Government Consultation Papers on Planning-Gain Supplement

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Report for Key Decision

Summary
This Report outlines the Government’s proposals for a new system of planning obligations in England and assesses the likely implications for LB Sutton. The Government produced three consultation papers dealing with the possible introduction of the Planning-gain Supplement in December 2006: Changes to planning obligations: a Planning-gain supplement consultation (DCLG); Valuing Planning gain: a Planning-gain supplement consultation (HM Revenue and Customs); and Paying Planning-gain supplement: a planning-gain supplement technical consultation (HM Revenue and Customs). A response to the consultation is required by 28th February.

The Report highlights areas of concern, in particular the likely reduction in financial resources the Council receives through S106 Agreements and the possible reduction in the Council’s ability to fully address the impact of additional traffic arising from new development.

Recommendations
I recommend that the Strategic Planning Strategy Committee Advisory Group agrees:

a. that the Executive Head of Planning Transport & Highways submits a holding response to the Government’s consultation on PGS on the basis of this report, the final content of which to be agreed with the Lead Councillor for Planning;

b. to forward the report to Strategy Committee for their endorsement of the approach taken.

1. Background

1.1 The government issued a consultation paper on the introduction of a planning-gain supplement in December 2005, in response to Kate Barker’s review of housing supply (March 2004). The government’s consultation paper (December 2005) set out that a planning gain supplement would capture a proportion of the land value increases or “uplift” created by the planning process. If it were implemented, the current system of S106 planning obligations would be scaled back.

1.2 The government’s new consultation documents build on their proposals for a planning-gain supplement set out in December 2005. They seek views on more detailed aspects of the scope of the new system.
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2. Issues

2.1 Changes to Planning Obligations: a planning gain supplement (December 2006) (DCLG) raises specific questions on five topics: scope of planning obligations; treatment of in-kind contributions of land for public and community facilities on large sites; developer contributions to affordable housing; implications of the new scope for the relationship between planning obligations and planning conditions; and transport contributions and the future of agreements under section 278 of the Highways Act 1980.

2.2 The document says that future legislation would define the scope of planning obligations according to a number of criteria-based tests. The current tests set out in the document are based on those set out in the planning-gain supplement consultation document from 2005. They currently cover: affordable housing provision; facilities replacement; or other items needed to make a development acceptable.

2.3 The document raises the issue of how a scaled-back planning obligations system would fit in with the need for compliance with EU legislation, such as the Environmental Impact Assessment Directive. The document states that councils should take note of where the “mitigation of harmful environmental effects would require works that would fall outside the scope of a scaled-back system of planning obligations and would therefore be the responsibility of a public body to fulfil”. The onus is therefore on councils to ensure that they are aware of public bodies’ responsibilities and plans, which may be required to mitigate the impact of new development.

2.4 The document seeks to retain the approach from the 2005 consultation paper that contributions towards community and social facilities would not fall within the scope of section 106 contributions. However, it asks whether land contributions for public and community facilities should be included within the scope of planning obligations.

2.5 The document says that one criticism of current affordable housing contributions is the lack of predictability for developers as to the value of the contribution required from them. The document therefore proposes a “common starting point” on the value of developer contributions towards affordable housing. The document proposes that the following definition be used: “a contribution by the developer in the form of, or equivalent to the value of, the land necessary to support the required number of affordable units on the development site”.

2.6 The document seeks consultees’ views on which aspects of transport provision might best be included within planning obligations or highways agreements and which might better be dealt with directly by the public sector using PGS and other revenues. The document suggests that direct measures such as travel plans and demand management related to the environment of the development site should remain within the scope of planning obligations, where they are not covered by planning conditions.

2.7 The document also puts forward a number of suggestions for widening the scope of planning obligations to consider wider off-site impacts. The first option is that
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developers would only be required to connect the development safely and effectively to the immediate road network. The public sector would then, through PGS or other sources, be responsible for improvements or capacity enhancements required on the wider network beyond the immediate site access to accommodate additional trips. In practice, for example, the contributions made by developers could include a dropped kerb for a single new dwelling to a dual carriageway access road and new junction, for a major distribution centre. Under the second option, developers would be expected to cover the cost of accommodating all the additional traffic demand generated by their schemes, up until the point at which the existing road network could accommodate the additional demand generated.

2.8 The document asks whether people agree with the proposal to reinforce the 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.

Paying Planning-Gain Supplement: a Planning-gain supplement technical consultation (December 2006)

2.11 This second consultation document is also an update to the consultation document that was produced by the government in December 2005. The Government still proposes to make developers apply to HM Revenue and Customs for a Start Notice before they can commence development. The new consultation document states that a developer would have to supply the following information to register for a start notice: developer’s contact details; developer’s Unique Taxpayer Reference, National Insurance Number, company reference number and/or VAT number, as applicable; contact details of developer’s agent, where applicable; development site address; name of the local authority; local authority reference number for planning permission. By introducing a Start Notice, the government can a) identify the relevant person for charging the supplement to; and b) set the point of charge. This will be on the date the government issues the start notice.

