

# Developer contributions to infrastructure

## A submission from the property and house building industry

1 October 2007

### Introduction

1. The property and house building industry welcomes the opportunity to respond to the Government's invitation set out in the Housing Green Paper to consider a number of approaches to obtaining contributions from the development sector to help fund infrastructure requirements.
2. The industry is committed to working with Government to secure more and better homes, better places and high standards of development which offer real value. The industry recognises its responsibility to contribute through development to positive social change. We all seek a holistic approach to planning, within which the planning and delivery of infrastructure is an important part - but only a part of a broader discussion about planning reform.
3. This paper sets out the case for a tariff-based approach as a means of securing developer contributions towards infrastructure costs. The property and planning industry is critical of the current draft proposal for the planning-gain supplement (PGS) for a number of reasons, but principally because it would create disincentives to development, disempower local authorities and communities, divorce development from infrastructure delivery and create significant uncertainty as to the extent of the actual liability, particularly at the critical points in the process – at acquisition and when planning permission is granted.
4. The property and development industry shares the Government's objective of improving the planning, funding and delivery of the infrastructure needed to support population and economic growth, and to increase housing supply and commercial development. It recognises the need to reform the current approach to financing necessary infrastructure and is ready to play its part. Contributions from development could play a significant part in meeting community needs and infrastructure requirements, although yields from planning will only ever make a partial contribution to costs, which will continue to be funded substantially from local and central taxation.
5. The industry welcomes the Government's commitment to reform, as exemplified by its Cross Cutting Review, the Local Government and Planning White Papers, the Housing Green Paper and the ongoing reform of the planning obligations process designed to speed up delivery and increase funding. This paper sets out a proposed approach, supported by the industry, for improving the planning obligations process, building on the reforms which have already been undertaken and addressing the Government's objectives for the proposed PGS.
6. In seeking to raise more funds to meet infrastructure costs, the Government has posed the question to the house building and property industry: "How would you like to pay?" We are able to respond to this question in a clear and unequivocal way. We believe that a system of standard planning charges or tariffs has the greatest ability to satisfy the aspirations of all parties. It offers the best prospect of generating the additional funding that the Government is looking for, it provides the development industry with the certainty it requires and it preserves the integrity and pivotal position of the local authority role. The combination of these factors, we believe, would be the

best way of expediting the provision of the infrastructure needed to support more residential and mixed use development.

7. A tariff approach complements local authorities' place-making role and the requirement for local infrastructure planning. It will increase the revenue yielded from the development process to fund infrastructure by capturing almost all developments and increasing individual schemes' average contributions. It will change the basis on which Section 106 payments are currently justified and collected.
8. There is significant scope to increase the yield from planning and to do so in a way that meets a number of important objectives. An infrastructure tariff would be established in (and enforced through) the development plan at regional and local levels. It would have the advantage of building on current Section 106 arrangements, but dramatically enhancing their effectiveness by extending the tax base and regulating the co-ordination and funding of infrastructure through the development plan.
9. We strongly believe that tariffs, introduced alongside planning obligations, are best processed and administered through the planning system rather than through national taxation.
10. The approach that this paper recommends is applicable to England. In view of the strength of feeling about this matter in Scotland, there would be considerable resentment north of the border at being required to impose and pay a tax such as PGS. It should be up to the Scottish Government, along with relevant stakeholders, to develop its own approach to the funding of local and regional infrastructure. A satisfactory solution would also have to be found for Wales and Northern Ireland.
11. We recognise that a reformed system would need to meet the following principal objectives:
  - a) ensure an equitable system where contributions are captured from all development;
  - b) create certainty in the property and house building markets so that liabilities can be known in advance and, for instance, pass through to land value;
  - c) encourage appropriate land to be brought forward for development, particularly housing;
  - d) raise more revenue; and
  - e) facilitate the co-ordination and delivery of both general and site specific infrastructure alongside development.
12. The property industry welcomes reform of the "planning-gain" system and wishes to work positively with Government to establish a new system based on the above principles. The property industry strongly supports the co-ordination and funding of infrastructure, which is so important to the productive operation of the property market.
13. In recent years, since the new ODPM Circular 05/2005, Section 106 has improved considerably both as a process and in terms of increasing its financial yield. A new system can build on, and learn from, these improvements, whilst achieving a fundamental change in the way in which infrastructure is funded and delivered.

14. We strongly believe that a tariff-based approach is a viable and credible alternative to PGS, as clearly demonstrated by this paper. If introduced along the lines suggested in this paper, such a tariff-based approach would meet all the Government's avowed objectives for PGS, while crucially maintaining the support of the property industry, something which is conspicuously lacking with the PGS proposals.
15. It seems possible that the tariff approach to infrastructure funding could be introduced without legislation. This can be tested at the next stage of detailed examination, along with the question of whether there would be advantages in introducing the tariff through legislation. In any event, it is critically important that the tariff approach operates through a clear set of rules.
16. Part one of this paper outlines the tariff-based solution that is being proposed, explaining in detail what the system is and how it would work. Part two analyses why we are opposed to the other alternative approaches in the Housing Green Paper, and part three compares our tariff-based proposal against the PGS. In addition, the annex section provides information relating to the changes in existing guidance that would be required to allow a wider application of tariffs, and also lists tariffs / standard charging mechanisms that are already being used throughout England.

## Part one

### Detail of the tariff proposal

#### The principles

1. Section 106 obligations can, with some important changes, form the foundation for the wider introduction of tariffs. Based on the steps set out below, it should not be difficult to ensure that Section 106 is universally applied, that the yield from Section 106 increases, that greater simplicity and transparency are created and that there is no deterrent to bringing development forward. Many of the necessary principles are already contained in Circular 05/2005. Revisions to Planning Policy Statements (PPSs) 11 and 12 and a replacement to Circular 05/2005 could achieve the following:
  - a) the ability of planning authorities to set a tariff charging system in development plans (as opposed to informal policy). By applying such a system to all development (above a zero or very low threshold), one of the significant current inequalities would be removed, i.e. the position which allows smaller developments to contribute little or nothing to local or sub regional infrastructure;
  - b) the ability of developers to offset the tariff system with locally negotiated Section 106 agreements where it is necessary to ensure that specific local infrastructure is secured to enable a particular development to proceed: and
  - c) the introduction of a development plan requirement for all development to contribute through a tariff towards general infrastructure.
2. One concern of Government is the fact that Section 106 is not applied uniformly and that a number of developers are perceived to be 'getting away with it'. A tariff approach meets that concern by promoting a system whereby virtually all development could be captured by development plan policies, requiring tariffs to be paid towards regional and local infrastructure.
3. Formulae and standard charges bring the advantage of certainty and speed to a Section 106 negotiation, but they will not be ideal in every circumstance, particularly where specific infrastructure needs to be secured for a particular development. The approach proposed offers the best of both worlds, i.e. the flexibility of Section 106 together with the equity of a tariff system for all development.

#### The policy

4. Circular 05/2005 can be revised to give effect to the new approach. To a significant extent, the ground rules were laid when the circular was revised in 2005 to amend the test of 'necessity'. The circular now requires obligations to be 'necessary for a planning purpose', i.e. a purpose that could be prescribed by policy. It follows that the amended policy in the circular could require tariff payments to contribute towards general infrastructure, even where that infrastructure is not required for the specific development. Current planning practice is already adopting this approach and tariff initiatives are being adopted by local authorities across the country. This rapid but *ad hoc* evolution of tariff-based policy was not apparent at the time of the Government's earlier consideration of the tariff approach and Kate Barker's first report, but we believe that the experience that has since been gained enables many of the concerns to be addressed.

