

The Clerk of the Committee
ODPM Committee
Committee Office
House of Commons
7 Millbank
London, SW1P 3JA.

24th February 2006

To Whom It May Concern

**ODPM Select Committee Inquiry into Planning Gain Supplement – BCSC
Evidence**

Please find enclosed a response from BCSC to the Planning Gain Supplement consultation launched in December 2005. The response takes into account a wide range of contributions received from BCSC members and was edited under the guidance of Dr. Brian Raggett, Senior Executive Director at CB Richard Ellis.

The British Council of Shopping Centres (BCSC) was established in 1983. It currently has 1,700 members involved in shopping centre development and management. The BCSC supports the Government's objectives for sustainable development, including the policy set out in PPS6 for promoting town centre development. We welcome the opportunity to respond to the consultation on the proposed Planning Gain Supplement (PGS).

The BCSC's over-riding concern is that Government proposals for PGS would lead to reduced investment in new shopping centres and a slower rate of improvement for the fabric of town centres. Kate Barker's original proposal for PGS was focused specifically on circumstances where farmland is allocated for housing, thus creating a large uplift in land value, combined with a need for new infrastructure to support development. In such cases PGS is potentially a pragmatic and workable solution to providing and funding relevant infrastructure. However, applying PGS to other types of development could discourage investment in retail centres and brownfield sites, contrary to Government policy which promotes town centre development and diversification of out of town centres. In particular, in order to fully support current Government policy of developing brownfield rather than greenfield sites, PGS should not be applied to brownfield sites. Therefore, we urge the Government to limit PGS to greenfield residential developments as originally envisaged by Kate Barker. Our response to the consultation is enclosed and addresses our concerns in more detail. Also included, for quick reference, is a summary of our response and recommendations.

We hope that our response is a positive contribution in helping the Select Committee conduct its inquiry into this important issue. The BCSC would be delighted to further expand on this submission by giving oral evidence should the Committee consider it necessary. Please contact our Public Affairs Manager Helen MacDougall on, tel: 0207 630 3370, email: helen.macdougall@morganallenmoore.com to discuss this further. Should you require any additional information then please do not hesitate to contact us.

Yours faithfully

Dr Brian Raggett
Chair of BCSC Government Affairs Committee

Summary of BCSC's response to Planning Gain Supplement Inquiry

BCSC opposes the wider introduction of PGS because:

- It has been designed for greenfield residential development and it cannot readily be adapted to retail-led or mixed-use development on brownfield sites. Such redevelopment sites are rarely in single ownership and their existing use value is much more complex to calculate. Rarely, if ever, are there simple value uplifts or infrastructure needs which can be calculated in the same way as may apply for greenfield residential sites;
- Its 'broad brush' application to greenfield and brownfield sites would be inappropriate. It would undermine the Government's objectives for sustainable development, because there would be:
 - increased uncertainty over the timing of the provision of critical infrastructure;
 - a significant risk that investment in existing town centres and enhancements to shopping centres including improving the public realm would be discouraged;
- It is likely to make obtaining planning consent harder if communities cannot readily see the benefits of development and are uncertain about the timing of critical infrastructure provision;
- It is a unique tax in requiring payment before any benefit is realised and it is likely to be inefficient, particularly given the likely high costs of administering it, as it stands, in relation to brownfield sites and;
- It is unlikely to raise the revenue the Government is seeking, whilst imposing considerable costs and bureaucratic burdens on business.

RECOMMENDATIONS:

- If PGS is introduced, payment should be on completion of development, this will avoid the need for an additional and separate set of regulations covering phased completions.
- Sufficient resources must be made available to verify Development Start Notices in a timely fashion in order to avoid costly delays to development projects.
- Brownfield development should be exempt from PGS so as to ensure these sites are redeveloped, in accordance with current Government policy.
- Regional priorities for PGS should be established with all stakeholders through the process of consultation and adoption of the Regional Spatial Strategy.

The BCSC's Response to The Select Committee Inquiry's Specific Issues with Planning Gain Supplement.

