The Terrier

The Journal of ACES - The Association of Chief Estates Surveyors & Property Managers in the Public Sector

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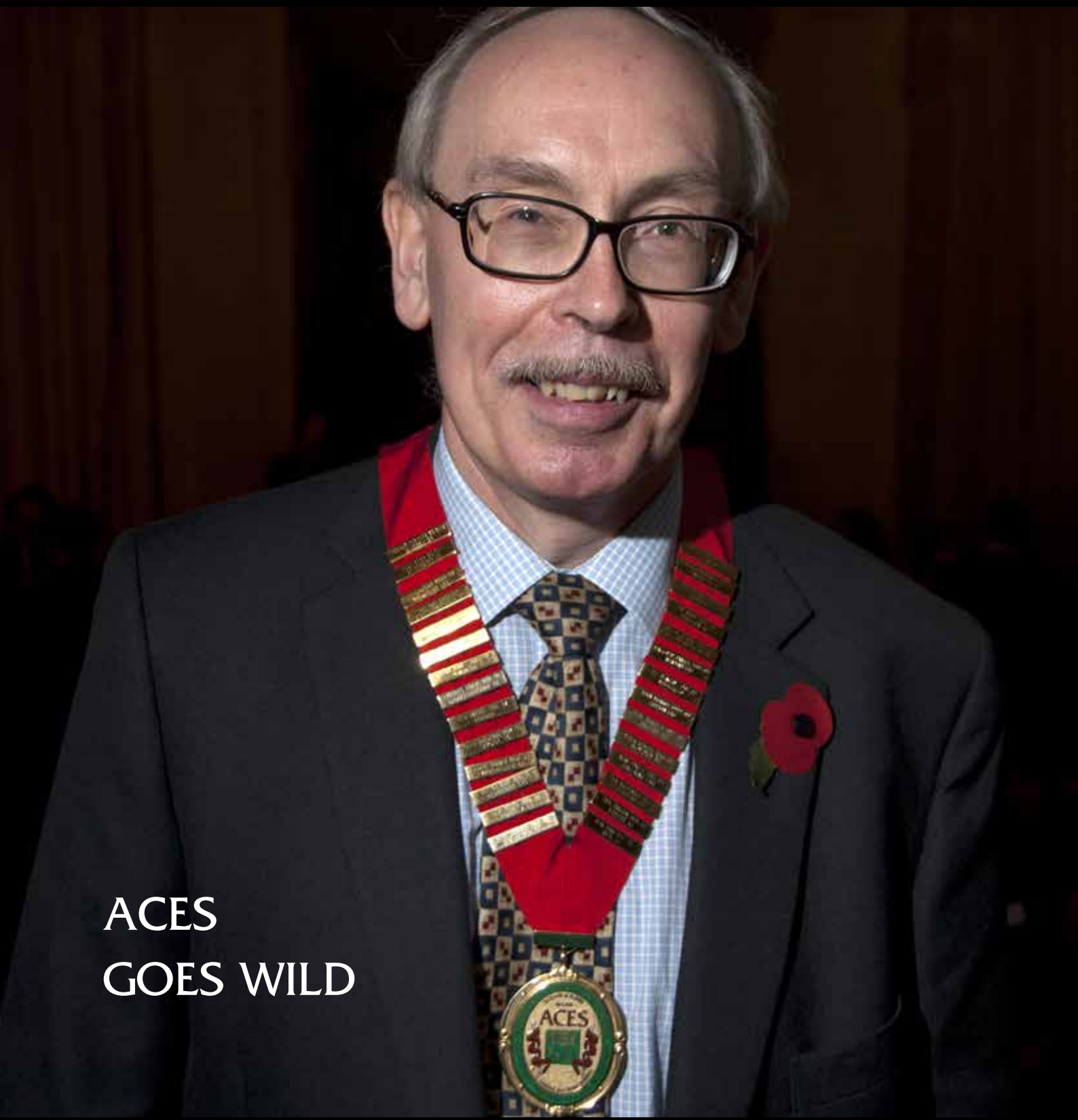

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THE JOURNAL OF ACES - THE ASSOCIATION OF CHIEF ESTATES SURVEYORS & PROPERTY MANAGERS IN THE PUBLIC SECTOR VOLUME 18 - ISSUE 4 - WINTER 2013/14

EDITORIAL

Betty Albon

Firstly, may I wish you all a happy new year.