5. Whilst there may be a need for a short term, supplementary planning document (SPD)-based tariff policy to expand on, e.g. a Section 106 policy in a development plan document (DPD), any tariff policy should at the earliest opportunity be included in the development plan, through a DPD, so as to be the subject of proper scrutiny through the development plan process, given the scale of payments that may be required. Levels of charges would need to be scrutinised bearing in mind the need to contribute to infrastructure funding while at the same time not deterring overall delivery of development. The need to fund and deliver infrastructure would be a powerful incentive to local authorities to prepare an early infrastructure/tariff DPD. This process should start with the regional spatial strategy (RSS), particularly given the opportunity for tariffs to be pooled towards regional infrastructure. Each RSS should make an estimation of the need for regional infrastructure required to enable the development of the housing, employment, commercial and other development planned by the RSS, and the likely costs of regional infrastructure that are unlikely to be met by Government funding. A regional tariff should be identified in RSS, together with provisions for monitoring and review. The pooled payments would most effectively be applied by a regional delivery vehicle, along similar lines to that suggested in the Budget.
6. In principle, there should be no difficulty with a regional tariff, even if the payments from a particular development might fund infrastructure at the other end of the region – as long as this has the clear support of RSS policies. In practice, payments would be made into a pool and would not be traceable to specific projects – they would go to regional projects required by the RSS. It is likely, of course, that most money would be spent relatively locally, as it will be the areas with the greatest amount of development that will require the greatest infrastructure, but that will not be a requirement of the policy. Consistent with revised Government policy in the PPS and the circular, the specific link between development and Section 106 based on necessity will shift towards an approach based on contributing to the general requirements of an area.
7. At the local level, the local development framework (LDF) needs to take the same approach, recognising that there would be a separate regional tariff towards regional infrastructure. The tariff would be set through a DPD following the full process, including examination and a binding Inspector's report. The circular would define what infrastructure qualifies as regional and what is local for the purposes of setting tariffs, what would qualify for a S106 payment, and the range of Section 106 payments that would qualify for offsets against the tariff.
8. Both the RSS and DPD should set out a tariff approach, differentiated between different land uses, i.e. a tariff per unit or sq m for B1, A1, residential development etc, taking into account RSS and LDF policies for the scale of development anticipated. A clear intention would be that the scale of payment from the anticipated scale of development would accumulate to the sums of money required to meet anticipated physical and social infrastructure requirements where money is not available from other funding regimes, but qualified by consideration of local land values and viabilities ('ability to pay'). Revenue from tariffs would not fund all infrastructure; government funding would remain essential and it would be important to ensure that public sector investment programmes for infrastructure are also clearly identified at an early stage. The approach proposed, however, would clarify, increase and make more predictable the contribution from development.
9. Both RSS and LDF would be encouraged to set differential levels of tariff for greenfield and brownfield land. Authorities could also set different levels of tariff for different parts of their areas. Where this is straightforward, geographic allocations

could be made in the RSS/DPD. Where it is more complex, the development plan could set criteria, with the relevant tariff category to be settled when applications are made. It is important that the RSS/LDF does not attempt to address the complexities of individual sites, and both documents should aim for a clear, simple set of policies. The PPS and circular might encourage, for instance, differential tariffs for greenfield and brownfield land and could even identify areas where no tariff would apply, for example in low value 'regeneration' areas, where authorities particularly want to encourage development and where viability is known to be difficult. Section 106 would still apply in those areas for essential site specific infrastructure.

10. Development plans could also set out policies for the timing of the tariff payments, having regard to the scale and timing of infrastructure requirements and the anticipated phasing of development. In other words, large developments would pay tariffs on a phased basis. Indexation based on building cost indices would be expected.
11. The process would be hugely assisted by clear statements from Government of its commitment to regional and local spending over a medium term period. With an improved level of certainty in this respect, regional and local planning policy could confidently address the infrastructure requirements of their respective areas and develop an effective tariff regime.
12. Similarly, liberating local authorities and delivery vehicles to be able to borrow against the expectation of future tariff income should be strongly encouraged and would enable maximum benefits to be achieved from the new regime, though this is not essential for the tariff to function in its own right.
13. The tariffs would not be expected to contribute to national infrastructure, nor would funds from one region normally contribute to infrastructure in another. The Government would be aware of differential revenue expectations from development in different regions when considering its own funding allocations between regions.
14. The tariff is not a tax on development; it is a contribution from development to meet necessary regional and local infrastructure. It requires no valuation of land when applied, it would be based on clear published policy and the scale of liability would be known at the point of the grant of planning permission.
15. At this stage, it is accepted that affordable housing would not be funded through the tariff but would remain a matter negotiated as part of the planning discussion on specific applications. Levels required of affordable housing would be set in RSS and LDF and the tariff would apply additionally and would have to have regard to affordable housing and other policy objectives, including the availability of Housing Corporation grant. We appreciate work is being undertaken to establish a fixed starting point for affordable housing contributions from sites and this may lend itself to a more standardised or formulaic approach.
16. There may be circumstances in which the combined site conditions, requirements for the tariff and Section 106 demands, including affordable housing and whether Housing Corporation grant is available, render desired development unviable. In these circumstances (as in current policy), this lack of viability would need to be demonstrated. It would be a matter for the planning authority to judge whether the benefits of the development justified the grant of permission with reduced obligations, either to affordable housing or to the tariff (or both). There may be merit in regional teams or specialists to assist local authorities in such analysis and to spread best practice.

17. The regional tariff would be paid initially to the local planning authority and then remitted to the regional planning body, and the local tariff would be held by the local planning authority. In both cases, the tariff would be ring fenced for the purposes set out for it in RSS and LDF, and the planning authorities would make the tariff pool available to relevant infrastructure providers to ensure the satisfaction of the specified infrastructure objectives.
18. The payment of the tariff would be secured through a standard Section 106 agreement entered into on the grant of planning permission. That agreement would impose obligations on the planning authority to apply the tariff to the purposes set out in the development plan.

### **How to introduce and set the level of the tariff**

19. The level of the tariff would be considered and set through the development plan making process, in the knowledge that it would not be expected to provide all the revenue to fund infrastructure, other sources of Government funding will remain important. The development industry would be able to make representations as part of that process to help ensure that a fair tariff level was agreed. The development industry would share an objective that the tariff should generate sufficient money to fund necessary infrastructure, whilst not being set at such a level as to deter or preclude viable development. Therefore, the local authority would have to consider the other demands on development, such as affordable housing and the need to build low / zero carbon developments, for example, when setting the level of the tariff. The tariff must not be set at the margin of viability and the level of the tariff must not put at risk the delivery of development proposed in the RSS/LDF.
20. If events demonstrated that the development plan making process had got it wrong (or if economic circumstances changed significantly after adoption of the plan), the following could arise:
  - a) the planning authority would have the discretion to waive the full tariff in circumstances where it was demonstrated that the full tariff was rendering development unviable (this provision is already contained in Circular 05/2005 and see paragraph 16 above);
  - b) an amendment to the RSS or the DPD would be progressed – if necessary, non-statutorily in the first instance.
21. In practice, tariffs are emerging informally across the country at a rapid pace. It is appropriate that these should be formalised in the development plan and properly regulated within a structure of national guidance. A period of joint working between Government and the property industry should be encouraged to refine the details of the approach, but the principal structure could be put in place relatively quickly through consultation and the publication of a revised Circular 05/2005. As explained above, the circular would require the system to be introduced through the development plan making process (RSS and DPD).
22. The objective must be to bring forward infrastructure DPDs as quickly as possible. In the meantime the rigour of SPDs must be strengthened by the revised circular and a reformed PPS 12.
23. Transition arrangements would be required to ensure sites with an existing planning permission would not be liable to any newly introduced tariff.

### **How Section 106 would be offset**

24. The tariff figures would have been constituted from a combination of different total infrastructure requirements, i.e. so much for roads, so much for schools, etc. In each case (regional and local), however, the authorities would arrive at a simple tariff figure, for example £X per square metre for residential and £Y per square metre of commercial floorspace, differentiating between different types of land use. All development above a very low threshold, which would be specified in the relevant planning document, would be liable to pay the tariff.
25. For instance, the local tariff might be £10 per square metre. Of this, the calculations would have shown that the contribution for rail infrastructure amounted to only £2 per square metre. For reasons specific to a particular scheme, however, a particular developer may choose to negotiate a Section 106 agreement which contributes substantially towards rail infrastructure identified in the tariff costings and relevant to a particular project. This might amount, for instance, to £7 per square metre. In these circumstances the developer would still be liable to top up to the full tariff of £10 per square metre. In other words, whilst the tariff is compiled from a range of different infrastructure requirements, it would be applied as a simple, single tariff payment.