1. How the revenue from the supplement should be determined and appropriate uses

Current PGS proposals state that revenues will be collected nationally and redistributed locally, regionally and between regions. This statement suggests to us that the rate is unlikely to be "modest", and this is therefore a real concern to us.

We consider that PGS should be reallocated in direct proportion to revenues raised as it is critical that local communities see both the benefits from development, and the commitment to invest in the necessary infrastructure. Equally, developers need to know that this commitment is unequivocal and this can of course be achieved via the maintenance of the existing regime using a combination of Section 106 and other Development Agreements as appropriate (without the delays which reference to PGS would inevitably generate).

The Development Site Approach distinguishes between funding different elements of infrastructure but does not clarify the process by which infrastructure will be provided. This is especially critical for infrastructure required or defined because of the Transport or Environmental Impact Assessments which might be required as a condition of development. For example, a retail development might need to provide enhanced local bus access which would in theory be funded through the PGS revenues. The consultation document issued by HM Treasury in conjunction with the ODPM and HM Revenue and Customs, is not clear on the mechanism to ensure that this it is provided in tandem with the development, and we consider that existing mechanisms (Section 106 Agreements plus Highways and other Legal Agreements) can – and should – provide an adequate solution in the future for retail-led and mixed-use schemes.

Town Centre Management schemes are identified as to be funded through PGS. Again, it is not clear how and when revenues will be distributed to fund these. Effective town centre management is critical to the success of retail centres and we consider that there will be more effective means of securing funding than using PGS.

1.1 Recommendation: regional priorities for PGS should be established with all stakeholders through the process of consultation and adoption of the Regional Spatial Strategy.

2. Whether, and, if so, how the planning gain supplement should be used to encourage development of brownfield sites

Planning Gain Supplement can be used to encourage development on brownfield sites, in line with existing Government policy. The cost of assessing liability for brownfield and mixed use development is likely to be much higher than that for greenfield, given its additional complexity. Therefore, a reduction in the rate of PGS rather than exemption, would still penalise brownfield development and would be inappropriate.

2.1 Recommendation: brownfield development should be exempt from PGS

3. The potential impact of the supplement on section 106 arrangements negotiated through the planning system.

We note that current proposals involve "scaling back" Section 106 to "direct impact mitigation" – its current purpose as described in Circular 05/05. If Section 106 is not sufficiently scaled back the increased cost could mean that some development will not be undertaken. This is likely to affect those regeneration schemes whose viability

is marginal but are important environmentally, economically and socially. This is contrary to the Government's wider aspirations.

We consider that the principles for matters to be included in the development-site environment approach envisaged in the current consultation document are too broad; especially the category of "development-site acceptability" which would mean in reality that Section 106 Agreements are not scaled back and negotiations would be unlikely to be quicker.

3.2 Recommendation: Section 106 agreements currently provide adequate funding for infrastructure investment and should be left in place.

The BCSC Response to HM Treasury Planning Gain Supplement Consultation Document

1. General Comments – *The Barker review and its application*

The proposed PGS was conceived in Kate Barker's report to address the need to balance the release of additional greenfield development for residential uses with the necessary infrastructure and to capture a modest proportion of the increase in value created by the planning system towards social and physical infrastructure provision within the vicinity of the site.

Whilst this might be justified in a housing/greenfield context, the extension of this concept does not readily adapt to retail led or mixed-use development on brownfield sites and will create distortions and unanticipated outcomes. Such redevelopment sites are rarely in single ownership and their existing use value is much more complex to calculate. Rarely, if ever, are there simple value uplifts or infrastructure needs which can be calculated in the same way as may apply to greenfield residential sites. The valuation assumption that the land before and after development is a freehold unencumbered title, is completely at odds with the situation which subsists in relation to most brownfield sites.

