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HM REVENUES AND CUSTOMS CONSULTATION: PAYING PLANNING GAIN SUPPLEMENT

SUBMISSION BY SCOTTISH ESTATES BUSINESS GROUP

1. BACKGROUND

The Scottish Estates Business Group (SEBG) represents a group of progressive land-based estates with significant agricultural and rural business interests. It aims to promote a modern business approach in the management of Scotland's land resource in ways which deliver social, economic and environmental benefits. The group seeks to secure a sustainable and prosperous future for rural areas.

Estates are proven business models that assist the development of smaller rural businesses, and landowners and estates have a vital role to play in the ongoing and future development and prosperity of Scotland. SEBG is committed to rural economies and its members work hard across Scotland across Scotland to stimulate enterprise and economic development.

2. SEBG – CONCERNS ABOUT PGS

SEBG's concerns about the proposed introduction of a Planning-gain Supplement (PGS) were set out in detail in February 2006 in response to the consultation on PGS by HM Treasury, HM Revenue and Customs and Office of the Deputy Prime Minister Treasury. Before commenting on the proposals set out in the current consultation on Paying PGS, the Group feels it would be helpful to reprise its concerns about the possible implications of the introduction of a PGS policy.

SEBG has major concerns that the introduction of a PGS as proposed will not only fail to deliver the Government's aims for it of improving the means of funding infrastructure to support the expansion of housing supply, but will also be a disincentive to and actively work against the very developments which are expected to deliver those desired aims. Our main concerns about the proposed PGS fall into two distinct areas – why such a tax would deter rather than support development, and practical difficulties of applying a reserved mechanism to the devolved areas of planning and development.

Impact of a PGS on development

SEBG believes introduction of a PGS would actually work directly against its stated aims.

- Since developers would be required to make a PGS payment greater than that required under the current planning obligations regime, the effect would be either to put up the cost of subsequent development including house prices; or lead to lower prices being offered by developers for land, which in turn would lead to less land being offered for sale and fewer developments consequently being taken forward. In either case, the impact would be to increase house prices and restrict future supply, exacerbating market imbalance in provision – a direct contradiction of Government's policy of increasing housing availability. This could have an extremely detrimental impact on rural housing schemes and in particular affordable housing schemes where, if the PGS has to be borne by the landowner, it would be less likely that land would be made available, and if borne by the developer, would push up the price of houses and thereby prejudice affordability.

- Since planning obligations would be retained for environmental works related to the site and for affordable housing provision, and would be additional to PGS, the economic viability of development projects would be reduced, leading to the abandonment of some formerly attractive investment projects.
- PGS as proposed would act as a disincentive to early development, once planning permission had been granted. With PGS being based on planning gain, its cost as a proportion of overall development cost of the project would fall over time as site value increases. Since planning consents usually are granted for a five year period, the economic case for a delay to the start of development would be strengthened, particularly where investment capital was required for the project to go ahead.
- Payment of the PGS as proposed would be required at the commencement of development, when returns for the project may not have begun to appear. This would create a further "up-front" financial burden which would have implications for the viability of the project.
- It is intended that local infrastructure development would be funded from the revenues raised by application of PGS at the time development begins, yet infrastructure would be needed before development can take place. Under the new system, local authorities would not have the funding necessary for "pump-priming" new development.
- Many projects involve development for rent rather than sale. The effect of a PGS would be either to raise the rent to be charged, in order to cover the increased cost of the development, or to reduce the number of economically viable rental projects, potentially restricting any increase in supply of affordable property for rent.
- Application of the tax will be on all land, including brownfield sites and sites for social housing. Indications are that the level of tax will be set low as a consequence, but to date the Treasury has given little indication of what the level might be. Nevertheless, the increase in costs caused by even a "low" rate of PGS could render such developments as unviable.
- Irrespective of the level at which it might be set, the very existence of the new tax would act as a new risk to offset the advantages of potential development.