### **Payments that would qualify to be offset**

26. It would be necessary to ensure that there was a clear checklist in the tariff DPD of those headings within Section 106 that could be legitimately offset against the tariff – thereby avoiding concerns that developers could abuse the system by itemising elements of their own development as Section 106 contributions, or by gold plating local infrastructure to enhance the value of their development. There would be no incentive for developers to elect to make greater Section 106 contributions, as these would not be offset against the tariff. The revisions to Circular 05/2005 would set out the relevant principles, but the approach would be based on a requirement for a local authority to produce an infrastructure plan as part of the RSS or LDF. This plan would define the infrastructure requirements over the plan period and, in doing so, define qualifying expenditure.

### **How to deal with phased development**

27. It would be for the relevant development plan document (the RSS or the DPD) to set its own local policy arrangements. In Milton Keynes, for instance, local policy has determined that 10% is payable on the grant of reserved matters approval, 15% on implementation, with the remainder phased over the likely length of the project. Having regard to the cash flow requirements to fund necessary infrastructure, the planning authority should arrive at its own formula, consistent with encouraging viable development.
28. The tariff for any particular development would be set at the time of the grant of planning permission and would not be subsequently revisited.

### **How to value and secure payments**

29. The use of Section 106 would continue to be the formal basis on which the tariff payment is secured. In other words, a planning authority would resolve to grant planning permission subject to a Section 106 obligation that would commit the applicant to the payment of the tariff. Failure to sign the agreement would mean that planning permission would not be granted. Most Section 106 agreements would be simple, i.e. a pro-forma obligation committing to the payment of the tariff.

30. The value of qualifying site specific infrastructure would be calculated in the same way as it is at present, i.e. where an obligation is necessary to pay for a local road, school, etc. There is a well established process for costing the obligation and ensuring that sufficient funds are provided

#### **When an applicant refuses to pay the tariff**

31. As set out above, planning permission would not be granted where an applicant refuses to pay the tariff. The applicant would be in a position to appeal against the refusal or non-determination of the application, and the appeal could be heard at inquiry. The applicant may seek to argue that it is inappropriate to pay the tariff for specific reasons, and an inquiry would consider the case, in much the same way as inquiries currently consider appeals where applicants contest the demands to provide the full provision of affordable housing required by the development plan. As the tariff payments would be set out in a DPD (and based on policy in the RSS), there would be a presumption in favour of their payment unless material considerations indicated otherwise (see for instance paragraph 16 and 19 above).

#### **If a developer gives land instead of infrastructure**

32. This would arise, for instance, where a large development incorporates the site that is allocated for a local school. The Section 106 agreement may require the developer to provide the land for the school. In those circumstances, the market value of the land for its identified use would be treated as a qualifying Section 106 payment to offset against the tariff.

#### **If not enough development is planned to pay for necessary infrastructure**

33. This situation might arise, for instance, in an area where development values are low but infrastructure requirements are high. Where this variation occurs across a region or a local authority, the planning authority would be able to determine where to spend its infrastructure tariff. Where the issue is apparent across a whole administrative area or region, the remedy would be for Government funding to increase to target those regions or local authorities in order to facilitate the necessary development and infrastructure.
34. One specific advantage of the tariff approach, however, would be the obligation which it imposes on a planning authority to realistically co-ordinate infrastructure and land use. The Planning White Paper imposes part of this obligation on a planning authority in relation to the LDF, but the obligation would be much more meaningful if it was related also to ensuring the availability of sufficient finance to pay for the infrastructure. A beneficial outcome of the approach could be, for instance, a recognition that more land needs to be allocated if necessary infrastructure is to be provided. A positive compact would be created between the public and private sector.

#### **Establishing a sufficient link with infrastructure**

35. The approach accepts that developers will pay a tariff towards infrastructure projects which may not immediately and directly benefit their development. Those projects will, however, improve overall regional and local infrastructure. This represents a departure from current practice but is a less radical departure than PGS as proposed in Option A, because the level of tariff is still derived from infrastructure needs generated by development.

36. The offset mechanism would allow specific, necessary local infrastructure to be funded through Section 106. The property industry prefers the tariff approach, not least because it creates a far closer link between development and infrastructure than straight PGS. The tariff would be enforced through the statutory presumption in favour of the development plan.

### **The tariff to apply to net increase in development**

37. The logical principle is that it is new development that creates the principal demand for incremental infrastructure and, therefore, new development should pay its part. Logically, therefore, the tariff should apply only to the increase in development promoted on specific sites. In other words, if a site contains an office building of 10,000m<sup>2</sup> and is to be redeveloped with a new office building of 20,000m<sup>2</sup>, the tariff should logically only apply to the additional 10,000m<sup>2</sup>.
38. Where development is redevelopment, therefore, the tariff should be applied to the net increase in development to encourage re-development and intensification. Applying the tariff to the gross development would be a disincentive to regeneration, and is likely to undermine viability.

### **Providing infrastructure on time**

39. Where the required infrastructure is local and specific to a development, it would be best to secure this through Section 106 in the normal way. In order to ensure that infrastructure of wider relevance is provided in time, e.g. a bypass, the following could apply:
- a) ideally, though not essential to the effective working of a tariff system, the planning authority should be given the ability to borrow money against the anticipated revenue stream represented by tariffs anticipated in the LDF or RSS;
  - b) both the regional and the local planning authorities would be directly encouraged by Government guidance to take a proactive role in the provision of infrastructure. For these purposes, it may be necessary to enhance the powers of the regional development agency so that it could act as a proactive development vehicle; and
  - c) Section 106 agreements would impose obligations on authorities to apply the tariff to secure the infrastructure in the plan.
40. The Section 106 would impose obligations on the planning authority to use best or reasonable endeavours to provide the infrastructure. Once a tariff is committed to by the developer, there should be no Grampian condition attached to the planning permission, preventing development from proceeding until infrastructure is provided.

### **The impact on the delivery of development**

41. Planning timescales would be reduced, often significantly in many cases – particularly in the case of large scale development. In London, for instance, long negotiations with Transport for London could be replaced by a tariff payment. Certainty about the level of liability would be apparent in advance of planning, through the development plan.
42. The tariff system should also encourage a system whereby the regional and local planning authorities act as genuine partners in the delivery of planned development objectives. More money would be available for infrastructure and authorities would be

drawn directly into facilitating the early provision of infrastructure. Increased powers for local authorities to act as delivery vehicles for infrastructure, and to borrow against projected income streams, should engender a positive approach to the removal of obstacles to development.

43. It is possible that the need to co-ordinate infrastructure and development could slow the preparation of RSSs and LDFs. However, the Planning White Paper already contains a requirement for planning authorities to ensure the proper planning of infrastructure, and the additional requirement to cost this and set a tariff should not be too complex; there are already precedents for it happening informally across the country. PPS and circular advice should encourage authorities not to attempt too much complexity in tariff policies – in the interests both of speed but also simplicity and clarity.

#### **Would there be perverse incentives?**

44. It might be suggested, for instance, that local authorities would have an incentive to allocate and approve greenfield land if the tariff was higher there. The same, of course, could be said of PGS, where the tax rate is likely to be higher for greenfield land and where valuations would show a greater gain from the grant of planning consent.
45. In practice, tariffs would be regulated and set through the development plan process, in accordance with Government guidance and with the benefit of a binding Inspector's report, as well as the reserve powers available to the Secretary of State. Applications on greenfield land outside the allocations in the development plan would be departures, referable to the Government Office for scrutiny.

#### **How planning authorities would cope**

46. There should not be any doubt that a revised PPS and a new circular could ensure the rapid implementation of a new system for collecting infrastructure payments. Complementary advice relating to the preparation of RSS and DPD would ensure that the system becomes enshrined within the development plan as soon as practical. Failure to pay the tariff would then amount to conflict with the development plan and could be readily enforced.
47. Many planning authorities are already demonstrating the ability to set tariffs and to deal with affordable housing policies, which can raise similar issues. Others could be assisted through the publication of rapidly emerging best practice. Requiring tariffs to be developed through the development plan process creates the certainty that they will be addressed and imposes a rigour on their preparation.

#### **Co-ordination of infrastructure**

48. This is a question that needs to be addressed whichever approach is selected. The availability of greater funding for infrastructure requires a more co-ordinated approach to delivery and implementation. At the local level, the new obligations on planning authorities to co-ordinate infrastructure will inevitably lead to more focused administration and partnership working with infrastructure providers. At the regional level, the approach is most likely to involve further development of the current initiative to enhance the role of regional development agencies.

