PLANNING GAIN SUPPLEMENT

Response of the Country Land and Business Association to consultation document issued by HM Treasury December 2005

Introduction

The Country Land and Business Association welcomes the opportunity to comment on the proposals for a planning gain supplement as outlined in the HM Treasury's consultation document published on the 5 December 2005. The Association has nearly one hundred years experience of landownership and safeguards the interests of those responsible for land, property and businesses throughout rural England and Wales. Originally founded in 1907 as the Country Landowners Association, its members own and manage more than half the rural land in England and Wales and are committed to the positive development of the rural economy to benefit those who live and work in the rural areas.

The Association would wish to be involved in any further discussions or consultations following on from this response

Overall Comment

There have been at least 5 attempts since the Association was formed in 1907 to tax realised development value outside of the income tax and capital gains tax systems. All of these taxes failed to live up to their fiscal expectations and created obstacles to the efficient provision of developable land with landowners postponing sales of such land due to the high rates of tax charged. All had to be repealed within a relatively short period. The Association maintains that the proposed planning gain supplement will again inhibit the market place for developable land and create a costly and cumbersome tax divorced from the development on which the tax is based.

Previous experience of the Betterment Levy and Development land tax regimes demonstrates that the imposition of a tax on developable land has the effect of reducing the amount of such land offered for development and a modest rate of planning gain supplement combined with the pre-existing rates of capital gains tax will achieve the same result. There is already evidence that since the announcement of the proposed commencement of the new tax in 2008, with its rate as yet unspecified, that this is having an effect on the willingness of landowners and prospective developers. There is now a reluctance to progress either to granting options or to complete outright sales.

It is unfortunate that the original proposals in the Barker Report which dealt with primarily stimulating the provision of developable land to meet chronic housing needs have now been extended to encompass commercial development as well. Such a change of policy damages confidence in the market place, especially the viability of the rural economy, and places doubt on assurances within the consultation document that the rate of charge of planning gain supplement will be ‘modest’.

The Association recognises and fully accepts that planning gain arises out of community involvement in the planning process and that the granting of planning consent has an impact in the locality of that development. The community can and should seek a share in the uplifted value of the land and there needs to be a
mechanism in order to determine the local infrastructure that is required and a particular developments contribution towards it. In the Association’s view, planning gain supplement with scaled back section 106 charges creates a centralised tax to be administered by H.M. Revenue and Customs which will not be a subtle enough instrument to deal with, what are primarily local and on occasion’s regional issues.

The consultation suggests that PGS will be applied across England, Wales, Scotland and Northern Ireland – in other words “one-size to fit all”. In fact one size will not fit all and the Association suggests that there still needs to be a locally based regime for determining planning gain arising out of a particular development and for the receipts to be received and spent in that area. It is suggested that more work needs to be done in creating this type of approach to solving local and possibly regional needs rather than the proposals currently under consideration.

On the specific issues raised for consultation on the proposed planning gain supplement the Association would comment as follows:

**Chapter 2 – PGS Valuations**

**Current use value (CUV)**

i) The consultation document assumes that current use value can be readily and easily determined under a self assessment tax system. Notional values would be considerably more difficult to obtain than basing the calculations on relevant actual market information. In many cases, an imposed current use value would not take into account expenditure already incurred on the land prior to its disposal for development. An example would be land that had already undergone extensive remediation, in which case, unless a negative base value could be used, would result in an inequitable tax charge. In other cases, the landowner may have purchased agricultural land for his business, but because of the proximity of the land to localised development its price had increased due to the element of hope value. A subsequent disposal for development would be given no realistic credit under the proposed CUV purposes.

ii) There is no recognition that situations other than unencumbered freehold will arise in determining CUV and PV. An owner in such a position would be unable to obtain access to all of the uplifted value of the development and thus would be subject to additional cost.

iii) The suggestion that planning gain supplement can be policed under a self assessment tax system appears wholly optimistic. Transactions in developable land in the normal course of events require detailed and extensive valuations. If and when these values are to be scrutinised under self assessment system full information would still be required as to the state of the land at the time that planning consent was obtained; of necessity these would need to be conducted by appropriately qualified practitioners.

*It is therefore recommended that actual valuations should be obtained for the purposes of determining land values and qualified land valuers will need to be*
involved in order to gain agreement to those values and in determining liabilities.

