

ANGUS COUNCIL

PLANNING AND TRANSPORT POLICY COMMITTEE

17 OCTOBER 2002

SUBJECT: PLANNING GAIN CONSULTANCY STUDY

REPORT BY DIRECTOR OF PLANNING AND TRANSPORT

Abstract: This report proposes the commissioning of specialist consultants to undertake an initial study of the scope for securing appropriate and achievable planning gain arising from development proposals emerging from the review of the Angus Local Plan.

1 RECOMMENDATION

It is recommended that the Committee:-

1. note the general position on the parameters and use of planning gain as a legitimate mechanism to secure acceptable development in the public interest;
2. agree that a specialist consultancy study be commissioned to initially advise on the scope for negotiating appropriate and achievable planning gain in Angus arising from the review of the Angus Local Plan, and that up to £5,000 be allocated for this purpose; and
3. note that following this initial study further specific consultancy advice and assistance may be required as major development proposals are firmed up alongside the preparation of Development Briefs, and that this will be the subject of a future report for consideration by the Committee.

2 BACKGROUND

- 2.1 Planning gain is a process under which developers make voluntary contributions to the local Planning Authority in order to overcome some legitimate planning objection to their proposed development.
- 2.2 While elements of planning gain can be used appropriately to mitigate or compensate for some adverse effects arising from a development, it is not a mechanism for extracting unrelated benefits. It is also a fundamental requirement of planning legislation that planning permission should be granted on the merit of the proposed development and not influenced by the presence or absence of extraneous benefits or inducements. In other words there are strict limits as to how far planning gain can legitimately overcome obstacles to the grant of planning permission.
- 2.3 Particular items of planning gain must be consequential on the scheme for which planning permission is sought and thus material to the grant of planning permission. There is no simple definition as to how far the consequences of a development should be pursued via planning gain. Indeed planning gain can normally only be defined through a process of negotiation. Planning gain could include contributions

towards items of infrastructure, communications links, buildings or facilities required by the development. The scope of what is consequential can, however, extend much further than this, for instance to affordable housing provision, depending on the circumstances of the development.

- 2.4 Planning gain is often thought of as only referring to off site infrastructure obtained via Section 75 Agreements under the Town & Country Planning (Scotland) Act 1997. However, this is potentially misleading as some planning gain can also be embodied in conditions, while the term planning gain is also often used to describe on site items.
- 2.5 Planning gain, therefore, refers to items both on site and off site which the developer would not normally regard as immediate commercial necessities for his development, but which are, nonetheless, required in the public interest if the site is to produce an acceptable development.

3 ANGUS LOCAL PLAN REVIEW AND PLANNING GAIN

- 3.1 New development has an important role in funding measures to mitigate any adverse impacts in a way which is consistent with the delivery of wider planning and environmental objectives. Indeed in Angus, as elsewhere in Scotland, the bulk of the funding for infrastructure and facilities arising from major new greenfield housing developments will probably have to come from contributions by developers.
- 3.2 The current review and roll forward of the Angus Local Plan will include the identification and allocation of sites for development in conformity with the strategic guidance provided in the Dundee and Angus Structure Plan. As with the existing adopted Local Plan, this will encompass the need to prepare more detailed Development Briefs for various major sites. These briefs will set out the development phasing, mix of uses, infrastructure requirements and guidance on site layout and design matters. They will also indicate requirements for vehicular, pedestrian and cyclist access; landscape and open space provision; and the need for related community facilities and developer contributions.
- 3.3 An example of the need for a future Development Brief is at Forfar. The Dundee and Angus Structure Plan confirms that the Angus Local Plan Review should direct the majority of the additional housing land allowances for the housing market area (1,025 houses between 2001-2016) to Forfar. This will require consideration of planning gain as part of the development of the allocated site(s) to ensure that developers appropriately mitigate the impacts of their development to address and compensate "planning loss" created by the development.

4 PLANNING GAIN CONSULTANCY ADVICE

- 4.1 As indicated in paragraph 2.3 above planning gain involves a variety of factors and can normally only be defined through a process of negotiation. There is therefore considerable merit in addressing this issue from an early stage in the Local Plan preparation process. This is also reflected in Scottish Executive policy (Circular 12/1996) which confirms that Development Plans and Development Briefs should give guidance on the particular circumstances in which Planning Authorities will seek to use Section 75 Planning Agreements.

- 4.2 It is therefore suggested that specialist consultants be commissioned to advise on legitimate and achievable planning gain requirements arising from proposals emerging through the review of the Angus Local Plan. At this stage it is envisaged that this advice would include general guidance on possible planning gain packages arising from significant development proposals signalled by the Local Plan Review. Subsequently the opportunity might also be taken at a future date to commission more specific follow-up work directly related to individual development proposals.
- 4.3 A suggested draft brief indicating the proposed terms of the initial consultancy requirements is attached as Appendix 1 to this report. This identifies key study requirements and outputs, including the provision of advice on:-
- the principles and practice of planning gain, including recommendations on drafting Section 75 Agreements, planning conditions, and other agreements necessary to secure the desired phasing and funding of development based on practical experience;
 - the broad scope for negotiating appropriate and achievable planning gain in Angus arising from the review of the Angus Local Plan and taking account of a general development viability analysis for this area;
 - legitimate planning gain opportunities to be considered and pursued for each of the relevant major development proposals emerging through the review of the Angus Local Plan.
- 4.4 The draft brief is, by necessity, open-ended where general advice at this stage may require to be followed up in further detail as major development proposals are firmed up. The appointed consultants will therefore need to identify how they could best deliver both initial broad guidance and possibly subsequent detailed advice to the Council under these circumstances.