## **Dealing with on site/development site environmental works**

49. In many cases, these will continue to be necessary and may need to be secured through Section 106 obligations. Such works will only qualify to be offset against the tariff, however, if they form part of the costings on which the tariff is based.

## **Legislation or guidance?**

50. We consider that the approach outlined above can technically be achieved without the need for legislation. A key aspect of its enforceability is that it would be enshrined within RSS and DPD, so that failure to pay/comply would represent conflict with the development plan.
51. The approach suggested, however, represents a departure from some of the principles in the current Circular 05/2005, and it would be necessary to revise the current tests for the acceptability of planning obligations. Such revisions, together with the achievement of development plan status for tariff policies, will remove the risk that applicants could successfully argue against the tariff based on pre-existing case law (for instance the Tesco, Witney case).
52. The guidance would need to make clear the distinction between what is to be included in a Section 106 and what is included in a tariff. Local authorities should not be able to charge twice. In other words, infrastructure which is covered in a tariff can not also be charged through a Section 106.
52. The property industry recognises that a tariff does represent a change in approach to planning obligations and the funding of infrastructure. Whilst this approach is relatively straightforward to introduce, by building on the mechanisms of Section 106 and the development plan, it does radically change the relationship between the grant of planning permission and the funding of infrastructure. In particular, it represents a move from an impact based approach to an approach based on the broader requirement for infrastructure created by development as a whole. Whilst this is a change of genuine significance, no legal difficulty is created as long as Circular 05/2005 is appropriately redrafted.
53. This does not mean that there might not be advantages in legislation and, in any event, it is essential that the new system is brought in with clarity and that the published policy advice is precise in its specification of the approach required to be taken by planning authorities. The best approach is that changes to the circular and PPSs be used to implement the tariff system. If experience suggests a need for legislative support that can be introduced.
54. Other, complementary legislation may also be required if the full value of the new approach is to be secured. This may be particularly relevant in areas relating to:
- a) allowing authorities to borrow against a future tariff income stream; and
  - b) requiring / empowering authorities to act as regional and local delivery vehicles for infrastructure.
55. There is no reason, however, why the rules cannot be clearly set in a revised PPS and circular and the Government, of course, has the power to ensure their proper application within the development plan.

**What would it be called?**

56. There are a range of potential names for the tariff-based approach but there is no reason why it could not be called 'Planning-gain Supplement!'

## Part two

1. In this section of the paper we consider the three other possible alternatives to the PGS that were mooted in the Housing Green Paper and explain why we do not support these approaches.

### The other alternative approaches

2. What is clear is that the very limited support that PGS enjoyed when it was first announced has dissipated. As the complexity and impracticality of PGS have been increasingly exposed, it has become progressively more difficult to find anyone, either in the public or private sectors, prepared to support it. In the light of this, we cannot support any option that continues to be based upon PGS. Any tax or charge has the greatest prospect of working successfully and yielding significant revenue if it enjoys the acceptance of those called on to pay it. On those grounds alone, it is clear that the prudent way forward is to opt for a tariff-based approach.
3. We strongly believe that a tariff, as previously outlined, will meet these objectives. We do not think that Approach A or B would meet these objectives and we do not feel that Approach D should be pursued, as it is our belief that legislation is not required in order to implement a tariff-based system.
4. The Government set out four alternative approaches, in the Housing Green Paper, to how developers can help fund infrastructure. Below, we analyse the three approaches we do not support.

### Approach A: a lower rate PGS with a lesser scale back of planning obligations

5. We do not consider this an acceptable option for the following reasons:
  - a) We think that the approach of trying to capture the increase in land value is fundamentally misguided. Given that the objective of the exercise is to help fund infrastructure costs, it seems illogical to seek to extract an arbitrary sum from a development that bears no relation to the size and nature of the infrastructure requirements of a local area and/or region. A more rational approach must be to estimate the scale of infrastructure needed in an area to support required new housing and related employment development, and to then ensure that the new development makes an appropriate contribution to the cost of its provision. Reducing the rate of PGS does not alter the basic weakness of the PGS concept. Further, reducing the rate of PGS will not reduce the administration costs to the Government or the industry, thereby increasing the cost of collection as a proportion of the tax actually collected.
  - b) The leading professional valuation body, the Royal Institution of Chartered Surveyors, has drawn attention to the complexity of the valuation process required by PGS. For example, the crude valuation mechanism that PGS will use assumes that the value uplift in land is solely created by the grant of planning permission. This is somewhat divorced from reality. We believe that the imposition of PGS will inevitably give rise to protracted legal proceedings challenging PGS valuations. This will only serve to slow down the development process across the country.
  - c) PGS is ill-suited to the redevelopment of previously developed sites. Whilst it may, in theory, be easy to apply PGS to a housing development on greenfield

land, it is much harder to apply PGS to previously developed land, particularly where there has been no sale. PGS will therefore discourage redevelopment within existing property ownership.

- d) Turning PGS into a centrally collected tax that is subsequently redistributed back to regional and local areas creates two problems. First, the vital link between a developer and the community is undermined. Secondly, even with an enhanced role for planning obligations, developers and communities will have less certainty that development critical infrastructure, which developers currently often provide, will be delivered in a timely manner. If public bodies do not provide the supporting infrastructure, this could prevent the implementation of a planning permission, or undermine uses commencing on completion of the development, if it has been granted on the basis that the development would only proceed/be occupied once the supporting infrastructure has been provided.
- e) The Government has so far refused to release any information on the rate that PGS will be set at other than that it will be set at a 'modest rate'. Such uncertainty has been unhelpful for the property industry in trying to ascertain how much they will be expected to pay. The only study we are aware of that has sought to calculate the effect of PGS on the property industry, was undertaken by Knight Frank in 2006. The research suggested that PGS set at a modest rate with a scaled back Section 106, "may not result in the necessary additional funds for local and strategic infrastructure to support housing growth."<sup>1</sup> If there is not enough money in the PGS pot, developers will be forced to pay twice for infrastructure in order to enable their development to proceed.
- f) PGS has the serious drawback that the level of liability would not be known at the time of acquisition (so that the cost could not be passed through to the land price) or at the time of the grant of planning permission (so that the developer would not be able to know his/her liability and would thus be disinclined to commit to starting the development).

#### **Approach B: a PGS limited to greenfield sites**

- 6. Kate Barker's Review of Housing Supply in 2004 recommended introducing PGS on greenfield sites to help fund the provision of infrastructure. Generally, greenfield developments attract large increases in value upon the granting of planning permission and the PGS approach therefore superficially appears better suited to such sites. However, many of the problems associated with PGS, as outlined above in response to Approach A, such as the crude valuation mechanism that PGS uses, would still remain. The definition of greenfield land would also pose problems. Presumably, Section 106 obligations would continue to be used for brownfield sites. The result, therefore, would be two separate systems operating side by side. This is not a prospect that we view with enthusiasm.

#### **Approach D: a statutory planning charge**

- 7. We believe it is right for a standard charging approach to be applied by all local authorities upon the basis already discussed, but we consider that this could be achieved under current legislation. However, it would be important to ensure that whatever approach were to be implemented should not be liable to legal challenge.

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<sup>1</sup> Planning-gain Supplement Audit: Final Report prepared on behalf of the BPF, the CBI, the HBF and the RICS, September 2006.

## Part three

1. This section of the paper compares PGS against our favoured approach, as set out in part one. It highlights the differences between the systems, explaining why we are convinced that our proposal is better suited to meeting the challenges that both local and central government and the property industry face in delivering infrastructure to support development.