Chapter 3 – Paying PGS

i) The Association welcomes the recognition that the payment of the planning gain supplement will be payable at the time when the development commences rather than as before at the date that planning consent was granted. However, there appears to be no recognition that in the case of large developments there will be a series of works being carried out under one large scheme which may extend over a number of years. The imposition of the planning gain supplement at the beginning of the development would have serious financial implications for the developer. It is suggested that there needs to greater flexibility in the payment of planning gain supplement in such cases.

ii) The development start notice is a local matter and does not require central government involvement in the process. This pre-supposes that local authorities and HMRC will both be properly resourced to be able to handle the necessary administration in a timely manner.

The issue of who ultimately pays PGS needs to be resolved. Some landowners sell options to a developer. An option is not a contract. What happens if a developer does not pay the PGS? Who becomes the “liable” person? We suspect the liability will fall back on the landowner who may not have the funds to pay the charge.

Payment of PGS will be at the commencement of development whilst value with planning permission and current use value will be assessed when planning permission has been granted. In many cases, especially on large sites, the time delay between when the valuation was undertaken and starting development can be quite a long period. In that time the valuation may have altered substantially. Furthermore in that period, ownership of the land may have changed. These issues have not been taken into account in the consultation document.

Chapter 4 - Scope

Research clearly indicates that “big site” owners are not farmers! Developers own 39% of the developable land, whilst the public sector owns a further 36%. And that it is manifestly unfair (despite what HMT say to the contrary) to expect rural businessmen and women to have to pay a PGS charge on conversions to new uses and changes of use of existing buildings. This is not new development, merely the re-use of existing buildings many of which will not be sold on the open market.

i) There will be many occasions when a landowner will seek planning consent with a view to developing the land themselves with no intention of disposing of the land. In such circumstances there will be no immediate yield from the uplift of the value of the land to pay the tax. The additional value may well be achieved by the landowner as a flow of increased rental income from the developed property.

ii) Planning gain supplement may well result in no development taking place because the tax renders a project uneconomic. There is particular concern for rural developers attempting to improve redundant buildings. In our report 'Reform to
Perform’ the Association drew attention to Sir Donald Curry’s conclusions pointing to a need for reconnection in the rural areas. New business opportunities, providing new and alternative employment, would rise organically by reconnecting farming, the rural economy and the environment into a ‘… wider economy of rural areas…’. The Curry Report emphasised a key role for Government in achieving this reconnection, but cautioned that wherever possible, it should take measures to facilitate rather than regulate this desirable process. Additionally, in March 2002 the Chancellor of the Exchequer suggested that the prosperity of disadvantaged sectors of the economy did not rest on ‘… more giro cheques but more businesses and economic activity…’. The article went to suggest that it was Government’s responsibility to ‘…break down barriers…’ that prevented new business activity and establish a culture of rewarding entrepreneurship. Following that exhortation by Government to diversify, many farmers and land managers are seeking diversification and attempting to bring back into use traditional rural buildings for commercial and community use.

iii) In the Association’s view planning gain supplement would be a new barrier to development in rural areas and would affect a variety of new and essential developments. In most instances of rural development, no section 106 charge currently arises because of the scale and location of that development in areas of relative isolation and there is little that local planning authorities can seek in terms of planning obligations. The proposed imposition of planning gain supplement would therefore be an additional cost on desirable re-development. A number of examples of such activities are enclosed in the attached Appendix to this response.

Furthermore, the application of PGS on the rural commercial market would result in a two-tier market, with new rental values post-PGS subjected to the PGS factor, whilst those rental values agreed prior to 2008 will not. This is likely to lead to a downturn in the commercial rented market in rural areas with consequential effects on the viability of farm businesses, the rural economy and social and environmental fabric of rural areas.

iv) There are considerable concerns of the effect that planning gain supplement will have on the flow of land for the provision of affordable housing. The present arrangements rely on landowners often providing land at below current market value in order to make a rural housing project viable. From the landowner’s perspective, providing land at less than market value for the construction of affordable housing is financially unviable; but the landowner provides the land for economic, community and environmental motives. The imposition of PGS would render the project even more financially unviable and is almost certain to reduce the creation of affordable housing in rural areas.

v) Brown field sites should have a lower rate of charge on their development. However, it is necessary that the definition of brown field land for the purposes of planning gain supplement now includes all land that has been hitherto been used for commercial purposes. Redundant agricultural buildings such as barns should now be brought within the definition.

