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HOMES FOR SCOTLAND

AL/KT

28 February 2007

Planning Gain Supplement Consultation
Room G72
100 Parliament Street
LONDON
SW1A 2BQ

Dear Sirs

Planning Gain Supplement – Response to Consultation Papers
Valuing PGS and Paying PGS

Homes for Scotland is the representative body for the private home building industry in Scotland. In 2006 some 25,000 dwellings were constructed in Scotland, with just under 20,000 being built by the private sector without recourse to public subsidy. Homes for Scotland represents the interests of about one hundred companies who provide 95 of every 100 homes built for sale in Scotland and we have a rapidly expanding membership of professional and other service businesses engaged in our industry.

Two thirds of homes in Scotland are now privately owned. Demand for new homes continues to be strong and, for the foreseeable future, will outstrip the number of houses we are currently permitted to build.

As we indicated in our response to the original consultation on the introduction of a Planning Gain Supplement, this backdrop is not dissimilar to the market context in England that gave rise to the Barker Review's policy recommendation for the introduction of a Planning Gain Supplement. However, there are 2 fundamental differences between Scotland and England.

In February 2006 we indicated that those differences might result in the introduction of a planning gain supplement having a direct inflationary impact on house prices in Scotland. Consideration of the current consultation documents has led us to conclude that, in Scotland, the Planning Gain Supplement <u>would</u> have an inflationary impact.

The first fundamental difference is the lack of a commitment on the part of the Scottish Executive to promote an expansion of housing production. Unlike England there is no publicly proclaimed acknowledgement that increased production can impact on house price inflation.

The second issue relates to the ability or rather the inability to recycle the hypothecated revenues to provide the vital physical and community infrastructure to support housing development and community growth.

Notwithstanding the policy ambitions of a Westminster Government to support growth in housing production by targeting tax revenues at programmes aimed at relieving infrastructural deficits, Homes for Scotland takes the view that spending programmes would be more difficult to direct in Scotland.

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It is barely conceivable that the Scottish Executive would take direction from a UK Government on the nature and extent of its investment programmes. Rather it will wish to remain free to determine its own political priorities. As a consequence PGS revenues raised from residential or commercial development proposals in Scotland could be used to fund major strategic projects such as the additional Forth River Crossing, new transportation systems or, indeed, investment in social policy programmes.

Additionally it is inevitable that the Scottish Executive would wish to act in a redistributive way when it comes to allocating resources. This could result in resources raised in pressured markets being spent in areas requiring investment to be levered. While that is a legitimate action on the part of government it would have a devastating impact on projects being starved of investment despite the generation of the tax revenue.

There are other more “technical” reasons why the use of PGS will break the link between the generation of the resources and the provision of infrastructure to support development.

In Scotland there is no equivalent agency to English Partnerships. In addition, the Scottish Executive does not have absolute powers to direct local government expenditure. The Scottish Executive could provide additional grant aid to a local authority believing it should be used to fund infrastructural provision only to discover it has been used for a different purpose.

A further issue needs to be addressed in relation to those projects where it is necessary to provide infrastructure in advance of development taking place. Even if the Scottish Executive would direct Local Authorities to spend the hypothecated revenues on infrastructure there remains the timing of the works to be undertaken. Public sector procurement rules could mean that investment is packaged and programmed in such a way as to delay the projects that generated the tax income with the expectation that the supporting infrastructure would be provided by the hypothecated revenues.

In England, the Government is committed to the scaling back of Section 106 Agreements to ensure that there is no “double taxation” in relation to the funding of infrastructure projects. No such commitment has been given in Scotland. Indeed, one year after the launch of the original consultation paper, the Scottish Executive (a) has taken no action to consult on the matter of scaling back Section 75 Agreements, the Scottish equivalent of Section 106 Agreements and (b) declined the opportunity to amend Scottish Planning legislation when the Planning (Scotland) Act 2006 was before the Scottish Parliament during 2006.

Homes for Scotland further understands that the Scottish Executive will not consider any further amendment to planning legislation until after the May 2007 Scottish Parliamentary Elections.

While it is impossible to predict the settled will of the Scottish Parliament post May 2007, there remains the possibility that Section 75 of the Town and Country Planning (Scotland) Act 1997 will not be amended in line with English legislation.

If that were to be the case the PGS would be nothing more than a punitive tax in Scotland.

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HOMES FOR SCOTLAND

Notwithstanding our fundamental opposition to the introduction of the Planning Gain Supplement we have examined the issues raised in the two consultation papers, Valuing Planning Gain and Paying PGS. The attached report was drafted following extensive consultations with our house builder members and their professional advisers.

Yours faithfully

Allan Lundmark
Director of Planning & Communications

Enc.

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HOMES FOR SCOTLAND

<u>HMRC CONSULTATION PAPERS:</u>

PAYING PGS: A PLANNING-GAIN SUPPLEMENT TECHNICAL CONSULTATION, DECEMBER 2006

VALUING PLANNING GAIN: A PLANNING-GAIN SUPPLEMENT CONSULTATION, DECEMBER 2006

RESPONSE FROM HOMES FOR SCOTLAND

28 FEBRUARY 2007

STRUCTURE OF THE COMBINED RESPONSE

There is considerable overlap between the two consultation papers. This combined response tries to embrace the over-lapping matters but follow through the sequence of each paper dealing with each matter as it arises. The paper is structured as follows.

