

Planning-gain Supplement: summary of consultation responses

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SUMMARY OF PGS CONSULTATION RESPONSES

INTRODUCTION

1.1 The 2005 Pre-Budget Report announced a consultation on the Government's response to Kate Barker's recommendation for a Planning-gain Supplement (PGS). The consultation paper set out:

- how a modest portion of the land value uplift accruing to landowners at the grant of planning permission could be captured and shared with the wider community;
- how planning gain would be valued;
- how it would be paid;
- the scope of PGS;
- consequent changes to the current planning obligation system in England¹; and
- how PGS revenues would be allocated.

1.2 Following the 2005 Pre-Budget Report, the Government conducted a twelve-week consultation and engaged with a wide range of stakeholders across the UK, including holding events in the English regions and in Scotland, Wales and Northern Ireland. Meetings with representative bodies, presentations to industry conferences and direct engagement with local government officials also took place. These were productive and informative sessions ahead of receiving written consultation responses.

1.3 The consultation period closed on 27 February 2006. The Government received 783 written responses. Responses were submitted from a wide variety of organisations and individuals, including the British Property Federation, the Town and Country Planning Association, the Local Government Association, the National Housing Federation as well as local authorities. The respondent breakdown by category is as follows:

Breakdown of respondents

Respondent	Proportion (approx)
Local Authorities	39%
Professional Bodies	6%
Developers	12%
Businesses	11%
Interest groups	11%
Landowners / farmers	2%
Charities / housing associations	4%
Infrastructure / service providers	6%
Other	10%

¹ The main legislation for planning obligations is the Town and Country Planning Act 1990, as substituted by the Planning Compensation Act 1991. As detailed in *Changes to planning obligations – a Planning-gain consultation*, planning obligations applies only to England. The Devolved Administrations have their own developer contribution regimes and reference to changes to planning obligations in this document do not apply to planning obligations administered by the Devolved Administrations.

1.4 The Government is grateful for all the responses received and for the active participation of the various representative groups throughout the consultation process.

1.5 Alongside this summary, the 2006 Pre-Budget Report announces further progress on PGS. In response to views expressed by consultation respondents on specific policy areas, the Government is also publishing further consultation papers on elements of the design of PGS and the new approach to planning obligations. These publications are:

- *Valuing planning gain – a Planning-gain Supplement consultation* (published by HM Revenue and Customs and the Valuation Office Agency);
- *Paying PGS – a Planning-gain Supplement technical consultation* (published by HMRC); and
- *Changes to planning obligations – a Planning-gain Supplement consultation* (published by the Communities and Local Government).

GENERAL VIEWS

1.6 In the 2005 consultation paper, the Government asked a series of questions on the design of PGS. This summary outlines the general responses received to the consultation as well as specific answers to these questions.

Capturing a portion of development gains

1.7 There was general support for the principles and objectives that the Government proposed for PGS and a scaled-back system of planning obligations in England. The principle of capturing a portion of the land value uplift created by the planning process, in order to help finance additional infrastructure, received broad acceptance by those consulted.

1.8 The need for additional investment in infrastructure, particularly alongside the Government's commitments to increase the supply of housing, was considered important, and many, including those involved in the development process, accepted that they had a role to play in contributing to the infrastructure needed to support growth.

1.9 There was widespread support for reform of the current planning obligations system, although significant concern was raised regarding certainty of delivery of those matters that would be taken out of the scope of planning obligations, for example education and health infrastructure.

1.10 Many respondents suggested that the Government consider alternative measures to capture land value, including the Optional Planning Charge (OPC) and planning tariffs.

1.11 Finally, stakeholders also expressed concerns regarding the practical application of the proposals in particular about: the valuation process; the mechanism by which PGS funds would be returned to local communities; the need to ensure the appropriate transitional arrangements; and the risks of reducing incentives for certain forms of development.

