transport policies to Government, and as such we are currently preparing the South East Plan. This is our term for the Regional Spatial Strategy (RSS) for South East England. The document sets out a 20 year vision for the region and provides the statutory regional framework that forms the context for preparation of Local Development Documents and other strategies and programmes that have a bearing on land use activities. Part One of the Plan, comprising the core regional policies, was handed to Government on 29 July 2005. Part Two encompassing sub-regional policies and the Implementation Plan is due for submission by end of March 2006. The Regional Assembly also chairs the Regional Transport Board (RTB) and the Regional Housing Board (RHB).

As requested in your call for evidence, I enclose a copy of the Assembly's response to the Government's consultation on PGS.

Determining the Rate at which the Supplement is Set

The consultation does not propose a specific rate for the levy, but emphasise that it should be made relatively simple so as not to delay housing development. Research recently undertaken for the Assembly suggests that even at a rate of less than 20% it could be expected to raise significantly more resources than present section 106 arrangements. It is anticipated that a rate will not be determined until the Government has concluded its forthcoming cross cutting review infrastructure costs needed to support growth that it will be able to take a view on the level of PGS resources required.

How PGS should Address Social and Affordable Housing

The scale of affordable housing required in the South East, a proposed target of 35–40% of new dwellings over the period 2006–26, is potentially one of the biggest variables affecting the amount raised by PGS. Under the PGS proposals local planning authorities will still be responsible for including any affordable housing requirements in the proposed "development site related" section 106 obligations. It follows that the higher the level of affordable housing secured through section 106, the lower the land value uplift on which PGS will be levied. Consequently, the more successful a local authority is in negotiating section 106 agreements which deliver regional or sub-regional targets for affordable housing, the lower the revenue raised for other strategic infrastructure needs through PGS. This may create a perverse incentive to under-deliver affordable housing.

On the other hand the removal of affordable housing from section 106, by 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 mixed sustainable communities. About half of affordable housing currently developed in the South East is built on land obtained through section 106 agreements.

Distribution of PGS Revenue

The principle of effective recycling of revenues for local and regional action is a critical requirement. The consultation makes the Government's commitment clear that the substantial majority of PGS should be devoted to local provision. This is welcomed.

Local authorities in particular will need to have influence over the application of the revenue generated, and politicians regionally and locally will need confidence in the system in order to give assurances to their communities on the delivery of infrastructure in a timely fashion. To this end it is imperative that PGS captured in the South East is used to fund infrastructure investment in the South East. The Assembly would not support the redistribution of PGS revenues between regions.

The collection of PGS revenues by individual local authorities would help provide this level of certainty.

One issue not addressed in the consultation paper is how the revenue raised through the PGS will be allocated in a two-tier system. While this issue is not insurmountable there is clearly a need for this aspect of the proposal to be given further consideration.

At the regional level, the certainty that PGS would bring could potentially support the Assembly's proposal to establish a Regional Infrastructure Fund to advance fund the delivery of infrastructure. A particular concern of the Assembly is that there has been a serious time lag, with infrastructure provided several years after development has taken place. In its advice on Regional Funding Allocations, submitted to Government in January 2006, the South East advocated the establishment of a revolving loan fund to be knows as the Regional Infrastructure Fund to forward fund key pieces of strategic infrastructure. Initially pump primed by adding an additional 10% contribution to the Regional Funding Allocation within the current spending review period; it would then be enhanced through the application of Planning Gain Supplement when PGS begins to generate revenue. The RFA submission sets out how the Regional Bodies would propose to prioritise this additional funding in accordance with emerging Regional Strategies.

PGS and Brownfield Sites

The consultation paper states that Government will consider introducing a lower rate of PGS for brownfield sites in order to promote environmentally desirable behaviour changes. However, as the consultation paper acknowledges brownfield sites differ significantly, in terms of their abnormal costs. As long as these abnormal costs (eg site remediation and assembly) are included within the Current Use Value of the land, thus reducing the planning uplift on which PGS is levied we see no reason why brownfield land should be subject to a different rate of PGS.

Impact on Section 106 Arrangements

The Committee will no doubt receive a large number of responses on this issue by organisations better placed to provide a detailed response on this issue. However, one issue which will require particular attention will be the need for any transitional arrangements to provide a mechanism for offsetting agreed section 106 contributions (which would fall outside the "development site-related approach" set out in the consultation document) against the newly introduced PGS levy. This will have a potentially significant and ongoing implication for Milton Keynes, and any other growth areas proposing to introduce a standardised tariff to replace section 106 negotiations.

Memorandum by the Audit Commission (PGS 19)

Summary

1. The Audit Commission is pleased to respond to the ODPM select committee's inquiry into the planning gain supplement. This response:

- argues that there is merit in the current Section 106 system;
- argues that these benefits need to be borne in mind alongside proposals for a new PGS;
- suggests how the current system might be improved to enhance its operation and reputation;
- notes the importance of Section 106 in providing social and affordable housing;
- sets out the arguments for and against scaling back Section 106 in the context of a new PGS; and
- concludes that there is a risk that PGS will need time to bed down and during this time, it might be wise to retain the current Section 106 system to safeguard the infrastructure needs of local communities.

Introduction

2. The ODPM Select Committee is conducting an inquiry into the Government's proposals to introduce a planning gain supplement, with particular reference to the following issues:

- The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set.
- How the supplement should reflect subsequent uses such as social housing.
- How the revenue from the supplement should be distributed and appropriate uses.
- Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites.
- The potential impact of the supplement on Section 106 arrangements negotiated through the planning system.

3. This Audit Commission memorandum has been prepared in response to question 5 only. The Government is also carrying out its own consultation on its proposals for a Planning Gain Supplement.

Background to the Planning Gain Supplement

4. The Barker review identified a lack of responsiveness in housing supply as one of the main reasons for long-term house price inflation. At the time of the review, the Section 106 system was seen as one of the factors underlying this problem. Section 106 was recognised as an ineffective way to capture land value increases that occur through the planning system, and as a result the idea of a new planning gain supplement (PGS) was proposed.

5. PGS is a type of windfall tax, based on the idea that it is fair for the public to share in the proceeds of development. This is quite different from Section 106, which is constrained by government policy to allow planning authorities to obtain contributions only towards facilities that are necessitated by development and to secure affordable housing. But there is a degree of overlap between PGS and Section 106 because of a commitment to spend PGS revenues on local infrastructure, in order to facilitate growth.

6. In our opinion, there are some improvements that could be made to the Section 106 system to make the system clearer, less complex and less of a hindrance to the planning process. However, since the Barker review, many councils have substantially improved their Section 106 policy and practice, partly motivated by the availability of the planning delivery grant. There are therefore merits in retaining the system and in encouraging local authorities to improve its operation.

7. This paper draws on evidence from Audit Commission inspections of planning services and recent and ongoing research into the planning and Section 106 systems. It looks at three main issues:

- the merits of the current Section 106 system;
- how the Section 106 system should be improved in the context of PGS; and
- whether it is necessary to scale back Section 106 if PGS is introduced.

We also include a brief comment on the role of Section 106 in funding affordable housing.

The Merits of the Current Section 106 System

8. Section 106 is often blamed for causing delays and unpredictability in the planning system, and indeed the way local planning authorities use Section 106 could be improved. However, the Government should be aware of the merits in the current system, in particular:

Recent improvements in councils' operation of the system

9. The Barker review was undertaken at a time when concern about the Section 106 system was high, with both developers and councils complaining that it was costly and caused delays in development. Since then, many authorities have improved the way they implement Section 106 agreements, in part as a response to the availability of the planning delivery grant, which was introduced in 2004.

10. Our research has found that Section 106 agreements need not be such an obstacle to development as they are sometimes perceived to be. If the development itself is reasonably straightforward, a well organised planning authority can conclude the Section 106 agreement for a major application within the Government's 13 week timescale. Indeed there are examples of agreements being reached in much shorter timescales. For example, Southampton City Council has reduced the time taken to issue Section 106 agreements from 67 to seven weeks.[11] Forthcoming guidance from ODPM (and the Audit Commission) is expected to help councils further improve their performance in this area.

Section 106 as a positive planning tool

11. It should be borne in mind that Section 106 is a positive planning tool, which enables developments to go ahead that would otherwise be unacceptable in planning terms. The reason for delays is partly because the system is open to interpretation, which can be a strength or a weakness depending on how this flexibility is used. Scaling back the scope of Section 106 as a consequence of the introduction of PGS might result in higher refusal rates for planning permission if means cannot be found to make developments acceptable in the scaled-back system.

Improving the Operation and Reputation of the Section 106 System

12. There is a legal loophole that allows planning authorities to secure contributions for facilities that do not meet the Secretary of State's policy tests,[12] as long as such facilities are relevant in planning terms and the developer contribution does not influence the outcome of the planning decision. The effect of this loophole is to taint the Section 106 system with the perception either that authorities are "chancing their arm" by seeking contributions for facilities only tenuously related to the development, or that developers are "buying" planning permission. In reality the scale of this problem may be overstated. Often such contributions are for relatively low value items which make developments acceptable to local communities, although they may not be strictly necessary in planning terms. For example, some authorities have local parish council projects or environmental improvements that are funded by contributions through Section 106. Because of the influence parish councils or interest groups may have on the local planning authority, it may appear that planning permission is being bought, which is against government policy and undermines public confidence in the planning system.

13. The application of national planning policy is continually tested through public inquiries (appeals and call-ins), and to an extent a mechanism already exists to address this loophole in retrospect.[13] However, both the operation and the reputation of the system would benefit from the removal of this loophole and if new primary legislation is developed to introduce PGS the Government should take the opportunity to do so. Such a move would make the system easier for people to understand and more transparent. It should also reduce the perception that councils use Section 106 agreements improperly.

Is it Necessary to Scale Back Section 106?

14. The government's proposal is for Section 106 to be scaled back to include only mitigation work (for example, immediate road/transport infrastructure, drainage, landscaping or sewers) and affordable housing. This would mean that facilities such as health centres, schools and community centres would no longer be fundable through that route. There are both arguments for and against this course of action.

15. Scaling back what can be asked for via the Section 106 route might:

(a) reduce uncertainty for developers and councils by limiting the range of facilities that may be secured by Section 106 agreement;

(b) reduce lengthy negotiations; and

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[11] See case study 1 in the recent Audit Commission report, *The planning system: matching expectations and capacity*.

[12] The Secretary of State's policy tests are that planning obligations must be:
— relevant to planning;
— necessary to make the proposed development acceptable in planning terms;
— directly related to the proposed development;
— fairly and reasonably related in scale and kind to the proposed development; and
— reasonable in all other respects.

[13] See for example "Village hall contribution considered excessive" *Planning* magazine 10/2/06 P21 (DCS No 1000040751). The application was called in by the Secretary of State because the council supported an application which fell outside a village development boundary. The development included contributions towards a village hall, which were sought in order to support the community's well-being. The application was rejected by the planning inspector.

(c) avoid the appearance that developers are being charged twice for the same thing.

16. However, there are arguments for retaining the system in its current form:

(a) it would continue to provide a local delivery mechanism for community facilities, should the resources not be available from other sources;

(b) Section 106 contributions to local community facilities which are closely linked to the development would continue to provide an incentive to local communities to accept that development; and

(c) developers would not be charged twice for providing the same facilities because:

— the cost of developer contributions secured though Section 106 is taken into account when calculating the PGS levy; and

— developer contributions under Section 106 would not be needed in cases where there is spare capacity in local infrastructure, or where other funding is available.

17. The evidence available to the Audit Commission does not provide a clear position on whether Section 106 should be scaled back. We would advise the Government to proceed with caution if it intends to scale back Section 106 so as not to lose the benefits of this current system.

Affordable Housing

18. Under the current PGS proposals, the use of Section 106 to secure affordable housing would be retained. We support this because affordable housing, as an exception to normal "mitigation" rule of Section 106, is working reasonably well. We would have concerns if the new system resulted in a reduction of resources for affordable and social housing given how acute the shortage is in many areas. The new system will have to be carefully designed to ensure that this important local and national priority does not lose out.

Conclusion

19. The introduction of PGS provides an opportunity to refocus Section 106 and address some of its weaknesses, and this would build on recent improvements in local policy and practice. The Government is looking at scaling the system back in the context of PGS and there are arguments both for and against this. The impact of scaling back Section 106 will depend on how effective PGS is in providing funding for the external impacts of development that will no longer be secured through Section 106. There is a risk that PGS will need time to bed down and, during this time, it might be wise to retain the current Section 106 system to safeguard the infrastructure needs of local communities.

Memorandum by National Grid Property Holdings Ltd (PGS 20)

1. Introduction and Background to National Grid Property's Response to the Planning-Gain Supplement

1.1 Set out below is our consultation response to the House of Commons, ODPM Committee Inquiry; by way of background, you should note that National Grid plc is a group of companies which owns, operates and develops a substantial part of the national gas and electricity transportation systems. National Grid Property Holdings Ltd., as part of the National Grid group, manages the Group's extensive estate portfolio. Its main activities are the reclamation and disposal of formerly operational gas and electricity sites and the provision of property services to Group companies, to meet their occupational requirements. In its property management and disposal role, the Company (known as National Grid Property) becomes significantly involved in all aspects of the planning system.

1.2 Throughout Great Britain, we have a number of proposals which are at varying stages in the planning and development process, with some for operational land where future re-use has yet to be considered, or is beginning to be appraised, and others for sites where planning permission has been applied for. Hence the Planning-gain Supplement (PGS) proposals are of considerable relevance and importance to the Company's land and property interests.

1.3 This memorandum addresses each of the issues raised by the Committee in turn. The National Grid Property response to the HM Treasury, HM Revenue and Customs and ODPM consultation document has been included as an appendix to this memorandum, as it acknowledges issues beyond but directly related to those specifically raised by the Committee. As such, we have not reiterated our fundamental concerns regarding the "workability" of calculating the PGS, particularly in terms of the valuations and self-assessment processes proposed. These concerns are raised within the attached response to the consultation paper.

2. National Grid Property's Overall Comments on the Planning-Gain Supplement Proposals

Key Points:

— The design and implementation of PGS is critical to its success but the history of attempts to tax the development value of land demonstrates that any system which is complex in itself or which adds to the complexity of the existing tax regime is likely to be inefficient and therefore unsuccessful. PGS is complex, likely to be inefficient, raise insufficient monies and therefore we conclude will be unsuccessful.

— The absence of almost any detail in the consultation document makes it difficult to answer in any more detail the Committee's questions on PGS. Yet the "workability" of PGS is a key determinant in assessing the merits of this proposal. If the system does not work adequately, then the cost of collecting the tax will be too high and neither Local Authorities nor the Treasury will benefit.

— Overall, National Grid Property's view is that amendments to the existing section 106 arrangements should be made, to relate to introducing standardised planning obligation payments comprehensively and making the "Necessity Test" for obligations statutory.

— In fact, it is the Company's opinion that the PGS runs counter to so many of the Government's stated objectives for land use planning, including increasing housing supply, promoting regeneration and diversification, speeding up delivery and ensuring that the system is efficient, consistent and transparent. The consequences of introducing PGS therefore will be very different to the Government's intentions for it to fund infrastructure and create sustainable communities. It will discourage and slow the rate of future development.

— PGS should therefore not apply to brownfield sites, in particular those that involve additional costs to facilitate development, such as remediation. If it is considered that PGS is applicable to such sites, then a lower PGS rate should be applied. PGS guidance should make clear that additional site costs, such as the remediation of contaminated land, should be taken into account in sites' valuations.

— The Company are also concerned that PGS would remove the existing link between development proposals and community benefits, infrastructure improvements and mitigation measures. Furthermore, PGS would not provide any certainty that these benefits could be implemented, particularly within a necessary timescale and this could have the effect of holding back development.

3. The Factors Which Should be Taken into Account in Determining the Rate of the Supplement and the Level at Which it Should be Set

3.1 The Company does not consider that there is a level at which PGS could be set which would be acceptable. It is not just the rate, it is the additional administration and the complexities of the process that would affect business. These complexities include self-assessment.

3.2 The rate is of paramount importance; previous attempts to tax development land value separately have not been successful and it appears that there is insufficient acknowledgement of the reasons for past failings. It is important the mistakes of the past are properly acknowledged, including that of the selected rates variously applied.

3.3 It is suggested in para 1.9 of the HM Treasury, HM Revenue and Customs and ODPM consultation document, that PGS would be at a "modest rate" but the level is not currently stated. Once introduced, and whatever the initial percentage rate, the fear and risk of future increases in the rate of tax could initially bring forward more land for development, which would assist the Government in meeting its expectations (subject to no change in Government control) but then any increase in the rate of PGS could slow the rate of development land release. This slow down would be more likely to occur, if two systems were operated simultaneously and as proposed, ie PGS and section 106 (albeit "scaled back"). If both were to require increased contributions independently over time, this may well lead to an excessive burden on the development industry which may not only slow the rate of development but also render some development economically unviable.

3.4 Any rate of levy on development using PGS is likely to have an adverse impact on bringing land forward for development not only, but particularly, in lower value areas and on contaminated brownfield sites, where even a modest levy could render a scheme uneconomic, compared to developments in higher value areas and on other sites. To underline this point, it should be noted that ODPM recently announced (at the end of January, 2006) that the proportion of housebuilding on brownfield land had reached a record level of 72%, compared with the target of 60%; the continued success of the Government's prioritisation of brownfield land development for housing could be considerably undermined if PGS is introduced, especially but not only where the rate is too high.

3.5 Exemption, or at least a lower rate of PGS for brownfield developments, would greatly help in promoting the Government's policy for prioritising such sites for re-use but could produce distortions in the market. This issue is addressed further under section 4 of this memorandum, with the comment that if the

Government does not accept that brownfield developments should be exempt from/subject to a lower rate of PGS, then contaminated brownfield sites should be subject to an exemption from PGS, or at least to a much reduced rate.

3.6 National Grid Property accepts that PGS should also be applied to non-residential developments, as well as housing, as currently proposed. However, the Company considers that certain development should be exempt, such as development by utility providers for statutory purposes. Development of this nature is largely for the provision of strategic public infrastructure, which has no impact on or generates no demand for other public infrastructure, such as roads, schools, healthcare facilities and so forth. As a matter of principle, it is wrong that PGS should apply to the development of public infrastructure, the very thing that it is supposed to support.

4. How the Supplement Should Reflect Subsequent Uses Such as Social Housing

4.1 The fact that PGS is proposed to be levied on all types of development and the increasing trend towards more mixed use, sustainable development is likely to mean that the strategic and other infrastructure that it is intended to fund will also and should benefit other forms of development.

4.2 Government policy for affordable housing is set out in PPG3 and in the emerging PPS3, with its provision on specific sites to be dealt with in section 106s. It is our view that funding obtained through PGS should be used primarily for the purpose of infrastructure provision to ensure that the impacts of any specific development proposal locally are fully mitigated against. Affordable housing provision on-site will generate similar infrastructure needs to any other form of residential development and while it might be appropriate to better enable affordable housing by eg applying lower rate of PGS, this would no doubt require other proposed elements of a development to cross-subsidise its infrastructure requirement. This would be an unacceptable addition to the section 106 requirement to provide affordable housing in the first place.

4.3 Throughout the PGS Consultation document, there is an underlying assumption that PGS will assist in increasing the delivery and supply of development and in particular, housing (including affordable housing) within the United Kingdom. However, history shows the imposition of such a tax on landowners could well have the effect of reducing land availability and pushing up demand. This would result in increased property prices, whilst reducing further the supply. In addition, the planning application determination process will be prolonged by additional negotiations with LPAs, caused by them seeking to maximise section 106 benefits for their own Authority area, in spite of and in addition to PGS. This would be another unacceptable consequence of PGS.

4.4 Thus, the impact of PGS upon housing, especially social housing, needs to be adequately addressed so as not to undermine supply. We therefore consider it entirely incorrect for the Government to suggest that without PGS it will be difficult to address housing supply issues (as suggested in the assessment of costs and benefits of the three options examined in the Consultation's Partial Regulatory Impact Assessment (RIA)—ie "do nothing", introduction of an "optional planning charge", or PGS). The RIA concludes that PGS will not affect the supply of land for development because of it being part of a "package of reforms" to increase the supply of land brought forward for development and affordable housing (para A.22). The revenue from PGS should not be used to support housing growth, nor to cross-subsidise the infrastructure needs generated by section 106 affordable housing provision. It should instead only be used more generally, to fund the specific infrastructure needs associated with development of all kinds, and to mitigate directly any relevant impacts.

5. Whether and, if so, How the Planning Gain Supplement Should be Used to Encourage Development of Brownfield Sites

5.1 We have already explained how a high rate of PGS could significantly reduce the viability of development and disincentivise the development of brownfield land in particular. This is especially so where remediation costs are high; we therefore consider that any PGS applied to brownfield land developments has to ensure that the Government's agenda to encourage development on brownfield land is not undermined.

5.2 Of more significance in this debate however should be how the development of contaminated brownfield sites can be prioritised, to meet the Government's regeneration objectives. Developers are normally reluctant to start speculative schemes in doubtful market conditions; they would be especially so if there was a substantial sum to be paid in tax by way of PGS. Because of other risk factors, this is most likely to affect the schemes which are more marginally viable in the first place. These schemes will most often be those on redundant brownfield, contaminated sites ie commonly those of National Grid Property.

5.3 Many of National Grid Property's development sites are likely to have a negative Planning Value due to the level of contamination and cost of remediation works required. In such circumstances, the basis of any PGS assessment would have to reflect the negative "Uplift" when assessing the PGS. In these circumstances the PGS payment should be nil.

5.4 The PGS proposals are already having a clearly observable effect on the Company and throughout the development industry. Landowners such as ourselves, and developers, are reviewing all of their landholdings and development projects, to assess whether planning permissions should be sought, prior to

2008, so as to avoid PGS. A huge increase in the number of applications, to be determined by LPAs with limited resources, could then overload the planning system. It is also then likely in the short to medium term, that once PGS is introduced, it will result in many landowners retaining their sites and refusing to bring forward the land for development or to submit planning applications. This is, and will be, particularly the case with brownfield land, often held as part of wider portfolios where there might already be a reasonably high current land value and the imposition of PGS on re-development would lead to deliberate delay in bringing such sites forward for redevelopment. In these circumstances the value of the land with the benefit of planning permission for redevelopment would have to be significantly higher than currently to justify the development risk. Therefore brownfield site landowners will be encouraged to retain existing, but inefficient uses of sites.

5.5 It is also possible that smaller developers may be discouraged from proceeding with development and as a result of PGS and they, may sell their sites to larger developers in a better position to meet onerous PGS costs. It is commonly acknowledged that large developers "land bank", with a view to proceeding with development in favourable market conditions. Larger developers often have considerable reserves of land, which, will not be brought forward for development. In the case of housing, this reaction by smaller developers to PGS could have the effect of further hampering housing supply.

5.6 Overall, we therefore consider that PGS is unlikely to be usable as a tool to encourage the development of brownfield land.

6. The Potential Impact of the Supplement on Section 106 Arrangements Negotiated Through the Planning System

6.1 Even with PGS, s106 obligations will still be needed and as a result, PGS is unlikely to speed up the planning process.

6.2 Moreover, the legal status of s106 obligations provides the developer with control over the timing, delivery and specific nature of the infrastructure required. Furthermore, an inspector at appeal who cannot be certain that mitigation will occur (because it is in the control of a third party funded by PGS) may not be able to grant permission for a proposal. The third party might not deliver the necessary mitigation because it has other spending priorities for PGS revenues. Once again, PGS will therefore hinder future development, rather than encourage it.

6.3 It is necessary to mitigate against the impact of development. The Environmental Impact Assessment (EIA) process is a mechanism which seeks to ensure that proposals are only permitted if adequate mitigation measures can be taken. It will not always be possible to ensure this due to the abovementioned third party constraints. The delivery of such measures are no longer in the developers control and they cannot be guaranteed by the LPA as they are in the current section 106 process. This could lead to proposals being refused which once again will have the effect of further constraining development.

6.4 It is therefore the preference of National Grid Property to retain the system of recently-reformed planning obligations (as explained in ODPM Circular 05/2005) but with some elements of guidance to become statutory, and with expanded and detailed advice on the use of section 106 "standardised planning obligations payments" ie a tariff or charge set, collected and spent locally (with a proportion allocated and spent sub-regionally or regionally, where necessary)—based on the Milton Keynes "model" which has very recently received Treasury approval (in January of this year). This funding mechanism would be more acceptable to us, as it would:

— provide certainty at the outset, in terms of development plan policy and supplementary planning documents setting out requirements, to ensure that as landowners/developers, we can understand the level of payment required in relation to the scale and type of development proposed;
— ensure that the funding provided by a site's development would be put to meeting related, local infrastructure needs, and sub-regional and regional infrastructure needs where "necessary" for the development to go ahead (using "pooling"); and
— be flexible and transparent, in terms of being part of development plan policy and the section 106 negotiations at the local level.

6.5 In the Company's view, current section 106 arrangements are an appropriate locally-based approach to funding infrastructure in a site's locality and wholly preferable to PGS or any other tax alternative, or PGS plus revised section 106 arrangements. PGS could not provide the infrastructure required at the right time by individual developments and with section 106 not providing such mitigation, necessary infrastructure will not be implemented. As part of section 106, planning charges are a viable option which should be considered, instead of introducing PGS as a new system which would take time to bed down and which also has many fundamental questions concerning its workability.

6.6 National Grid Property would welcome a more comprehensive statutory basis for section 106 obligations, as this would lead to a consistency in the approach of different local planning authorities which currently does not exist; particularly in relation to affordable housing. Following the introduction of PGS, a statutory approach to section 106 would be essential, firstly to ensure that planning authorities do not seek to impose a wider range of section 106 requirements, and secondly, to ensure that they cannot seek to duplicate PGS provisions for social infrastructure.

6.7 The intended scope of section 106 in the Government's consultation is not however appropriate. The proposal to include off-site landscaping and off-site environmental improvements in the revised scope of section 106 obligations would be inconsistent with the objectives of scaling back the nature of such contributions to those directly relating to the site. Also, most if not all of the items included in Table 5.2 in the Consultation document would be capable of being dealt with/provided for by conditions.

7. How the Revenue from the Supplement Should be Distributed and Appropriate Uses

7.1 The current PGS proposals include a commitment to ring-fence a proportion of the revenues to contribute towards local infrastructure but it depends very much at which level (eg county, district, sub-region, region or national) the funding is used as to whether key strategic infrastructure to serve a development is provided at the right time and in the right location. Not knowing who will be responsible for administering all parts of the PGS procedure is unhelpful in this context. No information is given regarding how the utilisation of revenues by LPAs might be controlled.

7.2 Also, what is not clear from the consultation document is how the allocations of PGS revenue at the local level would be used. For example would development plan documents define elements requiring funding? If this is the case, then this is the same approach as a planning tariff or optional planning charge. There is still therefore an element of "the shopping list approach" to funding infrastructure, with developers having no say in how their funds, paid as PGS, are used.

7.3 The Company, like the rest of the development industry, is sceptical of whether in light of slowed economic growth in recent years, PGS set at any rate could provide a sufficiently large funding stream, regardless of how revenue is to be distributed. We are most concerned that the intention is that PGS will become a substitute for public funding, being one of the outcomes of the Government's current Comprehensive Spending Review. The revenue from PGS should supplement infrastructure investment and not be a substitute for public sector investment. It is vital that, should there be a more marked market slowdown, infrastructure investment is not curtailed due to it being dependent on private sector funding via PGS. The absence of adequate funding for infrastructure would then only further disincentivise development and lengthen the time before economic recovery could take place.

7.4 Infrastructure costs are often site specific and some locations require greater infrastructure investment than others. There is little evidence suggesting a relationship between the value of infrastructure investment required to mitigate against the impact of development and the uplift value upon receipt of planning permission. This being the case, the PGS seems an unjustified means of using the uplift in land value to raise revenue to fund infrastructure investment. This is especially so if a high proportion of this revenue is returned to the Treasury for national redistribution. There is also a case to be made for "minor" projects having a cumulative impact upon the environment, which may in some cases then require greater infrastructure investment than a single major scheme might.

7.5 National Grid Property agrees with the principle of focusing a "significant majority" of the revenue at the local level. This is very important in our view. We are very aware of the impacts (positive and negative) that our developments can have on the local community. Currently, payments under section 106 obligations for off-site works contribute directly to the mitigation of the impact of our development sites on the local community and its environment. Such contributions therefore have a positive and beneficial effect on the views of the local community, and the local planning authority, towards the development. If adequate PGS revenue were not redirected to the immediate locality of the development, this would be likely to hinder future development, rather than encourage it. This is particularly the case with National Grid Property's most contaminated and redundant sites, where if a local planning authority is not to benefit substantially from their re-use, there will be little incentive for them to grant planning permission. Such difficulties in obtaining planning permission will mean PGS will not be payable and while such sites might be disposed of, their re-use will not occur.

7.6 Funding infrastructure projects which are not specific to the locale is also unlikely to be beneficial to those liable to pay PGS. The obvious disadvantage for developers is if their PGS is used for improvements in other parts of a local authority area, thus development in one location subsidised other areas.

7.7 Thus using PGS revenue (or any other form of national taxation) to fund infrastructure provision is likely to break the direct link between the developer's contributions and the development funding them. This link must not be broken ie there must be a clear and tangible relationship between the development and its impact. The infrastructure the financial contribution is spent on to ameliorate this impact is of prime importance. The development industry is fearful that finances raised by PGS as a national tax will not be applied to infrastructure needed by the proposed development and may even "disappear". Alternatively it may be sub-divided to the extent that they can make little difference to the funding of local infrastructure—at present, section 106 obligation contributions are used in general to fund infrastructure etc. in the immediate environs of the site.

7.8 There is also a concern that despite making PGS payments, there are inadequate measures in place to ensure that LPAs can deliver the necessary infrastructure and site mitigation measures. Thus, development may be hampered whilst waiting for the necessary infrastructure investment where, as a result of PGS, the developer would no longer have control both the quality and timing of delivery.

7.9 It is not clear from the Consultation Paper what proportion of the receipts of PGS the LPAs will receive and whether they would be at liberty to spend it as they saw fit, eg for improved administration. It must be clear in any PGS system that revenues are ring-fenced. A further disadvantage for developers is if their PGS is used for improvements in other parts of the Borough. Thus development in one location subsidises others.

7.10 There is also a fundamental development industry concern over the distribution of funding, the type of infrastructure to be funded and whether such a process is capable of serving individual schemes. Whilst PGS is intended for such works, without formal legal agreements which the section 106 process affords, developers will have no guarantee of the provision of infrastructure, and its timing, which might be vital for the viability of their particular development. By way of contrast, the Milton Keynes Partnership section 106 tariff scheme makes provision for "payments in kind", which allows developers some direct control over the provision of certain categories of infrastructure. National Grid Property supports this approach. This key advantage of section 106 agreements appears to have been largely overlooked by the PGS proposal.

Memorandum by Community Investors (PGS 21)

1. Brief Introduction to Community Investors

1.1 Community Investors is a strategic development agency established in 2001. Our ethos is faith in the knowledge and experience of the people and communities we aim to serve. We believe that local people, with their intimate knowledge of the needs of their communities, have a critical part to play if there is to be effective and sustained economic, social and environmental transformation. We work as far as possible at a strategic level to promote development of appropriate infrastructure, policy and practice that takes account of the contribution as well as the needs of local people and communities. This has included promoting social enterprise and community infrastructure, supporting user and public engagement in health and other fields and combating disadvantage among young people. Many of our activities are innovative and involve networking, support to others, acting as a third sector interface between government and community and making recommendations on policy and standards.

1.2 Community Investors has a diverse staff team with backgrounds in a variety of fields, including local government, the voluntary sector (including intermediary agencies) and business (including SMEs and social enterprise), largely within areas of high deprivation. Research is a critical part of our work and includes managing or undertaking studies of issues which matter to communities, producing briefings and discussion papers and helping to bridge the gap between academic researchers and local people.

1.3 In 2005, we jointly published with the Civic Trust a multi-sectoral, strategic action-research study into the sustainability of community buildings, *Making community buildings work for people*. The Study focused on buildings owned by local authorities but used/tenanted/leased by the voluntary sector and located in deprived neighbourhoods. The Study was led by Civic Trust and project-managed by Community Investors who designed the Study. The team also included a London University, a firm of architects and town planners, two London local authorities and twelve community centres. Funding was provided by two well-known charitable funders, later supplemented by London regional government. We are currently working with a range of partners to take forward the findings, sustainability framework and recommendations from the study.

1.4 Focus of evidence: our evidence draws on our Study experience and on our collective experience over many years of involvement with local communities and centres, for which we consider the implications of the planning gain supplement (PGS) proposals and S106 proposals. We consider in particular the statutory underpinning needed to ensure community benefit. We make some critical overall observations and recommendations which contain significant reference to the Planning Policy Statement 3 (PPS3) consultation and to Partial Regulatory Impact Assessments (PRIAs) of both PGS and PPS3, and other relevant government documents, and summarise our recommendations. We address:

— How the revenue from the supplement should be distributed and appropriate uses.

— The potential impact of the supplement on s106 arrangements negotiated through the planning system.

2. Safeguarding the Interests of Local Communities and Centres in Planning

2.1 Our understanding is that, under proposals set out in the document *Planning Gain Supplement: a consultation,* community centres, cultural and leisure facilities would be outside the scope of planning obligations but could be funded through alternative mechanisms, including PGS (paragraph 5.15, pp 26–27). Overall objectives for the new system replacing current section 106 provision include financing additional investment in the local and strategic infrastructure necessary to support housing growth, and help local communities to share better the benefits of growth and manage its impacts (paragraph 1.14, p 8). While the majority of PGS revenues would be recycled to the local level, a significant proportion would be used at a regional level through an expanded and revised Community Infrastructure Fund, originally established to help meet transport infrastructure costs (paragraphs 6.8–6.9, p 32).

2.2 We would argue that communities and their interests, particularly when expressed through centres, need to be represented in development planning in safer ways than those envisaged at present in the revised S106 and PGS proposals. Development planning legislation such as PGS should be written in a way that will give a clear guide to all future readers of it. For instance, one of the stated objectives against which PGS will be assessed is given as: 'To help local communities to share better the benefits of growth and manage its impacts'. The point is made in chapter 6 of the PGS proposals that "To deliver housing growth, new investment is needed to ensure the long-term sustainability of the communities where growth will be achieved. Sustainable communities require access to high-quality public services—such as schools, health centres, parks and open spaces, and public transport. These services must accompany new development and additional investment must be targeted to strategic and local priorities to achieve this goal". However there is a risk that other vital services may be overlooked. It should be explicitly recognised that voluntary and community organisations (VCOs) make an important contribution to public service delivery, and that facilities managed by communities themselves are an essential component of sustainable development in which quality of life is enhanced. This should be reflected, for instance, in the proposals for "Options for allocation" (paragraphs 6.6–6.7 p 32 in PGS document) and the somewhat misleadingly-named Community Infrastructure Fund (which turns out to mean transport). Even if these paragraphs are written more clearly and explicitly, there would, in our view, need to be further statutory underpinning to ensure meaningful engagement of communities and centres in development planning. As a minimum, there is a need for a fair and accessible process to position local communities and centres in relation to planning gain. Community centres and appropriate associated powers should be clearly delineated in the renewed legislation, and could form part of Local Development Framework proposals.