For these reasons, SEBG believes that rather being a spur to development, imposition of the PGS as proposed would, on the contrary, deter development, reduce the supply of available land, limit the amount of housing becoming available and raise house prices. The Group is particularly concerned about the effect this may have on the provision of affordable housing in rural areas.

Practical difficulties of introducing a PGS in Scotland

There are concerns about how accountability and transparency of a UK PGS can be assured at Westminster, Holyrood and local authority level. It will be important to the acceptability and effectiveness of the PGS that it is – and is seen as - an additional resource for investing in infrastructure and community projects, rather than purely a more bureaucratic way to deliver the same level of resources.

PGS as currently proposed is based on a presumption of the scaling back of planning obligations, restricting developer contributions to matters relevant to the environment of the development site and affordable housing. Yet in Scotland, local authorities are increasingly using S.75 agreements to secure financial contributions for a variety of community projects unrelated to the development site. With introduction of PGS, developers in Scotland could be faced with a double burden, being required not only to pay PGS but also to continue to suffer additional local planning obligations beyond site-specific matters. This would not only act as a disincentive to development, but would also disadvantage developers in Scotland vis-à-vis the rest of the UK and run counter to the principle of equitable and uniform tax treatment between England and the rest of the UK. The proposals also make no allowance for differing priorities and policy of the devolved and Westminster administrations.

3. DETAILED ISSUES RAISED IN *PAYING PGS* CONSULTATION

CH. 2: OVERVIEW OF THE PGS PROCESS

The requirement on developers to pay PGS within 60 days of the issue by HMRC of the PGS Start Notice, will be an extra financial burden at a time when returns for the project will not have begun to appear, and as such will undermine the economic viability of any project. The suggestion that developers might instead be asked to make the payment at the time of requesting the PGS Start Notice in order to limit contact with HMRC is likely to exacerbate an already difficult financial position.

In Scotland, planning obligations are not always fulfilled at the time of commencement of development but may be phased throughout the project, according to what is appropriate to the stage of the development. Indeed, whilst some obligations such as the planting of trees for screening or adjustments to the roads infrastructure can only be made as the project progresses, other obligations may be totally unrelated to the project concerned. Increasingly local authorities in Scotland are using S. 75 agreements to secure financial contributions for a variety of community projects unrelated to the development site. In the Scottish Borders, for example, a levy is to be applied of £1500 on each new house to assist in the funding of the re-opening of the Waverley railway line from Galashiels to Edinburgh.

Communications between planning authorities and HMRC

Currently there are no direct lines of operation between Scottish local authorities and HMRC. The intention that local planning authorities will be an important source of information for HMRC regarding relevant planning permissions and information on developments which go ahead without a PGS Start Notice, will create further administrative burdens and costs which will have to be borne by already financially stretched bodies.

Since the activities of Scottish local authorities are overseen by the Scottish Executive, in turn answerable to the Scottish Parliament, presumably legislation will be required to facilitate the administrative links required to facilitate the passing of information from Scottish local authorities to HMRC and vice versa.

Similarly, funds raised by PGS would require to be channeled through the Scottish Executive, with accountability to the Scottish Parliament for their application. The involvement of Scottish local authorities with HMRC as the body responsible for collecting the PGS revenues would need to be clarified and appropriate measures applied to ensure transparency and accountability.

Issues for consultation:

Q.1: What difficulties (if any) might there be in making electronic communication the sole channel of communication for the application and return of information for PGS Start Notices and PGS returns? Are there any particular groups who might face problems accessing or using electronic services either personally or via an agent from the outset of the new regime?

A: Smaller developers/builders may not be set up for compulsory electronic communication. They are most likely to use an agent, probably their solicitor or accountant, leading to increased professional fees. This in turn would impact on profitability and in due course land values with possible implications for release of land.

Q.3: If you consider a pre-commencement agreement service should be offered, how would you design it to take account of the problems of administrative complexity and cost? In particular, how should any charges for the service be set?