2.12 The valuation date for the Supplement (the proportion of the uplift that the developer is required to pay) is the date of the local planning authority’s letter that informs the person who applied for full planning permission that it has been granted. For outline planning permissions, planning permission is considered to have been granted on the date of the letter that informs the applicant that the final “reserved matters” application is approved.

2.13 It will be unlawful to implement a planning permission to which a planning-gain supplement applies without having obtained a start notice. The developer will have a number of days (Example 1 and paragraph 2.11 say 60 days and paragraph 2.8 says 30 days) from the date the start notice is issued to pay the Supplement. There will be a number of ways in which to pay. Late payments will be charged interest. If some or all of the monies due are not paid, the government may issue a Planning-gain supplement Stop Notice. Other ways of recovering debt include seizing property, or court or insolvency proceedings.

2.14 As suggested in the consultation paper in 2005, developers will also need to file a planning-gain supplement return to obtain a start notice. This must be done at the same time as making the application for a start notice. In practice, it is likely that the planning-gain supplement return and start notice application will be incorporated in one document. The planning-gain supplement return will consist of a self-
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assessment of the Planning-gain supplement due from the developer, together with any relevant supporting information.

2.15 The document says that the government wishes to encourage the use of online services, including the service that HM Revenue and Customs will be developing to support the administration of the planning-gain supplement. It continues that “the details of the planning-gain supplement administration process set out in this document assume that developers and their agents will submit planning-gain supplement Start Notice applications and returns to HM Revenue and Customs through a dedicated e-channel”.

2.16 The document also says that although local authorities will not be involved in the day-to-day collection of the planning-gain supplement, they will be an important source of information for HM Revenue and Customs in relation to relevant planning permissions and developments that go ahead without a planning-gain supplement Start Notice.

2.17 Given that developers will be submitting a self-assessment return for their developments, HM Revenue and Customs and the Valuation Office Agency will review each planning-gain supplement return to assess the level of risk that the return is not correct.

Valuing planning gain: a Planning-gain supplement consultation (December 2006)

2.18 This document is concerned with the valuations that will be required for the planning-gain supplement. The land to be valued for Planning-gain supplement purposes is the entire site to which the planning permission relates. When assessing the planning value or current use value, it is assumed the interest to be valued is the freehold interest with vacant possession. The valuation date for current use value and planning value will be the date of the full planning permission.

2.19 The Government does not wish to dictate what valuation method should be used. The document suggests that when there is no sale price on which to base the valuation, the most common method of arriving at the planning value is the comparison or residual method. The comparison method simply compares the value of the property with others of a similar nature that have sold at around the valuation date. The residual method is the value of the completed property (Gross Development Value) minus the costs of development, including developer’s profit. The primary evidence for calculating the planning value is likely to be the sale price of the actual property.

3. Implications for the LB Sutton

3.1 The Council has a number of concerns with the ‘Changes to Planning Obligations: a planning gain supplement’ (December 2006) document.

3.2 The Council is concerned at how a scaled-back planning obligations system would fit in with the need for compliance from public bodies with EU legislation, such as the Environmental Impact Assessment Directive. There is concern at how local authorities will be made aware of public bodies’ responsibilities and plans for mitigation of individual developments.
3.3 The consultation documents were not accompanied by a Regulatory Impact Assessment. The council believes that they should have been, so that potential costs to local authorities could have been set out.

3.4 The Council would like to see land contributions included within the scope of planning obligations. This would help to ensure that facilities were integrated within developments.

3.5 The Council does not consider that the Government should be setting a definition of what should be sought with regards to affordable housing. The use of a common starting point, in this case: “a contribution by the developer in the form of, or equivalent to the value of, the land necessary to support the required number of affordable units on the development site”, appears over-prescriptive. It does not afford the Council the flexibility that is required in dealing with a range of applications for affordable housing from different types of developers. Contributions for affordable housing normally include an element of construction costs. The proposed wording in the document might lead to affordable housing not being delivered.

3.6 With regards to the options on widening the scope of planning obligations to consider wider off-site transport impacts, the Council prefers option 2 to option 1. The Council would prefer to see developers covering the cost of accommodating all the additional traffic demand generated by their schemes, rather than developers providing some infrastructure and then relying on a different public body to provide the rest.

3.7 The council also has a number of concerns with the 'Paying Planning-Gain Supplement: a Planning-gain supplement technical consultation' document (December 2006). Given that the supplement could affect the timely provision of necessary infrastructure and services to support the needs of new development within the Borough, it is still unclear from the government what the supplement rate will be and how much of the money that is to be collected from the supplement will be returned to local authorities. However, the Government’s Pre-Budget report (December 2006) for the 2007 Budget suggests that at least 70% of PGS revenues will be returned to local authorities for local infrastructure projects, with the remainder returned to the regions for strategic infrastructure projects. It is unclear who would be responsible for allocating this strategic funding.