2.3 Community centres should be retained as an option under S106 (even if only as a voluntary option) and specified under PGS or other strategic option such as Optional Planning Charge. There may be occasions in which such facilities, designed in partnership with and to be managed by local communities, are an integral part of the design of a new development. PGS should be lower or not applicable if a developer has voluntarily included significant community asset in development. As the British Property Federation made clear in its address to a Town & Country Planning Association (TCPA) seminar on "Financing the Future: Funding Infrastructure for Sustainable Communities" on 13 December 2005, developers recognise the need for infrastructure. Evidence from our Study and experience would suggest that locally-applied planning gains have contributed to the creation of community centres. From a community point of view, it would be unhelpful if in the future a developer wanted to put in a community facility and found that either they could not do so under S106 or that they would not be given any credit for it. Issues to be resolved would include how to estimate value of proposed asset on an ongoing basis and issues to do with ownership. Statutory underpinning would also be needed to prevent developers and or local authorities from being able to ignore existing community facilities, knock them down or take them back into their ownership solely on account of funds they could earn from development uplift.

2.4 We sympathise with the argument of the Local Government Association (LGA), in *Helping local government to deliver sustainable communities*, that PGS revenue should be used for local benefit (p 4 of this LGA document). As pointed out, many communities view new development with suspicion and even hostility: new development puts pressure on statutory services without apparent local benefit except to residents of new housing, and development may be seen as intrusive and imposed on local people by government (p 3). It should be demonstrable to local communities that new development benefits them and impacts are met. However the proposal of a strategic tariff as an alternative approach to PGS (p 4) would seem problematic: the Local Development Framework process on which this system would be based would not necessarily take full account of the knowledge and potential within the local community in all its diversity, including the role of voluntary and community organisations (VCOs). While local authorities play an important role in promoting local well-being which should be adequately recognised, the contribution of other players including self-help and mutual support within communities should also be taken into account.

2.5 The changing roles of local authorities and other statutory bodies and the entry of the voluntary sector into public service provision will gradually give community centres a different and enhanced role. In addition to the more traditional "self-help" activities, this could include community postal and banking services and preventative health facilities. If these were to be (appropriately) "bent" through centres, it would ensure their sustainability into the foreseeable future. For this to happen, there needs to be urgent attention to the necessary strategic (and real) community infrastructure (with concomitant investment) at national level.

2.6 As illustrated in 2.7, 2.8 and 2.9 below, evidence indicates that the potential contribution of community centres as an important component of local infrastructure is unlikely to be optimised without a national community buildings strategy and investment partnership.

2.7 *Making community buildings work for people: an action-research study into the sustainability of community buildings*, mentioned above, involved a sustainability appraisal examining local context and policy environment, management (operational and strategic), and fabric and functionality. Four key issues that evolved at the early stages of the Study came to influence and shape the overall study.

1. The current provision of community buildings is unsustainable. There are clear problems of structure and infrastructure. Many of the issues faced are outside the control of the centres themselves and even of their local authority landlords.
2. While it is government policy to increase the role of the voluntary and community sector (VCS), particularly in the delivery of public services, recent developments in national and local policies affecting the role of community buildings are not joined up and there are unresolved tensions.
3. There is a need for a co-ordinated series of strategic initiatives at national, regional, local authority and neighbourhood levels to enable the systematic provision of community buildings, particularly in deprived neighbourhoods.
4. Systematic provision will need both "top down" and "bottom up" action. Government policies need to be joined up to provide a coherent resourcing strategy and VCS needs to influence policy development and build up its capacity to manage an expanded physical infrastructure of sustainable community buildings.

2.8 By the completion of our Study, we and our partners had concluded that major improvements could only be achieved through a more strategic approach, involving:

— a National Community Buildings Strategy and Investment Programme;

— a community-led and informed capacity building programme for all decision-makers, especially those in government (national, regional and local);

— a national financial mechanism; and

— encouragement to local authorities to support the development of a (community led and informed) Local Community Buildings Strategy and Investment Plan.

2.9 A strategic approach of this nature could also include community buildings owned by faith groups and housing associations. *Building faith in our future*, published by the Church of England in 2004, focused on the cultural, economic and social importance of its 16,000 buildings, but pointed out that "our arguments about the contribution provided through these buildings to our society apply as strongly to places of worship of other denominations and faiths." Recommendations included:

— greater recognition of the importance of places of worship by funders and planners;

— a continuing standing group to increase co-ordination and cross-departmental group to look at the impact of policy proposals on places of worship;

— representation of faith groups on regional cultural consortia and development agencies;

— support for capacity building, and a simpler legal framework; and

— more funding.

To quote English Heritage, church buildings often "provide the only remaining physical and spiritual focus for rural communities—a reassuring and beautiful presence on the skyline and a solid and timeless reminder of our shared history. In urban areas, redevelopment and shifting populations may mean that they are the only remaining physical link to the origins of that part of town. Wherever they are, and whatever denomination or faith built them, they are loved and cherished by believers and non-believers alike. The problem we urgently need to address is how to keep our places of worship in a good condition and accessible for everyone to use and enjoy."

2.10 Evidence from our Study and experience suggests that community contribution could be given a value that could be usefully worked into the planning process. Local VCOs in or near growing neighbourhoods, including older people's and children and youth groups, minority ethnic and faith community organisations can experience a much-increased demand on their services This can put a strain on their resources and force them either to reduce their provision to longer-standing residents (which can cause resentment) or fail to offer newcomers much-appreciated support and opportunities for integration. Yet, often with very small levels of additional investment, they may be well-placed to expand and adapt what they provide, and offer residents of new housing the chance to enjoy local facilities and participate in local community activities.

2.11 Planning and building guidance (backed by training for professionals) should be provided. Our Study found that centres are too often built without storage and well-intentioned consultation with local people results in centres being built with mutually-incompatible uses designed into them eg a meeting hall also used for basketball or toilets put into a church or other faith centre that can clearly be heard flushing throughout worship. Some centres with these built-in inadequacies had been built out of planning gain.

2.12 Community impact test: the PRIA already includes a Small Firms Impact Test. A similar test should be devised for community impact. Use of the term "enterprise" instead of business or firm would make it easier to include social enterprise in such assessments.

2.13 With regard to PGS Annexe A: Partial Regulatory Impact Assessment: Sectors and Groups affected by PGS, the wider community should be listed as an affected sector. It is recognised as affected [PGS PRIA, Paragraph A.35 refers] and is listed as an affected sector in the closely-associated Planning Policy Statement 3 (PPS3).

2.14 An approach to planning which recognised the value of community centres and other local facilities managed and/or owned by VCOs would be in line with government policy. Government sustainable development indicators include active community participation, and the Home Office has also highlighted the vital importance of community cohesion. *Community Cohesion: Seven Steps* suggests that:

— attempts to create sustainable communities by regenerating areas and renewing housing markets need to consider the impact on community cohesion in these areas: not working to build relationships and to develop a sense of community is storing up problems for the future;

— leaders within the voluntary sector, community or faith groups can have as vital a role to play as official leaders such as local authority chief executives and members;

— enjoyable activities which bring together people with different experiences can help to promote social cohesion;

— tools which might be utilised include Integrated Impact Assessment, combining impact on health with other dimensions of an area including community cohesion, the economy and the environment; and

— "community cohesion proofing" of long term planning documents can improve sustainability.

2.15 The Bristol Ministerial Informal Meeting on Sustainable Communities in Europe in December 2005 highlighted the fact that adequate physical and social infrastructure was essential, and indicated that the characteristics of sustainable communities include offering a sense of community and cultural identity and belonging, and enjoying a strong, inclusive, community and voluntary sector. It pointed out that effective democratic governance of places would require effective citizen participation through both representative and participatory democracy, designed to give communities power and influence over the decisions that affect them.

2.16 The Treasury, with other government departments, has actively championed an expansion of the voluntary and community sector's role in service delivery, including increased investment. However the National Audit Office found in 2005 that progress had been uneven and slow in some areas of the public sector, and highlighted the importance of the willingness across departments to embrace new ways of working with the third sector and to embed new practices across funding streams. As David Miliband, Minister of Communities and Local Government, stated on 21 February 2006, "in its role as social enterprise and service provider, the sector reaches people below the radar of many statutory services, wins their trust, and tailors services to their needs, aspirations and circumstances", and "because of its voluntary ethos and its roots in communities, the voluntary sector generates trust, cooperation and voluntary action by citizens and communities." He highlighted the importance of expanding the asset base, and stated that "The third sector has a critical role in mobilising the disparate energies of people in this country. Its role as advocate, as social enterprise, as the glue of community, requires partnership with government".

2.17 There are diverse ways in which community buildings, managed by VCOs while remaining in local authority or other ownership or owned and run by VCOs such as church or other faith organisations, contribute to making communities attractive and viable. Many are used to house or support multiple groups and activities. As research has shown, they can serve as a focus for community life, provide opportunities for volunteering, tackle urban and rural deprivation and support and involve older people, carers, children and youth. A Social Exclusion Unit report in 1999 mentioned that empowerment of communities might include "owning and running assets of their own", and urged "Facilitating maximum use of existing community buildings" and "Providing or facilitating infrastructure support". Other government policies too mentioned community buildings, yet many remained under-resourced and in a poor state of repair. Management committee members and other volunteers faced a constant struggle to keep them open.

2.18 Research continues to add to existing knowledge on how community buildings contribute to local wellbeing and create public value created. Local authorities are now being actively encouraged by central government to develop asset management plans. This offers a major opportunity to update community buildings policy. But the viability of many community buildings remains in doubt because of the scarcity of resources available for repair, including ensuring they have adequate disabled access, can meet new regulations and cater for the needs of changing local communities. The ODPM Committee has previously drawn attention to the importance of greater integration in delivering the sustainable communities agenda. A cohesive approach by local, regional and national partners to make better use not only of the physical resources but also of the time and skills of volunteers and community networks can contribute greatly to community social and economic well-being, help to integrate newly-arrived with long-standing residents and create constructive and healthy recreational opportunities.

3. Recommendations

3.1 We recommend that, if PGS goes ahead, as a minimum:

(i) it should be recognised that essential infrastructure for sustainable communities includes suitable national and local strategic infrastructure (whether funded from PGS or otherwise) and sufficient community, cultural and leisure facilities to meet the needs resulting from development;

(ii) PGS should be used for local benefit, and its allocation should incorporate consideration of the need to maintain and improve quality of life of local people using suitable indicators, including indicators to measure community contribution;

(iii) community centres should be retained as an option under S106 (even if only on a voluntary basis), and PGS should be lower or not applicable if a developer has voluntarily included significant community asset in development;

(iv) voluntary and community organisations—in particular those which own or manage premises in neighbourhoods where development is taking place—should be involved at all levels in decision-making about the use of the PGS, and consideration should be given to the impact of development on local VCOs, and their potential, if some portion of PGS were allocated to them, to develop or expand services and activities so as to meet new or increased needs. A community impact test should be devised; and

(v) respect for diversity and the incoming duty for public bodies to promote equality should be integral to the use of PGS, including introducing meaningful, fair and accessible processes to make sure that diverse (including faith and minority ethnic) communities and age-groups are fully positioned and their views and interests given due consideration in resulting plans and distribution of funds.

Memorandum by the Commission for Rural Communities (CRC) (PGS 22)

Introduction

1. The Commission for Rural Communities (CRC) was established on 1 April 2005, initially as a distinct division of the Countryside Agency, pending legislation to establish it as an independent statutory body. It has three main roles: rural advocate: giving voice to the concerns of rural people, businesses and communities; expert adviser: providing evidence-based objective advice to government and others; and, independent watchdog: monitoring and reporting on the delivery of policies nationally, regionally and locally. Across its work, the Commission has a particular focus on tackling rural disadvantage.

2. The lack of affordable housing in rural areas is a critical issue for the CRC. We have recently submitted evidence to the Government's Affordable Rural Housing Commission, setting out the issues and possible solutions (copies of our evidence are available at www.ruralcommunities.gov.uk).

3. The CRC is specifically concerned with the implications of the PGS proposals on rural areas and rural communities. This note sets out the CRC's response to the Committee's inquiry into the Governments proposals for PGS, based on our response to the Government's consultation, which is attached at Annex 1.

Our Response to the Committee's Inquiry

4. In general, we welcome the overall principles underpinning the proposed Planning-gain Supplement and the contribution it could make to improving and supporting the future sustainability of rural communities, not only through the provision of additional local and sub-regional infrastructure, but also through more rigorously applied (albeit scaled-back) Section 106 Agreements for securing affordable housing and local site development. We support the development of a mechanism that will ensure that a significant majority of the proceeds from PGS is directed to local communities. This is discussed in greater detail in Annex 1.

5. At the same time, we also recognise that development on rural sites is often more difficult and expensive to undertake than most urban sites, because they are typically smaller (and, therefore, do not enjoy the economies of scale), or require more expensive design and access solutions and are generally more time-consuming (for example by incurring more local consultations). We are concerned that the potential implications on rates of development in rural areas are properly assessed and monitored to ensure PGS is not detrimental to developments. Thus, we believe that the proposed Planning-gain Supplement has much to offer rural communities, not only for supporting services and infrastructure, but also (and perhaps even more crucially) to help deliver much needed affordable housing through more clearly defined Section 106 mechanisms.

Memorandum by the Northamptonshire Chief Planning Officers Group (NPOG) (PGS 33)

1. Northamptonshire Chief Planning Officers Group comprises representatives from all of the Northamptonshire local authorities, the West Northamptonshire Development Corporation and North Northamptonshire Joint Planning Unit. I would like to state at the outset that Northamptonshire Chief Planning Officers Group strongly supports the principle of the community taking a greater share of betterment and agrees that in recent history Section 106 has in many cases been unable to do this effectively. However, whilst NPOG supports the concept of capturing betterment for community benefits, it has some significant concerns regarding the current Planning Gain Supplement (PGS) proposals as set out in the government's consultation paper.

2. It asks for the following issues to be addressed in any future considerations.

3. Local Accountability and Infrastructure Delivery

4. Under the new PGS proposals the local planning authority, developer and the local community will not be able to guarantee that infrastructure required due to the development will be provided as funds would be collected, administered and distributed centrally. As such the PGS proposals could bring a lack of accountability into the system. Increased local certainty, transparency and accountability on longer term funding and the timing of this is crucial for delivery, and is crucial for public acceptance of the growth. This is a major shortcoming of the current PGS proposals.

5. The PGS consultation paper is far from clear on how much money would come back to the local area only that "the majority of PGS will be recycled directly to the local level for local priorities". It states that a significant proportion would be used to deliver strategic regional, as well as local, infrastructure. It is also unclear and how and when this would be done as clearly timing is critical to ensuring the funding is available to deliver infrastructure led growth.

6. Proportionality is an important principle. Funding received through PGS or standard charges should be related to the scale of growth being planned and delivered, rather than merely land value uplift. Otherwise resources will be skewed to towards those areas where the land values are highest as opposed to those delivering most growth and where needs are greatest.

7. Any funding generated through PGS or another mechanism should be "in addition to" rather than replace funding which is currently received from government departments such as the Department for Transport, Department for Education and Skills, and the Department of Culture, Media and Sport. This would in part reflect the fact that strategic infrastructure has a much wider role to play than serving and supporting new development. This additionality is crucial.

8. School Provision

9. Under the proposals outside the scope of planning obligations and therefore for funding via the PGS would be education provision, health provision, community centres, bus services, fire stations, employment and training, labour initiatives, town centre management, cultural facilities, and leisure facilities.

10. NPOG is particularly concerned regarding the affect that this could have on our ability to deliver schools. The County Council has recently adopted Supplementary Planning Guidance on "Planning Obligations and Local Education Facilities". This is based upon school capacity and pupil generation rates from different types of residential developments and provides transparent and robust guidance for developers and local communities.

11. In many cases, particularly for new primary schools in new housing developments, the County Council requires funding for school infrastructure at the beginning of a development. This is currently secured via 106 agreement and is because of the length of time that it takes to design and build a school and because school places need to be there when children arrive. Any delay or uncertainty in the provision of funding could have a detrimental effect on the provision of school places and require unnecessary expense in transporting children to other schools in the interim period.

12. In addition, this measure could negatively impact on the statutory process. The current legislation and guidance does not allow the approval of a proposal to build a new school or significantly expand an existing one until the capital resources are available. Also, the recent Education White Paper requires a proposal for all new schools to be subject to a competition of prospective providers. New school proposers would need some guarantee of the funding available. Uncertainty over funding could prolong the statutory process and delay delivery.

13. In some cases, it is useful to negotiate directly with the developers when planning new schools. For example, at Upton, Northampton the County Council received additional funding in order to provide a school designed to fit in with the specification of the development. In addition, the County Council may also negotiate with developers to support neighbouring schools that are affected by new development and the opening of new schools. The proposals appear to inhibit any opportunity to do this.

14. Strategic Infrastructure Funding

15. There is a danger with the proposals that there will significant problems with the funding of "strategic infrastructure". The contributions made under a reformed planning obligation regime would be taken into account for the planning value. This implies that "scaled back" s106 costs will have to be agreed and deducted from the potential uplift in land value before the PGS due can be calculated. There may be some reluctance on the part of developers to "scale back" payments which are held and applied locally under s106 in order to need to leave sufficient value within the scheme for PGS to be collected.

16. Development Land and the Market

17. PGS would be payable when development starts. An upfront payment of the PGS at the granting of full planning permission is likely to have a major impact on the cash flow of the project. If the cost of borrowing to fund PGS is shown as a development cost this could ultimately reduce the amount received by the Treasury.

18. There is a danger that if the PGS is introduced then landowners and developers will not bring land forward for development and instead wait in the expectation that this will change. This experience of previous "Development Land Tax" initiatives is well documented. This could have a major impact on delivery and lead to market stagnation. Proposals should not hinder regeneration, developer interest, and importantly the delivery of strategic and local infrastructure. Indeed they should help to accelerate infrastructure delivery. Because the tariff operates through a conventional Section 106 Agreement there are direct links between the revenues raised and the application of the funds to infrastructure needed at the local level.

19. There is a risk that the PGS could encourage "land banking" if market conditions soften or enter a downturn. Alternatively, developers may seek to bring forward development in smaller parcels to minimise or phase PGS payments; this could be detrimental to the co-ordination of infrastructure and facilities within the Sustainable Communities Plan growth areas.

20. Efficiency and Bureaucracy

21. The efficiency needs to be questioned of setting up a new regime of tax collection alongside the grant of planning permission, to double handle and redistribute the majority of funds collected back to the local authorities in the first place.

22. There is likely to be an increased role for policing the system for local authorities with the monitoring of Development Start Notices and where appropriate the serving of Development Stop Notices. In terms of strategic infrastructure it is proposed that there is a revised CIF programme introduced. Again there is a danger this will be a bureaucratic process compared to the standard charge approach.

23. The PGS proposals have the danger of increasing bureaucracy and introducing an inefficient system. It is an imperative that any new system must be not overly-bureaucratic, fit for purpose and adequately resourced at all levels.

24. Affordable Housing

25. It is noted in the proposals that a number of items will be left to negotiation at a local level, most notably affordable housing. The level of affordable housing is still going to require extensive negotiation within the context of the PGS.

26. To put it in context half of all the affordable housing units (26,541) housing units provided in 2003–04 were provided from the planning system through Section 106 agreements. If you factor in PGS there is a serious risk that either development would be frustrated or affordable housing resources coming from s106 would be cut in those areas with the greatest affordable housing problems.

27. Revenue Funding

28. Further consideration of PGS proposals should also look at the revenue implications of planning for and accommodating growth and the opportunity to address these, as this is a significant issue not only for local authorities, but also other service providers including those in the health sector.

29. Making the Current System Work Better

30. Developer contributions should mitigate the impact of their developments. It is clear in Circular 05/05 this includes strategic as well as local infrastructure.

31. Public agencies acting within Northamptonshire have embarked upon a substantial piece of work to ensure that land value can be captured effectively through the existing Section 106 system. These agencies are committed to taking forward this work and are pleased that the government has acknowledged the work that has been undertaken on standard charge based approaches in Northamptonshire and elsewhere in the growth areas and that it has encouraged this work to continue.

32. Practical experience has shown that where local authorities have clear Supplementary Planning Guidance and other approved policies in place the system has been shown to work well and is accepted by the development industry as a legitimate means of raising capital to help fund the infrastructure and facilities which support growth. This is the approach that the public agencies within Northamptonshire are working hard collectively to introduce.

33. Moreover the Milton Keynes Tariff approach, which is similar to the approach being developed in Northamptonshire, indicates how with the necessary support and commitment the current system can be used to front-fund infrastructure.

34. The framework for this work is the MKSM Inter-Regional Board report in October 2004 on land value capture (see attached). The principles set out in this report provide a sound context for not only this work but also for testing alternative proposals such as PGS.

35. Transition Arrangements

36. If the government are *determined* to move towards the PGS then clear proposals need to be introduced that ensure a smooth transition from any "Northamptonshire approach" that is adopted. Public agencies are seeking to introduce a high level of certainty regarding the future funding streams from s106 and provide confidence with regard to how their contributions will be applied at both the local and strategic level.

37. To maintain the pace of development required in Northamptonshire theses conditions will need to be maintained. A transitional framework is therefore required to cover the following points:

38. An unequivocal statement that PGS will not impact on parties who are signatories to the "Northamptonshire approach" to capturing the rise in land value.

39. An exemption from PGS for all reserved matters applications granted pursuant to any outline planning consent with the "Northamptonshire approach".

40. A clear statement regarding the proposed arrangements for prioritising for funding infrastructure required to deliver the next phase of growth to ensure a seamless transition from tariff funding to PGS funding for both strategic and local infrastructure.

41. Clarification of the government's intention with regard to the scope of the scaled back planning obligations to ensure that no overlaps remain whilst allowing scope to vary the coverage of the scaled back obligations in accordance with local needs and circumstances.

42. As stated above, NPOG supports the principle of land value capture to enable sustainable growth and would be willing to provide further information in support of its comments and to work with the government to put in place clear transitional arrangements which would enable, should it be implemented, any switch from tariff to PGS to be made without risk of delaying infrastructure provision and growth.

Memorandum by Strategic Planning Advice Ltd on behalf of the Rutland Group (PGS 24)

The Rutland Group is a private development and investment company which has been responsible for a number of major development projects, for example Bedfont Lakes near Heathrow (250 acres of landfill in the Green Belt transformed into a 180-acre country park, five acres of housing and three quarters of a million square feet of high quality business space now occupied by companies such as IBM, Cisco, SAP and Alcatel). The company now wishes to develop a sustainable new community of some 2,600 homes adjacent to the half million square feet of employment space on Dunsfold Aerodrome near Cranleigh in Surrey. A planning application is due to be submitted later this year. Strategic Planning Advice Ltd are the lead consultants for both these projects.

Our understanding of PGS is that:

- A proportion of the increment in value consequent on the grant of planning permission will be taxed.
- The tax will be collected by HM Treasury (HMRC).
- Part of the product of the tax will be returned to the local area.
- Part will be retained by the Government and applied to investment in strategic infrastructure.

— Developers will still be liable for some s.106 contribution and for the provision of affordable housing.

The Rutland Group's perspective on the proposal is that they specialise in large projects (see above) for which a s106 package is developed in dialogue with the local authority and the local communities. Whilst this approach can involve lengthy negotiations (which is entirely proper for major developments affecting large numbers of people), it is, in our experience, an extremely effective way of addressing the externalities of major schemes:

— The application of s106 funds is defined carefully and openly with local communities and the local authority; the funds are well targeted at local needs and impacts.

— The s106 contributions are directly related to the impacts being generated by the proposed development, for example the need for additional infrastructure or support for additional bus services.

— The process of defining the s106 package is open, and conducted with the democratically elected local authority. We believe however that there is scope for the negotiating process to be more open, particularly to the involvement of local communities (as is Rutland's practice).

— The process of negotiation being local, it is empowering for local bodies.

The attached brochure, which is part of our recent consultation on the development of a new village at Dunsfold Park illustrates a case where all the costs of the scheme are to be borne by the private sector: affordable housing, infrastructure off-site and on-site, new primary school, health facilities, parkland, support for bus services etc They have to be borne by the private sector as there is little prospect of public funds being available, for example for affordable housing or for infrastructure. If PGS is introduced, then the scheme will not be viable as funds will be diverted at two levels:

— Part of the product of the PGS will be diverted elsewhere for strategic infrastructure; given the Government's priorities, it is highly likely that these funds will be directed towards the growth areas or to regeneration areas.

— Of the portion of the PGS product that is returned to the local area, the Government is only committing itself to returning funds to the region (paragraph 6.4) of origin; it is extremely unlikely that they will be made available to address the needs of the scheme that has produced the funds.

Because of this diversion of funds away from the mitigation of local impacts of development, the PGS will have the effect of slowing the rate of development as more schemes will be refused planning permission on grounds of failing to address their local impacts. As housing starts are already below target, the effect will be to undermine further the achievement of the Government's Sustainable Communities Plan for housing growth.

The notion of levying a central government tax on land values in substitution for locally driven s106 schemes runs counter to the Government's declared devolution aims: the "double devolution" that has been announced in the last week as part of local government reform.

This element of local accountability and the link between paying a charge and receiving the benefit is retained and codified in standardised approaches to planning obligations, such as the roof tax imposed in the growth areas of Milton Keynes (Box 5.3 in the Consultation Paper). Rutland support the extension of this type of approach provided the proceeds are ringfenced for an agreed set of purposes that are defined locally.

The Paper at paragraph 5.10 described commonly cited problems with s106 negotiations. Rutland's view is that the time taken to negotiate is a necessary part of a local process to define appropriate provisions. The proposed PGS will do nothing to reduce these delays as s106 will survive, albeit in reduced form. Indeed delays are likely to be increased as there will be the additional burden of completing a self-assessed declaration for PGS and possible disputes about that.

The Paper also comments negatively (paragraph 5.12) on the wide variations in the obligations sought by different LPA's; this is no more that the proper workings of local democracy: if they were all the same, there would be no need for local government. Positively, local negotiation allows s106 commitments to be tailored to local needs, as expressed by local representatives.

Table 5.2, Box 5.4 and the accompanying commentary illustrate the real risks of the proposed regime: a developer of a significant scheme and the local authority will be able to secure funding for the left hand column of items but implementation of the development will be held up whilst funding for the right hand column of items is sought from other mechanisms. Either the development will be delayed indefinitely or there will be a temptation for the local authority to suggest, with some persuasive force, that the developer fund these other items regardless of guidance. The final sentence of paragraph 5.20 confirms that this latter outcome is a risk for which no answer is offered in the paper.

The record of s106 obligations and their predecessors is that developers and LPA's have always found ways to circumvent guidance in order to maintain the pace of development. The proposed regime is creating another set of confusing and delaying conditions, which will be fertile ground for appeals and legal challenge. The advantages claimed for the proposed regime in paragraph 5.17 especially "reasonably clear limits on the size of contributions" will not be delivered; the qualification "reasonably" immediately undermines the clarity that is claimed.

The term "challenge" in paragraph 5.18 demonstrates, in understated terms, the real risks attaching to the proposed regime: it will cut the link between a proposed development and the funding of the infrastructure needed for its implementation.

The Consultation Paper is seriously lacking in specifics, such that even the merits of the proposed PGS cannot be assessed:

— The comparative amounts of funds that could be generated through alternative measures such PGS, a roof tax and a modified s106 regime have not been estimated.

— The rate of the PGS levy is described as modest (paragraph 1.9), but no indication is given of the likely rate.

— The residual role of s106 agreements in paragraph 1.12 is very vague and would leave developers open to further heavy demands at the local level (on top of the PGS).

— The implied objectives of the PGS eg "deliver the investment required to support significant housing growth" (paragraph 1.16) are very ambitious and would imply a very high rate of levy to meet the infrastructure deficit in the growth areas. These investments are of benefit to the nation as a whole not only to one generation of developers and should be supported by a wider tax base.

Para 2.8 describes the basis of the planning value of the site, alluding to the costs of developing the land potentially affecting the planning value. It is extremely important that the costs of realising the market value of the site are fully taken into account as the tax should relate to the net uplift in value. If this is not done then brownfield sites, where the costs of realising open market value may be very high, will be unduly penalised. Such costs should include off-site infrastructure as well as remediation. If such costs are fully taken into account in the calculation of planning value, then it should not be necessary to impose a different rate of PGS on brownfield sites (paragraphs 4.4 and 4.5).

Rutland anticipate, from careful study of the Consultation Paper, that the effect of PGS on their proposals for a privately funded sustainable new settlement in Surrey will be as follows:

— A substantial part of the uplift in value consequent on planning permission will be taxed away.

— The local element of the funds taxed will be directed to Government priorities in the region eg Ashford or Thames Gateway.

— A further strategic element of the tax product will be directed out of the region to, for example, regeneration areas in the North.

— The Surrey scheme will not be able to deliver the infrastructure eg primary school, health facilities required to make it a sustainable settlement.

— Surrey will continue to be a low priority area for Government funds eg for much needed affordable housing.

— The scheme will not be delivered, either because it is no longer viable (if such facilities are nevertheless provided at the developer's expense through some devious route) or it will be refused planning permission for failing to provide proper infrastructure.

— The result will be the loss of some 2,600 dwellings in an area of acute housing shortage, a shortage which generates labour shortages, inefficient and environmentally damaging long journeys to work, and disruption of families and communities through excessive commuting.

It is important that the date when the PGS regime will come into effect (paragraph 3.19) be announced as soon as possible.

Rutland's preferred way forward is for the PGS proposal to be abandoned and for s106 negotiations to be reformed to make them more open to participation by local groups with a genuine interest in the consequences of a development scheme. If the PGS is implemented then Rutland suggest that provision be made for exceptions where major schemes are prepared in which all the necessary off-site infrastructure and other benefits, for example affordable housing, are included in a s106 agreement without recourse to public funds. Similar exceptions were anticipated in Kate Barker's report (quoted in Box 1.1 in the Consultation Paper).

Memorandum by Merseytravel (PGS 25)

It is with pleasure that we submit evidence as part of the Committee on the Office of the Deputy Prime Minister's inquiry into the Government's proposals to introduce a planning gain supplement.

We have also made a submission to HM Treasury's own consultation as we believe that Kate Barker's recommendations need to be considered in more detail. We firmly believe that the Government are right to look at the issue of contributions from developers given that one thing is very clear: the existing system is not satisfactory.

Using PGS to provide additional infrastructure investment would be extremely worthwhile. We were, however, very worried that whilst the consultation document on this issue mentioned transport as being an example of the type of major infrastructure projects being considered, there was no reference to Passenger Transport Executives (PTEs) or Passenger Transport Authorities (PTAs).

Transport is an essential element of the vast majority of developments but, unfortunately, there are many examples of large scale developments that take little note of education, health or transport needs.

About Merseytravel

Merseytravel is a public body comprising the Merseyside Passenger Transport Authority (MPTA) and the Merseyside Passenger Transport Executive (MPTE), acting together with the overall aim of providing a single integrated public transport network for Merseyside which is accessible to all.

In planning and procuring major elements of the public transport system, Merseytravel funds socially necessary bus services, oversees local rail and bus services, owns and operates the Mersey Ferries and the Mersey Tunnels, provides a range of prepaid and concessionary tickets, produces and distributes timetables, and prepares and implements the local transport plan for Merseyside with our district council partners.

We have an impressive record of delivery across all aspects of the transport system in Merseyside and have been recognised for our high level of customer care, professionalism and innovation, winning the Joe Clarke Award for PTA of the Year for the second year running. We also recently claimed the Northwest regional "Award for Skills and Workforce Development", one of a handful of awards announced as part of the British Chamber of Commerce and Microsoft sponsored "Chamber Awards 2005".

Merseytravel has delivered a number of major infrastructure projects and has several more in development. Many of our developments are designed to create an infrastructure that supports private sector investment in Merseyside but without a financial contribution from them. In particular, we have:

(i) Introduced state-of-the-art bus stations and on-street waiting facilities.

(ii) Undertaken improvements to two of the safest road tunnels in Europe, now coping with 26.9 million vehicles per annum.

(iii) Recently opened a new multi-million pound Interchange, the Paradise Street Interchange, which will give up to 10 million people every year direct access to jobs and leisure and shopping facilities in and around the giant development currently under construction in the heart of the city.

We will shortly be opening Liverpool South Parkway, a key gateway into Merseyside for visitors by rail and air, and a new Pier Head building for Mersey Ferries is planned in keeping with the area's World Heritage Site status.

It is clear that the nature of our business means that we are actively engaged in the planning process. The new development work we undertake is often in response to changes in travel patterns which are commonly caused by changes to the physical environment in an area.

Questions

Q1 *The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set.*

Merseytravel believes that Passenger Transport Authorities (as the major transport providers in Britain's largest conurbations) should be made formal consultees on all major planning applications as defined by floor space triggers or any development of more than 50 dwellings. PTAs should also be given a clear mandate in respect of guiding the use of PGS funds, particularly around consideration for appropriate public transport provision necessary as a result of the development.

There are good examples where transport is already a key consideration in the process (such as in Milton Keynes where the Council is proposing to apply a levy on new housing schemes at around £17,000 per unit). Merseytravel encourages the consideration of successful arrangements such as these, that the Government can use to inform policy development rather than inventing a new policy all together.

Merseytravel is keen to support the PGS proposals, providing transport needs are included as a key consideration. If the balance of policy does not make this possible within the current remit of the consultation, Merseytravel suggests a wider review of planning policy, possibly to include more localised decision-making on planning gains rather than a centralised planning policy. There may also be scope for a strengthening of PPG13 as part of the Government's review. If necessary, this could be included in the current review of local government structures and impending White Paper.

The definition of region is one that we are particularly concerned about. In the case of Merseyside, we have a clearly defined area upon which most people are agreed. If this, under the plans, is extended to some concept of the North-West, then there is no doubt that problems will occur. A definition of region is notable by its absence in the consultation paper and should be resolved before the PGS is progressed further.

If we take the example of the "North West", if the expectation to recycle the overwhelming majority of PGS funds within the region from which they are derived is carried out then the nature of a region with two clear urban centres will inevitably cause additional pressures. Under these circumstances the PGS from a major building project in Liverpool could be used to fund infrastructure in Manchester and this approach would not be considered acceptable, especially when the problems arising from new developments are normally localised. This goes against established planning principles of relating benefits levied via planning gain to the planning application that they stem from.

Whilst HM Revenue and Customs (HMRC) may be technically well placed to administer the new scheme, we are concerned that the correct systems are put in place to ensure that local stakeholders decide on what projects the funds are spent. Great care will also need to be taken to control administrative costs, eg if the PGS funding is to go through two or three bodies before being spent then there is an administration issue to contend with.

