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Your Ref
PT/ND/
Natalie Dear
0115 977 4543
0115 977 4327
natalie.dear@nottsc.gov.uk
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Planning-gain Supplement Consultation,
Room 2-32,
HM Treasury,
1 Horse Guards Road,
London,
SW1A 2HQ

Dear Sir/Madam,

Planning-gain Supplement Consultation

Nottinghamshire County Council welcome the opportunity to comment on proposals to review the planning obligations system in order to promote a faster, more equitable system. I have coordinated a response from departments across the County Council in this letter.

Nottinghamshire County Council cannot support and objects to the proposed Planning-gain Supplement (PGS) set out in the December 2005 consultation paper. The reasons for this objection are set out below in response to the answers posed in the consultation document and in the general comments at the end of the letter. It should be noted that the responses made in answer to the consultation questions are made on the basis of an objection to the proposed PGS and it is intended that they should be considered in this context.

Concern should be expressed at the outset that the focus of the paper is derived from a need to improve housing supply and little or no recognition is given to the vast range of other types of development to which it is proposed to be applied. Not all types of development can be treated in the same way as housing development and this issue will be addressed further in this response.

Q2.1 What further clarifications to the definitions of planning value and current use value (as described in Box 2.2) would be helpful to provide further certainty to developers?

With respect to the definition of planning value, it is unclear why it is necessary to add "assuming that there is no prospect of obtaining planning permission for any other development in the future". One issue is that a site may be suitable for a mixed use, (as promoted in PPS1 and encouraged through development plans, a situation which is therefore quite typical). If one part of the site comes forward for development, it is quite possible that a range of different types of development may

actually be appropriate on that particular part, as alternatives to the use proposed, so how is an assessment made in this circumstance? This is equally applicable to a site where a number of different uses may be considered to be appropriate. It is feasible that planning permission for two (or more) different uses could be granted for the same site. It will not be possible to predict what permissions may be obtainable in the future, for example, following a change in policy or need identified. The principles of the PGS appear to be to assess the value added by a planning permission and charge developers on this basis. It is therefore unnecessary to consider what other planning permissions may be granted because if they were to be granted in the future, the PGS would be calculated on them at the time of planning permission being granted.

If the intention of this clause is to ensure that the “hope” value of land is not taken into account in the valuation, in order to fairly calculate the PGS generated as a result of the development for which planning permission is granted, the definition needs to be revised and made very clear. It would need to state that the planning value is calculated for precisely the development for which consent is granted. Using the mixed use example again, it must be clear that although a number of uses may be appropriate on any one part of the site, the PGS will only be calculated in relation to the planning permission granted.

The calculation of PGS takes no account of the “hope” value of land which may be as a result of allocations in current development plans. Developers may have already purchased land because it is an allocated site and so would incur losses through the implementation of the PGS.

It is uncertain how development which may have an unclear market value will be addressed, such as schools, hospitals, roads and cemeteries. Will PGS be payable on these types of development? This has clear implications for service providers and whether there will be recycling of PGS revenues back to the service provider, which itself would result in unnecessary administration and delay.

Another concern to be raised at this point is the need for each planning permission to be assessed on its own merits. Whilst the notion of self-assessment is put forward, the value of each permission will still need to be assessed by HMRC and this will inevitably result in a delay between the grant of planning permission and the time at which the development can be commenced, that is following the confirmation of the PGS liability. It is unclear how long this delay will be and whether it would in fact be quicker than the current system.

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

If PGS is to be introduced the commencement of development stage is the most logical point at which payment should be made because this is the only stage at which there is certainty regarding the actual proposed development. However, there are a number of issues that this raises:

- developers will not know the costs to be incurred through the development until the end of the planning process introducing greater uncertainty and therefore greater risk;

- land purchases are likely to be postponed until planning permission has been granted and the PGS calculated because, in reality, the potential PGS liability is likely to be taken from the amount a developer is willing to pay for the land, leading to delay;
- full payment of PGS at the outset of the development commencing could be an unrealistic financial burden to be borne by developers who are also the landowner, where land was purchased at a value above the current use value, for example where the price reflected its allocation for development in a development plan. One option here is to split the payment of PGS by phasing the development. This in turn would mean that there would be a requirement for subsequent notices to be served by the developer notifying the commencement of each phase of development. The problem with this approach is that it will encourage piecemeal development. This in turn leads to a problem with the delivery of infrastructure and services required as a result of the development, which at present can be secured through planning obligations at the outset;
- a problem arises relating to the payment of PGS monies where outline planning permissions are granted but the conditions attached to the permission allow for the commencement of development prior to the approval of all reserved matters. In this case, the “full planning permission” stage would only be determined to have been reached once all of the reserved matters had gained approval but the development could be underway before this. This may result in developments being commenced and even substantially completed before any PGS liability is due and in effect it could provide an opportunity for avoidance of payment;
- concern is expressed regarding the time lag between the submission of self-assessment and the confirmation of PGS liability. Given that each permission will need to be assessed on a case-by-case basis, it is difficult to see that the delays will not have an impact on the timescale within which development can actually commence; and
- the imposition of the PGS at the final stage of the planning process is contrary to the promotion of a plan-led system as it leaves one of the greatest areas of uncertainty until after permission has been granted.