Section 1	Introduction and fundamental issues
Section 2	Overview of the PGS process from the PPGS – Establishing the Valuation Date (This is relevant to both papers)
Section 2	Responses to the paper Valuing of PGS (VPS)
Section 3	Responses to the paper Paying of PGS (PPGS)
Section 4	Matters not considered in consultation papers.

SECTION 1

HMRC CONSULTATION PAPERS – VALUING PLANNING GAIN: A PLANNING GAIN SUPPLEMENT – PAYING PGS: A PLANNING GAIN SUPPLEMENT TECHNICAL CONSULTATION

INTRODUCTION

FUNDAMENTAL ISSUES

When the Planning Gain Supplement (PGS) was proposed by Kate Barker in her review of housing supply it was seen as a means of funding the infrastructure required to support new housing and growth. In the foreword to the Government consultation document of December 2005, it was stated that the "PGS will be largely a local measure, its proceeds recycled to the local level for local priorities and for the vital strategic infrastructure needed for new development."

Homes for Scotland has never resisted the idea that where the value of land has increased as a consequence of a planning decision, a portion of that uplift should be used to support the provision of infrastructure and community facilities.

Homes for Scotland recognises that, increasingly, housing development in Scotland cannot proceed until and unless significant private sector investment is diverted to provide basic infrastructure and community facilities.

Against that backdrop Homes for Scotland believes that the ambition to recycle the hypothecated revenues in Scotland to support the provision of infrastructure related to development will be frustrated.

Homes for Scotland takes the view that spending programmes would be more difficult to direct in Scotland since there is no equivalent agency to English Partnerships and the Scottish Executive does not have absolute powers to direct local government expenditure. The Scottish Executive could provide additional grant aid to a local authority believing it should be used to fund infrastructural provision only to discover it has been used for a different purpose.

A further issue needs to be addressed in relation to those projects where it is necessary to provide infrastructure in advance of development taking place. Even if the Scottish Executive would direct Local Authorities to spend the hypothecated revenues on infrastructure there remains the timing of the works to be undertaken. Public sector procurement rules could mean that investment is packaged and programmed in such a way as to delay the projects that generated the tax income with the expectation that the supporting infrastructure would be provided by the hypothecated revenues.

In England, the Government is committed to the scaling back of Section 106 Agreements to ensure that there is no "double taxation" in relation to the funding of infrastructure projects. No such commitment has been given in Scotland. Indeed, one year after the launch of the original consultation paper, the Scottish Executive (a) has taken no action to consult on the matter of scaling back Section 75 Agreements, the Scottish equivalent of Section 106 Agreements and (b) declined the opportunity to amend Scottish Planning legislation when the Planning (Scotland) Act 2006 was before the Scottish Parliament during 2006.

Homes for Scotland further understands that the Scottish Executive will not consider any further amendment to planning legislation until after the May 2007 Scottish Parliamentary Elections.

While it is impossible to predict the settled will of the Scottish Parliament post May 2007, there remains the possibility that Section 75 of the Town and Country Planning (Scotland) Act 1997 will not be amended in line with English legislation.

If that were to be the case the PGS would be nothing more than a punitive tax in Scotland.

As stated above, Homes for Scotland do not take issue with the idea that where the value of land has increased as a consequence of a planning decision, a portion of that uplift should be used to support the provision of infrastructure.

What concerns us is the practical problems of implementing such a tax and as to whether it can be made workable. Consequently, the position of Homes for Scotland is that it is opposed to the introduction of the PGS until such times as it can be clearly illustrated that all the issues have been addressed and overcame in the Scottish context.

Nevertheless, we wish to fully engage and co-operate with the Government in seeking out and addressing the obstacles which stand in the way so that whatever decision is finally taken, it will be based on a thorough examination of the situation having taken place.

GENERAL CONSIDERATIONS

It is the view of Homes for Scotland, that the PGS will be unworkable and ineffective in Scotland if the following matters are not resolved.

(i) a way is found to "oblige" the Scottish Parliament to scale back Section 75 Agreements

(ii) that an efficient method is devised to recycle the funds gathered to where they are required for the provision of infrastructure timeously to support housing development

(iii) that developer contributions towards affordable housing are met by the PGS in recognition of the separate legal and policy framework that exists in Scotland in respect of the provision of Affordable Housing.

Uncertainty over these matters is already creating problems for developers obtaining contracts over land. While both the rate of PGS and what items of infrastructure it will cover are unknown it is already proving extremely difficult to conclude.

In pressurised markets where developers are bidding against each other, all these uncertainties create a highly inflationary situation and until they are resolved, there could be a falling off in housing production which defeats the government's aim of stepping up house production with a view to stabilising housing markets.

