

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**PLANNING and TRANSPORTATION ADVISORY BOARD**

**26 February 2007**

**Report of the Director of Planning, Transport & Leisure**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 PLANNING GAIN SUPPLEMENT (PGS) – CONSULTATION BY DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT (DCLG)**

**1.1 Background**

1.1.1 At the February 2006 meeting I reported on the first stage consultation on the then newly trailed PGS concept.

1.1.2 The following overall response was made by the Council at that time: “The Borough Council rejects the concept of the introduction of the Planning Gain Supplement, but would rather see guidance and any necessary legislative changes to enable the development of local tariffs and the pooling of funds in appropriate circumstances.” Further clarification of the Councils concerns was also given and these are set out in **Annex 1**.

1.1.3 This position has been taken primarily due to the very serious concern that funds taken by central taxation methods via the PGS would not be clearly and specifically allocated back to deal with local community needs.

1.1.4 The latest consultation paper from DCLG discusses the proposed approach to dealing with the relationship between PGS and the planning system on the assumption that it is eventually introduced. The Government has made it clear that no firm decision has been made and that it will not be until the practicalities have been fully explored. However, it confirms that, in line with its earlier consultation and the findings of the Barker Review, Local Planning Authorities will only deal with planning obligations involving development contributions that:

- mitigate the direct impacts of a development and
- provide affordable housing.

1.1.5 This means that factors such as education and health provision; community centres, bus services, fire stations, employment and training, labour initiatives, town centre management, cultural and leisure facilities, strategic transportation and off-site nature conservation would all be covered by the new PGS.

- 1.1.6 This approach does not meet the Council's previous objectives but does have one major benefit in that it distances the issue of development value and related development costs from the planning process decision. Planning decisions will still have to deal with those matters where it is necessary for development contributions to be made to ensure that the site can be properly developed and will also need to secure affordable housing but otherwise financial negotiations are intended to be largely removed from the town planning process, which it was never properly equipped to deal with.
- 1.1.7 Quite separately Her Majesty's Revenue and Customs are consulting on two technical matters to do with the introduction of PGS. One to do with the means of valuing planning gain and the other on the mechanisms for payment. While the Council will have a part to play in the process of the grant of planning permission, it would not have a role in either the valuation exercise or the process for payment. This would avoid the Council having to create a whole battery of new procedures and systems to support PGS, but would mean an absolute loss of direct influence and control over the raising and allocation of funds from development.
- 1.1.8 What is significantly lacking in the consultation is any clarity as to the precise mechanism for placing PGS receipts into the community to make the necessary provision in the locality where the development will give rise to the need. As it is now suggested that PGS will come online in 2009 there is still some time to deal with these aspects of the matter and further consultations can be expected in the future. However, if funds are 'returned' locally via Revenue Support Grant then councils like us who are at the 'floor' for revenue support purposes could be severely disadvantaged.
- 1.1.9 Although this is still unclear in the Pre-Budget Report it was announced that 70% of PGS would be "recycled" back to the local authority area from which the revenues derived for infrastructure priorities with the remainder being returned to the regions to help finance strategic infrastructure projects.
- 1.1.10 The following section deals with the specific consultation questions, listing them followed by a short analysis, where necessary and then a recommended response. In all cases these responses should be qualified by the Councils overall opposition to PGS.

## **1.2 The questions raised in the consultation are as follows:-**

*1. Do you agree that a criteria-based approach to defining the scope of planning obligations is the best way forward? If not, what approach would you recommend?*

This suggests that rather than have a simple list of potential contributions, the criteria based test for S106 contributions would relate to factors such as "connectivity to access points", replacement of facilities on the site that cannot be lost and need to be replaced, affordable housing based on adopted policy framework, ensuring biodiversity, acceptable landscaping/design etc.

Response – This approach is accepted as the most practical and in particular will be well related to the specific site analysis carried-out in making an individual planning case decisions.

*2. Do you agree that the scaling back of planning obligations will not undermine the operation of EIAs [Environmental Impact Assessments] for the reasons set out above?*

This suggests that the new system would mean that other than on-site works the LPA would be reliant on ensuring that the relevant Nature Conservation bodies could be guaranteed to spend the PGS on a timetable to ensure that the offsite biodiversity works would be capable of being coordinated with the development of the site. If this process were in place now, I would have particular concern with respect to matters, especially biodiversity related matters, which would be subject to EIA. For example it may have been difficult to achieve a speedy and positive outcome on Peters Pit (and substantial amounts, 250 units, of affordable housing could have been lost in the short/medium term).

Response – If PGS taken from development is to be made available to regional bodies to execute off-site mitigation works then there is no certainty that such works will be carried-out in the locality of the development or in a timely fashion in relation to the development timetable. Normally the LPA would not expect to grant permission UNLESS there is certainty as to the timetable for the mitigation measures. The current proposals do not create such links – this is of particular concern where European Habitats are involved and thus the surrounding procedural matters are at their most complicated. EIA mitigation (wherever it has to take place) must be treated as, effectively, a direct development cost (without such works the development could not be allowed).

*3. Do you think that land for public or community facilities on large sites should be included in the scope of planning obligations in future, or excluded? How should “large” sites be defined?*

Response – Yes, these matters should be part of the “S106 process” as the facilities will provide for local needs even if they may provide for the community beyond the immediate site. These are more related to the matters in the knowledge of the LPA than a more regional/sub-regional body. There is no need to define a “large “ site.