We start with reports on ACES Annual Meeting held at the splendid Cardiff City Hall, and the installation of our new President, Andrew Wild, Client Services Manager at City of London Corporation. Thanks again to the outgoing President, Tom Fleming, for all his hard work during his year. And good luck to Andrew and his team.

There are some excellent articles in this edition. Once again, town centre regeneration figures strongly, including pieces on 2 major reports – "Beyond Retail" and the draft RICS Town Centres Information Paper. I am also very pleased to present 2 case studies from ACES members on collaborative regeneration/asset management projects in Brent and Brandon, somewhat different in scale, but both providing important new facilities and saving public money. And we have a brief update on the recent consultation on the government transparency proposals.

There is a whole range of professional pieces covering rent arrears, dilapidations, refrigerant gases, sustainable energy sources, compulsory purchase and compensation case law and valuation. Branch news continues to show the valuable CPD being covered at local level. And finally, there's the Scribbler. I know that many readers turn immediately to the back pages – just who is he?

My thanks go to all contributors from legal practices, RICS and CIPFA, as well as ACES members. You've done us proud to start the new year.

The content of these articles are not the opinions of the Editor or ACES.

CONTENTS

ACES ANNUAL MEETING 2013 PRESIDENT'S KEYNOTE ADDRESS

Andrew Wild, Client Services Manager,

City of London Corporation

Before I propose a toast to the guests, I have a few words to say. I should like to thank Tom for all of the hard work he has put in during his Presidential year and for me the highlights have been, first of all as you saw this morning some of you, Tom being a good firm chairman at the various council meetings we have had over the past year and moving key elements forward such as improving the ACES website which is a little tired and this is underway at the moment. It is not quite as modern as it should be and we will be working on that over the next 6 months and I am pleased to say the Paul Over is helping out on that, as well as Jeremy Pilgrim.

Tom has also pushed forward with the appointment of our new Treasurer, Willie Martin, who is already shadowing Ian Doolan. Ian has agreed to mentor him over the next 6 months

We have continued to build on the ACES links with the RICS, DCLG and the Government Property Unit. I am pleased to say that the GPU has now joined ACES and have representatives in many of the branches around the UK with fresh applications coming in. I am pleased to see that there are at least 3 representatives of GPU here today.

You have allowed myself and Jeremy Pilgrim, with council's consent, to look into utilising the advice of a professional marketing company, Fox International, to see what ACES can do to improve its conferences, profile and website Toby Fox who is helping us, is in fact just working for public sector organisations so that is quite useful and he has done some very good work in Southwark, Bromley and elsewhere so far, so I am looking forward to that moving on.

Another highlight was Tom's very successful Glasgow Conference, organised virtually by himself, and we should all stand and give him a round of applause at this point which he richly deserves.

Thank you

I would like to say a few thank yous now. There is one unexpected one. Thank you Alan Jaques. The reason why I am thanking Alan is because I joined the London branch because Ted Harthill, who was the City Surveyor, had given quite a number of years to ACES and he felt that there should be some succession plan. Alan actually welcomed me at the first branch meeting; there were 25 people there, I didn't know anybody in the room, it was quite daunting but Alan sort of took me under his wing and I went to the next session and here I am now, so thank you Alan.

I should also like to thank Gerry Devine of Cardiff County Council for helping out with the organisation, the menu, etc. Now we all know Tim Foster. Tim is one of the backbones of ACES and is secretary; Colin Bradford, who is our techno wizard, thank you, who in the past has been our publishing expert but has now taken a bit of a back seat, but he is always here and always taking photographs of people in the most awkward poses normally, and in my case, not smiling. I would also like to thank Betty Albon. Before she retired she took over the editorship of ACES. She is doing an excellent job and she normally has too much material, which in the past has been a problem, but it is not now, thanks to Betty. I would also like to thank the double act Ian Dolan and Willy Martin for carrying on the Treasurer role. And the last person I would like to thank is Adrian James of Swansea City Council. Thank you very much Adrian for trying to organise me, even if I do tend to go off in the wrong direction around the wrong table and probably to the wrong room!