3.8 The Council considers that the process set out in the document for developers may lead to delays in the implementation of planning permission, i.e. the time lag between planning permission being granted and a Start Notice being issued by HM Revenue and Customs. Further delays could also occur if developers do not pay the Supplement.

3.9 It is also unclear from this consultation document exactly how long developers have from the issue of the Start Notice to pay their liabilities: Example 1 on page 8 of the document and paragraph 2.11 say it is 60 days, whilst paragraph 2.8 says it is 30 days. The Council urges the Government to set out clearly what the time limit is.

3.10 The Council also considers there may be difficulties with the proposals for developers to submit Start Notice applications and returns to HM Revenue and Customs through a dedicated e-channel. Experience from council consultations supports this view. It
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would be better if an e-channel were one of a number of options for developers to submit their Start Notice applications and returns to HM Revenue and Customs.

3.11 Finally, the Council has concerns with proposals set out in paragraph 2.20 of the consultation document regarding the liaison between HM Revenue and Customs and local authorities. Paragraph 2.20 states that local authorities “will not be involved in the day-to-day collection of the planning-gain supplement. However, they will be an important source of information for HM Revenue and Customs in relation to relevant planning permissions and developments that go ahead without a planning-gain supplement start notice”. There is no indication here of the potential workload for councils. There should be far more detailed guidance for councils.

4. Next Steps

4.1 Further announcements on the planning-gain supplement are expected in spring 2007.

5. Financial Implications

5.1 The government’s proposals for the introduction of Planning Gain Supplement (PGS) are set out in the three current consultation documents and the Chancellor’s Pre-Budget Report 2006. These documents follow the Baker Review of Land Use Planning and previous consultations on PGS in early 2006. The proposals will have a material impact on the financial resources that the Council currently receives through the use of section 106 agreements (s106) from both the scaling back of the current scope of planning obligations and the distribution of PGS.

5.2 Under the current system of planning obligations the Council has received around £12 million in s106 payments from developers and these have been used mainly for community and social purposes (e.g. education provision, transport and environmental improvements) that will be outside the scope of the ‘scaled back’ planning obligations that would operate alongside PGS. The future scope of planning obligations will be more limited and relate to the “physical environment of the development site”. There will be further consultation on how the development site approach will be included in legislation but very few of the Council’s previously negotiated s106 agreements would be possible under the proposed arrangements.

5.3 The PGS will be collected centrally by HM Revenue and Customs (HMRC) as a national tax. Local authorities will not be involved in the assessment or collection process, other than providing information to HMRC, and will have no direct influence on the level of the PGS. The level at which PGS will be set (the rate) has not yet been established but the government have made it clear that it will be at a ‘modest’ level.

5.4 Whatever the future value of PGS raised from developments within the Borough are, the amount that the Council will actually receive will be less because:
- 30% of PGS will be distributed at a regional level for strategic infrastructure projects (e.g. Thames Gateway)
- It is not clear, but likely, that the costs of administering PGS will be met initially from the proceeds (i.e. only the net income would be available for distribution)
- It is not certain that the 70% proceeds would be paid to the Council – the intention is that 70% of PGS revenues would be returned to the “local authority
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area” in which they were generated. It is also intended that the 70% PGS will be “hypothecated for local infrastructure priorities” but it is not clear whose priorities these are. There is a risk that other public bodies (e.g. TFL) would benefit from PGS for infrastructure investment within the area of the Borough.

In addition, the level of resources from PGS could be lower because:

- PGS will be calculated on the increase in value arising from planning permission and will be particularly beneficial where ‘planning gain’ is significant. This may well favour larger ‘green-field’ developments and this could reduce the level of PGS generated within the Borough. The Council has successfully developed policies and strategies to maximise the benefit from negotiated s106 agreements that will be lost in a formula based PGS.

5.5 Although there are a number of uncertainties around PGS and scaled back planning obligations, it is clear that the future level of resources will be significantly less than under the current system of negotiated planning obligations and the uses to which these resources can be applied will be more restricted. It is likely that most, if not all, of these resources will have to be used for prescribed infrastructure investment and not discretionary improvements.

5.6 There is an explicit reduction in the amount of resources that will be received at the local level from new developments. The government is taking 30% of the proceeds to fund regional infrastructure developments that it would otherwise have directly funded. This reduction needs to be recognised and compensated for in additional resources from government.

6. Influence on the Council’s Core Values

6.1 None

7. Contribution to the Achievement of the Council’s Policy Aims

7.1 The Council’s goals include achieving environmental sustainability, social inclusion, and economic and community well-being. Setting out the Government’s proposals for a planning-gain supplement enables the Council to consider the potential impacts of the proposals on the ability to achieve its aims.

8 Background Papers

Changes to Planning Obligations: a planning –gain supplement consultation (Dec 2006, DCLG);
Paying planning-gain supplement: a planning-gain supplement technical consultation (December 2006, HM Revenue and Customs);
Valuing planning gain: a planning-gain supplement consultation (December 2006, HM Revenue and Customs)
Pre-Budget Report CM 6984 (Dec 2006, HM Treasury)
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