

The English Property Development State Aid Scheme

1. Member State

United Kingdom

2. Regions

East Midlands;
Eastern;
London;
North East;
North West;
South East;
South West;
West Midlands; and
Yorkshire and the Humber

3. Title of aid Scheme

The English Property Development State Aid Scheme

4. Government or statutory bodies authorised to implement the Scheme

The implementing body is the Department of Communities and Local Government.

The implementing body has a range of statutory functions which include funding projects in England which incentivise property development, encourage employment and/or attract business investment.

The implementing body is also the managing authority for European Regional Development Fund projects.

5. Legal Authority

Each of the implementing bodies is authorised to award aid under domestic law. The legal authority for the implementing bodies to award aid is contained within:

- The European Communities Act 1972;
- The Local Government, Planning and Land Act 1980;
- The Leasehold Reform, Housing and Urban Development Act 1993;
- The Local Government Act 2000;
- The Public Contracts Regulations SI 2006 No 5;
- The Local Government Act 2007;
- The Housing and Regeneration Act 2008; and
- The European Communities (Finance) Act 2008

6. Duration

The English Property Development State Aid Scheme allows the implementing bodies to award and provide aid in England between 1 July 2011 and 31 December 2013.

7. Basis of Scheme

The English Property Development State Aid Scheme is exempt from the notification requirements of Article 108(3) of the TFEU as aid is awarded in accordance with the General Block Exemption Regulation ([Commission Regulation No 800/2008](#)) of 6 August 2008 ("GBER").

The scheme utilises the following instruments of GBER:

- Article 13: Regional Investment and Employment Aid; and
- Article 15: SME Investment and Employment Aid.

8. Scheme Objectives

The object of the English Property Development State Aid Scheme is to lawfully provide State Aid cover for awards of aid that incentivise property development, encourage employment and / or attract business investment.

9. Discretion of Implementing Body

All awards made under the English Property Development State Aid Scheme will be made at the discretion of the implementing body, taking into account considerations such as whether the award of aid will help unlock the commercial potential of the area and whether State Aid is the appropriate instrument to achieve the objective.

10. Obligations upon the Aid Recipient

All awards made under the English Property Development State Aid Scheme are provided on the condition that the aid recipient has:

- read the requirements of GBER;
- agreed to meet the requirements of this scheme;
- has made the appropriate assessment of the incentive effect; and
- satisfied themselves that the award is compliant under Article 107(1) of the TFEU (if necessary, taking independent legal advice).

11. Aid Intensity

The English Property Development State Aid Scheme allows the implementing bodies to award aid up to the maximum aid intensity allowable under Articles 13 and 15 of GBER.

Under Article 13 the maximum aid intensity is calculated taking account of the location and status of the aid recipient. Article 15 does not depend on the location of the aid recipient.

[Commission Recommendation C20031422/361/EC](#) (Official Journal L124, 20.5.2003) provides guidance on identifying the appropriate size of enterprise.

Aid Measure	Maximum % aid intensity levels for:			Notification thresholds (€)
	Large Enterprises	Medium Enterprises	Small Enterprises	
REGIONAL AID: GBER SECTION 1				
<u>Article 13:</u> Regional Investment and Employment	Article 107(3)(c) areas 10-15% Article 107(3)(a) areas may receive up to a maximum of 35% (subject to the State Aid N673/2006 UK Corrigendum Regional Aid Map 2007-13)	+10%	+20%	Large investment projects where there is an initial single investment in capital assets at or above €50m. Sums greater than 75% of maximum allowable grant sum in respect of eligible costs of €100m in area in question (e.g. in area with 10% regional aid cap; €7.5m)
AID FOR SME INVESTMENT AND EMPLOYMENT: GBER SECTION 2				
<u>Article 15:</u> SME Investment and Employment	N/A	10%	20%	€7.5m per undertaking per investment project

Where the total funding from all public sources will exceed the above thresholds, no aid may be granted or otherwise committed until approval has been obtained from the European Commission.

12. Forms of aid

Aid for property development projects funded under this scheme may take the form of the following aid instruments:

- Grant;
- Loan; or
- Any other instrument consistent with either Article 13 or 15 of GBER.

All awards shall be transparent (as defined in Article 5 of GBER).

13. Investment Aid

The requirements of Article 12 of GBER (Specific Conditions applicable to Investment Aid) apply to the English Property Development State Aid Scheme.

Aid Structures under the English Property Development State Aid Scheme

Generally, Property development projects supported through the English Property Development State Aid Scheme will be funded in two ways:

- Where the implementing body owns the property and wishes to incentivise the market to develop the site, by seeking (through public tender in accordance with the Public Contracts Regulations 2006) proposals from the market which shall be assessed in accordance with design, price and other criteria included in the development brief; or
- Where a specific property is owned freehold or held on a long lease held by a private developer or end-user through an application process involving the submission of a project plan submitted by a developer or end-user and subsequently appraised by the implementing body against set criteria.

