

THE TERRIER

THE JOURNAL OF ACES - THE ASSOCIATION OF CHIEF ESTATES SURVEYORS & PROPERTY MANAGERS IN THE PUBLIC SECTOR

VOLUME 20 - ISSUE 4 - WINTER 2015/16



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EDITORIAL

Betty Albon

A happy new year to all Terrier readers.

We have a new ACES President installed and this edition includes the 2 professional papers given at the Annual Meeting in November, by John Watts of Annequin Associates and James Robinson of Carter Jonas, on aspects of the crucial issues of energy efficient projects and renewable energy options. These are very topical, following the outcome of the Paris Climate Change Conference. Jeremy's inaugural speech and response by Tony Joyce, Bilfinger GVA, provide in parts a light-hearted and serious view of the year ahead, which were delivered in the superb City Chambers of Edinburgh Council. Thank you to Carter Jonas for sponsorship of the lunch, and Edinburgh City Council for hosting the event, which proceeded seamlessly. And finally, congratulations to Melton Borough Council for winning the well-contested ACES Award for Excellence.

This issue features the initiatives of an increasing number of authorities setting up companies for acquisition, delivery and management of housing and commercial assets, as well as researching the reasons for doing so. If this helps surveyors to scale back up the officer hierarchy, then all well and good. Will we penetrate that glass ceiling?

I'm pleased to include a piece about ACES' involvement in the successful publication of the 'Rural Estate Asset Management Planning' guidance. The full document is on the ACES website. There are the concluding parts to the compulsory purchase and compensation articles, an update of government initiatives and associated guide on the Housing and Planning Bill, and similar for the changes to business rates.

In short, plenty to get your teeth into!

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The views expressed by the authors are not necessarily those*

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Cover photo: Jeremy Pilgrim, ACES President



ACES ANNUAL MEETING 2015 – PRESIDENT’S KEYNOTE ADDRESS

Jeremy Pilgrim MRICS

I wish it were that simple that I just had to make a toast to the guests. Unfortunately I have to sing for my supper. Just before this lunch started I thought, having now assumed the role of President I would get to stay tonight at the Palace of Holyroodhouse as a visiting president. A little while earlier, I met a lady in the corridor who said “what is that chain around your neck?” and I said “I have just become President of ACES and was expecting to stay at Holyrood House” and she said “I have the keys - if you want to stay you can, but there is no staff there so you will have to nip out around the corner for fish and chips tonight.” And I said “well we are staying in a nice hotel, but thank you very much for the invitation.”

I would just like to say a very big thank you to the Scottish contingent who once again, have shown me, my wife, and I know others who are visiting Edinburgh, such exceptional and warm-hearted hospitality. We had a lovely meal and it is very much appreciated and I thank the Scottish branch for that.

Moving on to formal thanks, first of all I would like to thank Edinburgh City Council for allowing ACES here. It really is an exceptional venue: the view overlooking the valley and railway station onto Princes Street really is spectacular. They have done us proud here and thanks to Edinburgh Council for organising this and the superb lunch.

So ladies and gentleman, may I make various thanks, including everyone here today and in particular those that have travelled following Abigail’s party last night [Ed – referring to Storm Abigail of the night before]. I am not sure how many people were affected by that but I think most of us seem to have got here and I know we arrived here yesterday afternoon and we had a bit of a hairy landing, but apparently it got worse later on.

First and foremost I would also like to thank Graham Tully of the City of Edinburgh Council for organising this and in particular his colleague Mags Nicholson. Organising lunch and the venue here is a lot of hard work.

I would like to give thanks to Iain Mulvey of Carter Jonas in sponsoring the lunch today and I also thank Carter Jonas for supporting, along with others, ACES’ conferences. We have a number of sponsors which cover advertising in The Terrier and conference sponsors, without whom we could not put on what I think are excellent conferences. I would like to give special thanks and in no particular order, Lambert Smith Hampton and Tony Joyce of Bilfinger GVA, who is to deliver the toast from the guests. I would like to thank Antony Phillips of Field Fisher Waterhouse. Antony and I have worked together on numerous projects over the years and we have also built up a very good friendship and he has helped me and

helped a lot of my graduates in passing their APC and sponsoring ACES as well at conferences. If you have not heard Antony talk about landlord and tenant law, which can be a bit of a dry subject, and property litigation, he is well worth listening to if you get the opportunity.

Thanks also to Savills, BNP Paribas and DVS Property Services who all sponsor ACES. I would like to thank members of Council, particularly Willie Martin ACES treasurer and Keith Jewsbury our secretary who have done sterling work in organising this AGM. They took over their roles a year ago and have worked tirelessly in creating what I think is a more modern and dynamic organisation and hopefully that will continue in the future. We live in difficult times and obviously money is always short and money is always required and Willie has certainly done us proud in getting the books properly organised.

Finally I have to thank my wife who has kept me on the straight and narrow through some difficult times recently. I would also like to mention that I had an e-mail earlier from my 94 year old mother wishing me success. Now that sounds strange: my nephew gave my mother an iPad last Christmas, which for the first 3 months was hell because I had to keep showing her how to switch it on and do anything with it. She has now mastered this to the point that she is now sending e-mails, photographs, and

skyping, so my life has become totally intolerable. I think it demonstrates the fact that actually it is never too late to teach old dogs new tricks.

To be serious for a moment now, I feel very humbled and honoured to be elected by my fellow peers as President and I hope to repay that trust over the next 12 months. I do regard this as a sort of solemn undertaking. We are going through dramatic changes and I think that there is some serious work that we need to do.

So what is ACES to me? I think that when I joined ACES I thought it was a little bit old clubby, a bit stuffy, a bit sort of old fashioned and gradually as I attended further meetings, I got to realise that it was a family and it was a family of surveyors in the public sector who found a way of networking, trying to understand each other in a difficult working environment where we all actually answer to different political masters, such that it is often difficult to reach consensus of views. Gradually ACES has found a way of doing that and I think that over the years I have grown to appreciate the 'ACES family'. It is very easy to phone people up and get information. I think that we have changed substantially; under Richard's presidency we have sought to become much more professional, whereby the president doesn't just get involved with various public sector bodies and then that information disappears. We constantly have new information coming in, we digest that and bring it forward and allow other people to pick it up.

We are a changing Association under present circumstances and that has probably been brought on by various factors, but mainly government cut-backs, which have had a serious effect on many people and I think we will have to, in the future, look at how we organise membership and how we relate both to other public sector bodies, how we relate to government, how we relate to the RICS. We are all chartered surveyors. I have been emphasising at the RICS for some time now that it doesn't represent the public sector, it is very much corporate. A third of surveyors work in the public



Jeremy and Senior Vice President Daniella Barrow

sector, whether it is in local authorities, government, fire and police services, and the other two-thirds at some stage will work with or for local authorities or the public sector. The public sector owns about £84bn worth of property in the UK; that makes us a big player and that is a player that should not be ignored, either by professional bodies or by the government, and we are the best placed people working in the public sector to actually have an understanding of those assets and how they should be worked in the political environment and policies that guide us. It doesn't mean to say that we shouldn't work with the private sector. We do need to work with the private sector, we need to see them as colleagues, I believe, and not as rivals maybe for our work and possibly our jobs.

Moving on, where do I see ACES going and where do other members and certainly councils see us going? We need to advise government departments - which we do. We talk to the DCLG, we talk to the Cabinet Office and we do have a number of ACES members who work in the Cabinet Office. It is clear to me that government departments may not talk to each other sufficiently and perhaps we can provide a way to deal with that. We need to advise them on various matters and certainly over the last year ACES has been involved in lobbying government and other organisations. We stopped the government under the 2015 Local Authority Regulations from requiring all local authorities to have all disposals over £1m to be approved at meetings of full Council, as opposed to maybe their Cabinets or Executives and to my

mind, that would have brought the whole thing to a grinding halt, because if something goes to full Council you are never going to get a decision, the politicians will always fight against selling something even though when they get elected they are going to seek to do exactly the same thing. We have been involved in the Rural Tenancy Reform on farming, which has now been published as a government document and that is a good success and I am very proud of that and the hard work that others have done in producing it.

We are considering advising on the current Housing and Planning Bill, which we discussed this morning at our AGM and how we are going to take that forward and give advice.

I want to see a younger membership and I have ruled myself out of that! I have now reached a ripe old age of 62 but I like to think that I am still a young man at heart. I did sail the Atlantic 2 years ago; I think my wife was very glad to get rid of me for 6 weeks; I think it was a shock when I actually came back! But we do need to have young blood in positions of responsibility, willing to take them on, if we are going to continue as an organisation. I have an ambition that I would like to see an ACES member in at least every local authority in the country, the whole of the UK, which would be fantastic. We do have successful regional committees and meetings and those are very good. We do need to improve in certain areas because we will survive only by being able to lobby and to provide a service at branch level; we do have that ability



Runner up Detlev Munster, Enfield LBC



Runner up Anne Cains, Portsmouth City



ACES Award winner, David Blanchard, Melton BC

to provide a unique service which nobody else in my mind can provide. It is needed. So we do need changes, we do need to bring on young people, we do need to lobby harder, we do need to be of more influence. We are doing more of those things and we have a continuation programme where past presidents will devote a lot of time and Richard has kindly agreed to that. But it is a members' Association and that is a factor and we rely on members to come forward.

We do now have a good website and it is through that website that we can actually share information and not carry on reinventing the wheel; local authorities are very good at reinventing the wheel in my mind, and I think that it is down to us. I can cite several cases on Right to Buy; Southwark

unfortunately was the first borough to be hit with a Right to Buy; I knew nothing about it and it was charged to me to find out. We put something on the website through my colleague Chris Rhodes, and we got quite a lot of responses back from people like Leeds and Peterborough councils who were also facing the same things. Through a combination of discussions we developed a policy that every local authority could adopt. Similarly with developing an understanding of the Localism Act, which takes some understanding! So there are good examples like that.

I would like to see further support for regional branches, particularly those ones that are not as active as places like London. I know there is often a lot of geography involved but we do need to boost those and I am looking to members to increase that over the next year. So I am very positive about the future, even though we do live in difficult times and I am fully appreciative of that, facing those situations myself in terms of how local authorities are going to employ the public sector surveyor and how they are going to deal with that in the future. They are testing times: as our new Chinese partners would say, we live in interesting times, we certainly do.

Finally I would like to end by saying thank you all for making the journey here today, it is not easy I know, particularly in the middle of winter and the ever changing weather scene here in Edinburgh, sunny one second and the next it is pouring with rain, and again to the kind hospitality of the Scottish contingent.

ACES Award for Excellence

It gives me great pleasure to announce the ACES Award for Excellence In Property Management. This year we received a record number of applications and it falls on the Senior Vice President, with advice from colleagues, to make the award. This year we are also doing something slightly different because there were some excellent submissions and it was very difficult to choose which one should be the recipient of the award.

The winner has to present to the next Annual Conference and I think this year's presentation from the West Country on how to engage the public in farming matters is going to be a very difficult one to better.

We narrowed the extremely good applications down to 3 so we are giving 2 highly commended awards to the runners up. I teach children racing sailing; it is quite competitive and I always say to the kids "what's second place?" and they will go "First loser Mr Pilgrim" but in this case I don't think that there are any losers.

The 2 highly commended applications are:

- The London Borough of Enfield, represented by Detlev Munster. They were looking at how to form a housing company and create new social housing, and wanted to get it up and running very quickly
- Portsmouth City Council, represented by Anne Cains. This was a scheme to provide a facility for The Americas Cup down in Portsmouth, which has been very successful.

The winner, Melton Borough Council, shone out because it is something that we have all got to learn to do, and that is to start sharing accommodation with other bodies in the public sector. How we integrate them into one building is always difficult if people don't talk to each other. In their new offices, Parkside Hub, they have integrated 16 partner organisations, so improving local service delivery and transforming the town station site. So if David Blanchard could come up and receive the Award.

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RESPONSE TO THE PRESIDENT'S KEYNOTE ADDRESS

Tony Joyce, Senior Director, Bilfinger GVA

Thank you very much. It is a great joy to be here. What I would like to do on behalf of your President first of all is to say "cead mile failte"; now if you don't know what that means, ask your President afterwards and he will translate it for you. [Ed – Gaelic, something along the lines of 'a hundred thousand welcomes'].

I consider it an honour to be invited here today to respond on behalf of the guests. Jeremy and I go back some considerable years. He knows me well and I am very surprised that he asked me to respond today. Each time Jeremy and I attempt to have an intellectual conversation I am reminded how incredibly well read and quick witted this gentleman is. Naturally as you would expect when we meet up, we put the world to rights as you do, we have views on everything and we are always right, even when we are wrong! As chaps we must confess that behind every successful man there is a strong, wise and successful woman. So when I ask Ann if in her wildest dreams she ever thought that Jeremy might become President of ACES, Anne replied that Jeremy does not feature in her wildest dreams; it's true.

Success is measured in so many ways, but things may not always be as they first appear. Recently I heard about an 89 year old man in Southwark, he was a Southwark resident called Dave Smith and on his death bed he asked his nurse, summon my wife, my sons, my daughter. When all was assembled he began – Bernie I want you to take

the Mayfair houses, Charmaine you take the apartments in Belgravia, Charlie you take the London Bridge offices and Marlene my dear wife please take all the Chelsea Harbour apartments. As Dave slipped away his nurse quietly whispered to his wife: "Mrs Smith my deepest condolences, your husband must have been such a hardworking man to have accumulated all that property." "Accumulated property?" she replied "he was talking about his paper rounds."

So on a more serious note, I have heard it said that a successful man is one who can lay a firm foundation with the bricks that others have thrown at him. That's commendable, but it is not how I measure success. Success in my book is based on generosity, honesty and happiness. A couple of weeks ago my wife Polly and I watched a programme called DIY SOS, you may have seen it. On that programme a married soldier in the British army had been blown up by a Taliban mine in Afghanistan and he had lost both legs and an arm. The programme was all about building a home for him and his family. It really touched us because what was important was the love openly shown for him by his wife and their 5 young children. They all loved and admired him, as did everyone who came into contact with him.

Now I unashamedly say that Jeremy is in this camp, Jeremy is admired, much loved and respected by his contemporaries. Jeremy is tough, he is no pushover, but in my experience,

Jeremy has always been fair and is known for doing what is right. He is also very good company; this is how I measure success.

So I thank you Mr President and pay tribute to you and to the members of the Association: may she continue to thrive under your leadership.



NOTES OF ACES ANNUAL GENERAL MEETING HELD AT CITY CHAMBERS, EDINBURGH ON 13 NOVEMBER 2015

Keith Jewsbury, ACES Secretary

Deaths

The secretary reported the deaths of Richard Miller (ex Norfolk CC) and Peter Adams (ex Lancashire CC). Members stood to observe a minute's silence to their memories.

Apologies for absence

The Secretary reported 112 apologies for absence.

Minutes of previous meeting

The minutes of the Annual General meeting held on the 14th November 2014 were approved as a correct record.

Annual report of Council

The Secretary circulated a comprehensive report on the work of Council and the Association for the year 2014/15 which was noted. [Ed - the Annual Report can be found at www.aces.org.uk, in the Minutes section. It is an excellent summary of ACES' activities for the year].

Financial matters

The Honorary Treasurer presented his report containing the unaudited accounts for the period ending 30 June 2015 with recommendations for subscriptions for the coming year.

It was agreed to adopt the unaudited accounts and to appoint Wortham Jaques as the auditors for the coming

year. It was further agreed to increase the annual subscriptions level to £125 for full members, £80 for additional members and retain the current £40 for past members. Past members still carrying out work in the public sector to pay the additional member's rate of £80.

National conference

The President gave an interim report on the conference held in Salford and noted that the feedback from delegates was very positive in respect of the quality of the speakers and the way that the conference had been organised. A £8,000 surplus is expected.

ACES/DCLG Working Group

It was agreed that the following members serve on the Working Group for 2016:

B Albon, L Dawson, T Fleming, H McManus, N McManus, P Over, J Pilgrim, R Wynne, D Barrow and K Jewsbury.

Officers of the Association

The following were approved as officers of the Association for 2015/16:

President Jeremy Pilgrim

Senior Vice President Daniella Barrow

Junior Vice President vacant

Immediate Past President
Richard Wynne

Secretary Keith Jewsbury

Hon Treasurer Willie Martin

Editor Betty Albon

Hon Auditor Wortham Jaques Limited

Liaison officers

The following were approved as liaison officers for 2015/16:

Compensation Gary Sams

Valuation Michael Forster

Rating & Taxation John Murray

Housing Rachel Kneale

Performance Management
Trevor Bishop

FPS Daniella Barrow

Corporate Asset Management
Barbara Vernon

Commercial Asset Management
Andy Kehoe

Agricultural Asset Management
Stephen Morgan

Sustainability Lee Dawson

Consultation Daniella Barrow

Procurement Abdul Qureshi

Urban Regeneration & Town Centres
Richard Wynne & Heather McManus

RICS Sam Partridge

ACES/DCLG Heather McManus

Post Graduate Courses
Malcolm Williams

CPD Events Rachel Kneale
& Neil Webster

[ED – Liaison Officers invite all ACES members to contact them if they have issues on their specialist areas which you would like to discuss, or to submit consultation responses if ACES intends to make a formal submission on behalf of the Association].

Council membership

Richard Allen and Sam Hird were elected to serve on Council for 2015/16 representing Past and Honorary members of the Association.

Tom Fleming and Paul Over were elected as directly elected members of Council for 2015/16.

Future meetings

The following meetings were noted:

National Council
22 January 2016 London

National Council
28 April 2016 London

National Council
19 August 2016 tba

National Conference
29/30 September 2016 London

Annual Meeting
18 November 2016 London

National Conference
November 2017 tba

Annual Meeting
November 2017 Cardiff

The meeting closed and was followed by 2 linked presentations on energy matters [Ed – see this edition of Terrier] and the annual lunch.

MEMBERSHIP Keith Jewsbury

I list below the changes in membership between 1 October and 31 December 2015.

New members approved

There were 6 new applications approved during the period.

Tom	Burns	South Ayrshire Council
Stuart	Knight	Unity Partnerships
Stephen	Nicholson	Bradford Metropolitan District Council
Mark	Pearson	Leeds City Council
Ken	Shirer	Valuation Office Agency
Tom	Southall	Portsmouth City Council

Transfer from full to past membership

5 members transferred to past membership during this period.

Roger	Handsombe
Adrian	James
Philip	Percival
Jane	Taylor
Nigel	White

Resignations

17 members resigned during this period.

Tony	Bamford
Richard	Combes
Richard	Cook
Marina	Dimopoulou
Steve	Dinnick
Chris	Fairhead
Belinda	Gaynor
Peter	Jones
Kevin	Joyce
Peter	Knapton
Sam	McVie
Rachel	Moan
John	Parling
Simon	Peters
Mark	Scott
Richard	Smith
Paul	Taylor

Total membership

Full	219
Additional	71
Honorary	32
Past	51
Total	373



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DCLG POLICY UPDATE

Colin Wright BSc(Hons) MRICS

Colin is the Deputy Chief Estates Specialist at the Department for Communities & Local Government. Prior to joining central government he worked in both private sector consultancy and local authority sectors. His team in DCLG leads on the provision of professional property advice and support on the development of government policy on housing, land, commercial property, planning and local authority assets. colin.wright@communities.gsi.gov.uk

Colin provides a useful summary of current government property and planning initiatives. The Editor thanks Colin for undertaking this important coordinating role and for organising experts for the forthcoming meeting of the ACES/DCLG Working Group.

On a high policy level, the government focus on building homes and increasing levels of home ownership seeks to increase supply all over the country, in towns, cities and rural communities. At the Autumn Statement on 25 November 2015, the Chancellor announced that DCLG's settlement would include more than £20bn gross capital investment over the next 5 years to support housing and local growth; £8bn was also committed to deliver 400,000 affordable homes and the opportunity for right-to-buy was extended to 1.3m housing association tenants. Other initiatives include delivering 200,000 starter homes exclusively for first-time buyers under 40 years old and giving millions the chance to get onto the housing ladder with affordable deposits from Help-to-Buy. [Ed – also see article on the Housing and Planning Bill in this edition].

The brief summary above provides an overall flavour of some of the

departmental policy areas, particularly relating to housing. This latest update article for The Terrier turns the focus on just a few examples of the latest DCLG policy developments that should be of interest to surveyors in the public sector, particularly those managing land and property at a local authority level. Included in this article are updates on Build to Rent, Community Rights and, from the cross-government Public Sector Transformation Network, a signpost on its work encouraging and supporting councils through increased flexibility of asset receipts. More widely, as the various policies that support the use and management of public sector assets are further developed and announced, details can be found on www.gov.uk

Build to Rent

Despite representing an investment market in the US now estimated at \$22 trillion, the Build-to-Rent (BTR) housing sector has only begun to become properly established in the UK over the last couple of years. The recent growth of BTR in the UK has happened because the economic fundamentals of housing demand and investment supply are right, but the sector has been given a boost by initiatives within DCLG aimed at improving the rental offer in the UK and diversifying the range of tenures

available. The BTR sector provides high quality properties (usually blocks of flats), purpose-built for private rent, and owned and managed over the long term by large institutional investors.

BTR meets a particular housing need, typically for young professionals with relatively high disposable income before they are ready to enter the market for purchasing their own home – they may, for example, be saving for a deposit or simply intend to maintain mobility for work purposes. However, the sector has the potential to meet a wider housing need, including middle-income households with children.

BTR brings various important local benefits, mostly centred around the ability to accelerate local housing supply by virtue of not being constrained by the market absorption issues affecting build-for-sale. Compared to sites providing solely build-for-sale, the inclusion of BTR can typically reduce build-out rates by more than half. Benefits include:

- promoting place-making through the early establishment of an economically active renting population
- raising the value of build-for-sale units nearby

- helping liberate family homes from the buy to let market for home-ownership
- supporting labour mobility, and
- raising standards within the wider private rented sector through competition.

Design quality, good management and good on-site service underpin the BTR “offer”. Being long-term investors, owners have a clear business interest in holding onto tenants (“customers”) and thereby minimising voids.

