

Legal Alert

Planning-Gain Supplement – An Update

On 5 December 2005, the Government produced their consultation paper on the Planning-Gain Supplement ("PGS"). The 2006 budget published on 22nd March 2006, indicates that the Government is still considering both the results of the consultation and the PGS proposals, although no significant further detail on PGS was provided.

What is it?

PGS is a development tax, through which the Government hope to capture a "modest" proportion of the uplift in land value following the grant of planning permission. PGS will apply to all types of development, commercial and residential (but possibly not to 'home improvements' or small scale improvements on commercial properties). A lower rate for brown field sites is being considered.

Liability will arise on the grant of a qualifying planning permission. The PGS Rate (predicted to be around 20-30%) will apply to the difference between the market value with planning and the current use value of a site. PGS will be self-assessed and prior to development, a developer will have to serve a 'Development Start Notice'. PGS will then be payable in a lump sum on commencement of the development. It is likely to be shared by the Government with local and other authorities, with a significant proportion of revenues being retained for infrastructure within the area from which it originates, and the remainder being used for strategic regional infrastructure.

There will be a penalty and interest regime for default, and a final penalty of a Development Stop Notice or an injunction restraining development may also be available. It is proposed that the use of section 106 Agreements be scaled back post-implementation of PGS, so that they will only be used in relation to the environment of the development site and to affordable housing.

Problems with PGS:

- 1) Liability is triggered on the grant of planning permission, but as payment is not due until commencement of the development, the developer who pays PGS may not be the party to have gained the value of the uplift if they bought the property after the grant of planning permission.
- 2) Where there is more than one interested party (for example, in a forward funding) it is unclear who the appropriate party to pay the PGS would be.
- 3) There is no concept of phased PGS payments. This is likely to create cash flow problems for larger developments (where currently, obligations under s.106 Agreements are often phased).
- 4) Market value will be based on an assumption that the land is freehold, unencumbered and comes with vacant possession of the whole, although anticipated development costs, decontamination costs and money payable under section 106 Agreements will be taken into account. These assumptions may cause problems, as they do not fit all developments.

- 5) The budget confirmed that a 'significant proportion' of PGS revenue will be invested in the required infrastructure in the area neighbouring the development. However, with some being retained for regional and central spending, local authorities will receive less than under the current system.

Some considerations:

- 1) Developers considering acquisition of development sites/properties between now and the implementation of PGS will need to obtain sufficient information from the seller to assess the property value at the date of planning permission and should consider the potential impact of PGS on the purchase price they are willing to pay. The possible amount should also be factored into any projected development costs.
- 2) If approval of reserved matters will trigger PGS, then developers with outline permission for large phased developments should consider accelerating their timetable for submission of an application for approval, so as to obtain it before implementation of PGS.
- 3) Another concern for larger developments with outline permission only is how, during the transitional period, s.106 Agreements entered into in relation to the outline permission, will be adjusted or considered in relation to PGS liability on the grant of approval of reserved matters.
- 4) The government may well specify that PGS is due on developments commenced after the PGS deadline but where permission was granted before the deadline, so developers entering s.106 Agreements should ensure that this possibility of 'double taxing' is addressed.

The future

The Government is still continuing to assess PGS and further announcements on implementation are to be made by the end of the year.

PGS will not be implemented before 2008, and there will be transitional arrangements. It is expected that there will be a cut-off date for planning permissions, with detailed permissions given before that date not creating a PGS liability. It is likely that there will be a rush of planning applications in the run-up to the deadline.

For further information on PGS please contact our property partner Roger Thornton on 020 7421 6410 or Claire Atkins on 020 7421 6457