And before I hand over to Mark Walley of the RICS I would like to give a special thanks to Carter Jonas, especially Clare Winnett this morning, who gave an excellent presentation on development that was really interesting especially the case studies, I find case studies much more interesting than, as she said, valuation, which is a bit dry. I would also like to thank Ian Mulvey from Carter Jonas for sponsoring this event. And finally to Sionned Evans from the Property Division of the

Welsh Government, who outlined to us this morning the work being done in strategic asset management across Wales.

Presidential aims

I now want to outline my aims for my Presidential year. What I hope to do with Tom Fleming, Richard Wynne and Jeremy Pilgrim is to give some continuity through the next 3 or 4 years. One of the things we are aware of is that we don't really publicise ourselves particularly well as an Association, although we have a website and we run very successful conferences.

I will be visiting ACES branches around the country and my aim will be to ask members to let me have examples of past triumphs such as rationalizing operational estates and more importantly new projects that are actually underway or are in the pipeline. The idea is to use these to show to the outside world what we are capable of and what we have done to help local authorities' finances out, in terms of asset rationalisation and savings. People need to know how we are helping improve services and why we should be on the top table within our authority. This information will also provide good material for the website and any new publicity material we produce. Property projects take a long time to actually mature and I think that using the website and the conferences we can make our presence much better felt within the country and the UK nationwide and hopefully start moving up the top table.

I must admit that when asset management was mandatory, that actually was quite good for public sector property surveyors. It is not anymore; certainly at my council the profile has gone down a bit and I think that other authorities have noticed the same. When it is not mandatory you are just seen there as delivering the goods, as it were, not particularly at policy-making level. And I know that some of you are extremely good. One good example is Oldham where Past President Heather McManus is currently bringing together key partners such as the fire brigade, police and NHS to maximise collaboration, achieve savings and more importantly to provide a better service to the public.

I also want to follow up Tom's work with encouraging authorities to offer training and apprenticeships to young people and publicise this more on my journey round the UK. Mark Walley (Regional Managing Director of the RICS) kindly provided us with information on the Chartered Surveyors Training Trust at one of our ACES/RICS liaison meetings this year. The Trust provides 16 to 24 year olds with the life changing opportunity of a debt free and tutor supported surveying apprenticeship. It supports young people to become qualified surveyors regardless of their academic, social or financial circumstances and the programme of support runs from application to qualification. The programme runs for 2 years and leads to qualification as a building surveyor, quantity surveyor, valuation surveyor, commercial property surveyor or a residential property surveyor. The Trust has its own website which is www.cstt.org.uk, if you are interested.

Modernising the website is also very important and Past President Paul Over is coordinating and giving us invaluable assistance here. Toby Fox from Fox International attended Tom's Glasgow conference and will be able to give us some useful feedback and tips and Jeremy Pilgrim and I will report back on this at Council in January 2014.

Presidential conference 11/12 September 2014

The London conference next year is set for the 11/12 September and will be at the Grange Hotel St Paul's, the theme being "Sustainable Property". There will be the normal Thursday morning session with an outline of where we are in terms of economics and resources; it is not only economics but it is energy water, gas, electricity, where really are we at the moment? It may be quite frightening but I would actually like to know more about that. And secondly what is more important, I think as well, is the change in the demographic outline of England, Wales and Scotland.

In the afternoon workshops will pick up and develop the morning's themes. We will have sessions repeated so you don't actually miss the ones that you might have liked to go to. And then on Friday we will have a more national strategic outlook. I will let people know who the speakers are to be after Christmas so we gradually build up interest in the London Conference, which I hope will be a great success. Social trips for partners could be the Tate Modern across the Millennium Bridge, St Pauls for those of you who havn't visited it; I have ideas about Mansion House, and there is also a weird and wonderful museum in Wood Street Police Station which is a criminal museum and not normally open to the public,

We want to see if we can get into the premier league of conferences in terms of competing with, for instance, the RICS.