While programmes focussed on owner occupation, such as Help to Buy and Starter Homes, are at the forefront of the government’s strategy for boosting housing supply, the Build to Rent sector can help meet the country’s housing supply needs. DCLG currently supports the growth of BTR through 2 programmes:

- **The £1bn Build to Rent Fund** – providing loans to help finance the construction of up to 10,000 new BTR homes. 15 schemes are currently contracted to the Fund, receiving over £455m of investment and delivering over 4,000 homes. Additional schemes are being considered
- **The £3.5bn Private Rented Sector Housing Debt Guarantee Scheme** offers investors a government guarantee on debt they raise to invest in new homes. This will help to address the absence of long-term debt finance in the market and reduce borrowing costs.

Savills estimates that institutionally-funded BTR has the potential to deliver 10,000 new, high quality homes a year by 2020. Recent estimates of the sums available for investment in the sector have been up to £50bn – not yet on the scale of the US but a considerable sum nonetheless.

The key issue affecting the growth of the BTR sector is the ability of development proposals to compete for land against proposals for the provision of homes for private sale.

The price payable for BTR schemes is determined principally by the net rental yield expected to be delivered by the properties and this yield is usually lower than that which may be delivered through the reinvestment of profits secured on homes built for sale. Investors are increasingly recognising that, on a risk-adjusted basis, the returns on BTR can be favourable relative to other sectors. Nonetheless, in many cases, the availability of sites for BTR schemes will need the local planning authority to recognise the particular viability constraints facing the sector in determining planning obligations.

The government has addressed these issues through the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). The NPPF requires local planning authorities (LPAs) to take into account the need for all forms of housing development in light of the characteristics of the local housing market. PPG indicates that LPAs should break down the overall housing requirements by tenure, household type (e.g. singles, couples and families) and household size, including through reference to current and future trends. In March 2015, the guidance was strengthened specifically to clarify that – in suitable areas – LPAs should support the viability of PRS housing development through careful assessment of the appropriate level and timing of planning obligation payments.

There are other ways to help achieve viability. Where local authorities own land suitable for housing, they may opt to become directly involved in building homes, for example through joint venture partnerships with BTR investors or by offering land for development at “less than best consideration” (see 2015 Summer Terrier). High quality design and an attractive management offer can improve viability, enabling proposals to compete successfully for sites, particularly through increasing residential densities.

For further information on the build-to-rent sector generally, please see our Guide for local authorities: <https://www.gov.uk/government/publications/build-to-rent-guide-for-local-authorities>

Community Rights latest

The government is committed to supporting communities to have more say over the running of their neighbourhoods, and they have done so by exercising the Community Rights created by the 2011 Localism Act. Many local communities are already involved in re-designing or taking over public services where they can deliver better outcomes and value for money (an interactive map can be found at <http://ow.ly/VqkM4>). Over 1,750 communities have started neighbourhood planning (<http://mycommunity.org.uk/programme/neighbourhood-planning/>) and the Community Ownership and Management of Assets programme is helping communities to acquire over 400 assets, ranging from libraries to castles!

This work has been given new impetus by the present Devolution agenda. Thirty-four English cities and consortia of local authorities coming together on a county-wide or sub-regional basis have submitted proposals to take over significant decision-making and spending authority from Whitehall, many of them under the aegis of a new elected mayor or combined authority. The Devolution Deals currently being negotiated contain a wide variety of different models and there is no centrally imposed template. This said, the government hopes to see devolution of decision-making and service delivery moving beyond the bidding consortia into neighbourhoods and communities wherever this is possible and sensible.

Devolution of service delivery to neighbourhoods can make sense, not only in terms of better democratic accountability, but also to create a more tailored, efficient and economic offer. Many local authorities involved in “Deals” are already including neighbourhood level working in their thinking around devolution; others are encouraged to follow suit. Whether you’re already involved or are looking for new ideas as to how this might work in practice, you are encouraged to join the “My Community Network” to talk to experts and connect with others who are exploring these possibilities. For

further information, visit <http://www.justact.org.uk/forums/>.

Incentivising service reform from the sale of assets, property and land

To support local authorities to deliver more efficient and sustainable services for people, the Spending Review allows local authorities to spend up to 100% of their fixed asset receipts (excluding Right to Buy receipts) on the revenue costs of reform projects.

Councils will now be able to invest in services that, for example, deliver home improvements that can help keep older people from needing to go to hospital, share information and data between public bodies to deliver better services, or tackle domestic abuse by improving collaboration between the police, health system and social services.


The flexibility to use asset receipts for reform projects will be subject to a number of conditions, including limits on the years in which the flexibility will be offered and the qualifying criteria for reform projects. Details will be set out by DCLG alongside the local government settlement.

Conclusion

The ACES/DCLG Working Group will be meeting in early February and the ACES members of that group will no doubt report back through the next edition of The Terrier on the topics and policy areas covered in that session. This should include updates on the high level policies outlined at the start of this article.

Finally thank you to DCLG colleagues Nigel Kersey (Build to Rent), Jon Yates and Warwick Hawkins (Community

Rights) and Kemi Saka (Public Sector Transformation Network) for providing the updates and accompanying text on their respective policy areas. For more details, please visit www.gov.uk or otherwise contact the author directly using the e-mail address at the top, the Editor or a member of the ACES/DCLG Working Group [Ed - see AGM notes in this Terrier].



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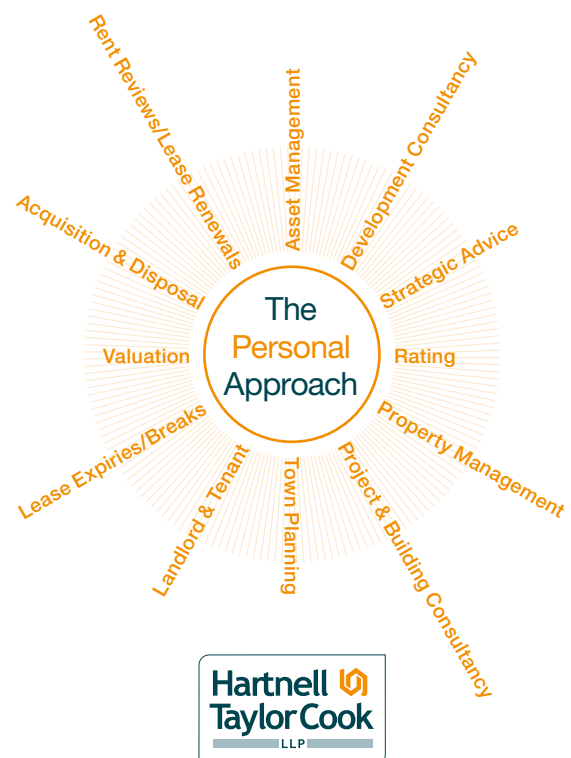
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This presentation was made at the ACES AGM held in the City Chambers, Edinburgh.

DELIVERING ENERGY EFFICIENCY PROJECTS – THE FUNDING CHALLENGE

John Watts

John is a qualified chartered accountant. He retired as a Partner in the Deloitte Government & Infrastructure team in May 2012 and established his own consultancy business, Annequin Associates. Through this business he works for a number of clients delivering advice on feasibility studies, business planning, restructuring, governance, strategy, procurement, project management and review, risk management, financial and funding strategy.

He is also an Associate with Deloitte on a number of infrastructure projects and Ernst & Young on low carbon projects. He has experience of a range of infrastructure and corporate finance projects for both public and private sector clients and this has involved strategic, commercial and financial advice as well as governance and structural change. He has worked in the low carbon, education, transport, waste, health and port sectors. He holds a number of non-executive director and member posts for public and private sector organisations. johnwatt@annequinassociates.co.uk

Thank you for the invitation to speak to you today. What I want to talk to you about today is energy efficiency and climate change, particularly as we had storm Abigail passing through last night and there is still some residue of that. There was an announcement this week about a 1 degree increase in temperatures, so we are half-way to the 2 degree centigrade target that everyone says is the limit.

Pressures

Some of the pressures that we are facing are:

Urbanisation - currently 50% of the population is living in cities and it is forecast to be 70% by 2050, so we have a big expansion in population

Waste and energy - actually energy usage in the UK looks to have been in decline in the past few years and I think that is partly due to the recession, but the expectations are that usage will start to go up again

Flood risk - south west England

suffered flooding last year, but you can think about those observations in terms of other areas, whether it is the Thames, where there is work going on around flood protection. Whether it is countries overseas, where it is actually more important in terms of water security, flooding is going to be a big issue to deal with and potential damage to buildings

Ageing infrastructure - heat is beginning to affect the rail lines, particularly in the south

Carbon emissions - interestingly, London thinks that 80% of its CO2 emissions come from its buildings. There is a lot of discussion around whether vehicles or vehicle fleets contribute to emissions. In Edinburgh, we have an issue around the bus and taxi fleet because they are contributing to the emissions: diesel is making areas of the city quite unpleasant.

The top slide on the next page came from an Adaptation Scotland conference in September 2015, 'adaptation' being

adaptation to climate change. It is quite a nice pictorial representation of some of the issues that we have just been talking about. If you look at the city scope, you could add a lot more issues around transportation and greening of buildings. But it does set out the context of the issues we are trying to address.

People, planet and profitability

I think this triple bottom line is quite a good one for us to all bear in mind. We do have to think about the issues and we are all responsible.

People - health and well-being, ensuring good food and water supply, and employment opportunities for people

Planet - I think we all have an obligation to reduce carbon emissions. We do have to slow the increase in global warming

Profitability - I think there is quite an issue around economic security, but there is quite a lot of economic

opportunity out there, which I will illustrate later through some projects.

Other issues

What other issues have you got to deal with?

- Known capital constraints that you are having to manage
- Need to encourage economic growth in many cities
- Carbon reduction targets very challenging. This week Amber Rudd MP, Minister for the Department for Energy and Climate Change, announced that she doesn't think they are going to hit the renewal energy target of 15% by 2020. There is a target to hit 34% reduction in CO2 emissions by 2020 and 50% by 2030. Edinburgh and the Scottish Government both have a 42% target reduction in carbon emissions by 2020
- Adaptation activity projects are challenging
- What flexibility is there to use existing assets to deliver in new ways?
- Cost of funding
- How can investment be leveraged into opportunities?

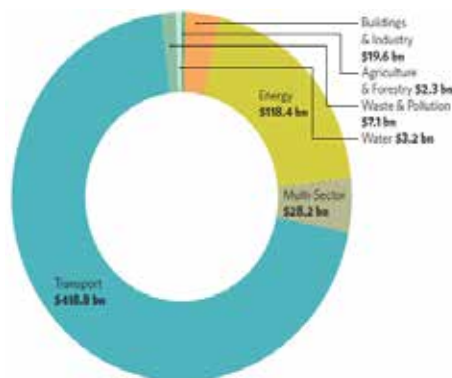
The slide, produced recently by an ethical investor, illustrates that 2 degrees centigrade requires \$53 trillion investment. That is a number that you can't quite comprehend. I think that that is part of the challenge, but that is the need for investment in energy supply and security. If we are to hit that target - and almost \$600bn is already available through the climate aligned bond universe. The huge bulk of that investment (\$420bn) is in transport and only \$20bn is in buildings and industry. We need to move that pie chart quite significantly in order to spend a little bit more on the buildings sector, to achieve some of the targets. If we think back to the fact that London is saying that 80% of its emissions were coming from its buildings, is that split right?

Adaptation actions and projects – courtesy of Adaptation Scotland



2°C requires massive investment = opportunities

The \$597.7bn climate aligned universe by sector:



- ▶ 2°C requires \$53trn in investment in energy supply & security*
- ▶ The climate aligned bond universe is currently \$597.7bn**

Funding approaches

Capital programme - that is something that you are familiar with. There are challenges and priorities elsewhere: there is not much vote-winning in climate change; schools and hospitals take priority, so I can understand why some of these projects perhaps don't get pushed up the agenda.

Payment by results - we can see situations where some street lighting deals are beginning to happen and significant savings are to be generated from those. For example, Glasgow has a street lighting deal with a pay-back of about 5 years and there are one or two deals beginning to happen south of the border. But you can't work payment by results for flood defences because the last thing you want is a flood, so how you work out a result is quite challenging.

Payment by usage - I was involved in congestion charging consultation in Edinburgh and I think that we missed a huge trick. It would have created a fund and the aim was that that was going to be the basis for improving transport infrastructure. We could have paid for the tram and extension to the tram line; we could have paid for cycling routes and pedestrian routes as well as a number of other things. Singapore interestingly enough has got electronic road pricing in action and they have tied that to smart car parking. They have worked out that quite a lot of the traffic usage in Singapore is actually spent going around looking for a car parking space, so they have worked out a system which directs you to where the parking spaces are. They have also got 60% of the commuters using public transport and the aim is to get 70% by 2020. I suppose it is the benefits of having a

benevolent dictatorship as to how you go about things, but I think that we do have to look at this payment by usage model and make people realise some of their actions.

Refits – this is retro-fitting schemes to reduce CO2. It seems to be beginning to work in London. There are pilot schemes including 42 public sector buildings, with anticipated 7,000 ton reduction in CO2, an average of 28% reduction in energy consumption across those buildings, with a £7m capital spend and a 7 year pay back. I understand that Edinburgh Council is looking to retro-fit some of its public buildings; those of you who have tried to shut the windows here will appreciate some of the difficulties that we have in these buildings, but it is definitely leaky old buildings like this that need to be addressed.

The City Deal - here in Edinburgh we have got a pitch in for a City Deal. We are talking about a carbon levy; we still need to understand what the council is proposing in terms of how to use the fund.

Funding sources

PWLB and capital programme - PWLB (Public Works Loan Board) is relatively cheap but there are budget pressures and I understand that that money will tend to go elsewhere into other projects.

Social funding – there are quite a lot of sources. Green Bonds – the \$600bn climate aligned bond referred to earlier is a sort of green bond funding. You have ethical finance, Islamic finance, and community models. There is quite a successful one for a hydro scheme locally, where it raised about £350,000 but that was a wealthy community who put that money in and it took quite some time and quite often these social funding models aren't actually that cheap. Funding costs can be well above commercial rates.

Green Investment Bank and the European Investment Bank - GIB has a green loan which it is promoting to local authorities, which competes with PWLB and that has been used for

street lighting. It is looking at energy efficiency projects as well. EIB is awash with cash and is wandering around desperately trying to find projects. The challenge actually is that it wants to spend quite big amounts of money, so they are typically looking at projects of £50m or more, such as infrastructure projects, which are of interest.

General commercial debt and bond market - When I was involved in PFI/PPP projects were very aggressive. With the credit crisis, the appetite has shrunk, but it has quickly come back in terms of maturities, but we are starting to see banks out there that are willing to lend for longer terms; a few months ago a bank was offering 30-year loans. They are beginning to compete with the bond market. We have also got the potential for project bonds or municipal bonds and we have a number of involved investment companies and pension fund companies who are interested in these long term assets.

Infrastructure fund – this is an active market involved all over the country at the moment. For example, Standard Life is very interested in the energy efficiency/low carbon market and is investing across the world in a variety of different projects.

Tax Incremental Financing - that model has tried to be deployed in Scotland and it hasn't exactly been that successful. There have been a few projects talked about, but not many have actually progressed. There is one authority that I am having some discussions with at the moment that is looking at a TIF model, whereby it puts some of the infrastructure in place for the roads and does work around district heating schemes at the same time, so there are opportunities.

Thames Tideway Tunnel

This is a good example of how some of the funding options have helped to get some of these projects under way. The Thames Sewer System was designed in the 1860s. At that time London had a population of 2 million; it was designed for 4m and we are now looking at 8m in London and 10m

is the forecast by 2031. There will be 600,000 new homes in London in that time period, so massive changes in London. Apparently at the moment the equivalent of 8bn tonnes of raw sewage p.a. goes into the Thames alone. So there are considerable benefits to the environment if we get the Thames Tideway Tunnel built, health and safety, and the potential for job creation.

The 'super sewer' would be 25km, 7m wide and have capacity for 8bn toilets p.a.; the cost of this scheme is £4.2bn and just recently a deal for £3bn funding has been signed, from a mix of commercial funders including pension funds. This is a relatively low risk project with a lot of the procurement already committed and applies fully inflation-linked cash flows for a long-term asset base. A lot of the construction issues have been mitigated. Consumers will be paying for it so this is payment by usage. This is a mission-critical project as London would run out of capacity very quickly, if it has not already done so, and if this doesn't happen then you really are restricting a lot of opportunities here.

Munich ESCO/Stadtwerke

Munich's ESCO is enormous. Edinburgh, Glasgow and Falkirk are all looking at these. This is on a different scale entirely but it has been going for over 100 years and is a very good model. It is 100% owned by the Municipality; it is the 5th largest energy utility in Germany and is among the 100 largest companies in Germany, with an annual turnover of 6bn Euros. They have an ethos about being very green; they offer high quality; they have actually taken over some of the deficit operations such as swimming pools and transport that the local authorities have challenges with. But they return to the local authority 100m Euros each year in surplus which can be used for other things.

They have a target of 200m Euros of investment in district heating schemes over the next few years. That heating is from geothermal as its principal source and they want to be 100% renewable by 2025. They are quite a long way towards getting to that point, also

using onshore and offshore wind, biomass, solar and hydro. They also have investments in Spain and the UK, Holland, Croatia and France so they are very widespread. It is an example of a huge business but with a very strong drive, a very strong ethos towards being green and addressing these energy efficiencies.

Delivering investable projects

Packaging things up is very important. I sit on the board of Zero Waste Scotland and within that we have a team called Resource Efficient Scotland which has funds available to provide technical support for projects both for the public and the private sectors. Understanding the technical issues and then packaging the project up as with Thames, in terms of the risks, the financial impacts and the affordability is extremely important.

Aggregation - you need to group small projects together; you need to work with the NHS and the police and whoever else to pool projects together. You need a good understanding of risk transfer. We need to be realistic about this: in recent years I have found it interesting to see the perceptions from the public and private sectors as to the right level of manageable risk to get the right answer.

Expertise - the Munich ESCO has really good expertise and that core drives projects forward. In local authorities there are challenges, but you need to focus staff and the leadership. I think the benefit of ESCOs is that they have the commercial focus and Munich is putting cash back into the local authority. It is doing that because it is generating effectively, it is charging appropriately but its social purpose is there to be green.

Benefits - I go back to my triple bottom line: people, planet and profitability. I am on the board of a new company called Our Power Community Benefits Society, to address the issues of fuel poverty for tenants of housing associations. The aim is that we will put a lot of these people who are on pay-as-you-go meters onto smart meters, reduce the energy bill by 10% and make it more affordable for them, and we will also get good green generation. We think about the people that are in need, we are also thinking about job opportunities for disadvantaged communities. We may invest in district heating schemes in certain areas to enhance place. We are out there to make a profit, but as a community benefit society, we are asset-locked so all the profit that might be generated will be reinvested. The model is getting a lot of interest and funding from Scottish

Government and people are starting to see us as a salvation for all the ills.

Conclusions

I think there are opportunities out there; I think there are some very major challenges, but I think that we have to address these issues sooner rather than later, because having heard the recent news of where we are heading in terms of climate change, some of these actions need to happen. You have a big asset stock which I suspect is quite inefficient and it needs to be addressed. There are ways of doing it, I think that we have to think innovatively and effectively about how we do it.

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RENEWABLE ENERGY – SECTOR UPDATE AND OPPORTUNITIES

James Robinson

James is a Senior Energy Specialist in the Energy Team at Carter Jonas' Harrogate office. He has over 8 years' experience in providing technical leadership of energy projects, as both project manager and consultant. James has an MA in Environment and Business and various energy qualifications. He is responsible for developing a range of renewable energy projects, from planning through to installation. This includes undertaking feasibility studies and investment appraisals, screening and scoping, tendering suppliers and negotiating contracts. James has a particular focus on, and experience in, solar, biomass wood fuel and anaerobic digestion projects.

Prior to working at Carter Jonas, James worked for Yorkshire Water, project managing the research, development and implementation of a variety of low carbon technologies and before this, was a consultant at CO2Sense, an energy specialist at Bradford Environmental Action Trust, and a Project Manager at Creative Environmental Networks.

In his previous roles James has carried out renewable energy feasibility studies for a wide range of public and private sector clients including various London boroughs and West Yorkshire authorities. He has also advised multiple community energy schemes including work funded by the Local Energy Assessment Fund, European Regional Development Fund and Big Lottery. He has managed the due diligence and investment in several anaerobic digestion projects, both farm based and food waste. James. Robinson@carterjonas.co.uk

This presentation was made at the ACES AGM in Edinburgh. It was obviously delivered in November before the Paris Climate Change Conference. Thanks also to Carter Jonas, who sponsored the event.

I am here to talk to you about renewable energy, providing a technical update and looking at potential opportunities moving forward, given the changes that we are experiencing recently. Carter Jonas has 5 specialist energy teams within the UK which provide services ranging from project feasibility and managing contracts, through planning applications, installation and operation, and due diligence and valuation to the banks when projects change hands.

Renewable energy drivers

John has already touched on policies. However, it is important to consider the quality implications because these are what underpin financial incentives and the rationale that the government has adopted for financial incentives that support renewal energy technology. It really began in 2009 with

the Renewable Energy Directive which set the targets that John was speaking about. Those targets are based on renewable energy for electricity, heat and transport, so the requirement for renewable electricity now is 30% as opposed to 15% by 2030. We are unlikely to meet those targets based on current projections, which is a bit of an embarrassment, given the incentive cuts that are happening in the industry at the moment. Saying that, there is still strong policy support and rationale for future incentives pushing it forward. We have carbon reduction commitments as well within the EU. In 2014, the EU Commission announced a new renewable energy target of 27% by 2030, although at present these are not nationally binding targets.

It is important to note that our infrastructure in the UK is ageing and increasingly inadequate to supply our

energy needs. There are current plans, which haven't been formalised yet, to take off the grid the last 10 coal fired power stations by 2023. But that will also mean increasing energy gaps at a time when it is needed. We see a potential big gap looming between periods of peak supply and peak demand, for example when people put the kettle on at half time in rugby matches, the electrical demand will surge and there won't necessarily be enough power. So not only will renewable energy be used to meet that demand, but also increasingly we are looking at battery storage, on the back of solar and wind farms so that that energy is created and released back into the grid at those peak periods of need. Also, demand management techniques, like generators which are located at strategic points across the national grid to meet supply with demand. So all of this really means that

the government and the industry as a whole need to be incentivised to drive the energy supply.

And finally, there is the Paris Climate Change Conference at the end of November – will there be a new global agreement on climate change?