### PGS or a tariff: a discussion

2. The Government has expressed the view that the property development industry could, and should, contribute more than it does now to the cost of infrastructure provision. Our opinion is that this view does not take full account of the efficiency of local authorities in negotiating effective deals for infrastructure provision via Section 106 planning obligations, which has greatly increased in recent years, especially since the introduction of Circular 05/05. It is wrong to imagine that there is a vast pool of additional resource within the development sector waiting to be tapped. Nonetheless, we recognise that there is scope for expanding the range of development to which planning obligations can be attached, and we support a tariff because it offers the prospect of a reasonable, fair, simpler and more comprehensive mechanism to the funding of infrastructure costs.
3. We acknowledge that the development industry expressed some concern with the concept of planning charges when the Government previously raised the issue in 2001 and 2003. However, our views have developed since then, as we have been able to work through and resolve some of the problems that such a charging regime could pose, and we are now convinced that there are practical solutions. It should also be noted that local authorities have been voting with their feet. Around fifty of them appear to be at varying stages of introducing, or operating, standard planning charge systems. Consequently, there is now much more practical experience of the formulation and operation of charging mechanisms. The apparent success of the models already in operation – and the positive reaction to them of both the local authorities and stakeholders involved – have confirmed our conviction that this is the most sensible way forward.
4. A tariff has a number of key advantages, relative to PGS, which can be summarised as follows:
  - a) PGS is overwhelmingly unpopular with the property industry and with local government – the Government should recognise both that there could be good reasons for this and that the unpopularity and suspicion which surrounds PGS could act strongly against the prospect of a smooth introduction.
  - b) By definition, the PGS liability will not be known prior to acquisition or the grant of planning permission. The ability to pass its cost on to the landowner is thus severely restricted. The scale of tariff liability, by comparison, will be clear from the RSS and DPD and all prospective purchasers will be able to factor it in.
  - c) Critically, the PGS liability will not be known for some time after the grant of planning permission. The level of PGS payment relies upon agreement over two valuations (before and immediately after the grant of planning permission). Residual valuations are notoriously controversial as they depend on a large number of variables and some valuation disputes could take months or even years to resolve.

- d) Investors and developers hate uncertainty and will be likely to defer development until clarity is apparent. Another potential consequence is that the risk of increased liability will be priced into the cost of borrowing – an outcome which would work against encouraging maximum investment and development. This is a fundamental problem for PGS. Introducing a new tax that has the effect of reducing, rather than stimulating, the amount of development would be a serious mistake.

For the tariff, the scale of liability will be known on the grant of planning permission because the level of payment will be secured through a Section 106 obligation. There will be no doubt about the liability and the developer can decide with confidence whether or not the liability makes it acceptable to proceed. There may be cases where viability needs to be considered, although the normal expectation is that the tariff will apply in full. Even where viability testing is required, it will not call for the same absolute valuation precision as PGS, which must arrive at precise, agreed valuations, because it is a tax.

- e) PGS is a standard, national tax – incapable of adaptation to the circumstances of local areas or sites. By contrast, our approach will be set locally and, where necessary, agreed on individual schemes through the negotiation on planning applications, along with all other material considerations such as the level of affordable housing, etc. By definition, therefore, the tariff is more sensitive to factors that may be relevant to individual sites.
  - f) PGS is divorced from planning and runs counter to a strong theme of Government policy to devolve responsibility to local government and, particularly, to ensure that development and infrastructure are planned and co-ordinated together.
  - g) The tariff is embedded in local planning, responding to and helping to plan the level of infrastructure required in a particular area. There are many benefits that result from this, but one of them is the real prospect of encouraging positive planning by local authorities.
  - h) PGS imposes a new system in addition to Section 106 agreements, which will still be necessary for site required infrastructure.
  - i) For the large number of small schemes, PGS is vastly more complex, requiring formal agreed valuations, compared to our approach, which involves paying a simple, published tariff.
5. Those in favour of PGS argue that it is inherently fairer than a tariff, as it would take more from those who could afford it and less from those who cannot. Further, it is argued that PGS will raise more money and, also, that a tariff will be difficult to fix and complex to negotiate.
6. On the question of **fairness**, the theoretical advantage of PGS is largely or completely negated by the following;
- a) PGS is most 'fair' if the developer has the opportunity to offset it against the cost of land purchase but a) no opportunity exists for existing landowners to offset or negotiate its cost, whilst b) others cannot know the PGS liability at the time of purchase because its level will be set on future valuations. It would be much fairer to have a system where liabilities are known in advance of acquisition and

development, so that informed decisions can be taken about price and investment.

- b) PGS does not allow the full circumstances of individual sites to be taken into account in setting its level – it is an automatic tax, with no opportunity for negotiating its effects, a failing that could lead to significant unfairness.
  - c) PGS is a national tax; setting the rate uniformly across the country will generate inequality as some areas could probably afford a higher rate, whilst others will struggle even at a low rate.
  - d) The tariff approach builds in two equitable dispute resolution mechanisms; the RSS and DPD examinations, where overall fairness and affordability can be tested, and the application process, where liabilities can be negotiated and where disputes can be resolved through the planning appeals process.
7. **Which system would raise more money** is difficult to predict. A tariff, set locally, directly geared to local infrastructure needs and with the opportunity for negotiation on individual sites, is much less likely to lead to a deferral or withdrawal of development than PGS. With greater development should come greater revenue for infrastructure, which in turn will facilitate further development – the sort of virtuous circle envisaged by Kate Barker. Given that the national house building target is 240,000 homes per annum, and having regard to the levels of tariff already apparent across the country, it is not difficult to see that a tariff system has the potential to raise very significant sums.
8. It is also important to remember that PGS was never intended to be a tax on development, but a contribution to infrastructure. If the Government's interest is simply to raise as much money as possible, it should say so (although PGS would not be the answer). If, however, it wants a system which is geared to matching infrastructure needs with development contributions, a plan based system such as the tariff is clearly more appropriate.
9. Overall, the administrative burden for tariffs must be much less than for PGS, which would require two detailed valuations of every single development, and additionally require Section 106 agreements for developments of any size.
10. The **practicality** of the tariff is already apparent from the number of local authorities who are implementing tariff policies, possibly in the region of fifty councils. The number is rising rapidly as authorities see the obvious advantages and learn from each other - all this without good practice guidance or a revised circular. Figures are not available, but no-one can doubt that the yield from Section 106 has risen rapidly since Kate Barker originally made her recommendation for a PGS.
11. The recent supplementary policies approved in Chelmsford or Thames Gateway, for example, demonstrate what can be achieved and also offer some lessons:
- a) In Chelmsford, clear detailed guidance has been published that sets out a schedule of standard charges for different forms of development, and that differentiates between charges in different parts of the borough, based on varying infrastructure requirements. The draft SPD also explains how the contributions relate to site specific infrastructure requirements, how exemptions or reductions would be judged, how changes of use would be addressed, that the charges apply to net additional development and that they operate on all development with no minimum threshold.

Impressively, the draft SPD defines the infrastructure that is needed and planned, and sets out how a local delivery mechanism has been established in partnership with the principal infrastructure providers.

- b) For the Thames Gateway, a similar approach has been taken, based on consultants' studies of the scale of infrastructure required to meet the planning objectives for the area. More flexibility is provided in the way in which individual developments' liability would be set, but a standard charge of £22,600 - £28,800 is identified. In recognition of the challenge that this could initially pose to viability, the draft strategy recognises that it may be appropriate initially to apply a discounted tariff, but proposes a standard legal agreement that would require developments to be reassessed in future to ensure that the discount remained valid.

This approach might be appropriate in a unique area such as the Thames Gateway, where there is a huge infrastructure bill to address and where values are currently depressed, but may be expected to rise rapidly when the effects of regeneration start to kick in. It would not, however, be appropriate in more normal circumstances.

- 12. These examples demonstrate three powerful points in favour of a tariff:
  - a) that local authorities are more than capable of devising a tariff system;
  - b) that a tariff system can be far more responsive to unique local circumstances than a 'one size fits all' PGS; and
  - c) that although tariff policies have been applied in an informal SPD, clearly, they would have even greater force when set out in the formal RSS/DPD.
- 13. It is suggested by some, that local authorities will lack the wit or the resources to settle and apply tariffs at a level that makes an appropriate contribution to infrastructure but does not deter development. A similar concern could be applied to PGS, except that the standard, national approach to PGS means that a rate adjustment which might suit one area could deter development in another. The tariff, of course, can be more sensitive and its level will be set through proper scrutiny in the RSS/DPD process. Local authorities already use consultants to assist with specialist areas, such as affordable housing, and already have to negotiate Section 106 agreements, taking into account the viability of the development. The tariff would have the status of a RSS/DPD policy, with a presumption that it would be paid at the standard rate, through a standard Section 106 agreement. The onus is on the applicant to demonstrate non-viability in exceptional circumstances.
- 14. By definition, tariffs would vary between regions and between local authorities. This does not create any difficulty, however, because all potential investors and developers are obliged already to ensure that their proposals take full account of the development plan. The relevant tariff would be clear on the face of the RSS and an LDFs DPDs. This approach would create much greater certainty than an alternative PGS system where the tariff simply could not be known until valuations were undertaken after the grant of planning permission.
- 15. In this context, it is said against the tariff that the development industry would find it hard to deal with a system that featured 330 different tariffs in 330 different local authority areas. This concern suggests a lack of understanding of the planning system. Developers already deal with 330 different local authorities and 330 different

local plans / emerging LDFs, and would not dream of proceeding with development without consulting and taking into account the specific local policies of an area. The tariff would be clear on the face of the RSS and LDF and would be properly taken into account by a developer along with a host of other local factors.

