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Report

Report subject: Proposed changes by the Government to the Planning obligations system, and the proposed introduction of a planning gain supplement.

Report to **:** The Cabinet

Date **:** Wednesday 28 February 2007

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Cabinet Member for Planning and Economic Development: Cllr Mrs Brown

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1.0 Report Summary:

To update councillors on the Government's consultation paper on the planning gain supplement and to seek endorsement for the suggested response from the council.

2.0 What is 'Planning Gain Supplement'?

The government proposed changes to the planning obligations system as a result of Kate Barker's review of housing supply, published in 2004. Barker recommended that planning obligations should be scaled back to cover only direct impact mitigation, plus affordable housing and that a Planning Gain Supplement (PGS) should be introduced.

The Government subsequently issued a consultation paper in 2005 on a proposed Planning Gain Supplement. It was proposed that the PGS would capture a portion of the uplift in land value created by granting permission, and that this money would be dedicated to local communities to manage the impacts of growth and to support local and strategic infrastructure, and thereby contribute to long term sustainability.

3.0 What are the implications for the existing Section 106 system?

As part of this reform, it is proposed that the planning obligations (S106) system follows a 'development site environment approach' that is based much more closely on the nature of the relationship between the requirement and the development. In basic terms the existing system would be scaled back to only include:

a) Affordable housing
b) Direct replacement / substitution: i.e. necessary to replace / substitute directly for the loss or damage to a facility caused by the development.
c) Development site acceptability: i.e. necessary to make the development site acceptable in terms of the following:
    - Connectivity to access points
    - Physical safety
    - Environmental quality
    - Biodiversity
    - Design or landscape
    - Archaeological protection
    - Mix of uses and or
    - Operational effectiveness.

The Government has stated that if a requirement relates to the site's social or community infrastructure, that this would **not** be included within the scope of obligations (S 106) For example, contributions towards recreational open space that this council has successfully collected under policy R2 of the Local Plan would now fall outside of the scope of planning obligations (section 106 agreements). However the Government is seeking views on whether land for public or community facilities should be included within the scope of planning obligations in the future. If they were excluded from obligations, there would need to be parallel negotiations between the landowner and the relevant public body over the purchase or lease of land within the development.

4.0 How will the proposed new system work?

The proposed system of PGS would work in the following way.

The date of issuing planning permission for qualifying developments would be the date that the land would be valued. In order to work out the uplift in the land, the current use value (CUV), for example an agricultural field, would be calculated just before planning permission was issued. After consent, the planning value (PV) would then be calculated, for example, the value of the same land with consent for 100 dwellings.

Example 1
A plot of agricultural land worth £500,000.
With consent for 100 dwellings was worth £5 million, then the uplift would be
£5 million - £500,000 = £4.5 million.

In order to work out the planning gain supplement liability this uplift would be multiplied by the PGS rate (this has yet to be defined). In this worked example if the rate was say 0.05 then the PGS liability would be:
£4.5 million X 0.05 = £225,000.

5.0 Who would be responsible for calculating the uplift?

This process would be done as a self-assessment by developers and submitted to HM Revenue and Customs (HMRC). The HMRC would then check these valuations with the assistance of the Valuation Office Agency.

When the developer waned to commence development, they would need to contact HMRC for a PGS start notice. Without a start notice, implementing a planning permission would be unlawful. The developer would also have to submit a PGS return, which would include the self-assessment of the PGS liability.

Once the developer received a valid PGS start notice, they could commence development. They would then have 60 days in which to pay the PGS to HMRC. Local planning authorities would not be involved in the day to day collection of PGS, however HMRC would put in place

arrangements to obtain information about relevant planning permissions and notify planning authorities of the issue of PGS start and stop notices.

If developers failed to pay the PGS on time, HMRC would use their existing debt management procedures to recover the money and where appropriate, issue a stop notice, making the development unlawful to continue.

6.0 Implications for the Council and the Local development Framework:

Under the existing system of planning obligations, the council collects and spends contributions in accordance with a legal agreement entered into with the developer. The key example of this is policy R2, whereby the council able to collect money to offset the impact that any new development would have on recreational open space. The council currently sets the level for the charges, administers the money and helps facilitate the parish councils to spend the money. This way, there is confidence that the money is being spent in the area in which the demand occurs and in accordance with any terms set out in the legal agreement. If the new system of PGS comes into being, then the council will no longer be able to collect money in this way.