vi) The consultation switches between the terms “brownfield land” and “previously developed land”. Clearly the old definition in PPG3 referred to “previously developed land” and we note that draft PPS3 has now changed this definition heading to “brownfield land”. We suggest the consultation is confusing what it means by both terms and is sending out mixed messages. We suggest that this confusion should be clarified as soon as possible and that only one term is used. Alternatively if there are two separate terms then these should both be clarified and properly defined.
vii) There should be a threshold for small scale development; many of the developments in rural areas are small scale and it is important that there are no further fiscal disincentives on essential re-development. There are problems in creating a threshold in that it creates arguments at the margin and landowners will have uncertainty as to whether or not a particular development or series of developments is within the scope of the tax.

The Association therefore feels that it is important that the proposed planning gain supplement be subjected to HM Treasury's own process of rural proofing as set out in the Rural White Paper 2000 and that a regulatory impact assessment be made of the effect of such a policy on the future homes and business and employment priorities of the 10 million or so people who live in the rural areas of England and Wales.

For administrative reasons PGS would be better focused towards only large-scale schemes, with small schemes including minor changes of use, subject to the existing S106 arrangements. Although such an arrangement would create market distortion and may provide scope for PGS avoidance, it will certainly reduce the number of PGS references that will be made each year.

The threshold at which PGS may be set is arbitrary but permitted floor area or numbers of dwellings are logical tests. Further research is required to reveal the level at which a large proportion of small schemes applied for would fall out of PGS. The inclusion of a reasonable de minimus limit may allow both public and political acceptance to develop.

It is therefore suggested that in order to provide some certainty for small scale developments the Association suggests that the threshold for small scale developments be set at £250,000 of uplifted value.

The issue of whether relief or exemption will be provided for charities and similar organisations who may be developing their own land in line with their charitable purposes (i.e. affordable housing, care homes etc) must be addressed. If relief was provided in these situations then developers would not need to offer lower values for these properties as they would not be required to pay the supplementary charge at the point that development commences.

Chapter 5 – Financing infrastructure through the planning system

i) The consultation document suggests that the current application of section 106 monies to funding infrastructure is a weakness in the current planning system. The replacement of a locally based system with a new tax to be administered by a central government department would be regretted. In the Association's view the creation of a tax will act as a disincentive to the bringing forward of land for development by the creation of further risk in the development process and will lead to a loss of land for housing development.

ii) There are concerns about the current system of section 106 planning obligations and there are a number of serious disadvantages such as:
• lengthy delays in negotiating agreements with LPAs and getting them signed off;
• uncertainty, in that developers do not know what arbitrary demands LPAs are going to make - many fall well outside the “necessity test” of Circular 1/97, with some demands being made at the last minute after long negotiations, so that it is often very difficult to cost the S106 agreement into the land price;
• pressure for open-book accounting if a developer claims the S106 demands make a site unviable, or the land owners will not sell;
• Affordable housing demands, a primary cause of delay;
• Lack of transparency - it can look as though permissions are being bought, and the industry and LPAs are unable to promote the benefits of development of S106 agreements, and therefore housing development, to local communities.

Although the limits of S106 demands are clearly defined within government policy (Gov circ 1/97), LPAs have pushed demands well beyond these limits and developers have often acceded to their demands out of desperation to obtain a permission. In effect, S106 money has become a general revenue source for local authorities, rather than a mechanism for raising money specifically to enable an increase in housing development. The interim revisions to S106 in 2005 were unsatisfactory in that they claimed to retain the necessity test, but at the same time suggested LPAs could make demands well beyond the limits set by the government’s “necessity” test.

However there are some advantages in the current S106 system. LPAs retain all the money for the local community which should, in theory, help reduce opposition to development. It allows regional and local variations – developers in the northern regions seem generally to have fewer problems than those in the south. Some developers believe they can use their superior negotiating skills to achieve a better S106 outcome than would be achieved through some form of fixed charge or tax. And the S106 demand should be related to the value of the individual site – though this can lead to demands for open-book accounting if a developer tries to argue the demand is excessive and will render the scheme unviable.

The “development site” approach as set out in the PGS consultation document does have merit. In future, scaled back section 106 monies could be directly related to issues arising out of the immediate impact of the site under development. Developers of what ever scale would then be confident in proceeding with a development having achieved a clearer definition of what local planning authorities could legitimately seek. The community affected by such a development would also be reassured under such a process, thus reducing time consuming objections to the granting of planning consent.