16. The progress being made by local authorities would need to be dismantled if PGS was introduced.

## **Summary**

17. Some of the principal purposes stated for PGS are:
  - a) to ensure that all development pays proportionately towards infrastructure;
  - b) to ensure that development is not held up because of the lack of infrastructure;
  - c) to simplify the planning process and to demystify Section 106;
  - d) to increase the yield from development.
18. All these objectives would be met by a tariff approach, with the additional benefit of being deliverable without the requirement for new legislation. Additionally, it does not need to be regarded as a tax and it has the advantage of transparency, enabling it to be anticipated and passed on to the landowner.

A tariff offers three key advantages:

- a) it builds upon the existing systems of plan-making and development control, using Section 106 Agreements, which are well understood and which provide a tried and trusted link between development and infrastructure;
- b) the liability would be broadly known at the time of acquisition and precisely at the time planning permission is granted. For this and other reasons, it is much more likely to receive industry support than PGS as currently proposed; and
- c) its characteristics inherently encourage a proactive, positive relationship between public and private sectors.

## Annex 1

In this annex we set out the precise changes in existing guidance that we believe would be needed to enable a more general introduction of planning tariffs.

### Outline of the tariff proposal

1. PPS12 and companion guide 'Creating Local Development Frameworks' (LDFs) need to be revised to:
  - a) require local planning authorities (LPAs) to include tariff policies in local development documents (LDD) unless regional spatial strategies (RSSs) say otherwise;
  - b) set out general guidance on:
    - i) what is national/regional/local/site infrastructure;
    - ii) what infrastructure can properly be included<sup>2</sup>;
  - c) identify the proportion of the cost of infrastructure that arises as a consequence of future development;
  - d) set out guidance on pooled/cross boundary tariff issues;
  - e) identify criteria for LPAs who do not need to develop a tariff approach<sup>3</sup>;
  - f) set out the test that will be adopted in supplementary planning documents (SPD) and development plan documents (DPD), making clear that substantially less weight will be attached to informal SPD policies;
  - g) make clear that tariff levels should be based on a detailed infrastructure plan, which should establish the extent of additional infrastructure required to support the scale of development proposed in the RSS or LDF;
  - h) allocate the infrastructure costs to the proposed development on a basis that is fair, reasonable and not disproportionate;
  - i) emphasise that tariff levels are set at a level to encourage and not restrain development, are not to be set at the margin of viability and must not be such as to have the effect of slowing the rate of development;
  - j) confirm that tariff should only apply to net new development;
  - k) ensure that annexes refer to 'best practice' documents, including issues such as the approach that should be adopted in relation to contingencies, cost over-runs, underdevelopment, etc.;
  - l) provide guidance on reviews of tariff LDDs.

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<sup>2</sup> It is assumed that affordable housing will be excluded

<sup>3</sup> It is assumed that these will only be the exceptional cases where the costs of developing a tariff system are greater than the likely receipts

2. PPS11 guidance will need to confirm that RSS should:
  - a) set regional tariffs (including any inter-regional element);
  - b) set sub-regional tariffs;
  - c) identify LPAs who do not need to develop a tariff approach;
  - d) identify the delivery mechanism for regional infrastructure.
3. Circular 5/05 should be amended to:
  - a) confirm that tariff approaches will be supported by the Secretary of State where they are in LDDs, i.e. DPDs, and that less weight will attach to SPD, which may be necessary for interim arrangements but which will be inappropriate for any longer period;
  - b) confirm that tariff requests unsupported by an interim SPD or in a DPD will not be upheld, and that the present 'necessity' test will continue to be applied;
  - c) otherwise remove the current tests for the reasonableness of planning obligations (e.g. the necessity test) in favour of tests related to the infrastructure needs of the plan area and the policies of the development plan;
  - d) confirm that tariff payments are to be secured through Section 106 agreements or undertakings, entered into on the grant of planning permission;
  - e) confirm that exceptions to tariff approaches may be justified in exceptional circumstances, where they would inhibit otherwise viable development;
  - f) indicate that requests for additional off site infrastructure contributions will not be supported unless:
    - i) the class of infrastructure is outside the scope of the tariff approach adopted; and
    - ii) the impacts of the development directly give rise to a need for that infrastructure;
  - g) indicate that developers will still be required to provide on site infrastructure not identified in the tariff where:
    - i) that is required to make the development acceptable;
    - ii) it is needed to meet mitigation measures identified in any environmental assessment;
  - h) indicate that Grampian conditions are inappropriate and development should therefore not be prevented from proceeding because of a lack of infrastructure where infrastructure is being tariff funded.

4. SPD:
  - a) Tariff proposals not backed by an SPD will be unacceptable
  - b) should be acceptable on its own only as an interim mechanism for a maximum of three years, pending adoption of a tariff policy in a DPD;
  - c) will need to be the subject of genuine consultation, particularly with the house building and property industry.
  - d) will need to be transparent in terms of the approach adopted to the calculation of requirements and their apportionment.
5. DPD:
  - a) will need to be supported by a detailed infrastructure plan and programme;
  - b) will need the plan to be fully costed;
  - c) will need to identify the proportion of the cost of infrastructure that arises as a consequence of the demand of development and make an estimate of (a) that part of the cost that will not be funded by other means, and (b) a tariff level that would contribute reasonably to the cost of infrastructure but which would not put at risk the delivery of the development proposed in the plan;
  - d) will need to indicate that, as part of the cost of the infrastructure, the cost of land will be included at the present market value of land (reflecting allocations for public use where appropriate);
  - e) will need to identify any exceptional cases where tariff will not be required or thresholds below which tariff will not be sought;
  - f) will need to consider whether the full RSS tariff amount should be passed on, and any process of abatement;
  - g) will need to apportion the costs between anticipated net new development perhaps differentiating between:
    - i) different land uses;
    - ii) different geographical areas;
    - iii) different types of land;
    - iv) different time periods;
  - h) will need to introduce transitional provisions to address part developed sites, sites with existing allocations, and state that all sites with existing planning permissions will not be subject to a newly imposed tariff;
  - i) will need to set out proposed payment profiles;
  - j) will need to set out delivery mechanisms;
  - k) will need to set out a process for reviewing costs/allocations;
  - l) will need to commit to the production of standard documentation.

6. Applications:

- a) standardised approach to all development with agreements for:
  - i) tariff payments;
  - ii) on site requirements/mitigation measures;
  - iii) developer's option to provide planned infrastructure and to offset cost against payments<sup>4</sup>;
- b) payments will be indexed from date of latest SPD/DPD;
- c) final payment profile agreed;
- d) making provision for land transfers where the public facilities are on the application site, subject to payment/rebate of the land value assumed in the tariff calculations;
- e) confirming partial or whole long stop arrangements depending on the nature of the infrastructure being provided, and providing for security arrangements for payment (if appropriate)<sup>5</sup>;
- f) will need to be referred if the LPA does not require the regional payment to be made;
- g) the regional payment will be held by the LPA until the regional infrastructure is committed;
- h) will need to set out delivery obligations on the local authority;
- i) will confirm that all tariff receipts will be ring fenced for identified infrastructure;
- j) noting that repayments will not occur unless the tariff system as a whole is dismantled in which case repayments will be pro-rata;
- k) will consider those exceptional cases where a departure from a tariff approach is acceptable because of the scale of the development or viability issues<sup>6</sup>.