With PGS not due to be implemented before 2008 there is sufficient time to work this out. There is much work on governance being undertaken by the Office of the Deputy Prime Minister and we are engaging in this process. Given other Government policy consultations, the reality is that there could be major administrative changes and upheavals in Local Government structures in the not too distant future, and so how would these impact upon a PGS that would not be introduced until after 2008?

The "how" and "where" the decisions are taken will be fundamental to the scheme if it is introduced. With no level of democratic regional government in existence with which people can readily identify, existing bodies such as Merseytravel would be an ideal conduit to advise or administer transport infrastructure projects, and other similar existing bodies to advise on projects relevant to their area of responsibility.

Q2 *How the supplement should reflect the subsequent uses such as social housing.*

If it is to work properly, PGS needs to be linked to the priorities and democratic structures associated with the LTP in respect of transport infrastructure. Developer contributions raised through the PGS process would then need to be allocated by the relevant local authority according to need. This would include an appropriate amount for public transport, reflecting public transport demands and LTP priorities.

Merseytravel's area covers five local authority areas with varying needs. The only way we can properly balance the needs of each of these communities—Liverpool, Knowsley, Sefton, St Helens and the Wirral—is to engage with them and we do this in several ways:

(a) The PTA—the Authority is made of elected representatives of each of the five councils and this ensures that those elected by the communities have a direct say in the running of transport.

(b) Merseytravel Advisory Panels—each area has its own Panel which meets quarterly. The Panels provide a way for customers to advise Merseytravel as to how services can better meet their requirements.

(c) Transport Access Panel—this advises Merseytravel on how public transport can better meet the mobility needs of people with physical or sensory disabilities.

(d) Women's Forum—this was established to ensure women, currently the main users of public transport, have the opportunity to influence its future shape.

(e) Merseyside Integrated Transport Forum—this brings together key stakeholders in the Local Transport Plan (LTP).

The only effective way for decisions to be made about the allocation of PGS monies is through engagement and consultation with stakeholders, or by awarding the monies to bodies, such as PTEs/As, who have already been through such processes.

Q3 *How revenue from the supplement should be distributed and appropriate uses.*

The infrastructure requirement of any large housing development has to be considered before submission of plans. There are many examples of large scale developments that take little note of education, health and transport needs. We are always happy to work with developers to collaborate on transport issues as part of major developments but many are often content merely to consider putting a bus route through. This is insufficient, especially given the need to integrate all forms of transport, wherever possible; plan transport across a whole area; and given current bus policy where de-regulation provides only very limited power to the transport authorities for ensuring that a good quality of service is provided.

There has to remain in place a national strategic overview of all the infrastructure projects developed. It may also be the case that incentives, or penalties, need to be developed at a national level to encourage local bodies to look at the right type of infrastructure projects.

A link between the infrastructure project chosen and the original application from which the funding was gained must be maintained. If the link between the investment funds and the development is lost then it may well be seen a replacement for state/taxpayer funding and will cause disquiet.

Any additional revenues from PGS must not be allowed to replace existing or potential Government funding of infrastructure projects. They must be in additional to Government spending. Any form of replacement funding would not be acceptable to the electorate and, we suspect, developers. PGS should explicitly cover both capital and revenue expenditure as well.

For PGS to deliver strategic regional, as well as local, infrastructure it will require a comparison of projects on offer and those demanded. There are systems and procedures in place which can help compare, for instance, competing transport projects but this becomes much more problematic if the comparison is across two different areas. This is to say nothing of the difficulties involved in attempting to choose between different types of infrastructure projects. This has to be explored in more detail before the scheme is introduced in 2008.

Q4 *The potential impact of the supplement in s106 arrangements negotiated through the planning system.*

Merseytravel believes that the suggested PGS could be made to work as the current system has significant flaws. Merseytravel rarely receives any of the proceeds from a section 106 agreement, even when there should properly be a large transport-related contribution for the development to be acceptable. Too often section 106 agreements are viewed as "sweeteners" for a development and are agreed by Council Officers and the developers before any democratic element has entered the equation. This piecemeal approach does not lead to strategic decisions relevant to the whole of the area but instead encourages Officers to second guess the local community and deliver a package of facilities that they believe are needed. Their interpretation of local needs and the actual needs as understood by the community may not coincide.

The relationship between PGS and section 106 agreements should be clear to public bodies from the outset. It may be that a balance between the two is being considered. Merseytravel believes that having two parallel methods may be confusing and hopes this review will conclude one, new method of progressing forward.

It is considered that government policy needs to be strengthened so that new developments more accurately reflect transport considerations, to ensure that sustainable and accessible developments are created from the outset and that the costs associated with providing transport infrastructure are shared across the public and private sector. Merseytravel proposes in this response a review of PPG13. This would allow even further permanence to the responsibility of developers to contribute towards the cost of additional public services, such as transport and the link/potential link with s106 agreements could be explored in more detail.

Memorandum by Milton Keynes Council (PGS 26)

ODPM Select Committee Inquiry into Planning Gain Supplement

1. I am writing to you with regard to the ODPM Select Committee's Inquiry into the Government's proposed Planning Gain Supplement (PGS). The following letter sets out the main concerns and suggestions of Milton Keynes Council with regard to the implementation of any PGS.

Context—Delivering the Government's Growth Agenda, MK's Unique Position

The "Roof Tariff"

2. Milton Keynes Council is at the heart of the Government's Sustainable Communities Plan, a cornerstone of the Milton Keynes South Midlands (MKSM) growth area. To this end the Office of the Deputy Prime Minister has set the Council the target of doubling the rate of housing building and accommodating an additional 73,000 dwellings up to 2034. 15,000 dwellings are planned for two major green field expansion areas to the east and west of the existing urban area.

3. In order to deliver these ambitious development goals Milton Keynes Council has pioneered its own form of PGS, known as a roof tariff.

4. Our model proposes a cash contribution from the landowners/developers of £18,500 per dwelling and a further £33.46 million contribution from employment development to support the requisite infrastructure. These figures are supplemented by in-kind contributions and the provision of free land. It is intended that the approach will be piloted in the green field areas with a view to adaptation and implementation across the rest of the City.

5. Milton Keynes Council believes the roof tariff should be given consideration by both ODPM and HM Treasury when formulating its decisions about the way forward with regard to any Planning Gain Supplement.

PLANNING GAIN SUPPLEMENT CONCERNS

6. In simple form our concerns about the PGS proposals are:

As a community leader, Milton Keynes Council is concerned:

— the PGS will not improve the transparency of the planning system and will weaken community engagement in the growth agenda.

As a planning authority, Milton Keynes Council is concerned:

— transitional arrangements leave a risk that a glut of planning applications prior to introduction of PGS will put undue pressure on the planning authority and other service departments and consultees; and

— that PGS significantly weakens local policy development.

As a service provider, Milton Keynes Council is concerned:

— about how the PGS will facilitate the timely delivery of infrastructure;

— that the gap in funding infrastructure will not be met; and

— that leverage to negotiate the location and extent of free land is lost.

As a landowner, Milton Keynes Council is concerned:

— about the timing of payments, cash flow and economic viability.

7. These concerns are addressed more fully and expansively within our response to the consultation on Planning Gain Supplement currently being conducted by Her Majesty's Treasury. I enclose a copy of our submission for the Committee's further information.

THE COMMITTEE'S BRIEF

8. In the paragraphs below Milton Keynes Council seek to provide the Committee with our principle thoughts and concerns in relation to the particular issues which the Committee have indicated they wish to explore.

The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set

9. The valuation of PGS needs to be an agreed standard valuation with the Royal Institute of Charted Surveyors (RICS). A standard definition of both planning value (PV) and current use value (CVU) is required.

10. Planning Value presumes that no work has been done on a site. The costs of remediation and vacancy possession should be included as allowable costs to minimise the risk to the developer. The costs need to be agreed and established as part of the RICS standard valuation process to ensure the most functional operation of PGS.

11. Valuations must be actuals not average valuations.

How the revenue from the supplement should be distributed and appropriate uses

12. One of Milton Keynes Council's key concerns is that a link between the area where the PGS is raised and its expenditure is maintained. A central premise of the Government has been that the reform of the planning contributions system is necessary to generate transparency. Such a point also applies to the recycling of funds to the local area from where they originated: The return of all revenues locally is the most transparent solution. In contrast, the capturing and disbursement arrangements are very likely be bureaucratic and unclear.

13. The aim of reforming planning contributions to support growth in particular areas requires a guarantee that all revenues will be locally hypothecated. The guarantee is necessary to ensure:

— ongoing community support for development;

— certainty about infrastructure provision; and

— transparency.

14. Failure to return all revenues will:

— create uncertainty about the provision of infrastructure;

— will hinder the speed of growth; and

— frustrate local commitment to growth.

15. Local control over planning contributions will mean that service providers are able to progress related infrastructure development in a way that meets local need.

16. However the Government have been ambiguous about the emphasis placed on returning funds to the same region and the locality. The south east is a large region. Residents will not benefit from funds raised in their locality spent in a totally different part of the region. Returning the funds to the same local authority area is therefore essential to ensuring their support for housing growth.

17. The importance of locally driven specification of need is a central tenet of a Sustainable Community. The danger is that the Government's proposal will generate a top down approach based on local areas awarded grants calculated through a formula which has been judged remotely.

18. The PGS cannot be a replacement for existing strategic infrastructure funding. Such an approach without compensation at the local level would merely reduce local infrastructure provision and obstruct the Government's objective to create sustainable communities. Similarly the revenues raised should not be used to supplement Growth Area Funding, Community Infrastructure Funding or be subject to competitive bidding rounds. Such processes, although offering the local area the opportunity to express their priorities, are ultimately determined at a level too remote from the community's needs and do not encourage adjacent area collaboration.

Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites

19. Variable rates of PGS to be levied on green and brownfield land are necessary to encourage the regeneration of the latter. Developers would be encouraged if remediation costs are discounted from the Present Value on brownfield sites discounts the costs of remediation. Such an approach would provide an incentive to the developer to maximise necessary investments in this activity without prejudicing the overall economic viability of the development.

Memorandum by the Chartered Institute of Housing (CIH) (PGS 27)

1. Introduction

The Chartered Institute of Housing (CIH) is the only professional body for individuals working in housing. Its primary aim is to maximise the contribution that housing professionals make to the well being of communities. Membership status is dependent on completion of a professional qualification and a track record of professional achievement.

CIH has over 19,000 individual members working for local authorities, housing associations, Government bodies, educational establishments and the private sector.

A change in the way planning gain is managed will have a significant impact on many of our members and the communities they work in. Therefore CIH welcomes this inquiry and the opportunity to provide evidence to it. We would be happy to attend the committee to give oral evidence on any of the issues covered.

2. Summary

The introduction of a planning gain supplement would be a significant change to the way planning obligations are managed. It has potential to increase the amount of money contributed by developers to fund social and transport infrastructure. However, poor design and lack of support could thwart implementation and intended outcomes. The HM Treasury consultation paper shows that much of the detail of the proposed PGS has yet to be developed, and CIH is keen that thorough consideration is given to key issues before final decisions on design are made.

Our main concerns for design of PGS include:

- Better integration of PGS with PPS3 is needed, especially regarding brownfield land.
- Clarity should be given over allocation of funds to local and regional level, and ability to meet local needs must be protected.
- PGS revenue should be hypothecated for housing-related expenditure.
- The choice of PGS based on residential property (a development tax) in place of a wider development tax or a land tax is a missed opportunity.
- RSLs should be exempt from payment of PGS.

3. Responses to Inquiry Issues

(a) *Factors which should be taken into account in determining the rate of the supplement*

When determining the rate of the supplement, government should make long term projections of infrastructure which will be required to support stated housing numbers. These projections can be used to calculate a total infrastructure cost. The rate of the supplement should be set so it raises as much of this figure as possible without acting as a deterrent to development. The GLA has conducted a similar exercise based on the housing figures in the London Plan, which it uses to lobby government departments for funding. As individual Planning Gain Supplement payments will not be based on the amount of money needed in an area, the amount charged could appear arbitrary. Accusations of opportunistic taxation could be largely avoided if an open calculation of projected need and cost is made.

Once the rate (and anticipated income) is set, government should be clear about where funds to top up PGS revenue will come from and how they will be allocated. The current situation experienced in some growth areas, where small amounts of funding are announced at intervals and agencies disagree over responsibility for funding, is unacceptable and hinders development.

The proposal to use PGS revenue to fund strategic infrastructure at regional level suggests that government is seeking to significantly increase the revenue raised from planning gain. By choosing PGS based on residential property over (a) a PGS based on all development (including commercial) or (b) a true land tax, government will miss the opportunity to raise revenue from all landowners who benefit from development. For example, the increase in value of undeveloped land caused by investment in a new public transport route will remain untapped. A land tax would also help to meet government's housebuilding objectives by encouraging sites to be brought forward in high value areas.

Exemptions

Government should clarify whether RSLs would have to pay PGS. Although they too benefit from uplift in value of land they own, payment of PGS would limit the funds they could reinvest in the community and, for schemes using SHG, would amount to taxation of government funding. Exemption from PGS liability would make better use of government resources and help to deliver the increased level of affordable housing which government desires.

(b) *How the revenue from the supplement should be distributed and appropriate uses*

PGS revenue should be hypothecated for housing-related expenditure at local, regional, and national level. This should cover provision of social and transport infrastructure to facilitate development of new housing; remediation of development sites by local authorities; and initiatives to provide housing which meets a local need, be that new affordable housing or PSL schemes.

The proposal to redistribute the "vast majority" and "significant majority" of revenue to local and regional levels has caused considerable concern. Clarity over what is meant by these terms should be given at the earliest possible opportunity.

Local Distribution

Some authorities are very good at negotiating planning contributions to fund infrastructure, and will be concerned about reduction of income under PGS. The majority of PGS revenue should go back to the local level, but government should not pick an arbitrary proportion to satisfy concerns about loss of local control. Government should use the calculations suggested in a), above, to set a proportion which ensures that local authorities receive sufficient PGS revenue to provide infrastructure at at least the same level as is currently delivered through planning obligations in the best authorities.

PGS revenues should be passed back to local areas in direct proportion to the revenues raised in that area (the first option suggested in the consultation). This approach would give greater certainty to local authorities and enable them to determine their own priorities as they would with S106 currently. Using this method, they would be able to make a rough calculation of the income they could expect from PGS if all sites allocated under the PPS3 guidelines were developed, and therefore they could budget for provision of infrastructure. This approach would also gain more support from local communities, who would see the direct benefit of the land value increase in their area.

If revenues were allocated using a needs-based formula (the second option in the consultation), some local authorities would lose out to areas where large-scale nationally identified priorities were located (such as HMRPs or growth areas), and local resentment would be strong. Those authorities outside areas receiving national attention which currently raise sufficient money to provide local services through S106 would find they need to provide the same services with significantly less revenue. These local authorities would need to borrow substantial additional amounts to maintain provision of services, which could result in facilities needed to support new housing not being provided in future.

The direct proportion option is fairer and more effective as it enables authorities to meet local need but also takes some of the revenue for redistribution to help areas with little PGS income or which are trying to deliver national growth priorities.

Government should consider whether PGS revenue re-allocated to local authorities can be spent on additional housing as well as infrastructure and community facilities. Local authorities with adequate facilities may be able to make good use of PGS revenue to fund housing projects, such as private sector leasing and community land trusts, or even direct commissioning of new affordable housing, which would benefit the community.

PPS3 seeks to ensure provision of new housing takes place at a sub-regional rather than local authority level so that it takes better account of market activity. Clarification is needed on how the PGS system will interact with this delivery model. For example, how will authorities take responsibility for provision of social infrastructure if the housing built in their area is intended to meet needs of areas other than their own—must education etc be joint funded by local authorities in future?

Regional Distribution

The potential for PGS revenue to fund strategic infrastructure at regional level is clear. However, strategic infrastructure can be hugely expensive, and so unless significantly more money is raised through PGS than is currently made through S106, government will struggle to make PGS meet all its aims.

Money should not be skimmed away from local authorities to create a pot of money for regional and national spending—they should receive at least the same amount of money as currently delivered through S106 (not including housing provision). Local authorities' ability to meet local needs must be ensured before regional funding pots are created from PGS revenue.

In many cases infrastructure will need to be in place before housing development can take place, and so funding cannot come directly from the site(s) affected by the infrastructure provision. Government should establish a pot of money to forward-fund infrastructure in advance of PGS revenue being raised. This, possibly an expanded Community Infrastructure Fund, should be available to all areas, not just growth areas. If areas which raise PGS do not have access to money from the to meet their own needs, resentment towards the scheme will grow.

(c) *Whether and, if so, how the PGS should be used to encourage development of brownfield sites*

Government should recognise that brownfield sites are not always the best place to build new housing. Reuse of land is an important national target, but the sites where housing is developed must be in suitable locations. Housing market assessments will help to identify these.

It is appropriate to set a lower rate of PGS for brownfield land to encourage regeneration. In some cases, paying a lower charge (and therefore taking a higher profit) could be an incentive to develop a more difficult or costly site. This could help to limit the spread of existing towns and focus development within existing communities. However, the high cost of remediation on some sites means that the lower tax rate will not be sufficient to ensure development is favoured on all suitable brownfield sites. Government should consider how PGS can interact with the proposals in PPS3 for local authorities to have a brownfield strategy. Funds from PGS should be available for use by local authorities to assist them with the delivery of that strategy.

(d) *The potential impact of the supplement on s106 arrangements negotiated through the planning system*

It is appropriate to scale back S106 to mitigation of direct impact and provision of affordable housing. The clearer boundaries it creates should give greater certainty to developers and promote a fairer planning obligations system. It is essential that provision of affordable housing remains in this category as it enables the development of mixed communities and gives developing housing associations access to increasingly expensive land.

Negotiation has been criticised for slowing delivery of new houses, but the proposed development site approach will still involve a significant amount of negotiation. If PGS is introduced, investment in the negotiation skills of local authority staff will still be necessary to ensure appropriate amounts of affordable housing and mitigation features are provided.

The development site approach could have a negative impact on on-site provision of community facilities. Whilst PGS revenue could still be used to fund development of facilities such as schools and health centres, local authorities would lose the ability to secure land for the development through S106. The ability to ask for land to be provided ensures that new facilities can be integrated with new communities when necessary. Under the new system, local authorities will have to identify and purchase sites as close as possible to new developments, and failure to do this would impact on new and existing residents' quality of life.

It is appropriate that the cost of any affordable housing to be provided should be deducted from PGS liability, but there is some possibility that this system could be abused and lead to under-provision of social housing. Some areas could be tempted to forfeit provision of affordable housing to increase PGS revenue which can be spent on local infrastructure. The PGS system should interact with PPS3 to ensure that use of the planning system to meet affordable housing targets is prioritised over raising revenue for other local needs.

Memorandum by the Wildlife Trusts (PGS 28)

1. Introduction

1.1 The Wildlife Trusts welcome the opportunity to present written evidence to the Committee on the Office of the Deputy Prime Minister's Inquiry into the government's proposals to introduce a Planning-gain Supplement (PGS).

1.2 The Wildlife Trusts are a unique partnership of 47 local Wildlife Trusts covering the whole of the UK and the Isle of Man and Alderney. The partnership works for the protection of wildlife and invests in the future by helping people of all ages to gain a greater appreciation and understanding of nature. Collectively, The Wildlife Trusts have more than 600,000 members including 100,000 junior members. In addition, we manage almost 2,500 nature reserves, covering more than 80,000 hectares of land. Popular with visitors, they include some of the UK's finest wildlife sites, from inner city locations to the open countryside.

1.3 We are active participants in the planning system throughout the UK from the national to the local level. Over the years our staff and volunteers have dedicated considerable time and resources to many reviews of Development Plans and they scrutinise thousands of planning applications annually for impacts on biodiversity. They are engaging fully in the development of Regional Spatial Strategies, Local Development Frameworks and Community Strategies.

2. Background

2.1 With our wide range and depth of ecological expertise and many years of experience of working with local people, we bring a uniquely informed perspective to bear on biodiversity in relation to both the planning system and communities. The concept of a PGS is, naturally, of great interest to us and we are keen to make a constructive input.

2.2 We are also forwarding a response to the parallel consultation from HM Treasury, HM Revenue & Customs and the Office of the Deputy Prime Minister on the proposed PGS. That response is appended to our evidence and we do not intend to repeat it in detail here. Rather we shall concentrate upon the issues set out in the call for evidence in so far as they affect our area of interest.

3. Inquiry Issues

The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set

3.1 The parallel consultation (page 7) explains that revenues generated by PGS would be "dedicated to local communities to manage the impacts of growth and to funding the local and strategic infrastructure necessary to support and stimulate new development and contribute to long term sustainability."

3.2 It, therefore, seems logical that a factor that should be taken into account in determining the level of the PGS is an assessment of local and strategic infrastructure needed to manage the impacts of growth and to support and stimulate new development. In our submission on the parallel consultation we make the case for biodiversity rich green infrastructure as an essential component of sustainable communities. Consequently we believe any assessment of new infrastructure needs should factor in biodiversity provision.

3.3 In determining the level of biodiversity provision required we would suggest that to a large degree it should be possible to develop and apply formulaic approaches. For example, English Nature recommends minimum standards for the provision of accessible natural green space[14]. However, it is important to bear in mind that there is much variation between regions and local areas in terms of the quantity and quality of existing biodiversity assets and the direct community benefits and ecological services already available.

How the supplement should reflect subsequent uses such as social housing

3.4 Should the PGS be introduced we believe it is important that it is applied in such a way as to avoid economic distortions which could lead to excessive development in environmentally sensitive locations. For that reason we would favour a single rate applied to all types of development both residential and non residential with very few exceptions.

3.5 It seems reasonable to exclude home improvements from PGS not least because we would hope that in future many of these will involve the retrofitting of sustainability features.

[14] Anon (1996) *A Space for Nature—Nature is good for you!* English Nature, Peterborough.

How the revenue from the supplement should be distributed and appropriate uses

Biodiversity rich green infrastructure

3.6 In our response to the parallel consultation we present evidence in support of our belief that biodiversity is a necessity for sustainable communities, rather than a luxury, and is no less important than the provision of other public services such as schools, health centres and transport.

3.7 Hence we believe the PGS should make a substantial contribution towards the delivery of the biodiversity rich environmental infrastructure needed for sustainable communities. We would hope to see a substantial proportion of PGS receipts specifically allocated for widespread biodiversity conservation and enhancement beyond the case specific level.

Geographical distribution

3.8 We believe there is an argument for operating a weighting system that allows a higher level of the biodiversity component of the recycled PGS revenues to be allocated to regions, sub regions and local areas that are likely to experience enhanced levels of growth. Biodiversity resources will be under greatest pressure in these areas at the same time as their being an increased need for the environmental, social and economic benefits they bring.

3.9 However we do not believe it would be wise to direct the biodiversity component of the PGS revenues solely towards the four Growth Areas, growth points, new free standing settlements and major urban extensions. Biodiversity conservation and enhancement requires a holistic approach and the network of biodiversity rich green infrastructure should be available to every community.

Distribution mechanism

3.10 The parallel consultation (page 32) explains that the government is exploring an expanded version of the Community Infrastructure Fund (CIF), or suitable alternative, for the distribution of PGS revenues.

3.11 This does not seem unreasonable provided the grant scheme is transparent, inclusive and can be readily accessed by the key infrastructure providers. It would also be important to ensure that the criteria are sufficiently broad and the geographical coverage sufficiently wide to deliver an appropriate level of biodiversity rich green infrastructure to every community.

3.12 It would be vital to ensure that any grant scheme makes provision for the ongoing costs of the management of biodiversity rich green infrastructure in addition to funding initial set up costs. Under the present system of negotiated Section 106 agreements it is common practice for developers to provide a "commuted sum" to contribute towards ongoing management of biodiversity features.

Whether and, if so, how the Planning-gain Supplement should be used to encourage development of brownfield sites

3.13 In our response to the parallel consultation we explain that we are not opposed, in principle, to brownfield development which brings some advantages in terms of environmental sustainability. However, there can be disadvantages in that regard, too.

3.14 We are aware from our own experience and the research of others[15] that a proportion of brownfield sites are of biodiversity value. That fact is recognised within "Planning Policy Statement 9: Biodiversity and Geological Conservation" (paragraph 13) which advises that in certain situations the aim should be to retain the interest or incorporate it into any development.

3.15 Planning to retain some brownfield sites as open space may also offer the potential to incorporate biodiversity rich green infrastructure within heavily developed urban areas.

3.16 Since planning policy already affords high priority to the regeneration of previously developed land we are not yet persuaded that applying a lower rate of PGS for brownfield sites is either necessary or desirable.

The potential impact of the supplement on Section 106 arrangements negotiated through the planning system

3.17 In our response to the parallel consultation we explain our concern that the PGS should be well run and not inadvertently diminish the level of protection and enhancement for biodiversity below that which can already be achieved through the current system of Section 106 agreements.

3.18 At the present time the latter are of considerable importance, both in terms of tackling case specific biodiversity impacts and, increasingly, in securing wider biodiversity benefits.

[15] See, for example, Gibson CWD (1998) *Brownfield: red data. The values artificial habitats have for uncommon invertebrates* English Nature Research Reports, No 273.

Section 106 agreements for the enhancement of biodiversity

3.19 English Nature Research Report 672 "Using a Planning Gain Supplement for nature conservation purposes"[16] presents a number of useful case studies in which Section 106 agreements have been used to secure positive benefits. We are also aware of a number of other cases. Typical examples would be the creation and subsequent aftercare of a Local Nature Reserve or accessible natural green space somewhere within the neighbourhood but not necessarily within the development site.

3.20 The biodiversity facilities provided in such cases are invariably of great benefit to the new residents and the local community but they may not be essential to offset case specific impacts. It is not clear to us whether cases of this type would fall within the scope of the scaled back planning obligations and development site environment approach described within the parallel consultation (pages 26 to 29) or whether they would be amongst the matters that would be excluded.

3.21 If such positive biodiversity benefits are not considered to fall within the new scope of negotiated Section 106 agreements it is vital that provision is made for their delivery by other means.

3.22 The use of recycled PGS receipts could have a significant role to play in that regard but if they are to be disbursed in the form of competitive grants, perhaps with some regions or local areas favoured over others, we are concerned that funding may not be available from this source in every local circumstance where it is needed.

3.23 "Planning Policy Statement 9: Biodiversity and Geological Conservation" (paragraph 1) makes clear that there is a new emphasis on planning delivering positive gains for biodiversity. It would be particularly unfortunate at this time if one of the main mechanisms for achieving such benefits were weakened or removed without alternative arrangements that are at least as effective being put in place.

Section 106 agreements for addressing case specific impacts upon biodiversity

3.24 We welcome the fact that the description of the development site environment approach suggests that case specific biodiversity impacts could still be the subject of negotiated Section 106 agreements. They are an essential tool for mitigating and compensating for the unavoidable impacts of development upon biodiversity, in line with the requirements of "Planning Policy Statement 9: Biodiversity and Geological Conservation" (paragraph 1).

3.25 In our view it is vital that it remains within the scope of negotiated Section 106 agreements to address the full range of case specific biodiversity impacts in the most appropriate way.

3.26 For example, under some circumstances, planning obligations may be needed to secure off site habitat creation or restoration, and subsequent management, to compensate for losses of biodiversity on a development site. Indeed, that is an increasingly common scenario as the higher densities to which new housing is now built often limits the scope for meaningful biodiversity provision within the development itself.

3.27 It does seem that off site compensation would be achievable under the development site environment approach. However, we would welcome re-assurance from government that the "replacement/substitution" for the loss or damage to a facility or amenity described in the parallel consultation (Box 5.4 on page 27) would, indeed, include biodiversity assets.

Memorandum by the Campaign to Protect Rural England (CPRE) (PGS 29)

Introduction

1. The Campaign to Protect Rural England (CPRE) welcomes the Committee's decision to hold an inquiry into the Government's proposed Planning Gain Supplement (PGS). CPRE has a longstanding interest in planning gain issues. We were closely involved in the establishment and development of the modern British planning system and we are the nation's largest single participant in it. We estimate that CPRE campaigners scrutinise at least 100,000 planning applications across the country every year, in addition to participating in reviews of Regional Spatial Strategies and local development plans.

2. Our interest in the PGS proposals stems from our ongoing support for a robust planning system to protect and enhance the countryside while accommodating necessary development. We also responded to Government consultations in 2002 and 2004 proposing reform of existing Section 106 planning obligations, and copies of our responses are enclosed.

3. We welcome the stated objectives of the consultation paper, in particular that reforms to planning gain should "provide a fairer, more efficient, and more transparent means" of capturing land value uplift (paragraph 1.14). We believe that, provided the issues we mention below are effectively addressed in the final

[16] ENTEC UK Ltd (2006) *Using a planning gain supplement for nature conservation purposes* English Nature and the Royal Society for the Protection of Birds English Nature Research Reports, No 672.

regulations, PGS has the potential to achieve this objective. If PGS is to be a success, however, it is critical that it should not be an additional obstacle to the redevelopment of brownfield in preference to greenfield sites.

4. We have structured our evidence around the questions posed by the Committee. Most of the recommendations we have made in response to the HM Treasury consultation paper are included here, but are also set out at the beginning of our response, also enclosed as requested, for ease of reference.

i. *The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set*

5. The tax system in England tends to favour land accumulation and building on greenfield sites over sustainable urban regeneration. This can be particularly seen in relation to Council Tax discounts on second homes, and the application of VAT to repairs, maintenance and improvement (RMI), rather than to greenfield new build. England's leading housebuilders are increasingly accumulating land with outline or detailed planning permission. Since 1998 these landbanks have increased from 240,000 plots with outline or detailed planning permission to 331,000. In the retail sector, Tesco has reportedly banked 185 development sites as at February 2006, potentially enabling it to grow at 12 times the rate of its nearest commercial rival.

6. PGS forms part of a package of Government policy measures intended to boost the supply of housing and provide a decent home for all. CPRE's briefing *Housing in England* (updated in January 2006, copy enclosed) highlights that, at the average density levels (40 dwellings per hectare) of current housing completions, there is enough brownfield land suitable for housing in England to deliver more than a million new homes. In 2004 there were 690,000 vacant properties in England, many of which are to be found in the highly pressured South East and East regions. There is thus more than ample brownfield land, sites with outline planning permission or better, and housing stock already available to meet the Government's aspirations. CPRE believes that reform to the tax system, combined with continuing strong planning policies to encourage urban renewal and minimise greenfield development, could do much to unlock this potential, thereby both meeting housing need in England and preventing a return to the unsustainable greenfield sprawl of the 1980s.

7. CPRE has long argued that VAT should be applied to new buildings, particularly greenfield development, at no less than the rate for repairs, maintenance and improvement (currently 17.5%). At the very least, we believe that the rates of VAT for new build and repairs should be harmonised. The Barker Review indicated that £1.8 billion could be raised from levying VAT on new greenfield development (*Review of Housing Supply,* Final Report, paragraph 4.62). CPRE supports a tax on betterment in principle, but we also believe that introducing VAT on new greenfield development would be a simpler, fairer and more profitable way of achieving the Government's objectives.

8. The Treasury has not provided an estimate of the expected revenue from PGS or the rate at which it will be levied, but reports in the technical press have suggested a rate of 20% is likely, raising around £1 billion per annum (*Planning* magazine online [www.planningresource.co.uk], 25 January 2006). Government policy aims to provide at least 60% of all new housing development on previously developed land by 2008. Accordingly, the consultation paper also proposes that a lower rate of PGS be set for brownfield sites. Again, reports in the technical press suggest that this discount might in practice be around 50%.

9. The Treasury has proposed to levy PGS at a single national rate relating to the value of the land. This removes part of Kate Barker's rationale for preferring PGS to VAT on greenfield land, in that the rate of PGS could varied across regions whereas a uniform rate of VAT has to be applied across the country (ibid, paragraph 4.72).

10. CPRE contends that PGS can only be judged to be preferable to VAT on new greenfield development if:

- it raises at least £1.8 billion per annum, the figure quoted for VAT on greenfield development by the Barker Review;
- it provides at least an equal incentive to develop brownfield sites in preference to greenfield; and
- revenues are directed to funding infrastructure that contributes towards, or is consistent with, PSA targets set out in the UK Sustainable Development Strategy, in particular those relating to reducing greenhouse gas emissions and caring for our natural heritage (see our points under Section [iii] below), as well as Government policy in PPS1 *Delivering Sustainable Development.*

11. If PGS is to go ahead, and development on brownfield sites is subjected to a lower rate or exempted, a higher rate may be needed on other development in order to achieve £1.8 billion per annum. CPRE believes that a higher rate than the suggested 20% PGS rate may be needed for greenfield development, so that revenues of at least £1.8 billion per annum can be achieved whilst exempting the majority of development on brownfield sites from PGS. It would also reflect the very significant costs of greenfield development to local communities, in terms of the requirement for new transport and social infrastructure. This cost was estimated in 2002 at £40,000 per dwelling in Milton Keynes, one of the major growth areas earmarked in the Government's Sustainable Communities Plan, by Professor Anne Power of the London School of

Economics. This is substantially more than the £18,500 per dwelling that the local planning authority in Milton Keynes is presently extracting from developers in tariffs, proposed as an alternative to PGS by many in the property industry.

12. Notwithstanding our preference for the introduction of VAT on new greenfield development and criticisms in paragraph 9 above, CPRE supports the use of a single national rate rather than a locally varied one for achieving betterment, in tandem with reforms to restrict the scope of Section 106, as proposed in the consultation paper. In our opinion, the single national rate levied on the value of a property, as proposed in the consultation paper, also holds a crucial advantage over a system of tariffs. If it were made possible to vary PGS rates or set tariffs locally, we are concerned that it could encourage a race to the bottom and unhealthy competition between local authorities, with decision makers in poorer areas setting lower rates in order to attract new development.

13. The setting of PGS levels and payment should seek to address the issue of land banking by major companies (see paragraph 5 above). It has often been remarked that previous development gains taxes failed because developers withheld land in the expectation that a change of Government would lead to the repeal of the tax. The Government proposes to calculate PGS liability when full planning permission is granted, and to require payment when development is deemed to have begun. This suggests a flaw in the proposals, in that the value uplift conferred by an outline planning permission will be ignored and PGS will only capture the (potentially much smaller) uplift at approval of reserved matters. It also could tempt developers to withhold land with outline planning permission in the hope of arguing that PGS is unworkable and should be repealed.

14. CPRE recommends that in cases where outline planning permission is granted, instead of the approach outlined in the consultation paper, PGS liability should be calculated at the point of granting outline permission, and then, as a general rule, be payable in five annual instalments, or linked directly to times specified for commencement of development in conditions attached to the planning permission, to reflect the life of the permission and in order to discourage land hoarding and encourage developers to resolve reserved matters issues with local authorities. This period of payment could be subject to negotiation depending on the phasing and expected release of the site.