SECTION 2

OVERVIEW OF THE PGS PROCESS (PPGS – page 7)

Figure 1 on page 7 sets out the main stages of the proposed process for paying PGS. The following Figure A of this paper illustrates steps that the developer would need to achieve to integrate with the HMRC proposals. There will be many occasions where the developer will be able to short circuit these stages, particularly where there is no Section 75/106 Agreement required, but in most circumstances relating to large developments they are likely to apply.

Stages 1 & 2

These are self explanatory. The offer for the land will usually be in the form of a conditional offer or an option or a combination of both.

Stage 3

This is the stage where agreement has been reached on the planning consent subject to agreement on reserved matters and agreement has also been reached on the terms of a Section 75/106 or other similar agreements. On a single phase development, the agreement on planning consent will include agreement on details. On a large phased development, there will be agreement on the terms of an outline consent for the whole development probably including a master plan and for detailed agreement on the first phase.

At this stage a general practice needs to be developed with the planning authority issuing a letter intimating that the planning permission has been approved by the Planning Committee and will be granted on the developer signing the Section 75/106 and any other appropriate agreement.

The definition of Planning Permission is key here. The legislation must define exactly what constitutes, for the purposes of PGS, a purified 'planning consent' and that definition must reflect current practice.

In this context it has to be noted that final discharge of all reserved matters may not take place until a development has been completed.

As the Section 75/106 agreement has to be registered against the title to the land, the developers cannot sign it until they acquire the land. Also, negotiation cannot be concluded with the landowner until all the other necessary statutory approvals and all costs have been identified and quantified. Without this a developer cannot arrive at the planning value. In addition, the availability of water and drainage are frequently reserved matters which must be cleared.

Stage 4

This is the stage where the developer submits applications for roads, sewers, water, public utilities and building regulation consent (and the details of any remaining reserved matters). Many council departments involved will not entertain an application for approval until planning consent has been granted.

A practice needs to be developed whereby those departments accept the letter issued by the planning authority referred to in Stage 3.

Stage 5

This is the issue of the approvals referred to in Stage 4.

Stage 6

This is the stage where the developer completes his negotiations with the landowner and acquires the site. The developer will make a self assessment of the PGS and retain it from the payment to the landowner.

Developer Stage 7; HMRC Stage 1

This is the point where the developer stages integrate with those of the HMRC.

Once the developer has obtained all necessary approvals and acquired the site, the Section 75/106 Agreement can be signed and planning consent obtained. **This will be the relevant planning consent referred to in PPGS, paragraph 2.3 (page 7) and the valuation date referred to in VPG paragraph 4.2 (page 11).**

Developer Stage 8; HMRC Stage 2

The developer files a return to HMRC and applies for a PGS Start Notice. The return will include the self assessment of the PGS.

Developer Stage 9

On receipt of the Start Notice, the developer can commence development.

Developer Stage 10

The developer pays the PGS within 60 days.

FIGURE A

Overview of the PGS Process
The Developer Stages related to the HMRC Stages.
(See Figure 1, page 7 of Paying PGS Paper).

	Developer Stages		HMRC Stages	
Stage 1	Developers offer for land accepted.			
Stage 2	Application for planning consent. Negotiations on application and Section 75/106 Agreement.			
Stage 3	Letter from Planning Authority to Developer intimating that planning permission has been approved by Planning Committee and will be granted on developer signing Section 48/60/75 Agreement.			
Stage 4	Developer submits applications for approval of roads, sewers, water, public utilities and building regulation consent.			
Stage 5	Issue of approval of matters in Stage 4.			
Stage 6	Developer completes negotiations with landowner and then acquires the land.			
Stage 7	Developer signs the Section 48/60/75 Agreement and is granted full planning consent. (Valuation Date)		a. Developer secures planning consent. (Valuation Date)	Stage 1
Stage 8	Developer files return to HMRC and applies for PGS Start Notice.	→	b. Developer files return to HMRC.	Stage 2
Stage 9	On receipt of Start Notice developer commences development.	←	c. HMRC issues PGS Start Notice.	Stage 2
Stage 10	Developer pays PGS within 60 days.		f. HMRC/VOA risk assesses return.	Stage 4

g. HMRC/VOA intervention.	Stage 4
l. Return and correct payment accepted.	Stage 4

SECTION 3

RESPONSES TO VALUING PLANNING GAIN: A PLANNING GAIN SUPPLEMENT (VPG)

THE LAND TO BE VALUED (VPG : PAGE 7)

Other Land Rights : Ransom Strips

References:
VPG:
PAGE 7, PARA. 2.2
PAGE 10, PARA. 3.7 & 3.8
PAGE 15, PARA. 5.12
PAGE 33, QUESTION 6

Ransom strips and being held to ransom for off-site acquisition essential to development are a growing problem for developers who have no powers of compulsory acquisition. There is an ambiguity in the last sentence of para. 5.12 (page 14) which the answer to Question 6 (page 33) partially clears up. Does para. 5.12 refer merely to the costs associated with the acquisition such as legal costs and excluding acquisition costs? Question 6 appears to confirm that the acquisition price of the ransom strip will be taken into account in assessing the PV.