ACES award for excellence

At this point I will conclude my aspirations for my year and I am very pleased to say we are now coming to the ACES Award for Excellence 2013 and we have a few people in the room who have come along at very short notice to be with us and I am very pleased to say that the Award for Excellence has been won by the London Estate Rationalisation Team. They are part of the Government

Property Unit which is part of the Cabinet Office. They are Malcolm Sutherland FRICS, Ann Parker MRICS and Murray Quinney MRICS.

I will just give a very brief background to it. The scheme offers 100% occupancy of a vacant government building in central London leased to 2022, which is the corporate headquarters, with 7 organisations in a single location with shared reception, shared conference suite and shared amenities such as showers, 100 bay cycle store, first aid, prayer room and storage facilities. The building delivers significant savings to government as a result of exiting 9 leasehold properties and providing savings of £6.6m per annum and around £59.4m over the 9.5 year period. This represents a gross reduction of approximately 10,000 sq m in respect of the central government estate as all 7 organisations are each now in a smaller footprint which they occupy at improved metrics.

The challenge was to rationalise a number of departments back to back because they needed to make sure that they had a controlling interest in the property, with rent and rates and service charges all coming in at the same time.

The scheme succeeded because there was a positive collaborative approach from all parties. I won't go into any more detail because the penalty of winning the Award is that you have to speak to the conference next year!

RESPONSE TO THE PRESIDENT'S KEYNOTE ADDRESS

Mark Walley, Regional Managing Director of the RICS

Andrew thank you very much. It is an absolute delight to be here and I always enjoy coming down to Cardiff and be given the opportunity to pop into the RICS office here, but coming into a building such as this reminds me of the fantastic heritage that our Victorian forefathers gave us both with the civic buildings that we see around, but also the professions because that's when they all started.

It's really interesting to just think that 12 months ago at the 2012 Annual Meeting, Tom was sitting next to our Chief Executive, Sean Tomkins, and was basically having a conversation that said – well most of us are members of the RICS in ACES but we are not sure that we are getting great engagement from you. He was very gentle about it but it was kind of true and Sean came back to the office and said to me, we have got a group of members in the UK who need more looking after; and the UK is my responsibility within RICS.

So I had a meeting with Tom, Heather McManus and others and they very gently prodded us and said –we don't think you are quite doing enough and the big thing was actually around preparing ACES members for the future, a future that was going to be somewhat different from the past and probably some different skills were needed. Along with that, there was a discussion around training and CPD but also around how to bring the future professionals in and then how to develop them.

We had a very good discussion and it is always great to get feedback from - and this is the bit where I have to be careful – customers, because I talk

about our members quite often as customers; that is how I see it, it just helps me to get into the right frame of mind for the conversation. Those of you who are members are paying the Institution somewhere over £500 a year typically and I like to think about you as customers in that respect, because if you are not going to pay, then I have to work out a different way of cutting my cloth. It is really important that we think of the public sector as a whole in that equation, and see the public sector as a single unit; you are my biggest single group of customers. There are a number of very large commercial firms in London who send me some very big cheques every year. The reality is that probably 60% or more of our members are in small or medium enterprises but I do know that if 10 people stopped sending me a cheque every year then I have got a big hole in my accounts and 2 of those big cheques actually sit with 2 large public sector bodies. I just really want to reinforce the fact that we do take the public sector seriously.

The conversation was good and frank and we talked about how we could do more in those areas identified. We made some progress and then we got back together again later on in the year, just to review from both sides how were we doing against what we said we would do. I think if we were both honest we were kind of doing okay but not really as far as we wanted to be, and we had some further talks about what sort of training people would want and what sort of CPD and how we could really engage, because that seemed to be the big area. The great thing for me today, as I have just been talking to a few people at the reception, was that the local events that we are running and getting involved in, and in your own local branch events, the feedback is that we were beginning to make it happen properly. I would never say that we are at the end of the journey but it was good to get positive feedback, so good news.

Apprenticeships

Andrew talked about this and there is a fantastic organisation - I will give them another name check – Chartered Surveyors Training Trust. They will preselect people for you and then they will help you through the whole process of bringing an apprentice into the organisation and through their apprenticeship. The website – cstt.org.uk - is easy to remember and I really would encourage those of you who are thinking about bringing youngsters in, to look at their website and then have a conversation with them. They will make it really easy for you, so let's keep working on that.