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<sup>4</sup> The offset cannot exceed the amount in the tariff cost plan. It can only be set off against payments and will not normally require the LPA to make up any shortfall. This provision will always be subject to the need to meet any necessary public procurement requirements

<sup>5</sup> This may be required to give the LPA confidence that it will have the tariff receipts to commit to the provision of infrastructure. It will provide, for example, that all tariff payments will be made within 10 years of implementation

<sup>6</sup> It is assumed that these exceptions will be rare

## **Annex 2**

### **Standard charging mechanisms and tariffs in England**

1. It has become apparent that many local authorities are increasingly opting to use standard charging mechanisms / tariff systems as a means to secure developer contributions towards necessary infrastructure. Below is a list of some of the schemes of which we are aware; whilst this list is far from comprehensive, it shows that many local authorities are already using a tariff-based approach and demonstrates that good practice could be easily disseminated across the country. The examples are listed in alphabetical order.

#### **Ashford Borough Council**

<http://www.ashford.gov.uk/PDF/Core%20Strategy%20Submission%20Document%20November%202006.pdf>

2. All residential development in the Ashford Growth Area, both general demand and affordable, will be required to pay a tariff. Site specific requirements will be addressed using Section 106 agreements, with a tariff being used to fund the provision of strategic infrastructure. Residential development on brownfield sites will be encouraged by a reduction in the full residential tariff rate, as will changes of use of existing buildings or conversions of existing houses to create additional homes. The tariff rate will be set at a level which should not undermine the viability of development and will be reviewed every 3-5 years, following consultation with landowners and developers. Where there are abnormal circumstances, the council will encourage an 'open book' approach and where necessary will operate the policy flexibly.

#### **Bedfordshire County Council**

<http://www.bedfordshire.gov.uk/EnvironmentAndPlanning/TownAndCountryPlanning/DeveloperContributions.aspx>

3. This comprehensive document sets out the basis for the standard charges district councils could charge, the manner by which they are calculated, the payment and monitoring provisions and their index linking. It also contains examples of standard clauses which could be used in legal agreements.

#### **Cambridge County Council**

<http://www.cambridge.gov.uk/ccm/content/preview/policy-and-projects/planning-obligations-strategy-spd.en>

4. The council has produced a comprehensive supplementary planning document (SPD), based on the policies of the Cambridge Local Plan 2006, which explains the basis upon which they will seek planning obligations. These obligations will cover community infrastructure, which covers both physical and social infrastructure. The methodologies for calculating financial contributions will vary according to the infrastructure which is being sought.

## **Chelmsford Borough Council**

<http://www.chelmsford.gov.uk/index.cfm?articleid=13034>

5. Chelmsford are (until 11 September) consulting on a draft supplementary planning document (SPD) relating to their core strategy and development control policies DPD. The draft SPD proposes a standard charging approach for off site infrastructure, in addition to site related contributions under current national policy guidance. The off site contribution is calculated through use of standard charges and/or formulae. Whilst infrastructure requirements are assessed for all new development proposals, in most instances, planning contributions obtained through the standard charges and/or formulae will only apply to development which creates a net increase in units. In the cases of changes of use, and extensions to existing commercial or leisure development, these will be liable to standard charges where the new use, or the intensification of use, places additional demands on supporting infrastructure. Where proposals result in the redevelopment of existing sites within the use class, standard charges would only be liable for the additional development.<sup>1</sup>

## **City of London**

[http://213.86.34.248/NR/rdonlyres/A75398F3-5FF5-45B2-9A42819EE5AF42CC/0/DP\\_PL\\_plannobligations.pdf](http://213.86.34.248/NR/rdonlyres/A75398F3-5FF5-45B2-9A42819EE5AF42CC/0/DP_PL_plannobligations.pdf)

6. The City Corporation issued an SPG in 2002 on planning obligations. A payment of £70 per additional square metre of floorspace is required as a contribution towards infrastructure costs, with the SPG showing how the contribution will be divided. Consulting on a new draft SPD covering planning obligations will begin shortly.

## **Crawley Borough Council**

<http://www.crawley.gov.uk/stellent/groups/public/documents/otherdocs/int132386.pdf>

7. The council has just published a sustainability appraisal for a draft version of an SPD on planning obligations and Section 106 agreements, which will subsequently be published around January 2008. The draft SPD will be based on the borough council's submission core strategy. Sustainability appraisal (and eventually the draft SPD) will provide developers with an indicative understanding of the level of planning obligations they can expect to pay, as worked out using standard formulae. In most cases the obligations will be sought in relation to transport, education and affordable housing. Depending on the development, contributions towards open space and community facilities may also be sought. A threshold will apply to which developments have to pay the contributions.

## **Eastleigh Borough Council**

<http://www.eastleigh.gov.uk/ebc-3236>

8. A developer contribution tariff is operated for the most common planning obligations. The tariff helps to bring speed and certainty in the negotiation of planning obligations. The tariff level is updated annually, with all contributions being subject to the general

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<sup>1</sup> Chelmsford Borough Council, Planning Contributions, Supplementary Planning Document, Consultation Draft July 2007, p.10.

index of retail prices. The council has laid out stringent criteria in terms of submitting information that a developer must comply with in the negotiation of the tariff payment. The council is also in the process of producing a contributions calculator to help a developer to approximate the likely cost of a planning obligation.

### **Hull City Council**

[http://consultation.limehouse.co.uk/hullcc/drafts/23/chapter\\_149.html](http://consultation.limehouse.co.uk/hullcc/drafts/23/chapter_149.html)

9. In relation to the pre-submission City Centre Area Action Plan (2006), Hull City Council created a specific standard charging mechanism in order to help provide the necessary infrastructure for the regeneration of the city centre. The system was introduced to help speed up Section 106 negotiations, provide developers with the certainty they required, help provide the city centre with a quality public realm, which is needed in order to sustain its growth, and deliver a fair and transparent mechanism by which this could all be achieved. Each year the council details the works that have been undertaken, indicating how the contributions gained have funded these works, the works that will be undertaken in the coming year and the extent to which they will be funded via the standard charge and other sources of funding, and also reviews the standard charge, making changes if necessary.

### **Kennet District Council**

<http://documents.kennet.gov.uk/planning/forward-planning/supplementary-planning/index.htm?openpage>

10. The council sets out its approach to obtaining developer contributions in the following areas: education, sport and recreation, social and community, public art and residential amenity areas, stating when contributions will be sought and how they will be calculated.

### **Kent Thameside Strategic Transport Tariff**

<http://www.dartford.gov.uk/planning/StrategicTransportTariff.htm>

11. Based on a recently adopted (July, 2007) 'Interim Transport Policy on Strategic Transport Tariff', a standard tariff of £5,000 per dwelling, at 2007/08 prices, linked to the construction price index, will be applied to all new residential development comprising ten or more units. Conversion of buildings to ten or more housing units will also be subject to the tariff, with the exception of the conversion of single family homes. The tariff will only cover contributions to the strategic transport programme, leaving in place both Section 106 and/or Section 278 contributions.

### **London Thames Gateway Development Corporation (LTGDC)**

<http://www.ltgdc.org.uk/planning/consultation/>

12. Based on a July 2007 'Planning Obligations Community Benefit Strategy, Revised Strategy for Public Consultation', the LTGDC is close to adopting a tariff-based system that would require residential developments in the Lower Lea Valley to pay £10,000 per unit, and those in the London Riverside area to pay £6,000 per unit. No tariff will be applied to commercial development, with planning obligations being sought on a site by site basis. Both the arrangements for residential and commercial development will be reassessed in April 2009. In some circumstances, a developer

will have the ability to offset a tariff payment against the provision of strategically important infrastructure (infrastructure which benefits the wider population) that they have chosen to deliver. For example, the provision of land for, or the building of, a school could be offset with the agreement on the LTGDC.

### **Milton Keynes**

[http://www.milton-keynes.gov.uk/local\\_plan\\_review/DisplayArticle.asp?ID=50680](http://www.milton-keynes.gov.uk/local_plan_review/DisplayArticle.asp?ID=50680)

13. This is the most commonly cited example of a tariff system in use. The original tariff was set up for the urban development area and the tariff agreement signed in March this year, on the basis that £18,500 would be paid per dwelling on 15,000 homes to be built by 2016. A further £33.46 million contribution will be obtained from employment development to support necessary infrastructure. Whilst the specific application of the greenfield site based tariff will not be relevant on a countrywide basis, in a general sense the Milton Keynes tariff shows what is possible and can help spread best practice, especially with regard to the role as a banker/forward funder played by English Partnerships.