Circular 05/05 on planning obligations encourages local planning authorities to have a plan led system for planning obligations, and that the procedures and aims for planning obligations should be in the LDF as part of the relevant topic based document. The use of formulae and standard charges for negotiating and securing planning obligations are currently encouraged.

Widening the scope of planning obligations was to be comprehensively reviewed within the LDF process. Evidence gathering has already taken place in order to justify future policies to secure community benefits. If the Government's PGS comes to fruition, it will not be possible to include policies to secure these additional benefits. Developers will have to pay PGS and it is still unclear how the money will be allocated.

7.0 How will the money be distributed back to the LPA?

In the 2005 consultation, the government proposed in the two options for recycling PGS to local levels. Option one, to distribute the money as grants in direct proportion to the revenues raised. This would require the PGS return to identify the local area in which the development site was located. The second option would be to recycle the revenues as grants on the basis of a formula not specifically connected to the PGS revenues raised. Of the total sums collected, a *significant majority* would be recycled to the local level. The remainder will be used for strategic infrastructure to support growth, and the majority would be recycled within the region from which it came. The current consultations are silent on the recycling of revenues. Officers consider that further information is required on this area, before any objective assessment of the system could be made.

It is also unclear about who will be able to bid for this money. If the purpose of the money is provide infrastructure, then any agency that provides infrastructure, be it the water companies, highways authorities, parish and town councils and local authorities may be able to bid for the money. There is then the question as to how HMRC will prioritise the release of the money to these groups.

Your officers consider that money should be recycled back to the authority where it was collected, and spent on areas of need as identified within the LDF. This would ensure that the spending of the money was transparent, and would give confidence to developers that the revenues generated would be spent on improvements in the locality.

8.0 What does the council need to do if the PGS is brought in?

The Audit Commission's 2006 report *Securing community benefits through the planning process,* recommends that local authorities should have detailed policies in supplementary planning documents (SPD). However, it also acknowledges that if the PGS is introduced, some local authorities may take the view that their detailed planning policies on section 106

agreements will be redundant. However, the report goes on to say that the background work will still be useful in a future system for the redistribution of PGS revenues. There will also be a delay in introducing the PGS until at least 2009 and the current system will remain operational until then.

Officers are currently working on a topic paper on planning obligations to feed into the Core Strategy and as a starting point for any future supplementary planning document. It is proposed that a twin track approach is put into place, with documents for both scenarios being produced, in order that when the government makes a decision, we can implement one or other of the documents, and therefore not delay the production of the LDF.

9.0 Uncertainties arising from the consultation:

Officers have identified the following uncertainties from the proposed new system

- More detail is required on the distribution of money.
- There is no information on whether there will be an administration charge from HMRC to implement the system.
- What happens to the interest accrued on the sums collected?
- Sums currently collected for larger schemes are index linked. How will the PGS factor this in with the delay in providing facilities?
- How do we guarantee that the mitigatory measures previously required through a Section 106 agreement would be implemented through the new system?
- Removing control from the local level – loss of local distinctiveness.
- Will developers pay twice? (PGS and providing facilities).
- 2-tier local government – both can bid for money. What about other public bodies?
- Loss of revenue for good authorities (such as this council who are successful in negotiation planning obligations).
- Personnel implications – may need an officer to coordinate the bids for the money.

The Government has posed a series of standard questions as part of this consultation exercise and they are included, along with your officers response at Appendix 1 to this paper

10.0 Recommendation:

That the council makes robust representations on the consultation as follows:

(1) The council wishes to see more information on the interpretation of the principles to be included in planning obligations.
(2) The council does not support the introduction of this overly bureaucratic system, which removes an element of local control.
(3) If the system is to be introduced then the council consider that payment should be made directly to the local authority.
(4) The council would wish to see the promotion of the LDF and SPD as the streamlined system for simplifying planning gain
(5) That the uncertainties outlined in section 9 of this report are addressed.

Councillors are also recommended to endorse the detailed responses to questions 1 – 12 that form Appendix 1 to this report, and that these are forwarded to the DCLG as the council's response to this consultation exercise.

11.0 Background Papers:

HM Revenue and Customs. December 2005. Pre budget report – PN 4 The governments response to Kate Barkers review of housing supply. HMSO

HM Treasury December 2005. Planning gain supplement: a consultation. HMSO

The Audit Commission. August 2006. Securing community benefits through the planning process. The audit Commission.