*4. Do you agree with the proposals to establish a clear statutory and policy basis for affordable housing contributions?*

Response - Yes

*5. Do you agree with the proposals to establish a common quantum for such contributions?*

Response – Yes, but only if this is a meaningful measure. As the aim is to provide **affordable** housing then this must be the ruling factor rather than issue of land prices or whether sites are or are not provided as serviced land. The common

quantum should be based on “open book” principles being adopted for each negotiation from the outset (pre-submission) and assuming, as a starting point, no public grant aid.

*6. Can you envisage any unintended consequences of the above approach?*

Response - Negotiations would be impractical if all LPA's were required in all areas, whether or not high cost areas, to work from a value based on discounted land value. It would make it more difficult, on grant free schemes, to push for Scheme Development Standard housing units.

*7. What common quantum would you recommend? What would be the impact of this option on a) development viability and b) affordable housing delivery?*

Response – Subject to comments on preceding questions it would seem appropriate for the common starting point to be the value of the land and construction costs. The impact of this approach would need to be assessed on a site by site basis based on ‘open-book’ principles.

*8. Do you agree that measures to implement Travel Plans and demand management measures directly related to the environment of the development site should remain within the scope of planning obligations?*

Response – Yes, inclusion would be the appropriate approach because the application of these matters relates so closely to the nature and sustainability of the proposed development.

*9. Which of the options for developer contributions to transport infrastructure should the Government pursue in order best to balance the objectives of; managing demand for road transport; the need to ensure network improvements are provided in a timely manner; the need for transport impacts to be dealt with on a cumulative and strategic basis alongside other forms of infrastructure; and the need to create a scope for planning obligations which is sensible and consistent and does not lead to delay? Are there any other options?*

There are two options put forward. The first, A: limiting the LPAs involvement to transport links to the nearest transport network and the second B: to allow LPAS to be involve with links to the nearest *appropriate* network. I believe firmly that the LPA should be able to engage in the future provision of infrastructure to the point where this is crucial to the decision whether or not to grant planning permission. Taking the example of the Three Sites Inquiry, the Council played a pivotal part in the negotiations between the three developers and the Highways Agency to bring the future of Junction 4/M20 to a speedy and successful result. These improvements were key to the delivery of the Council's Local Plan strategy, and therefore the successful delivery of a large amount of affordable housing (over 600 units). I would have no confidence that such a speedy solution could be achieved if PGS was put into a Regional or Sub Regional pot for Highways Agency expenditure according to their strategic priorities. I believe that this must be treated as, effectively, a direct development cost (without such works the development could not be allowed).

Response – Option B is the only realistic one.

*10. Do you agree with the proposal to define the new scope for planning obligations for non-road infrastructure i.e. those contributions required to allow “accessibility to access points”, but to exclude more strategic contributions or those which are better dealt with on a cumulative basis?*

Response – Not acceptable unless the Local Transport Authority is required to have a medium term strategy which identifies projects to spend PGS contributions in the locality of the proposal site and that there is some means of guaranteeing that the necessary investment will be made in the locality. As with comments made above it is assumed that the non-road infrastructure is required to make the development acceptable in principle and therefore in most cases the development should not go ahead without the infrastructure in place. It is recognised that some infrastructure could only be provided when a quantum of contributions is in place - this could, however, be dealt with by LPA pooling arrangements

*11. Do you agree that in future all planning obligation contributions, including towards highways works, should if possible, be made under a single agreement, to which highways authorities would also be parties where relevant? Do you see any downsides to this approach?*

Response – Not favoured as the considerations are not the same for instance between S106 development contributions and the consideration under S38 or S278 of the Highways Act. This would only cause more confusion.

*12. Do you agree with the proposal to reinforce the current policy presumption that planning obligations should only be used where it is not possible to use a planning condition, but not to provide for this in legislation?*

Response – On matters to be directly related to the implementation of the proposed development would be appropriate. On any other matters an agreement may be more appropriate for subsequent control and any further guidance should recognise this need for flexibility based on judgement.

### **1.3 Legal Implications**

- 1.3.1 None directly arising from this consultation. Legislation would be required to implement the changes put forward.

### **1.4 Financial and Value for Money Considerations**

- 1.4.1 Considerable funds for local services and infrastructure are raised via Planning Obligations. In a PGS system it is unclear how and to what extent such funding would be allocated in the future.

### **1.5 Risk Assessment**

- 1.5.1 The risks around the proposed system being introduced are highlighted throughout the report. In particular there could be a risk that the level of PGS

could prejudice the current priority given to affordable housing which is to be left for the planning system to deal with.

## 1.6 Recommendations

1.6.1 The general opposition to the proposed PGS as previously agreed and detailed responses to the current consultation as set out in this report **BE ENDORSED**.

The Director of Planning, Transport and Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Steve Humphrey  
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File ref: B4

Kate Barkers Review of Housing Supply March 2004  
and the Governments response December 2005

Changes to Planning Obligations DCLG December  
2006.

Valuing Planning Gain December HM Customs and  
Revenues December 2006

Paying PGS HM Customs and Revenues December  
2006

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