For the purpose of implementing this scheme, projects can be classified into two categories:

- Speculative Developments; where aid is given to the developer who initiates the project. The developer receives a public funded benefit as upon completion of the development they are free to rent or sell the premises; or
- Bespoke Developments; where the end user is either confirmed or can be reasonably identified prior to the development. In that case aid is directly paid out to the developer who undertakes the work.

Within Assisted Areas, the scheme will provide State Aid cover to allow the implementing body to incentivise enterprises of all sizes to undertake both speculative and bespoke property developments.

Outside the areas covered by the Assisted Areas Map, the scheme will only enable the implementing bodies to provide aid to speculative development projects in which the developers are SMEs and to bespoke development projects by all sizes of developers where the end-users are SMEs.

In non-assisted areas, bespoke aid will only be provided under the English Property Development State Aid Scheme where both the developer and the final user are an SME.

14. Estimated Costs

Where a decision to fund a project is based upon estimated costs, the funding shall be conditional upon the recipient providing written confirmation from an independent expert (usually a Chartered Surveyor) to the satisfaction of the implementing body that the submitted cost estimates are consistent with the market rate for the relevant works, goods and services.

15. Procurement of Suppliers

All goods and services supplied to projects using the English Property Development State Aid Scheme must be selected through an evaluation process which:

- is consistent with the Public Contracts Regulations 2006 (as amended); and
- demonstrates compliance with the principles set out in Article 2 of the Procurement Directive 2004/18/EC.

Where, for whatever reason, an open and competitive tender is not adopted, the recipient is required to keep records to demonstrate that the costs for each item or service are equal or lower than that which would have been established had the goods or services been selected through an open and competitive tender process. The implementing body reserves the right to require the recipient to instruct an independent expert, at the recipient's cost, to verify whether the costs are equal or below that which would have been established through an open and competitive tender process.

Organisations delivering projects under the cover of the English Property Development State Aid Scheme should collect and retain documentation to demonstrate compliance with this provision.

16. Incentive Effect

The implementing body will take all necessary steps to ensure the Incentive Effect requirements in Article 8 of GBER are satisfied before aid is awarded.

In accordance with European Commission notice "Incentive effect in relation to large enterprises" Comp/H4/CS/dg-D*2011/097439, dated 20 September 2011, to ensure compliance with Article 8 (3) of GBER, all projects using this scheme involving large enterprises will:

- Produce an internal document analysing the viability of the aided project activity with the proposed aid and without the proposed aid;
- Ensure the document contains credible analysis and demonstrates the incentive effect; and
- Shall submit that document to the implementing body, prior to the aid being legally committed.

17. Eligible Costs

The eligible costs under the English Property Development State Aid Scheme are those set out in:

- Article 4 (Aid intensity and Eligible Costs);
- Article 12 (Specific Conditions applicable to Investment Aid);
- Article 13 (Regional Investment and Employment Aid); and
- Article 15 (SME Investment and Employment Aid).

The eligible costs for investment shall be:

- tangible and intangible assets set out in Article 12 (1) (a) and (b); and
- employment costs covered in Article 12(3).

Both the implementing body and beneficiary shall separately assess the eligible costs prior to awarding aid, however the following costs are understood to be eligible:

- The market value of the property / land purchased for the specific development;

- Reasonable professional fees (such as the purchaser's necessary legal expenses and design fees, provided they comply with the procurement requirements of this scheme);
- Reasonable costs incurred in the investigation and preparation, remediation and decontamination of the site (provided that these costs are not already provided under the alternative State Aid exemption, the Land Remediation Scheme N385/2002 and prolonged as N221/2006);
- Provision of infrastructure (including utilities and roads);
- Costs of landscaping required for the development to proceed;
- The construction or refurbishment of buildings, including built-in plant, equipment and fitting out¹;
- Planning obligations;
- Initial investment costs;
- Irrecoverable VAT; and
- Finance charges taking account of any savings due to grant provision.

Where only a proportion of the site relates to a project, the eligible costs shall be applied pro rata.

The following costs are understood not be eligible under the English Property Development State Aid Scheme:

- The costs of solely acquiring shares;
- Tax payable on the development (other than irrecoverable VAT); and
- Professional fees for any other parties (such as the seller's legal costs, unless the same sum is set off against a purchase price).

This is not a definitive list and all users of the scheme (both Aid recipients and each implementing body) shall undertake their own assessment with reference to European legislation, decisions and case-law.

18. Investment Projects

The English Property Development State Aid Scheme can be used by the implementing body to provide aid to 'Investment Projects', these are projects with the purpose of bringing land or property which is derelict, contaminated, under-used or vacant and are suitable for use or conversion for business, industrial or commercial purposes (hereafter called 'business') back into productive use.

For Article 13 the following specific provisions apply:

¹ Built in means the item cannot be removed from the site

- The project investment involves tangible assets and/or in-intangible assets in Assisted Areas (not including any assets owned by the implementing body);
- Aid shall be calculated as a percentage of eligible expenditure;
- Aid can only be given within the Assisted Areas and up to the intensity level set out in State Aid N673/2006 [UK Regional Map 2007-13](#);
- The property owner or developer (speculative) or owner or beneficiary (bespoke) must provide a minimum financial contribution of at least 25% of eligible project costs, either through its own resources or by external financing, in a form which is free of any public support; and
- The resulting asset must be maintained in the respective recipient region for the purpose for which the aid was provided, for at least 3 years in the case of SMEs and at least 5 years in the case of large enterprises.