15. It will be crucial for the valuation process to be as transparent as possible. CPRE believes that making the proposed self-assessment returns open to public inspection, along with the planning application to which they relate, would assist other developers in the area who wished to gain an understanding of potential liabilities. CPRE recommends that valuations of "current use value" should be submitted with the relevant application for planning permission, and both these and the valuation of planning value should be made publicly available at local planning authority offices. This would also have the beneficial side effect of increasing the transparency of, and public confidence in, the PGS process.

ii. *How the supplement should reflect subsequent uses such as social housing*

16. CPRE is particularly concerned about the continued shortage of affordable housing in rural areas and the more general sustainability of rural communities. We recommend that private developments entirely composed of affordable housing and the development of community facilities, such as village halls and new schools, should be exempted from PGS.

iii. *How the revenue from the supplement should be distributed and appropriate uses*

17. Financing infrastructure is central to the rationale for the PGS proposals. We would welcome greater investment in infrastructure, provided the policies for revenue allocation are transparent and funds are hypothecated towards infrastructure that contributes towards, or is consistent with, PSA targets set out in the UK Sustainable Development Strategy, in particular those relating to reducing greenhouse gas emissions and caring for our natural heritage, as well as Government policy in PPS1.

18. We are concerned that question 6.3 of the consultation paper could be taken to suggest that infrastructure priorities would only be related to unlocking *future* housing development. The present situation suggests to us that Government needs first to address the considerable costs arising from where infrastructure development has not been properly co-ordinated with housing growth. We believe it is important that a substantial proportion of PGS revenues be used to address this.

19. There are numerous places across England where large-scale housing development has taken place with inadequate resources provided for employment, sustainable transport and other environmental infrastructure. Consequentially, residents are forced to become dependent on commuting by private car. A prominent recent example is the town of Portishead near Bristol (see House of Commons *Hansard,* 24 January 2005, Column 134). As pointed out in paragraph 11, tariff revenues in Milton Keynes are raising considerably less than the likely infrastructure costs of the greenfield development to which they relate.

20. A further danger is that if future Governments were tempted to use PGS revenues as a means to reduce financial support to local authorities there could be a reliance on new development for essential local resources. The consequences of this could be very wide, ranging from increased inequality between districts

and regions, and to an increasing inducement to corruption. Overall, it could quite easily lead to authorities promoting or accepting patterns of development that are environmentally damaging, socially divisive and very costly to public finances in the longer term.

21. Careful detailed design of PGS is needed to avoid these risks. CPRE is concerned to ensure that PGS should operate in practice as a progressive betterment tax, making local communities overall (and not just in areas of high growth) better off, as per the stated intention of the consultation paper. CPRE recommends that most PGS revenues should be collected and allocated at a level higher than that of the local authority responsible for planning decisions, and redistributed (whether nationally, regionally or sub-regionally) according to public policy objectives, eg for urban regeneration. If a proportion of the revenue is to be spent locally it should, we believe, be subject to strict ring-fencing to prevent mis-use of PGS funds for unrelated political purposes, and remove the temptation for local authorities to approve inappropriate development proposals simply to acquire PGS revenue.

22. Key to regional allocation of revenue is a co-ordinated approach at national level. This currently lacking. CPRE recommends that the Government develop a coherent national spatial policy framework within which regional policy can operate better. The Comprehensive Spending Review 2007 and the review of PSAs (particularly those relating to regional policy) provides an ideal opportunity to do this. Such a framework, supported by the existing development plan process at regional and local level, could do much to properly co-ordinate infrastructure development across the country. It could also be used as the basis for allocating PGS revenues in a progressive way to areas where sustainable development needs are greatest.

23. Specifically, we believe that criteria are needed in the final scheme to ensure that new transport infrastructure funded by PGS should help to reduce the need to travel, especially by private car. Therefore we would like to see a substantial share of PGS revenues directed towards small scale, local sustainable transport schemes to encourage walking, cycling and use of public transport. This becomes especially pressing if Section 106 agreements can no longer be used to fund bus services, as the consultation proposes.

iv. *Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites*

24. In order to avoid further disincentive for repairs and refurbishment (see paragraphs 5 and 7), CPRE strongly supports the intention floated in the consultation paper to levy a lower rate of PGS on brownfield development. We would recommend that brownfield development should be entirely exempt from the tax. Such a move would be important in:

— redressing the financial incentives to greenfield development; and

— encouraging regeneration through the retention and economic re-use of historic buildings.

25. The Barker Review suggests that a greenfield/brownfield distinction could be open to question in the Courts (ibid, paragraph 4.64). CPRE would respond that Government policy is clear about prioritising brownfield development, and also on what a brownfield site is. As such the term could be applied in regulations in a similar fashion to how "sustainable development" is in Sections 39–40 of the Planning & Compulsory Purchase Act 2004.

26. We would ask the Committee to consider how appropriate amounts of planning gain can still be extracted from sites with high levels of value uplift, or on sites where the size and location of a proposed development means that significant public transport and social infrastructure investment is necessary. In addition, if a significant proportion of PGS funds were recycled directly to the local level where they are collected, a lower rate of PGS on brownfield sites could potentially lead to the perverse outcome of encouraging local planning authorities to permit development on greenfield sites as departures from development plans and in unsustainable locations. Our support for a lower rate of PGS on brownfield sites must therefore be read in conjunction with our comments on revenue distribution made at paragraphs 17–23 above.

27. In addition, emerging Government policy in draft PPS3 (December 2005) continues to prioritise housing development on brownfield land to meet the national 60% target. If left unchanged, however, paragraphs 13–16 of the policy could make it much more difficult for local planning authorities to avoid the release of greenfield sites for housing before brownfield. In particular, paragraph 13 puts a heavy emphasis on designating a five-year supply of sites that are "developable". "Developable" in turn is defined as "available", "suitable" and "viable". There is a danger that developers could use the presence of PGS liability on brownfield sites, many of which are economically marginal to develop as Kate Barker recognised (ibid, page 58, Box 3.2), to argue that many brownfield sites were neither available nor viable.

28. Exempting brownfield sites from PGS liability entirely, coupled with retaining the existing sequential approach in national policy to retail development and release of housing development sites, and extending it to industrial and commercial development, would avoid this problem. Additionally, it will be crucial for the valuation process to be as open as possible, in order to demonstrate where brownfield land is economically viable (see paragraph 15).

29. CPRE welcomes the intention to restrict the scope of Section 106 agreements in tandem with a flat rate of PGS to capture betterment. Planning obligations are primarily designed to make acceptable development that is line with the development plan but would otherwise be unacceptable in planning terms (ODPM, Circular 05/2005, paragraph B3). As the HM Treasury consultation paper on PGS (paragraph 5.11) shows, this has led in practice to an expansion of what "planning gain" is deemed acceptable to the point that it is no longer clear whether obligations are being sought in line with the Government policy tests set out in Circular 05/2005 and its predecessors.

30. CPRE supports the fundamental premise of the planning system that decisions should be taken in accordance with the development plan unless material considerations dictate otherwise (Planning & Compulsory Purchase Act 2004, section 38[6]), especially as adopted development plan policies result from a rigorous process of community involvement. CPRE believes that the proposals for PGS offer a real opportunity to address one of our major concerns about the present system of planning obligations, namely the potential for conflict with agreed development plan policies and objectives. Potentially, planning gain (including both PGS and Section 106 revenues) would be often no greater for development permitted as a departure from the development plan than development in accordance with it. This is more likely to be the case if:

- PGS was levied at a uniform rate across the UK;
- PGS revenues were distributed to wider regions and sub-regions rather than to individual local planning authorities;
- Section 106 was restricted to a set of "development site environment" issues clearly defined in published Government policy; and
- the policies for revenue allocation were transparent and funds were hypothecated towards sustainable infrastructure (see paragraphs 17–23 above).

31. CPRE supports the principle of Section 106 agreements insofar as they provide a link between planning gain and the development to which they are related. Therefore, subject to our concerns in paragraph 32 below, we would endorse the Government's intention to restrict such agreements to "development site environment" issues such as affordable housing and other criteria of "site acceptability" such as biodiversity, landscaping and archaeological protection (consultation paper, Box 5.4). Funding affordable housing entirely through PGS, with no contribution required on site, by contrast, could halt the recent gains made by Government and local planning authorities in creating mixed communities of affordable and social housing alongside market housing.

32. CPRE is concerned that reducing the scope of Section 106 agreements should not hinder the provision of many community benefits, such as community centres and bus services, that are deemed by the consultation paper (Table 5.2, page 27) to be outside the new Section 106 framework. We recommend that the development of education and community facilities in rural areas should be exempt from PGS (see paragraph 16 above). We suggest that PGS revenues should be directed towards sustainable transport measures (paragraphs 17 and 23 above).

33. Section 106 agreements, however, have struggled to deliver significant amounts of affordable housing. As we point out in *Housing in England,* only 11% (or 16,737) of new dwellings built in 2004–05 were affordable, and many of these require some form of subsidy to keep them affordable in perpetuity. We agree with Kate Barker's argument that additional revenue to recycle needs to be combined with policies to promote affordable housing (Final Report, paragraph 4.4). A question which the consultation paper raises but does not address is whether PGS could be used to boost the supply of affordable housing. CPRE recommends that, if the scope of Section 106 is restricted as proposed in the HM Treasury consultation paper, there are stronger policies in the final version of Planning Policy Statement 3 for local authorities to specify the size, type and affordability of new housing, and/or a target of 50% or more affordable housing specified as policy by national Government.

34. The implementation of PGS and revised Section 106 should also be monitored to ensure that it does not result in a decline in the scale of resources going towards the provision of affordable housing.

Memorandum by the Labour Housing Group (LHG) and the Labour Land Campaign (PGS 30)

INTRODUCTION

The Labour Housing Group is a socialist society affiliated to the Labour Party. LHG is committed to ensuring that everyone, especially poorer and more marginalised sections of our society, has the right to a decent, affordable home with a right to choose between alternatives types and tenure of housing of equal status in sustainable mixed communities. One of LHG's long term aims is to break down the tenure demarcations that still influence social and economic inequalities.

The Labour Land Campaign advocates a more equitable distribution of land values that are created by the whole community, and is a voluntary group working for land reform within the Labour Movement.

Both organisations recognise the fundamental role of land ownership and supply in the workings of the housing market and the provision of new homes. We therefore welcome the government's recent interest in these vital issues and the opportunity to respond to the proposals for a Planning Gain Supplement.

In the context of the current housing crisis, almost all commentators agree that more housing needs to be built, and that land supply is an essential factor in increasing housing output. The Barker Review of Housing Supply, from which the current proposals emerged, summed up this analysis:

> 1.6 A key factor underlying the lack of supply and responsiveness is an inadequate supply of developable land. More land will need to be released or made viable for development, if housing supply is to increase.[17]

While we agree that a more responsive land supply is needed to deliver the new housing Britain needs we are concerned that the analysis presented by the Barker Review and promoted by the government is inadequate, and fails to fully understand the nature of the land economy and its role in the housing market.

Most importantly, the Review ignored the demand-side factors that drive unaffordable house prices, and therefore over emphasised the role of land supply and the planning system. Consequently the Review proposed a tax on planning permission, the Planning Gain Supplement, which is deeply flawed and may seriously reduce the supply of new housing and the infrastructure it depends on.

We urge the government to reconsider this proposal, and to look again at more long-term approaches to land supply, affordable housing and infrastructure provision.

Problems with the PGS Proposal

1. Failure to capture long term value uplift: PGS applies at only one moment in the history of a site. Land value accumulates over time as a result of many different factors, not just planning permission. The biggest increases in value as a result of public investment in infrastructure occur in the existing property market—none of which would be captured by PGS. For example, London's private housing assets rose by nearly £400 billion between 1994 and 2004. Almost none of this would have been captured by PGS.

2. Taxing users, not owners: as a development tax, PGS will be levied on those that bring land forward for development, not the landowners themselves. The assumption is that PGS will be passed back to landowners, but in reality such transfer mechanisms are highly imperfect.

3. PGS fails to address negotiating weaknesses: because S106 is still retained in the new system, albeit in a weakened form, the costs and delays associated with S106 negotiations will continue to fall on both local authorities and developers.

4. Lack of transparency and concern about where PGS revenues will go: it is not clear where the revenue raised from PGS will be allocated, nor how to trace the benefit of the PGS revenue to the community most affected by the development. Government have said most will "stay local" with some going to "strategic infrastructure". This fails to resolve the fundamental tension between keeping gains local, to incentivise authorities and communities to support development, and providing the necessary infrastructure to make new housing viable. Potentially, PGS could mean that value extracted from greenfield sites zoned for development is spent on inner city brownfield sites—resulting in local government becoming even more dependent on centrally collected taxes than is currently the case.

5. Failure to stabilise land prices: even if PGS does get passed on, leading to lower land prices, it will do nothing to reduce the volatility of the land market which is as much an obstacle to housing provision as high prices.

6. Failure to tackle affordability: the proposal assumes that PGS will improve land supply and that this will improve affordability. However, there is strong evidence that the UK housing market is highly imperfect, and that supply-side measures alone will not significantly effect affordability, especially in high-value regions.[18] The PGS proposals, combined with the package of reforms proposed for the planning system following the Barker Report, will not address the problem of the shortage of affordable housing, a severe problem in the South West and many rural areas including parts of Yorkshire, Derbyshire and Cumbria.

7. Inapplicability to brownfield sites: Barker designed PGS with greenfield development in mind—and examples of land value uplift from planning permission quoted by HMT tend to be of agricultural land released for housing. Recent ODPM land use change figures show that, in 2004, 72% of new dwellings were built on brownfield land—in London the figure is 95%. There are generally lower planning gains to be made on brownfield sites, and where brownfield land requires expensive remediation the uplift can be negligible. The PGS proposal therefore seems contrary to the government's policy of encouraging new development on brownfield land wherever possible.

The proposal to levy a lower rate of PGS on brownfield sites will not help: if there is little gain to tax the rate is immaterial.

[17] Kate Barker, *Delivering Stability: Securing our Future Housing Needs,* HMT 2004 p 12.

[18] Market Failure and the London Housing Market, GLA, May 2003.

8. Self Assessment Regime: commercial land valuation is complex, and there is always scope for the figures to be manipulated. Given this it is extremely unwise to rely on developers to self assess their own PGS dues.

9. Deterring development 1: all event taxes are distortionary and tend to deter the event in question. As PGS revenues would be paid at the start of development, but based on the land value when planning permission was granted, there will be strong incentives for developers to delay between getting permission and starting to build, especially in a rising market. Smart land taxes should incentivise development, not deter it.

10. Deterring development 2: event taxes must have long-term political credibility to be effective. Given the political climate at present, and the prospect of a general election soon after 2008, developers will stop building and wait a subsequent government to repeal the PGS. This is exactly what has happened three times since WW2.

11. Deterring development 3: even a small reduction in sites coming forward could drive land prices higher, making housing development more expensive and worsening land supply problems.

12. Cash flow: Levying a tax on developers when they start building hits their cash flow at the precise moment it is weakest, increasing the risk of failure in an already risky industry.

13. The future of Section 106. Although S106 is not without problems, and its application is highly uneven, over the last ten years it has become a vital source of affordable housing, mainly in conjunction with Housing Corporation funds. Scaling it back as proposed by Barker could undermine a key source of affordable housing.

Land Value Capture for Public Benefit

Gains from rising land values, as distinct from rising building values, are almost entirely unearned. As economists since Adam Smith have pointed out, this makes the rental value of land a good item for taxation, as it has no distortionary effects on behaviour.

Furthermore, one of the main drivers of land value is public investment in infrastructure and services, which increases the value of some locations relative to others. It is therefore reasonable and fair to expect those who benefit financially from public investment to contribute towards its costs. Yet at present, land value gains are mainly tax-free.

The Barker Review itself highlighted the extent to which land value increases return huge profits to land owners, and the fact that these gains are largely untaxed. For example, Capital Gains Tax, introduced for land sales by the Conservatives in 1973, ought to capture planning gain, but the extensive system of reliefs means that only £50 million was raised from CGT from agricultural land and buildings in 2000–01.[19] The exemption of principal private residences from CGT is worth an estimated £12 billion a year—a huge subsidy for an already overheated market.[20]

These tax subsidies are one of the key drivers of unaffordable house prices, as they incentivise excessive borrowing and create a climate of dependence on ever rising values.

While we welcome the government's willingness to explore tax-based policy measures to improve the supply of housing, it is important to consider the wider role of taxation in the housing sector. The proposed Planning Gain Supplement is intended to capture land value increases to fund public infrastructure and improve land supply, but has some fundamental flaws in its conception. Focussing purely on the moment of planning permission is an inadequate response to the complexities of the land market, and threatens to distort land supply even further.

Conclusion—Land Value Taxation and Housing: Alternatives to PGS

The Labour Housing Group and Labour Land Campaign believe that the government should be prepared to look at wider issues about land value taxation and ways in what we can ensure that enough affordable homes are provided for present and future generations.

While the principle of capturing land value gains to support housing supply and funding infrastructure for sustainable communities is sound, the Planning Gain Supplement as proposed is flawed and is likely to deter rather than encourage development.

Instead of taxing development through event taxes like PGS, the government should fully investigate the various tax policy levers that influence the supply and price of land and housing.

[19] Barker, 2004 p 74.

[20] HMRC, Tax expenditures and structural relief, December 2005.

Memorandum by the Town and Country Planning Association (TCPA) (PGS 31)

Introduction

The Town and Country Planning Association (TCPA) welcomes the opportunity to give evidence to the select committee on the proposal for a planning gain supplement. The TCPA puts social justice and the environment at the heart of the debate about planning policy, housing and energy supply. We inspire government, industry and campaigners to take a fresh perspective on major issues including climate change and regeneration. Its key objectives are to:

1. Secure a decent home for everyone, in a good human-scale environment combining the best features of town and country.
2. Empower people and communities to influence decisions that affect them.
3. Improve the planning system in accordance with the principles of sustainable development.

The TCPA campaigns for improvements to the places in which we live and strives for the best in the new communities of the future.

General Remarks

The TCPA welcomes the call for evidence from the select committee into the Government's proposal to introduce a planning gain supplement (PGS). It has long supported the principle of a tax on the uplift in land value created by the grant of planning permission (betterment) and is therefore particularly pleased that the consultation paper on PGS acknowledges the principle that "a portion of the wealth created by the planning system should be released for the benefit of the wider community" (Ministerial Foreword).

Previous attempts to capture land value have been reversed by incoming Governments. More enduring and successful applications of this principle over the hundred years or so of its advocacy by the TCPA have, however, included some very notable economic success stories. The capturing of value through land acquisition in the original garden cities and at Milton Keynes are two good examples. In addition the 1980s saw the successful operation of Development Land Tax (on which the PGS proposals make an improvement) in its latter form, until it was phased out in favour of Capital Gains Tax in 1986. (The Barker Review of Housing Supply adequately explains why CGT is an undesirable alternative.) Finally the operation of section 106 agreements today is highly successful in yielding an estimated £2.5 billion annual contribution to public investment made mainly by local authorities.

The argument of principle for a tax or charge like PGS is strengthened by the urgent need to find additional public resources for investment in the infrastructure and social and community facilities needed to enable essential development to proceed, particularly new housing and in the Growth Areas. PGS has the potential to be an effective and equitable way of raising a significant amount of additional revenue for these purposes.

Section 106 agreements currently achieve some of the aims proposed for PGS but we believe that PGS offers considerable advantages. It would, as a tax levied on all qualifying development at a set rate, be more predictable and transparent. It would assist developers by reducing the complexity and length of negotiations over individual developments. It would capture betterment not captured by S106, eg from smaller developments, developments with little or no adverse impacts or where local authorities lack the resources or skills needed to secure planning gain. It seems unlikely that the Section 106 system, however, modified, could capture as much betterment as efficiently as a system including PGS.

However we recognise that Section 106 agreements are a system with which local authorities and developers are increasingly familiar and that they can deliver important contributions towards the infrastructure, social and environmental costs associated with development. It is, moreover, a flexible system that tailors developers' contributions to the needs of particular developments and localities. It will be essential therefore that the combination of PGS and the reduced system of Section 106 agreements which is proposed delivers significantly greater benefits than the present system. And these benefits must be delivered at the right time and in the right places and be visible to local communities.

TCPA Position

The TCPA strongly supports the principle underlying PGS. It has, however, a number of concerns about the details of the proposed scheme, which are explained below, and it asks the Government to ensure that they are satisfactorily resolved in the final proposals.

1. PGS plus a scaled down Section 106 system must raise significantly more revenue (or benefits in kind) than the current Section 106 system but not to the extent of causing the withholding of land or jeopardising necessary development.

2. The revenue from PGS must be retained and used for the benefit of the area where it was raised. (This may include contributing to the cost of infrastructure or facilities which also benefit a wider area.)

3. The present level of contributions to affordable housing through Section 106 must not be reduced by the advent of PGS and ways of increasing support under the new system should be sought.

4. The allocation of PGS revenue should be sufficiently local, flexible and speedy to ensure that the infrastructure and other facilities needed in connection with specific new developments are provided when and where required, as happens under many current site specific Section 106 agreements.

5. In view of the scale of development planned for the years immediately ahead, it will be essential to put in place interim arrangements for financing infrastructure and other facilities in the period before PGS is fully on stream.

6. The proposals in the consultation paper should not preclude the use of other mechanism to capture additional betterment in appropriate cases.

The Factors Which Should be Taken Into Account in Determining the Rate of the Supplement and the Level at Which it Should be Set

The TCPA agrees that PGS should not be set so high that it leads landowners to withhold land. Setting it at a moderate rate is also likely to reduce the risk of the levy becoming a political issue. Were it to become so landowners might withhold in the hope that it would be repealed by a future government.

In our view the rate of PGS must be sufficient to make good the loss from cutting back the scope Section 106, cover its administrative costs and yield a substantial addition to the resources available for investment in infrastructure and other facilities. However, recommending what an appropriate rate might be is difficult in the absence of any reliable estimate of the yield from the current Section 106 system or, more relevantly, from the proposed reduced system of Section 106 agreements. We understand that the results of research into the current yield are due to published soon and would expect to offer a view on the appropriate rate of PGS then.

We are not convinced that there is a compelling case for having a lower rate of PGS for certain categories of development land, eg all brownfield sites or land in designated regeneration areas. We agree that PGS should apply to all use classes and any threshold for its application should be low, eg development of a single house and a correspondingly low value of commercial or industrial development. Differential rates of PGS, thresholds and exemptions, by reducing the yield of PGS, would reduce its cost-effectiveness and the amount of extra resources available for facilitating development, and should be avoided. Our reasons are set out in the annex.

How the Revenue from the Supplement Should be Distributed and Appropriate Uses

We are encouraged by the strong undertakings in the consultation paper that the "significant majority" of funds would be recycled locally for investment and that the "overwhelming majority" of funds will be recycled within the region where they arise. We welcome, too, the assurance that local authorities would receive a share of PGS revenue "at least broadly equal [to] estimates of the amounts [they] are currently able to extract from Section 106 agreements" and that they will be free to spend these as they wish.

The TCPA has insisted in its responses to previous consultations about Section 106 that any new arrangements must retain the close link between the places where the funds are generated and where there are spent. Visible linkage is essential in order to secure public acceptance of new development; it is also important to the political sustainability of PGS that the revenue does not disappear into the Exchequer but is seen to be used for additional investment related to development.

An objection to this local linkage is that areas with high land values will benefit from PGS much more than less economically buoyant areas. Whilst we think there is a case for some modest redistribution of PGS revenue within regions and favour the allocation system proposed in the consultation paper which would distribute the revenue locally according to an assessment of infrastructure needs rather than in direct proportion to where it was raised, we do not think that redistribution should be one of the main aims of PGS. Generally there is likely to be a fair degree of match between the amount of new development occurring in an area, land values (and hence PGS yield), and the need for investment in infrastructure and social facilities. Much of the PGS will be generated where it is most needed, including in those parts of the less prosperous regions where new development is occurring. Areas of low growth and development may not get a lot out of PGS, but other, specific mechanism exist for tackling their problems.

We think it is important that the assurances which have been offered about local linkage are given concrete form in the scheme which is implemented. None of the revenue from PGS should be used centrally, except possibly to defray the direct costs of collection, and the legislation should specify that it must be used locally. We agree "local" should include investment in infrastructure and services which are of benefit to a wider area—a sub-region or whole region—such as major roads, hospitals, flood prevention measures and sewage treatment plants.

An important objective of PGS should be that all local authorities are better off under it than they would have been with the current Section 106 system. (The consultation paper promises only that local government *overall* will receive more revenue.) This requirement must be built into the detailed arrangements for distributing PGS revenue.

The chances of PGS being used locally might well be improved if local authorities played a part in its administration alongside HM Revenue and Customs, as the consultation suggests. However, it is desirable that the envisaged role in enforcement is not allocated to planning staff, both because they are already severely overstretched and because there would be potential conflict of interest with their statutory planning duties.

Account will need to be taken of the special circumstances relating to rural exceptions sites for housing. Under this policy sites in small villages which would not normally receive planning consent for residential development are allowed to be used for social housing on condition that Section 106 agreements are entered into to ensure that they are retained in social housing sector in perpetuity. By this means sites are available for social housing at well below the cost of open market housing land. If this policy is to be able operate after the introduction of PGS residential development, the calculation of liability for PGS must take account of the restricted nature of the planning consents and the much lower planning value which results.

How the Supplement Should Reflect Subsequent Uses such as Social Housing

The TCPA agrees that value of contributions to the provision of affordable housing under current Section 106 arrangements must be safeguarded. If, as proposed, these contributions continue to be raised via site specific Section 106 agreements it will be important to ensure that the rate of PGS is not set so high that landowners/developers are unwilling to contribute at current levels to affordable housing.

Consideration should be given to the option of collecting additional contributions to affordable housing via a higher rate of PGS rather than solely through Section 106 agreements. The intention would not be to obtain larger contributions to affordable housing from those developments which already contribute but to spread the net more widely, thus raising more revenue in total, and to simplify the process. Section 106 contributions for housing will continue to be important particularly on larger sites where they often take the form of land, which simplifies land acquisition and helps to achieve mixed communities.

Whether and, If So, How the Planning Gain Supplement Should be Used to Encourage Development of Brownfield Sites

The Government has other mechanisms for encouraging the development of brownfield sites and is having a high degree of success in doing so. Similarly it has a range of well funded programmes for promoting regeneration, which are also achieving a good deal of success.

Many brownfield sites are financially attractive to develop; and where the return is lower the value uplift from development will be smaller resulting in a smaller PGS liability.

Brownfield development usually gives rise to requirements for new infrastructure and facilities and it is equitable that it should make a financial contribution towards the costs.

However other brownfield sites, particularly those that are contaminated, remain uneconomic to develop at all without the injection of public funds to make them ‘development ready’. If a proportion of PGS revenue is to be available for national spending priorities then it would be appropriate for Government to invest further in the clean up of contaminated sites alongside the introduction of a PGS.

The Potential Impact of the Supplement on S106 Arrangements Negotiated Through the Planning System

Concern has been expressed quite widely that PGS will reduce the linkage between provision of infrastructure and services and site development which Section 106 agreements provide. The worry is that PGS revenues will not be available in the right places at the right times and that development will therefore be slowed up or even prevented. This is because PGS will have been levied automatically by a bureaucracy outside the development process and funds fed into a central pot and re-allocated through a potentially quite complex system.

This danger can only be avoided if the administrative arrangements for collecting and distributing PGS are decentralised, flexible and efficient; and this means inter alia that they are properly resourced. These arrangements need to be meshed in with arrangements for determining local investment priorities and planning and delivering the investment in step with development. Undertakings by Government about what percentage of PGS revenue would need to be returned to the local authority where it was generated are urgently required.

Transitional Arrangements

There is an urgent need for additional investment in infrastructure and other facilities associated with development. Without this the Government's aim of increasing the supply of new housing to 200,000 units a year will be jeopardised. However, the consultation paper says that PGS will not be introduced before 2008, and its full revenue yield is not likely to be achieved until several years after this.

The Government must find ways of increasing the resources available for infrastructure during this interim period. There are several options for doing this. The recently announced cross cutting review to ensure that departmental resources are targeted to support future housing growth should result quickly in re-prioritisation of the relevant Government programmes to this end. Second, the Government should support the use of strategic Section 106 agreements to help fund important developments, for example on the lines of the Milton Keynes " infrastructure tariff" and encourage local authorities to seek rather higher contributions from developers than hitherto where the uplift in land values seems to justify this. Third, once PGS has been enacted and the details are clear local authorities (and possibly other providers of public facilities and services) should be able to borrow against expected future PGS revenue. Specifically infrastructure schemes on which major housing developments depend must be progressed as and when any PGS is brought in.

Complementary Mechanisms

The proposed combination of PGS and a scaled down Section 106 agreements should be capable of capturing considerably more betterment than at present. As emphasised above, it will be important that the combined impact of the two mechanisms does not cause withholding of land or a slowing up of development. Nevertheless we believe that there will sometimes be circumstances in which it would be possible to use other mechanisms as well to capture a further share of betterment for the community.

Such action is most likely to be justified where the uplift in land values is expected to be very large, eg the building of a new community on predominantly agricultural land, the redevelopment of a long vacant city centre site or where the public sector is shouldering substantial risk (such as in difficult regeneration projects or where major infrastructure investment is needed). Mechanisms which can be used in such cases include the advance acquisition of land by public authorities, not-for-profit development trust or public/private partnerships so that more of the value uplift resulting from the planned development and future growth of values accrue to the community. There is a case for exempting public bodies and charities from liability for PGS.

Conclusion

The TCPA strongly supports the principle underlying PGS and believes this proposal for a PGS should be considered further and could, if the above concerns and considerations are addressed, provide a successful means of securing for the community a share of the increased land values which are brought about by the activities of society and funding sustainable new communities. The purpose of a PGS to fund infrastructure and through this to assist the Government in meeting its housing delivery targets should remain central.

Memorandum by Bedfordshire Councils Planning Consortium (PGS 32)

1. The Factors That Should be Taken Into Account in Determining the Rate of the Supplement and the Level at Which it Should be Set

We agree that there should be a tax on the profits of the uplift in land values and that it should be fair and transparent as there are often differences between councils as regards the amounts of planning gain that different councils get. Councils are often struggling with resources and the support and back up of expertise so that a clear and transparent tax can be applied. This will make it much easier for developers to understand the situation and process planning applications and for the local communities to keep their character and to benefit from the new development.

We believe that obtaining the maximum revenue from development should not come at the expense of sustainable development.

The tax should be used as a tool to encourage sustainable growth within the framework of other government policy. It should be used to promote development in lines with PPS1 paragraph 13 section 1. "Development Plans should ensure that Sustainable Development is pursued in an integrated fashion, in line with the principles set out in the UK Strategy" and the UK Strategy for Sustainable Development, Securing the Future" March 2005. This will require the tax to be applied within a framework of other clearly defined requirements such as energy efficiency to the "Ecohomes Very Good Standard", accessibility by public transport, green infrastructure and social infrastructure. This means that National Planning guidance and Regional Planning guidance should include standards on energy efficiency in homes, and accessibility by public transport and green infrastructure. When there is a clear framework through the planning system, then the Planning Gain supplement can easily follow and support it. The use of brownfield before greenfield should definitely be encouraged by the tax as suggested in Box 1.1. There is a clear example in the village of Cranfield, where a greenfield site has been built on before a brownfield site, despite local opposition. There should also be encouragement through the tax to build houses close to facilities and to jobs in order to reduce the need to travel as laid out in PPG13.

2. How the Supplement Should Reflect Subsequent Uses Such as Social Housing

There is a serious concern about affordable housing overall but especially in rural areas. We are very concerned that box 5.4 says that affordable housing should be covered by the remaining 106 agreement after the planning gain supplement has been taken. At present affordable housing uses up most of the planning gain from the present 106 agreement, so it would be impossible to fund affordable housing from 106 agreements after the Planning Gain Supplement was taken.

It was agreed by developers, councils and environmental organisations at the Examination in Public for the MKSM SRS in 2004 that it would be impossible for developers to pay for affordable housing and the other required infrastructure. There is considerable need for an increase in bus-based access to new estates and to and from villages, there is a need for more doctors, dentists, hospitals, green infrastructure and social infrastructure. There is a problem with producing the money to pay for all of this even with the Planning Gain Supplement. Milton Keynes has a very successful record of getting money from developers and is indeed quoted in the consultation, however they have experienced a serious shortfall in their funding for infrastructure and the East of England Regional Assembly suspended their support of the East of England Plan as they did not believe that there would be enough money for infrastructure. We are also concerned that Lord Rooker's previous assurances to the East of England Assembly that "no infrastructure meant no development" has now been "refined" by Baroness Andrews' paraphrased reply to EERA (Regional Planning Panel report 6 February 2006—EERA Meeting with Baroness Andrews, Growth Areas Minister—16 January 2006) to read "the Government recognised the difficulties to be overcome in delivering higher rates of growth and was working hard to ensure that there would, in the future, be a range of mechanisms, including the new planning gain supplement to overcome these known difficulties" There is a serious shortage of funding and though Planning Gain Supplement can help, it does not solve the shortfall in funding.

We believe that the provision of affordable housing should not be linked to the building of large-scale developments. This is particularly important in rural areas where young people want to live in the villages that they grew up in. The character of the village would be destroyed if a large-scale development was built, but the building of affordable housing for local people and supporting local employment and access to jobs by other means than cars could revitalise rural communities. In "Sustainable Communities, Homes for All" January 2005 it says" one of the definitions of "Sustainable communities is "Thriving with a flourishing and diverse local economy" This is where money from the Planning Gain supplement could be used to support and encourage a rural economy and village life. However, the PGS cannot cover the needed rural housing. Homes For All also states that "The Housing Corporation is funding 4,000 homes in rural areas by 2006" paragraph 3.36.

It is crucial if the social capital of villages is to be supported that there is funding for affordable homes direct from the Housing Corporation, for the people who have grown up in the village. This funding for Affordable houses should not be linked to money from development.

We also believe that affordable housing in towns should not be linked to development and should be funded separately. If this is the case then Planning Gain Supplement can be used to enhance the whole local area by providing vital infrastructure so that local people can see benefits to their community from the new growth, and also be used on a more national scale. We believe that affordable housing should be funded by the Housing Corporation not by the Planning Gain Supplement and by section 106 agreements. This will practically mean that there will then be enough money from PGS and section 106 agreements to provide the hard and soft infrastructure to support decent sustainable communities.

There are serious issues about affordable housing on a national scale. There are concerns that although the Government has doubled investment in social housing that the stock of social rented accommodation is still falling. We note that in "Sustainable Communities, Homes for All" published January 2005 it says in paragraph 2.11 " More new social homes are now being built, but sales of local authority and housing association properties mean that the total stock of social housing is still falling" and in Paragraph 1.22 "But Right to Buy does not work for everybody and it is expensive for the taxpayer, since 1980 we have lost 1.7 million council homes and 100,000 housing association homes." There is a serious need still for a step change in the provision of social rented accommodation in all areas and PGS is not enough to solve it.

There are problems in the North of the country in the provision of affordable housing as the attitude of developers is there is such a low market that they are lucky to have any developers and therefore the smallest amount of affordable housing.

Planning gain supplement will only be a creditable tax if it can help fund infrastructure for local communities. Affordable housing should be placed where it is needed and should be planned by the councils and should not be dependent on the developer.

