



## **HM REVENUES AND CUSTOMS CONSULTATION: VALUING PLANNING GAIN**

### **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 Valuing 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 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

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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 potential effects on the provision of affordable housing.

## **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

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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 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 *VALUING PLANNING GAIN* CONSULTATION**

#### **THE LAND TO BE VALUED**

Under the current proposals, the developer is to be the one liable for the PGS applicable to a development, irrespective of ownership of the land involved. However, since the developer will take account of his PGS liability when negotiating to buy the land to be developed, this will mean the PGS liability in effect will fall on the seller of the land rather than the developer. The charge will thus be a tax on land sale, rather than on the uplift in value as a consequence of development, and as such would be a disincentive to landowners to sell. The inevitable consequence would be a reduction in the land being made available for development, including for housing. The PGS policy would therefore deter more house-building rather than facilitate it, in direct contradiction of Government policy of increasing the building of new housing, affordable or otherwise.

#### **THE INTEREST TO BE VALUED**

It is to be assumed when assessing PV or CUV that the interest to be valued is the freehold interest with vacant possession (FHVP) free from encumbrances. As stated in the consultation, this assumption means that that the actual position with regard to land ownership, such as the existence of any tenancies or other interests over the land, and any restrictions such as any restrictive covenants, which prevent the development from proceeding, will be ignored for the purposes of calculating both PV and CUV.

This definition means that for the sake of simplicity, the tax is to be charged on theoretical rather than actual values, since tenancies and other interests or restrictions over land reduce their value. The application of a PGS charge calculated on a theoretical rather than actual value have the potential to be open to question as well as lacking in transparency. Further,

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the FHVP definition will cause difficulties in those cases where tenants occupying property under leases wish to carry out developments.

Valuations will inevitably be complex and costly, particularly for larger or phased developments. Assessing the PV of land with planning permission would require consideration of infrastructure costs for development of roads, drainage, sewage treatment etc and of the affordable housing policy of the local authority, as well as housing construction costs and the assessment of the market value for housing in the area at the time planning consent was granted. CUV would also be likely to be less than straightforward in many cases. The potential for disputed valuations would be considerable, with costly appeals and delays to the commencement of development.

The main reasons that the taxation of development gains has failed in the past have been the problem of expensive and complicated valuations and the risk of dispute. The introduction of a betterment levy under the Land Commission Act 1967 and Development Land Tax in 1976 both foundered as the costs of valuation proved out of all proportion to the amount of tax being collected.

## **DEFINITION OF PLANNING VALUE - PV**

### **Contaminated land**

PV has been defined as the ‘market value’ of the land the moment after full planning permission is granted, subject to the specific assumption that there is no prospect of obtaining planning permission for any development in the future other than permitted development. The PV is to reflect the physical state of the land at the valuation date including any contamination, with costs of any remediation works to be reflected in the PV. However, the consultation makes clear that that the PV cannot be a negative figure, even if the cost of remediation work exceeds the value of the land.

SEBG suggests there would be a greater incentive for the development of brownfield sites and contaminated land by developers if negative PVs could be applied to such developments – in effect, creating a grant to facilitate the clean-up of such sites and their use for development instead of being left as scars on the landscape through being uneconomic for development. This approach would enable better use to be made of currently unusable land for the provision of both residential and non-residential developments.

### **Phased developments**

SEBG has concerns about the difficulty which will be created in identifying funding for phased development projects, where PGS may arise with each phase. Since it will be impossible to assess at the outset what the tax liability for the overall project may be, funding bodies are likely to be less ready to commit to such developments.

Concerns have also been expressed about the potential impact of “reserved matters” as a phased project progresses, and the way it is proposed to treat “ransom strips”, which can have

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a major impact on the value of a development. It is questionable why these are to be disallowed in arriving at a valuation, when they are regarded as normal adjustments within a RICS Red Book valuation.

**SEBG**  
**28<sup>th</sup> February 2007**

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