5 FINANCIAL IMPLICATIONS

- 5.1 The cost of the initial consultant's study is estimated at up to £5,000 which will be met from the Planning & Transport Revenue Budget for 2002-2003.

6 HUMAN RIGHTS IMPLICATIONS

- 6.1 There are no human rights implications arising from this report.

7 CONSULTATION

- 7.1 The Chief Executive, Director of Finance and Director of Law & Administration have been consulted in the preparation of this report.

8 CONCLUSION

- 8.1 The opportunity arises through the review of the Angus Local Plan to consider how appropriate and achievable planning gain can be determined and negotiated for major development proposals. This requires specialist consultancy advice both on general issues arising and more detailed recommendations for planning gain packages attached to individual developments.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/CGR/KW
8 October 2002

Alex Anderson
Director of Planning and Transport

APPENDIX 1

PLANNING GAIN STUDY BRIEF**Background**

1. The current review and roll forward of the Angus Local Plan will include the identification and allocation of sites for development in conformity with the strategic guidance provided in the Dundee and Angus Structure Plan. As with the existing adopted Local Plan, this will encompass the need to prepare more detailed Development Briefs for various major sites. These briefs will set out the development phasing, mix of uses, infrastructure requirements and guidance on site layout and design matters. They will also indicate requirements for vehicular, pedestrian and cyclist access; landscape and open space provision; and the need for related community facilities and developer contributions.
2. The opportunity arises through the review of the Angus Local Plan to consider how appropriate and achievable planning gain can be determined and negotiated for major development proposals. This requires specialist consultancy advice both on general issues arising and more detailed recommendations for planning gain packages attached to individual developments.
3. An example of the need for a future Development Brief is at Forfar. The Dundee and Angus Structure Plan confirms that the Angus Local Plan Review should direct the majority of the additional housing land allowances for the housing market area (1,025 houses between 2001-2016) to Forfar. This will require consideration of planning gain as part of the development of the allocated site(s) to ensure that developers appropriately mitigate the impacts of their development.

Objectives

4. Specialist advice is required on legitimate and achievable planning gain requirements arising from proposals emerging through the review of the Angus Local Plan. At this stage it is envisaged that this advice would include general guidance on possible planning gain packages arising from significant development proposals signalled by the Local Plan Review. Subsequently the opportunity might also be taken at a future date to commission more specific follow-up work directly related to individual development proposals.
5. The initial consultancy study key requirements and outputs, include the provision of advice on:-
 - the principles and practice of planning gain, including recommendations on drafting Section 75 Agreements, planning conditions, and other agreements necessary to secure the desired phasing and funding of development based on practical experience;
 - the broad scope for negotiating appropriate and achievable planning gain in Angus arising from the review of the Angus Local Plan and taking account of a general development viability analysis for this area;

- legitimate planning gain opportunities to be considered and pursued for each of the relevant major development proposals emerging through the review of the Angus Local Plan.

Methodology

6. It is essential that the findings of the study are capable of being used with confidence. The draft brief is, by necessity, open-ended where general advice at this stage may required to be followed up in further detail as major development proposals are firmed up. The appointed consultants will therefore need to identify how they could best deliver both initial broad guidance and possibly subsequent detailed advice to the Council under these circumstances.
7. In particular the consultants should provide a detailed description of their proposed approach to delivering the key study outputs identified in 5 above, including any relevant information on successful techniques or advice delivered elsewhere in Scotland.

Output

8. Two bound and one unbound copies of the study report will be provided together with a copy of all relevant background data. The copyright of all data and reports will vest in the Council.
9. As a central requirement of the study is the provision of guidance and advice, a presentation of the findings to officers and/or elected members of the Council is anticipated. Consultants should detail their proposals for presentations taking particular account of the requirements in 6 above.

Timescale

10. The initial study is expected to take no longer than two months to complete but again will need to be considered alongside possibly subsequent detailed advice. Anticipated start and completion dates to be further specified.

Budget

11. The initial study and liaison with the Council's Officers will be at a cost not greater than £5,000 including expenses but excluding VAT. Submissions in excess of this figure are unlikely to be successful.

Data Provision

12. Consultants will be required to clearly indicate any aspects of the study which will require input from the commissioning authority.

Response to Draft Brief

13. Written submissions from consultants confirming an interest in undertaking the study should include details of:-
 1. the proposed approach;

2. costs in total and a breakdown for different elements of the study;
3. timescales and programme for the study;
4. members of the study team and relevant experience;
5. the roles and responsibilities of the study team and a breakdown of costs; and
6. details of experience in similar studies elsewhere in Scotland, including experience in assessing development viability and planning gain.