3. How the Revenue From the Supplement Should be Distributed and Appropriate Uses

Box 1.3 states that PGS revenue would be dedicated to local communities. However, there are questions about the size of the local authority. Would the PGS go to the regional authority or would it go to the local planning authority such as Mid or South Bedfordshire District Council, or to a county council. There is a serious need to increase and protect local infrastructure and it is important that the money is seen as coming back to the local community. There will be a need for new schools, learning and skills colleges, hospitals, green infrastructure, and good public transport to increase accessibility and to support the economy. It is important that town centres are supported. This will need the money to be used at a local level. Strategic infrastructure is often used to mean roads and there are fears that Planning Gain supplement will be used for this rather than promoting a safe efficient means of transport for all. We support the views of Kate Barker that 10% of all planning gain supplement should be spent on green infrastructure. However this is a minimum that is needed to protect and create green spaces.

We strongly support most of the Planning gain supplement being used for local need. However, there is a potential that the PGS taken in the South could be used to support development in the North as a form of taxation to make the North more attractive.

4. Whether and If So How the Planning Gain Supplement Should be Used to Encourage Development of Brownfield Site

We believe that in all cases that brownfield land should be built on before greenfield. In this way the centres of towns will be preserved and it will prevent situations like the Homefarm development of around 400 homes in Cranfield, where a greenfield development was chosen over a Brownfield development, against the Inspector's recommendations.

5. The Potential Impact of the Supplement on the s106 Arrangements Negotiated Through the Planning System

The section 106 agreements will only produce limited funds and this could mean poorly designed housing. It is crucial that building standards are not a voluntary code, otherwise councils will be forced to choose between energy efficiency and therefore the affordability of the houses as regards living expenses and maybe environmental quality and biodiversity. Although there is need for flexibility for different areas and characters, it should be made easy for councils to insist on eco-homes and get environmental standards in the design overall along the lines of the TCPA document "Biodiversity by Design". The Environment Agency in the East of England are stressing that there has to be an increase of 25% of water efficiency otherwise there are serious questions about water provision. Yet at present this is left to councils and developers to enforce. For the remaining section 106 agreements to be successful, there have to be clear targets on energy and water efficiency and on green space and biodiversity otherwise some important factors that are needed for Sustainable Communities could be sacrificed due to lack of funding.

Memorandum by English Heritage (PGS 33)

1. English Heritage is the Government's advisor on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 to help protect England's historic environment and promote awareness, understanding and enjoyment of it.

2. Although English Heritage does not have a direct interest in how increases in land value created by planning permissions can be released more effectively to help finance infrastructure provision, there are aspects of the implementation of planning-gain supplement on many types of planning permission that will have an impact on the historic environment, and it is for this reason that English Heritage is making a submission.

The Context

3. English Heritage welcomes the chance to raise concerns about Planning-gain Supplement, because we are aware that there are many cases were planning permission is given for a site containing elements of the historic environment, and the uplift in value that the permission brings can be used by the owner against the costs of repair of the historic entity which will give that element of the historic environment a sustainable future.

4. The issues that English Heritage wishes to raise fall into two parts. Firstly, there are the consequences of activities and policies on the historic environment. Secondly, there is the extent to which the historic environment's ability to contribute positively to the creation of growth, that meets the government's objectives aim of sustainable communities, could be impaired by the measures that are proposed in this consultation.

5. English Heritage can see merit in the broad objective of recouping the uplift value that is created when planning permission is given, especially when applied to brownfield or greenfield sites of little existing value whose value suddenly rises dramatically if residential development permission is granted, to provide for community infrastructure.

6. We see that outside this fairly specific development situation, the increase in value of the site helps offset the costs of developing that site. For instance, when the site contains either listed buildings and/or scheduled ancient monuments, and could be covered by conservation area or Registered Park and Garden designation, then the repair or enhancement of the heritage artefacts are likely to add substantially to the development costs.

7. This may arise in the case of a site in a historic town centre whose regeneration is vital for that town and community, or a site containing a single, large listed building, or a site containing a listed building at risk, where allowing an element of enabling development may secure the future of that building. All these situations could become unviable to develop if PGS is applied.

8. One of English Heritage's greatest areas of concern are listed buildings at risk of being lost through decay and neglect (BARS). Over the last fifteen years English Heritage has invested considerable sums, firstly to survey all the higher grade listed buildings in the country (those at Grade I and II*—some 40,000) and assess their condition, reviewing it annually, then to work with the relevant local authorities to secure improvements to the condition of the buildings in poor condition. We have also carried out a similar exercise with Scheduled Ancient Monuments (some 20,000).

9. Much of the work of resolution of the problem of the funding of expensive repairs and the finding of a use that generates income sufficient to maintain the historic structure revolves around consideration of new uses and/or enabling development on adjoining land. So it is not just the listed/scheduled assets in a redevelopment site that might be more vulnerable if PGS was levied, because they could be seen as the additional cost to the development that make it unviable. The listed or scheduled structure could be standing on its own, and need a new use or an extension that means they could be put into a use that gives the building a sustained future, but the viability of any scheme could be undermined by PGS. In the case of enabling development, the size of development required would have to be larger to pay for the cost of PGS.

Detailed Comments

10. Planning obligations under Section 106, have, from our observations, been a mixed success, not always providing all the funding needed for infrastructure that developments need to be fully sustainable communities, or sufficient funds for the complete restoration of historic environment features on the site. But we are far from convinced that PGS is the answer. We watch with interest the "roof tax" model of tariff being trialled by Milton Keynes and Ashford, and suggest that an early review might show if this is a better way to raise the funds needed to provide all the infrastructure needed to make new residential developments into sustainable communities.

11. Planning-gain Supplement (PGS) appears to be liable to be paid on all but the smallest residential development, with uplift, the taxable element being calculated by the developer and then submitted to the local valuation office for confirmation. Uplift is the value of the unencumbered vacant freehold interest of the whole site at the time planning permission (PP) is granted minus the current use value before PP but assuming that the site has no development or improvements that can be carried out without some form of consent. This figure would then be multiplied by the PGS rate to get the amount of tax due.

12. It is not clear who is liable to pay the tax, the original owner or developer or both? It is also important to be clear when the tax is liable, on the date when full PP was granted (or the last reserved matter on an outline PP was granted) or on the day before development actually starts, that is when a contract for the development is let and a start date agreed and the finance is in place.

13. We can see that PGS was obviously designed for the town expansions where Greenfield land was being developed for hundreds of houses and PGS could be off the rise in value from farmland to land with PP for residential development. Here the case for PGS is at least relatively clear.

14. But it is possible to cite two common cases where PGS could stall development. One would be a town centre redevelopment, involving site assembly and a very unclear situation as to whether unencumbered vacant possession would ever be obtained, but if it was the uplift from partially occupied site to fully vacant site with full PP could be huge. But this could remove a lot of the money needed for complex development costs and any developer's profits from the scheme. So the scheme might never go ahead.

15. The other could be a public building, built for a specific use, and possibly *sui generis* (in a planning use class of its own), such as a fire station. It might well be a listed building of great historical importance to the local community, now not able to be used for its original use due to technological advances and bigger

fire engines. Here the local authority might want to retain freehold but sell the leasehold to a tenant, say a firm of architects, getting them to apply for PP to get change of use to office and pay for the refurbishment, then occupy the building for a rent free period in lieu before paying full rent. Here the building's existing value must be zero, if it is a fire station that no one wants, and the value shoots up when PP is granted, all of which will be liable for PGS. So this practical way of bringing buildings back into use would be more difficult because no one would want to do this sort of deal in the future. If the council themselves apply for PP then it is unclear that if they then started the development, would they be liable?

Conclusion

English Heritage has serious concerns about the effects of Planning-gain Supplement if levied as the consultation paper suggests. Whilst there may be a desire to capture part of the increase in land value created by planning permission and release it to help finance the infrastructure needed to stimulate growth and build sustainable communities, it is likely that the side effects of making many regeneration schemes unviable, particularly those involving elements of the historic environment.

Memorandum by The Royal Institution of Chartered Surveyors (RICS) (PGS 34)

1. Factors Which Should be Taken Into Account in Determining the Rate of Supplement and the Level at Which it Should be Set

We do not accept that the tax should be assessed on the full difference between planning permission (PV) and the current use value (CUV). Some allowance should be made for disturbance and an incentive that a landowner would require before selling to a developer. We suggest that 120% of CUV would be reasonable and would have the further benefit of excluding *de minimis* cases.

Further discussion should take place between the VOA and RICS to ensure that the interpretation of market value is the same for both parties. Although it has not yet been stated what definition of market value will be used, we assume that the intention is to use the definitions found in Capital Gains Tax and Inheritance Tax Legislation. Whilst these definitions have been used for many decades, their judicial interpretation may provide a loophole in Planning-gain Supplement (PGS) as they allow the valuer to reflect the possibility of a special purchaser. This may be relevant where the land to be developed is an amalgamation of several sites and we comment on this later.

We believe that it is important to maintain an incentive for sites with small marginal development gains to be developed. To achieve this, calculations should be based on the development gain rather than the potential sale price. Of the possibilities for the payment point for PGS, we urge that consideration is given to the point when land is transferred from landowners to developers and on disposal or occupation of the completed development.

The proposal to adopt values immediately before and after the grant of full planning permission, which is to be followed by the start of development, is problematic. The definition of full planning permission is when all reserved matters are settled. It is not uncommon for some reserved matters to be outstanding when development starts, and even to be outstanding when the development is almost completed.

The proposed PGS structure is based on the premise that the valuations are made before development starts, whereas they could be made some time after when the valuation would include the development itself.

This could be overcome by making the valuation date the earlier of the grant of full permission or the start of development, but this still leaves the undesirable consequence of the valuation and payment dates, as proposed, being the same.

We favour the valuation date being in advance, so as to enable the tax payment to be known before development commences. Perhaps a date when planning permission has been granted which enables development to commence could overcome the problem.

We stress that there is a real need for the PGS liability to be established before development commences. Without this, uncertainty reigns and this could well result in development being deferred or abandoned. This is particularly so where a funding body requires certainty as a pre-condition for advancing funds.

This requires a system for crystallising liability after the grant of planning consent but well before the start of development. Although the valuations are to be provided on a self-assessment basis there will need to be a mechanism for early agreement with the VOA of values returned. It has been suggested that this places an unacceptable resource burden on the VOA and HMRC and that possibly "hard charging" would be a solution. We are completely against "hard charging" as it would create a wholly unacceptable precedent in UK taxation. We would also remark that, as the aim of the PGS regime is said to be the encouragement of development, it is incumbent on HMRC, ODPM and the Treasury not to seek to impose a system, which has the opposite effect. In any event, the VOA will need to consider the returns at some stage, so there would be little additional burden created.

The definitions of value planning gains used in the Treasury consultation document are clear and broadly in accordance with the relevant parts of the old Development Land Tax regime. They do not, however, make allowance for acquisition and other costs incurred prior to planning permission being granted which means that PGS could be payable upon a profit not realised by the developer or landowner. Third schedule rights to rebuild should be included within CUV, which would tie in with planning compensation and compulsory purchase provisions. Further, when allowing for development within the General Permitted Development Order (GPDO) 1995, any Article 4 Directions should be disregarded.

Since the assessment of site value is an imprecise science, further consideration should be given towards making the notification well before the intended start date of the development. The taxpayer should be given the right to discuss disputed valuations with the VOA, with a view to agreeing the valuations and hence the amount of the PGS. Such an operation is unlikely to create resource issues for the VOA if all self-assessments are not to be checked.

Previous attempts and sophisticated avoidance mechanisms to impose a tax on development value have all foundered due, largely, to a lack of political consensus driven by public unpopularity. As a result, it follows that a tax which affected relatively minor domestic improvements and extensions would be unlikely to attract either political consensus or public support. The PGS should only therefore focus on larger developments. Adopting 120% of CUV would eliminate minor domestic and some other development.

The practice of due diligence on a purchase should ensure that the necessary information is available to the chargeable person on the condition of land at the grant of full planning permission.

Although the approach of assessing PV and CUV on the basis of "an unencumbered freehold interest with vacant possession in the whole of the site covered by the planning permission" seeks to minimise the scope for avoidance, it does not provide protection for lesser developers who are faced with unreasonable taxable sums. Moreover, this definition does not provide guidance on building leases where developers are trying to avoid/retain Capital Allowances held on long ground leases with a "low" ground rent. PGS must be an allowable deduction when computing Capital Gains Tax.

In addition, it should be recognised that not all development is carried out by professional developers. For example, a tenant may obtain a change of use. Say that the tenant of a warehouse with a few years to run on the lease obtains planning permission for use as a retail warehouse; the assumption of freehold in possession would grossly overstate the planning gain to the tenant.

An important consideration here is that many transactions will involve property subject to, or held under leasehold interests. Apart from the intrinsic unfairness of seeking to value gain based on an artificially assessed uplift it renders unusable the best evidence of value in the transaction, where the development is not to be carried out by an owner occupier, that is the actual sale price achieved.

Consideration should also be had to the impact of this approach on extensions to commercial premises proposed by leaseholders with medium term leases and the right of renewal. In these cases the developer/leaseholder seeks to increase the space available and, hence, profitability rather than to trigger a capital development gain. It is probable that the imposition of a PGS charge will render this type of development uneconomic. It is also probable that in many cases this type of development would not attract a section 106 charge although it would be subject to planning tariff charges.

As PGS is payable on the whole project at the start of development, there could be an adverse and even prohibitive impact on viability. Clearer guidance is needed for development, which takes place in phases, particularly where phase 1 comprises infrastructure works, such as Canary Wharf. At present, the developer is unable to set these off against tax on future phases. The issue of assembling sites, where acquisition costs exceed CUV with an element of disturbance, also needs to be addressed.

As PGS is potentially payable upon a profit not realised by the developer, further guidance is required as to how account will be taken of developers who acquire key interests unconditionally and before planning permission is granted. If no account of this is taken, then it could prove to be a serious hindrance to such development. Consideration of charging PGS at the point of the sale or leasing of the land should also be contemplated.

2. How the Supplement Should Reflect Subsequent Uses Such as Social Housing

For administrative reasons PGS would be better focused towards only large-scale schemes, with small schemes including minor changes of use, subject to the existing Section 106 arrangements (paragraph 4.7). Although such an arrangement would create distortions and provide scope for fragmenting projects so as to try to avoid PGS, it does provide a means by which the Valuation Office Agency and Local Planning Authorities will deal with 325,000 PGS references each year.

The threshold at which the PGS may be set is arbitrary but permitted floor area or numbers of dwellings are logical tests (paragraph 4.8). Further research could reveal the level at which a large proportion of relatively small schemes applied for would fall out of PGS. As a small-scale development could produce a relatively high level of value, a value threshold would probably be required as an alternative test. An alternative test is required in any event to cover change of use development.

The inclusion of a sensible *de minimis* limit would allow both public and political acceptance to develop (paragraph 4.9). This could be met by adopting 120% of CUV or excluding from liability a certain amount where the tax payable is small (say, £50,000 if the tax rate is 20% ie an uplift in value of £250,000). A tax-based *de minimis* limit would allow for national application without undue distortion. It would also effectively take out of PGS most residential or home improvements, but would still capture most redevelopment projects.

A reliable means to assess whether or not an increase in value has arisen needs to be identified as well as whether or not this increase has derived from the planning consent or the development itself. To identify whether or not thresholds have been designed in a way that will encourage small business developments, more research is required. Precision will be required when assessing business development and analysing low density developments where the number of units falls just under the threshold at which the developer has to provide affordable homes.

There are a number of other ways to address this problem, including:

- Levying a tax on one housing unit upwards with a commercial threshold of possibly 200 square metres or more or an extension of around more than 20%/500 square metres if less.
- Using a relatively inflexible PGS for nationally or regionally funded infrastructure, coupled with a more flexible section 106 which would be applied to specific local infrastructure.

The issue of whether relief or exemption will be provided for charities and similar organisations needs to be addressed. If relief were provided in these situations then developers would not need to offer lower values for these properties, as they would not be required to pay the supplementary charge at the point that development commences.

As a final point, compulsory purchase orders should be considered in order to support the Government's Balanced and Sustainable Communities agenda. These represent the only way to secure the enhancement to land values accruing to private land-owners arising from public sector investment.

3. How the Revenue From the Supplement Should be Distributed and Appropriate Uses

The PGS scheme must provide certain infrastructure necessary for a particular development to proceed. If this is not achieved by the planning obligation system then the Local Planning Authority should be able to stipulate to HMRC those items, which will have to be provided to enable planning permission to be granted. HMRC then needs to allocate such funds.

Clarification is needed on the mechanism that will be used to return revenue to Local Authorities. The two principal options for this are as follows:

(i) To recycle a proportion of PGS revenues back into the local community in proportion to the revenues raised. This could be provided through a revised Community Infrastructure Fund or through increased involvement of government bodies such as the RDAs or Government Offices. However, this would have the disadvantage of removing the clear link between the development benefits and the benefits to a local community.

(ii) To use grants to Local Authorities based upon factors such as the amount of development proposed. The drawback of this approach is that it may increase the time it takes for local authorities to get access to the revenues raised. This problem could be especially acute if Local Authorities were required to forward fund infrastructure and requires further research.

If PGS funds are to be paid to Local Planning Authorities, it needs to be clarified whether this will be on a case-by-case basis or an annual basis. It also needs to be established whether the level of funding will differ according to the level of funds received and development brought forward, or whether PGS will be fixed at the level of contributions that the LPA currently receives.

The inability of low value regeneration to finance infrastructure needs to be addressed by the consultation. We believe that it is likely, based for example on the evidence of the high costs of delivering infrastructure for predominantly greenfield development in Ashford and on the evidence of the reductions in public spending that urban regeneration brings, that urban regeneration is the most cost effective way for the public sector to provide new housing. However, PGS revenues from urban regeneration will be nil. It is therefore imperative that there is a clear mechanism to channel funds from PGS into the regeneration locations where housing can be most cost effectively provided in terms of public investment even if these are outside the region in which the revenues are raised. Further explanation is required as to the means by which infrastructure will be put in place in order to encourage development and how the developer will be able to initiate discussions as to the likely PGS well before the start of development.

At the regional level, PGS revenues could be used to fund strategic infrastructure by means of an agreement between the LPAs and the Regional Government Office. Efforts should be made to simultaneously agree the approach with other regional authorities such as the Highways and Environment Agencies.

Local and regional stakeholders should be able to assist in the determination of strategic infrastructure priorities by means of the planning obligation system. If this is not possible, the Local Planning Authority should be able to stipulate to HMRC which items are necessary for planning permission to be granted and should then allocate funds accordingly.

The Local and Regional Development Plan should continue to be the mechanism by which consultation on housing is undertaken. This will ensure that the process remains democratic although there is scope for further stakeholder involvement by means of wider consultation with the Local Strategic Partnership and the preparation of Area Action Plans, Planning Briefs and so on.

4. Whether and, If So, How the PGS Should be Used to Encourage Development of Brownfield Sites

If brownfield land is to be given preferential treatment, then a more detailed definition of what is meant by this term will be required and an incentive for the prevention of rural dereliction and the provision of affordable housing will be needed. A low rate of tax in these areas may result in similar or even greater off site infrastructure consequences than for other sites but may also serve to inhibit development in lower value, non-brownfield areas where development may need grant aid. Any concessions to encourage development on brownfield land should apply equally to Designated Disadvantaged Areas.

A distinction needs to be drawn between contaminated land or land in need of expensive remediation works. It is probable that much of the land falling into these categories will face PGS at a lower rate, as there will be little or no uplift in PV due to inherent costs.

5. The Potential Impact of the Supplement on S106 Agreements Negotiated Through the Planning System

Any change to the section 106 agreement should be fair and transparent as well as ensuring that certainty for those involved in the planning process is maintained. The introduction of PGS may necessitate a scaling back of section 106 agreements and the removal of discretion from local planning authorities in determining priorities.

A relatively inflexible PGS should be used for nationally or regionally funded infrastructure, coupled with a more flexible section 106 for specific local infrastructure. Although such an arrangement would create distortions and provide scope for fragmenting projects so as to try to avoid PGS, it does provide a means by which the Valuation Office Agency and Local Planning Authorities will be able to deal with 325,000 PGS references each year. The revenue raised from the PGS should be allocated with the majority recycled directly to the local level. This will ensure that Local Government overall will receive more funding than through section 106 agreements.

A final issue arises in the possibility that some large schemes will have to guarantee the provision of major infrastructure and offer this at the same time that the planning application is determined. Accordingly, the PGS system might effectively be double taxing the scheme, with section 106 obligations used to secure some of the very elements, which PGS apparently seeks to provide.

Memorandum by the Royal Town Planning Institute (RTPI) (PGS 35)

Introduction

1. The Royal Town Planning Institute (RTPI) is the professional body for planners. It has over 19,000 members working in every aspect and sector of planning. The RTPI's members are at the forefront of securing agreements under section 106 and of striving for the achievement of sustainable development. The RTPI is a learned and a learning body and, as seen below, has had a long involvement in the whole question of betterment. More recently, it has put forward suggestions in 2000 for a tariff-based approach to address some of the problems of the current system.

2. The RTPI fully supports the concept of, and need for, using the changes in the value of land in order to provide the infrastructure to support the creation of mixed and sustainable communities and to achieve sustainable development. Over 65 years ago, a Town Planning Institute Committee on Compensation and Betterment concluded that "we are satisfied that essential planning and, particularly, re-planning cannot be carried out effectively under the existing legislation regarding compensation and betterment". As the White Paper on "The Land Commission" [Cmnd 2771, September 1965] pointed out, "there is no novelty in proposals to secure for the community at least a share in the values it has itself created. An Act of 1427 sought to recover increases in the value of property attributable to public expenditure on works for sea defence . . .".

3. It is one of the key shortcomings of the current planning system that, despite a number of attempts, no satisfactory system of capturing value has been implemented. The RTPI, therefore, very much welcomes the fact the current Government is keen to devise an acceptable, workable and effective system to achieve this. All the comments we make below should be read within the context of a clear acceptance of the principle of using land or development value to support sustainable development.

4. Additionally, these comments should not be taken as indicating a belief that the current system of Section 106 agreements is fully effective either in raising the necessary funding in all cases or in delivering effective and transparent decision making and certainty. However, there is evidence that this system is starting to work more effectively at a time when the Government intends to scale back its operation.

The RTPI's Position

5. Whilst the RTPI wholeheartedly accepts the principle behind the proposals for Planning Gain Supplement (PGS), we do not believe that the approach set out will achieve the objectives for PGS as set out in 1.14 of the consultation paper. There are seven main reasons for this:

- It is not certain that significant additional revenue will accrue.
- The proposed PGS scheme appears to break the link between the infrastructure[1] needs of a community that are generated by a new development and the provision of that infrastructure before the development commences.
- It is not clear how money derived from PGS will be distributed in practice—not least in relation to devolved administrations—nor, consequently, how transparent PGS will be.
- There is the danger that those communities most in need of infrastructure investment, particularly those with failing markets, will lose out to those with development pressure—with a consequent "overheating" of the local economy for the latter areas.
- The proposed scheme appears to have been written with a green field development model in mind. This makes it less relevant given that, for example, 67% of housing is built on brown field sites.
- The retention of affordable housing within s106[2] as opposed to within PGS, albeit understandable, may have adverse effects on the achievement of this key aspect of Government policy.
- There are a number of more detailed criticisms related to the methodology set out for valuation, which may lead to uncertainly, delay and a failure to deliver. In this context, it needs to be borne in mind that previous attempts at capturing and returning the uplift in value[3] failed not only because of political differences between administrations but because of their complexity and difficulty in delivering the objectives of those schemes.

Each of these issues will be dealt with in turn, below.

Notes:

[1] In the context of this paper, "infrastructure" is taken to relate to such aspects of sustainable communities as health, education, social services, recreation, environmental protection, community facilities and affordable housing as well as physical infrastructure such as transport, drainage, utilities and flood defence.

[2] "s106" is used here to denote planning obligations agreements in order to follow the usage in the consultation document. It is recognised that other legislation applies in devolved administrations and the difficulties posed by a consultation that relates a UK tax solely to an English system are covered in this response.

[3] The Town and Country Planning Act 1947; the Land Commission Act, 1967; the Community Land Act, 1975; and the Development Land Tax Act, 1976.

Additional Revenue

6. One of the main rationales for introducing a PGS is that it will lead to an increase in funding for necessary infrastructure. The RTPI fully supports this aim. However, in practice, it is not certain that such revenue will accrue at levels that will make the introduction of this tax cost effective. There are a number of reasons for this, some of which are covered in the points below. These include the fact that on brown field development there may well not be an uplift in value when remediation is taken into account. Secondly, one element which contributes a significant proportion of existing s106 related expenditure—affordable housing—is not included within the PGS regime. This fact appears to preclude affordable housing from benefiting from any additional funding raised through PGS—in effect the contribution that development can make to affordable housing will remain the same as it currently does under the s106 regime.

7. Additionally, developers will rightly take a pessimistic view of the value of land following a planning permission when the longer term prospect for property markets is uncertain. They may well be able to demonstrate little or no uplift in value for a development. Fourth, PGS payments may be treated as an allowable business expense for tax purposes—thus potentially offsetting the yield from other taxes. In addition, s106 payments will be taken into account in determining the final value for PGS and, therefore,

the amount of "new" resources entering the system need to be offset by those already gained through the existing system. Finally, there must be a tension between the desire to set a rate of tax that will bring in additional funding and one that is low enough not to deter development and not to encourage developers to land bank to a greater extent than now happens.

The Link Between Infrastructure and Payment

8. In seeking to limit the operation of s106 to a "development-site environment" approach, there is the danger that elements of infrastructure required to both make a development financially viable and, importantly, to enable it to contribute to the creation of sustainable communities will not be delivered for that particular development.

9. The Section 106 system that operates currently can be seen, basically, as a contract between a developer and a local planning authority (LPA) with the authority agreeing to deliver certain elements of infrastructure, to which the developer has contributed, within a certain time. Many authorities will return the developer's contribution if that contract is not fulfilled. It is hard to determine from the details in the consultation paper how such a direct relationship between payment and delivery will exist under PGS.

10. Some elements which contribute to the creation of sustainable communities, such as education and health provision, will be provided by PGS rather than s106. Without a clear means of identifying how PGS revenue will be returned directly to fund those elements, it will be impossible for a contract for delivery to exist between a developer and an LPA. It will also make it very difficult for an LPA to require that all or part of a scheme is not started until certain elements of infrastructure are in place. It will be doubly difficult in some cases as the financial payment is not made until the development starts.

11. This lack of direct link between the developer and the provision of infrastructure will also make it much harder for a development to be acceptable in terms of an Environmental Impact Assessment. Currently, developers can mitigate or obviate adverse impacts by providing or funding ameliorating actions or developments, such as provision for public transport. Unless there is a more direct link between payment and delivery then it will not be possible to demonstrate conclusively that impacts identified in the assessment will be addressed.

The Distribution of PGS Revenues

12. There are four main issues relating to the distribution of revenues back to local areas, The first—the relationship between PGS payment and the infrastructure required for a particular site, has been covered above. The second relates to the geographical distribution, the third relates to the distribution in respect of a "shopping basket" of infrastructural needs and the fourth relates to timeliness.

13. On geographical distribution, the consultation paper states that a "significant majority" of revenues will be returned to the local level and an "overwhelming majority" will be recycled within the region. This somewhat confusing statement is further compounded by a more recent statement by the Minister for Local Government and Communities that "the majority of funds will be spent at the local level, with the rest to be spent in the sub-region". The re-distributive mechanism is at the heart of making a workable infrastructure funding system and it is regrettable that the consultation document is uncertain on this.

14. The consultation paper is silent on an extremely important aspect of geographical distribution—that relating to the devolved administrations. As the tax is payable to HMRC, it is a national tax. There is no indication of the role (if any) of devolved governments in influencing, or playing an active role in, the re-distribution of this national tax. This omission is compounded when planning agreements are considered. This is a devolved responsibility and, for example, the Welsh Assembly Government is currently considering reviewing the operation of s106 in Wales. The situation could arise where a national tax regime is predicated on changes to legislation (5.15 in the consultation paper) which may not apply in devolved areas.

15. Equally important, is the way in which the distribution of revenue will relate to the requirements of local and regional areas in terms of infrastructure. The consultation paper is silent on this although it is understood that recipients could include health trusts and others as well as local government. There is the need for local authorities working in partnership with utility and infrastructure providers and adjoining and regional authorities, to draw up investment plans for the infrastructure needs of their areas. Many already do so through local planning and regional planning processes but the possible introduction of a PGS will require that this is put on a more substantive footing. There is a strong case to be made for local, regional and national spatial investment plans to be drawn up as documents which form the basis of bids for PGS funding. This gives added weight to the RTPI's long standing calls for a spatial development framework for the United Kingdom—indeed it is hard to see how PGS could operate effectively without this.

16. The final element in relation to distribution is timeliness. It is recognised that the taking of the revenue at the point at which development is started is necessary in terms of the cash flow of a development. However, this means that the funding for necessary infrastructure is not available in advance of the development for which it is required. It may be assumed that local authorities and others will establish infrastructure funds which may draw in other sources of funding—such as the Community Infrastructure

Fund. However, in terms of the funding of a flow of infrastructure projects, the timing of revenue collection will mean that the element of such a fund which is derived from any additional PGS derived money will always be in debt to itself and will require pump priming funding from elsewhere.

17. An added complication arises when developments are necessarily phased but where the infrastructure need relates to the overall completion of the development rather than simply to the first phase. In this case, there will be no certainty that subsequent phases will provide the levels of revenue required but it would be inequitable for the "pathfinder" development to have to provide a significant proportion of overall funding requirements.

Effects in Different Market and Geographical Situations

18. PGS is promulgated as a national tax but is one that will impact in very different ways in different geographical and market situations. It is clearly built on a model of development on a greenfield site in an area with growth pressures and it is relevant that the table of uplift in values (paragraph 1.10) shows uplift from mixed agricultural land. Currently, in England, only 33% of housing development follows that model. The reality in many other cases is one where a site without permission (or even with permission) will have a negative value taking into account the need for remediation or where the uplift in value is low as the Planning Value itself will be low. The consultation document does not make it clear how PGS will benefit local areas in such situations.

19. In such cases, the role of infrastructure investment will be to stimulate markets rather than service them or to help to turn existing communities into sustainable ones. If, however, there is little revenue accruing through PGS because of no, or limited, uplift in value, then those areas that can be in most need of infrastructure will not receive funding for it through PGS. Rather, PGS may be seen as adding fuel to potentially overheated local economies through continued investment in such areas. This tax can, therefore, be seen as being potentially regressive.

20. In order to counter this, there does need to be some element of the revenue diverted for strategic infrastructure investment in areas which would benefit from it. This may be done through "top slicing" PGS or through taking PGS revenues into account in determining the regional allocations of national spending. Otherwise, PGS could be a deterrent to the regeneration of run-down and deprived areas.

21. The Government is considering having different rates of taxation on greenfield and on brownfield sites. It is worth looking at the extension of this differential rate approach to different uses in order to encourage a range of uses which would contribute to sustainable communities by reducing tax rates on those that may be desirable in planning terms but less attractive in commercial terms. This may include types of use, such as individually owned shops as opposed to chains, which planning does not currently have the ability to control.

22. Additionally, it is clear (see PPS1) that one of the purposes of planning is to create high quality development. It is not certain how PGS will affect those developers who wish to invest in a greater quality of development in ways that may not necessarily be reflected in the final monetary value of the scheme.

Affordable Housing

23. The logic behind keeping affordable within the s106 arrangements is recognised—both that the provision of affordable housing needs to be related directly to a site if mixed communities are to be achieved and that payment will most often be in the form of land or stock rather than a payment. However, the exclusion from affordable housing from PGS could have two detrimental effects. First, it is not stated in the consultation document whether some of the revenue from PGS will be used to support affordable housing in addition to the resources gained through s106, by for example including the Housing Corporation as a recipient of revenue or through returning to the equivalent of Local Authority Social Housing Grant. If this is not to be the case, then the opportunity to support the delivery of a key Government agenda will be lost.

24. Secondly, s106 agreements for affordable housing are only meant to relate to residential developments above a threshold. PGS is to apply to all types of development with a very low threshold set. There is a strong case for requiring commercial development to contribute to the development of the types of housing that many workers will need in order to staff that particular development.

25. Taking both these concerns, it is necessary for re-consideration to be given to the relationship between PGS and affordable housing—even if a key funding route remains s106 agreements—so that the development of affordable housing can benefit from the PGS regime.

Detailed Aspects

26. It is not necessary to go into detail on some of the more specific aspects of the proposals in the consultation paper as we consider that the case against the scheme suggested has been made above. However, while we welcome the fact that the Supplement would be payable by all types of development and that the threshold for payment is to be set as low as possible, we have concerns over other detailed aspects including the difficulty in assessing a value before permission—particularly on green field sites—and in separating out those elements of the uplift that can be attributed to a specific permission being given.

27. The greatest uplift in value may occur at outline planning permission stage but the paper is not clear at which point in the permission process the value is assessed. This fact, combined with the point at which the tax is collected, still allows for a market in land to take place without permission being implemented. There are also concerns—already expressed in broad terms above—about where the line should be drawn between "development-site environment" infrastructure and that falling under PGS. For example, flood defence is listed as being within the new scope of s106 rather than as suitable for funding by PGS.

Alternative Approaches

28. Given our strong support for the principle behind these proposals, the RTPI is very keen to work with HM Treasury, the ODPM and HMRC to develop proposals that will overcome the concerns about the current proposals set out above. One clear basis for further thinking is a tariff-based approach and we set out further thinking on this below. However, it is also worth considering both extensions to existing mechanisms, including s106 and Capital Gains Tax and more fundamental suggestions including examples from abroad such as Tax Incremental Financing and the Irish Republic's system of Development Contribution Schemes which is embodied in their Planning and Development Act 2000. The RTPI would be pleased to prepare further evidence on alternative approaches and includes an example of one approach at the end of this section.

A Tariff Based Approach

29. The RTPI fails to understand why a tariff-based approach was not included as part of the proposed approach—or even one of the options—in the Consultation Paper. Whilst the consultation paper states reasons for rejecting this option, we do not consider these to be robust.

30. Five years ago the RTPI issued a policy paper on Planning Gains and Obligations [December 2000—http://www.rtpi.org.uk/resources/policy-statements/2000/dec/pol20001202.pdf] which stated that: "the Institute proposes a new look at policy, which rejects antipathy to formulae but rather directs itself toward the development of a tariff or scale based approach where a balanced and well-planned development can be secured best by developer contributions to infrastructure."

31. The RTPI statement went on to specify that, "the foundation of a scale, or tariff based, approach should be the development plan. This should: set out the basic policy for the approach and should clearly incorporate the tariff expected and, wherever practical, set out on a spatial basis the "area by area" requirements for the provision or renewal of infrastructure in new developments, including redevelopment of previously developed areas."

