

# planning gain and the new localism



The degree to which planning permissions can legally be 'bought' by a developer or 'sold' by the planning authority, by the payment of planning gain,<sup>1</sup> is most recently set out in Circular 5/05: *Planning Obligations*.<sup>2</sup> Each of five tests must be satisfied. Payments must be 'relevant to planning'; 'necessary to make the proposed development acceptable in planning terms'; 'directly related'; 'fairly and reasonably related in scale and kind'; and 'reasonable in all other respects'.

As land values inflated to incredible levels from the 1990s until the Bankers Recession in 2008, expectations of the yields from planning gain rose at a similar rate.<sup>3</sup> The impacts of development were no more or less than they had been before, so it must have been simply the availability of the cash that drove the yield, somewhat stretching the tests of Circular 5/05.

Almost all planning authorities want money (or land) for 'affordable housing', to be given to housing associations. It is not commonly used actually to widen choice for lower-income people – such as through self-build, co-operative housing, or even sheltered housing for the elderly – but instead is used to provide housing for precisely defined welfare-dependent households.

Almost all authorities have processed their baseline negotiating position for affordable housing in their statutory development plans, although the small print always makes it clear that the actual contribution to come from a specific scheme will be negotiated at the time in the light of both an up-to-date local housing needs survey and what is affordable by the landowner.

Other types of planning gain – say, for transport schemes etc. – have very occasionally been processed with minimal evidence base or consultation, and are adopted 'for development control purposes'. Such documents are not subject to formal examination by an independent Inspector, and carry little weight in reality.

Then we had the 'set menu' approach to planning gain known as the Milton Keynes Tariff. This was an arrangement by which some landowners with an expectation of strategic growth coming their way agreed to pay a fixed sum per home and per square metre of commercial floorspace. The agreement was not publicised or consulted upon, and neither was the list of things it was supposed to pay for. The landowners signed up because it was obvious that the planning gain demands would only rise if not nailed down now. Even then they were wobbled at the last minute when English Partnerships (EP), midwife to the whole scheme, announced that, contrary to previous understandings, affordable housing would be in addition.

It is said that the money to have been collected through the MK Tariff would have covered about 40% of the relevant costs, and on that basis HM Treasury was willing to advance EP the money for infrastructure prior to it being collected from development. What actually was spent 'in advance', and what has been collected since, is not yet known, and the scheme is soon to time-expire. Some places have tried to copy the MK Tariff approach, but they do not have the luxury of the EP (now the Homes and Communities Agency) corporate business to run it for them.

Last, we must remember the Community Infrastructure Levy (CIL), a national scheme for collecting planning gain which took effect on 6 April 2010. Planning authorities can elect to set up a tariff-type scheme in their area, but there is not much sign of activity at present.<sup>4</sup>

For mainstream developments, in situations not covered by the special arrangements just described and aside from the almost universal demands for affordable housing monies, planning gain demands come forward fairly randomly. The planning authority solicits shopping lists from fellow departments, and sometimes from the local NHS Trust, the Fire Brigade and the Police too. As land values rose through the years of boom, more and more departments and organisations would come fishing for planning gain. I recall, for example, the museums officer who calculated the wear and tear on the museum lino by the occupiers of the 1,000 flats to be built in the town, and wanted planning gain to cover that.

Eventually there is a negotiation, and slowly it would dawn on those making demands *a)* that there was only so much planning gain to be extracted in total; *b)* that affordable housing would take the lion's share; *c)* that the highway authority had an insatiable appetite for money; and *d)* that if they weren't sharp about it there would little left for the planning authority's council itself.

During the recession, most development schemes are unviable and so there is no planning gain to argue about. So Communities and Local Government Chief Planner Steve Quartermain has advised everyone involved to reach deals that provide for reviews at future stages, so that planning gain might be taken as land values rise once again. This sensible and necessary advice rather proved, however, that planning gain was just a tax, as we had known all along – because the costs necessary to mitigate impacts of a project are the same in times of plenty as they are in times of famine, and yet here we were being told to let things go when times are hard.

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Overall, this has become quite a mess. The legitimate high-level principle – of taking for the community a fair share of the unearned increment in land value created by the grant of planning permission – grew to become a mainstream funding source for the nation's affordable housing and infrastructure programmes, clumsily settled by secretive deals between unequally matched negotiators. Attempts to devise and apply a standard tariff require a credible method of estimation, competent collectors and spenders, HM Treasury underwriting, and a buoyant economy in which development actually takes place. Alignment of so many stars at once is not presently in view.

This is the foundation upon which the 'new localism' of the Coalition Government is to be built, by which developer/landowners are encouraged to buy off local opposition with planning gain offers, and by which local planning authorities are to be 'incentivised' by the Government to grant planning permission in return for money.<sup>5</sup>

For the developer/landowners, the new political landscape is already beginning to take shape. Forget shopping lists from local authority departments and other public bodies. Find out what local people want, and offer it up to them. A bypass? An Olympic swimming pool? A shiny Academy school? A tram route? Free summer holidays in Corfu? (I made the last bit up.) Forget affordable housing: people don't want lower-income residents near *their* neighbourhoods. If you want localism, you can have localism. There is still only so much planning gain to go round, and developers would rather it was spent on the shiny things that everyone can see than on some obscure local government programme in a place that is far way in time or space from the actual site. All that is needed to make this new world work is for the deletion of Circular 5/05, for we must travel far beyond its prim tests.

For local planning authorities, the anarchy of the new localism's permissiveness has not yet struck. The consequences of letting local people decide what matters to them may be very surprising. More free car parking? More roads? Unless properly advised of the responsibilities that come with the new localism, people might be very selfish.

And that is one of the reasons why the planning system was invented, and why it has survived all attempts to unpick it. There is a consensus that a fair share of land values should be captured for the community which, after all, creates them. There is no consensus that there should be a vulgar competition to receive those monies, with the express purpose of buying acquiescence from the noisy, and ignoring those in need.

The whole idea of buying and selling planning permissions takes us to an ugly place that is alien to our culture. We may be astonished at the corruption that will infect the public discourse over the use of land. On the subject of planning gain, stop, look, and listen, for the system is already sick. Then design a better way and proceed.

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### Notes

- 1 The Government refers to 'developers' obligations' or 'planning obligations', rather than to 'planning gain'.