

# cash for planning permission



There has been a particularly explosive outburst of outrage from many quarters of the town planning establishment – including our very own TCPA – at the provision in the Localism Bill by which the financial consequences of a development proposal are to be made a specifically named 'material consideration' in determining a planning application. A sort of 'first among equals' of considerations.

Minister Greg Clark protested in increasingly irritated terms to Opposition speakers in the House of Commons that the financial benefits of a planning application – the planning gain – had always been a key consideration, and that there was nothing new in what was proposed in the Bill.

If Mr Clark is right, why did he feel the need to introduce words about in the Bill, and why were his opponents so excited about it? This needs unpacking.

The financial benefits to be derived from a planning application have indeed been a major determining issue for as long as most of us remember. In the absence of a transparent, simple and equitable national method of collecting a share of the increase in land value arising from the grant of planning permission since the Tories knocked the concept out of the founding 1947 Town and Country Planning Act when they came to power in 1953, some arrangement or other has been made to get development to contribute some cash to the public purse.

The generosity of payments, perhaps to induce a favourable response from the local planning authority when an application came to be decided, was sometimes shamelessly blatant. So much so that regulations were made to try to contain the excesses by insisting that such payments were to 'mitigate impacts' and absolutely not simply to 'buy support'. The current version of these constraints is set out in Circular 5/05, and the tests are good ones: in broad terms, payments must be directly

related to the development, and must be in proportion.

The regulations in the Circular were under strain through the property boom of recent years. The offers from developers became larger and wider in their effect, it being easy to relate many things directly to the development. A good example would be money for town centre regeneration two or three miles away, or a nature conservation project ten miles away, to come from a major urban expansion scheme. With so much money being made from housing for sale in some periods, the proportion of subsidised housing – 'social' or 'affordable' housing – sometimes reached 50%.

In the years immediately prior to the recession, when the property market was particularly hot, local planning authorities became more and more bold in demanding money in return for planning permission. The gamekeeper turned poacher. This was actively encouraged by central government, and councils were exhorted to hire consultants to do their negotiating for them.

You could hear Circular 5/05 squeak, as tariff-type horse-deals were set up behind closed doors, and shameless and irresponsible demands were whipped up by each local authority department, county council and quango in sight. My favourite true experience was the demand from a council's Museum Director who had calculated the cost of the wear of his lino by the extra residents that would come if one of our client's projects was permitted. Planning officers typically passed on these demands to the applicant, unedited, and unmoderated. If this wasn't 'buying planning permission' it was as near to blackmail as you could get: pay up, or you don't get your planning permission. It was easy to justify, as the money would go to some council department, and thus it could be said the public would benefit from the development.

This was the period in which the resulting 'Section 106 Agreements' attached to a planning permission were not available to the public. This was probably out of fear of embarrassment – one side or other might have felt they had been skinned in the negotiation, or both might have felt they were at the outer limits of the elastic in the governing Circular. Few Section 106 deals were reported to

Committee even in headline terms in those days. Ordinary foot soldier councillors must have been quietly assured that all was OK, and the local authority would greatly benefit, so don't rock the boat.

To that extent, Minister Greg Clark is certainly right. The leveraging of planning permission, and the lubrication of planning processes, by the paying of money by applicants has been around a long time.

Where I suspect the fault line lies, however, is in the political narrative begun with the Conservatives' *Open Source Planning*, which is that in the new localism, payments can be made to local people and

betterment on the wider area where the effects of the development might nevertheless be felt. The posh area where developers want to develop gets the new school, or the new bus or the new park. The poor 'neighbourhood' on the other side of town, where there is no developer interest, gets nothing out of it at all. Better areas get better and bad areas sink deeper. This is the doorway to social unrest.

This Government will learn that planning systems primarily exist to mediate between conflicting interests over the use of land, and that in the UK people prefer to think that there is some sort of planning department to whom they can make their representations – preferably quietly or even anonymously – and who will act reasonably responsibly on their behalf and not be bribed.

This Government will also learn that not all planning issues can be related to cash. Not all arguments, assessments, impacts and feelings can be bought and sold.

Believing that money is ultimately the sole determinant, and consequently to feed people to developers, whether individually, in groups, or under the carapace of a thing called a 'neighbourhood', starts from an alien place in our culture. It is not where we are now, and it is not a place to be heading. The battle over these words in the Localism Bill is not a battle worth fighting, as the war will be lost, Mr Clark.

● *David Lock CBE is a Vice-President and Trustee of the TCPA, and is Chair of consultancy David Lock Associates. The views expressed here are personal.*

## **'Believing that money is ultimately the sole determinant, and consequently to feed people to developers, whether individually, in groups, or under the carapace of a thing called a 'neighbourhood', starts from an alien place in our culture. It is not where we are now, and it is not a place to be heading'**

to the local community (whatever that means). This is new ground, and it is correct for bodies such as the TCPA to be very agitated about them, for two reasons:

- First, the recipient may not necessarily be the public purse. It might be private people – stropky neighbours, or a nearby business, for example. The public controls the development of land, but the benefits flow to private individuals. The developer deals with individuals, not the council. Nightmare scenarios are easy to imagine – knocks on the door in the middle of the night; a cash offer becomes a physical threat. This is the doorway to gangsterism. Another scenario is that a small group of objectors get bought off with big wedges of money, leaving everyone else as victims of a planning process from which they have been excluded. This is the doorway to corruption.
- Second, the benefit may be focused very locally – to a neighbourhood (whatever that is) – thus enriching that locality but conferring no