For Article 15 the following specific provisions apply:

- The project investment is in tangible assets / intangible assets (not including any assets owned by the implementing body); and
- Aid is calculated as a percentage of eligible expenditure.

19. Adjusted threshold for large Investment projects

Investment aid awarded to companies in assisted areas for large projects is subject to an adjusted aid ceiling on the basis of the scale set out below:

Eligible Expenditure	Adjusted aid ceiling
Up to €50m	No reduction – 100% of aid ceiling
For the part between €50m and €100m	50% of aid ceiling
For the part exceeding €100m	34% of aid ceiling

20. Artificial division of projects

The English Property Development State Aid Scheme shall not be used to support artificially sub-divided projects at a greater aid intensity than would otherwise be applied. A large investment project will be considered to be a single investment project when the investment is undertaken in a period of 3 years by the same undertaking and consists of fixed assets combined in an economically indivisible way.

21. Excluded aid

The English Property Development State Aid Scheme allows aid to all sectors other than those listed below:

- Fisheries and aquaculture;
- Shipbuilding;
- Coal industry;

- Steel industry;
- Synthetic fibres; and
- Primary production of agricultural products (listed in Annex 1 of the Treaty; cork products under CN codes 4502, 4503, 4504; products used to substitute for milk/milk products).

This scheme shall not allow aid:

- which constitutes export aid or favours domestic over imported products;
- that has the objective of the establishing and /or financing of distribution networks in other countries;
- where implementing body has reasonable grounds to believe the recipient of funds will be within the definition of undertaking in difficulty (as set out in 2.1 of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C244/02);²; and
- where the recipient of the aid is the subject of an outstanding recovery order relating to a previous European Commission decision in which aid has been declared illegal and / or incompatible with the Common Market.

Beneficiaries awarded aid under the English Property Development State Aid Scheme acknowledge and agree that any failure to meet the terms of this scheme may result in the aid being clawed back with interest calculated in accordance with the European Commission's reference rate.

22. Cumulation

Aid awarded under the English Property Development State Aid Scheme may be cumulated with any other aid under the GBER as long as those aid measures are for different identifiable, eligible costs.

However aid under the English Property Development State Aid Scheme may not be cumulated with any State Aid exemption (for example another measure under GBER or the De Minimis Regulations 1998/2006) where the funding covers the same eligible costs and the effect is to exceed the applicable maximum aid intensity or aid amount allowable.

23. Notice of Scheme

Where aid is provided under the English Property Development State Aid Scheme, the implementing body shall inform the recipient in writing of the name of the scheme and that it is notified under GBER.

24. Conditions of Funding

To protect the public funding, the implementing body shall ensure that the recipient agrees to conditions of funding that are materially similar to the following:

- That for property investment projects, the agreed use provisions set out in GBER are followed for the required time period³;

² other than SMEs that have been incorporated for less than 3 years unless they are insolvent under UK legislation

³ although during this period plant and equipment that has become out of date may be replaced, provided that the economic activity is retained in the region for the minimum period

- The recipient agrees to promptly provide any documents or information to the implementing body which are reasonably required to assist a European Commission investigation;
- Where any of the State Aid conditions are breached by the aid recipient and as a result the aid is found to be non-compliant, this shall be a breach of the award and the implementing body shall have the right to require the value of the aid to be returned with appropriate interest.

25. Administration

The European Commission requires information on the use of all GBER schemes. Therefore whenever an implementing body project makes use of the English Property Development State Aid Scheme, they shall:

- write to Alexander Rose at the Legal Department, Department of Communities and Local Government to inform him that they are using the scheme and shall provide the required reporting information upon reasonable notice; and
- agree to collect information to meet the requirements of Articles 10 and 11 of GBER.

The requirements of Articles 10 and 11 of GBER, include records of the:

- Scheme title;
- Commission block exemption reference number;
- the decision date;
- the name and address of recipients;
- the amount of aid and evidence of gap calculations;
- the date and amount of aid payments;
- information on the form of each tranche of aid;
- the status of any undertaking where the level of aid is dependent on its status as an SME; and
- evidence that the incentive effect has been met for each award of aid.

Failure to provide information may mean that the aid is invalid. The implementing body requires that beneficiaries take reasonable steps to ensure records are retained for at least 10 years from the date of the last payment.

In the event that any part of this scheme is inconsistent with GBER, the provisions of GBER shall take priority.

26. Budget

The maximum sum allowable in each calendar year under the English Property Development State Aid Scheme shall be £1.5bn. This sum is provided for State Aid purposes only and does not reflect a committed government budget.

27. Sources of Funding

The awards of aid provided under this scheme may come from structured funds or otherwise.

28. Contact Details

Alexander Rose
Senior Projects Solicitor
Re: State Aid
Legal Department
Department of Communities & Local Government
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4WH