It is Homes for Scotland's view that the costs associated with the acquisition are legitimate costs which should be taken into account

The proposal in the answer to Question 6 that PGS should be deducted from the ransom strip payment will merely result in the owners of the strip increasing the price to pay for the PGS.

It would be more helpful if councils could be encouraged to take the initial steps to exercise their powers of compulsory acquisition in such cases. This would give developers a negotiating position with the owner of the ransom strip.

For the longer term, legislation should be considered to lay down rules for the valuation of ransom strips backed up by compulsory powers if the rules are not adhered to.

Phased Developments

References:
PPGS:
PAGE 14, PARA. 3.7 & EXAMPLE 2
PAGE 20, PARA. 4.22
VPG:
PAGE 7, PARA. 2.4 & 2.5
PAGE 11, PARA. 4.4
PAGE 15, PARA. 5.13, 5.14 & 5.15

The whole objective of the PGS was to collect part of the increase in the value of the land paid to **the landowner** so that it could be applied to the provision of infrastructure. The bulk of the value is realised at the point where the developer acquires the land from the landowner. The land once acquired should be regarded as the developer's stock-in-trade and should not be subject to any further land tax. That was the position with earlier land taxes.

The proposals in the consultation paper appear to be directed towards capturing the gain in value of the land whilst it is in the developer's hands. This already occurs through corporation tax which is applied at 30%. To attempt to apply PGS in addition amounts to double taxation.

If it is applied as each subsequent phase is started, it will be imposed at a time when the developer is incurring major capital outlays and will increase borrowing requirements with a consequent adverse impact on cash flow.

The application of the policy will be complicated and difficult. There is scope for considerable uncertainty and dispute over valuations leading to delay at a time when the developer is anxious to make progress.

Neither the PPGS nor the VPG paper give clear examples of how the tax would work.

In the example quoted in para. 2.5 (page 7, VPG) the installation of infrastructure could be interpreted as increasing the PV without increasing the CUV. This would amount to what is in effect a tax on the installation of the infrastructure when the PGS is intended only to tax land.

If it was accepted (as it should be) that the installation of the infrastructure increased the CUV, then the CUV is likely to equal and could exceed the PV. In such a case the developer should be given a tax credit to be set off against the PGS of future phases.

'In para. 5.15 (page 16, VPG) the second sentence says '*To avoid any overvaluation of initial phases, the PV should exclude any value in the land that arises from providing access to, or facilitating latter phases of development…'*

The initial phase of development often consists of two elements (i) infrastructure such as outfall sewers, access roads and distributor roads to serve the whole development, and (ii) clearance of reserved matters for the first phase.

Contrary to what is quoted above from para. 5.15, rather than excluding the value of the advanced infrastructure, it should be included in the CUV against the first and earlier phases in which case it could well exceed the PV for these phases and should result in a tax credit against the future phases.

There is also an inconsistency in the way developments are treated. In para. 5.13 (page 15, VPPG) it says that if a developer obtains full planning permission for a development, it will only require one PV & CUV even if it is developed in phases. This is apparently regardless of its size.

On the other hand, the following para. 5.13 says that if a developer obtains an outline approval and full planning permission in phases, the developer will need a new PV and CUV for each phase.

This would result in developers being tax led rather than planning led.

Whilst the proposal to tax every phase may result in some increased tax, it is open to so many sources of challenge that the tax collected is likely to be much less than anticipated and not worth the complications and delay it would create.

Where the developer buys, and takes title of, a large tract of land, it would be helpful to allow the developer to allocate the PGS payments over the various development phases, the appropriate payment to be made as each phase is commenced. The developer would apply for a Start Notice in each phase. This would assist cash flows. It is crucial that agreement is reached on the amount of PGS payable over the whole development before the commencement of development. In that regard the PGS rate must be set at the point when the developer files the return and the rate should not be changed as subsequent phases are released.

In some cases, the developer's agreement with the landowner permits him to acquire the land in development phases. The PGS should facilitate such arrangements to continue. A PGS self-assessment would require to be made for each development phase in such cases.

The attempt to charge PGS against the developer's stock-in-trade by requiring a valuation at the start of each phase should be abandoned.

THE INTEREST TO BE VALUED (VPG: PAGE 9)

Calculating the PGS Due; Vacant Possession

References:
PPGS:
CALCULATION PGS: PAGE 15, BOX 3.2
VPG:
CALCULATING PGS: PAGE 4 BOX 2
VACANT POSSESSION: PAGE 9, PARA. 3.2 & 3.3

The PGS calculation is set out in the boxes quoted above. In the VPG, paragraph 3.3 (page 9), it states that the existence of any tenancies should be ignored. This creates a major problem in Scotland, Agricultural land with secured tenancies and has already stopped one major development of 1000 houses from going ahead under the current regime. The proposals in the paper will certainly halt many more.