Feed in Tariff (FIT)

The main renewable energy incentive and support mechanism in the UK that I am going to talk to you about today is FIT. FIT is more significant in terms of the number of projects installed and more practical at individual building levels. FIT was introduced in 2010 and it has been radically changed from that time. Essentially it is a mix of Generation Tariff (paid for every unit of energy that is generated by renewable electrical systems) and Export Tariff (paid for each unit exported). FIT is for electrical projects under 5 megawatts (MW), mainly focused on wind, solar, hydro and anaerobic digestion. For any electrical generation that is produced by these systems you get a guaranteed income from the generation power for 20 years from the point when you register the system, which is indexed linked. This was a major incentive that was focused on solar panels that everyone is aware of.

The Generation Tariff varies a lot and to give you an idea of the scale at the moment, there are about 23 different tariffs alone for solar panels, depending on the size of the scheme, what are the specific energy efficiency requirements that are being met by the scheme, and when it is installed. There are about 15 tariffs for the other technologies, so a lot of different tariffs are out there currently for renewable energy systems, which provides a bit of a complication when trying to assess a project. The FIT has reduced over time, so a project now is subject to future reduction when you install. But you will get that guaranteed tariff for the lifetime of the scheme.

There is a consultation, the results of which will be announced at the end of November, which suggests that the government is looking to reduce FITs by up to 87% from January 2016;

for some solar schemes around 15%, 20% for hydro schemes and anywhere in the middle of that range for all the other projects, so there are heavy reductions proposed for FIT and for all future renewable energy projects. The question is whether those tariffs will be implemented in January; there is strong lobbying going on at the moment, but the drive from the government is to remove or reduce these tariffs. This is a big issue for the industry as a whole and the projects that we see coming on-line are being heavily hit by this. It will mean more financially challenging times for renewable energy.

In addition, the consultation considers the reductions in the tariff rates with stricter degression rules, more regular and higher forced reduction in FIT for the first time, and even those proposals to remove FIT entirely in certain levels of Generation Tax. If lots of systems get installed, and the government is proposing to remove FIT entirely, this means that it is very high risk for investors, yourselves, or anyone looking to fund renewable energy projects, so it is not good news for the industry. [Ed - To compensate for most energy technologies getting cheaper as volumes build, to ensure that the support costs decrease over time, the tariffs for new registrants will reduce progressively, through a mechanism called 'degression'.]

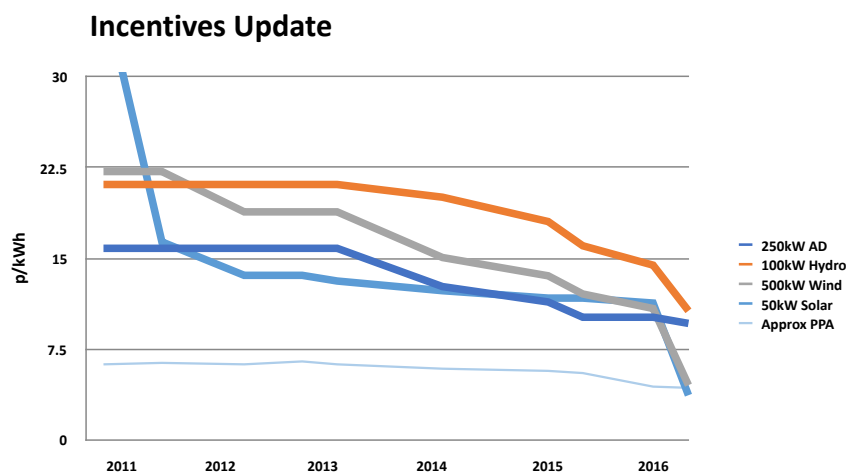
One of the things that has already happened this summer is the removal of Pre-Accreditation. This meant that

a big project could pre-accredit and guarantee a FIT rate prior to actually building out, which is important for hydro, green and anaerobic digestion where there is a long lead-in time. If you are looking to do a hydro project which can take several years to get running, then the actual tariff that you are going to get at the end of it is going to be very reduced, and that again puts investors off.

The graph gives you an idea of the scale of reduction from 2011. The tariff has significantly reduced, particularly for solar, but across the board all the technology has gradually been reducing. The reason for this reduction is primarily that the mechanism is meant to reflect the overall infill capacity in the market - reducing prices and increasing the amount of installations there are in the market. So we supposedly saw high rates which led to lots of people doing renewable energy solar projects, which then meant that the installation price came down so low that it was reflected in massive cuts in the level of tariffs. In recent months this has caused several companies to go out of business due to loss of work.

Renewable Heat Incentive (RHI)

The RHI is the equivalent financial incentive for renewable heat projects. It is very similar to FIT for guaranteeing a sum for 20 years once you have accredited the system, and is indexed linked. It covers technology which



produces heat, such as biomass heat pumps and anaerobic digesters. The rate varies by technology and by infill capacity when you install; there is a degression mechanism in-built within the RHI. Recent change has been the implementation of sustainability measures which if you have a biomass system or an anaerobic digester, your fuel input needs to meet certain minimum sustainability criteria in order to be eligible for this RHI.

Moving forward, there aren't any major complications now to reduce or remove the RHI that you fit, but we do forecast and foresee stricter degression particularly for biomass and potentially for other technologies. It is likely that heat pumps will remain relatively stable, at least in the near future, in terms of their level of support, the reason being that historically, biomass has been built up by relatively good internal investment. RHI is relatively easy to apply to lots of different technologies. However, something like heat pumps, even though they do provide a good internal investment rate (IRR), they are much more building specific. It is hard to implement, you need a stable low temperature heat margin, and a relatively well insulated building.

Renewable Obligations (RO)

ROs are mainly for larger projects and the contracts are different. It was originally for 20 years, up to March 2017. Earlier in the year we saw that RO was going to be closed for solar and wind projects from March 2016, so it is really only going to be valid for off-shore wind, big power stations and waste projects. No investors are going to be able to get projects finalised with locked subsidies unless they are well established through the planning process. ROs work by open market competition with renewable energy suppliers having obligations to meet certain renewable energy generation; then to meet that renewable energy generation they will trade certificates which are provided by regenerators of new energy.

Contracts for Difference (CfD)

CfD is an interesting one, introduced in 2014. Developers bid against competing technologies in a complex annual auction with a fixed budget for a strike price for energy produced from a development. It was intended to replace ROs. However, the government has postponed indefinitely the recent CfD round which was planned for October 2015 and we are not sure whether and when it is going to be continued.

Energy efficiency legislation

Energy efficiency legislation is relevant to public sector surveyors and also relevant to the industry as a whole.

Tenants energy efficiency improvements (domestic)

Tenants have the ability to request energy upgrades from April 2016, which includes all energy efficiency measures as set out under the Green Deal. A landlord can reasonably withhold consent where the measure is not suitable for the property or table a counter proposal.

Minimum energy efficiency standards

For residential and commercial property being let and sold, particularly in the commercial sector, there will be a need for certain minimum levels of energy efficiency. From April 2018 it will be unlawful to let residential commercial properties without an Energy Performance Certificate of above E, so essentially, if you have an inefficient property you need to make it more efficient in order to be able to continue to let that property. The primary drivers are the essential energy efficiency measures of insulation, lighting, heating controls, etc., but renewable energy can play a useful part, particularly in the hardest to treat buildings, in helping them meet those minimum energy efficiency criteria. It will apply to all new lets or re-lets to existing tenants from 2018 and to all let buildings from April 2020. There are fines for non-compliance of up to £5,000.

Exemptions to the standards can apply:

- All cost effective improvements have been undertaken but property remains below E
- An improvement may require 3rd party consent and this is withheld
- Measures are evidenced to project a devaluation of the property by more than 5%.

Energy Savings Opportunity Scheme (ESOS)

From 29 January 2016 it will be mandatory for businesses with over 250 employees to complete an officially approved energy audit every 4 years. There will be fines of up to £5,000 by local authorities for non-compliance; other fines up to £50,000.

Renewable opportunities

So what does this really mean for the renewable energy industry as a whole? For your estate, for your buildings? What do the changing tariffs do to the changing market? How does that reflect for the opportunities that are still there?

Implications - incentives

For solar technology, prices are falling and they have fallen significantly for the last few years. Unfortunately, they have not fallen enough to match the government's proposed cuts, but that is a point of contention which the industry has with government. Based on the proposed cuts, we will not see any large-scale solar happening in the next 6-12 months without any changes to those cuts, or for electrical projects that are still very much in the planning process or underway at the moment.

We at Carter Jonas have seen several of our major projects just cancelled because there is no appetite. Investors do not see there being sufficient term investment and they see them as high risk for these sort of projects. However, roof mounted smaller schemes of 50kW in particular, will continue but at a slower rate, but there are still good opportunities even with the proposed reduction. It is unlikely that we will see the domestic sector having major

renewable energy projects. Ground mounted solar returns will be marginal and higher risk.

Wind farms opportunities have almost been exhausted in England. They are particularly burdened by planning and ministerial statements which have meant that wind is being pushed to the margins, although Scotland is still active. We see an opportunity for single wind turbines, which are still viable above 500kW. For anaerobic digestion, tariffs remain at a very low level; returns remain unattractive unless the heat can be used. Similarly, there are marginal returns for hydro and schemes are very difficult without pre accreditation.

The big push we see in the next 6-12 months is in heat technology. There is still a good market and good return for investment for biomass boilers above 200kW (>6 houses). Heat pumps provide a good opportunity but are heavily site dependent.

Implications – energy efficiency summary

Lighting – generally cheap and easy to install but limited impact

Insulation – large impact but older/solid wall can be expensive (long paybacks)

Heating – potentially large impact and good payback. Replace old/oil systems, replace/install controls.

Implications – renewable opportunities summary

Solar PV - install small systems on suitable roofs; consider larger systems on adjacent land to connect through building supply

Biomass heating - consider stand alone or heat networks to link multiple buildings

Heat Pumps (ground or air) - recommended if building has suitable heat distribution and good insulation.

Example: Biomass Project

- **Building:** 26 bed care home
- **Heating:**
 - Oil boilers
 - Heat demand 315MWh/yr
 - Old boilers at 80% efficiency
 - High heat use throughout year, 394MWh/yr
- **Costs/Income:**
 - £20k/yr cost in fuel, no income
- **Practicalities:**
 - Space for boiler, fuel and access
 - Caretakers used to boiler maintenance
 - Not located in smoke control zone



Example: Biomass Project

- **Heating:**
 - New wood pellet boiler
 - Higher efficiency (90%)
 - Lower heat use, 350MWh/yr
 - Containerised and fully automated
- **Costs/Income:**
 - £2k/yr annual saving on fuel
 - £15k/yr income from RHI
- **Practicalities:**
 - Easy integration with existing system
 - Simple onsite checks with small amount of ongoing maintenance
 - Planning permission easily secured



Example: biomass project

The slides illustrate a project we recently managed for a care home; it might be relevant to some of your estates. We installed a 200kW boiler, replacing an oil heating system. The biomass solution is a containerised pellet system and that resulted in a £2,000 a year annual

saving on fuel, including any increase in maintenance costs, but importantly, getting a £15,000 p.a. income from the RHI. The indicative business case is shown in Table 1. The return could be higher and the payback earlier if you use wood chip.

Table 1: biomass replacement

Typical project cost (200kW scheme)	£150,000
Annual heat use	315,300kWh
Annual income from RHI	£14,700
Annual fuel savings	£3,200
Annual additional maintenance/insurance	£1,000
Total annual income	£17,000
Simple IRR	12%
Simple payback (pre-interest and tax)	8.8 years

Example: solar project

This is a project we are currently managing. We are looking at a 50kWp solar project on the roofs of one of our client's buildings. Table 2 shows that these sort of systems can generate around 45,000kWh of energy in a year and that will, even with the proposed cuts on FIT, still earn almost £2,000 p.a.; but the main incentive is the saving on electricity, by having the ability to offset your electricity costs on the site.

What next?

I conclude with the matters to be considered:

- Grid and/or heat demand – is there a practical way to connect and use energy on your site, what are grid connection costs?
- Practical and suitable space/roof/land – is there available space suitable for the technology, what constraints are there?
- Planning permission/permitted development – will the project be approved on this space, what constraints are there?
- Incentives and regulation – what are current/projected tariffs, are there other regulatory issues (e.g. fuel sustainability)?
- Resource / generation – what resource is there for the technology specific to the site?
- Costs and financial viability – what are the total and projected costs and income based on all of the above?

We do see there being opportunities for renewable energy, particularly in small-scale solar and biomass, but larger projects will not be moving forward unless the government changes its stance.

Example: Solar Project

- **Technology:**
 - 50kWp PV roof mounted
 - Example based on large commercial or agricultural building
 - Approx 350m² space
 - Generates approx 45,000kWh/yr
- **Income:**
 - £4.2k/yr annual saving on electricity
 - £1.7k/yr income from FIT
- **Practicalities:**
 - Roof needs to be structurally sound, south(ish) facing
 - Building meets EPC of at least D
 - Planning permission permitted development (prior notification)



Table 2: solar project

Typical project cost (50kWp)	£48,000
Annual electricity generation	45,000kWh
Annual income from FIT (post January 2016)	£1,700
Annual income/saving from electricity	£4,200
Annual additional maintenance/insurance	£700
Total annual income	£5,200
Simple IRR	10.8%
Simple payback (pre-interest and tax)	9.2 years



LOCAL AUTHORITY RURAL ESTATE ASSET MANAGEMENT PRACTICE: GOOD PRACTICE GUIDANCE - TENANCY REFORM INDUSTRY GROUP

Stephen Morgan MRICS FAAV

Stephen is the Assets Portfolio Manager (Estates) for Wiltshire County Council. He is the Agricultural Asset Management Liaison Officer for ACES and a member of ACES Council.

Stephen outlines the development of this practical advice which is relevant to many rural district councils. Through Stephen, ACES has taken a lead role in this nationally recognised guidance for rural estate asset management planning. The guide can be found on ACES website.

Some of you may remember a draft of a report on local authority rural estate asset management planning guidance was provided in the 2012/13 Winter Terrier. You will recall that the purpose of the report is to signpost elected councillors, senior officers and those with responsibility to review estates to make sure that the full benefits, risks, liabilities and opportunities are carefully considered as part of any rural estate strategic reviews. This is a brief update and summary of how I have developed the guidance note since.

The Food and Farming Review Group published its findings to the Department for the Environment, Food and Rural Affairs (DEFRA) in July 2013 and in its report, it focused on the importance of the local authority rural estate to the agricultural sector at large. It called "to see the farming industry and government working together to produce guidance that illustrates, for the benefit of local authorities, the

advantages and possible returns from such holdings as a way of persuading them to retain or replace their farms." (para 5.25 Future of Farming Review 2013): <https://www.gov.uk/government/publications/future-of-farming-review-2013-report>

The Tenancy Reform Industry Group (TRIG) was then asked by DEFRA to consider the review group's recommendations.

The rural branch is represented on TRIG and for those readers that don't have an interest in rural matters, TRIG is an informal advisory body with an interest in all issues relating to agricultural tenancies (and the laws that govern them) in England and Wales. It meets on an ad hoc basis when government calls on it to provide advice, information and evidence.

TRIG aims to:

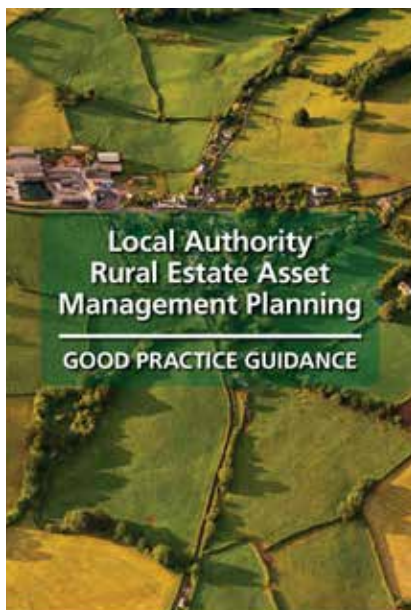
- provide independent expert advice as appropriate and when required by DEFRA; and
- act as a forum to discuss current agriculture tenancy and associated issues, engaging and seeking advice from other experts within the industry where appropriate.

Members of this informal advisory body represent and are nominated by key organisations from across the agriculture industry that have an interest in and/or represent those in the tenanted sector. This includes representatives for tenanted farmers, landlords, agricultural valuers, surveyors, lawyers and local authorities.

As a devolved policy, membership also includes representatives from Wales to ensure coherence of policy and law. The range of organisations includes an independent chair and the National Farmers Union, Tenant Farmers Association, Country Land and Business Association, Royal Institution of Chartered Surveyors, Agricultural Law Association, National Federation of Young Farmers Clubs, Farmers' Union of Wales, Central Agricultural Association of Valuers, Association of Chief Estates Surveyors (ACES), and the Local Government Association.

Good Practice Guidance

After further circulation among the rural branch and the other members of TRIG, there was clear feedback that suggested it needed to be broken down into stages. It was subsequently reviewed and amended to break the process of undertaking a review into 7 key stages.



These are:

1. Baseline Data & Intelligence Gathering – “The Past”
2. Stakeholder Engagement – “What do others think of the ‘The Past’ and what would they like to see in the future?”
3. Alternative Use Potential – “What else could it be used for?”
4. Options Appraisal – “What could it look like?”
5. Stakeholder Consultation (options and policies and buy in) – “What should it look like?”
6. Consolidation, Asset Management Plan Preparation and Adoption – “The Future”
7. Monitor and Review – “Celebrate the benefits of active Asset Management”

The report goes into detail of what needs to be considered for each stage but is not too prescriptive either. This is to reflect the fact that not all estates are the same and the amount of resources put into the review process should be tailored to the size and value of the estate.

The process of review is an essential part of asset management planning. In reviewing rural estates, it is essential

that there is an understanding of the rationale for the existence and the impact it has in both financial and non-financial terms. Best value analysis should underpin everything local authorities do and in respect of “County Farms”, this will involve ensuring that future potential values from development opportunities are properly assessed against achieving capital receipts from disposals in the short term.

Also, the impact on the environment, local communities as well as on the revenue budget, need to be considered and evidenced.

The guidance note is provided to assist and signpost property managers and elected councillors with responsibility for rural estates to:

- a. help understand and capture what benefits their estates provide,
- b. engage and consult with stakeholders; and

- c. assist with striking a fair balance between meeting the needs of the authority they represent or work for (good financial estate management), the socio, economic and environmental needs of their communities and of the general interests of agriculture and its allied industries.

TRIG endorsed the report earlier in 2015 and through the kind sponsorship of the NFU, a digital copy of the ACES document supported by TRIG is now available on the ACES website at <http://www.aces.org.uk/rural-practice-guide/>

The Future of Farming Review group chair, David Fursdon, on reading the report said: “I am delighted that the rural practice branch of ACES has worked with the Tenancy Reform Industry Group and produced this guidance. It sets out a holistic asset management approach which has worked well for a large number of private agricultural estates and should provide a profitable basis of operation for local authorities.”

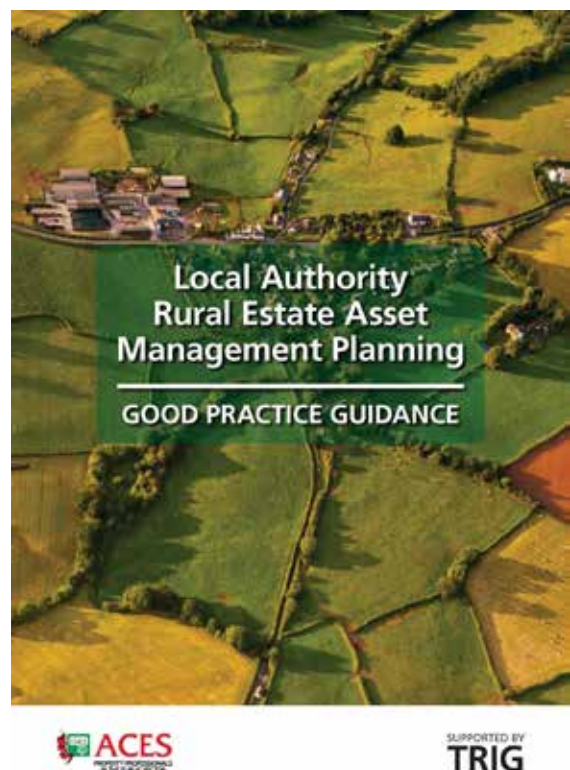
The Council Farms Service – Rationale

Local authorities have over a century of involvement in the agricultural industry through their management of Statutory Smallholdings, now known as Council Farms. The service has a unique role and is a vital niche player in the tenanted sector. The agricultural industry and the countryside are constantly changing, and the service continues to adapt to ensure it sustains the many benefits it provides to the wider community.

Against this background, the Rural Practice Branch of ACES has again updated its rationale. This sets out examples of the many benefits Council Farms Estates can provide through the implementation of good estate management practice.

It provides: -

- A means of entry into farming and/or diversified rural businesses for those who may not otherwise have the opportunity to farm on their own account
- The potential for tenants to establish and develop viable business enterprises, enabling internal progression to larger council farms and/or advancement from the estate to bigger holdings on privately or institutionally owned let estates
- A valuable source of rural employment opportunities on small family farms, often in remote locations
- A tangible means of meeting the aspirations of the young farming community and the agricultural industry
- An opportunity to contribute to the wider economic well-being and development of the countryside, including products for local markets
- A “bank” of potentially surplus development land arising from positive property reviews and estate rationalisations, providing a valuable source of capital for essential estate reinvestment, which assists rural economic regeneration and also contributes funding for the provision of other council services
- A potential land bank source of exception sites for affordable housing projects in rural areas
- A valued council service managed on a dynamic, sound, commercial, business-like basis having regard to the principles of asset management planning and effective performance management
- A direct stake in the countryside for councils enhancing the links between the local farming industry, the rural economy and the wider community through school visits in relation to lifelong learning, open days and guided walks
- An opportunity to implement best practice in rural estate and sustainable countryside management and stewardship: e.g. Environmental Stewardship Schemes, health & safety, and community participation
- A wealth of traditional landscape features such as stonewalls, ditches, hedgerows and farm buildings which are more likely to be retained on small family farms
- The opportunity, in partnership with tenants, for the implementation of positive strategies that address the challenges of climate change (e.g. wind farms and other renewable energy sources), together with sustainable farm management and good husbandry practices
- Encourage and develop community involvement with the rural estate to strengthen the connection between food and farming.