HM Government. 2006. Government response to the Communities and local government committee's report on planning gain supplement. HMSO

http://www.communities.gov.uk/index.asp?id=1504924

Communities and Local Government. December 2006. Changes to planning obligations. A planning gain supplement consultation. HMSO

HM Revenue and Customs. December 2006. Valuing planning gain: a planning gain supplement consultation. HMSO

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_026418

HM revenue and Customs. December 2006. Paying PGS: a planning gain supplement technical consultation. HMSO.

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_026417

12.0 Implications:

Legal **:** Contained in the report
Financial **:** At the moment it is impossible to know what the actual financial effects of the proposals would be. However, the likelihood is that there would be less funds available for the City Area Committee to spend primarily on recreational schemes; community schemes would also be affected. There would be a similar effect on the parishes. The result would be either that the district or the parish councils or the City Special Levy would have to make up the shortfall or that the number and /or value of schemes would have to be cut back
Personnel **:** Depending on how the work arising from this change is organised, people resource implications are likely to arise.
Environmental **:** None
Human Rights **:** None at this stage
Council's Core values **:** Excellent Service; Fairness and Equality; open, learning Council and a willing partner; communicating with the public; supporting the disadvantaged.
Consultation Undertaken: Internally with officers
Parish Affected **:** All

Appendix 1

Question 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?

The criteria that have been put forward by the government are very hard to interpret. The current system has the benefit of years of court decisions, which the new system would not. This could lead to challenges to the new system, which may cause uncertainties.

One of the attributes that might be open to interpretation is that of 'operational effectiveness'. Does this mean that the council could argue that providing public open space or a school or a community building would make the site acceptable in terms of its 'operational effectiveness' and therefore include them in an obligation?

Another issue to take into consideration is whether the PGS will generate enough income to hypothetically provide all the infrastructure required by a development. If not, it could lead to development being permitted with no certainty that the improvements could be made, and therefore stop development that would defeat the purpose of the new system.

An alternative approach might be to give developers the choice of the current system, or the PGS. It is likely that for small developments, the PGS would be favoured, but for large schemes the existing system of obligations would be used. This arrangement would give the planning authority certainty that facilities necessary for the development to proceed would be secured. It could also give the developer more certainty; if any off site infrastructure needs to be provided, the developer can pay for it and not have to wait until the relevant public body is prepared to do the works. The PGS revenues could then be recycled to provide facilities that would benefit the community as a whole.

Question 2. Do you agree that the scaling back of planning obligations will not undermine the operation of EIAs for the reasons set out above?

It is proposed that most works to mitigate harmful environmental effects would still fall within the scope of planning obligations, but where they would fall outside, the decision maker would need to take account of commitments to provide the infrastructure set out in public bodies' plans.

This system, whereby officers would have to look at the relevant public bodies' plans might add delay to planning applications and if any mitigating works required are not in these plans, then permission might have to be refused. Under the current system this would not happen, as if the developer is willing to pay for off-site improvements that are directly related to the development, then on the basis of an obligation to carry out the necessary works permission may be granted.
Planning authorities would therefore have to resort to Grampian style conditions, obliging the developer to provide the infrastructure before development can commence. This might have cash flow consequences for developers and could eventually stymie development. Therefore, it could be argued that the proposed system would not provide certainty for developers on matters that are outside their control.

Question 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?

If land for these purposes were not included in the scope, then parallel negotiations would have to take place between relevant public sector bodies. There needs to be some consideration of who these public bodies might be. For mainly rural authorities, this might include parish and town councils, who might not have the expertise or resources to carry out these negotiations.

It is also unclear how any buildings that might be required on the land will be provided, for example, the land for a community building may be negotiated as part of a planning obligation, but the building would not. This may result in areas of land becoming available for facilities, but with no guarantee that those facilities would be provided.

Officers recommend that all community infrastructure should be included in a revised planning obligations system, in order that facilities are provided in a timely manner. The government is also asking how "large sites" should be defined. The Department of Communities and Local Government already define large development as development over 10 dwellings or having a site area of more than 1 hectare or over 1000 square metres for business premises. Officers consider that these definitions should continue to be used.

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

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

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

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

Officers welcome the proposed establishment of a statutory and legal basis for contributions, providing it is flexible enough to respond to changing guidance and funding streams. On the second issue of establishing a common quantum, it would be difficult to be very precise, as all sites have some sort of constraint that may affect their viability. However the contribution formula should be (land + build cost) – RSL purchase value. It would also be difficult to negotiate the level of affordable housing an a site, as the developer would not know in advance how much PGS they would have to pay. The residual value of the land would be the key factor in negotiating these obligations. As well as this consequence, it might also be difficult for local authorities to be clear about what land value is available to secure affordable housing.