The provisions of the Agricultural Holdings (Scotland) Act 2003 have put secured tenants in an invincible position to hold projects to ransom. In the case referred to above, the tenant is reported to have declined £8M to relinquish his tenancy at which point the landowner concerned refused to have any further dealings with him. Ten years of work by the planning authority and developers had to be abandoned. Even with more amenable tenants, an ever increasing share of the development value is being demanded. In some cases, a new farm is having to be provided. Thus the tenant is in effect accruing a substantial proportion of the planning value.

In such circumstances, no developer will acquire land without vacant possession. The problem of obtaining vacant possession has to remain with the landowner. Here another major impediment arises. The Act prevents the tenant from entering an agreement to relinquish his tenancy in advance. Accordingly, the landowner cannot guarantee the developer that vacant possession will be available. In effect, negotiations with the tenant can only commence once all the development approvals have been obtained at which point, the tenant is in a position to extract the maximum sum. Whilst informal discussions may take place earlier, they are not binding on the tenant.

In these circumstances, the proposals in paragraphs 3.2 and 3.3 cannot work. The cost of obtaining vacant possession must be taken into account otherwise landowners are likely to decide not to sell.

We propose that the PGS calculation in Box 3.2 (page 15 of the PPGS and Box 2 (page 4 of the VPG) should be amended as follows.

Uplift = Planning Value – (Current Use Value + Cost of Vacant Possession) **PGS = Uplift x PGS Rate**

The long term solution to this problem is for the Scottish Executive to amend the Agricultural Holdings Act to at least allow the landowner to reach an early agreement with his tenant and for rules to be introduced which put limits on the compensation to be paid.

THE DEFINITION OF PLANNING VALUE (VPG : PAGE 13)

References:
VPG:
PAGE 14, PARA. 5.5
PAGE 27, PARA. 8.3

In these paragraphs, the words 'around', 'often' and 'similar' cause some concern. Our reading of the consultation papers leads us to believe that the authors are trying to create a simple system which will be quick to operate and that the usual case will be that the PV will be the price paid by the developer for the land.

Our fear is that once the legislation is in operation, such wording will lead to interpretations which depart from the original intention.

We believe that thought should be given to providing more definite guidance as to the circumstances in which the PV would not be the price paid.

Contaminated/Undermined Land

References:
VPG:
PAGE 14, PARA. 5.7 to 5.10
PAGE 20, PARA. 6.15 to 6.19

No mention in the papers is made of undermined sites. We suggest they should be considered along with contaminated sites as the problems are similar particularly where the grouting of old mine workings is required.

The government is anxious to promote the development of such sites but there is a fundamental difficulty with them that the proposals in the paper do not help. The cost of the work is very difficult to estimate and can be widely inaccurate in the event (as much as 100% or more).

It is best if the work can be carried out as early as possible as it can have considerable influence on the final form that the development takes but apart from the cost risks, the paper warns that there could be a risk of increased PGS payable (page 15, para. 5.9).

What is required in the first instance is a PGS regime which is clearly cost neutral whether the work is done before or after the Valuation Date. The paper must recognise negative values.

In addition, the developer should have the option to either accept the risk with the estimate obtained for the work or to be able to submit a provisional PGS assessment until the full costs are known.

We do not recognise the difficulties listed in paragraph 6.18 (bullet 3 – page 20). The work is all carried out by specialist subcontractors supervised by the developer's surveyors.

The situation referred to in para. 6.15 (page 20) where the CUV would be reduced in the case where an existing use could not continue without remedial decontamination works being carried out is anomalous and could prevent sites from going ahead by creating a negative site value.

It could and probably does apply to a large number of contaminated sites in whole or in part and may be why they become available on the market. In effect, it could be interpreted as meaning that decontamination costs should not be taken into account in the case of many sites. This would clearly be counter-productive and could prevent such sites from being developed.

Re-development of such sites is a new situation and decontamination has to be considered as a whole and the cost taken into account either in the CUV or the PV, whichever is appropriate.

The second sentence of para, 6.15 should be deleted.

With contaminated agricultural land, it would have to be clear that the cost of decontamination was either added to the value of the CUV or deducted from the PV, whichever is appropriate when the work was done.

<u>Demolitions</u>

References:
VPG:
PAGE 8, PARA. 2.6 & 2.7
PAGE 15, PARA. 5.11

A broadly similar but usually less difficult situation to contaminated/undermined sites arises in the case of demolitions. Paragraph 5.11 in reference to demolitions states that work carried out before the valuation date 'may' increase the PV at the valuation date.

The use of the word 'may' introduces a degree of uncertainty and would deter developers from doing the work in advance.

Again, whether the demolition work is done before or after the valuation date, it should be cost neutral.

If the work of demolition is done before the valuation date, it clearly increases the PV at least by the cost of the demolition works.

<u>CURRENT USE VALUE (CUV) (VPG : PAGE 17)</u>

<u>The Definition of Current Use Value</u>
References:
VPG:
PAGE 17, PARA. 6.3, 6.7
PAGE 33, ANSWER TO QUESTION 3

In view of what is said in para. 6.3 & 6.7 with reference to hope value, the answer to Question 3 (page 33) needs clarification. A site which has been used for a development purpose should have a development value which at least reflects that use. The fact that it is no longer used for that purpose merely frees it for an alternative development use.