COMMUNITY LAND ADVISORY SERVICE

Editor - Following the release of a press statement concerning the publication of the TRIG document, I was contacted by the Community Land Advisory Service for Wales. A summary of our discussions is published here.

We are really interested to see the recent publication of the Rural Estate Asset Management Planning Guide and we are excited about the references to communities and community involvement. It would be a great opportunity for the Community Land Advisory Service in England, Scotland and Wales to promote its existence to your members, with a follow-up article which taps into the experience of other CLAS officers nationwide.

As a free impartial advice service CLAS would be well placed to support councils with engaging with local community growing networks, developing networks, working with existing tenants on diversifying through community involvement, and for supporting dialogue

between other council departments/officers and elected councillors. Local authority rural and urban estates are a real asset and we wish to support the work of ACES members to achieve not just financial targets from the assets but other socio economic targets.

I think there are quite a few different options for a follow-up article to focus on:

- Meanwhile lease/licence arrangements
- Community Supported Agriculture
- Care farming
- School farms

- Well-being of Future Generations (Wales) Act – places an obligation on Welsh public bodies to consider certain things within all their work <http://thewaleswewant.co.uk/about/well-being-future-generations-wales-act-2015> . What might that mean to the estate of a local authority? Although the legislation is just for Wales, as sustainability is a priority for most local authorities (if not all) then I think it would be relevant to all members.

The advertisement for CLAS is below, which gives website and contact information. An article will follow in a future edition of Terrier.

Do you know a community group who needs assistance on accessing land for community activities?

We are currently supporting local authorities to initiate subletting of farming tenancies and to look at ways to make it easier for communities to use land for community projects.

The Community Land Advisory Service, currently operating in England, Scotland and Wales, is a unique impartial service that works with landowners, public bodies and communities to aid the process of accessing land for community projects in the short and long term. Our work helps combat the lack of land for community gardening and associated green space activities. Our Advisors are experienced property practitioners with backgrounds in disciplines including surveying and planning. We help provide technical advice on lease and licence agreements and town and country planning issues.



Community Land
Advisory Service
Gwasanaeth Cyngtori
Ar Dir Cymunedol



Launching the service in Wales in 2013 the Big Lottery Fund Director stated:

"This award helps demonstrate the Big Lottery Fund's commitment to helping combat climate change. The funding will help empower people to grow their own food which will not only help boost community spirit but also increase skills and sustainability."

CLAS Cymru is now working to support 250 growing projects, having already helped over 100 projects get going, just in Wales. CLAS is managed nationwide by the Federation of City Farms and Community Gardens who have been supporting communities to create and nurture green spaces across the UK since 1980.

Please take a look at our website for more information <http://www.communitylandadvice.org.uk/> where numerous guidance and template documents are provided for both landowners and community growers.

If you would like to talk to us about how the CLAS service might help your local authority or a community group, please contact lucie@communitylandadvice.org.uk



Huub outlines the results of a recent survey of local authorities concerning housing companies.

COUNCILS SETTING UP HOUSING COMPANIES – A SURVEY

Huub Nieuwstadt

Huub was promoted to his current position in May 2014, taking lead responsibility for 3Fox research projects. He had joined as a researcher for the Sitematch London programme in August 2012. Huub graduated from Leiden University in the Netherlands in 2008 and worked initially at the District Law Court of Rotterdam and later at a law firm. huub@3foxinternational.com

Introduction

With central government funding reducing, local authorities are looking for new and innovative ways to generate an income to fund council services. One method that is currently on the agenda for public debate is setting up a council-owned private housing company. This practice has recently been the subject of some controversy, as housing minister Brandon Lewis stated that these companies cannot interfere with right to buy rules – probably one of the reasons some councils have set up a company in the first place.

While this topic is very much at the centre of public debate, 3Fox International is keen to find out the extent of interest among local authorities to set up a housing company. To do this, a survey was conducted of local authorities. This article outlines the survey and how it was structured and the analysis of the results. The outcomes were considered at a workshop organised by 3Fox International on 17 June.

The survey and methodology

The survey was conducted in mid-April 2015. 311 single tier and lower tier

authorities were approached, out of a total of 326 authorities. County councils were not contacted. A way to contact these councils would have been through a Freedom Of Information (FOI) request, but for reasons described below, we opted not to go down this road.

The councils that were contacted were initially approached through a generic information or enquiries email, for example: enquiries@councilname.gov.uk. The email included 4 questions:

1. Has your local authority set up a housing company to deliver new homes?
2. If not, is it contemplating setting one up?
3. If the answer to (1) or (2) is yes, what is the priority objective of the company? (delete as appropriate):
 - a. generating revenue
 - b. providing long-term housing solutions
 - c. providing short-term emergency housing
 - d. other (please specify).

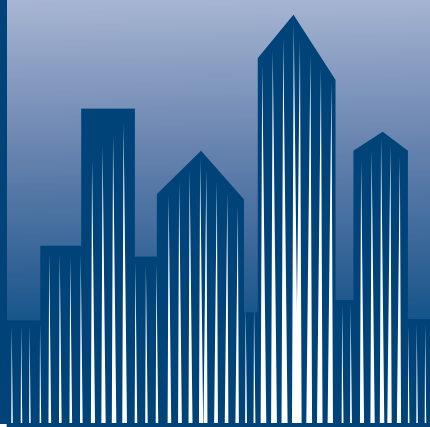
4. If the answer to (1) or (2) is yes, has your council contracted the services of any private sector organisations to help set up the company? If so who, and for what services?

The reason for avoiding FOI requests is that we wanted to undertake a secondary research objective: assessing the method and speed at which local authorities respond to general enquiries like this. This subject will not be discussed in this report as it is not relevant to the topic at hand, but outcomes for this can be found in a future blog post on the 3Fox International website.

Councils that did not respond to the initial email were sent reminder emails on several occasions. As well as using generic email addresses, we also sent the survey to a senior officer at the council (eg head of housing, director of housing). We sent the survey to senior officers at 207 councils, to cross reference responses obtained through contacting the generic email addresses, as well as increasing the pool of participants, so as to increase the probability of receiving a response from a council.

Senior officers were reminded on a number of occasions to respond if they

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had not done so. If a response came in through the generic information email, we would ask the senior officer to confirm that information and provide a few more details.

In total, we received responses from 112 councils, out of a total of 311 requests; a response rate of over a third. As mentioned earlier there are 326 authorities. If we are to assume that the 112 responses are representative of all 326 authorities we would have to take into account a 7.5% margin of error. That particular margin assumes a 95% confidence level in its accuracy. In other words, we assume 95% of participants' responses fall within the margin of error.

Outcomes

This section presents and disseminates the outcomes of the survey. These will be presented question by question: the outcomes and some accompanying thoughts.

1. Has your local authority set up a housing company?

Of the 4 questions, this is seemingly the most straightforward – either a company has been set up or it has not. However, there is a bit of leeway in terms of how a company is structured and defined, as for example an ALMO (arm's length management organisation) would not qualify as a housing company because of the non-profit component. For the purposes of the survey, a company is qualified as a wholly or partially council-owned for-profit company.

Of the 112 councils approached, 14 said that they had set up a housing company, or 12.5% of local authorities. One response stated that a company had been set up, but subsequently closed again. One of the 14 respondents stated a company had been set up, the purpose of which still needed to be determined but could possibly be housing. Interestingly, one council responded that it had set up a company in collaboration with another local authority and a local registered provider. A number of councils indicated they had considered the

option, but after weighing up the pros and cons had rejected the idea.

2. Is your local authority contemplating setting up a housing company?

This question is more open to interpretation: what does 'to contemplate' mean? There are different responses indicating different stages in the process that leads up to setting up a company. For the purposes of this research we have interpreted 'to contemplate'; in the broadest possible way. What we want to know is if a council has even entertained the possibility of setting up a company, as this indicates a (admittedly minor) level of engagement with the topic. It can be formulated as a negative argument: if a council does not outright reject the option of setting up a company it is at least contemplating the possibility.

38 councils indicated that they had contemplated setting up a company, or 34% of local authorities. Two of the respondents indicated that they are currently in the process of setting up a company. Others had already contracted a consultant (law firm, accountant, etc.) to assess and review the options. Some councils mentioned that there were just exploring their options through initial and internal conversations. One council had already set up a not-for-profit ALMO, but was looking instead to set up a for-profit company.

It is worth looking at the geographical distribution of councils. With the limited number of councils that have set up a company, the geographical spread is quite random. But since the number of councils that are contemplating setting up a company is larger, mapping these reveals a few trends. The red dots on the map show the locations of local authorities that have indicated that they are contemplating setting up a housing company.

The map reveals some interesting trends. Perhaps unsurprisingly there is a large cluster in and around the M25, as well as along the south east coast. Next, there is a cluster in the Midlands, and another smaller one in the North of

Location of councils contemplating a housing company



England. It is beyond the scope of this report to explore the reasons behind the geographical distribution.

3. What is the priority objective of the company?

The next question was to get an idea of why local authorities set up housing companies. Participants were given 3 choices: generate revenue, provide long-term housing solutions, or short-term housing relief, as well as an 'other' category for those objectives that do not fall under the 3 choices. Participants had the option of choosing multiple options.

An overwhelming majority selected long-term housing solutions: no less than 32 councils indicated this to be a priority objective of their (proposed) company. With the housing shortage being one of the main issues in the UK today, this should come as no surprise.

Generating revenue was said to be a key priority of 18 councils. Again, not surprising as councils are looking to other streams of income, with government grants and funding reducing. The revenue from the housing company would be reinvested into council services.

Finally, short term solutions to provide immediate relief to a housing shortage is less of a priority for councils: only 8 respondents indicated this to be a key priority.

Only 2 local authorities provided an alternative priority, and interestingly both had the same objective: boosting the local economy.

4. Are any private sector companies involved?

Setting up a housing company comes with specific challenges: what are the legal implications? How should the financial side be structured? How should the business side be run? These are just some of the issues, and to address these, councils might contract the services of consultants, including law firms, accountants and property consultants.

Out of the local authorities that had already set up a company, only 2 claimed not to have made use of an external adviser; 9 councils that are contemplating setting up a company have already contracted a consultant.

Developing councils: a SocInvest masterclass

On 17 June 2015, 3Fox International organised a masterclass on the topic of councils setting up housing companies. Senior officers from 3 local authorities that had set up a housing company presented a case study of each council's company. These officers were: David Baptiste, Head of Housing Development at Ealing, John East, Director of Place Commissioning at Newham, and Andrew Sivess, Group Manager for Housing and Investment at Barking and Dagenham.

The other speakers at the workshop were Robert Beiley, Partner at law firm Trowers & Hamlins, Michael Hill, New Business Director at housebuilder Countryside, and Stephen Armitage, Head of Public Sector at Lambert Smith Hampton. Armitage hosted a workshop that had delegates discuss the main challenges local authorities face when tackling the housing shortage in their areas.

How do the outcomes of this survey fit in with the lessons delegates learned at the workshop? The survey question that ties in the closest with the workshop is the one about the priority objectives

of the council and how this shaped the companies at Barking and Dagenham, Ealing and Newham. The outcomes of the survey indicate that providing long-term housing solutions and generating revenue are the most important factors driving the creation of a council-owned housing company. And this indeed turned out to be the case.

For the London Borough of Ealing, providing long term housing solutions, specifically affordable homes, was one of the key objectives of the company. Baptiste explained: "What we really are about is 'affordable' housing in its widest sense – not just the vague definitions of that, but dealing with the real business of what people can afford in this area. We're working hard to craft opportunities for homebuyers that are genuine, taking incomes into account and linking that into Ealing as a place to live."

As the survey indicated, generating revenue is an important aspect, as is evident in Red Door Ventures, the housing company owned by Newham Council. John East explained that easing pressure on the housing market and generating revenue are both key objectives for the company: "We have the top 5 overcrowded wards in England and I think we are officially the densest borough in the UK. That probably explains some of the extreme pressures."

East said the authority's experience of acting as developer to address some of these issues led to the thought process behind the housing company, as long ago as 2011. He went on to set out the objectives for Red Door Venture, saying: "The intentions of the company are to increase the amount of housing as supply from housing associations declines and for us to manage the risks. But most importantly it's for us to secure the rewards. What we want is that once we start generating profit, that money can be piled back into the borough."

Concluding remarks

Our survey emphasises that setting up a housing company is currently very much a hot topic for councils.

A significant proportion of local authorities are considering doing so, are already in the process, or have done so. But with Housing Minister Brandon Lewis indicating government plans to limit council-owned housing companies circumventing right to buy rules, the issue is looking to be on the public agenda.

With the housing market coming under increasing pressure, providing long-term housing solutions is a key priority of many (planned) housing companies. Generating streams of income is an important secondary objective and at times even the main priority for certain local authorities. This was reflected in the approach of the local authorities presenting case studies. With all the attention council-owned housing companies are receiving, and with a significant proportion of councils considering the possibility of setting one up, these companies look like they are here to stay.

Ed - there follows 2 case studies of local authority companies.



FILLING THE FUNDING GAP WITH A HOUSING COMPANY – THE ROAD TO ERMINE STREET

Duncan Vessey BA (Hons) MCIH



Duncan is New Business Initiatives Manager with South Cambridgeshire District Council. He has over 30 years' experience in social housing, having worked in the London Boroughs of Enfield and Islington, Peterborough City Council and Cross Keys Homes. After a spell consulting, promoting change and service improvement, including with South Cambs, Duncan has successfully managed and developed the Ermine Street Housing project. In addition to a career in housing, Duncan also runs a successful microbrewery.

Duncan presented South Cambridgeshire's experiences at the summer meeting of ACES Eastern Branch. He describes the background to and development of a housing company, including the financial issues to resolve. Duncan delayed writing the article until an important council decision was taken in November 2015.

Background

Faced with cuts to its Revenue Support Grant, South Cambridgeshire District Council decided to create a housing company called South Cambs Limited, providing an income stream to protect services. The housing company was to purchase homes on the open market and rent them in the market rented sector, with aims to provide an income stream, an investment opportunity and the likelihood that appreciating values could be realised at anytime in the future to generate a capital gain.

The idea stemmed from the Housing Revenue Account self-financing settlement and the possibility of providing surplus funding for investment opportunities and embryonic ideas to develop a stand-alone investment vehicle to deliver funding streams. However, the idea

developed with the realisation that the company could support the General Fund financially.

In 2013 the council decided to adopt a pilot project to approve £7m of funding to a housing company on a secured basis from prudential borrowing in line with individual investment appraisals being developed before property acquisitions are made. The pilot project was approved to test the concept and analyse the market conditions, and £7m was allocated in order to acquire a small property portfolio for market rental purposes.

Hometrack provide unique housing market intelligence and evidence from which the council could gauge commercial risk, return on investment and rent yields. They were commissioned to provide post code intelligence of the local housing market in 2014 and the council has continued to track the trends to gain market intelligence from which to base future commercial decisions.

The local economy and objectives

In South Cambridgeshire there is a buoyant local economy and the demand is particularly for high-

quality rented housing. For example, a significant number of businesses in South Cambridgeshire are science based and have high turnover of specialist staff working on 1-3 year contracts. There is currently a shortage of suitable accommodation to meet the housing needs of this flexible workforce. The identification of potential strategic development sites in addition to the site at Northstowe [Ed – a proposed large new housing development near Cambridge] could provide an opportunity to develop on the scale that would be required and as a result it may be possible to attract some Build to Rent funding.

So in short South Cambs Limited could enable the council to meet a number of objectives which include:

- Generate a revenue stream that will enable the council to continue to deliver its services at a time of reducing government grant
- Assist economic development in the district by helping to provide good quality, flexible rental housing for the many local businesses that have workforces with a high turnover of staff
- Innovative solutions to assist

meeting housing need and gaps in the housing market, particularly those people that are unlikely to be granted an affordable housing tenancy or who do not wish to join the housing register, but are finding it difficult to buy a house or finding it difficult to rent in the private rented sector

- Place leadership - supporting community development by investing in the local district and working alongside other private and public sector bodies.

Using its experience as a stock-holding authority, the council had the opportunity to develop a unique housing management service to private owners and other institutional owners of property.

The initial funding proposal was that the capital required to acquire the properties would be by the use of prudential borrowing from the Public Works Loan Board (PWLb) at competitive rates, or raised by a bond issue, or use the Council's reserves.

Company development

It was originally intended that the pilot scheme should focus on acquiring properties in the South Cambridgeshire district. However, the council agreed that the company could consider expanding its operation in the future outside the district boundary into neighbouring areas where this supports the business case and is backed up by market intelligence.

In December 2013 the Defence Infrastructure Organisation (DIO), part of the Ministry of Defence, approached the council and asked if it was interested in managing a small estate of 28 homes in Waterbeach. Previously the homes had been occupied by service personnel, but it was anticipated that the DIO did not have need for the dwellings for a period of at least 5 years, and was seeking a guaranteed return on its assets for this period.

It was considered an ideal opportunity for South Cambs Limited to take the lead and commence negotiations with

the DIO and take a 5 year lease on the dwellings at a fixed lease premium. More importantly, the company would gain experience to manage dwellings in the private rented sector and be responsible for letting, managing and undertaking responsive, cyclical, major and void repairs in respect of the dwellings for the lease period. This project was considered an appropriate pilot for South Cambs Limited, as it represented a relatively low value/ low risk initial project. Furthermore, it would test the viability for the company to make a rate of return and general surpluses for the council.

During the summer of 2014 it became apparent via market research that the proposal to purchase and rent at the market levels indicated was going to be financially challenging in terms of viability. House prices continued to rise in the quarters 1 and 2 of 2014-2015, and were outstripping the associated market rental values and therefore the business model needed to be reappraised, allowing the pilot to proceed and be financially viable.

Business modelling analysis concluded that the acquisition of properties would only be feasible if the council provided an equity investment stake, of say 45%, into the property to buy, with the company funding the remainder of the purchase price by borrowing from the council. The properties were then marketed and let at market rents, allowing the company enough headroom to repay the loan with interest, and generate a working surplus.

As a variation on this business model, consideration was given to the option for property to be acquired, let for a period of up to 5 years, and then sold on, in order to realise the capital appreciation of the asset. The uplift in value could be shared between South Cambs Limited and the council because of the council's financial interest in the company at up to 45% of the value of the assets sold.

This option was financially viable (albeit more vulnerable to market conditions), and was the recommended route forward for property purchase during the



pilot phase, alongside the longer term purchase of any individual properties which demonstrate viability in their own right using 100% loan finance.

Risk

Risk management has been managed by incorporating a full risk log before any commercial activity commenced, noting that the bulk of the funding will be used to purchase properties which could be re-sold if required, paying off the associated debt.

The management of risk is critical to the success of the company and along with the funding strategy and the governance arrangements, will form a key part of the business plan to be drawn up. Risks will include financial, reputational and political elements, as well as the performance of the economy and competition from other businesses.

During the course of the pilot South Cambs Limited decided to adopt the trading name of Ermine Street Housing. Ermine Street is the Roman road that runs through the South Cambs district on its way from London to York.

In November 2015, the results of the pilot were reported back to the Cabinet with a range of recommendations, ranging from winding up the company and selling the assets, standing still or business expansion. Cabinet decided on the business expansion option, having examined the business case showing the success of the pilot and accepting the business plan for expansion. This was later endorsed by full Council, and the decision was made to invest £100m over the next 5 years, acquiring upwards of 500 additional properties.



PROPERTY INITIATIVES

Kevin Clark BSc MRICS

Kevin is Head of Property Services at the Borough of Broxbourne.

Kevin also kindly agreed to write an article for Terrier after presenting Broxbourne's experiences at a meeting of ACES Eastern Branch. It points out the practical challenges of how to make a success of establishing and running a company.

Your task, should you choose to accept it, is to achieve increases in revenue to the council to the tune of £600,000 p.a. over the next 18 months ... this report will self-destruct in 60 seconds....

Background

In common with all other local authorities Broxbourne has found itself subjected to major cuts in grant allocations. At the time of writing we are still awaiting the effects of the Autumn Statement and how things will change on the business rates front, but we assume it will not be getting any easier. Millions have already been trimmed off budgets and services but more is still required.

Back in 2013 the Borough's then Leader, and the Interim Chief Executive, decided that it would be a good idea to form a Special Purpose Vehicle (SPV) principally, at that point, to invest in and maybe develop, residential property, which could then be let on a Private Rented Sector (PRS) model without the council actually being the owner of the property. The council had previously transferred its housing stock to the local housing association so it now held no council housing.

The actual creation of the SPV, setting up its terms of reference, deciding on Board members etc. took some

time and it was finally incorporated on 1 April 2014 and named Badger BC Investments Ltd. The council is the only shareholder. Five Directors were appointed, being 3 senior officers of the council and 2 elected members. A loan agreement was set up between the council and Badger, as Badger had no capital or indeed staff, whereby the council would loan money to the company at a prescribed rate over a set period of time. Once this facility was in place, the Property Section of the council was tasked, on behalf of Badger, with identifying and acquiring residential property within the borough. Staff time spent on working for the SPV was to be charged back at the end of the year and could therefore also be capitalised and present a further saving on revenue streams for the council.

Challenges and solutions

Sounds easy, but problems were encountered from Day One when competing in the market for suitable properties. A simple financial model had been set up to include the parameters set by Badger, showing how any property acquired should perform. In essence the rental that could be achieved from the property needed to be sufficient to cover all costs identified in the first year and generate a small profit. This included items such as covering the loan on the purchase price of the property PLUS all the other costs incurred during the acquisition process, including legal fees, stamp duty, survey costs etc. It also had to include any annual service charges relating to the property, any management fees to be incurred, the insurance fees and any other costs required to bring the

property up to standard and also gain all necessary certification, and consents required to be able to let within the private sector. An allowance was made for voids. Essentially, this was working out to be a loan of about 106% of the value of the property being covered by the annual letting fee.

It was found that in order to make the properties work (i.e. "wash their own face") Badger was not able to compete in the market, therefore the directors and officers had to look at a change in the strategy.

This was achieved by re-examining the loan arrangement being promoted by the council and seeking the necessary authority to lower the interest rate, without falling foul of any State Aid issues. This in fact was a decision delegated to the Director of Finance (DoF) as the initial approvals for the loan rate had been set between a cap and a collar rate to be varied at the discretion of the DoF. This simple action enabled Badger to be more competitive in the market.