I think the other name check that I want to give here is somebody in the team at the RICS - Paul Bagust - and I can see many of you nodding your heads as I have said that name. Paul has been looking after this sector for RICS for probably approaching 10 years and has a fantastic knowledge and understanding of what you folks do and how we can help add value. If you want to get involved in helping us, Paul runs a survey each year directly with the public sector and it gives us an indication of where we are going. People are absolutely recognising our primary goals which are all about setting standards, getting people qualified to those standards and then regulating to those standards. And then it starts to fall away after that, in terms of how well we are doing on other things, but from the first survey to the second survey there was a nice increase in terms of recognition of what we are doing at a practical level. I would be really disappointed if we have not made even more ground, given all the work that has been put in by Tom Fleming and Richard Wynne and others from ACES, and from Paul and the teams around the UK.

I know we also said that we will put a regular column into the Terrier. The Terrier popped into my mailbox probably about 12 months ago and I thought, what's this? And when I read it I thought, yes I like this, so now I wouldn't say that I was waiting for it to arrive, but when it does I actually read it. So you have got a convert and I think the Terrier is a great way of getting the messages out to your own members and for us to be able to share some of what we are doing.

We agreed RICS would become much more visible for you. I hope that we are living up to that. We will be involved in the Presidential conference. We will have a stand there in September and we are ready to help in any way that we can with that, so just call on us.

Before I move on to the last thing I want to talk about - and I can't miss this opportunity with so many members in the room – I want to remind you of your CPD recording requirements. Now that I have the information available, I did a little check as to roughly how many ACES members have completed their CPD and have recorded it on-line. Now let's put this in terms of the national average of all members. There are around 25% of all members who have registered and got something on line and remember there is a 31 December deadline this year. ACES members are a little bit ahead of that but I did say a little bit. You are all leaders in your professional lives and I think it is beholden on all leaders in professional lives to go first. So if you haven't yet registered, please do; if you have, keep talking to your colleagues, remind them how easy it is to log on, how easy it is to register the details of your CPD and remind people about why it's so important that CPD is completed.

I use an analogy when I am talking about CPD. When I first had a car and it wouldn't start in the morning when I was trying to get to work, I would run round, flip the bonnet, play with the plugs and the distributor and I would spray some WD40 and everything would work again. Now if my car won't start in the morning, first I am really really annoyed because it is quite a new car; second I flip the bonnet and there is a big sheet of plastic which has "go away" (figuratively) written all over it. You are not competent. Underneath that piece of plastic is the same internal combustion engine but the way that it works is different now and that for me is the story of CPD. I used to be competent and now I am not because things have changed. So if that little story helps to encourage you to help your colleagues, please take that with you.

I think now there is just one more thing left from me and that is, on behalf of the guests, I would like to propose a toast to ACES.

NOTES OF ACES ANNUAL GENERAL MEETING

HELD AT CITY HALL CARDIFF ON 1 NOVEMBER 2013

Tim Foster, ACES Secretary

47 members attended the AGM. The secretary reported the deaths of Arthur Tindall and Geoff Brigham, both former Presidents of ALAVES.

Annual report of the Council
The Secretary circulated a comprehensive report on the work of Council and the Association for the year 2012/13, which was noted [Ed – available on the ACES website].

Financial matters
The Honorary Treasurer presented the unaudited accounts for the period from 1 July 2012 to 30 June 2013 with recommendations for subscriptions for the coming year. It was agreed to increase subscriptions from £115, £70 and £35 to £120, £75 and £40 for full members, additional members and past members respectively. It was also agreed that past members still carrying out work in the public sector should pay the additional member's rate of £75.

Appointment of Treasurer Designate
The recommendation from Council at its meeting on 12 April 2013 for the appointment of Willie Martin as Treasurer Designate, on a remuneration not to exceed £5,000 per annum, was unanimously endorsed by the members present. He will take over as Treasurer following a period of working closely with the Honorary Treasurer.