VALUING PLANNING GAIN

1.12 The consultation paper outlined the proposed basis for calculating PGS. It described that the ‘land value uplift’ would be the difference between the land value with full planning permission (Planning Value or PV) and the value of the land in its current use as permitted by the planning system (Current Use Value or CUV). It then described that the liability would then be calculated by applying the PGS rate to this land value uplift.

1.13 Responses were mixed; some agreed that the definitions were sufficiently clear, but others asked for further clarification. Many respondents suggested that valuations should be conducted in accordance with guidance from the *Royal Institution of Chartered Surveyors Appraisal and Valuation Standards* (‘the Red Book’). The *Valuing planning gain* consultation paper, as described in paragraph 1.5, provides further details on the valuations process.

1.14 A number of responses questioned whether CUV would reflect hope value. In this context, ‘hope value’ is the element of value over and above the existing use value of land, reflecting the prospect of obtaining planning permission for development at some future date. There was recognition that it would be difficult to account for and measure hope value without a definable event by which to base the charge on.

1.15 There was a misconception in some responses that by calculating CUV only at the point of full planning permission, the Government was missing earlier gains accruing to land, for instance as a result of outline permission or inclusion in a local plan. In fact, these earlier gains would be reflected in the PV.

1.16 Concerns were also expressed about the assumption that the interest in land to be valued would be the unencumbered freehold interest with vacant possession (FHVP). In particular, some respondents felt that this could artificially increase the CUV, although many recognised that this would generally result in a lower amount of PGS to pay. For investment properties some respondents expressed concern that current or future rents may not be factored into the CUV (under a FHVP assumption) and that this might result in an artificially lower CUV in some cases.

1.17 Finally, there was concern from some as to whether PGS valuations could be carried out accurately.

Self-assessment of PGS valuations and liability

1.18 The valuations chapter also discussed how developers might make a self-assessment of their PGS liability and proposed that actual valuations would be used instead of average valuations. There was general agreement that actual valuations should be preferable to average valuations.

1.19 Many respondents were generally content with the self-assessment proposals and a number of respondents proposed that the Government work with industry to produce a standard valuation methodology to minimise the additional burdens of self-assessment.

1.20 A number of respondents raised concerns about arbitration of disputes over valuations. The Lands Tribunal was commonly suggested as the right forum to resolve valuation disputes if they could not be settled between the developer and the VOA. There was also concern that disputes might result in significant delays to projects, which could impact on the viability of project funding. A mechanism to agree

valuations before commencement of the development was therefore suggested by some respondents, which the Government responds to in the *Paying PGS* consultation.

1.21 Finally some concerns were raised that self-assessment could lead to avoidance or abuse. The Government's approach to compliance and self-assessment is further discussed in the *Paying PGS* consultation.

Information on the condition of the land

1.22 The Government consulted on whether landowners should be required to provide information on the condition of the land at the time the planning permission was granted, because the developer may not have been involved with the original permission. While it was recognised that considerable information could be required to establish the condition of the land (for calculation of the CUV), the general view was that information already in the public domain would be sufficient and that the onus for obtaining this information should be on the developer.

1.23 Some suggested a site survey should be required from landowners or those applying for planning permission. However, others expressed concern about the additional burdens and work that this would require.

PAYING PGS

1.24 Chapter 3 of the consultation paper proposed that the grant of full planning permission would be the right event to determine planning gain, but proposed that the liability should not become chargeable until development is about to commence. The chapter also examined who should be liable to pay PGS and how it might be enforced. It proposed the creation of a PGS Start Notice procedure and a PGS Stop Notice for use in the event of non-compliance. Finally the chapter discussed the need for transitional arrangements.

1.25 Many believed that the process as proposed could work and would in many respects fit with the current development model. There were, however, differing views on certain aspects of the payment process some of which are detailed below.

1.26 Alongside this summary of responses the Government is publishing *Paying PGS*, which consults further on the proposed framework for administering PGS.