Badger was still having problems looking locally and so the breadth of the search area was extended to neighbouring counties. Badger was soon able to complete its first 3 acquisitions in Hertford, Hoddesdon and Broxbourne.

At around the same time an additional initiative was introduced to look at increasing the commercial investment portfolio the council already owned and managed, as a way to offset cuts by increasing revenue.

A pilot fund of £5m was set up for

acquisition. Base criteria were agreed which included a minimum return of 6% net initial yield, 5% if there was exceptional growth potential or solidity of covenant, single lets, (i.e. not multiple occupancy if possible), low managements costs, and good tenant strength. Sound due diligence reports were prepared covering legal, structural and valuation aspects.

The search was on and the council wasn't too fussy about locations (i.e. didn't have to be local) as long as the potential acquisitions met the criteria.

The council's first acquisition in fact ended up being a site let to the government in an industrial park in Bangor, North Wales! Other deals have been closer to home but so far the council has acquired investments in Hertford, Norwich, Raynham Kent, and High Wycombe, with a property due to complete late December 2015 in Burnt Oak, Edgware. The council has also investigated and dismissed opportunities in Ware, Cornwall, Milton Keynes, York and quite a few others.

The success of the first 3 deals led to an increase in the budget to £15m overall.

It transpired, however that the council was being hamstrung, in certain instances, from picking up ripe off-market properties due to the existence above the shops of residential properties let on assured shorthold tenancies. This aspect made the investments non-starters for the council.

However, why couldn't Badger acquire the properties? Well they could of course. A few tweaks in Badger's set

up, such as registering for VAT, were required but it was agreed that Badger should invest in the mixed commercial residential market. As well as increasing the residential stock, the rental income from the commercial units was seen as a good filler to bolster Badger's income and offset any early potential losses from the residential properties if they proved hard to let.

The first successful purchase on this basis was made in Palmers Green in London and Badger has subsequently purchased another property in Newbury Berkshire.

To enable this, of course, the facility available to Badger had to be increased and in September 2015 authority was granted to allocate £20m overall to the acquisition fund, which could be utilised either by the council acting on its own or as loans to Badger, to enable the company to acquire property, or indeed develop property.

Development potential

The council does not have a great deal of surplus land but it had identified 3 sites that had potential for residential development. This meant that the council had 2 options in reality; sell the property on the open market, or dispose of the sites to Badger. The decision was made to appoint independent valuers for the sites to carry out valuations and dispose of the sites to Badger, which would then carry out the development of residential property, to be let in the private market. It is anticipated that 13 properties (a mixture of flats and houses) will be developed in this way. Again we have sought to ensure that we avoid s123

and State Aid conundrums in reaching these deals.

The process has been devised to increase the revenue income to the council from its capital money, present the council with manageable new stock which could bring about capital growth and rental growth in the future, and not burden the council with assets that could become unsaleable in the future.

So has it been successful?

The additional assets so far acquired by the council have totalled around £9m and have increased the revenue income to the council by around £620,000 p.a.

The assets acquired by Badger have meant an increase in revenue to the council of around £200,000 p.a. in interest payments on the loans. Additionally, Badger is currently running at a small profit on its dealings.

So yes all in all the 2 initiatives have so far been successful. The jury is still out in respect of the development arm of Badger but indications are that a profit should also be turned on these when completed and occupied.

Since starting the acquisitions, we have found increased competition in the market and finding off-market deals is becoming harder; we are again finding ourselves being squeezed out of the market and we are therefore taking a rest before re-entering to see if the picture improves again next year, but up to this point, Mission Accomplished. [Ed – the Presidential Conference included a useful workshop on creating income producing investment vehicles – see Asset Salford 2015].

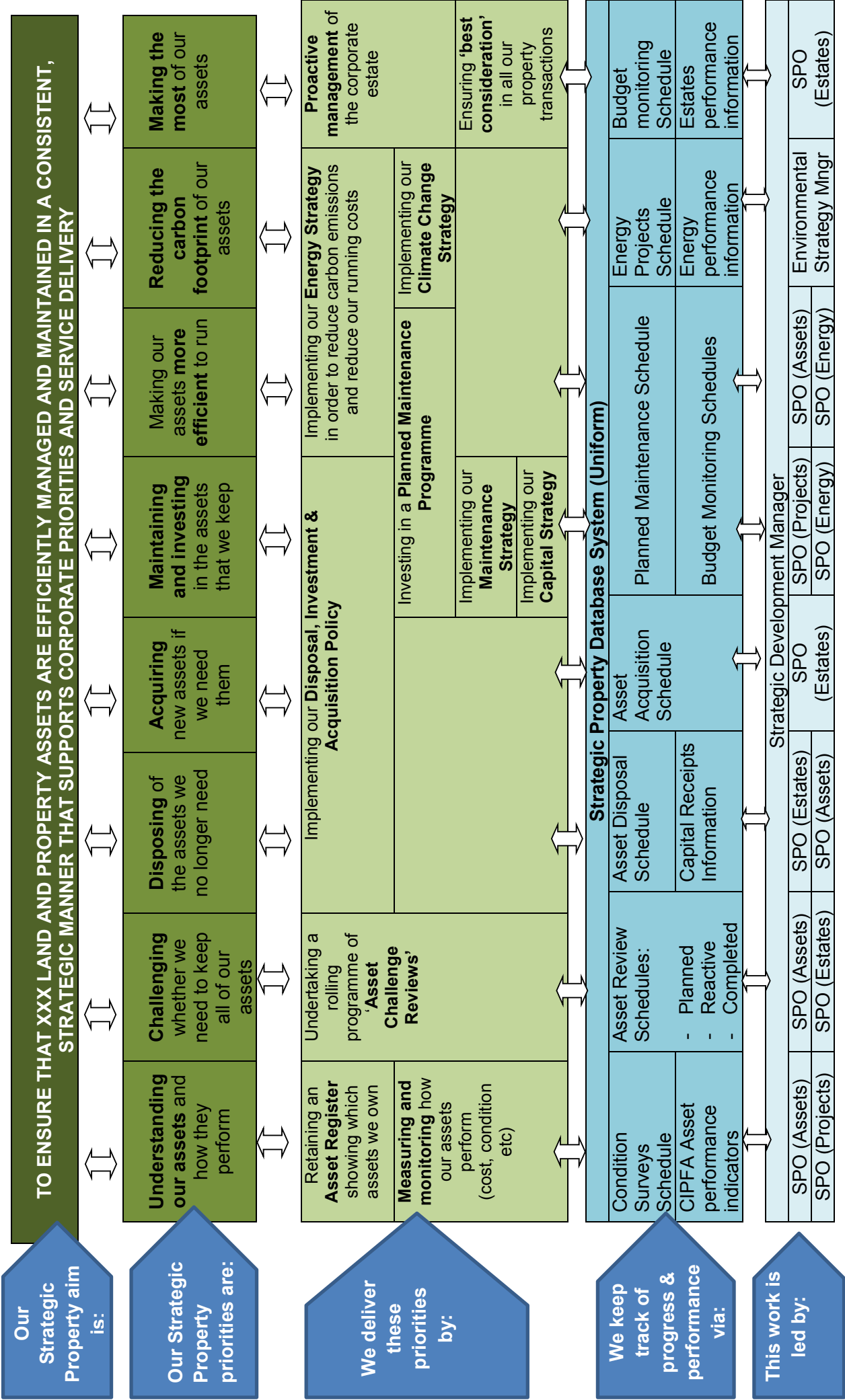
STRATEGIC PROPERTY – PLAN ON A PAGE

Nigel Thompson

I came across Harrogate Borough Council's 'Plan on a Page' through the CIPFA AMP Network and thought that it is a useful summary of one council's strategic property remit. Nigel Thompson, Strategic Officer (Assets) at Harrogate Borough Council is happy that it is reproduced in the Terrier. It appears on the next page.

STRATEGIC PROPERTY – PLAN ON A PAGE

The Council’s strategic property remit is undertaken by officers in the Strategic Development team (within Planning and Development) and is overseen by a corporate Strategic Property Board. This document summarises how strategic property work is prioritised, managed and monitored within XXX.





THE HOUSING AND PLANNING BILL

Caroline Bywater

Caroline is a senior associate in the Mills & Reeve real estate group and specialises in planning law. Her work involves a wide range of planning related issues from considering planning applications and drafting s106 agreements to dealing with appeals to the Planning Inspectorate or in the High Court. Caroline also provides planning related support to colleagues in other teams within the firm. Caroline has experience acting for local authority, public sector, and landowner/developer clients. Caroline.Bywater@Mills-Reeve.com

Caroline distils the contents of this important Bill, much of which is of significance to estate surveyors. However, there are lots of questions not answered in the Bill and the devil could be in the detail awaited.

Much of what is currently found in the Housing and Planning Bill will be of little surprise to those who have followed ministerial statements and government publications relating to housing need over recent months. The Bill, published on 13 October 2015, contains a number of measures aimed at increasing house building, including by making a series of changes to the planning system, and follows up on government targets to secure 1 million new homes by 2020.

In many parts, the Bill lacks much in the way of detail and so we must use our crystal ball to anticipate precisely how the measures will look when they come forward.

This article sets out a number of the proposed measures which are currently making their way through Parliament. Those measures not mentioned further

here include crackdowns on rogue landlords and letting agents and the recovery of abandoned premises.

Permission in principle

Permission in principle was expected to be the centre piece of the Bill, but even with much still to be revealed, many have been left questioning its purpose. In the lead-up to the Bill, we were told it will improve access to finance for development schemes at an earlier stage and speed up the planning process.

So far we know that a development order may enable permission in principle to be granted automatically for certain housing sites allocated in local plans, neighbourhood plans and on a particular part of the statutory brownfield register. At this stage, no size limits have been given for these sites, but the exclusion of mixed use schemes will naturally limit its application. Further limitations are expected in the forthcoming regulations to address matters such as Environmental Impact Assessment (EIA). In addition, we are told this power will not have retrospective effect and will only apply to future plans etc.

We also know that local planning authorities (LPAs) may be empowered to grant permission in principle in response to an application. At present these applications are expected to be limited to sites for fewer than 10 units.

Technical details approval will need to be obtained following permission in principle, which we guess will be similar to the prior approval process for certain permitted development (PD) rights (albeit more complicated). It is at this stage we expect conditions, planning obligations and Community Infrastructure Levy (CIL) to be imposed. The Bill's explanatory notes tell us, in the graphic below, that:

Some planners we have spoken with have said they struggle to identify the distinction intended between permission in principle and a site allocation, and struggle to see how this new route may lead to a quicker process overall. Some land buyers have told us it is unlikely they would acquire sites with the benefit of permission in principle, instead waiting for a full understanding of the detailed mix, site infrastructure requirements and any constraints arising from site



assessments. Others have raised concerns about the level of public participation in the process. A primary point yet to be resolved is the timing and process for undertaking necessary assessments, including EIA. With these reactions, it is difficult to see how funders will take anything other than a cautious view.

It is hopeful that the government will give a further steer on its thinking in the near future, including as to the proposed duration of a permission in principle.

Starter homes

The Conservative manifesto contained a commitment to build more homes that people can afford, including 200,000 “starter homes” by 2020. These starter homes are now provided for in the Bill.

Starter Homes are defined in the Bill as new dwellings which will only be available for qualifying first-time buyers, sold at a discount of 20% of the market value and less than the price cap. These caps are initially set at £250,000 outside London and £450,000 in London. Qualifying first-time buyers are first-time buyers under the age of 40, although regulations can add additional requirements.

The proposed duty to promote the delivery of starter homes and secure their delivery in all suitable ‘reasonably-sized’ housing developments will put those dwellings in a special category – ahead of affordable housing. So the first question to be answered is whether starter homes are intended to replace affordable housing, or supplement it. They would not currently fall within the National Planning Policy Framework (NPPF) definition of affordable housing if there is no way in which the units could be retained as affordable in perpetuity – early indications are that they could be sold at full market value after 5 years, but the Bill is silent on detail in this regard – but proposed amendments to the NPPF would sort that out.

There is widespread concern that, while ‘Generation Buy’ may sound like an attractive proposal, the provision of starter homes may be at the expense of the sub-market rented sector. Due to the higher return likely to be available for

developers providing starter homes as opposed to current forms of affordable housing (where the returns are typically 60-70% of market value, rather than 80%), as well as the proposed extension of the right to buy, if starter homes can meet developer obligations to provide affordable housing there could be a real impact on the delivery of traditional tenures. The time-limited nature of the 20% discount will also cause concern for lenders, who will need to consider how to value the property.

The Bill sets out an obligation to have regard to guidance which perhaps, as elsewhere, will become an obligation to follow that guidance unless material considerations suggest otherwise. Add to that the proposal that development plan policies may be “disapplied” where they work against starter homes and local planning authorities have not met their statutory duty – and you can see that the government intends this proposal to have real impact.

The transitional provisions are notable by their absence at the moment. We assume that the duty will not apply to outline consents already granted at the relevant date – but what of applications in the system and not determined? Will applicants prefer to wait for the duty to take effect and recast their offer? And what will be the effect on s73 permissions? [Town & Country Planning Act 1990, relating to a subsequent permission not to comply with conditions attached to a previous planning permission]. Earlier announcements suggested that starter homes would not be subject to s106 or CIL liability, in order to encourage their provision. The position on this is not set out in the Bill.

Self-build and custom housebuilding

The Bill expands on the Self-Build and Custom Housebuilding Act 2015 and introduces a duty on LPAs to provide planning consent to meet demand for self- and custom housebuilding.

The Bill requires LPAs to ensure ‘sufficient’ serviced plots with planning consent are available to meet demand in their area each year, such demand being evidenced by new entries to the register of qualifying

people wanting self-build plots – this is the register provided for under the Self-Build and Custom Housebuilding Act 2015 (when the relevant provisions come into force). [Ed – see 2015 Autumn Terrier].

The planning consent which satisfies the duty could be a permission in principle, or a planning permission in the traditional sense. Serviced plots are defined as having a connection to a public highway, electricity, water and waste water, or where such connections could be provided in a specified period or in specified circumstances.

The terms ‘self-build’ and ‘custom housebuilding’ are defined with a view to excluding commercial housebuilders.

The Bill does not mention whether such properties would be subject to s106 or CIL liability. The CIL Regulations currently provide for an exemption from CIL for self-build housing, but this is not automatically applicable and those wishing to benefit must apply (and await a decision) before commencing their build.

A LPA can apply to the Secretary of State for an exemption from the need to provide self-build plots – we will need to wait until we have regulations on this point to see what circumstances might lead to being successful on an application of this nature.

Permitted development rights

The government announced in October, along with the introduction of the Bill, its intention to introduce PD rights for the demolition of office blocks and construction of houses. We would expect the exercise of those rights to be subject to a comprehensive prior approval process (similar to that which currently operates for changes of use).

Currently, where operational development is to be carried out using PD rights, the LPA’s prior approval can be required only in relation to matters of design and external appearance. Section 104 of the Housing Bill expands the scope of the prior approval process for operational development, thereby paving the way for significantly more substantial

development to be permitted under the PD regime.

Designation of local planning authorities and local plan preparation

As part of the government's drive to speed up the planning process, the Bill proposes to broaden both the circumstances in which a local authority may be designated and the consequences of designation.

Under the current rules, a local authority may be designated only in relation to applications for major development. The Bill would enable designation of LPAs based on their performance in determining categories of planning applications (to be specified in regulations), which may include those for non-major development.

Once an authority is designated, the Bill would enable the specified categories of applications to be made directly to the Secretary of State, although regulations may provide that a designated authority should still determine certain types of applications.

Aside from this designation process, the Bill also includes wide powers for the Secretary of State or Mayor of London to intervene in the plan-making process if he does not think that an authority is doing what is necessary to prepare, revise or adopt a development plan document.

The Secretary of State is also to be given powers to direct an inspector to take specific procedural steps, hear specified persons, consider specified matters or not take a particular step during the examination of a local plan. These proposed powers are already giving significant cause for concern over a loss of impartiality in local plan preparation.

Determination of planning applications

The Bill seeks to increase transparency in the determination of planning applications. It provides that planning officers' reports to committee must contain information about the financial benefits of proposed development which would accrue to the authority or

certain third parties. The benefits to be reported include governmental grants and CIL receipts, and the officer's report would need to state whether the officer considers each benefit to be material.

Regulations to come forward in due course may limit the financial benefits to be reported by reference to value, and different provisions may apply to different kinds of LPAs or types of development. Officers will be aware that the Town & Country Planning Act 1990 already requires "any local finance considerations so far as material to the application" to be taken into account.

Compulsory purchase reform

The Bill extends certain compulsory purchase powers, previously limited to only some acquiring authorities, to all acquiring authorities. A general power to enter and survey is introduced, and the power to override easements and other rights will be extended.

Currently, an acquiring authority need not take possession on the date in the notice of entry (NOE), which can cause the occupier uncertainty, not least because compensation only becomes payable following possession being taken. Under the Bill, an occupier in receipt of a NOE may serve a 'counter-notice' requiring the acquiring authority to take possession, or be deemed to do so, on a given date (no earlier than 28 days after service of the counter-notice, or the end of the period in the NOE).

Clauses 130-133 introduce changes to advance payments, intended to facilitate clearer claims and earlier payments. Regulations may prescribe a claim form and interest on late payments, and any request for further information from the claimant is to be made within 28 days.

The Bill helpfully clarifies that, on a High Court challenge, it is open to the Court to quash the decision to confirm a CPO (i.e. the Court is not restricted to quashing the whole CPO). This means that a CPO could be reconsidered by the minister, rather than 'returning to square one'.

Most, but not all, of the points in the technical consultation are reflected in the Bill. Those not brought forward include:

- changing the compensation basis for overriding easements to facilitate commercial development from diminution in value to open market value—the government does not intend to bring this forward; and
- provisions for the situation where a compulsorily-purchased property is in negative equity. Here, the government's preference is for a voluntary solution with lenders and regulators.

It is clear - or as clear as it can be with relatively little detail - that the Bill's focus is on the delivery of housing - and more specifically housing to own, not rent. Questions will continue to be asked about whether this is what the market requires. Local authorities will need to keep a close eye on the Bill as it passes through Parliament to see precisely where their new duties and powers will land.



BUSINESS RATES – THE CHANGING FACE OF AN OLD FRIEND

Colin Hunter

Colin provides a timely article on the forthcoming changes to the business rates system and the important implications for local authorities: "councils need to be sure they are fully aware of the impact that full rates retention could have." The system looks set to remain contentious.

Colin is Director, Business Rates. He has over 30 years' experience dealing with rating appeals. He trained with the Valuation Office Agency and has since advised clients in the public, private and charity sectors on a wide range of properties and has appeared in Valuation Tribunal and Upper Tribunal as an expert witness.

The business rates team at Lambert Smith Hampton currently advises a number of local authorities on business rates, primarily looking at the level of value on the authority's own properties and reducing the business rates costs to the authority. We also offer services in addressing historic rates audits and assisting with the checking and calculation of current rates bills. CHunter@lsh.co.uk

A raft of changes

Having been promised a review of business rates by the Department for Communities and Local Government, we are now seeing a raft of changes. The Enterprise Bill is currently making its way through Parliament, with 2 short but important clauses for business rates. In conjunction with this, we have the 'Check, Challenge, Appeal' consultation, designed to streamline the process. Then, more profoundly for local government funding, we have the announcement of 100% rates retention.

This will present one of the biggest transfers of power to local councils in recent times and while on the surface this looks to be a positive step, councils need to be sure they are fully aware of the impact that full rates retention could have.

Reviewing is crucial

The 2010 rating list was due to expire on 1 April 2015, but has been extended to 2017, with the government claiming this was because they wanted to maintain

stability. However, every independent and government sponsored study has repeatedly made the point that more frequent revaluations and not delays are needed to make business rates a more responsive and fairer tax. It is all too easy to forget that business rates are a tax and so have to be responsive to the changing market in order to remain relevant. Business rates are the only tax which have been made inflation-proof and provide a stable level of income over extended periods between revaluations. It is easy to collect, hard to avoid and recession-proof. But that isn't to say it provides the level of certainty of income that local authorities need to determine long term strategies for service delivery, or even to decide what services they can afford.

The press coverage about business rates over the last 2 or 3 years has been mainly negative and primarily driven by the retail sector. But the property world is concerned that the tax base is out of step with the market, not helped by the fact that the 2010 rating list is based on peak levels of rent in the pre-recession world, but came into effect in the middle of the recession. This, coupled with the added

burden of empty rates being seen as a punitive tax on landlords, who were first hit by the loss of tenants and then by the imposition of a tax demand, mean it is hardly surprising that the property industry has reacted by looking for ways to mitigate this charge.

Effect on local authorities

Local authorities were initially insulated from this resentment. However, on 1 April 2013, the ground rules changed for funding with the introduction of business rates retention. The initial announcements of change were all positive. Local authorities would be allowed to keep 50% of all increases in business rates in their area. This seemed excellent news for hard-pressed councils. The reality however was a complete review of funding the shift of responsibility from central to local authorities for a number of costly services or capped charges, not just for business rates but also for council tax benefits schemes. This meant a cut in local authority income for all but a few, and a year-on-year reduction in the support grant. Also hidden away was the fact that



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local authorities now pick up the tab for refunds going back to 1 April 2010, not just to 1 April 2013, when they started to retain rates payments.

With this as a background, what should be made of the latest promise to change to 100% retention? Will this be a return to the days of the pre-1990 general rate, when local authorities had greater control over their own finances? The evidence suggests that this will not be the case.

The rates retention scheme from 1 April 2013 is set on a baseline which assumes authorities will collect all of the empty property rates, ignoring mitigation initiatives. This scheme makes inadequate allowances for refunds due to reduction on appeal; for this refer to the plight of Hartlepool Borough Council and the loss of rates from the power station. It also fails to factor in the losses from appeals due to major changes in the authority's area. For example, including allowances for new shopping centre openings such as Trinity Leeds, or Wakefield Trinity, where formerly prime shopping areas are receiving up to 20% reductions in rateable value with the impact on local authorities' finances running to millions each year. The added rateable value for these new developments were in the main factored into the baseline for 2013, so there was no real gain in revenue as a result. The baseline for calculating the support grant was set until 2020, but with phase 2 of rates retention, this becomes a moot point.