The answer to Question 3 requires that the CUV should be based on a use restricted to the existing state of the site without the need for planning permission. This could infer that any value arrived at was merely hope value and the CUV in many cases could be NIL in which case the owner may be discouraged from selling.

In such circumstances the owner may apply for a Certificate of Alternative Development. If he was granted a certificate for residential development this would be the major component of the PV. The equitable position is for the CUV to be based on a notional value for hospital use.

This is a matter of some importance as it could apply to many redevelopment sites.

The CUV on redevelopment sites should be based on their previous development use.

<u>Hope Value</u>

References:
VPG:
PAGE 13, PARA. 5.4

PAGE 17, PARA. 6.3
PAGE 18, PARA. 6.7 & EXAMPLE 7
PAGE 28, PARA. 8.8

We do not believe that the circumstances set out in Example 7 are typical. In our experience, hope value is normally only paid for land which is not allocated for development on the development plan and the developer is buying it accepting the risk that he may never obtain planning consent for it.

In the case set out in Example 7, we believe that most landowners would not sell their land until it had full planning consent when they would obtain the maximum value for it.

If a landowner did sell land (say, on the basis of an outline consent), the PGS to be paid ultimately by the developer on £5M would amount to about £1M (£988,000 at 20% PGS). This could put the developer in a very difficult negotiating position with the landowner as it would imply that the site is worth £6M. The landowner in many cases could demand £6M leaving the developer to pays the PGS over and above.

It would be helpful if the developer was obliged to retain PGS from any payment to the landowner in the case of settlements required earlier than the granting of full planning consent. This could help simplify matters generally by encouraging landowners to await the receipt of full planning permission before the land was sold.

We believe that depending on the level of risk and the length of time it might take to obtain planning consent (if ever), in this case the developer might offer ten times agricultural value say £600,000. The hope value would be £540,000. If planning consent was obtained, there should be an entitlement to deduct this sum plus interest from the PV.

Developers buying land in this way are taking a major risk which is ultimately in the public interest. It makes available a ready supply of potential development land in the hands of developers which can quickly be brought forward to expand the supply.

RE-PLANNING (VPG : PAGE 23)

References:
PPGS:
PAGE 15, PARA. 3.10
VPG:
PAGE 23, CHAPTER 7

The case for not applying PGS to re-plans of housing estates is even greater than for phased developments. The complications would be even greater as also would be the scope for disputes over valuations. Example 10 (page 24 VPG) presents an idealised simplified picture of what would be likely to generally occur.

HMRC would be flooded with relatively minor changes from which they would be unlikely to extract much in the way of PGS. Many re-plans are for marketing reasons and often do not increase the value of the site. They merely exchange houses of types which are not finding buyers to new types which the developer hopes will be more attractive to buyers. If the re-plan is more valuable, the increased value will be subject to corporation tax.

The only case for applying PGS to re-plans is where there is a change to a more valuable type of planning use, for example, substituting residential for industrial.

Re-plans which merely adjust the existing planning use should not be subject to a fresh PGS start notice.

VALUATION METHODOLOGY (VPG: PAGE 27)

Option Agreements

Reference:
VPG:
PAGE 28, PARA. 8.7 & 8.8

Paragraph 8.7 refers to option agreements where the sale price is a percentage of the open market value and would also apply to conditional contracts over land.

Such agreements are common in contracts over land which is not allocated for development and there is clearly a difference in the market value of such land as compared with allocated land and this is usually expressed as a percentage discount of the market value of allocated land with planning permission.

Such agreements are usually the outcome of competitive offers and the discount is a legitimate element of the market price. It reflects the risk, effort and expense that the developer will incur in obtaining planning consent and these are considerable. They usually involve presenting the case for the site at a public inquiry. If the case is lost, the developer loses all the money and effort that has been expended.

Such efforts by developers perform a useful public function as they bring to the attention of planning authorities potential development land which the latter has missed. If developers had not made such efforts, the supply situation in the UK would be considerably worse. Not to encourage them to do so is likely to adversely impact on the future production of houses.

Where a developer has taken under contract at a discount land which is not allocated for development and has been successful in obtaining planning consent, the discount should be recognised as a legitimate element of the market price taken into account in assessing the planning value.

One alternative to this would be to allow the developer to set off costs against the planning value but this would be time consuming, complicated and open to dispute.

If the discount is not allowed, there could be other complicating effects. The landowner would be receiving the discounted price less PGS from the developer but the PGS would be calculated on the full price. This is clearly inequitable.

The alternative is for the developer to pay the proportion of the PGS attributable to the discount but this would become an additional cost. The likely outcome would be that developers would increase the discount to cover the PGS they had to pay.

The best solution would be for the discount to be taken into account as we have recommended.

A similar situation arises in the circumstances referred to in para. 8.8.