32. Given this, the RTPI very much welcomes the approaches being taken in Milton Keynes, Peterborough and other areas in adopting a tariff-based approach. We recognise that that the situation in such growth areas—with significant pressure for, and acceptance of, growth, an analysis of the infrastructure needs created by development and an ability to deliver housing in significant trenches—is not replicated in many other areas. However, there are elements of such an approach, including the certainty that it brings to the development process and the transparent nature of both payment and infrastructure requirement, that need to be incorporated into any further proposals to capture value uplift.

Land taxation

33. A more far reaching approach could stem from a recognition that there is a fundamental difference between land values and uplifts in value created by the grant of planning permission. In the planning Acts the definition of land includes buildings but in the law of economics it does not. Classic economic theory states that land is simply the natural resource upon which all human activity depends. In economic terms buildings and development are capital.

34. Economic principles state that if the cost of producing goods (eg development) and services is increased then supply will be reduced. Thus if the cost of the charge is applied to development, as is proposed through the PGS, it will have the effect of reducing the supply of new development. In contrast to this, if the charge is applied to land (in its economic sense and not its planning sense) it will not have the same adverse effect. This is because land has no cost of production—it simply exists as the natural resource. In addition it is also fixed in supply indicating that a charge on land cannot reduce the supply.

35. To improve the situation, in this model, it would be necessary to split the value of property (and proposed development) into their separate land (the natural resource) and capital (building) elements and amend the existing property taxes—the business rates and council tax—so that the charge is moved away from the building element of property value to the land element.

Conclusion

36. The RTPI strongly supports the Government in the actions that it has taken to try to find a mechanism through which some of the increment in value created through the planning system is used to fund the infrastructure necessary for sustainable communities and development. For all the reasons given above, however, we feel that the proposed scheme for achieving this will not have the desired effects and could, in some circumstances, work against their achievement. We urge the Government to work closely with all those involved in the creation of sustainable development to devise another system that is acceptable and effective and which meets the Government's own objectives. The RTPI is very keen to be part of the process that leads to the identification of such a system.

Memorandum by the Football Association, Rugby Football Union, Rugby Football League, England and Wales Cricket Board and Lawn Tennis Association (FA RFU RFL ECB LTA) (PGS 36)

Introduction to Our Organisations

The FA, RFU, RFL, ECB and LTA are the National Governing Bodies for five of the major professional and participation sports in the UK. We all share valuable experience of managing or supporting tens of thousands of playing fields, sports pitches and facilities around the country.

We are submitting a joint response to this inquiry as we feel that the Committee will benefit from one clear submission from sport. This is also appropriate as all of our five sports share similar views on the Planning Gain Supplement (PGS) proposals.

Our governing bodies recognise the case for reform of the current sI06 planning regime, and welcome many of the proposals set out in the consultation. However, we are concerned that there is no specific reference to sport in the consultation. We have two key concerns with the current proposals:

1. It appears that community sports clubs would be liable to pay PGS for improving the club's facilities to extend their use into the local community.
2. There is little certainty that sport and physical recreation would receive a fair share of revenues accrued from the PGS.

Therefore, our short response deals broadly with our views on:

- The factors which should be taken into account in determining the rate of the supplement.
- How the revenue from the supplement should be distributed and appropriate uses as set out in this inquiry's terms of reference.

Determining the Rate of the Supplement

The proposals under consultation state that PGS would apply to "both residential and nonresidential development". They do not suggest any exemptions, for (eg) Community Amateur Sports Clubs, not-for-profit organisations, social enterprises or for developments which will provide a significant benefit to the local community. This would create a situation where a sports club which develops facilities to make an enhancement to local infrastructure provision, gets taxed to pay for enhancements to local infrastructure provision. This is obviously a perverse application of the principle of taxation.

It also seems counterproductive that developments funded by sports governing bodies or affiliate organisations through their own or Government/Lottery funding should be subject to this sort of levy.

Our recommendation

A specific exemption from paying PGS for all community sport planning developments. We recognise that there should be exclusions to this exemption, including:

- Community sports club development with no benefit to local community sport users (such as a club building houses on its land).
- Professional sports development, which may or may not have some associated community sport benefit.

Therefore, we seek an exemption for all developments which:

- Are undertaken by a Community Amateur Sports Club.

— Are undertaken by a sports National Governing Body or not-for-profit organisation at a site which has some community sporting use.

— Are funded using Government or Lottery money (where matched funding with industry applies, the exemption should still remain, otherwise sport's ability and motivation to obtain matched funding would be drastically reduced).

How the Revenue from the Supplement Should be Distributed and Appropriate Uses

We are concerned that there is little certainty that sport and physical recreation would receive a fair share of revenues accrued from the PGS, to be spent on local facilities and services.

As we understand the Governments proposals, money accrued from all PGS levies will be "recycled" in the local community, either directly or through a regional allocation. However, it is not clear in the Governments proposals that any amount of this funding might be ring-fenced for specific services, such as sport and physical recreation.

Furthermore, experience shows that when various sectors are competing for their share of similar funds, education, health and other "major players" tend to receive the highest priority. The current proposals also suggest that investment of PGS revenue may only go to fund capital investment in facilities—however, for sports projects, investment in revenue services (such as coaches or groundstaff) is needed to ensure that those facilities are well used.

Therefore, while we welcome the PGS as a broad improvement on s106 agreements, we remain concerned that it appears much easier for local sports provision to be a condition of a new development under s106 than it would potentially be under a PGS regime.

Our recommendation

There must be regional and local structures in place to ensure that a fair proportion of PGS revenues is allocated to sport.

We recommend that the investment of PGS revenues is split into two distinct funding streams, local and regional. We believe that the PGS from smaller developments (of say less than 10 houses) should be reinvested directly into the local area under criteria derived at a local level, whereas PGS from larger developments should go into a regional fund to be reinvested within a nationally-agreed framework.

We recommend that the framework ensures that 12% of all PGS revenues were ring-fenced for investment in sport and physical recreation at a regional level (this is the level set by the flagship Milton Keynes Partnership Committee prospectus, which is used as a case study in the Governments consultation). It is possible that this revenue stream could act as matched funding for the Governments investment in grassroots sport through some form of dedicated fund.

The local fund would also need to take into account sports needs at a local level, although we believe that it would be unnecessarily burdensome and problematic to impose a formula for this investment on Local Authorities.

Memorandum by the Association of Play Industries (API) (PGS 37)

1. Section 106 money is an important part of funding for play area provision and it is vital both for the industry and for the local residents that this funding stream continues. It does seem that the space provided on many new developments for play provision is not the most suitable for the purpose, but perhaps the least suitable area for use for housing. Planning policy could consider this aspect of the provision—not simply from monetary terms but also from the use of space perspective.

2. At present the negotiations that are carried out between developers and local authorities to establish the amount of 106 for a particular development seems to be prolonged and complicated so perhaps a set procedure would be beneficial and create clarity for all parties.

3. Section 106 should be charged on all developments—industrial as well as residential.

4. Our general preference is to see the entire 106 money go to local level, not into a communal budget and then re-allocated, in order to ensure there is no dilution of funding for local projects, as the importance of Local Development Frameworks cannot be overlooked, particularly as these provide for consultation and local input processes.

5. Whilst it perhaps easier for local authorities to simply require the developer to provide a play area and leave it to the developer to commission a playground, this does not necessarily create an area compliant with standards or containing suitable equipment. The play area should be considered as part of the overall provision in a locality and therefore is better managed by the local authority rather than the developer.

6. Decisions relative to the use of funds need input from local level. We believe local people know what is needed for their community, and are best placed to comprehend the impact of a new development on the resources and facilities of the existing area.

7. In some parts of the country, local communities have embraced the government's Town and Parish Plan procedure, thus providing researched local information to District Council level. This local level planning and knowledge should be embraced within the system.

8. It is essential that 106 funding is an additional resource for a local area—to provide additional facilities required as a result of a development—and not a replacement for funding that should already be allocated by the local authority. We are aware that in certain instances not all of the funding is used for the provision of play areas. However, we are not aware of the proportion utilised for other amenities and facilities.

Memorandum by the Historic Houses Association (PGS 38)

Introduction

1. The Historic Houses Association (HHA) welcomes the opportunity to give written evidence to the ODPM Select Committee on the subject of the Planning Gain Supplement, proposed in the Government's consultation paper launched on 5 December 2005. HHA's 1,500 UK members own and manage two thirds of Britain's built historic environment, listed Grade 1 or 2*. 500 or so of their houses and gardens are open to the public (more than the open properties of the National Trust, English Heritage and their equivalents in Scotland, Wales and Northern Ireland, combined). These welcome 15 million visitors per year, contributing significantly to the economy, culture and education of local communities and the nation alike. The future of this unique heritage depends upon conservation of the fabric of these properties and that in turn depends upon their economic viability. Many are part of integrated rural estates, generating jobs and incomes, as well as income tax, NI and VAT revenue in the countryside. These businesses evolve and develop—the countryside must adapt and change, or die—and thus HHA is well placed to speak on proposals that will have a widespread and deep effect on the prospects for sustainable rural properties, economies and communities in the future.

General

2. Many HHA members with rural businesses would contest whether a Planning Gain Supplement (PGS) would improve upon the current regime, in which development in the countryside is already subject to various levies—principally Capital Gains Tax, Business Rates and section 106 agreements. The last of these in particular has been used increasingly in rural areas to recycle the benefits of planning gain within local economies and communities. HHA Members will also recall that the Government has, in the last 10 years at least, sought to encourage developments with a view to achieving greater diversity and volume of employment in the rural community through grants from Defra, notably following FMD, EU Area 5b, RDAs etc and will question how PGS can sit logically with this still-current support for certain developments.

3. However, we do not disagree that communities should share more broadly in the planning gains that flow from consents for residential development and this submission responds to the proposals for a PGS in that context. At the same time, we argue that the relative small scale and locality of many rural development projects merit the retention of s106 agreements as a better way to promote regeneration, affordable housing and social inclusion in rural areas. In our view there is, accordingly, a strong case for a de minimis level, below which planning consents would remain subject to the existing s106 procedure, rather than being included in the PGS, whose purpose after all is to ensure that the bigger development projects can be adequately supported with the necessary infrastructure. By contrast, the transfer of planning gain away from these areas by the operation of the PGS and/or the adverse consequences of PGS on development projects where land is not sold, would run counter to the Government's rural policy objectives and undermine the ability of rural communities to support themselves. This would have negative consequences for incomes, government expenditure on unemployment and social benefits and on social inclusion. These points are taken up in paragraphs 9–11 and 15 below.

4. In addition, much will depend upon:

— The rate at which the PGS is introduced.

— The degree of certainty that the Government gives that this rate will not be increased in future.

— The assurances that the Government is or is not prepared to give that the whole of the revenue raised from the PGS will be recycled to the locality from which it was collected, and that the whole of the revenues will be recycled to infrastructure at all. It is stated in the consultation paper that the aim of a levy is "to ensure that local land value uplifts benefit local communities and support efforts to expand housing supply" (paragraph 1.13, page 7). By page 17, the commitment has been qualified: "the Government's commitment to ensure that a significant majority of PGS revenues would be recycled to the local level" (paragraph 3.16). The fear exists that, either straightaway or in time, the PGS revenues will not be recycled to the local area from which they came. There is also a fear that part of the PGS revenues will be retained by the Treasury for other uses, and that the PGS will become a tax to support general and nationally determined public expenditure. In that case there would be an increasing shortfall in the provision of the necessary infrastructure funded by the PGS, compared to what would have been the case under the alternatives of a revised s106 regime or a locally based tariff/charges regime, unless the Government raises the PGS rate to cover the shortfall. In the HHA's view, the PGS should not be used to support the Government's general expenditure, but should be used entirely for infrastructure provision, and should be recycled to the locality from which it came.

5. HHA therefore looks to Government to confirm:

- The rate at which PGS will be levied.
- That this rate will not be increased for at least 15 years.
- That all the revenues from PGS will be recycled to infrastructure and will not be used for general Government expenditure.
- That the revenues will be recycled to the locality from which they were collected.

6. If such confirmation were to be given, the logical conclusion, in our view, would be for Government to adopt a locally based tariff or charge regime, rather than a centralising PGS regime. If the Government is unable to make the assurances above, it would rather suggest that the Government's intention is indeed to centralise the collection and allocation of funding of infrastructure for major development projects and to transfer planning gain benefits away from the smaller communities that need them. It would also suggest that the Government is not ruling out raising the rate in the foreseeable future and/ is retaining the option to use PGS as a tax for its general expenditure. We believe that the Government should now make clear its intentions.

Specific Questions in the Consultation

7. Before commenting on the specific questions in Chapter 7 of the Government's consultation, we raise the issue of the scope of the PGS, described in Chapter 4, page 19, which is of considerable importance to integrated rural estates and the local communities and economies they support. The Barker Review of Housing Supply recommended a PGS on residential development and no doubt had in mind the majority of residential development projects where the land is sold to the developer. We make two points at this stage. The first is that in rural integrated estates it is common, when redundant farm buildings are developed, for the ownership of the land and those buildings to remain with the estate. The consequences of application of a PGS to this situation are explored below, mainly in relation to the development of buildings for commercial uses. But it should also be noted that when such buildings are converted for residential use they may also be retained within the estate's ownership, to be let rather than sold.

8. So there are two ways in which these proposals will damage the ability of rural integrated estate businesses in particular to remain viable: through the levy of PGS on residential conversions for let, not sale, and through the levy of PGS on conversions for commercial uses, for let not sale.

9. Unlike the Barker recommendations, this consultation includes commercial development as well. This means that planning consents for the conversion of redundant farm buildings into business lettings, workshops and other commercial uses would be subject to the proposed PGS, even though in a great many cases, as explained above, the land and buildings for these conversions are not sold. The consequence is that rural business owners will be taxed on a planning gain that has not crystallised except in the form of higher rents, which are, of course, already taxable as income and are rateable. This is both inequitable and impractical, and it would be unreasonable of Government to expect all owners automatically to sell this developed property (commercial or residential). On the contrary, the long-term investment of rural businesses in such developments is essential to the future prosperity of the countryside as a whole, and the business manager is likely to be best placed to undertake that investment.

10. Any forced sale of such property to pay the PGS would, furthermore, undermine the viability of the business itself, and the ability of owners to maintain the built historic environment, manage the land and provide employment. How could those who did not sell be able to generate the cash needed to pay the PGS? Under current circumstances, after such developments are finished and opened, the lettings become subject to higher rents and business rating, increasing the revenue base for local government. In addition, the s106 procedure gives the local authority the opportunity to seek benefit for the local community from the planning application in the first place.

11. For all these reasons it is critical that the PGS is not levied on consents where the property remains in the same ownership and the planning gain is not realised in a sale. It needs to be considered further whether the best way to achieve this objective is by a general exemption from the PGS when the freehold of the property is not sold, or by a more specific exemption for rural areas or developments below a certain level of PV. In either case it could be provided that the existing s106 procedures would continue to apply, so enabling a realistic level of planning gain benefit to be enjoyed in the locality.

12. There should also be an exemption from the general terms of the PGS in relation to affordable rural housing, ie housing made available at below the market rate, either in the renting or shared equity markets, as a result of land being gifted or sold at below market price for this purpose. To calculate the PV as if the land were to be sold for open market housing would render affordable housing schemes in rural areas impossible. The PGS should be waived in the case of affordable rural housing schemes, definable as those to which a s106 affordable housing condition applies.

13. We raise two more particular circumstances; the first of these is the use of enabling development to provide the funding for maintenance of historic properties, Grade 1 or 2* buildings, historic parks and gardens. The more that is taken for PGS either the more development will be needed—which may not be possible in a rural setting—or the less maintenance can be achieved. There is therefore a case for exemption from PGS for enabling development, ie where there is a relationship between the net gain from the development and the funding requirement for ongoing maintenance and repair of the historic property.

14. The second is where the development is to a historic property itself, Grade 1 or 2*, owned by a private individual or a charity as a dwelling, or to a building within the curtailage of such a historic building used as a dwelling. Thus we consider that a listed building consent for a property such as Chatsworth House should be exempt from PGS, because what is being considered is not development of the type envisaged within the consultation and needing new infrastructure, and because development of a historic property is heavily constrained by the listed building consent granted. Development of a building as a new tea room, or educational facility, within the curtailage of the house, similarly would be exempted, for the same reasons. However, development of a listed building where large scale commercial development was intended, such as St Pancras Hotel, would not be exempted from PGS, because the purpose of the development and its effect in terms of value and infrastructure need, was essentially different.

15. The HHA's views on the specific questions in Chapter 7 of the consultation paper (to which the question numbers below refer) are given below. We comment only on those questions which we consider raise issues specific to historic houses and gardens.

Q3.1 Payment of PGS should occur no earlier than commencement of the development. Earlier payment would entail developers/landowners having to borrow the funds for PGS against the uncertainty that the project would be undertaken. The earlier the payment point in the process, the greater the uncertainty and risk and the more unreasonable the provision would be. Ideally, any PGS should be payable at the point where the actual gain has been crystallised on completion of the development and sale. Market conditions may change and so affect the value and therefore the Supplement during the development process, which could last for many months.

Q4.1 If a reduced rate of PGS were to be charged on brownfield land, there should be a review of the definition of brownfield, to include redundant farm buildings. Otherwise it is hard to see why one level of PGS should apply for some previously used land and another for other previously used land. A differential rate should not be needed in so far as the costs of developing brownfield land should be reflected in the valuations. In rural areas some limited development on some greenfield sites is both desirable and unavoidable, eg small scale housing or commercial developments in villages, and it would be inequitable for this to be penalised relative to brownfield sites, through the PGS.

Q4.2 Such a threshold would enable the benefits of planning gain from small developments to be recycled locally. In rural areas many housing and commercial developments are small scale and so such a threshold would have particular relevance there. The value of small rural developments and their acceptability to the local community can be enhanced through the current S106 regime. Small developments also tend to be less complex in terms of land holdings and thus more easily embraced within the S106 process (whereas it is agreed that S106 agreements for large scale projects can be difficult to the point of being unnecessarily costly in proportion to the benefits of the project). The threshold might be set in terms of the PV (value of the property after the granting of planning consent). A housing development is more likely to reach the threshold than a purely commercial one, but that is acceptable in that housing developments are more likely to involve realisation of the planning gain through sale. Nevertheless, the threshold should be set above the level of relatively small scale housing developments, which should be subject to S106 procedures so that planning gain benefits can be enjoyed locally. Otherwise the balance in small settlements between the benefit to the developer and the new resident on the one hand and the village on the other will be lost, and popular resistance to any new development will lead to stagnation in rural communities.

Q5.1 The planning obligations that will continue to exist under the proposed "scaling back" of S106, as set out in Table 5.2, page 27, could still be substantial, and taken together with the PGS, could represent an overall increase in the charge on developers. The Government should make clear whether its intention is indeed to raise the overall take from development or to keep it at existing levels, but reallocated through the PGS. If an increased "take" were combined with the prospect that not all the PGS revenues would be recycled to infrastructure, then developers would see that the underlying purpose of the PGS was to raise the level of taxation for general expenditure. The above militates in favour of a tariff or charge approach, rather than a centralised PGS approach, so that it can be transparent that the purpose of the take is genuinely to fund infrastructure where it is needed. Even so, the case for an exemption for small developments, coupled to the retention there of the existing S106 approach, remains.

Q5.2 See comments on 5.1 above.

Q6.1 See comments above. If the Government does not opt for an exemption in the case of small developments, then the revenues from PGS could be recycled to local areas in the way described in Chapter 5, Box 5.1, page 23, but with the proviso that the Government would undertake to recycle all these revenues and not retain for itself (and other purposes) a proportion of the PGS revenue raised.

Memorandum by the City of London Corporation (PGS 39)

Introduction

1. The City of London Corporation, acting through the Court of Common Council, is the local planning authority for City of London. The City's interest in the planning system extends much further than the way it impacts on the amenity of the area. The planning policies it adopts have a significant effect on the international competitiveness of the City. An important part of the City Corporation's functions is to act as a facilitator in the development process, ensuring appropriate developments come forward from whatever source with as much ease as possible. The City Corporation is also a major landowner, both within and outside the City boundaries, with extensive experience in developing major schemes in its own right or acting as joint venture partner with some of the UK's largest property companies.

2. In order for the City to maintain its status as a world city and to enable it to continue to attract international business, it is of paramount importance that a continuous supply of high quality developments is maintained in order to offer a range of options to suit the varied and changing needs of businesses.

General Comments on the Proposed Planning Gain Supplement

3. The proposals in the Government's consultation paper appear to have been formulated on the basis of residential development in greenfield situations and do not appear adequately to take account of the far more complex circumstances surrounding commercial development in central urban areas, particularly in central London.

4. The proposals appear contrary to the workings of the market in assuming that increases in land value are simply attributable to the grant of full planning permissions. Changes in value are determined by supply and demand factors and are affected not just by the grant of permission, but also by the likelihood of that consent or the prospect of other changes in use, changes in construction and financial costs, relative attraction of other investments, as well as market demand. These and other factors vary over time and have to be projected over the period of the development until value can be realised. It is suggested that the wider use of a locally-based tariff system, similar to the one already in place in the City, could better serve to meet local needs and provide greater clarity and speed for developers.

5. Kate Barker's analysis was that in most cases the developer would pass the cost of the Planning Gain Supplement (PGS) back to the landowner "through lower prices bid for land". Such an assumption ignores the market reality that landowners have a "do nothing" option and could hold out for a higher price to be bid in the future. PGS could in practice, therefore, result in the reverse of the intended consequence and reduce rather than increase the flow of sites released for development. A consequence of this might be a freeze on the property market with adverse consequences for the UK in terms of business efficiency and its international competitiveness.

6. In June 2004, the City of London adopted Supplementary Planning Guidance on Planning Obligations. This document sets out the thresholds when planning obligations will be sought, a planning obligation guidance figure, the main types of benefits that will be sought and their relative importance and the processes involved. This has made the process more transparent and has increased certainty and clarity for developers. Increased resources and growing standardisation are enabling agreements to be dealt with increasingly efficiently and effectively and planning agreements are starting to deliver the provision of appropriate infrastructure linked to local need.

7. The consultation document gives no indication of the level of revenue that would be generated or the scale of revenue required to provide the infrastructure that has been identified as falling outside the scope of new planning obligations. The definition of the scope of matters outside planning obligations appears to be overly simplified and does not take account of the urban situation, for example, no reference is made to transport infrastructure other than bus services. It appears questionable whether the PGS revenue would be of a sufficient level to provide the same level of infrastructure achieved through funds obtained by the operation of the existing system. For example, in the City of London there have been two schemes where, under the existing planning obligations system, the developer has committed to significant railway/underground station improvements.

8. In addition, there is likely to be a time gap before any PGS is introduced. Encouraging and reinforcing the s106 opportunities for local planning authorities is necessary in the interim period. Uncertainty in the property market would be removed if the current s106 payments were reinforced rather than subjected to threat of change by the PGS proposals.

Valuing "Planning Gain"

9. There are potentially serious consequences from applying a simple theoretical model developed for residential development in greenfield situations to the far more complex and sophisticated circumstances surrounding commercial development in central urban areas such as the City of London.

10. A definition that uses points in time in the "before and after" valuations appears flawed. It is difficult to determine accurately a value before planning consent is granted because there is always the prospect, or hope, of a consent for the site. This will inevitably increase the value of land prior to the grant of full planning permission, particularly where there is a planning framework which encourages appropriate development. Attempting to define this "hope value" is not a simple process as it would differ from site to site and from authority to authority.

11. In the City of London context, valuing a site (usually encumbered with an existing building and thus providing a realistic "do nothing" option for the owner) just before the full grant of consent, which could be several months or more after the planning committee's resolution due to s106 negotiations, and then just after the grant, could show only a minimal or even a negative difference in value. The value of the site will have changed constantly during the planning process, not just at one specific moment. The changes in value will not have simply reflected the growing certainty of the final planning outcome, but will reflect much wider market supply and demand factors. Indeed, many City planning applications are approved at a time when the scheme's key purposes are unviable. It is often the anticipation of future changes which the developer has to consider. Current top rents in the City (£45–£50 per square foot) would not justify many redevelopment schemes unless favourable terms had been negotiated with a pre-let which anticipates future growth in rents. City office schemes take two to three years to deliver to the market and rarely can be divided into phases. This should be contrasted with residential developments where units are released more quickly and in phases over often shorter timescales.

12. Actual valuations are the only realistic basis for assessment in the central urban redevelopment context. There are major variations between sites in the City in terms of site constraints, archaeology, rights of light, service provision and other factors. Average valuation applied across arbitrary boundaries would be meaningless. Furthermore, the assumption that value is based on an unencumbered freehold interest is not realistic in urban districts; in the City much title is long leasehold and it is often the case that a developer will have no title interest in the land.

13. There may be further significant impacts on large brownfield regeneration sites where the assembly of several smaller sites is required to form a larger area for development. It should be made clear whether the "before" valuation would be the aggregate of the individual properties comprising the site or treated as a whole, which presumably the "after" valuation will be. In these situations, some vendors will hold out for ransom values in selling a site which is intended to form part of the bigger area, and it would not be fair if the tax is then based on a hypothetical existing use value. Consideration should be given to what would be done regarding properties acquired to complete the site after planning permission is achieved, when the vendor will expect to see the grant of planning permission reflected in his sale. It is not clear what would happen if there are arrangements attached to the sale that trigger further payments on planning permission. This could act to discourage such site assembly and regeneration.

14. It is not clear who would take on the role of assessing these valuations HM Revenue and Customs do not have the expertise to do so and the Valuation Office Agency does not have the resources. This has the potential to create a whole new industry or place considerable additional burdens on local authorities if the need to verify these values eventually falls with them.

The Payment of Planning Gain Supplement

15. The consultation paper seeks views on whether the payment of the PGS should occur at the commencement of development or at another point in the development process. If the payment were to be at commencement, there would need to be a clear definition of when the development starts, for example whether this is on demolition of the existing buildings or construction of the new development. If commencement includes demolition and site infrastructure preparation, developers will be encouraged to defer such action and could put back the whole process of redevelopment. This would delay the delivery of buildings to the market as essential preparation works would not have been completed. This, in turn, could impact upon the attractiveness of the City as a site for new buildings.

16. Currently, the payment of financial contributions to be used for delivering infrastructure is required at the commencement of development to ensure that the necessary provisions are in place before they are needed ie when the development is occupied. Given that the proposed system would have different delivery mechanisms and would require prime pumping, it should be borne in mind that the payment of PGS at the commencement of development will increase developer's costs and will favour schemes which are pre-let,

pre-sold or divisible into small units or phases. Large, non phaseable speculative schemes, which are an essential part of the City office market, will be disadvantaged. The impact on the City as the world's foremost international financial and business centre could be severe. Instead of having the choice of immediately available speculative space, businesses will have to wait two or three years for the new accommodation.

17. A more appropriate stage for the "after" valuation and collection of any PGS would be at the point in the property development cycle when value from the scheme is normally realised or realisable. This would be six months after practical completion which allows the normal time for the scheme to be marketed and potentially let and sold as an investment.

The Scope of PGS

18. It has been suggested in the Consultation that a lower rate of PGS should be applied to brownfield land to encourage regeneration. The City would support this suggestion and in addition the system should recognise the higher costs that may be involved in, for example, decontamination and archaeology. Lower rates of PGS for brownfield sites will only have relevance if there is at least equivalence to the extra costs incurred in bringing forward those sites for development. It would be fairer and more accurate if the actual costs incurred on a site-by-site basis were to be allowed.

19. Alongside this, the exclusion of small scale improvements from PGS is important. To do otherwise will discourage owners from maintaining existing stock and could lead to widespread dilapidations and deterioration in the quality of the buildings which, in turn, will adversely impact on business and the UK's efficiency and competitiveness.

Financing Infrastructure Through the Planning System

20. In a City environment, many matters may still need to be funded through the planning obligations system. If money is, therefore, paid through the PGS it could mean that less is achieved locally as developers will be reluctant to pay the PGS and contribute to local improvements or, if they do have to contribute to local improvements, the financial burden placed on developers would obviously be greater. Infrastructure not funded through planning obligations is unlikely to be provided unless the PGS is very high and is allocated to the local area in which it is generated.

Allocating PGS Revenues

21. Revenue generated through the PGS should be returned to the local authorities for them to determine how it is to be spent in accordance with their policies and strategies. In general terms, to determine local infrastructure priorities, local planning authorities can adopt clear s106 policies which are developed in consultation with their local stakeholders. The City has achieved this and, therefore, offers a realistic and more practical alternative to the PGS proposal set out in the Government's consultation.

22. At a regional level, there is possibility that major areas of high taxation such as the City could be adversely affected by the proposals in that it may not receive proportionate funding back in relation to the revenues generated. Redistribution to wider areas would mean money being spent far from where it has been generated and would not be welcomed by property owners, developers or occupiers who would effectively lose out twice in that they would not benefit but competitor areas and businesses would. It is also not clear whether strategic transport issues in London such as the railways and tube, would be funded through PGS.

Memorandum by the Commission for Architecture and the Built Environment (CABE) (PGS 40)

1. Introduction

1.1 CABE welcomes the broad objective of recouping the uplift in land values deriving from planning permission to provide for community infrastructure.

1.2 Planning obligations, or section 106 funding, have proven inadequate for delivering all the infrastructure that developments need to grow into successful communities. In particular they cannot ensure infrastructure outside the development site. S106s are often ad hoc, involve protracted negotiations and lack certainty for developers and local authorities alike. There is also anecdotal evidence to suggest that s106s are responsible for helping to reduce money spent on the developments themselves—both because of the resources used in negotiating agreements and the lack of transparency and certainty. We would therefore welcome a new funding arrangement based on openly set costs which can be passed onto landowners.

1.3 However, we are not convinced that PGS is necessarily the most effective alternative to the existing s106 model. The tariff, or "roof tax", model currently being trialled by Milton Keynes and Ashford does, we believe, merit further examination.

1.4 The tariff model provides greater certainty by setting out required contributions for an area. Developers are able to build these costs into their negotiations on the purchase of land. Although indirect, this effectively acts as a localised tax on uplift in land value. The core benefit of tariffs over PGS is that they can be based on local infrastructure need—not local land values. As well as better reflecting local infrastructure priorities, being locally set means that LPAs can adjust tariffs to incentivise forms or locations of development they would like to see. CABE would value a further discussion around tariffs in the near future.

1.5 Turning to the current consultation, we are concerned that PGS contains significant flaws as currently proposed. If it were to be retained as a model we suggest that the following issues be considered.

2. The Right Development?

2.1 Since one of the core objectives of PGS is to help stimulate development, it will be judged to have failed if it actually provides a barrier to building or distorts the planning system.

2.2 For example, although CABE welcomes the suggestion that the rate should be set lower for brownfield sites, we would urge caution in this area. Depending on how PGS is recycled; a lower rate may act as a disincentive to LPAs to promote brownfield development. It is also likely that the difference between current use value and value deriving from planning permission may be slight for brownfield sites—affecting likely receipts for LPAs.

2.3 In order to balance the likelihood of a lower PGS rate discouraging LPAs from bringing forward brownfield sites, CABE would suggest that LPAs be allowed to retain more PGS revenue generated from brownfield land development than from other sites. Such a measure would act to provide a powerful financial incentive to both LPA and developers to take on brownfield sites.

2.4 The issues relating to brownfield land should also be seen in relation to the weakening of the sequential test in the draft PPS3. CABE would not wish to see a situation where the PPS3 and PGS worked together to discourage brownfield development and the renewal of our urban areas.

2.5 If there is scope for PGS to be utilised as a tax to promote "goods", as suggested by the proposed lower rate for brownfield development, CABE would also suggest that a lower PGS rate might be introduced for homes which meet the Code for Sustainable Homes.

3. Right Funding, Right Place, Right Time

3.1 Dependant on the revenue recycling method, the PGS could help to create an important new funding stream for new and improved community infrastructure and open space. Additionally, it presents an opportunity to increase community support for new development and move the debate on from arguments about numbers, helping to promote a more sophisticated discussion about quality and impact.

3.2 CABE believes that a careful balance needs to be struck between how much PGS revenue would be recycled directly back to the local authority and how much is redistributed on the basis of infrastructural and community need.

3.3 If the balance is tipped too heavily in favour of the source local authority, funding would be unfairly distributed to authorities that are capable of generating it, and where there would already be good infrastructure provision, which helps produce the high land value uplift in the first place. Conversely, areas where the difference in land value between existing and proposed use is small would not generate adequate funding to improve the quality and economic success of the area. Such a system would leave many authorities in clear need of infrastructure funding but without the means to provide it.

3.4 Additionally, permitting LPAs to keep PGS revenues they are responsible for generating might lead to authorities promoting sites on the basis of how much PGS might be generated, not the most sustainable option. Examples might include prioritising greenfield over brownfield sites or favouring housing development over important supporting uses including those that create employment.

3.5 Alternatively, a system which was based solely on the redistribution of revenues would provide insufficient incentive to local authorities and communities alike to bring development forward.

3.6 Although a redistributive system would provide for the funding of infrastructure in a strategic and well planned manner, based on need rather than the ability to generate funding, it would be unlikely to receive popular support. Drawing such funding up into the exchequer would risk it being mined for uses other than that originally intended which were unrelated to the delivery of development or enabling infrastructure.

4. Potential Hazards

4.1 The Government needs to ensure that PGS is calculated in such a way as to take account of hope value, or the potential for uplift in value when land is allocated for development. This means that the calculations would have to be based on the value of the land at its current permitted use—not any potential development value.

4.2 However, doing so may act as a potential brake on development sites coming forwards as many developers will have agreed a price for land which includes some element of hope value. It would be rare for a landowner sitting on farmland allocated for development to agree to sell it for agricultural use value.

4.3 There is also an issue surrounding the "banking" of planning permissions by developers and/or landowners in a rising land market—ie gaining planning permissions before 2008 for land they have no intention of developing in order to minimise the gain for an application post-2008. Whilst developments have to be commenced within 3 years, they may even decide to make a technical start, pay any PGS due and wait until development values increase to a level where profits can be maximised. There is even some chatter in property and development circles about a market emerging in trading pre-2008 planning permissions or sites where a technical start has been made and PGS paid. This will clearly not help the delivery of development and this loophole will need to be addressed in order for the system to work properly.

Memorandum by the Environment Agency (PGS 41)

Summary

The Environment Agency supports the Planning Gain Supplement (PGS), and the site-environment approach to residual obligations.

The rate of PGS, and the way in which the Planning Gain is valued, should send clear signals to developers, particularly to support remediating contaminated land and not developing in the flood plain or adding to flood risk.

The development-site obligations are critical to give developers incentives to reduce flood risk, clean-up contaminated land and support wiser transport choices.

The environment should be one of the items of expenditure for funds raised by the PGS. In particular, this should include strategic flood risk management, innovative solutions to contamination, river and coastal restoration, waste management and broad area monitoring of land and air quality.

PGS should be largely connected to local development and returned to the communities in which the revenues are raised.

The regional funds should be allocated on the basis of clear infrastructure plans, and the Environment Agency should have a role in this.