Accordingly, a broad brush application to greenfield and brownfield sites would be inappropriate and unworkable. It will discourage regeneration and undermine the government's objective to promote sustainable development because:

- it will impose extra costs, uncertainty and delays on sites that are already complex and marginal. It will undermine the recent positive progress towards creating sustainable patterns of urban development and the creation of sustainable communities;
- it will penalise those who invest in regeneration for their own long term use rather than the speculative developers;
- it will increase uncertainty over the timing of the provision of critical infrastructure which is fundamental to maximising the regeneration benefit of private sector investment and to ensure that the benefits of the investment are realised throughout the area by improvements in public realm and connectivity.

PGS will militate against the securing of planning permissions in the public interest because it will be far harder for communities to see the realisation of the benefits of the development given the uncertainty as to quantum and timing of the distribution of PGS to the communities affected by a particular development proposal. It will sever the vital link between impact of development and its amelioration at a local level in a timely fashion.

Provisions, as they stand, provide a flawed valuation methodology which fails to take account of the costs and complexity of brownfield regeneration. It would dramatically impact on cash flow of developers, as upfront payments force rearrangement of existing financial agreements with lenders and investors.

PGS potentially undermines the quality of the built environment as it will act as a disincentive on property owners to maintain and update existing properties as the supplement becomes payable on extensions and potentially external refurbishments.

It will undermine the Government's desire to encourage local authorities to be more proactive in assembling land for regeneration purposes in accordance with the statutory sustainable objective. The supplement will attach to those owners of a site required for comprehensive developments in the public interest and thus discourage disposal by private treaty.

PGS is likely to yield far less net revenue for distribution to the community, given the complexity and bureaucracy necessary to administer the supplement.

Funding developments will become more difficult and risk prone. Liability for wrong self-assessment valuations may well rebound on the developer and its funding partner after it has acquired the site. This uncertainty will impact on the willingness of parties to take on the additional risks associated with regeneration proposals.

2. Chapter Two Q2:1 – Planning Value and Current Use Value

Neither Current Use Value (CUV) nor Planning Value (PV) are entirely problem free in relation to PGS. On mixed-use sites, CUV is not simple to define, as it is not possible to simply exclude “hope value” both in relation to sites with a local plan designation and, more generally, on other sites. If PV is used, this should exclude all development and remediation costs as well as any element the applicant is required to provide through the Section 106 agreement.

In addition, assuming unencumbered freehold with vacant possession is unrealistic and over-simplistic - especially for complex town centre regeneration schemes where development requires the acquisition of many interests. Vacant possession is often secured in phases, which do not necessarily precisely match the same areas as defined under planning permissions.

3. Chapter Two Q2:2 - Self Assessment Valuations

Whilst valuing a residential development is relatively straight forward, valuing a mixed use development including retail uses is a complex and specialist area. BCSC believes that this would lead to considerable delays in validating self assessment returns, especially given the likely volume of valuations. This could delay development as applicants would want to be sure of their liability before embarking on development.

RECOMMENDATION: a clear process for resolving valuation disputes is essential.

4. Chapter Three Q3:1 – Payment of PGS

Whilst the grant of full planning consent might be considered to be the appropriate point at which to assess the PGS liability, requiring payment when development starts means that the developer has to pay any liability before any value is realised and when substantial investment will still be required in the development. This creates significant uncertainty which, at best, is likely to delay a developer's commitment to proceed with a scheme.

RECOMMENDATION: if PGS is introduced, payment should be on completion of development

5. Chapter Three Q3:2 - Development Start Notice

In practical terms, it will make little difference to developers whether the Development Start Notice has to be submitted to the Local Authority or to HM Revenue and Customs. However, thousands of Development Start Notices will need to be verified each week which could result in severe delay to development.

RECOMMENDATION: sufficient resources must be made available to verify Development Start Notices in a timely fashion in order to avoid costly delays to development projects.

6. Chapter Three Q3:3 – Phased Developments

If the Government were to introduce PGS we consider that payment should not be required until the completion of development, i.e. when the value is realised, as this

would also allow payments to be phased on major developments, particularly as scheme completions are also often phased.

RECOMMENDATION: requiring payment of PGS at the completion of all developments will avoid the need for an additional and separate set of regulations covering phased completions.