Question 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?

Travel Plans need to be initiated, implemented and monitored by the occupier (or developer) of a new development in order to be effective. The prospects for achieving modal shift are likely to be higher if responsibility for the Travel Plan lies with the occupier rather than the public sector. It is also more cost effective for the occupier or developer to appoint their own travel plan co-ordinator rather than rely on the public sector to do this on their behalf.

Other demand management measures, such as public transport information provision and implementation of on-site Private Non-Residential (PNR) parking controls are also a matter best dealt with by the occupier of the development. Employees are more likely to comply with restrictions on parking or to be able to locate such information if it is clear that they emanate from within the organisation.

It is therefore agreed that measures to implement Travel Plans (both workplace, school and residential) and demand management measures relating to the development site should remain within the scope of planning obligations.

Question 9. Which of the above 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?

Both options assume that a Planning Gain Supplement (PGS) will be introduced by the Government in the near future (no earlier than 2009), the purpose of which would be to speed up the planning process.

Option A (direct demand management plus transport provision to allow access to and from the site to the **nearest transport network**) is fairer for developers than Option B, (direct demand management plus transport provision to allow access to and from the site to the **nearest appropriate transport network** in terms of capacity), but this could mean that the development is delivered prior to all the infrastructure (funded through the PGS) being completed. In terms of ensuring that development occurs that supports the aims and objectives of the Salisbury Transport Plan, Option B would be preferable, as this would ensure that infrastructure enabling the highway network to accommodate additional traffic was put in place prior to completion of the development. Option A runs the risk of exacerbating congestion problems, which potentially could worsen public transport reliability and air quality, until such time as the PGS funded infrastructure has been delivered.

The other option available would be a continuation of the "interim" proposals currently being considered. This would require a decision by central government not to introduce PGS. These proposals entail the adoption by Local Planning Authorities of formulaic or standardised approaches to planning obligations. This could be done within Salisbury District through adoption of SPD on planning obligations. The benefit of such an approach would be that the Council retains control over the sums raised and the size of contributions to be sought from new developments. It would also assist developers in quantifying the costs of providing infrastructure, reduce the time required for negotiation and would be fairer and more equitable than the existing approach.

It would therefore be preferable to use a formulaic or standardised approach (without PGS) than either Option A or B (with PGS). If this alternative is not possible, then Option B would be preferable for the reasons given above.

Question 10: Do you agree with the proposal to define the new scope for planning obligations for non-road infrastructure as described above. i.e. those contributions required to allow "connection to access points", but to exclude more strategic contributions or those which are better dealt with on a more cumulative basis?

If consistency with the approach to road infrastructure is important, then the preference should be for a formulaic or standardised approach as an alternative to the two options. If this is not possible, Option B would be preferable.

The successful delivery of the Salisbury Transport Plan requires flexibility and a more strategic approach to the use of transport infrastructure contributions. With delivery of bus priority measures, circumstances may require a "corridor approach" to be followed, rather than simply connecting a new development into the nearest bus lane. For example, with a new an edge of city residential development, a new section of bus lane may be required close to the ring road or inside it, to mitigate against higher congestion and deliver more journey reliability improvements (than a more peripheral section of bus lane further out of the city centre). The use of a more strategic corridor approach, would in most instances allow more beneficial transport infrastructure (i.e. bus lanes, cycle lanes) than Option A's "connection to nearest point" approach.

Question 11: Do you agree that in future all planning obligations, including towards highway 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?

Section 278 agreements could potentially save developers time and money, negating the need for them to spend time negotiating two agreements with different parties. In two-tier local

government structures, such as within Wiltshire, the legal sections of the County Council have built up considerable experience in negotiating S278 agreements on the provision of a range of infrastructure, which involves considerable technical expertise.

However including the highways authorities as parties to section 106 agreements, may lead to delays and in turn result in planning departments not achieving their targets on the determining of planning applications. There is also the issue of who would enforce the highways elements of an agreement.

An alternative to the current system could be to have a Grampian style condition, which would require the developer to enter into a S278 agreement with the highways authority. This is currently ultra vires and would require a change in legislation to work.

Question 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?

Yes, planning obligations should be used where a condition cannot, and this should remain flexible and not be enshrined in legislation. Developers are protected by the current appeals system if they are unhappy with conditions, and the planning authority then has to justify why they are necessary.