SECTION 4

RESPONSES TO PAYING PGS: A PLANNING-GAIN SUPPLEMENT TECHNICAL CONSULTATION

OVERVIEW OF THE PGS PROCESS

Stage 2: Development Start Notification

Reference:
PPGS:
PAGE 8, PARA. 2.4

The developer needs assurance that the self-assessment includes all the information required by HMRC.

Stage 3: Payment of PGS

Reference:
PPGS:
PAGE 9: PARA 2.12

This paragraph asks advice on to whether it would be preferable from the developer's point of view to pay the PGS liability at the same time as filing the return. Circumstances will vary. We recommend that the position should be as flexible as possible to permit developers to do it either way.

Stage 4: Compliance Procedure – Intervention by HMRC

References:
PPGS:
PAGE 9: PARA 2.13
PAGE 10: PARA 2.22 & 2.23
PAGE 30: PARA 7.13 & 7.14
PAGE 33: QUESTION 11

These paragraphs deal with the circumstances in which HMRC will intervene to challenge a developer's self-assessment.

The main problem for developers is the timescale within which HMRC may make the intervention.

Whilst accepting the necessity for HMRC having a right of intervention, it comes at a critical point in the development process, namely, at the very end of what has usually been a lengthy prolonged process when the developer is at last ready to start and wants to get ahead.

Many developers may accept the risk and make a start but many may not, particularly in the early stages until confidence in the system is established and particularly in the case of large developments.

To reduce uncertainty, the enquiry window should be limited to 90 days. However even if this is acceptable, there is a need for clear guidance on what HMRC would accept as full disclosure about the basis of the valuations, especially if PGS returns are to be filed electronically. Otherwise, developers may feel compelled to submit full copies of the valuations of both CUV and PV to avoid any possibility that HMRC could open an enquiry outside that 90 day period. This would make the whole process extremely cumbersome.

The consequent problem is what happens after the intervention? How long will it take to resolve?

The only answer to this is clear rules for establishing the CUV and PV to avoid the situation arising. In Scotland, at least, there is also the problem of obtaining vacant possession of agricultural land.

The cost of vacant possession of agricultural land is a "wild card" which only the landowner and tenant can resolve and in Scotland, it is the tenant who controls the situation. The developer should be responsible for assessing the PV. Few developers will wish to risk having their self-assessment challenged by HMRC. To avoid this, it would be helpful if, in the next round of consultations, either real or hypothetical examples could be produced to provide firmer guidance on the assessment of both the CUV & PV.

Developers need to have certainty over their liability for PGS. They require this not only to determine the viability of a development but also, critically, to obtain the necessary funding to commence development. A pre-commencement agreement service is therefore a commercial imperative.

To minimise the burden and complexity of such a service, it would be helpful if PV was defined as proceeds in most cases except in particular circumstances where that was not appropriate, for example because the land was acquired sometime before planning permission was obtained. In these situations, residual values should be used to determine PV. This would reduce the number of occasions on which valuations would be needed and hence significantly reduce the uncertainty surrounding the liability for PGS.

New guidance is required on the assessment of both the CUV and PV.

<u>Communications between developers & HMRC</u>

References:
PPG:
PAGE 9: PARA. 2.17, 2.18 & 2.19
PAGE 24: PARA. 6.10 to 6.14

The Government wants communications between themselves and developers or their agents to be online through a dedicated e-channel.

A record of the PGS payment is to be made publicly available electronically.

This raises the problem of what happens in the case of an intervention by HMRC? Solicitors may already have confirmed to housebuyers/lenders that the PGS has been paid.

THE PLANNING PERMISSION: CALCULATING THE PGS DUE

Phased Developments

References:
PPGS:
PAGE 14, PARA. 37 & EXAMPLE 2
PAGE 20: PARA. 4.22
VPG:
PAGE 7: PARA. 2.4 & 2.5
PAGE 11: PARA. 4.4
PAGE 15: PARA. 5.13, 5.14 & 5.15

This aspect was dealt with earlier in the responses to VPG. (See page 8 earlier)

Re-planning

References:
VPG:
PAGE 23: CHAPTER 7
PPGS:
PAGE 15: PARA. 3.10

This aspect was dealt with earlier in the responses to VPG. (See page 12 earlier)

Calculating the PGS due

References:
PPGS:
PAGE 15: BOX 3.2
VPG:
PAGE 4: BOX 2

This aspect was dealt with earlier in the responses to VPG. (See page 10 earlier)

PGS START NOTICE

Commencement of Development

Reference:
PPGS:
PAGE 17, PARA. 4.4 & BOX 4.1

We recommend that the definition of development should remain as it is.

SECTION 5

MATTERS NOT REFERRED TO IN THE CONSULTATION PAPERS

Transitional Arrangements

Reference:
VPG:
PAGE 3: BOX 1 – BULLET 8

Although the paper states that there will be transitional arrangements, it gives no details of what these will be.

There is a great need for flexibility over the next few years to ensure that there is no disruption to the building programme. The immediate source of land available to bridge any gap is the land held by housebuilders. They should be given every encouragement and incentive to bring their land forward for development as there is a danger that they could hold their land back until PGS is in place as, for many, it could provide a more favourable regime than exists at present.