7. Chapter Four Q4:1 - *Greenfield and Brownfield Land*

Existing Government policy is to encourage brownfield development and it should be noted that the cost of assessing liability for brownfield and mixed use development is likely to be much higher than that for greenfield, given its additional complexity. Therefore, a reduction in the rate of PGS rather than exemption, would still penalise brownfield development and would be inappropriate.

RECOMMENDATION: brownfield development should be exempt from PGS.

8. Chapter Four Q4:2 – *Thresholds*

Ensuring that important economic developments and building enhancements are not discouraged or their viability undermined is essential if retail developments are to contribute to economic sustainability. Therefore, brownfield sights are not the only developments that should be exempt from PGS.

RECOMMENDATION: The following types of development should be exempt from PGS:

- Exterior and interior improvements
- Enhancements (e.g. to out of town shopping centres as well as to town centre public realm) including accessibility improvements and landscape works
- Signage
- Changes of use
- Temporary uses
- Variations of conditions e.g. on hours of operation

so that improvements and developments which will enhance an area in need of regeneration are not discouraged.

9. Chapter Five Q5:1 - *Development Site Approach*

The Development Site Approach distinguishes between funding different elements of infrastructure but does not clarify the process by which infrastructure will be provided. This is especially critical for infrastructure required or defined because of the Transport or Environmental Impact Assessments which might be required as a condition of development. For example, a retail development might need to provide enhanced local bus access which would, in theory, be funded through the PGS revenues. The consultation document is not clear on the mechanism to ensure that this is provided in tandem with the development, and we consider that existing mechanisms (Section 106 Agreements plus Highways and other Legal Agreements) can – and should – provide an adequate solution in the future for retail-led and mixed-use schemes, without the additional complicating factor of using PGS.

Town Centre Management schemes are identified as to be funded through PGS. Again, it is not clear how and when revenues will be distributed to fund these. Effective town centre management is critical to the success of retail centres and we consider that there will be more effective means of securing funding than using PGS.

10. Chapter Five Q5:2 - *Financing Infrastructure through the planning system*

We note that the description in Box 5.1 proposes “scaling back” Section 106 to “direct impact mitigation” – its current purpose as described in Circular 05/05. If Section 106

is not sufficiently scaled back, the increased cost could mean that some development will not be undertaken. This is likely to affect those regeneration schemes whose viability is marginal but that are important environmentally, economically and socially. This is contrary to the Government's wider aspirations.

We consider that the principles for matters to be included in the development-site environment approach outlined in Box 5.4 are too broad; especially c) "development-site acceptability" which would mean in reality that Section 106 Agreements are not scaled back and negotiations would be unlikely to be quicker.

11. Chapter Six - Allocating PGS Revenues

We note that PGS revenues will be collected nationally and redistributed locally, regionally and between regions. This statement suggests to us that the rate is unlikely to be "modest", and this is therefore a real concern to us.

We consider that PGS should be reallocated in direct proportion to revenues raised as it is critical that local communities see both the benefits from development, and the commitment to invest in the necessary infrastructure. Equally, developers need to know that this commitment is unequivocal and this can of course be achieved via the maintenance of the existing regime using a combination of Section 106 and other Development Agreements as appropriate (without the delays which reference to PGS would inevitably generate).

RECOMMENDATION: regional priorities for PGS should be established with all stakeholders through the process of consultation and adoption of the Regional Spatial Strategy.

12. Conclusion

Where retail developments do create an infrastructure requirement such as changes to the highway network, enhancements to public transport or the public realm, these are usually covered fully through the commitments entered into under a Section 106 Agreement or other Development Agreements/Highway Agreements with the local authority concerned.

This has the benefit that the authority whose area is affected knows that a legal obligation has been entered into and the scheme implications will therefore be fully addressed to its satisfaction without the need for further costly procedures being put into place.

As the rationale for PGS is primarily to fund the infrastructure needed to support housing growth, it is appropriate to exclude developments which do not create a significant infrastructure need, such as retail.

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