1. Introduction

The Environment Agency has a statutory duty to protect or enhance the environment and to make an appropriate contribution towards achieving sustainable development.

Parliament has also given the Environment Agency major roles in the regulation of water resources, waste and the delivery of flood risk management.

In our response to the Government's consultation on the Planning Gain Supplement (PGS) our main interests have been:

- Reducing flood risk.
- Remediating contaminated land.
- Reducing stress on the water environment (both resources and supply).
- Improving air quality.
- Supporting waste infrastructure.

We would note that our comments apply equally to Wales, where the detailed arrangements have yet to be developed.

2. The Committee's Five Questions on PGS

The Environment Agency's views on Planning Gain Supplement are being sent to the Government. In this submission we draw out those parts of our response that are particularly relevant to the Select Committee's inquiry.

Q1. *The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set?*

The Environment Agency broadly supports the objectives set out for the PGS. We believe that the PGS should also internalise the external costs of development, which may otherwise fall on the public purse.

The rate of PGS, and the way in which the Planning Gain is valued, should send clear signals to developers, particularly to support remediating contaminated land and not developing in the flood plain or adding to flood risk.

However, we support a differential rate for land in the flood plain, to signal clearly the potential external costs of such development. (See also Q4 below.)

Q2. *How the supplement should reflect subsequent uses such as social housing?*

The Environment Agency does not have a view on whether the supplement should reflect subsequent use of the land.

Q3. *How the revenue from the supplement should be distributed and appropriate uses?*

PGS should be largely connected to local development and returned to the communities in which the revenues are raised—allowing environmental and infrastructure spend to be linked directly to particular developments. There is scope to redistribute part of PGS according to need, but this must avoid implicitly subsidising development that is high cost and risk, or inappropriate in environmental terms.

We have identified five areas where it believes the revenue from the supplement should be used:

— In flood risk reduction, it would be appropriate for funds from PGS to support the maintenance of existing defences that also provide defence to new development. There can also be scope for strategic investment to reduce flood risk over a large area, which would serve existing and new development better than individual interventions.

— River and coastal restoration projects could provide a more natural and sustainable river or coastal system to improve ecological status in line with the Water Framework Directive, improving wildlife, habitats and recreation opportunities.

— A contaminated land challenge fund, the purpose of which would be to encourage innovative measures to clean up contaminated land (to avoid the current incentive to choose the cheapest option—landfilling the contaminated soil).

— Monitoring of air quality or contaminated land could also be supported, where there was a clear economic benefit from pooling monitoring arrangements, rather than delivering them on a site by site basis.

— Where development adds substantially to demand on waste management, there may be a case for using PGS funds to support development of such facilities.

The governance of distributing PGS funds is critical. The Community Infrastructure Fund would have to be expanded beyond transport. We believe that governance needs three elements:

— Competent regional authorities, that reflect the needs of different stakeholders, to oversee all the infrastructure needs and opportunities, so that regional synergies will not be missed.

— Clear criteria for what is an appropriate area of expenditure for which packet of funds.

— A set of forward looking plans, like the infrastructure plans that the Local Government Association has proposed sit alongside the Local Development Frameworks, which would identify forward needs.

The Agency, with its regional structure, and its role in key environmental issues such as flood risk and land quality, is well placed to work with such a framework.

Q4. *Whether and, if so, how the planning gain supplement should be used to encourage development of brownfield sites?*

The Government clearly wishes to use PGS to encourage development in key areas, in particular brownfield sites. In this way, it will reflect the external costs that not developing on brownfield land can impose on the environment.

However not all brownfield sites are identical in terms of environmental benefit. For example, many brownfield sites are in the flood plain. It is not appropriate to encourage development on such sites, as that can also impose significant external costs of others.

Moreover it may miss an opportunity to address in particular those brown-field sites that are seriously contaminated (about 300,000ha). The cost of contamination is a significant barrier to their clean-up and re-development (where that does not contribute to flood risk).

Therefore we believe that it is possible to have a simple PGS that also differentiates flood plain and non-flood plain. This could be done by setting differential rates for brownfield land (lower rate than standard rate) and flood plain (higher rate than the standard rate).

In order to ensure that there is no artificial disincentive to developing contaminated land, we support the proposal in the consultation paper (paragraph 2.8) that "the expected costs of developing the land, including remediation costs" should be included in the Planning Value, to reduce the level of Planning Gain that is chargeable.

Q5. *The potential impact of the supplement on s106 arrangements negotiated through the planning system*

In line with our view that the obligation to protect the environment should ideally reside with the developer, we support the view that the residual obligations should be used to promote site specific environmental issues. The development-site obligations are critical to give developers incentives to reduce flood risk, clean-up contaminated land and support wiser transport choices.

Memorandum by the Home Builders Federation (HBF) (PGS 42)

Introduction

S.1. The Home Builders Federation (HBF) is the trade association representing the interests of private house builders in England and Wales. Our members, who include all the major home builders, are responsible for more than 80% of the new homes built every year.

S.2. Our interest in development issues would mean that HBF members would be the primary contributors to the Planning Gain Supplement (PGS). We have recently contributed a submission to the Treasury's consultation on the PGS.

Summary Conclusions

S.3. The PGS proposal has some benefits. Most notably, it would be levied at a percentage rate, so that the burden on each individual site would adjust to reflect the uplift in land value. One of the biggest flaws in alternative proposals, such as the Optional Planning Charge or Milton Keynes tariff, is that they levy a fixed value per dwelling, regardless of the land value.

S.4. However, we have concluded, having taken extensive soundings of HBF members, that the PGS proposal would not work. While we appreciate it is difficult to judge how some aspects would work out in practice, overall there is a considerable risk the proposed scheme would fail to deliver the Government's and industry's shared objectives. However, we are anxious to work with the Government to find a solution which meets our common objectives. With adequate industry input, it should be possible to find such a solution.

S.5. We have based our conclusions on a number of major reservations:

- Valuation: this is regarded by members as a major stumbling block. Although the Treasury has attempted to design a simple system, members believe a one-size-fits-all scheme would in practice create considerable problems, especially on brownfield schemes which can be very complex.
- Brownfield land: members are particularly concerned about the negative impact of the PGS on the financial viability of brownfield sites, including complex regeneration schemes, and the valuation problems likely to arise with brownfield land. There has been little enthusiasm for a reduced PGS rate because the valuation problems would remain, whatever the rate, because it could prove very difficult to reach a definition of brownfield, and because any exceptions would risk creating opportunities for dispute, delay and avoidance.
- Scaled-back s106: the Treasury has assured us this would not suffer "mission creep", as did the current s106 system, because its coverage would be determined on a statutory basis rather than by guidance. However, house builders remain sceptical. One of their greatest worries is that they could, in a few years, find themselves with something close to the current s106, plus the current system of Affordable Housing provision, plus the PGS, the worst of all worlds.
- Affordable Housing: because the Treasury proposes that this would continue to be negotiated separately, one of the major causes of problems (delay, uncertainty, inconsistency, unreasonable demands threatening the viability of schemes) in the current system would remain unresolved. In our submission to the ODPM on the draft PPS3, we have urged the Government to undertake a complete review of affordable housing provision through the planning system.
- Infrastructure Delivery: a s106 agreement provides a link between the developer and any infrastructure required by a site—either a contractual link with a provider, or the developer directly provides the infrastructure. However there would be no such contractual link under the PGS, and we assume direct provision of off-site infrastructure by the developer would cease. House

builders see this as a major stumbling block—they would be dependent for infrastructure delivery on third parties over which they would have no control or influence. Also, because the PGS would not raise all the funds necessary for infrastructure, providers would also have to rely on central and local government funding, introducing additional uncertainty and potential delay over which developers would have no control.

— Future Government Action: we appreciate this Government cannot limit the actions of a future Government. However we are concerned that a future Chancellor could raise the initially "modest" PGS rate, and could also cut local authority funds by an amount equal to the PGS revenue raised by each local authority.

S.6. In raising our objections, we are very conscious that the current s106 system and other possible alternatives also suffer from serious flaws. We do not believe anyone has yet designed a scheme which meets all the objectives. However, as already noted, the risk that the PGS would not work is, we believe, unacceptably high.

The factors which should be taken into account in determining the rate of the supplement and the level at which it should be set

1. For house builders, a key requirement of any system is certainty and predictability. There must be a set of rules which are transparent, certain, lead to a predictable outcome, do not rely excessively on personal judgement and can be applied consistently.

2. Valuation is not a precise process. A valuation is only made definite when it is tested in the market and finds a buyer willing to pay the valuation—ie when it becomes a price. Most taxes are levied on a transaction value or price, so that the uncertainty inherent in a valuation is not an issue.

3. Therefore a major concern with the PGS is how to arrive at an agreed Current Use Value (CUV) and Planning Value (PV) for the land. This concern has two stages: how the CUV and PV are calculated and the level of uncertainty and complexity; how and when the valuations, and therefore PGS liability, will be agreed with HMRC.

4. The imprecise nature of valuation is clearly demonstrated by the different values house builders will bid for a residential site in a competitive tender. Each bids a "market value", but because of different assumptions about likely sales 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. A large, highly efficient company may bid more than a smaller company. If land is bought through private treaty, the land price paid may be different from what might have been achieved in a competitive tender. Given all these differences, what is "the market value"—the price actually paid (accepting that another developer may have paid a different price), or the price a district valuer judges would have been paid in a competitive tender? If the latter, would the particular circumstances of each case be taken into account (eg size of developer, nature of land sale, mix, quality, etc)?

5. To reduce (though not eliminate) uncertainty and room for dispute between developers and HMRC, there would have to be an agreed set of valuation rules acceptable to both the development industry and HMRC, including an agreed list of qualifying deductions (see below).

6. Those responsible for checking and, if necessary, challenging self-assessed valuations would have to be adequately qualified to understand not just valuation, but the nature of residential development and residual valuation of housing land, and the very different valuation processes involved in the non-residential sectors. Valuing land on mixed-use developments would be especially difficult.

7. Self-assessed valuations would have to be approved by HMRC within a defined range (ie $\pm$X%), reflecting the inevitable margin of uncertainty in any valuation. There would have to be an efficient, speedy and adequately resourced system for appeals against HMRC decisions, and/or an arbitration system.

8. The valuation would assume an "unencumbered freehold interest with vacant possession in the whole of the site covered by the planning permission". Concern has been expressed about the impact on cases in which these assumptions did not hold: leaseholds, absence of vacant possession on the whole of the site?

9. Grant of planning permission often triggers payment for the land. However, developers would sometimes—probably quite often in the early life of the PGS—not know whether their self assessment of PGS liability was correct to within a tolerable margin. HMRC's right to challenge a self assessment would have to be time limited. But even if this was quite a short period, it would still leave the developer and land owner in limbo until either the challenge period had lapsed, or any dispute had been resolved. As neither the developer nor the land owner would be willing to take an unquantified, and potentially large risk, this would create a chicken and egg problem: developers would delay site starts until they had certainty about the PGS liability, but they could not be certain of the PGS liability until they had started on site. The only way to avoid this would be to have a pre-clearance system in which HMRC agreed the PGS liability subject to planning, with a very short period during which HMRC could challenge the PGS self assessment. In most cases, a developer will want to start on site as soon as a full planning permission is granted and the land is acquired. It would be very damaging if the PGS delayed many site starts.

10. A short challenge period after submission of a PGS return would benefit the industry. However, the danger would be that HMRC inspectors would frequently challenge PGS payments in order to keep their options open. A long period would suit HMRC, but would be very damaging for the development industry as it would delay many site starts. This conundrum would have to be sensibly resolved.

11. There would have to be adequate resources devoted to vetting PGS estimates if the system was not to lead to serious delays for developers. This would be especially likely in the early period as developers became familiar with the levels of valuations that were acceptable to HMRC, the frequency of challenges and the outcome of such challenges. There would also have to be adequate resources to process challenges speedily and, as noted above, adequately resourced appeal and/or arbitration systems.

12. This would need to be sensibly defined to avoid pre-construction work such as demolition, site remediation, testing ground conditions, etc. triggering payment when it could be a long period before construction of saleable dwellings commenced.

13. The market value of some uses is very difficult to estimate: a sewerage works; the air over a supermarket when flats are to be added to an existing structure. Some sites have a negative value (eg because of very heavy decontamination and a low market value).

14. As currently framed, if a land owner or developer prepared a site (eg demolition, site remediation, etc) and then planning permission for residential development was obtained, the CUV—and so the starting point for calculating the PGS liability—would be substantially higher (and therefore PGS lower) than if the full residential permission had been obtained before the site was prepared.

15. As currently framed, if a developer obtained residential permission for 50 dwellings, then submitted an application for an extra unit, taking it to 51, and began work on the 51-unit permission, the PGS would be levied on the difference between the land valued with permission for 50 units (CUV) and the valuation with 51 units (PV). (Note the gap between the 50 and 51 unit permissions could in theory be several years.) This is clearly not HM Treasury's intention. However, it is not easy to see how this situation could be avoided without relating the CUV to some earlier stage, which would create major uncertainties, both in defining a date at which the CUV was to be calculated, and in assessing PGS liability.

16. As discussed early, land valuation is subject to uncertainty, and therefore different estimates of the PV could be equally valid. Clear, workable and agreed rules would be essential. Valuations should take account of the actual value paid, the particular circumstances of the land purchase and the scheme granted permission. It would not be sensible to rely simply on comparables.

17. Option agreements to buy land will usually involve an agreement to buy the land at a discount to the market value (eg 80%) upon receipt of a planning permission. The discount reflects the substantial costs, direct (especially planning) and indirect, required to obtain the permission. If the PGS is based on the market value, then the PGS is in effect being levied on the costs associated with obtaining the permission, not just the uplift in land value. A fairer valuation would be the value actually paid, after discount.

18. It is not clear how the PGS would operate for sites not owned by the developer. For example, a house builder might take on the regeneration of a large local authority estate, demolishing existing housing and building new units, under a licence.

19. It would be essential to have an agreed set of qualifying deductions from the outset to provide certainty to developers and to avoid inconsistency between HMRC offices.

20. There would have to be full deduction for on-site costs such as demolition, decontamination, the scaled-down s106 agreement and affordable housing provision, costs which are deducted from the value paid to a land owner.

21. There would have to be an agreed valuation system for Affordable Housing. This has a number of impacts on the PV: plots transferred to an RSL without payment would have to have a PV value of zero; where the developer also contributed to the construction cost of the affordable dwellings, this would have to be deducted from the PV as with other s106 costs; the valuation would have to take account of the depressing effect social housing can have on open-market sales prices, and therefore PV.

22. While the PGS consultation attempts to distinguish items within and outside the scope of the scaled-back s106 (page 27), there is not always an absolutely clear distinction between on and off-site infrastructure.

23. Some s106 "payments" are in kind, including the provision of land (eg for a school), or the developer undertaking on and off-site work such as highways improvements. All those items included within the new scope of the scaled-down s106 would have to be valued and deducted from the PV, which may cause disputes. For items currently provided in kind by the developer which are only partially within the scope of the scaled-back s106, or which fall outside it, would provision still be possible within the s106, or would these cease as they would now have to be funded directly by the LA out of its PGS revenues? If they were still allowed, then they would have to be valued and allowed as a deduction against the PV. If not, then the LA would have to purchase them at full market value.

24. For example, if the scaled-back s106 did not allow the developer to provide land for a school on a large development (benefiting the residents on the site as well as the wider community), the LA would have to purchase the land at full market value from the developer out of its PGS revenues. Similarly, a school built by the developer under a s106 would fall within the scope of the PGS. Would such direct provision

cease under a PGS regime, thus requiring the LA to provide the facilities out of the PGS? If such facilities could still be provided by the developer, they would have to be valued and deducted from the PGS to avoid double taxation.

25. This latter example would raise a further valuation question. Under a s106, the cost for the developer to provide these benefits may be less than the cost to the LA if it were to take the cash and purchase them in the open market (eg have a contractor build a school). If such benefits in kind were to continue, would the PV deduction be the (lower) developer's cost, or the (higher) open market cost to the LA? If the former, the developer or land owner would be penalised for saving money for the public sector as he would be hit with a higher PGS liability. This would tend to discourage developers from providing benefits in kind, thus increasing the cost of provision to the public sector.

26. Sometimes a developer will re-plan a site part way through. For example a significant change in market conditions may require the balance of a site to be re-planned. Would the developer be liable for PGS on the revised permission, given that he had already started on the site covered by the original permission? If the valuation of the re-planned section was less than the original valuation, for example because of a deterioration in the market, would the developer obtain a PGS refund?

27. Another major industry concern is the possible action of a future Government. A future Chancellor could raise the PGS rate. Local authority funding could be cut by the same amount as authorities raised from the PGS, leaving LAs with no net gain in funds. The Opposition could threaten to repeal the PGS if it won a general election. This would lead to a sharp decline in the supply of land as land owners waited until after the Election hoping of avoiding the impact of the tax on the value of their land.

28. While we appreciate the present Government cannot restrict the actions of a future Government, this represents a very real risk to the industry.

How the supplement should reflect subsequent uses such as social housing

29. We appreciate that the new system would have a statutory base, rather than being determined by planning guidance. This should curb the ability of LPAs steadily to expand the range and scale of demands. However, the industry is still very fearful of "mission creep", given the experience of the last decade despite clear and unambiguous guidance (Circular 1/97).

30. Affordable housing demands have been the most problematic area of s106 agreements—long delays, uncertainty and inconsistency, unreasonable demands threatening the financial viability of schemes, pressure for open-book accounting which the industry vigorously resists. It is most unfortunate that the PGS proposal maintains the current system of affordable housing because all the associated problems will remain.

31. We have suggested in our response to PPS3 that the Government should, in the run-up to the CSR07, undertake a thorough review of affordable housing funding and provision. Not only is the current system highly inefficient and damaging to overall housing delivery, but it almost certainly distorts the allocation of government resources.

32. One difficulty we have faced in commenting on affordable housing provision is that the draft PPS3 treatment was very inadequate. In particular, a number of important policy advances in the earlier consultation were subsequently omitted form PPS3, and we have been seriously hampered by not having the accompanying guidance which will flesh out many of the details.

How the revenue from the supplement should be distributed and appropriate uses

33. The PGS, as with any tax on supply, will tend to reduce the quantity of land for housing. Such a tax could only add to housing supply if the funds were then recycled to facilitate additional development.

34. In our consultations, infrastructure delivery has been a major concern. Put very simply: would the money be spent, at times which fitted with the timing of the development, on the right things? It could be argued these questions actually have very little to do with the PGS proposal. The PGS is a funding, not an expenditure mechanism. However they are relevant because s106 agreements sort out both funding and delivery (timing, what is provided) of those infrastructure items covered by the s106.

35. Because funding and delivery of infrastructure are always major issues for any government, their resolution goes well beyond the expertise of HBF or its members. Having said that, we do have some general comments on the key requirements for a PGS, or any other alternative to succeed:

- Funds would have to be ring fenced so that they could only be used to provide infrastructure which facilitates development.
- There would have to be proper infrastructure plans which take account of anticipated infrastructure needs generated by development over a reasonable timescale, involving all Government and other bodies providing funding and/or involved in delivery.
- Funds would have to be spent on the infrastructure required to facilitate development according to these plans, and provision would have to be to a timescale that fitted with the development timetable.

— Any additional funds necessary to provide infrastructure over and above PGS funds would have to be forthcoming, ring fenced, and spent in line with the development timetable.

36. If these formidable, but essential requirements are not met, the PGS or any alternative would risk becoming simply a new tax on land which reduced the overall supply of land and new housing.

37. At present, because off-site infrastructure provided or funded through a s106 agreement is explicitly linked to the development, it is possible for the developer to monitor provision and to claw back money not spent as required by an agreed date. This gives the developer some degree of influence. However, the PGS will operate like a tax on development, contributing to a general PGS pool, with no direct link, contractual or other, between any particular development and the provision of infrastructure and no contractual link between the developer and infrastructure providers. This has a number of potential disadvantages:

— It will no longer be possible to demonstrate the particular community benefits brought by a particular development, although it will be possible to point to the aggregate benefits (funded by the PGS) brought by development generally.

— Because there is no contractual link between PGS payment and the provision of infrastructure by the local authority or other public body, developers will not have any influence over whether the money is spent, and when. This will be especially problematic when the provision of infrastructure is necessary to enable a development to progress (eg highways), or is required as a result of development (eg the provision of a new school during the development of a large site). In effect, the developer will be totally reliant on third parties—local authority, education authority, highways, etc—over which he has no control or influence. As discussed above, proper long-term infrastructure planning, adequate funding and ring-fencing of funds will be essential.

— This could be even more problematic where the PGS provides only part of the funding necessary to provide infrastructure. For example, if a new local school is partly funded by the PGS, partly by the local education authority and partly by direct grant from Government, it is easy to foresee situations in which the school would not be provided on time—but the developer would no doubt get the blame.

— A particular problem arises in relation to the requirements of an Environmental Impact Assessment. At present, the requirements of an EIA are incorporated into the s106 agreement and are discharged by meeting the contractual requirements of the s106. However, if these requirements were now funded through the PGS, the developer would have no control over spending, and so no guarantee that the requirements of the EIA would be discharged, but would still be liable for meeting the terms of the EIA.

38. The timing issue is important. Major infrastructure, including strategic infrastructure, requiring substantial funds, has to be planned in advance and may be phased over many years. Because the revenue stream from the PGS would be uncertain, infrastructure planning would be more difficult. This could have an adverse impact on future development.

39. The Milton Keynes tariff will get around most of these problems. However, the MK tariff benefits from a number of special advantages which will not apply in most cases: the quantity of infrastructure funds required, and the funds likely to be raised through the tariff and from other sources, can be assessed fairly accurately in advance; the likely timetable for development can be assessed fairly accurately; and EP will be responsible for initial infrastructure funding and provision, clawing back the money as development progresses.

40. One related question is whether PGS money raised from a site would be ring fenced for work necessary for that particular site, or whether the funds would go into a general pot for allocation on some need basis? HBF would strongly support ring fencing money raised from a site to benefit that site.

Whether, and if so, how the planning gain supplement should be used to encourage development of brownfield sites

41. HBF are particularly concerned about the negative impact of the PGS on the financial viability of brownfield sites, including complex regeneration schemes, and the valuation problems likely to arise with brownfield land. There has been little enthusiasm for a reduced PGS rate because the valuation problems would remain, whatever the rate, because it could prove very difficult to reach a definition of brownfield, and because any exceptions would risk creating opportunities for dispute, delay and avoidance.

The potential impact of the supplement on s106 arrangements negotiated through the planning system

42. HBF's concerns regarding s106 agreements have been covered under points 22 to 26 above. Two additional points (phasing, transition arrangements) are covered below.

43 In cases where a large site is broken down into phases, each with a separate detailed planning permission before work commences, payment of the PGS would be automatically phased. However, it is sometimes in the interests of a developer 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 and some

payment phasing would be required. This highlights a major concern for house builders, namely the cash-flow implications of the PGS. At present, s106 payments are phased. However, the PGS would require a substantial up-front payment, coinciding with the usually substantial up-front on-site infrastructure payments required for a housing development.

44. A s106 agreement will usually require phased payment in cash or in kind, with payments triggered by agreed stages in the development. If payment phasing was not allowed, the PGS could influence the way in which sites were submitted for planning and developed. Yet it would be undesirable to have a tax which unduly distorted the commercial decisions of developers. Practical phasing rules would have to be devised to guide developers and HMRC, although HMRC would need to apply these rules flexibly.

45. The transition arrangements would have to avoid levying the PGS on sites which already had a planning permission with a s106 agreement—for sites not started, or later phases of larger sites which do not yet have full planning permission, but where a s106 covers the whole site. There is also considerable unease about the impact on long-term sites which developers have already purchased without a full planning permission, and option agreements in which the levy of the PGS could not be passed on to the land owner.

Memorandum by the Confederation of British Industries (CBI) (PGS 43)

Introduction

1. The CBI represents companies of all sizes and from all sectors of the economy. With a direct membership accounting for 4 million employees and a trade association membership accounting for 40% of the private sector workforce.

2. The CBI believes that both an increase in the supply of housing and improvements in infrastructure are vital to the health of the UK economy and welcomes this opportunity to respond to the Government's consultation on Planning-gain Supplement (PGS).

3. The CBI's Minerals Group has submitted a separate response to the consultation highlighting the specific issues and concerns that relate to that industry. CBI Scotland has also responded to both the Treasury and Scottish Executive to complement the CBI's overall response.

Overview

4. The CBI supports the Government's aim to increase the supply of affordable housing and increase investment in infrastructure, both of which are key issues for businesses in the UK. However, the CBI believes that the Government's proposals to implement PGS are likely to lead to a number of unintended and negative consequences that would outweigh any potential benefits of PGS and we would strongly urge the Government to reconsider its proposals. There are three major areas which need to be recognised:

(a) The potential threat to the competitiveness of UK business and the long-term health of the UK economy:

- placing an additional tax burden on business in the context of increasing costs and global competition could further threaten wider business investment;
- the widening of the original proposals from Barker, without a correspondingly broader package of offsetting benefits, risks impacting on development and business growth;
- making development more costly and complex risks undermining the important role that property plays more widely for business;
- the proposals cut across the better regulation agenda and would entail a significantly increased administrative burden on business; and
- the Government does not seem to have fully explored the potentially complex and negative consequences on the property market, specific types of development or the wider business community.

(b) PGS is likely to make it more difficult in many respects to achieve key Government objectives, for example increasing the supply of housing:

- PGS could undermine the willingness of landowners to bring forward land for development;
- the additional tax and complexities of PGS would increase the costs and risks of development and could threaten the viability of regeneration and wider development;
- the relationship between development and the delivery of supporting infrastructure would inevitably be weakened with potential impacts on the acceptability and workability of development;
- the proposals would be likely to undermine the broader agenda to streamline the planning process, with potential delays of two years for complex schemes; and

— the proposed scaling back of Section 106 would be very difficult to achieve, with knock-on implications for the business-local authority relationship and the viability of schemes.

(c) The proposals for PGS are likely to be unworkable and do not sufficiently address past problems with development taxes:

— the self assessment process would still impose a significant burden on business (particularly those companies for whom development is not their core business);

— the valuation process would be highly complex and would cause major uncertainty thereby adding both to the costs and timescales of development;

— the proposals would involve taxing expected gain rather than actual gain creating scope for unfairness and increasing the risks associated with investment in potential development;

— the requirement to pay on commencement of development threatens to create cashflow problems for businesses;

— PGS would impose significant resourcing pressures on local authorities, the Valuation Office Agency and other organisations; and

— PGS is already affecting the market and would continue to raise serious problems during a transitional period.

5. Given these concerns we do not believe that PGS should be taken forward. However, we recognise the need to secure funding for infrastructure and will work with the Government to explore alternatives which may be more workable.

A. The Competitiveness of UK Business

Concerns about the Increasing Business Tax and Cost Burden

6. The CBI strongly believes that this is the wrong time to introduce a new tax on UK business. We are extremely concerned about the impact of new taxation in an increasingly competitive global market when business in the UK is already having to cut costs, avoid new costs and is increasingly risk averse.

7. The overall tax burden on UK business is already high. Overall, Budget decisions since 1997 will have added an extra £8 billion to the tax bills of business and its investors in the fiscal year about to end—bringing the cumulative additional bill since 1997 to £50 billion. Business and its investors have borne a disproportionate share of the tax rise due to post-1997 policy action, even if the impact of above-inflation council tax increases is taken into account.

8. The major impositions have been the surprise £4 billion per annum rise in employers' national insurance, and the £5 billion per annum erosion of dividend tax credits, which have been only partly offset by reduced corporation tax rates. In addition, many businesses have been affected by the rising burden of stamp duty land tax, while some sectors (such as utilities in the past, and North Sea companies today) have been singled out for special higher-tax treatment. We also note several other ongoing initiatives (the prospect of compulsory employer pension fund contributions, the Pension Protection Fund, and HM Revenue and Customs' target to close an alleged but unproven £3 billion "tax gap"), all of which threaten to add still further to business' tax bills.

9. The impact of this on the available funds to invest (and the incentives to do so) and on international competitiveness is critical. By adding both to costs and uncertainty, these policies are already holding back business investment, which has recently been at its lowest ever level as a share of GDP.

10. The problem is that these fiscal policy impacts have come on top of other pressures making it more difficult for businesses to grow profits, compared with a decade ago. At present, this includes the impact of the economic slowdown. But while the economic cycle will turn upwards in due course, other—"structural"—pressures have also emerged:

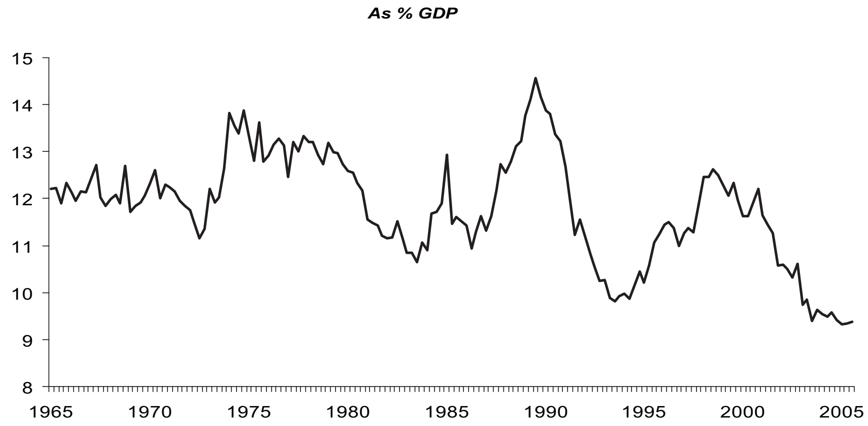
— intense international competition due to globalisation and the rise of China as a major world trading power. This has helped to push prices down in product markets, but up in commodity markets, thereby squeezing margins. Imported goods prices (excluding oil) are 17% lower than a decade ago, and export prices are down by 14% on the same basis. By contrast, manufacturers' raw material and fuel costs have risen by 26% in just three years;

— the increase in employer-funded pension scheme deficits, which are having to be reduced through additional business contributions. Employer contributions to funded occupational and personal schemes amounted to £36 billion in 2004, having more than doubled from £17 billion in 1998. Increased longevity, low long-term interest rates and—until recently—poor global stock market returns have all contributed to this situation, alongside the tax changes; and

— Government policies outside of the fiscal policy field, in particular labour market and other regulations which have added to business costs.

11. In turn, corporate profits recently peaked as a share of GDP, at a clearly lower level than the peaks achieved in the mid-1980s and mid-1990s, and even a little lower than the peak achieved in the late 1970s. Related to this, business investment has been depressed, reaching an all-time low as a share of GDP early last year.

Trends in business investment



Property and Development Important to Wider Business

12. Property is often perceived narrowly in terms of the "property industry". But this belies its wider importance. The property industry is indeed important in its own right but property is also a crucial ingredient of business success and is important to the overall performance of the economy and the attractiveness of the UK as a place to do business.

13. Business needs a constant supply of high quality development, offering a range of options to suit different and changing business needs. We need to ensure that companies can respond to varying economic and social drivers. Business investment in new property, redevelopment or a move from one property to another can transform the production process leading to substantial increases in output and/or greater efficiency. Increasingly property is also an important diversifier of investment risk—with a growing role in pension fund activity.

14. PGS must therefore be seen as a tax that has ramifications for the wider business community and the context of doing business in the UK—whether as a housebuilder, commercial developer, owner-occupier, tenant or inward investor.

PGS has significant implications for property/development

15. PGS, when initially conceived, was intended to apply to greenfield residential development where there was significant uplift in value from the planning permission. The current proposals cover a much wider range of developments (such as major mixed use or urban regeneration projects) which tend to involve more complexities and risks. As a consequence, development decisions and wider business decisions are likely to be impacted more significantly than appears evident from the consultation document.

16. In the UK, the level of taxes related specifically to property (eg business rates, SDLT) is already high relative to other countries, as our report (Is the tax system a help or a hindrance—UK As A Place to Do Business) and the latest OECD figures highlighted. In addition, business already pays in the region of £2 billion direct to local authorities through Section 106. The proposals for PGS represent a new and additional tax on property development. While the Government intends to scale back Section 106, it is clear that the intention is for the combination of scaled back 106 plus PGS to raise significant additional revenue (although there is no clarity about how much extra).

17. The introduction of such a new tax burden would be expected to impact in a number of ways: to reduce both the viability of new development and the attractiveness of redevelopment and to add to the costs of doing business—depending on where the incidence of PGS falls. The complexity of the proposals, within an already complex tax system, would reinforce this. This is likely to have significant impacts for development specifically, but also for the wider business community for whom property is an important operational and commercial element, at a time when UK businesses already face a challenging environment.

18. The Government assumes that where possible PGS costs would be factored in to the price paid for land. This would have potential implications for the supply of land (see Section B) and consequent wider economic impacts. In many cases, however, the incidence of PGS (at least in part) would be on the development, for example where a land transaction is not involved (eg an owner occupier business developing their site) or where the full cost of PGS cannot be factored in. In these cases, PGS could impact in a number of ways:

— a reduction in the rate of return that the development can make;

— the need to reduce other costs—either within the development or more widely;

— a reduction in other agreements entered into eg with local authorities;

— less willingness to proceed with development; and

— an increase in the price of the development to the end user.

19. In turn, there could be significant implications for a variety of sectors of the business community:

— developers: a lower rate of return will impact on profitability with a knock on impact on wider investment. Or if there is less willingness to proceed with development this will impact on regeneration and business growth;

— owner-occupiers: if businesses face additional costs and complexities this may result in lower quality development, reduced profitability, changes to wider investment decisions or simply a decision not to proceed. This will have consequences for the wider UK economy and competitiveness agenda;

— occupiers (tenants): may face higher costs in terms of rents or a reduced supply of suitable high quality developments which will impact on their ability to compete; and

— investors: if profitability decreases this could impact on pension funds and inhibit diversification of risk.

20. Property development is accompanied by a number of intrinsic risks, which are considered when deciding whether or not to enter into development. The introduction of PGS would add risk to this process despite the "sensitivity" of the proposed system (for example it is payable regardless of whether the developer is a profitable concern at the time) and could tip the balance of risk against proceeding on a number of development schemes, especially those that are currently marginal. Even for specific developments where the total of PGS and Section 106 may be lower than previously, the complexities, risks and impracticalities of PGS could reduce the willingness to proceed.

21. PGS could be a barrier for businesses considering renovation, expansion or change of use. This could inhibit business growth and adaptation and undermine small business development. It could also undermine wider objectives for which development is essential, for example the aim to diversify the use of farm buildings and boost rural economies. It is important to note that in cases of business expansion, companies would be paying additional business rates in line with the relative increase in value.

22. The "do nothing" option (ie not proceeding with development) is likely to be higher than presumed for those businesses which have a choice of international locations to consider. Where the additional complexity and cost involved are perceived to be too high, new business investment/expansion simply may not take place or may take place elsewhere. In the context of seeking to attract (and retain) international firms, high value added and R&D investment to the UK, this is a key concern.