Point of PGS payment in the development process

1.27 There were different views on the point in the development process at which PGS would become payable. The Government has proposed that a developer would need to submit a PGS Start Notice application and file a PGS return in order to obtain a PGS Start Notice. This would be required before commencement of development would identify the person liable for PGS in relation to a particular development. This is the date when the liability for PGS arises. Payment of the PGS liability would be due 60 days after the issue of the PGS Start Notice.

1.28 This proposal differed from Kate Barker's recommendation that PGS should be paid at the granting of planning permission, but most respondents accepted the Government's proposal that the granting of planning permission should not be the chargeable event. Some also argued that, given that planning obligations are often required at this stage, it would make sense for PGS to be paid before development commences. However, there were also concerns that payment at commencement of

development would impact on developers' cash flow, particularly for larger sites, and some respondents argued that the payments should be phased over the course of the development or that they should be liable only at completion and sale.

1.29 It was also recognised, however, that in a steady state developers would have the opportunity to pass back the costs of PGS to landowners when they purchased land and many agreed that the proposed PGS model would allow for some phasing of payment on large sites, as discussed in the following section.

Administration of the PGS Start Notice

1.30 The consultation asked for views on whether the PGS Start Notice application should be submitted to the local planning authority (LPA) or HMRC. Opinion was split and many felt both should receive it, or that one should receive and validate it and inform the other. There was concern, however, about the additional work created by the administration of a new process.

The fit of PGS with larger and phased developments

1.31 There was support for the principle that larger sites would be able to phase payments of PGS and that this should fit naturally with current phasing arrangements associated with the planning process. In particular, the design of PGS to allow for phasing was supported and it was recognised that in such cases, separate PGS Start Notices would be required for each phase of the development.

Transitional period

1.32 The consultation document discussed transitional arrangements for PGS and scaled-back planning obligations in England, to enable the market to adjust to the levy. Many pointed out that the Government needed to ensure fair and equitable arrangements to ensure that the market was not disrupted by the introduction of PGS. There was also concern that prior to the introduction of PGS there might be a rush of planning applications that would overwhelm local planning authorities.

1.33 While it was recognised that transitional arrangements would be needed, there was no agreement on what the arrangements should be, with suggestions including delaying the implementation date of PGS, linking PGS more closely to the planning obligation system or proposing certain exemptions.

SCOPE

1.34 In considering the scope of PGS, the Government's priorities are to ensure that the levy can be applied at a modest rate, with minimal risk of avoidance opportunities and inappropriate economic distortions. Chapter 4 of the consultation paper discussed how PGS might apply to both residential and non-residential developments and also considered the treatment of brownfield land, minimum thresholds for PGS and its interactions with existing taxes.

Residential and non-residential land

1.35 There were mixed views on the application of PGS to non-residential and commercial development. Many recognised that significant uplift may arise on the granting of planning permission for non-residential developments, that such development often creates additional infrastructure needs and that it would be

complicated to exclude these projects from PGS, particularly in the case of mixed-use sites. However, concerns were expressed about how to value mixed-used development and who would ultimately bear the cost of PGS where the development was on land subject to lease (for example for a factory extension). Many pointed to minimum thresholds as a way of ensuring that PGS does not unfairly impact upon such developments.

Brownfield land

1.36 Responses were mixed on whether a lower rate of PGS should be applied to developments on brownfield land. It was argued that brownfield land often has higher development costs and so some therefore argued for a lower rate or for it to be exempted altogether. A significant number of respondents, however, argued that so long as valuations reflected the increased development costs, a lower rate would not be necessary. Indeed, many supported the principle of a uniform rate, and argued that some brownfield sites have considerable value and that many brownfield sites do not carry significant additional development costs. Moreover, the point was made that brownfield development can often bring additional infrastructure requirements which local communities will need to fund.

1.37 Furthermore, a number of respondents argued that, given that PGS will often be factored into the purchase price for the land, a lower rate for brownfield land might not create additional incentives for development.