A: A pre-commencement agreement service has merits since it provides certainty, something a developer would want if possible. However the cost must be proportionate, otherwise it would not be used. The charge for the service should be related to the value of the development, perhaps on some form of scale. However if it were too complicated to calculate the fee, then again, the service would not be used. Simplicity to use and clear knowledge of its costs would be fundamental to its usefulness.

CH. 6: PAYING THE PGS CHARGE

SEBG has concerns about the timing of payments of PGS and how long it may take for PGS levied locally to be returned to the local authority to be available for the investment in infrastructure necessary to allow the development to proceed. There is also a need for clarity over whether Section 75 will continue to be used in Scotland as a means of identifying infrastructure or other community facilities to be provided by the developer, and against which there may be some credit arrangement once PGS finally flows in. Continued uncertainty will inevitably undermine confidence, an essential pre-requisite to effective development.

The requirement that PGS should be paid on the commencement of development fails to account adequately for those situations where more than one developer may be involved in a project with a single planning consent, or where an individual developer has legal access only to part of the development site. Should a PGS be implemented, there would be both a need for greater clarity as to who was to be responsible for payment.

Procedures where PGS liability identified after development completed

The PGS consultations make clear that the PGS obligation falls on the developer and that where a developer fails to obtain a PGS Start Notice and completes development before HMRC becomes aware of the failure, the PGS due together with interest and penalties will become the liability of the owners of the completed development or the interest in the land. Where the developer and owner are one and the same, this approach appears logical.

However, in those cases where the developer does not own the development or have an interest in the land, it might be more appropriate for HMRC to pursue for payment the defaulting developer, rather than an unsuspecting owner who may have been reassured that the payment had been made. Otherwise, an opportunity might be created for less-than-scrupulous developers to complete developments on behalf of owners without following proper procedures. In such a situation, it would seem inequitable for the owner to be subject to late payment penalties and interest in addition to an unsuspected PGS obligation.

With prospective purchasers of newly completed developments able to assure themselves that any PGS due has been discharged and that they will not themselves become liable to the charge at a future date, developers owning their developments will have a strong incentive to comply with the PGS rules, since otherwise they might find it difficult to sell on completion. Developers not owning their developments should not, by contrast, be able to take advantage of a loophole which offers an incentive not to comply with the PGS rule.

Issues for consultation

Q.1: What difficulties (if any) would it cause developers if HMRC made electronic payment mandatory? Are there any particular groups who might face problems accessing or using electronic payment methods?

A: See comment under Chapter 2 Q1 above.

Q.3: How should information on the status of the PGS charge on a development be made available and what information should be offered? Apart from purchasers of a development who wish to establish that there is no outstanding PGS liability on a development, are there other circumstances in which a person might want to check information held on such a register?

A: Rather than setting up another register with all its associated costs, this issue could be simply dealt with by if HMRC were to issue the developer with a 'PGS Paid' certificate once the payment had been received. Any purchaser, or more realistically a solicitor acting on behalf of the purchaser, could then ask for the certificate to be produced before completing the purchase of the development or property. The onus would be on the buyer but the developer would know that he would not have a marketable product unless he had that Certificate from HMRC.

CH.7: PGS COMPLIANCE

Issues for consultation

Q.1: The Government recognises that allowing a 12–month period in which to challenge a PGS return would not give sufficiently early certainty to developers and the time limit for PGS will need to be substantially less than 12 months. What do you believe would be a reasonable time limit beyond which HMRC should no longer be able to amend a PGS return or open an intervention, provided full disclosure of the facts has been made by the developer?

A: As the consultation recognises, the period for which a PGS return is open to challenge must be short so that it does not hold back or stifle development. Developers require certainty and may delay progress on their proposed development until such time as they could be sure that the return was safe from challenge by HMRC. We suggest that the challenge period should be limited to two months.

SEBG
28th February 2007