### **Peterborough City Council**

<http://www.peterborough.gov.uk/page-7782>

14. The council is currently undertaking a review and consultation process on a draft revised planning obligation strategy, based on a 2005 local plan policy, in order to improve the method by which they obtain developer contributions. The new strategy will provide a transparent and simpler process, explaining how the contributions will deliver the required infrastructure in each area of the council. There will be general principles explaining how the contributions sought will be calculated, which will be based on the type of development and other relevant factors.

### **Southampton City Council**

<http://www.southampton.gov.uk/building-planning/planning/ldf/supplementary-plan-docs/planning-obligations.asp#0>

15. Southampton City Council has, in its November 2006 planning obligations SPG (providing further guidance on policy in the 2003 revised deposit local plan review), set out a standard charging approach to securing contributions in the areas of affordable housing, transport, leisure, recreation, open space, public art, community safety, recruitment and training. Across some of these areas, standard formulae have been produced to provide the developer with an indication of the contribution that will be expected, based on the size and type of development. Issues not covered by the guidance will be negotiated on an individual basis. Strategic contributions are sought from both residential and commercial development with regard to transport, public space and public realm, depending on where a development is situated and issues relating to the specific development.

### **Surrey County Council**

[http://www.surreycc.gov.uk/sccwebsite/sccwspublications.nsf/b129973b443de13e80256c670041a50e/2f0f75b7e797454f80257321005335f3/\\$FILE/S106%20Tariff%20and%20Surrey%20Education%20Formula%20April%2007.pdf](http://www.surreycc.gov.uk/sccwebsite/sccwspublications.nsf/b129973b443de13e80256c670041a50e/2f0f75b7e797454f80257321005335f3/$FILE/S106%20Tariff%20and%20Surrey%20Education%20Formula%20April%2007.pdf)

16. Across the eleven Surrey districts and the county council, the Surrey Planning Collaboration Project 2006 was undertaken. This project sets out a planning obligations and infrastructure provision code of practice, which provides a basis for calculating standard formulae and standard charges. One example of how this project has been/is to be delivered in the districts is in Waverley Borough Council:

#### **Waverley Borough Council**

<http://www.waverley.gov.uk/planningpolicy/codeofpractice.asp>

17. From 1 November, 2007, the council will be seeking infrastructure contributions in association with planning applications for additional housing and/or commercial floor space, in accordance with the code of practice, referred to above, which was developed across the eleven Surrey districts and the county council. Thresholds are set as per other tariff/standard charging mechanisms. A further example from another Surrey district is that of Horley, in Reigate and Banstead:

#### **Reigate and Banstead Borough Council – Horley Master Plan**

[www.reigate-banstead.gov.uk/public/Business Planning/Planning/Policies/local dev framework/SPD/horley\\_infrastructureSPD/](http://www.reigate-banstead.gov.uk/public/Business_Planning/Planning/Policies/local_dev_framework/SPD/horley_infrastructureSPD/)

18. The Horley infrastructure SPD (adopted in January 2006), based on saved structure plan and 2005 local plan policies, contains details of the infrastructure that is required to facilitate new development in Horley in a 2,600 home urban extension scheme. It refers to the use of a planning agreement, which comprises an infrastructure tariff alongside a requirement to provide certain key facilities and services on site, designed to facilitate the financing and construction of an initial £25 million of infrastructure for the first section of 600 homes. The borough council and Surrey County Council reached agreement with developers to provide the necessary infrastructure in connection with their application for outline planning permission.

#### **Swindon Borough Council**

<http://www.swindon.gov.uk/environment/environment-forward/developercontributions.htm>

19. Swindon has set out a tariff-based system for the provision of essential infrastructure occurring as a result of residential development. Contributions for the infrastructure are quantified on the basis of need and cost. There are circumstances where an applicant will pay a discounted or reduced contribution. In addition, where the level of contribution affects the viability of development, an independent appraisal/valuation will be required and taken into consideration. The applicant has the ability to have an approximate idea of the level of contribution that will be sought, using an on line Section 106 calculator.

#### **Tameside Council**

<http://www.tameside.gov.uk/planning/ldf/spd/developercontributions>

20. Based on 2004 UDP policy, and in order to mitigate the cumulative effects of development in the local area, all developments, apart those exceptions defined in the recently adopted SPD, will pay one or more of the Greenspace Tariff, the Community Education Tariff and the Integrated Transport Tariff. There is a web calculator to help developers assess their level of contribution.

## **Trafford Council**

[http://www.trafford.gov.uk/cme/live/dynamic/DocMan2Document.asp?document\\_id=5C369021-8321-425D-BD17-A385EF7CB118](http://www.trafford.gov.uk/cme/live/dynamic/DocMan2Document.asp?document_id=5C369021-8321-425D-BD17-A385EF7CB118)

21. In its SPD, adopted in March 2007 and based on policies of the RSS and the 2006 adopted revised UDP, Trafford Council requires developers to contribute towards the provision of highway and public transport schemes. To ensure that contributions are used in relation to new developments, the council has produced a list of planned highways and public transport schemes that will be required to mitigate the effects of any new development. The SPD details the methodology used to calculate the total contributions required from developers and then explains how this is fairly apportioned to applicants according to size and type of development.

## **Warrington Borough Council**

[http://www.warrington.gov.uk/Images/Draft%20Obligations%20SPD\\_tcm31-14046.pdf](http://www.warrington.gov.uk/Images/Draft%20Obligations%20SPD_tcm31-14046.pdf)

22. In its revised draft SPD (June 2007), based on adopted UDP policy, the council sets out its approach to obtaining planning obligations, listing particular areas where a contribution will be sought, the type of infrastructure that will be sought and what type of development will be liable to pay for this infrastructure. For some of the areas where obligations are sought, standard formulae have been used to help calculate what a developer should contribute. These areas are primary and secondary education, health and local and public transport strategy.

## **West Berkshire**

[http://www.westberks.gov.uk/media/doc/3/c/Core\\_Guidance\\_010407.doc](http://www.westberks.gov.uk/media/doc/3/c/Core_Guidance_010407.doc)

23. West Berkshire has produced a comprehensive SPG (adopted in 2004, updated in April 2007 and based on structure plan and adopted local plan policies), detailing the contributions and obligations which the council will seek on a topic basis. These topics range from transport to education, to the provision of fire and rescue infrastructure. The level of contribution expected for the different topic areas depends on the type and scale of the development. The council sends a developer the 'bill' by day 34 of the application. There is then a 20 day period to conclude a Section 106 agreement or the application is refused. Negotiations can be entered into if an applicant can provide evidence as to why some element of the tariff is not applicable. In some circumstances site specific contributions will be added.

## **Westminster City Council**

<http://www.westminster.gov.uk/environment/planning/sitesandprojectspolicies/planning-obligations-spg.cfm>

24. The council uses a 2006 draft SPG and has established several areas for which they operate standard charges, depending on the type and size of development. The charges have been subject to a rigorous consultation process and are publicly available to view. Standard formulae have been used to assess the developer's level of contribution. In some cases the formula used was developed on a city wide basis – for example, health uses NHS London's Healthy Urban Development Unit (HUDU) – and in other examples the formula is partly based on a national assessment tool, as is the case for education with the use of the Department For Education and Skills'

(now known as The Department for Children, Schools and Families) Basic Needs Cost.

### **Winchester City Council**

<http://www.winchester.gov.uk/General.asp?id=SX9452-A7836FB7>

25. One well established local tariff is Winchester's 'Open Space Strategy.' It sets out prescribed levels of developer contributions towards the provision of children's play areas and sports pitches, with the amounts varied to relate to the size of dwellings proposed and the level of need in the parish/settlement. It provides a transparent and reliable guide to costs, which developers can take into account at an early stage when negotiating deals with landowners.

### **Wycombe District Council**

<http://www.wycombe.gov.uk/sitePages.asp?step=4&contentID=4195&categoryID=3750>

26. Wycombe District Council has produced an innovative 'developer contributions calculator', which allows a developer to obtain a rough estimate of the cost of the planning obligations they will be required to provide, based upon the number of units or square metre of floorspace.