The legislation must be clear that land owned or held as 'work in progress' or 'stock-in-trade' must be exempt from PGS. Furthermore, land where a developer has planning consent should be exempt. If a developer can prove a legal interest in the land before the appointed day PGS should not be payable.

Land contracts are constructed in a variety of ways and many have long time scales. The earliest point at which the developer's land makes contact with the planning system is when it is presented for inclusion in a development plan. We propose that for any land which has reached that stage when the PGS becomes operative, the developer should have two choices:

(i) opt to process the land by means of the current regime and where (a) the infrastructure costs are pre-funded by the developer and (b) these costs exceed the PGS liability the developer should receive a tax credit for the excess costs.

(ii) opt to process the land subject to the new PGS regime.

Where a site is started prior to the appointed day under the Act, it and future phases of it should be free of PGS as it will all have been processed under the current regime and the developer will have had to commit to S75/106 agreements providing infrastructure sufficient to serve the whole development.

A further matter of crucial concern to many developers is that long term land contracts do not make provision for a land tax. Most vendors' solicitors would not permit them to do so. In these circumstances, there is a major fear in the industry that many landowners will simply insist that the developer pays the PGS whilst the landowner obtains full value for the land. They are in a strong position to do so.

A solution to this problem would be provided by the new legislation making it mandatory on sites where PGS was payable (case (ii) above) for the developer to deduct PGS from the payment to the landowner.

TAX CREDITS

In our response to the December 2005 consultation paper we put forward the proposal that developers should be granted tax credits in circumstances where it would provide the most convenient way of installing infrastructure which was essential to achieve an early start on development.

This may be a more pressing problem in Scotland than it is in England because there is no equivalent to English Partnerships or a Community Infrastructure Fund and no current proposals to create either similar or alternative machinery in Scotland.

As referred to in the introduction to this paper, there are also at present no proposals for scaling back Section 75 Agreements in Scotland.

This is creating a fear in the industry that we will be faced with paying the PGS and, also, providing the infrastructure.

There is a concern that PGS funds will be transferred to the Scottish Executive and be claimed by other government departments such as transport and education with no guarantee that it will be prioritised to serve the areas where the revenue was raised and to release the infrastructure constraints inhibiting the development proposal.

Tax credits for developers are not the answer to this situation, but, in the short term, they could assist in overcoming immediate problems until the situation is resolved and ensure that infrastructure is provided where the PGS was meant to provide it.

We believe that tax credits also have a role to play in the longer term in resolving local problems expeditiously.

PGS AS AN ALLOWABLE EXPENSE

In the December 2005 PGS consultation paper, it was intimated that the government were considering making PGS an allowable expense to be charged against the developer's corporation tax assessment. There is no mention of this in the current papers.

If as intended the PGS is to replace planning obligations it is essential that PGS is an allowable expense. If PGS is not deductible it would result in double taxation.

This would assist developer cash flows whilst making little difference to the overall tax take.

LAND OWNED BY DEVELOPER SUBJECT TO UPLIFT PAYMENT TO PREVIOUS OWNER

This is the case where the developer acquires unallocated land at its current use value or CUV plus hope value and, if full planning consent is ultimately obtained, the developer requires to pay a development value uplift in price to the original landowner.

In this case it is the developer who holds the title to the land but it is the original landowner who receives the development value. No reference is made in the papers to this situation.

The legislation would require to cover this situation to ensure that the developer was obliged to deduct the PGS from the development payments made to the landowner.

EXEMPTIONS FROM PGS FOR DEVELOPERS TRADING IN LAND STOCKS

(i) Land Exchanges between developers

Where developers exchange land (usually subject to an equalisation payment from one side or the other) and PGS has already been paid, there should be no further PGS charge unless there is a major change of use. This will encourage developers to enter such exchanges with the result that land will be developed quicker.

In addition, if PGS on large sites to be developed in phases has been determined but not yet paid the liability would be transferred to the new owner but the amount would stay the same unless there is a major change of use.

(ii) Developer selling land to other developers

Where developers sell land (usually serviced) to other developers and PGS has already been paid, there should be no further PGS charges unless there is a major change of use. This will encourage developers to undertake the 'lead' developer role on large developments.

OTHER POSSIBLE EXEMPTIONS FROM PGS

Small Sites

There appears to be a reasonable case for making small sites exempt from PGS, although there could be difficulty in deciding the precise level at which the exemption should apply.

Of the three small sites analysed in the Knight Frank Report* (Case Nos. 6, 7 & 14), all would appear to be in financial difficulty and this seems to be more and more a common experience.

If small developments do not go ahead, no PGS will be collected. If they do go ahead, a valuable element of housing production will be achieved because they are usually located on small infill sites in urban areas. They thus result in better land use.

Charitable Projects

The Knight Frank Report analyses two charitable projects for care homes (Case Nos. 3 & 4) where the financial position is finely balanced. If they do not go ahead, valuable community facilities will be lost.

*Reference: Knight Frank (2006) "Planning Gain Supplement Audit: Final Report. BPF, HBF, RICS, CBI