Widening the north-south divide

The 2017 revaluation is also likely to widen the north-south divide. Until the Valuation Office Agency (VOA) reveal the draft rating list later this year, there is no definitive answer on how wide that rift will be, but the general consensus is that the total rateable value for northern cities will fall, and only London boroughs are likely to see any significant increases. However, there will still be a national multiplier, so the rates liability will shift, whatever arrangements are made for transition. If transitional arrangements are put in place, then the major impact of these will have worked through the system by 2020, just in time for the next

step in rates retention. The majority of councils are therefore facing a potential drop in income as a result of the changes and if the same pattern is repeated in 2020 as we saw in 2013, yet more responsibility for funding services will shift from central to local government.

There is the promise of a degree of control over the multiplier [currently the multiplier is set nationally and is the pence in the pound of the rateable value, and is the amount that is paid in business rates]. This will allow reductions in the multiplier by all councils, but in view of the shift in rates income to London from the rest of the country, there will be little scope for this. Alternatively, there is scope for a small increase by councils with elected mayors, but the increases need the buy-in of local business leaders and will be ring fenced for specific projects. This implies that there will still be a national multiplier against which the increases or decreases can be measured, and any cap on that multiplier will not affect the central government income for the Treasury.

Low value areas will suffer

Therefore high value areas will benefit and low value areas will suffer. By contrast, prior to 1 April 1990 there was a wide range of multipliers charged by local authorities. To a degree, these multipliers levelled out the differences in value, but also to a degree reflected the political make-up of the local authority. The introduction of a national tax base swept away these differentials in the multiplier, but not the differentials in value.

Disclosure of information

To counteract some of the loss in revenue, local authorities are now actively looking for properties which have been missed out of the rating list or have been improved and therefore should have increased assessments. The Valuation Office Agency (VOA) is actively working with authorities and the provisions of s22 of the Enterprise Bill will increase the VOA's willingness to share information with them. The Rating Surveyors Association and other sector bodies have objected to s22, not on the basis of the sharing with local authorities,

but on the basis that the information isn't being shared with the ratepayers who are being charged the tax.

This lack of transparency for the ratepayers calls into question the validity of the rates liability. As Professor Zellick (former President of the Valuation Tribunal for England) said in an interview with the Estates Gazette on 24 October:

"The ratepayer is never given the full explanation for the valuation. As a result, every time there is a new rating list, ratepayers initiate a challenge – partly to protect their position but chiefly to "flush out" more information.

"Unless information is given up front, the system will remain defective and unsatisfactory and unjust. I don't know any other tax that can be levied where the taxpayer doesn't understand in full down to the last detail the basis on which the taxman has calculated the tax due. It's unprecedented, it's unique and it's wrong."

So withholding information will further aggravate the situation and lead to a greater number of appeals simply to determine how the VOA has arrived at the rateable values. This in turn adds to the uncertainty for local authorities in respect of income, especially as refunds may be back-dated for several years by the time the appeals have been resolved.

Reducing the number of appeals

The government has tried many different tactics over the years to reduce the number of appeals. The latest was to introduce a cut off for back-dating from 1 April 2015, the net result of which was the submission of around 250,000 fresh appeals before 31 March 2015 to beat the deadline. Many of these appeals would not have been made if the regulations had not been changed and quite a few would have been avoided if the revaluation had not been put back by 2 years.

The 'Check, Challenge, Appeal' proposals, based on s23 of the Enterprise Bill, are subject to consultation and are the next step towards limiting challenges to the rateable values. But the proposals don't address the comments made by Professor

Zellick. Although the ratepayers will be able to see the floor areas used in their valuation, this is not the main reason for reductions being given. Even when the floor areas are a matter for dispute, because of the way the VOA divides properties up and applies different levels of value for different uses, it is often difficult to tie up the valuation with the property, so the check stage of the process will make little or no difference to the number of appeals, but will fuel the frustration felt by the ratepayer.

The challenge process will again put the emphasis on the ratepayer to prove the VOA is wrong. But without the disclosure of evidence, it is impossible to demonstrate to the VOA where it has erred, and also impossible for the VOA to show that their valuers are correct. The handling of appeals has degenerated during the 2010 rating list due to the VOA withholding evidence by a reference to the Commissioners for Revenues and Customs Act 2005. As a result, the VOA withholds vital evidence until, or sometimes beyond the submission of Statements of Case to the Valuation Tribunal. This reduces the chances for negotiated settlement, and increases the ratepayer's determination to achieve a "just" outcome. The proposed challenge

stage of the new procedures will exacerbate an already moribund process and introduce even greater delays in settling appeals, all of which adds to the uncertainty for a billing authority of the income that will be generated, or the amount of refunds that will have to be found at a later date.

Local authorities need stability

Local authorities need certainty of income and need to know that what they collect this year, they will not have to repay in 2 years' time. An increase in the control over income should be welcomed but will the change to 100% retention of business rates allow this in any meaningful sense? Alternatively, will it simply put local authorities under more pressure, shifting liabilities from central to local government, but retaining real control over the amount that can be charged in the hands of central government?

The new appeal system set out in s23 of the Enterprise Bill and the consultation document won't reduce the number of meaningful appeals, those that result in reduced rateable values, and therefore refunds and reduced revenue. It will in

fact make the system more antagonistic so that ratepayers will resist paying bills they consider unfair and when forced to go through the new appeal process, they will be less likely to offer compromise settlements but will insist on fighting for the maximum reduction they can obtain.

Local authorities are also ratepayers and landlords whose tenants are under pressure from changing rates liability. The constant pressure on local authority budgets, for the foreseeable future, creates a greater need to keep portfolio costs down and where possible boost returns. In our experience, good quality business rates advice can assist, allowing scarce resources to be redirected.

With so many questions unanswered, further understanding of the mechanisms and complexities of these proposals are needed in order for local authorities to fully understand the effects they will have. Until then, they would be right to view them with a degree of caution. External advice from professional, qualified, rating surveyors is often helpful if not essential in enabling local authorities to minimise their exposure to rates liabilities and looking at means of improving revenue.

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REGENERATION COMPULSORY PURCHASE ORDERS – THE IMPORTANCE OF CRIB LISTS TO PROVIDE A SIMPLE AIDE MEMOIRE, PART TWO

Stan Edwards

This is the second part of the content of some of the slides presented in a seminar given by Stan to DCLG and other government departments on the practical aspects of promoting a CPO. Part 1 was in 2015 Autumn Terrier.

Stan Edwards is a Director of Evocati Consultancy specialising in CPO process and since 2003, visiting lecturer in retail planning and development at Cardiff University. He was formerly Vice-Chairman of the Compulsory Purchase Association and is now an Honorary Member. He worked on town centre retail and project managing CPOs over 40 years in Cwmbran, Land Authority for Wales and the Welsh Development Agency stanlje_caerleon@btinternet.com

Part 1 included notes on strategic concept; early considerations; purpose and power; documents to hand; core regeneration CPO powers; funding and finance; partnerships and planning.

Compelling case in the public interest

Many CPOs fail to demonstrate the underlying requirement that the Order must show a compelling case in the public interest significantly justifying interference with an affected party's rights.

- S17 Circular 06/04 Compulsory purchase and the Crichton Down Rules - "a compulsory purchase order sufficiently to justify interfering with the human rights of those with an interest in the land affected.
- Justification – there must be clear evidence that the public benefit will outweigh the private loss
- Human Rights Act 1998 reinforces that requirement – considerations: Article 1 of the First Protocol to the European Convention on Human Rights ("Protection of Property")

Articles 6 (right to a fair trial) and 8 (right to respect for private and family life)

- Confirming Minister has to be able to take a balanced view
- Public interest (PI) definition - "The 'PI' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a PI consideration is one which is common to all members of the community (or a substantial segment of them), and for their benefit." (Source Office of the Information Commissioner (QLD))
- Practicality - PI should have SMART characteristics (Specific, Measurable, Achievable, Realistic, within a Timescale)
- Compelling - to be 'a compelling case in the public interest' there must be something making it 'compelling': Certainty, financial (costs), assembly (of interests), time (related to a target?), programme (providing a reasonable prospect

that the scheme will proceed in the interests of public propriety)

- Influenced by – scale, proximity, circumstances
- There must be no stark statement: "There is a compelling case....." (New Street Station CPO and related Argos Case)
- Focus upon justifiable (defendable) 'prime' compelling case factors. (New Street Station). Refocus the project to achieve a SMART case (Rodney Parade, Newport)
- 'Well-being' (PI). Depends on needs being met (Maslow). Consider relative weighting/cross impacting Social Environmental Economic (ESE) well-being to describe the compelling case. ESE relates to Sustainability not just TCPA and CCPI
- Cost/benefit – proximity; timing – present/future; sector – public/private; risk
- Note 06/04 Appendix KA requirement

Arnstein	'Ladder of Citizen Participation'
To empower	public participation goal is to place final decision-making in the hands of the public
To collaborate/partner	on-going mutually beneficial 2-way partnership between the council and stakeholders where decision-making may be shared
To engage	involves an on-going mutually beneficial 2-way partnership between the council and stakeholders
To involve	people actively participate, during which the council (acquiring authority) exchanges information with them and seeks their views
To consult	where people are asked for their views on specific policies or proposals to obtain public feedback
To inform	to provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions

- Note Argos Case, Bromley-by-Bow, London Road Fire Station, Crown House Banbury [Ed – featured in previous Terriers].

Assessing public interest consultation

Community involvement/engagement takes place at different levels. Fundamentally the earlier in the life of the project that this takes place, the more is the opportunity to consider realistic alternatives. When it comes to actually making the CPO, the compelling case means that the project by that time has become fairly fixed and adjustment difficult. This is why documentation from community engagement upstream is so important. Such consultation should be early and effective.

Using EU directive Environmental Impact Assessment (EIA) criteria (if ever applied to CPOs) [High Court Challenge in the case of Seaport Investments Limited (an EIA case). In the High Court of Justice in Northern Ireland Queen's Bench Division (Judicial Review) 2007 NIQB].

- The consultation period should be certain
- The consultation should be early and effective (early enough to influence and effective enough to demonstrate that influence)
- The process is the substance.

Circular 06/04

It is essential to follow completely the Circular 06/04 Guidelines. One

solicitor once sneered that they were not statutory. My response is that promoters ignore them at their peril. Below is a quick index with key words. This is only a signpost to the contents [Ed – please note that this checklist does not incorporate the new changes in the recently revised 06/04].

- Introduction (1-12) - CPOs an important tool providing guidance; Main topics covered: Appendices A-W; No statutory status: guidance only; Confirming Minister/Department; Transition
- Circulars, powers (13-15) - Use of the 1981 Act; Purpose determines power; Most specific power
- Justification for making a CPO (16-23) - Acquiring authority decides - justify a particular power; A compelling case in the public interest; Confirming Minister to take balanced view; Clear idea of intentions, resources reasonable timescales; Resource implications; Timing/availability funding; Impediments to implementation - a reasonable prospect; Planning required
- Preparing an order (24-34) - Seek to acquire by negotiation; Negotiations in parallel; Involving those affected: rights and duties, indicative timetable, accessible format. Appointing a case manager; Keeping uncertainty, anxiety and delay to a minimum; Enter into agreements; Minister satisfied, order is made correctly. Advice from the confirming Department; Errors or

omissions, power of modification; AA to seek own advice; Technical examination by confirming Department (Wales PINS); Appendix Q - document checklist

- The confirmation process (35-57) - Statement of reasons – type of case; Objection grounds; Clarification points; Consideration of objections; Written representations; Programme officer; Timing of inquiry; Date of the inquiry fixed; Scope for joint or concurrent inquiries; Inquiries Procedure Rules; Inquiry and WR costs; Acquiring authorities meet costs; Award of costs; Legal difficulties, Validity; Modification of orders; In stages; Unopposed order; Confirming authority will exercise discretion under s14A; Notification of date of confirmation/s19 certification
- Implementation (58-63) - Confirmed order operative date on which notice of confirmation; Notice to treat period; Notice of Entry; General Vesting Declaration/ Notice to Treat; Commencement of exercise of CPO
- Compensation (64-72) - Assessment of compensation; Compensation basis; Date of assessment; Interest payable; Advance payments; Earlier payments and reinstatement; See also paragraphs 33-34 of the Annex: mortgagees; Professional fees; Fees on a case-by-case basis
- Appendices – CPO Powers - A Section 226 of the T&CPA 1990

as amended; B RDAs; C English Partnerships; D UDCs; E Housing powers; F LGA 1972; G National Parks/Access to Countryside; H Educational purposes and for public libraries and museums; J Airport public safety zones; K s47 of the Listed Buildings Act; KA request of the community

- Appendices - Procedural issues - L Special kinds of land; M new rights and other interests; N Crown land; P Certificates of appropriate alternative development
- Appendices - Documents and submission - Q Check list of documents; R Preparing the statement of reasons; S Protected assets certificate; T General certificate in support of order submission; U Preparing and serving the order and its associated notices; V The order map; W Addresses to which orders, objections and applications for certificates should be sent
- Annex - Part 8 of the Planning and Compulsory Purchase Act 2004

Although it is in respect of highway schemes s2.4 of the Planning Inspectorate – 'Notes for the Guidance of Inspectors Holding Inquiries into orders and Special Road Schemes' is a useful general CPO consideration.

The approval in principle

The AIP is a fulcrum in that it draws together the concept (e.g. 'think will facilitate' – T&CPA 1990) into a report which sets conditions precedent for making and sealing a CPO (to be rehearsed in the Statement of Reasons). It is subject to conditions:

- Sustainability/well-being factors
- Community engagement
- Planning, technical, legal
- Confirmation compelling case in the public interest and justification
- Completion of any agreements with stakeholders

- Confirmation of additional rights including those of the Crown
- Preparation of the Order, Statement of Reasons, CPO plan and Schedule of Interests
- Technical approval of the draft CPO by DCLG (Wales PINS)
- Confirmation that funding is forthcoming conditional upon Confirmation of the Order
- There is a reasonable prospect that the scheme will proceed in that funding, resources and organisational facilities will be available. The council's position is protected through indemnity
- Authority being satisfied that the project is sustainable and planning approval for the scheme should not be blocked by planning problems
- A report to the acquiring authority for approval to make and seal a CPO on being satisfied that the conditions precedent have been fulfilled.

Statement of reasons

Following this, ongoing work takes place to prepare the SoR. There is input from negotiations, community, planning and policy, technical, legal, sustainability and well-being (economic – demand and impact), authorisation conditions.

The SoR is amplified and reinforced with relevant detail contained in Appendix R of Circular 06/04. It should be as comprehensive as possible – the basis of Statement of Case flows from the Authorisation in Principle.

- A brief description of the Order land and its location. Use the numbering from the Order plan and Interest schedule
- A Justification of the use of the enabling power
- An outline of the authority's purpose in seeking to acquire the land.

Again group numbered parcels to describe

- A statement of the authority's case for compulsory purchase – a compelling case
- A description of the proposals for the use or development of the land
- A statement about the planning position of the Order site
- Information required in the light of government policy statements where orders are made in certain circumstances (e.g. Housing Acts)
- Any special considerations e.g. Ancient Monument, Listed Building, Conservation Area, Special Category Land, Consecrated Land, Renewal Area etc.
- Details of how the acquiring authority seeks to overcome any obstacle [or impediment] prior to consent before the order scheme can be implemented
- Details of any views expressed by a government department
- Related applications, appeals, Orders, etc.
- Documents, maps or plans for the public enquiry.

The SoR is amplified and reinforced with relevant detail, including Statement of Community Engagement; Statement of Sustainability and Diversity; Special considerations such as open space; Actions already undertaken under statutory powers; Details of contact with the claimants; Assessments related to sustainability well-being factors – economic social environmental.

My checklist

So, taking into account all of that featured above, compile your own checklist. Here is mine as starters - but it continually grows.

Project – the case

Read the recently revised Circular 06/04 (assume nothing, reference throughout)

- Why are you undertaking this scheme?
- What is the policy background for the scheme?
- What is the minimum land take required for the scheme?
- What is the maximum land take required – no surplus?
- What is the acquisition status? How will this be audited? Have negotiations commenced? Unknown ownership?
- What steps have been undertaken to identify the owners? Have notices been put up? Who is documenting this?
- What referencing was done for planning purposes?
- Is access required for survey purposes?
- What is the planning/local policy/ National Planning Policy status?
- How is sustainable development demonstrated?
- Is any CPO likely to be blocked by planning? Remedies?
- Are there any other impediments to be overcome?
- What is required under the acquiring authority's standing orders?
- Obtain copies of source documents.

Acquiring authority approval considerations

- How is authority to be sought from the council/cabinet?
- What is the mechanism to communicate between the affected parties/community and the council and the means of updating and engaging all?

- What is mechanism for translating the authorisations into the Statement of Reasons?
- How does the proposal line-up with Circular 06/04 including the Appendices?
- Is a joint venture partner involved and if so was the appointment compliant and on what terms? Does EU Procurement rules apply? Roanne?
- Is a joint venture agreement signed?
- What indemnity is provided for the acquiring authority?
- What are the terms if the JV partner fails to deliver?
- What are the terms in the event of failure of the CPO?
- Is a risk assessment being prepared and who will prepare it?

Considerations and assessments - 1

- Special considerations e.g. listed buildings or open space?
- If open space how is it dealt with? s19 1981 Act
- What is your justification for using CPO powers?
- How does the public benefit outweigh private interest?
- What is your compelling case in the public interest?
- Why is it compelling?
- Why is it in the public interest?
- Compelling case in the public interest in well-being terms
- Sustainability/well-being/diversity factors?
- Social well-being?
- Economic well-being?

- Environmental well-being? EIA?
- How are these to be assessed?
- How do they cross impact? compelling case
- Documentation of assessment?
- Crown/local authority interest. Include as plots but include all interests other than dialogue with Crown Estate
- Retail assessment? Full collateral impact and situs analysis?
- Housing

Considerations and assessments - 2

- The factors affecting the mix of residential, commercial and retail premises found in town centres
- Overlooked assessment as to what is being attempted by regeneration of a town centre
- The features of retail demand that are avoided: the impact of alternatives; a true assessment whether retail projects are substitutes or complements
- Nearly every planning scheme will stress that the new development is complementary or at worst neutral
- Many stores in a new scheme will compete with the traditional high street and so the question has to be asked as to whether they are: complements; substitutes; neutral
- This then begs the question as to what is being attempted. Is it: reinforcement; replacement; displacement; assisted contraction of the city core?

Project management

- Has a draft reference plan/schedule been prepared?
- Has a draft appraisal been carried out? By whom?
- S106/CIL?

- Do you have the necessary resources and if not - cost?
- Can a review of sequencing of developer involvement regarding project delivery enhance a demonstration of a reasonable prospect that the scheme will proceed?
- What is the timetable for the process?
- Who is responsible for the delivery of the scheme and auditing the process? SRO?
- Who are the core CPO team members? Surveyor, planner, lawyer, engineer
- Which consultants are required and why?
- Is specialist CPO advice required and why?
- Who does the referencing?
- Who is placing Notices on the land to identify rights?

- Who will be the programme manager for an Inquiry?
 - Who is your contact for technical advice? Government department/ PINS
 - What are the milestones?
 - Target for Approval in Principle
 - Target for possession?
- Detail
- Which government department deals with this and where is the Order to be submitted?
 - What powers are appropriate to deliver this and why?
 - If the CPO is under the Town and Country Planning Act 1990 (as amended) which well-being factors are contributing to the achievement of the scheme?
 - If other power, say Housing Act, quantitative and qualitative assessment

- How is the project to be communicated to the community?
- When and what level is community involvement?
- How are these to be catalogued for future use?
- Has an appraisal been carried out? By whom?
- How is this project to be funded?
- Is it likely that the project will proceed?

I hope that these lists and schedules are of help to the reader. I can imagine the captain of the Titanic requesting a schedule of pressing issues and required actions and was given a list he was not expecting! Where there is no vision, the people perish [Proverbs 29:18 King James Version]. It would seem that people perish through lack of knowledge and vision. In CPO, accumulated knowledge has to be applied to any vision derived from a compelling case in the public interest to achieve an achievable level of success.



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This is the second part of Gary's update of compensation issues featuring in recent caselaw. The first part appeared in 2015 Autumn Terrier.

COMPULSORY PURCHASE AND COMPENSATION CASE LAW UPDATE 2015

Gary Sams

Gary is the Chief Estates Surveyor at Fylde Borough Council. He is a visiting lecturer for the College of Estate Management and part time lecturer at Reading University in his specialist field of compulsory purchase and compensation. He is editor and joint author of "Statutory Valuations" and joint author of "Modern Methods of Valuation". He is also a legal editor of "The Journal of Property Valuation and Investment" for which he contributes regular papers on recent compulsory purchase case law.

Introduction

This is the second episode of a two part article. I look at 3 cases, 2 from the Upper Tribunal (Lands Chamber) (UT) and one from the Court of Appeal, which cover broadly similar ground. Each of the cases relates predominantly to valuing the land acquired under compulsory purchase. The cases are mainly concerned with the approach to ignoring the scheme so the compensation paid is neither reduced nor enhanced by its impact on property value. Other issues include ransom value, betterment and depreciation in the value of land retained. The last 2 of these 3 cases is considered in this edition.

Valuation where only part of land is taken

In Ramac Holdings Ltd v. Kent County Council (2014) the Upper Tribunal Lands Chamber considered whether a strip of land being acquired for a highway scheme should be valued as a strip of land, or as part of the entirety of the land owned by the claimant. The land taken extended to around 7,700 sq m and was a strip of scrubby landscaping alongside the highway and outside the fenced off area of the claimant's main 25ha site.

The main issue concerned the way in which the strip should be valued. The acquiring authority argued it should be valued as a strip of scrubland alongside

the highway which, given its size and shape, had a value of £20,235 an acre, or £38,545. The claimant contended it should be valued as part of the entire industrial site which had a value of £250,000 per acre or £383,557.

The acquiring authority also argued betterment – the highway improvement scheme had enhanced the value of the claimant's retained land to the extent that the sum claimed was wholly offset by betterment and no compensation should be paid.

