

Planning-gain Supplement: a consultation

Response by the Royal Institute of British Architects

Introduction

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

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.

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.

The concept

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.

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 s.106 system, despite its flaws. We would deplore the introduction of two flawed systems.

Valuing planning gain

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.

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.

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 s.106 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.

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.

Paying PGS

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.

The commencement of development, as defined by s.56 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.

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.

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.

Scope

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.

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.

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.

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.

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.

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.

Financing infrastructure through the planning system

The Government has stated that, should PGS be introduced, s.106 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 s.106 "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 s.106 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.

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.

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 s.106 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 s.106 obligations and any future combination of s.106 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.

We welcome the statement in the consultation document that the ODPM should issue guidance, or new legislation, to scale back s.106 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.

Allocating PGS revenues

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".

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.

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.