Officers of the Association
The following were approved as officers of the Association for 2013/14:

President	Andrew Wild
Senior Vice President	Richard Wynne
Junior Vice President	Jeremy Pilgrim
Immediate Past President	Tom Fleming
Secretary	Tim Foster
Hon Treasurer	Ian Doolan and Willie Martin
Editor	Betty Albon
Hon Auditor	Wortham Jaques

Liaison officers
The following were approved as liaison officers for 2014:

Communications	Betty Albon
Compensation	Gary Sams
Rating	Andrew Wild
Valuation	Daniella Barrow
Housing	Rachel Kneale
Performance Management	Trevor Bishop
Corporate Asset Management	Ian Hay
Commercial Asset Management	Dave Willetts
Agricultural Asset Management	Stephen Morgan
Sustainability	Lee Dawson
Consultation	Richard Wynne
Procurement	Abdul Qureshi
Urban Regeneration	Jeremy Pilgrim & Richard Wynne
RICS	Sam Partridge
Federation of Property Societies	Richard Wynne
CLG/ACES	Heather McManus

[Ed – Liaison officers welcome all ACES members to contact them if they have issues on their specialist areas which they would like to discuss]

ACES/DCLG Working Party
It was agreed that the following members serve on the Working Party for 2014: B Albon, L Dawson, T Fleming, T Foster, I Hay, H McManus, N McManus, P Over, J Pilgrim, R Wynne and A Wild.

Council membership
Keith Jewsbury and Colin Bradford were elected to serve on Council for 2013/14 representing Past and Honorary members of the Association. Peter Burt, Adrian James and Paul Over were elected as directly elected members of Council for 2013/14.

Future meetings and conferences
The next meetings will be the Presidential Conference on 11/12 September 2014 in London and the Annual meeting on 14 November 2014, also in London.

One Public Estate
A Member of the North-West Branch reported that the branch had been approached by Aileen Wiswell MBE of Cabinet Office wishing to follow up on the initial briefings re the aims and outcomes of One Public Estate, delivered by Malcolm Sutherland working with 12 authorities across the country. It was requested that she and Ann Carter-Gray, together with a Regional Team Leader do a short talk/presentation at regional ACES meetings over the next 12 months. The meeting endorsed the approach.

MEMBERSHIP Tim Foster, ACES Secretary

I list below the changes in membership between 1 September and 31 December 2013.

New members approved

There were 9 new applications approved during this period

Sue	Bader	Crawley Borough Council
Chris	Fairhead	East Hampshire District Council
John	Gahagen	Aberdeenshire Council
Yinka	Jawando	London Borough of Barking & Dagenham
Peter	Knapton	South Lakeland District Council
Graham	Macpherson	Suffolk County Council
Christine	Morton	Cabinet Office
Mike	Paterson	London Borough of Hillingdon
Tony	Simpson	Wirral Metropolitan Borough Council

Transfer from full to past membership

Three members transferred to past membership during the period

Graham	Creasey
Dinesh	Kotecha
Cliff	Mallows

Resignations

There was 13 resignations during this period

Ray	Ashton
David	Baughan
Mike	Bell
John	Burgess
Alison	Campbell-Smith
Steve	Coe
Andrew	Cripps
Ian	Gould
Katie	Iggulden
Richard	Lauder
Robert	McLachlan
Dave	Pogson
Steph	Thorne

The membership as at 31 December 2013 now comprises

Full	232
Additional	73
Honorary	34
Past	75
Total	414

MAKING BETTER USE OF OUR PUBLIC ASSETS -
THE WORK OF THE NATIONAL ASSETS WORKING GROUP IN WALES

Sioned Evans, Deputy Director and Head of Property Division, Welsh Government

This is a slightly abridged version of Sioned's presentation about the property initiatives of the Welsh Government, given at ACES Annual Meeting in Cardiff in November 2013.

Sioned is a Chartered Surveyor with over 20 years' experience in property management within both the public and private sectors. She leads the Welsh Government Location Strategy Programme and is responsible for providing professional estates advice to departments across the organisation.

Facilities management for the Welsh Government administrative estate is a key role within Sioned's control, ensuring that the properties perform well, are safe, compliant and well positioned to efficiently and effectively support the business.

Sioned is the workstream lead for the National Assets Working Group – driving opportunities for collaboration and transparency in the use of Welsh public sector assets. She also leads on the development of the corporate carbon reduction strategy.