Valuing the land taken

In the past it has been well established that on a literal interpretation of the market value rule (rule 2 of s5 1961 Land Compensation Act), the acquiring authority is correct in its approach. The land taken should be valued as if offered for sale in isolation by a hypothetical willing seller. The problem with this approach is that it is thoroughly unfair. For, example, a residential owner occupier who loses a strip of his garden does not receive compensation based on the value of that strip to himself as part of his home. It is instead necessary to imagine the strip is owned by a third party who offers it for sale. In that scenario there is only one potential purchaser (in reality the actual owner) and given the lack of competition he would be able to buy it for a very low price. Therefore, the

strip has a nominal value and only this figure will be paid as compensation. Historically, the Courts have adopted some ingenious approaches to avoid this unfairness. In Rathgar v. Haringey [1978] 2 EGLR 200, they introduced the concept of speculators who might prevent the house owner from acquiring the strip by bidding against him, with a view to selling it on to him later and making a profit. Even this rather strained scenario does not allow the claimant to receive the true value to himself as no speculator would bid up to the full value to the owner. The Courts then went further in Spirerose v Transport for London [2009] UKHL 44 when it appeared to clear up the issue once and for all. It decided that the land taken should not be valued in isolation as if offered for sale by a hypothetical willing seller; it should be valued as if offered for sale together with such other land, and at such time, as would have been likely in a no scheme world. On this approach, full industrial land value would clearly apply to the subject land.

In this case the claimant made no reference to Spirerose and argued only that the acquiring authority's approach breached the overarching principal from Horn v. Sunderland [1941] 2 KB 26 that the purpose of compensation is to put the claimant in a position no better and no worse than if the scheme had not occurred. The UT did not accept

this argument and agreed with the acquiring authority. The land had to be valued as if offered for sale in isolation by a hypothetical willing seller and compensation was awarded in the sum of £38,545. An application to appeal has been refused so we have to accept that the UT will adopt a strict interpretation of rule 2, regardless of the House of Lords decision in *Spirerose*.

Severance and injurious affection

The approach to valuation of the land taken also has implications for the approach to assessing any compensation for severance and injurious affection – depreciation to the land retained. Using the strict approach adopted in this case, the land taken has first to be valued in isolation. The severance and injurious affection claim can then be assessed using a ‘before and after’ valuation on the retained land. What was the value of the retained land before the scheme and the loss of the adjacent strip of land? What is the value of the retained land after the scheme and separated from the land taken? The difference between the 2 is the compensation for severance and injurious affection.

If the *Spirerose* approach is taken, then the calculation is simpler. What was the value of the entire holding before the scheme? What is the value of the retained land after the scheme and separated from the land taken? The difference between the 2 is the compensation for land taken and severance and injurious affection combined. An apportionment of that figure between the 2 heads of claim is useful but purely academic.

The UT had to consider whether the after value of the retained land was reduced in value by the loss of the landscaping strip because some of it would have to be used to provide replacement landscaping. It decided on the facts of the case that there was no evidence that any of the retained land would have to be used to replace the landscaping so, whichever approach was adopted, no compensation was payable for severance and injurious affection.

Betterment

The final point to consider was whether

the value of the claimant’s retained land had been increased by the scheme by such an extent that compensation should be reduced to zero. The set off provision is contained in s7 of the Land Compensation Act 1961 and requires that any increase in the value of any contiguous or adjacent land owned by the claimant shall be set off against the compensation payable to that claimant. This in itself is unfair – why should landowners who have land taken have to give up some or all of the financial benefits generated by a scheme, while their neighbours who have no land taken do not? Set-off is a tempting way for acquiring authorities to reduce their compensation burden, but whenever I have tried to use it I have come across one big problem – proving it. I once acted for an acquiring authority buying land for a link road into a new business park, replacing the winding country lane which was previously the only access. It involved the acquisition of a narrow strip of land from one of the developers, who submitted a hugely inflated compensation claim. The sole purpose of the scheme was to benefit the business park and his letting details made great play of the fact that access would soon be much improved. It was simple common sense that the amount by which the developer’s retained land would increase in value as a result of the scheme would vastly exceed the value of the land taken from him. However, calculating the amount of that excess proved impossible. Was the increase 5%, 10% or 15%? Where was the evidence of land sales with good access compared to those with inferior access? In the end we made an offer we considered fair for the value of the land taken and dared the claimant to take us to the Lands Tribunal, in which case we would argue for nil compensation on the grounds of betterment. He settled.

The outcome was similar in this case. The acquiring authority listed the benefits of the scheme and argued that the value of the retained land must have risen by more than the amount of the claim. The UT accepted that there were some benefits to the retained land from the scheme but was unconvinced as to the value of those benefits. It noted that the acquiring authority’s surveyor:

‘was unable to submit transactional

evidence that supported betterment by way of a comparison of land values pre-scheme and post scheme. His judgement related to the fact that...the uplift in value to the retained land would only have to be small in order to completely offset any compensation payable. He originally assessed the uplift in value as “at least 5% and possibly more” and after the benefit of increased development capacity was dropped he revised this to “up to 5%”.

The UT felt there was insufficient evidence to show how the benefits of the scheme would translate into an increased bid from a purchaser and applied no reduction in compensation on the grounds of betterment.

Ransom value

While the betterment argument is an attractive option for acquiring authorities which is rarely found to apply, the counterpart for claimants tends to be ransom value. It is easy to see ransom value round every corner, but circumstances where it can be properly applied are rare. It is easy for a claimant to see his land as essential to the acquiring authority’s scheme. Without his land the scheme could not proceed and in the absence of CPO powers he would have been able to hold out for a share of the value in the scheme, rather than accept the intrinsic value of his land. However, this argument applies to almost any land in almost any CPO. True ransom value will only apply where, in the absence of a CPO and in the absence of the scheme underlying it, the claimant’s land would have been the key to unlocking development value in the real world. Such circumstances are very rare.

The case of *JW Hanbury-Tennison and Monmouthshire County Council* [2014] ACQ/48/2013 concerned the compulsory purchase of shooting rights over 2 fields, the fields themselves being already owned by the council. It was agreed that the value of these shooting rights was £1,000. However, the scheme involved the demolition of the town’s livestock market for the construction of a new supermarket. In order for the town centre site to be released for development, the livestock market was to be relocated to the subject fields and this necessitated

the compulsory acquisition of the shooting rights. The claimant argued that the acquisition of those shooting rights was the key to unlocking the development potential of the town centre site. In the absence of compulsory purchase powers, the holder of that key would not give it up unless he received a substantial proportion of the increase in value of the town centre site. He claimed an eye-watering £5,649,061.

The scheme was agreed to be the development of the supermarket including relocation of the livestock market. This immediately put the claimant on the back foot because in a no-scheme world there would clearly be no requirement for the shooting rights and no ransom potential. His argument, however, was that council participation was not essential to the proposed development. In a no-scheme world there would still be demand for a supermarket. The livestock market would have been acquired and developed for that purpose and the market relocated to these 2 fields, which comprised the only, or at least by far the best, alternative site. The developer would need to acquire the shooting rights for the scheme to go ahead, even if it meant giving away a substantial proportion of the development value.

In giving its decision the UT made critical reference to Lord Denning's 'conjure up a land of make believe' quote from Myers v. Milton Keynes Development Corporation referred to above. It preferred the approach adopted in Waters v Welsh Development Agency [2004] 1 WLR 1304 where the House of Lords set out 6 rules to be applied when creating a no-scheme world. The second of these is that 'a result is not fair and reasonable where it requires a valuation exercise which is unreal or virtually impossible'. It decided that the approach adopted by the claimant was in direct breach of that principle. To conclude that, in the absence of the scheme, the town centre site would have been developed as a supermarket and the 2 fields used to relocate the livestock market required the adoption of too many assumptions which were contrary to the facts.

There was evidence that the 2 fields were

an opportunist purchase by the council and were not among a list of 14 possible relocation sites identified when the scheme was first proposed. Also, it was purchased at auction at agricultural land value. These 2 facts did not suggest that in a no scheme world a developer would have come along desperate to acquire the fields and their shooting rights in order to relocate the livestock market.

The cancellation approach to disregarding the scheme was also accepted [Ed – see earlier article in 2015 Autumn Terrier which detailed the JS Bloor case], and the implications considered. Surely, if the scheme had been abandoned just before the valuation date, it would be easy to visualise another supermarket developer acquiring the livestock market and seeing the 2 fields as an ideal replacement site. As in Bloor, the UT did not consider matters to be so simple. Even adopting the cancellation approach, it was not correct to assume that everything is now in place for the development to proceed without a CPO. It could not be assumed that all decisions and events which had taken place in the real world were evidence of what might have occurred if the council had not promoted its scheme. In particular, CPO powers were essential for the acquisition of the livestock market and would not have been available to a private developer. In any event, no private developer would pursue a route which did not include a suitable site to relocate the livestock market and would leave it forced to pay ransom value to acquire one.

The UT therefore decided that the value of land taken should be based on its intrinsic value as shooting rights and not on ransom value.

LEGAL SNIPPETS

Below are extracts from Mills and Reeve "Property Matters" which are of relevance to public sector property professionals. My thanks to Mills and Reeve for letting me reproduce them.

Mills and Reeve Property Matters www.property-matters-law.co.uk

The rise of 'pop-ups' and how to document them

Over the last few years, pop-up stores and restaurants have quickly become a normal feature of our high streets. They provide an attractive opportunity for new businesses to test the market on a temporary basis. For landlords they provide a short-term solution to avoid paying rates on empty space, fill vacant units and showcase their premises.

But how to document pop-ups? A tried and tested uniform method is yet to be found. Both landlords and occupiers will be keen to avoid legal fees that are disproportionate to the nature of the deal.

- A **lease** offers sound protection to both parties, but is often extensive and takes time to negotiate
- A **licence to occupy** is more suitable for a short-term arrangement, but is not appropriate where there is exclusive possession being given
- A **tenancy at will** is limited in detail and must be used cautiously, but could be a good solution for an immediate and very short period (i.e. days and weeks rather than months).

Key issues for landlords to consider before entering into any pop-up arrangement include:

1. whether the tenant could gain any protection under statute during their occupation (1954 Act rights)
2. relevant planning laws, permitted uses and other regulations; and
3. how the tenant will leave the premises when they vacate, as the

occupiers will want to avoid onerous reinstatement obligations.

If pop-ups are here to stay, then it seems likely that there will be a demand for a standardised document. However, given that pop-ups vary in terms of use, duration, and budget, only time will tell if landlords are willing to make this investment.

When crime can pay – squatting in residential property and adverse possession

The Court of Appeal in R (on the application of Best) v Chief Land Registrar (2015) decided that an application to be registered as the proprietor of residential property by adverse possession can succeed even where part of the period of possession constituted an offence under s144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act").

It is an offence under section 144 of the 2012 Act to occupy residential property as a trespasser/squatter. The offence was introduced to answer public concern about the difficulties faced by landowners in securing the assistance of the police to remove squatters from residential property. The introduction of this offence created friction with an established doctrine, that of adverse possession. Adverse possession provides that, in very general terms, a squatter can acquire title to land or property if he/she has been in possession without licence or consent for 12 years or more.

Prior to the decision in Best v Chief Land Registrar, there was uncertainty about whether the introduction of the new offence would preclude squatters from acquiring title to residential property by adverse possession. The Court of

Appeal was mindful that the law is often developed with the precept that a person should not benefit as a result of their own unlawful action, but there was nothing to suggest that Parliament intended to alter the law of adverse possession when it introduced the offence of squatting in residential property. It was decided that the 2 regimes are separate and that s144 of the 2012 Act will not preclude a squatter from acquiring title to residential property by adverse possession, so long as he/she has been in occupation for long enough. The decision looks to be correct.

Section 144 of the 2012 Act gives a landowner an immediate remedy to require the police to evict a residential squatter. There is no suggestion in the legislation that the law of adverse possession does not apply where there has been a delay, for a number of years potentially, in seeking to enforce that remedy. Indeed, the law of adverse possession itself is based on something that is morally questionable, that of occupying the land or property of another without a legal right to do so.

Equitable easement by estoppel where no express right of access

Hoyl Group Ltd v Cromer Town Council is a case in which the Court of Appeal held that a tenant had acquired an easement by virtue of proprietary estoppel.

Estoppel arguments are very fact specific, and the case involved a detailed analysis of the facts by the court, and of the circumstances in which an estoppel might arise. In brief terms, the tenant had a 99-year lease from Cromer Town Council of premises that were insufficiently accessible for the tenant's intended purpose. As part of the lease negotiations, the tenant supplied plans of works it proposed

to carry out to convert the premises into residential accommodation. These works involved blocking off an existing access and creating a new access, but the lease did not provide sufficient rights of way. The town council approved the proposed works.

The issue of access, and whether the lease had given sufficient express rights of access, came to light several years later when the tenant placed the part of the property still demised by the lease on the market, but its purchaser raised concerns over the lack of access rights. The Court of Appeal held that a proprietary estoppel had arisen to prevent the town council from denying the tenant an easement for the required access.

The Court of Appeal held that the ingredients of an estoppel were present:

1. The town council had allowed the tenant to believe that it had or would have the benefit of a right of way
2. In reliance on that belief, the tenant had, to the council's knowledge, acted to its detriment in carrying out its conversion works, and
3. It was now unconscionable for the council to deny the tenant its right of access.

Equitable easements are much less common than legal easements, but arise more frequently than one might think. The Court of Appeal did not place great emphasis on whether the town council knew of the tenant's mistaken belief about its rights, and sympathy can be felt for the town council in this regard as the party being estopped from asserting its strict legal rights.

The doctrine does still have its limitations and, due to the fact specific nature of equitable easements by estoppel, it is no substitute for ensuring that any necessary access rights are properly documented. Nonetheless, the case is a good example of where an equitable easement can arise by proprietary estoppel.

Delivering housing developments through partnering agreements

The Mills & Reeve real estate team is currently involved with a number of new housing projects for landowning clients, which are being undertaken through partnering arrangements with housebuilders.

Rather than the landowners selling building sites outright, agreements are being entered into which see the housebuilder first build the new homes and pay later for the land, on completing sales. There are a range of variations to this general structure. On some deals, the housebuilder takes a lease on the site. Others involve the housebuilder entering into a development agreement, under which they are given a building licence for an agreed term.

Such arrangements bring with them a number of advantages:

- Greater control for the landowner, through working closely together with the housebuilder at all points in the development programme
- Consequently, the landowner can have a higher degree of influence over the design and layout of the new development, important where a landowner is concerned to see a particular style or quality of development
- Responsibility for securing planning permission, funding the works and marketing the new homes falls on the housebuilder
- Enhanced returns for the landowner, as a result of staying committed to the development site for longer. On top of the land price, the landowner can negotiate a deal to take a share of the development profit e.g. a fixed sum per house sold or a percentage of the sale proceeds
- Cashflow benefits for the housebuilder, from not paying for the land upfront and potential benefits from sharing the risk of sales prices in the housing market.

These agreements require careful structuring. They must take account of the liability to pay a range of taxes – stamp duty land tax, VAT and corporation

tax. Care must be taken to preserve the VAT election on a development site. The prescriptive payment provisions provided for in the Construction Act may also apply.

Game set and match to landlord in £1.1m M&S break clause rent refund case

The Supreme Court has made its decision on whether, where a break option is exercised, there is an implied term for a tenant to receive a refund of monies it has paid in advance which relate to the period after the lease has come to an end. The decision is important not just in the context of leases but has wider implications for contract interpretation across all sectors and is an indication of the extent to which the courts are willing to take a commercial view when interpreting break clauses. [Ed – for more detail on rent reviews and break clauses, see Lesley Webber and Antony Philips' article in 2014/15 Winter Terrier].

We reported in May 2015 on the reversal by the Court of Appeal of a decision supporting M&S' argument that, in the absence of an express refund provision, M&S should be entitled to a refund of rents and other charges for the period following a break date in their lease of premises at The Point, Paddington.

The decision of the Court of Appeal has now been upheld by the Supreme Court leaving M&S in the unenviable position of having no legal entitlement to a refund from its former landlord of £1.1m rents paid in advance, and also facing a significant legal bill.

The Supreme Court's decision confirms that an express refund clause is required otherwise a landlord is entitled to retain monies paid for the period after a break date. This is a blow to those who had hoped that the decision would allow courts to draw on wider commercial considerations in interpreting break clauses, rather than taking a strict interpretation of drafting within leases. As we commented following the Court of Appeal's decision last year, the courts' strict approach could result in a potentially harsh position for tenants where a break date falls shortly after a quarter day.

DUNCAN BLACKIE, EASTERN BRANCH

Eastern Branch met on 6 November at St Albans Civic Centre, where it held the AGM and meeting. Approximately 20 people attended.

Neil thanked members for supporting the branch and its aims during 2014/15 and officers for their work on behalf of the branch including Betty (not present) for her hard work on behalf of the national organisation and generously provided branch officers with gifts for their services. [Ed – I missed out there!]. He placed a particular emphasis on the recruitment of new members, from the growing base of supporters attending branch meetings. Neil also spoke about the national conference in Salford and eastern region being well represented.

Branch accounts were considered. Some additional income resulted from an 'exceptional turnout' for the Cambridge meeting in July. It was therefore agreed that the situation would be monitored and members of the branch would consider opportunities to disburse any accumulated funds for the benefit of members and younger surveyors. The branch would also continue to increase the CPD content of meetings, including a new May meeting to provide an opportunity to concentrate exclusively on CPD.

In view of uncertainties, the branch secretary asked that 2016 be seen as a

'trial year' and said that he would very much appreciate support from members (and others) in suggesting themes/speakers/venues. Assuming that the new approach will work, it was noted that in future years the Autumn AGM meetings could become an opportunity for ACES members to engage in a more distinctive 'members event', perhaps taking a cue from National AGM meetings.

The following were returned as Branch Officers for 2015/16:

Chair Neil McManus

Vice Chair Brian Prettyman

Secretary Duncan Blackie

Treasurer Richard O'Connell

Debby White of St Albans agreed to provide some support to the branch secretary in relation to membership. This offer was gratefully received, especially in view of the increased pressure of work that local government officers have been experiencing in recent times. It is hoped that as a consequence of this 'appointment' the branch will be able to use its increasing base of attendance at branch meetings to increase membership of ACES.

Presentation by Julian Daly, Leader of St Albans City and District Council

Julian is a chartered accountant with significant involvement in investment. He explained that while St Albans is not 'risk adverse' there is no appetite to compete in the investment property market. However, the council will invest capital where a business case demonstrates that it can deliver additional benefits which align with its service/strategy objectives. He provided a range of examples where St Albans has invested in property/assets to maintain and improve service delivery within constrained/declining budgets. Examples included leisure centres, council offices, museum services, housing and city centre regeneration.

Presentation by Craig Egglestone, Local Government Association – One Public Estate Team.

Craig outlined the background and development of the OPE programme, including key criteria for awards under phase 3. In doing so, Craig outlined a number of generic opportunities for consolidation and joint working including; DWP contract expiry, Ministry of Justice courts rationalisation, surplus health sector land and forthcoming surplus MoD sites.

PETER BURT, HEART OF ENGLAND BRANCH

The Branch AGM and ordinary meeting were held at the Hinckley and Bosworth Council Hub in Hinckley on 5 November 2015. There were 14 members and one guest in attendance.

At the AGM David Willetts, the outgoing Chair, said that it had been a year of change and consolidation with a number of new members joining and some long

standing members having now retired. But attendance at meetings was up, which was encouraging, and during the year the branch had welcomed 6 new members – David Blanchard, Melton; Diana Phillips, Oxford; Ian Fisher, Place Partnership; James Dunn, Telford; James Tyler-Morris, Staffordshire and Ken Shirer, VOA.

David handed over the Chair to Judith

Bays of Rutland County Council. Peter Burt took over the position of Secretary from Richard Allen who would continue as Treasurer.

Richard reported a financial loss of £86.30 on the year, but the branch was still in a healthy position with £3,570 at the bank, so it was agreed to leave the branch annual subscription at £30.

As it was the Secretary's last report in the post he said how much he had enjoyed the role over the last 8 years and thanked branch members for the support received. He offered his best wishes to his successor who he was sure would find the role equally enjoyable and rewarding as he had done. The Branch Chair thanked Richard on behalf of the branch for his commitment, work and time he had put into the role on behalf of ACES.

There was a review of the Branch Action Plan. Targets achieved were holding 3 meetings in the year, providing 10 hours formal CPD (if the proposed Birmingham CPD event had proceeded), increasing meeting attendances by around 30% and recruiting 6 new members.

Targets not achieved were that only the Chair, Secretary and one other branch member attended the National Conference and there were no nominees for the branch-sponsored free attendance. Also very few substitutes had attended branch meetings or work colleagues brought along for career development/CPD.

The format for future meetings was discussed. It was the view of the meeting that ACES seems to be moving to being a CPD provider and that it should focus more on its core objectives of being an organisation that comes together to share best practice through networking and exchanging views. It was, therefore, agreed that future meetings would follow the existing format of 2/3 formal CPD presentations in the morning, and perhaps a visit to a project of interest, and a general meeting in the afternoon where issues can be raised and discussed on an informal basis.

It was decided to cancel the CPD event proposed for the end of November in Birmingham as at the time of the meeting it appeared that the final numbers would be somewhat short of the figure needed for a viable event that would promote ACES as a CPD provider in a positive way. Consideration is being given to rescheduling the event for next year, perhaps in the spring as a full day event.

Meetings for 2016 were programmed and would be hosted as follows:

3 March – Warwickshire County Council

7 July – Mansfield District Council

3 November – Rutland County Council (provisional)

There were 2 presentations during the morning session.

Tim Whightman, Data Analyst at the Government Property Unit, introduced ePIMS, the electronic information mapping service mandated across central government. He explained that data is the core of any business and ePIMS is the engine that drives the government's property savings strategy. It is currently used by 931 organisations across government from the NHS, local, rail and charity sectors. He explained how easy it was to put data onto the system and the benefits in terms of measuring property performance and identifying opportunities for collaborative working within the public sector. ePIMS is supporting the government agenda by showing parcels of land which can be released for housing. Within the Transportation sector it is being used to identify sites for 40,000 dwellings. It enables government to identify adjoining areas of land owned by other public organisations and the data is supporting the One Public Estate agenda to deliver capital receipts, reduce running cost savings, build new homes, create jobs and deliver inward investment.