23. Ultimately property and the development industry is of fundamental importance to wider business. With property as a factor of production, an increasingly important element in pension provision, and an underpinning to labour market flexibility, the Government should not underestimate the potential wider impacts of PGS and the risks of slowing down development. This is particularly important given the background of increasing pressures on business and the far tougher economic context that we have outlined.

PGS does not fit with better regulation agenda

24. The CBI is concerned about the implications of implementing PGS for the better regulation agenda. We have long argued that an appropriate regulatory environment is a key factor for the efficient operation of markets and that a commitment to more effective regulatory enforcement practices has to be central to the UK competitiveness agenda. We believe that implementation of the Hampton recommendations represents a real opportunity to ensure that regulation and regulatory enforcement in the UK adhere to the principles of better regulation set out by the Better Regulation Task Force prescribing proportionality, accountability, consistency, transparency and targeting.

25. The CBI believes that the Government's proposals do not adhere to these principles because they would result in two parallel systems of revenue collection both of which, directly or indirectly, capture some of the gain in value from planning permission to fund local infrastructure. It would be extremely inefficient for central and local government and business to administer a two-tier system and it would contribute to the already significant bureaucratic burden placed on business and local authorities by the planning system. The proposed scaling back of section 106 is unlikely in practice to significantly reduce the administration of that system.

The lack of detail and impact assessment adds to business concerns

26. Given the wide implications of PGS for property and business, the absence of any real detail in the proposals is a major concern. There seems to be little assessment of the possible impacts of PGS on development or the wider issues highlighted above. The absence of such information further undermines CBI members' confidence that the proposals are consistent with efforts which help business to compete in an increasingly challenging global environment. And the lack of detail on the likely rates of PGS or the proportions to be re-distributed has heightened business sensitivities.

27. Given the risks involved, it is inappropriate for the Government to proceed with proposals for PGS without providing such analysis. This is particularly important since the Government has significantly expanded the scope of PGS from the original Barker recommendations. The burden of proof should not be placed on respondents.

28. We are willing to work with the Government to explore the issues further but we strongly believe that there are too many uncertainties and potentially negative consequences across business to consider progressing the proposals. As well as the detailed questions of workability (in section C), some of the issues that need to be addressed include:

- the level of revenue sought by PGS;
- the assumptions made in relation to how much of the additional money through PGS would be via extended scope (ie more developments being subject to PGS than Section 106) versus projects that already pay section 106, paying more in total through section 106 and PGS;
- the PGS rate at which the supply of land and development will not be adversely impacted;
- the proportion of schemes for which the Government assumes that PGS will be able to be "knocked off" the cost of land;
- where this is not possible (and particularly where the total of PGS and 106 is higher than previously), the assessment of likely impacts for different types of development;
- the offsetting measures to ensure that wider developments were not deterred (beyond the Barker proposals for housing);
- the baseline for Section 106 and by how much it would be scaled back;
- the budgeting processes for PGS and redistribution work in practice and mechanisms that would be put in place to provide certainty of delivery of infrastructure;
- the assumed set-up and running costs for PGS; and
- interaction of PGS with other Taxes eg SDLT, CGT.

B. Government Objectives and Wider Implications

29. The CBI believes that PGS would not achieve the Government's core objective, namely to increase the supply of affordable housing, would threaten some of the Government's wider objectives and would have a number of unintended negative consequences for business, local communities and government (both centrally and locally). These include:

- PGS revenue is likely to be lower than Government expects because development would be likely to decrease (a reason for failure of past attempts at taxing the uplift from development);
- Government revenue such as Capital Gains Tax (CGT) would decrease because of the slowdown in development;
- many brownfield developments in particular may not be viable which would be detrimental for the Government's regeneration agenda;
- activity in the minerals industry—vital for the provision of materials for house-building and infrastructure would decrease;
- local authorities could lose out from fewer section 106 agreements or other initiatives because of the slowdown of development; and
- ultimately local communities would lose out both from the lack of development in their area and from the related lack of investment in local infrastructure.

PGS threatens the release of land

30. The CBI notes that the Government's objectives have the aim of increasing the supply of affordable housing which dates back to the original set of Barker recommendations. The CBI fully supports these aims and the Government's intention to increase investment in infrastructure—the lack of affordable housing and infrastructure are both key constraints on business productivity.

31. However, we fail to see how a new tax on development in the form of PGS would achieve these aims. Instead, a consequence of PGS is likely to be a decrease in the amount of sites that are brought forward for development—with landowners and developers exercising their "do-nothing" option. Although the Government proposes a "modest" PGS rate there is no clear evidence to support the assumption that the supply of land would be unaffected.

32. The CBI is concerned that PGS would have a disruptive effect on the release of land in the short to medium term. Two scenarios are possible; both would distort the market and neither are desirable:

— there would either be an immediate incentive to increase development and the release of land before 2008 would increase to avoid PGS, followed by a decline in development post-2008; or

— land-owners would refrain from releasing their land thereby decreasing opportunities for development, in anticipation of a change of Government (which has happened with three previous attempts in the past).

33. The scope of the proposals has been extended significantly from the Barker Report in terms of moving from housing to wider development. It is inappropriate simply to extrapolate from assumed impacts in relation to housing and the supply of land for housing. There is little to suggest that the Government has examined in detail the likely impacts on commercial development or has understood the implications for the wider market or specific types of development.

34. The Government has argued that PGS should be seen in the context of a package of measures that they believe would offset potential impacts. But there is little clarity in relation to the positive measures that would offset potential impacts on commercial development and little certainty that those related to housing would be sufficient.

PGS likely to hinder supply of housing

35. The Government's claim that increasing investment in infrastructure would allow house-builders to obtain planning permission and build more houses presupposes that the lack of infrastructure is the biggest constraint on housing development in the UK. Infrastructure is undoubtedly a factor but it is unlikely that the additional cost, associated risk and level of administration that PGS would introduce into the planning system would be directly outweighed by the benefits of increasing infrastructure provision.

36. The Government's proposals also fail to address the timing issue—PGS from development is intended to fund infrastructure to draw in development, but in practice development usually follows the provision of infrastructure or is provided alongside development through planning obligations. Even without this complication there would inevitably be a lag of several years between the introduction of PGS and the actual delivery of any infrastructure.

37. As highlighted, we support the Government's aims of trying to increase affordable housing and secure funding for investment in infrastructure necessary to underpin sustainable development and support economic growth. Therefore we are willing to work with Government to explore potential options which may be more workable than current proposals. This may include building further on section 106 (also looking at the feasibility of the tariff-based approach), CGT or mechanisms such as Tax Incremental Financing.

38. But it is too early at this stage to be more definitive: issues would need to be addressed in any such options. For example, we recognise the Government's concerns about the relatively blunt nature of tariffs and the potential impact on viability of development (or alternatively the level of complexity that might be necessary in some areas to ensure sensitivity). But using existing mechanisms is a far less risky—and more cost efficient—approach than introducing a major new tax.

PGS likely to have adverse impacts on planning reforms and timescales

39. The CBI is anxious that the Government is considering such a radical change to the planning system, whilst in the middle of implementing other major reforms that emerged from the Planning and Compulsory Purchase Act 2004. While the CBI has consistently sought improvement to the system of planning obligations, this is not a reason to introduce PGS. Not withstanding some variation across the country in the application of section 106, it is generally recognised as a tried and tested mechanism to deliver positive physical and social infrastructure benefits directly to local communities. The current system should continue to be developed—building on the recent positive work (circular 2005/05, the best practice guidance on planning obligations, and developing practice within some local authorities). We are concerned that the proposal to introduce PGS could undermine this.

40. The Government claims that business would benefit from the proposed scaling back of planning obligations, but has not yet provided an established baseline for current payments through planning obligations or how much the proposed scaling back could save business. In fact the nature of section 106 arrangements is such that it would be almost impossible to gauge how much is currently received through planning obligations either in cash or non-money contributions, which in turn would make it very difficult to retain transparency and ensure additionality of funding through PGS.

41. The CBI also reminds Government that planning is a devolved policy area and therefore while the Government could, within its powers, implement a tax across the whole of the UK it could not direct the devolved administrations to scale back their own planning obligations. There is therefore a particular issue for businesses in Scotland, Wales and Northern Ireland which could face higher costs through PGS with no promise of reduced planning obligations.

42. In addition there is much concern in Scotland about the implementation of such a major change to the planning system when the Planning etc (Scotland) Bill, which could itself introduce major reforms to the planning system in Scotland, has only just gone before the Scottish Parliament.

43. The planning system has been subject to considerable change and upheaval in recent years, and as our recent report showed, business is still not significantly benefiting in terms of an improved system, in fact in some instances the system has worsened. This would simply add further disruption and resource pressures and could threaten to deter development simply by adding to the overall complexity and uncertainty of the planning system.

44. Given that PGS calculations would need to be made after the conclusion of Section 106 negotiations and on grant of planning permission, this would add another delay to the planning process. The strong likelihood is that valuation would be a complex and protracted process, with potential for significant debate. This would further extend timescales for development—with developers unwilling to start development until certainty about PGS liability had been provided. Looking back at Land Tribunals, this could take anything up to two years for complex and disputed cases. The certainty and timing of the assessment is critical.

45. Resource pressures could further exacerbate such delays, with significant expertise required to manage the system. Reducing the tax level would not remove the uncertainty and scope for delay. It would merely reduce the revenue and further undermine the economics of the tax.

46. The original proposal in the Barker review was for PGS to apply when permission was granted in order to encourage implementation. The current proposal is for PGS to be payable on start of development. While this recognises the problems inherent in seeking to extract earlier payment, it could cause delays to development—contrary to the Government's objectives.

47. The issue of Development Stop Notices is also of concern. There is little clarity about how notices might be used but it is difficult to see how they would not introduce lengthy delays on certain developments. There is also deep concern that it could make a development unlawful which could interfere particularly with commercial developments involving complex arrangements between a number of parties.

Proposals for streamlining section 106 are flawed

48. We have never questioned the principle of planning obligations, in terms of development contributing to supporting infrastructure and mitigating impacts, but have been a critic of the way the system has been implemented. However, these concerns are not an argument for replacement by PGS. Instead recent efforts to improve the operation of section 106 must be continued. We have worked with the Government and others to strengthen the guidance and improve the system and recent changes, for example to allow pooling of contributions, offer opportunities to address the issues more effectively.

49. The Government argues that scaling back section 106 will partly offset the impact of PGS but we are far from convinced that this will be effective in practice. There are a number of significant issues:

- even a "streamlined" system would need to cover a wide range of issues and still involve (potentially lengthy) negotiation over detail, delivery and timescales;
- affordable housing, which is often the biggest element of a section 106 agreement in terms of cost and negotiation time, remains within the scope of section 106;
- the situation with regard to the interaction of PGS with section 278 and 6 of the Highways Act is unclear—but is a key issue given the importance of delivery of such infrastructure;
- there would be difficulties in terms of how tightly the definitions of some of the elements could be drawn eg environmental improvements can stretch far beyond the actual scope of the site;
- as yet there is no explicit baseline for section 106 against which to assess the proposed scaling back. In the absence of such information—which is very difficult to calculate with any certainty—the commitment is unconvincing;
- it would be very difficult to police the system and could create an antagonistic relationship between business, local government and central government;
- with a less certain and direct source of funding for local authorities there would still be pressure for them to seek to maximise commitments under section 106, despite Government intentions to exclude certain elements. Given all the difficulties highlighted, it is likely that the scaling back will not happen as intended with potential impacts on development costs and viability; and
- this could also reduce expected PGS revenues since section 106 needs to be accounted for in Planning Value.

50. In addition, there would be nothing to stop local authorities seeking other payments or provisions outside the scope of planning obligations, which would allow them to maintain their direct income levels, but represent significant additional costs for business. Conversely the cost of PGS could mean that business was less willing or able to work with local authorities on more innovative opportunities to deliver local infrastructure or initiatives, leading to a worsening relationship between business, local authorities and local communities and a reduction in such schemes across the country.

51. We therefore have real concerns that the proposed system would lead to:

- loss of flexibility in negotiating planning obligations;
- potentially increased anti-development pressures;
- greater incentive for local authorities to seek to use other arrangements outside the scope of planning obligations to achieve certain local benefits but with even greater cost for business; but
- less incentive for business pro-actively to enter into goodwill agreements with local authorities outside the scope of planning obligations because of the additional cost of PGS.

52. There are significant difficulties in trying to develop a national solution when the issues to be tackled vary between regions. A one-size fits all approach would not be able to tackle the different problems of low value areas in need of regeneration versus higher value areas with challenges and pressures of growth. The answer is not PGS or the redistribution of revenues away from higher value areas—which would risk undermining the acceptability and sustainability of development in these localities. Clearly funding needs to be secured for infrastructure investment in lower value areas—but the proposals in the document are not the solution. Making development more complex also works against the need to encourage and facilitate regeneration and business investment in these areas.

Less certainty of delivery of infrastructure

53. The proposals would effectively provide developers with less certainty of delivery of any infrastructure classed as off-site (which could still be integral to the success/viability of the development) and therefore funded through PGS rather than section 106. The benefit of section 106 arrangements is that they are a legally binding contract between local authorities and developers for the delivery and funding of specific projects/outputs often with detailed timescales for delivery. In many cases, developers have the certainty that if the infrastructure is not provided their money will be refunded. They also have the option to deliver infrastructure themselves providing even greater certainty. PGS could not offer this degree of transparency or certainty for either local authorities or businesses.

54. Unless the Government was prepared to pump-prime PGS there would inevitably be a time lag between the identification of infrastructure need and the local authority receiving the PGS money to pay for it. It is therefore unclear what agreements would be possible between the local authority and the developer ahead of the stream of funding. In addition future funding commitments would always be dependent on the actual future tax take. It is unclear how this would impact on the conditionality of a planning permission for a major complex scheme. A developer would be unlikely to proceed in the face of significant uncertainty about whether necessary infrastructure or associated services (eg bus service) which are important for the development (in terms of its workability, sustainability and marketability) but outside the proposed scaled-back scope of section 106 would be delivered.

55. We are also deeply concerned about the lack of safeguards to ensure the additionality of investment in infrastructure and fear that PGS revenue would simply replace other Government expenditure or Local Authority grants (particularly in the longer term). While we support the Government's intention to increase investment in infrastructure, business has too often had empty promises in relation to hypothecation and additionality of tax revenues.

56. The Government would need to overcome many obstacles to make this workable and it is hard to see how business could receive the required certainty in relation to the delivery of infrastructure. This is crucial—the Government would need to demonstrate clearly how the system would work and what mechanisms would be put in place to ensure this if PGS was pursued.

57. In addition there has been little clarity from Government on the infrastructure deficit that they are intending to address. This would need to be clearly detailed in terms of which infrastructure issues were to be tackled, at what spatial level and how far PGS would be expected to contribute.

58. PGS might also be an inefficient means of delivering infrastructure. Some benefits may be paid for but provided off-site at a potentially higher cost to the local authority.

Threat to business/local authority/local community relationships

59. Collecting and redistributing PGS centrally would undermine an important local link. While there is a commitment that the monies received by a local authority would be at least roughly equal to that under section 106 it is a far less direct mechanism, and the budgetary processes are far from clear. With the inevitable time lag and less clarity in the linkage between developments and the provision of infrastructure there might be increased anti-development pressures within local communities.

60. While we recognise the desire to secure funding for regional and national priorities, redirection of revenues from some areas to others could create significant difficulties in terms of the local acceptability and sustainability of developments. We are extremely concerned therefore that PGS would be redirected via central government with a proportion siphoned off for national purposes—particularly in the absence of any clear accounting mechanisms or delivery structures. There may be a case for some revenues to be directed (in a transparent way) regionally, but the vast majority must be directed locally—back to the area where the funds originated—to be spent according to locally-determined priorities.

61. Given this, PGS seems an extremely inefficient system—with significant recycling of resources entailing additional delays and uncertainty.

62. It follows that 100% of any revenue raised through PGS within Scotland, Wales and Northern Ireland would have to be returned to those devolved administrations.

63. The Government argues that the revenue would need to be collected centrally and redirected to local and regional levels to allow for infrastructure provision across local authority boundaries. We fully recognise the need to provide more strategic infrastructure but believe that other options to achieve this must be promoted. New pooling arrangements could help to support this, as could a number of other mechanisms. The business community is also interested in whether arrangements such as those in Milton Keynes might be more widely applicable because they combine the local element, an opportunity for business to help identify infrastructure need and transparent delivery of infrastructure. It would be much more difficult to track the revenue and see the benefit of the tax if it was re-routed via either HMRC or HMT.

Implications for public services and infrastructure projects

64. There are specific issues in relation to the impact of PGS on organisations that are either wholly or partially funded from public sources or are involved in infrastructure delivery. The impact of PGS in terms of the additional cost and bureaucratic burden on local authorities, providers of transport infrastructure and higher education institutions, all of which would currently be within the scope of PGS, could be very damaging and threaten the Government's wider objectives. It would also be extremely inefficient to circulate funds through various public bodies in this way.

65. There are also significant questions in relation to partnerships involving local authorities or community schemes and how PGS would work.

C. The PGS Proposals Are Not Workable

66. The CBI does not believe that the proposals set out are workable. Even if the proposals were in tune with both the Government's own objectives and the CBI's objectives for the long-term health of the UK economy, the complexity and administration involved would outweigh any potential benefit.

67. In theory PGS may seem to provide sensitivity in terms of value uplift, but the complexities involved are likely to undermine its workability:

- the proposals are unlikely to improve sufficiently on past attempts at taxing planning gain;
- the self-assessment process would fail to mitigate the bureaucratic burden;
- calculating the value uplift in land is intrinsically complex and would lead to significant disputes about valuations;
- the payment procedure would be both impractical and unfair;
- there would be significant avoidance attempts; and
- PGS may relate to assumed value uplift, but is not necessarily related to actual gain.

Consultation does not learn from past attempts

68. The CBI recognises the Government's effort to learn from past mistakes of introducing a development land tax but remains unconvinced that this version would be any more likely to succeed for a number of reasons:

- The Government claims that "PGS should only capture a modest portion of the uplift, thereby preserving incentives to develop". The Government has failed to disclose what a "modest" rate would be, however the CBI believes that there would have to be different rates (or exemptions) to account for the complexity of development across different sectors and types of scheme. All of these rates would need to be low so as not to disincentivise development but it is likely that some rates would need to be so low as to make the net revenue gain for Government (once administration costs are accounted for) negligible.
- The Government also claims that "the cost of valuations should be managed through clear definitions of value and a self-assessment process". The CBI believes that the valuation process would still be very costly to administer as in previous attempts. The definitions of CUV and PV set out in the document are too simplistic and costly/lengthy disputes are inevitable in any valuing

system. The self-assessment process may seem an improvement on previous attempts but by no means addresses all of the problems that are intrinsic to any value-based tax system. At the very least it is anticipated that a system of audits or spot checks to self-assessment would need to be put in place.

- — The Government further claims that "PGS should be designed in a way which minimises avoidance opportunities". We believe that it is incredibly difficult to create a tax based on land values that minimise avoidance. It is therefore far from clear at this stage whether the Government has managed to improve this aspect from previous attempts.
- — In the absence of cross-party support for PGS it is likely that—as happened previously—landowners and developers would defer development in the hope of repeal.

Self-assessment adds cost and time to planning process

69. The Government claims to have made the valuation process simpler by introducing the self-assessment process. However, the CBI believes that this process would still introduce significant additional administration costs and potential delays both before a business decides to enter into development ie when assessing the costs and benefits of a development project and in complying with the process once planning permission had been granted. Valuations are already one of the most complex and disputed elements of the tax system and PGS would require (at least) two such valuations for each site for which planning permission was sought, making the proposals unwieldy from the start.

70. Self-assessment would not necessarily decrease the administrative costs for the Government because of the need to regulate and monitor the valuations that businesses submit (even in a risk based approach) and the need to introduce an appeals process to handle disputes over valuations. Even in the absence of a formal appeal, there would inevitably be lengthy and costly negotiations between businesses and the Valuation Office Agency.

71. The ramifications of introducing a new stage to the planning process with an associated appeals process would be considerable. Complex sites, of which there are many, take time and resource to value. This resource would be an additional cost for business but also a significant cost for Government in ensuring there was sufficient human resource and expertise both centrally and locally to cope with the additional volume of work. The alternative would be to slow the rate of development even further.

72. It is unclear how the validation and risk based approach would work in practice, but what is clear is that developers would not start development until they had certainty in relation to their assessment. This would slow development down. It should be noted that this is a problem intrinsic to PGS that couldn't be mitigated by a low rate. There has been some discussion of a prior agreement process, but it is far from clear how this would work in practice.

73. There would need to be a formal validation process—otherwise there could also be impacts on corporate activity if an acquiring company was concerned about the Inland Revenue challenging previous self assessments.

74. Even developments where there was a relatively low uplift—and low PGS take—would have to undergo the same complex process. In this sense the tax is regressive and even small added costs could threaten development.

75. The extra costs of the self assessment process for business should not be under-estimated and would need to be mitigated, for example by being allowable against the tax charged.

Complexity of valuations would threaten to stifle the planning system

76. The CBI believes that any tax system based on land values, including PGS, is intrinsically flawed because:

- — no two property developments are the same and therefore nearly all sites would require development appraisals (average or comparable valuations could not be used);
- — calculating the value of land both before and after planning permission would have to take account of a number of variables and costs which would inevitably be debated between the developer and the Government's valuer. The degree of variability in valuations is often plus or minus 15% (and far more in some cases); and
- — wherever the land valuations were disputed the District Valuer and possibly the Land Tribunal would have to be consulted, which would delay the start of development (with impacts on both costs and timescales).

The proposed valuation system would therefore neither be as simple (or potentially fair) as the Government claims.

77. The valuation would need to take into account costs incurred prior to the planning permission, such as payments for access, decontamination, rights of lights, ransom strips and so forth, otherwise there would be significant overestimation of values and liabilities with a consequent impact on the viability of

development. All acquisition and improvement costs must be factored in—the CUV in many cases would not capture this since the value would not necessarily be enhanced by such expenditure. If such costs were not taken into account a significant number of developments would become financially unviable and if the costs were taken into account many developments might have a negligible PGS liability where the low revenue would be outweighed by the cost of administration.

78. There is a presumption that the PUV would take account of all relevant future costs, output values, fees and so forth—but this is likely to be extremely complex (particularly where some costs may not be known) and could be contested. But there would be significant implications if valuations did not properly factor in these costs.

79. An example provided by Tesco illustrates this point. When hypothetically calculating the Planning Value of two mixed-use/regeneration sites (Dartford and Highham's Park), Tesco discovered that the price they paid for these sites reflected the "existing use property value of the individual property of interest and the cost of relocation or extinguishment of that interest". This is the opportunity cost to the seller and could therefore be defined as the Current Use Value. On both cases the Planning Value was very close to the CUV, which would have resulted in a zero or negligible PGS liability: very little gain in revenue for the Government but with administrative costs for both Tesco's self-assessment and the Government's regulation of the system. However, if the PGS calculation was as simplistic as that proposed with the assumption that values would be assessed on the basis of unencumbered freehold interest with vacant possession, these sites would have been unviable for redevelopment.

80. Even on "full" planning permissions, it is often the case that conditions will be imposed which require further details to be submitted for approval which could (depending on their ultimate form) affect the PV.

81. In short the points and definitions of valuation are too vague or inappropriate to be workable especially for commercial and industrial brownfield and mixed-use and shared-ownership sites and phased developments. The deterrent to development could be significant.

82. The proposed PGS system assumes that the land is freehold which immediately introduces a bias into the system. For example where the developer does not own the freehold but has a development lease the PGS liability would fall entirely on the lease-holder even though the free-holder would share in the uplift in value. This type of lease arrangement is relatively common in central urban areas. It is highly unlikely that the lease could be renegotiated—and even if it could, it is questionable whether such impacts on the market have been properly considered in relation to PGS. If this issue was not addressed, it could impact on the willingness to proceed with redevelopment and the process of urban renewal.

83. Given the complexities, there is significant scope for inaccurate valuations. And there would seem to be more likelihood of this leading to an over-estimation of PGS liabilities with consequent implications for the viability of development.

84. More widely, the process of redevelopment and renewal may be affected as companies seek to refurbish existing stock in ways which avoid the need for planning consent. For example, this would lead to more internal decoration rather than recladding buildings which would impact on the quality of the public realm and the ability of business to expand or up-grade their buildings.

PGS could jeopardise brownfield development

85. It is extremely difficult to see how PGS might work efficiently in relation to large scale, mixed use and complex developments that involve many partners, are phased and take many years.

86. The Government suggests that we should not be overly concerned about brownfield sites because the PGS is proportional. But the administrative costs of PGS falls equally whether it is in a low or high planning gain context—indeed the burden is likely to be greater for brownfield developments given the complexities.

87. There may be some developments where it is assumed that high returns would mean that PGS liability should not be a problem. However, these may be extremely high risk with little certainty about the ultimate returns—and PGS might deter such investment.

88. The Government implicitly seems to recognise some of the challenges by highlighting the possibility of a lower tax rate. There is a very strong case for this, but inevitably it would introduce new difficulties in definition and implementation. What is more the Government would need to assess the benefits/returns of a lower rate against the arguably higher costs of administering PGS for complex brownfield sites.

89. The Government also highlights the possibility of a threshold. If PGS was to be introduced, there would certainly need to be a threshold and most likely a number of different rates and exemptions. It is extremely difficult to identify what these should be and, again, this would introduce additional complexities and could create distortions. As a starting point, PGS should only apply where new and additional floor space was created—and then above a minimum threshold.

90. If the Government presses on with PGS, this needs to be addressed. Some people have suggested a value threshold, but this would require having to go through the valuation process which is a key problem.

91. The lack of a liquid market for brownfield land and the diverse existing planning permissions would also complicate the valuation process and impose a costly informational burden on developers. Some major companies have estimated that their valuation costs alone would increase by up to £500,000 per year.

Implications of market changes make PGS even more difficult

92. Paying PGS on expected value gain rather than actual gain is a significant issue and affects the perceived "fairness" of PGS. Changes in value do not just arise because of grant of planning permission but also as a result of wider factors such as market conditions.

93. We are concerned about what would happen in a number of scenarios:

— there are significant market changes (eg downturn) from when the PV and PGS are calculated to the actual delivery of the development which impacts on the value realised;
— the development may be phased and some phases may not start;
— the development may start but be substantially amended during construction; and
— the development may start with the intention of completion, but factors prevent this and cause it to be unfinished thus affecting its value.

Impractical Assessment and Payment Procedure

94. The CBI appreciates the Government's effort to put back the point of payment to commencement on site. However, the CBI still has concerns that it would be impractical to expect payment at this stage before any of the gain from planning permission had been realised. The commencement of development is one of the most expensive stages of development because businesses are outlaying significant sums in order to pay for the start of construction. In effect many businesses would need to increase borrowing in order to pay their PGS liability with no guarantee that the development would pay off. This adds to the risks and could make businesses more wary of entering into development, particularly for longer-term investments where profit may not be gained for a number of years.

95. This could also affect existing financial arrangements with lenders and investors and business models with impacts in the short term as developers sought to replace existing arrangements. It would also be likely to increase costs as earlier funding tends to be more expensive.

96. Many developments are phased in terms of their delivery and realisation of value. Also commercial developments built speculatively may remain vacant for some time after completion and potential tenants may be offered initial rent free periods. This means that developers may not see a return on their investment for some time. PGS will impact more on schemes that are not prelet, presold or divisible into phases or units. Large speculative developments that are an essential part of the property market will be disadvantaged.

97. Wider business investment eg in new distribution facilities, factories, offices would be based on longer term business plans and the value would not be realised at any specific point in time (rather it would flow through in the form of increased productivity, increased profits, etc). For such developments, having to pay more up front could affect their decision to proceed or wider investment decisions. Even where the value uplift—and thus the PGS liability—was not high, the complexities and administrative costs involved would be an issue.

Concern about resourcing pressures

98. We are concerned that the Government has not set out the direct cost or level of resourcing likely to be required to implement PGS. This would impact on both local authorities and other organisations. At a time when local authority resources and planning departments are stretched this is a real concern. The role that local authorities might play in administering and monitoring the PGS is unclear but it is likely that at least some of the burden would fall on them.

99. Set at a low and more "acceptable" level, the PGS would not justify the upheaval and substantial costs of implementation and administration and it is important to note that the inherent complexities of the tax would impact to some extent regardless of the rate.

Transitional impacts

100. It has been noted by some of those involved in the property industry that there are already impacts as a result of the PGS proposals, with a reluctance to finalise agreed figures for potential development sites.

101. In many cases, there would not be opportunities to pass the costs of PGS onto the landowner since the transactions would have taken place already. While for many developments this may be corrected in the longer term, there could be significant impacts on a large number of sites in the interim (and if the exact quantum of PGS liability was not known when purchasing land, pass-through would be more difficult than assumed). And, in the longer term, there would still be developments for which this would not be possible, for example where a business develops its own land.

102. The debate about PGS is creating significant uncertainty within the development industry and beyond. It is also likely to impact on the willingness of local authorities to develop schemes such as those in Milton Keynes and Ashford given the necessary lead time and resource commitment.

Conclusions

103. As highlighted, the CBI supports the aim to deliver more housing and greater investment in infrastructure but strongly believes that PGS is not the right way to achieve these objectives. The CBI is aware that the concept of a planning tariff/roof tax is favoured by some organisations while others favour improved section 106 agreements that contribute locally, potentially combined with an area-wide charge. A number of other options such as an enhanced planning obligations system, tax incremental financing or changes to the CGT regime have also been mooted.

104. However, there needs to be considerable work done on the details and wider implications for business and local communities before these or other schemes could be more widely applied. The CBI is willing to explore with the Government and others a range of options that may be more workable and acceptable to business than the current PGS proposals.

Memorandum by David Reed BSc DipTP DMS MRTPI, Director of Community & Environment Services, Canterbury City Council (PGS 44)

Many observers appear to have great doubts about the proposals for a planning gain supplement (PGS), but I am firmly supportive of the idea having waited 25 years for a government to tackle the betterment issue. I believe the planning profession should be influencing the proposals in a positive way rather than opposing them. Although some of the detail has not been thought through yet, and there would be many practical implications, the concept is a good one. The objective of a new tax hypothecated for infrastructure purposes, in addition to legitimate s106 requirements, would be very valuable.

The proposal at present does have a number of flaws which need to be addressed, the most basic of which is where the funds will go. There is only one acceptable answer to this, they must go back to the local level where the development occurs and the related infrastructure needs arise. The funds raised should not be diverted to the growth areas (which may need other sources) or distributed via a complicated bidding system but returned directly, without argument. Local level should mean none other than the local planning authority (LPA) concerned. This is vital to "incentivise" development and to satisfy the landowner, developer and local objectors that the tax is just and will enable the more general infrastructure concerns arising from the development to be addressed. Local authorities are now beginning to receive funds through the ODPM's local authority business growth incentive scheme and PGS receipts could be similar, automatic money as far as the authority is concerned and even more directly related to the decisions made locally.

The funds raised should be dedicated to address infrastructure needs which arise more generally from development in an area but which are difficult to require from particular schemes. With a reasonably reliable stream of funds local authorities could use prudential borrowing powers to bring forward much needed infrastructure improvements which were holding back development in the area.

To ensure transparency in the use of PGS funds each local planning authority could produce an annual statement setting out it's proposals for using PGS in it's area and what has been spent so far. This statement could be the subject of consultation with interested parties, and to ensure a fully rounded consideration of the needs of an area, could be debated by the local strategic partnership involving all the key local agencies.

In relation to the use of PGS funds for "regional" needs, it is accepted that there will be some wider infrastructure requirements that cannot be addressed by each LPA alone, so I would accept a maximum of 30% of the funds could be used regionally or sub-regionally. But an alternative mechanism would be to allocate all the funds to LPAs and make them accountable for meeting wider needs by clubbing together to commission critical improvements from the appropriate agency.

It might be desirable for there to be some redistribution of PGS funds from more prosperous areas to the less prosperous, for example in relation to housing completions or employment floorspace constructed, but only if the system would be grossly unfair without it because the direct link between planning decision and receipt should be maintained if at all possible.

The other big problem is the relationship of PGS to the infrastructure provided directly by a scheme and secured by s106 agreements or similar. These agreements cannot be scaled back as far as is being suggested, they may need to include for example off site highway infrastructure and community facilities (including schools) in the case of larger schemes, anything in fact that is directly required for a scheme to go ahead acceptably or must be provided in a definite timescale in relation to that development. No developer (or community) will be prepared to rely on the PGS system to deliver time critical infrastructure in relation to a scheme, nor should the PGS system be required to do so as this could frustrate the speed that development could proceed.

Finally, there is a critical issue about how the PGS should relate to the emerging roof tax systems being developed for major growth areas. Some of the strongest objection to the PGS idea comes from such areas, essentially on the grounds that current s106 agreements deliver more infrastructure than PGS will as currently proposed. There is a big danger that might turn out to be true unless the "directly required" test is applied more widely, giving LPAs in growth areas full scope to deliver what their area will need through the s106 mechanism. In case this approach might overlap with the collection and use of PGS, why not allow LPAs the option of conceding PGS will not apply in relation to a particular major scheme if it is satisfied that the s106 agreement is comprehensive enough to address all the issues raised. If it is the LPA's own money that is being conceded, that would be reasonable.

As an alternative to PGS, the "tariff" approach, favoured by some, has significant disadvantages which should be recognised. A tariff approach in a typical local authority area differs from a roof tax in a major growth area in that it would be applied to a large number of small schemes across the council's area. Whilst some schemes like this are in place—and a few work well and are quite lucrative (West Berkshire is the best example I have come across)—most LPAs have not tackled the issue seriously yet. If the PGS idea falls every LPA will begin to develop it's own scheme, every one is bound to be different, leading to complexity for developers and inconsistencies between authorities. Inevitably there will need to be a process to endorse each tariff scheme before it will be fully accepted which could impose another burden on the LDF process. Then the tariffs will need to be collected by hard pressed development control officers as part of each individual planning application. There will be frequent claims that the tariff makes a scheme unviable, leading to a difficult dilemma or delay as valuers are brought in to advise. The effect of widespread tariff policies on the development control process is potentially a big issue, the job is hard enough already without the additional task of tax collection when dealing with relatively modest schemes. PGS would be so much simpler with the tax system fulfilling this task leaving development control officers to concentrate on their main role.

There are considerable flexibility and fairness advantages of PGS. Tariffs do not relate well to the ability to pay since they tend to be inflexible flat rate figures based on development types. They are not sensitive to the scheme involved, and will require frequent updating to take account of changing needs and market conditions. PGS on the other hand would be a proportion of land value uplift which relates directly to the value and difficulties of each scheme and would rise and fall naturally as market conditions fluctuate.

In conclusion, I am confident that with the changes outlined above the PGS can be made to work successfully. The loss of a taxation approach to this issue for another generation would be an historic missed opportunity, providing as it does a much needed opportunity to raise additional resources to tackle infrastructure shortfalls, which in turn can only speed up further housing and other development as those shortfalls are tackled.

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