Sioned is a Director of International Business Wales and Head of Profession (Surveying) for the Welsh Government.

Introduction

The purpose of this paper is to provide information about my work with the corporate estate of the Welsh Government. As I lead on the National Assets Working Group (NAWG) work this presentation will also deal with the background and context of the NAWG, its scope and structure, engagement and achievements to date and the continuing challenge.

Background and scope

Some 4 years ago I was asked to establish a group of senior leaders across Wales with an interest in property assets. It was clear that a financial crisis was occurring, although I do not think that anyone recognised, at the time, just how long and how deep the impact of the crisis would be. There was therefore, some foresight when it was suggested that we turn our collective attention to opportunities presented by our established asset base and operational models. It is probably fair to say that the public sector asset base had been side-lined for a number of years. Traditionally we could acquire or dispose of what we wanted and this resulted in the public sector estate growing in a way that was, in the current context, far from appropriate.

Surprisingly, stark messages in the recent budget announcement came as quite a shock to many parts of the public sector and although the cuts in Wales may not be as severe as those in England, they have nonetheless brought the asset challenge into very sharp focus.

Structure

The National Assets Working Group (NAWG) was originally chaired by a local authority Chief Executive, Mark James of Carmarthenshire County Council and is answerable directly to the Public Services Leadership Group. In 2012, the Minister for Local Government asked Dr Helen Paterson, CEO of Wrexham Council to chair the group. Helen quickly reaffirmed the role of the Group, making it clear that with limited funding, the NAWG's primary function was to encourage and influence and to help remove blockages not (as some may think) to deliver projects and preach about what is right and what is wrong. Success in this relies heavily on collaboration, engagement and the sharing of information within and across public services.

Core membership is drawn from chief executives and directors from across public services in Wales, police, fire, local authority, health, ambulance, the courts and central government. We discuss a range of issues - how we can strategically map the public sector

Budgetary Pressures

- 2014-15 draft budget tabled on 8th October;
- Covers £15.1bn of spending -

  A contraction of £1.7bn in real terms since 2010;
- Four areas ring-fenced – health, schools, the economy/jobs and universal benefits; and
- Local Government budget cut by 5.7% in 2014/15 and 3.3% in 2015/16

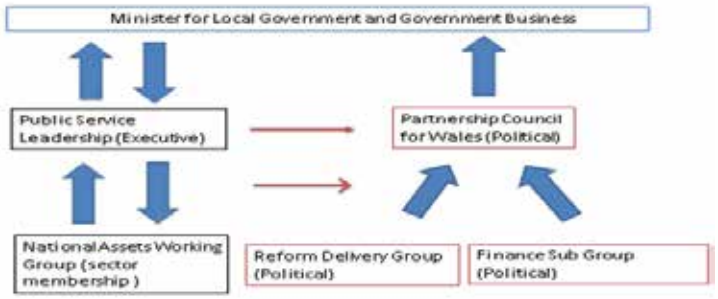
ACES, CITY HALL, CARDIFF - 1 NOVEMBER

Members of the NAWG

- Natural Resources Wales;
- HM Courts and Tribunal Service;
- Higher Education Funding Council for Wales;
- Unison;
- NHS Wales Shared Services Partnership – Facilities Services;
- Wales Audit Office;
- Wrexham County Borough Council;
- Welsh Local Government Association;
- Carmarthenshire County Council;
- One Voice Wales;
- Cabinet Office;
- North Wales Police and Fire;
- South Wales Police;

ACES, CITY HALL, CARDIFF - 1 NOVEMBER

Flow of Influence and direction



ACES, CITY HALL, CARDIFF - 1 NOVEMBER

estate in Wales; how we can share best practice and better understand the asset management picture. We meet monthly and minutes are circulated widely.