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

The Development Start Notice needs to be submitted to HMRC as it is HMRC who will be responsible for collecting the PGS revenues and will keep a record of such payments. If the Development Start Notice was to be served to the local authority this would introduce an additional, and unnecessary stage of administration and delay for by the developer.

In addition to this, all enforcement concerning the payment of PGS monies needs to be undertaken by HMRC because it will be their role to keep account of what monies have been paid and at what time. The local authority would not have this information as the money is not payable to them. Any other approach would again result in unnecessary additional administration costs and inevitably lead to delay.

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

As highlighted above in relation to question 3.1, in order for the PGS liability to be fairly apportioned to large developments, it would be most appropriate to allow payment in phases, triggered by certain stages in the development. In order to achieve this, further notices would need to be introduced placing the onus on the developer to inform HMRC whenever a certain point in the phasing of the development has been reached and this would trigger the next phase for PGS payments. This approach, however, results in two key problems. One is that it will encourage piecemeal development and make strategic planning very difficult. The second relates to the delivery of infrastructure and services directly required as a result of the development. Even if PGS revenues were to be paid directly back to the service providing local authorities, the delay in the payment coupled with a phasing of PGS revenues would cause serious problems for achieving the delivery of the infrastructure and facilities necessary in an appropriate timescale.

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

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.

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

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 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.

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

No. 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.

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

PGS revenues will need to be the principal form of funding for infrastructure required to meet the demands of new development, since the monies which currently fund the infrastructure, through planning obligations, will no longer be available. It is important that there is a clear link between the location of the development and the allocation of PGS funds. The current system requires there to be a clear link between the harm caused by the development and any planning contributions sought and the essence of this should be reflected in the allocation of PGS revenues, thereby enabling appropriate infrastructure to be delivered.

There is a serious problem that if the PGS revenues available for delivering County Council services, which would otherwise have been funded by planning obligations, are insufficient, it will not be possible for the appropriate infrastructure to be delivered.

Q6.1 How should PGS revenues be recycled to the local level for local priorities?

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 How should PGS revenues be used to fund strategic infrastructure at the regional level?

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 How can local and regional stakeholders, including business, help determine the strategic infrastructure priorities most necessary to unlock housing development?

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.

In addition to the responses to the questions posed in the consultation document, below are a number of issues which are important to raise and be taken into consideration at this stage:

- the proposed system breaks the direct link (which is currently one of the policy tests for seeking planning contributions) between the impact of development and any contributions payable. It will not be possible for developers to ascertain whether the monies paid in PGS have been used to mitigate or compensate for the impacts of their development and whether there has been any overall benefit to the local community. The accountability present under the current system is removed by the proposed PGS approach. It is noted that the Partial Regulatory Impact Assessment in Annex A of the consultation paper compares the proposed approach with the “do nothing” and the “optional planning charge” approaches. Whilst the limitations of the current system are acknowledged and Nottinghamshire County Council did not support the “optional planning charge”, at least both of these approaches reflect the local situation and make a direct link between the impact of development and the level of contribution sought. The proposed new system would move significantly away from this;
- there appears to be a potential problem with the calculation methodology which could result in developments not generating any PGS liability but still creating a need for additional infrastructure. One example is if a site currently hosts derelict housing and

planning permission is granted for an employment use on the site. The current system allows for an assessment of the employment use and contributions to be sought where “harm” is deemed to be caused, for example a need for public transport contributions. Under the proposed system the planning value would be less than the current value (because although the housing is derelict, a residential use is the authorised use of the site) and hence there would be no PGS payment to be made. The infrastructure requirements of the development would still nevertheless need to be met;

- 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;

- 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;

- it is noted that in Box 5.1 Kate Barker recommended that local authorities should be free to spend PGS money as they see fit. Although the consultation paper does not comment further on this, it raises the question of how money will be spent and who will decide how it is spent? Centrally held monies will inevitably lead to a lack of local control over infrastructure priorities;

- the consultation document does not state whether all PGS revenues will be recycled or whether some will be retained centrally. If monies are to be retained, to what use will they be put?

- 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;

- is PGS payable on Government development schemes?

- 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;

- developers are likely to draw boundaries very tightly around the application site in order to minimise the PGS liability and to circumvent the opportunities to be sought for planning obligations to be required relating to on-site environmental sustainability;

- 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 relation to self-assessment, would the chargeable person be able to include other commitments such as those through the scaled back planning obligation system (for instance, in relation to affordable housing) and s.38 and s.278 of the Highways Act to be taken into account in determining their PGS liability? If not, in the case of s.38 and s.278 commitments, the developer could effectively be paying twice for infrastructure provision;

- in paragraph 5.19 reference is made to the consideration of s.278 agreements. It is crucial that such agreements (and those made under s.38) remain an integral part of the process, as at present, in order for sites to remain attractive and workable. For example, if a site requires a new set of traffic lights to be installed on an existing highway to enable vehicular access, it is essential that this could be delivered prior to the development requiring this infrastructure, otherwise development would halt. These sections of the Highways Act are highly effective in delivering such infrastructure and are directly linked to new development.

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 as 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.

I trust that these comments are helpful to you. If you wish to discuss any aspects of them, please do not hesitate to contact me.

Yours faithfully

Natalie Dear
For Planning Manager