Robert Vaughan then explained the 360,000 sq.ft. Crescent town centre regeneration scheme that had just partially opened in Hinckley. Undertaken by the Tin Hat Regeneration Partnership, when fully completed, it will include a Sainsbury supermarket, 20 shops/restaurants, and a 5 screen cinema, the first in the town since 1993. The scheme, which had been around for 20 years, was facilitated by the council through the use of council owned land and CPO powers, a loan to the developer through prudential borrowing, the purchase of a leisure block and relocating a squash club and the Hinckley Times. He emphasised how it was important not to upset the press when undertaking such an important scheme. After the presentation there was a visit to view the development and the public realm works. Future proposals for

linking the scheme to the town centre were also explained.

General topics discussed during the afternoon session included how authorities are undertaking and supporting housing growth, the transparency agenda, the role of property assets in the devolution agenda, using public sector assets to increase mobile phone and digital coverage, the need for all commercial property to meet minimum energy performance standards by 2018 which is influencing disposal strategies [Ed- see article in this Terrier], the 2017 business rates revaluation and recruitment of staff.

The branch is again supporting final year students at Nottingham Trent University on their BSc (Honours) Real Estate course and at the end of November, Richard Allen gave his usual introductory talk on corporate real estate management in the public sector.

Finally, congratulations to David Blanchard of Melton District Council who picked up the ACES Award for Excellence at the ACES AGM and Lunch in Edinburgh, for his authority's asset management project 'Sixteen Partner Organisations at Parkside' relating to the joint occupation of its new headquarters building. As mentioned by the President when making the award, the new building replaced the old one which they had managed to burn down. I think he was joking! It was the only the 3rd time the branch has received the award so well done David.

JOHN READ, NORTH EAST BRANCH

The branch held its 72nd branch meeting on 6 November hosted in the Dolphin Centre by Darlington Borough Council.

The meeting started with a brief introduction to Darlington from Guy Metcalfe followed by a welcoming address from John Murray, Branch Chair, before handing over to Jenny Dixon who was to take over as Branch Chair at the end of the meeting. Jenny thanked John for his 2 years as chair and then handed over to Branch Secretary, Mike Ackroyd who presented John with a few gifts around a walking theme, including a Three Peaks DVD, Kendal Mint Cake and some Black Sheep (which were fortunately in bottles!). John then handed over to Bernard White, who along with Jenny had pulled together a range of speakers covering topics around the theme of 'Development'.

The first speaker was Ian Cartwright of Carter Jonas who spoke about development from the landowner's perspective. He explained that there was currently a high level of pent-up demand for new housing and that this was supported by new government policies aimed at delivering more new housing and growth. He explained that the landowner was at the beginning of the supply chain and went on to outline the processes generally used to bring land forward, including costs and risks and explained that the main choices were option agreements or promotion agreements.

Ian went on to cover the differences between these 2 types of agreement, the pros and cons of each and a summary of the typical heads of terms associated with each, together with some tips for negotiating deals.

The next speaker was John Anderson, Assistant Director for Economic Initiatives at Darlington Borough Council. John spoke from the planning authority perspective, seeking views from the audience on how northern authorities could attract more development. He

outlined current national planning policy, explaining that the push for affordable housing was being driven down by government policy on reducing rents for the social housing sector and the shift towards starter homes. He explained that there was a big gap between delivery and targets in the north east but the level of growth for Darlington was the best in the area. There was a healthy discussion with the audience about how to promote and encourage development in your area, including through engagement with agents and house builders, forums and consultation, speeding up the local plan processes, and by taking a longer term strategic approach to get the right sites in the right places.

Following a good buffet lunch and some networking, our 3rd speakers were Phillip Lee and David Newham of the Valuation Office Agency who spoke about development viability appraisals. Phillip gave a quick overview of issues in viability scenarios and the role of the assessor when a developer's appraisal does not deliver all of the planning gain requirements. He explained a potential 4-stage process:

- Stage 1 – Gather information, including drawings and specifications, sale prices, build costs, fees, abnormal and land costs and where necessary, specialist engineering or quantity surveyor advice
- Stage 2 – Site inspection, collating information and producing an appraisal report
- Stage 3 – Discussion and negotiation with applicant
- Stage 4 – If required presenting evidence at a planning enquiry.

David then went through the valuation approach, referring to the toolkits generally used by developers and agents and gave some very practical guidance on inputs into the appraisal. These

included build costs and the danger of only relying on BCIS figures, profit levels and finance costs.

The final speaker for the day was Ian Ward of Bond Dickinson who gave a legal update on key issues relating to property development, including those relevant to the public sector. The topics covered included:

- S123 with some examples of relevant case law and reference to the use of overage clauses
- The use of s237 of the Town and Country Planning Act to appropriate land for planning purposes to convert covenants and easements into only compensation interests
- Public Works Contracts and State Aid in relation to development agreements and disposals
- The pros and cons of different agreement types including options, building licences and freehold sales versus leases
- Implications for SDLT on development agreements
- Advice on the use of overage and typical avoidance tactics used by developers.

All of the above speakers attracted a good level of audience participation, with several questions raised following each presentation and the feedback from those attending was that it was an excellent 'Development' themed CPD event.

The meeting was closed with a brief summary of the proposals for the next branch meeting in Bridlington (more info on that below), and a thank you to all of the speakers and Bernard White and Jenny Dixon for organising the day.

The branch meeting was followed by the AGM at which Jenny Dixon was

confirmed as the new Branch Chair and Stephen Nicholson as the Vice Chair. It was also announced that both the Branch Secretary and Treasurer were planning to step down in 2016 and there was a discussion regarding options for their replacement. Both Mike Ackroyd and Alison Johnson have been long-serving and hard-working members of the branch executive and their services will be missed when they finally step down (more about that in a later edition of the branch news).

Finally, I can report that preparations are progressing well for the next branch meeting which will be held at Sewerby Hall and Gardens which is just north of Bridlington. The branch last held a meeting at the hall in 2010 when it received a presentation from East Riding of Yorkshire Council on the aspirations for a restoration and development scheme to transform the visitor attraction at the council-run facility. The March meeting will include a presentation and tour following the successful implementation of the scheme, using a combination of

council and heritage lottery funds. The day will also include a presentation on screen tourism and filming on council land and property, following the success of the council in attracting the filming of the new Dad's Army film to 7 locations in the East Riding, most of which were council-owned. These included a room at Sewerby Hall and Gardens. The film is due to be released in early February and the presentation will include reference to some of the legacy work that is planned to help increase tourism numbers to the area on the back of the film.

ADE ADEBAYO, LONDON BRANCH

The London Branch held its Annual General Meeting and its final ordinary general meeting of the year in December, splendidly hosted by the City Corporation at the Guildhall. The well-attended meeting (27 Members) was followed by the Branch's annual Christmas Dinner, held for the second year running at the Ye Old Watling Pub in the City.

The AGM was chaired by the outgoing Branch Chairman – Jeremy Pilgrim. Jeremy noted in his annual report, the increase in the London ACES membership. He also noted the success of the CPD events and the branch's co-sponsorship of the Espresso briefings with Bilfinger GVA. Jeremy warmly thanked members for the support given to him, with special thanks to the branch's outgoing Honorary Secretary, Chris Rhodes.

In his new role as ACES President, Jeremy spoke about ACES membership and how the changing pattern of employment and use of interims may require a look at our membership structure to ensure we are able to make the best use of ACES members.

The Honorary Treasurer, Marcus Perry reported that the accounts were in good health with only a modest reduction in net assets between 2014 and 2015. He noted that the branch was able to sponsor 4 delegates to attend the Presidential Conference at Salford Quays. These were 4 surveyors chosen by ballot from member authorities.

At the AGM, the London Branch elected its new Executive Committee and representatives to the ACES Council. The following were elected:

Ade Adebayo - Chair

James Young – Vice Chair

Alan Wharton – Honorary Secretary

Marcus Perry – Honorary Treasurer

Jeremy Pilgrim

Chris Rhodes

Neil Webster

Neil Simon

Abdul Qureshi

John Rayner

Representatives to ACES Council – Ade Adebayo and Andy Algar.

The Ordinary General Meeting immediately followed the AGM.

There was a discussion about local government's financial position on the back of the recent comprehensive spending review and the challenges we face in attracting and making best use of the talent within our organisations. One of ways we can do this was considered to be about how we leverage our knowledge and expertise across

organisations through collaboration. Jane Taylor from CIPFA gave a presentation on its survey of the effects of the recession since 2010 on asset management, which was written up as an article in the 2015 Autumn Terrier. Members were interested in the main findings coming out of the survey which Jane noted included the significant number of authorities looking to increase income from commercial holdings. She also noted the increasing requirement for surveyors to become more involved in programme management, as many authorities were reporting that projects with significant property issues were now being led by non-property programme and project managers and there is a concern that property people are being replaced.

It was noted that several agents and property people are wondering whether the market in London has peaked and the implications this could have for regeneration and the more commercial outlook being adopted by several authorities.

Andrew Ewbank from Bilfinger GVA joined members for the Christmas Dinner which followed the meeting. Neil Simon was leant upon to once again entertain with his fine singing voice. He however insisted in a sing-along and the collaborative rendition of the "12 Days of Christmas" - following a well-lubricated dinner - is best left to your imagination.



OUR NAME AND IDENTITY RESOLVED - OR IS IT?

Richard Allen and Jim Ross

A thoughtful piece for readers to consider, from Richard, an Honorary Member, President in 2004/05 and former secretary of the Heart of England Branch. He is a member of ACES Council.

Richard's cogitations

During a family holiday last summer I visited Holkham Hall in north Norfolk. In his book 'England's Greatest Houses', Simon Jenkins describes Holkham as one of England's 10 greatest houses. In the hall was an exhibition which promoted Holkham as much more than a beautiful house. Quoting from one of the display boards it showed that 'it is a diverse collection of thriving rural businesses that continues to grow as a major contributor to the local economy, and provides secure employment for more than 200 people who live and work here'.

The exhibition comprised a number of boards describing the work of the estate. But I was particularly drawn to the one that had been produced by the Estate Director who said that 'people live in country estates, people own them, people work there and people visit. An estate is more than an old house. It is a farm, a business, an ecosystem, a community, a venue, a confluence of history; it is a world in microcosm'. The board also explained that the Estate Director heads up a Property Department that is responsible for maintenance and facilities management of the estate.

Like me you have probably found it difficult to explain, in a few words, what you do as a member of ACES and in your day job. If I said that I was a chartered surveyor it would conjure up visions of surveying land by looking

into a theodolite. My degree is in estate management, so if I said that was what I did, it presented a clearer picture. But it associated the job with the management of a large country estate such as Holkham, rather than a much larger more diverse and mainly urban local authority-owned estate, as was the case.

The recommended text book when at the College of Estate Management, then part of the University of London, was 'Principles of Estate Management' by Michael Thorncroft, a senior lecturer at the college at the time and published by the Estates Gazette. I still have my copy. Upon leaving university I started work in 1969 with British Railways, as an Estate Surveyor in their Estate Department led by a Chief Estate Surveyor. In 1973 I moved to Nottingham City Council's Estates Department led by the Chief Estates Surveyor and Valuer. This was all very clear. I was an Estate Surveyor and my role, and what I did, was estate management. Well actually the job title at my authority was Principal Valuer, but apart from the surveyors who were involved solely in compulsory purchase or right to buy sales, we did very little valuation and I always thought the title to be incorrect.

However, within 6 months of moving, my authority went through a major reorganisation. I found myself in the Land Division of a multifunctional Technical Services Department, with my area of activity led by the Assistant

Director (Land), the ACES member at the time. The Estate Department of British Railways also became the British Rail Property Board soon after my move. So change and confusion was setting in, as identified by Ken Blessley in his excellent history of ALAVES, the Association of Local Authority Valuers & Estate Surveyors 1949-1977, in which he wrote 'we must try to bring about some degree of uniformity in our designations on the lines of the Treasurer, Education Officer, Architect and Planner. We must surely diminish our potential impact by the multitude of permutations which at present describe our activities'. [Ed – see 2012 Spring and 2013 Summer Terriers for Ken's history of ALAVES].

During my working years, the title of both my department and its lead officer changed a number of times, mainly to reflect the added responsibilities taken on, such as economic development, design and even for a time, leisure and tourism. In later years, and when my job title had estates rather than valuation in the name, I kept a record of the different titles that were adopted for what appeared to be similar chief or senior officer positions in local authorities. By the time I gave up this exercise it was already well into the second page of A4. The most common titles were a combination of Chief, Head, Director, Principal - Estates, Property, Valuation, Land - Surveyor, Manager, Officer, Valuer.

The name and identity confusion really

started when the government required local authorities to produce asset management plans to give strategic direction for the management of their estates, and also to support operating in a corporate, rather than hitherto departmental silo way. An appropriate person had to be designated in all authorities as the Corporate Property Officer to carry out this task. As the Assistant Director (Property) at the time, in the Department of Design and Property Services, I was that person at my authority. So I had 2 job titles and was an asset manager. Or was I still an estate or property manager? On retirement my title was Head of Estates. The authority until recently still had this post, as well as a Head of Asset Management, and they both reported to a Director of Strategic Asset and Property Management.

After my visit to Holkham I started to think how best to describe ACES members: is the current name still the most relevant? Does it matter which descriptive name is used in the title? Of the most commonly used: 'estate', 'property' or 'asset', do they all have the same meaning, or can one be ranked above the others?

I started by looking at dictionary definitions of estate, property and asset. My Collins English Dictionary says they are all nouns and defines 'Estate' as landed property, person's property; 'Property' as that which is owned, estate whether in lands goods or money; and 'Asset' a valuable or useful thing, property available to pay debts. So no clear help there, except it infers to me an estate is a single entity that can be made up of both property and assets. Another dictionary defined an 'Estate' as all of one's property.

This interpretation is also supported by central government who set up the Government Property Unit to produce an 'Estate Strategy' for all government-owned property. The ultimate aim is that all public sector property is seen as 'One Public Estate' and so the overriding entity is the 'estate' which is made up of property and assets.

In recent years I have helped Nottingham Trent University with its Real Estate degree - not property or asset degree - by giving a talk on corporate real estate

management in the public sector. The Wikipedia definition of corporate real estate is the real property held or used by a business for its operational purposes. As many authorities hold non-operational property, and presumably corporate real estate is the same as corporate property, this suggests that the designated local authority Corporate Property Officer for asset management purposes under the last central labour government regime was not responsible for the whole estate. For clarity, therefore, to cover all property which was the aim, the title should have been Corporate Estate Officer.

In my talk to the students I have explained that the role of the public sector is to contribute to the economic, social and environmental well-being of the community. And that property, like finance and people, is an economic factor of production that contributes and thus should be managed to support these aims and objectives. The great landed estates, such as Holkham, grew mainly in the 17th and 18th centuries through adopting good principles of estate management to create personal wealth and promote the status of their owners through the construction of stately homes, rather than for the overall benefit of the rural communities. But today their role is no different to that of the public sector estate. As a major estate owner in the area, the Estate Director at Holkham, together with his employer the current Viscount Coke, clearly sees that his estate management function is to manage the estate in both a strategic and day to day way to contribute to the local north Norfolk community and its economy.

Which brings me back to my old university textbook in which Michael Thorncroft defines Estate Management as: 'The direction and supervision of an interest in landed property with the aim of securing the optimum return; this return need not always be financial, but may be in terms of social benefit, status, prestige, political power or some other goal or group of goals.' He then says that: 'In this definition, "management" embraces both 'direction' or the overall control of policy, and 'supervision' which entails its implementation.'

So what have I concluded? It is that for all the variety of names used to describe

our work, nothing has really changed. Over the years the focus may have shifted from growing the public estate and day to day management, through asset management based on a fit for purpose approach and, as suggested by Keith Jones of Performant Consulting in his 'In the Public Interest' article that appeared in the July/August 2015 RICS Modus page 51, to now seeing property as a strategic resource that needs to be deployed to its best effect, with the emphasis on social benefits within reasonable or budgeted costs, rather than profit. But it all comes under the definition of estate management. Thus we are an association of estate managers. And the most senior property professional in any organisation should be the Chief Estate Surveyor, who should be responsible for the strategic, day to day property and asset management of its one single corporate estate. It could be argued that the name should be managers, rather than surveyors, as not all ACES members are chartered surveyors. But while the RICS is the most senior body responsible for professional standards in estate management, the use of the name surveyor is still appropriate.

Therefore, despite all the recent changes, the title and identity of our association still seems to be relevant and the most appropriate - or is it? Apart from the reference to 'property managers' which could perhaps be dropped as it is superfluous, the more observant of you may have noticed references to both 'estate' and 'estates' in this article. At British Railways I was an 'Estate' surveyor, but at my local authority an 'Estates' surveyor. Our ACES title refers to 'estates' but when we were ALAVES we were 'estate' surveyors. At the time the word 'Estates' was adopted for the title in 1994 it was the name most used in job titles, presumably because local authority property was considered to be held by service departments, thus comprising a number of estates, rather than being one corporate holding. If we are now an association of surveyors responsible for our employers' property and assets that make up the 'estate' - one single corporate entity - should we not be the Association of Chief Estate Surveyors in the Public Sector? Just a thought!



Response from Jim, ACES President 2007/08 and Honorary Member

An interesting piece, Richard. I agree with your conclusions, although not convinced that greater clarity in the title will clarify to executive directors and chief executives exactly what our role is, or even ensure that those who do know what our role is, involve us in projects from the outset, when they should.

In my 12 years at my last authority, I probably had 6 or 7 different titles, for a wide variety of reasons. However, one of the problems I never seemed able to overcome, was to prevent other departments (mainly Housing Department and Facilities Management) usurping job titles, ie the Estate Manager was the person responsible for managing a specific council housing estate, the Corporate Property Manager was the person responsible for all cleaning and caretaking staff in council-owned and operated buildings.

Even if I managed to convince the appropriate Director that the chosen job title was inappropriate, the perception of what the job was, if I tried to reclaim the title, among staff elsewhere in the authority, was diminished.

Long before I retired, and they were looking for someone to take over the role I had prior to my move into the regeneration team, I sent a comprehensive list of functions/specialisms which I believed the post-holder would need to have.

Prior to this I had already expressed

concerns that some of the newly appointed management team (all generic managers) were increasingly asking inappropriate staff to undertake work which should properly fall into the remit of the estate management team, or just as bad, appointing external consultants to undertake the work, without the knowledge to know which firms to approach or how to specify the work required.

I also seem to recall that most ACES members also found it difficult to identify which faculty of RICS to commit to, as none fitted with the work we all undertook.

In an ideal world a few chief executives would stand up and sing the praises of how their Estate Manager had provided invaluable help to transform their authority, but my experience is most chief executives don't want to share the limelight with others. The alternative is we bang the drum ourselves but sadly, our membership seem even less willing to share their successes now than when we were both working.

Like you, and like at Holkham, I am happy to say I worked as a Head or Chief Estate Manager, but to my Chief Executive, he still would not understand (or pretend not to).

And finally: Dr Timothy Eccles, Course Leader - Real Estate & Property Finance and Investment, Nottingham Trent University – looks like there is a similar problem as we always have, in what to name our courses!

THE SUFFOLK SCRIBBLER

Richard (Dick) Miller; always referred to in this column as "The Fenland Diamond Geezer"

I attended my first CLAVA meeting at the Lords Hill Hotel, Shrewsbury, on Wednesday 5 June 1985 as the new member from Suffolk County Council. One of the items on the agenda dealt with a membership application from Dick Miller, the Chief Estates Officer from Norfolk County Council. Earlier Dick had joined the LCC in 1959; only leaving for rural Norfolk in 1967.

We probably first met face to face at some national LAVA meeting in the late 80s and thereafter decided, as professional neighbours, we ought to meet on a more regular basis at some neutral local venue. The purpose of our meetings was simply to keep each other advised of what we were doing and the problems and benefits arising therefrom; this all seems unremarkable now but at the time was regarded as quite revolutionary, if not a little subversive.

Our 2 bases of operation, Ipswich and Norwich, are connected, geographically, by the A140 trunk road and there is a small town called Scole situated on the border between the 2 counties. Accordingly, we used to meet at The Scole Inn, in the hostelry's best lounge, the one with the huge open log fire. To preserve proprieties, Dick always took the seat on the north side of the table with me on the south.

As a result of these meetings and from reading his regular column in The Terrier, and from his contributions at national LAVA meetings I soon realised that Dick was a confident public speaker, with more than a trace of London accent, (and so was always referred to in this column as "The Fenland Diamond Geezer") and a wise and seasoned professional, while still being, and this was one of his favourite expressions, "streetwise."

He became President of LAVA in 1988/89.

Up to this point there had never been an Eastern Branch of LAVA but after his successful Presidential year 1988/89, Dick took the initiative and set up an inaugural Branch Meeting by hiring a room in The Maltings in Ely. He continued to do this and make all other necessary arrangements until Branch Officers were appointed.

Thereafter the venue for Eastern Branch meetings was changed to the Borough Offices on Angel Hill in Bury St Edmunds. And in the days before branch meeting refreshments were provided, Dick and I abandoned our regular lunches at The Scole Inn, instead opting for a lunch after the Branch Meeting at the One Bull Inn just around the corner. In those days this inn was regarded as a "Bikers' Pub" so we felt right at home there.

As Yesterday's Man, Dick wrote a regular column in The Terrier ostensibly dealing

with Past and Members' issues but which focussed more and more on newish professional matters, while extracting therefrom any humorous and quirky side issues. He gave it up at the end of 2001 (Volume 6 Issue 3). His final piece is typically forthright and slightly controversial.

After his retirement from Norfolk, Dick and Patt set up STEPS, a training company specialising in providing assistance for local authority surveyors and so it was that in 2001 Dick organised a final STEPS International Tour featuring the now defunct Betty'n Bert Roadshow International Tour with events at Cambridge, Walsall and Cardiff. I wrote at the time his organisational skills will be sadly missed.

Since 1985 Dick has made an immense contribution to ACES and its predecessor organisations while giving me about 25 years of professional companionship and support. He also told at a London Annual Meeting the Welders Joke for which I will always be grateful. It came in very handy at the start of the aforesaid Betty'n Bert Roadshow International Tour as the first event took place at The Welder's Institute in Cambridge!

Happy Days!

Thanks for that, Suffolk Scribbler – although I think you've now blown your cover.

The Terrier

The Terrier is published quarterly by ACES. The inclusion of any individual article in the Terrier should not be taken as any indication that ACES approves of or agrees with the contents of the article.

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