Thresholds for small-scale development

1.38 Almost all respondents agreed with the Government's proposal that small-scale home improvements should be excluded from PGS, but some proposed that the threshold should be increased. Similarly many agreed that a minimum threshold should also be applied to small-scale improvements to non-residential property. It was also generally accepted that works under the General Permitted Development Order 1995 (and equivalent provisions in the Devolved Administrations²) should not be subject to PGS. There was concern, however, that an increased minimum threshold would result in market distortions.

1.39 Many different proposals were made for exempting certain forms of development or developers. Some argued that infrastructure development should be exempt from PGS, while others argued that all public sector works or other groups of developers (such as charities) or developments (such as minerals) should be exempt.

FINANCING INFRASTRUCTURE THROUGH THE PLANNING SYSTEM

1.40 The Government consulted on a proposed approach to scaling back planning obligations in England alongside the introduction of PGS, so that obligations in the future would only apply to direct impact mitigation and affordable housing. Chapter 5 of the consultation paper discussed the current planning obligations regime: its legislative basis; how it works in practice; the case for scaling back the planning obligations system; and the proposed new approach.

² The General Permitted Development Order 1995 applies to England and Wales only. In Scotland the equivalent is the General Permitted Development (Scotland) Order 1992 and in Northern Ireland the equivalent is the Planning (General Development) Order (Northern Ireland) 1993.

1.41 Alongside this summary of responses, Communities and Local Government is publishing *Changes to planning obligations*, which seeks views on proposals for the new system of planning obligations in England.

The development-site environment approach

1.42 The consultation paper proposed that planning obligations would be restricted to the development-site environment approach as defined as “those matters necessary to make the environment of the development site itself sustainable, safe, of high quality and accessible;” as well as for the provision of affordable housing. The Government proposed that it would examine how affordable housing requirements could be made consistent and rationalised, to ensure certainty and transparency and avoid costly delays to the planning process.

1.43 Many respondents could see the logic in the proposals and there was support from some who felt that the revised approach was transparent and could be an effective and clear way of reducing planning obligations. Others expressed confusion over what would be in the new scope of planning obligations and asked for greater clarity. Questions were also raised on the role of highway agreements made under section 278 of the Highways Act and how they would be treated.

1.44 Similarly, there was concern about how infrastructure no longer within the scope of planning obligations would be provided. In particular, concern was raised that planning authorities and developers would not have certainty that infrastructure that had been moved outside the scope of planning obligations would be delivered in a timely manner.

1.45 A separate concern was raised that the development-site environment approach would be difficult to define in practice and many of the responses urged the Government to find a clear definition for a revised planning obligations to ensure lengthy disputes were avoided. There was also a concern that the scope of planning obligations may ‘creep back’ without clear boundaries set by the Government.

1.46 Some felt that the Government should go further and exclude affordable housing from the revised scope of planning obligations. They argued that this is often the most burdensome aspect planning obligations negotiations. However, others recognised the need for onsite affordable housing and some proposed that scaled-back planning obligations should also include land for community facilities within its scope.

1.47 Finally, some respondents argued that PGS revenues raised on a site should be hypothecated solely for that site and not allocated to other sites. There was also concern about revenue being diverted to communities other than those which had accepted development.

Providing infrastructure outside the new scope

1.48 Respondents were asked to comment on how infrastructure outside the new scope of planning obligations could best be provided. Responses covered a wide range of views. There was strong support for the principle that it was the role of Government to fund major infrastructure projects, such as rail and motorway improvements, and that PGS and general tax receipts should fund this. There was also general agreement with the principle that PGS revenues should be hypothecated for infrastructure and specifically those matters no longer covered by planning obligations.

I.49 There was a general consensus that local authorities should make and implement infrastructure plans, perhaps through the use of Local Development Frameworks (LDFs). At the regional level, Regional Spatial Strategy (RSS) documents were sometimes suggested, although some expressed the view that only directly elected representatives should make decisions on revenue allocation. Again on regional level infrastructure, there was support for the idea of a revised Community Infrastructure Fund (CIF), and a general view that additional bureaucracy should not be created for the allocation of PGS revenues.