There is no doubt that PGS will increase the burden on development, and therefore, if PGS is to be introduced, current planning obligations will need to be scaled back if developers are not to be taxed twice.

i) The funding of infrastructure depends on whether it is local regional or in some instances national infrastructure and is dependent upon how PGS revenues will be allocated. In all most all cases of local infrastructure this should be dealt with from receipts derived from local developments. If new infrastructure is to serve a wider public function beyond the immediate needs of the particular development then
i.e. regional or national development then the funding should obtained from regional or central government receipts.

The PGS consultation is none too clear on a number of issues and the Association calls for further clarification on:

- Whether a large surplus of PGS will be used to finance infrastructure elsewhere than in the region/locality it was raised;
- The degree of control that local authorities will have over revenues raised in their area;
- If new infrastructure is to serve a wider public function beyond the immediate needs of the particular then there should be an apportioned cost credit against the PGS payment, not just the uplift.

**Chapter 6 – Allocating PGS revenues**

i) The Chancellor in his 2005 Pre Budget Report called the planning gain supplement a "local tax for local people". The consultation document states that a significant majority of the planning gain receipts are to be re-cycled to the local level to meet local priorities. However the consultation document provides no definition of what “significant” means. If the receipts are to be a local resource then this should be totally transparent and only in exceptional circumstances are the receipts to be passed to a regional body. PGS revenue should be allocated with the majority recycle directly to the local level to ensure that Local Government overall will receive more funding through PGS than through S106 agreements. For PGS to be acceptable to the local community there must be a clear link between the development benefits and the benefits to the local community. This means that recycling PGS revenues through such Government bodies as the RDAs or Government Offices may not be acceptable.

ii) As we state above any planning gain supplement receipts that are passed over to a non local body should be minimal and only in circumstances where the use of them for regional infrastructure is itself going to provide benefits to the community that provided them. PGS revenues that are to be used for regional or strategic infrastructure could take place through the means of an agreement between a local authority and its regional Government Office, with clear transparent efforts to agree the approach with other regional agencies such as the Highways Agency, Environment Agency and English Nature. An example could be a better transport provision from which local and regional benefits flowed.

iii) It is suggested that the current arrangements providing for community involvement at all levels of development are sufficient to drive these plans forward. The creation of additional or replacement revenues such as planning gain supplement should not be an opportunity to create costly and duplicating structures that would waste the receipts received from local developments.

iv) Local and regional stakeholders must be able to assist in the determination of strategic infrastructure priorities by means of consultation through the Regional and Local Development Plan process.

v) Further clarification is required as to the means by which “pump priming” infrastructure will be put in place, and how it will be paid for, in order to encourage development to take place.

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Appendix

Small scale rural developments

(PPS7: Sustainable Development in Rural Areas)

Small scale rural development includes:

- Rural affordable housing for rent or shared equity housing;
- Small scale market housing (10 houses) within or adjoining rural settlements;
- Conversion and change of use of redundant farm buildings to new commercial uses (e.g. industrial, storage, holiday lets, offices) for rent by landowner/landmanager;
- Conversion of redundant farm buildings to community uses (e.g. school, village hall, village shop);
- Conversion of redundant farm buildings to residential use;
- Conversion of redundant farm buildings to rural affordable housing use for rent and/or shared equity;
- New farm houses;
- New agricultural/forestry dwellings with agricultural occupancy condition (PPS7 Annex A);
- New rural dwellings with rural occupancy condition (PPS7 Annex A);
- New agricultural or forestry buildings, including fruit and vegetable packhouses and associated equipment;
- Buildings required to house production of renewable energy (crops/timber/manure) facilities located in rural areas;
- New small-scale commercial buildings erected in rural areas;
- Development by charities in pursuit of charitable purposes e.g. affordable housing, village shops, care homes etc;
- Fish farms;
- Winter storage reservoirs;
- Livery stables and other equestrian pursuits (cross country riding course, outdoor/indoor manege at other equestrian equipment (horse walkers);
- Commercial shoots that take place for more than 28 days per calendar year;
- Diversification in large houses for commercial activities e.g. weddings, conference centre/facilities, bed and breakfast, care homes etc;
- Change of use of building to a new use.

This list is not exhaustive.