I.50 Finally, many respondents raised the need for certainty of infrastructure provision and allowing infrastructure provision to be planned against future PGS revenues. It was also suggested that negatively worded precedent (or ‘Grampian’) conditions should be revised to ensure that matters no longer in the scope of a planning obligations agreement should not be a requirement on developers.

ALLOCATING PGS REVENUES

I.51 Chapter 6 of the consultation paper discussed the principles underpinning the allocation of PGS revenues and set out the Government’s proposed options for meeting its commitment to dedicate PGS revenues to support growth. The paper outlined the Government’s key principles for allocating revenues.

Mechanisms for recycling PGS revenues to the local level

I.52 There were a wide variety of views on the method for returning PGS money to the local level, as well as the percentage that would be returned, with many questioning what a ‘significant majority’ would be. Some argued that instead of returning only a significant majority, all PGS revenues should be recycled to the local level. Others went further and suggested that PGS should also be collected locally, allowing local authorities to manage PGS in a manner similar to the current planning obligations system.

I.53 Questions were raised on *who* would receive PGS monies at the local level, particularly in two-tier local authorities, as well as how revenue would be apportioned for development that crossed local authority boundaries. As regards the body to which revenues should be allocated, some respondents felt that revenues should be recycled to the originating LPA, which could then allocate the money appropriately. Others were concerned that the allocation of PGS revenues to LPAs would inappropriately influence planning decisions.

I.54 On the basis for returning revenues, some argued in favour of a formula-based approach to revenue allocation so that revenues were recycled on the basis of infrastructure need, whilst others argued that revenues should be recycled on the basis of revenues raised.

I.55 As discussed elsewhere, there was often concern that PGS monies would not be available in time to support the infrastructure needs of a development and the Government was urged by many respondents to find a mechanism that allowed revenues to be recycled in a timely manner. Several respondents were keen for the Government to avoid any complex or time-consuming bidding mechanism for projects that were to be funded by PGS.

1.56 Finally, the differing cost of infrastructure provision across the UK was highlighted, and questions were raised as to whether the Government would make any accommodation for this when allocating PGS revenues.

Mechanisms for funding strategic infrastructure at the regional level

1.57 The Government proposed that an expanded and revised CIF could fund the strategic regional infrastructure. Views were sought on the appropriate geographical coverage and eligibility criteria of a revised CIF, or suitable alternative options that would deliver its objectives.

1.58 Responses ranged from support for a revised CIF, to concerns about delays created by any new bidding processes. Many respondents suggested that PGS spending at the regional level would logically follow from RSS documents. Some also proposed that PGS revenues should be used to fund environmental services and recreational infrastructure at the regional level.

1.59 Finally, a number of concerns were raised that the regional portion would be used to finance central government spending not associated with infrastructure, or that regional projects would be funded at the expense of local infrastructure requirements.

Setting and deciding strategic infrastructure priorities

1.60 Many suggested that Regional Assemblies should manage the regional process for PGS spending and that this would fit well with the RSS process. However, others proposed roles for many different bodies, including the regional Government Offices, Regional Development Agencies, LPAs, Highways Authorities and the Environment Agency.

1.61 A few respondents commented on the need to fund infrastructure up front before PGS revenues are available, arguing that for growth to be serviced effectively, infrastructure should be planned and delivered in advance of development.

1.62 In Scotland and Wales, a number of respondents proposed that the Scottish Executive and National Assembly for Wales could manage the regional element, with varying degrees of flexibility being suggested. This ranged from total control of the entire PGS pot (with the ability to choose the proportion that would be returned locally and perhaps even use the entire revenues regionally), to limited control of the regional portion. It was also suggested that PGS could fit with the new National Planning Framework in Scotland.

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