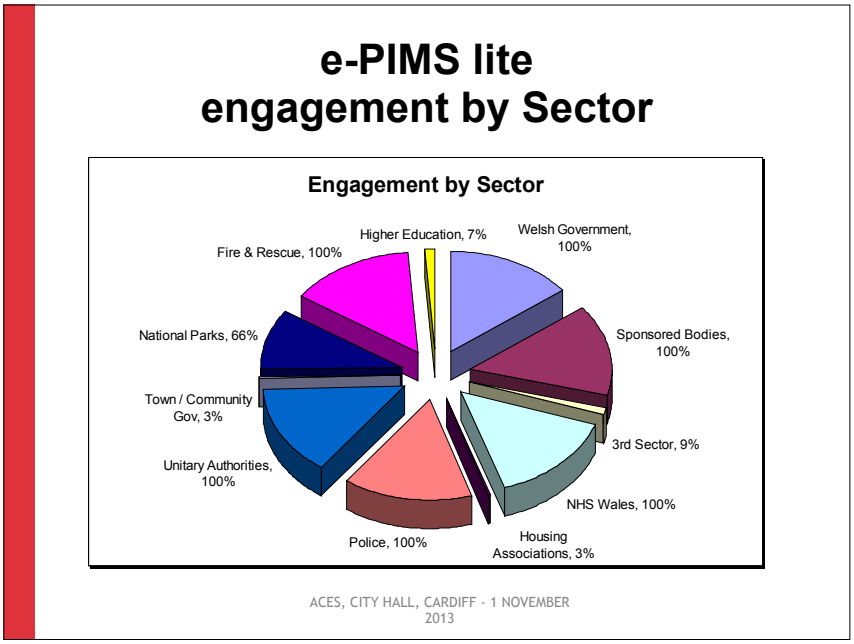
We have a good representation across Wales and our success, or otherwise, depends on the engagement of the partners. At times, this has been patchy, but through the NAWG's network of senior leaders, we have succeeded to share information, remove some blockers, promote best practice and develop some targeted tools to support the collaborative agenda.

This diagram shows the relationship of the NAWG with other bodies. The NAWG feeds into the Public Service Leadership Group (PSLG) chaired by the Minister for Local Government and Government Business. As Chair of the NAWG Helen Paterson formally reports to the PSLG on our progress, how we are engaging our achievements and challenges. The PSLG is an influential group and closely monitors our progress checking, for example, whether agreed reforms are being generally adopted and embedded. You will be aware that the Williams Commission is currently investigating public sector governance and delivery and will report in 2014. The work of the NAWG will help support the emerging remit for public sector governance and importantly, its delivery.

The NAWG seeks to influence and support collaboration between public services but does not provide direct funding, lead on collaborative projects; or approve business cases. We are clear what we can do but more importantly we are clear about what we cannot. Whilst we cannot provide direct funding, we can point projects towards potential sources, such as the Invest to Save fund. We cannot lead on collaborative projects, but we can support them. For example we are working with Blaenau Gwent Council on their assets review, where they are identifying collaboration opportunities and their potential for joint ventures. We are also engaged with other authorities and projects, for example Powys County Council, Brecon Town regeneration, Cardiff and Vale University Hospital Board Estates review, and the South Wales Police.

Fleet and passenger transport

The public sector property estate in Wales is worth around £12bn with an estimated £500m of annual running costs. Our role in looking at assets is not however, confined to land and buildings. Your role may also be broader, so one of the areas we look to support is fleet and passenger transport. We have evidence to show that service improvements -sometimes just through some modest adjustments- can bring savings of around 10%, if not more. That is a potential saving of around £27m pounds a year across Wales.



One of the examples that we have is in North Wales. Lee Robinson is the Deputy Chair of the NAWG and Head of Corporate Services in Wrexham. As part of Lee's regional engagement it was recognised that transporting vulnerable individuals in taxis was not only expensive, but it was also isolating and did not best support the development of life skills. What they have now introduced is a bus solution that addresses efficiency savings for the council but more importantly, delivers benefits around independence and access to more diverse social interaction.

Asset Management Programme and e-PIMS

We are on phase one of our ICT Project. Here we are looking at how we can develop a more consistent and coherent estates programme for use by public sector organizations in Wales. Initial indications show that doing this across as few as 6 unitary authorities will save between £0.25-0.75m. This proposal links into finance applications and other strategic pools such as e-PIMS. The project is led by Jonathan Fearn of Carmarthen Council, who many of you will already know.

The third area I want to touch on is engagement and achievements to date. The pie chart shows the engagement by sector. e-PIMS is a tool that was developed by central government to map the central government estate. When we decided to adopt e-PIMS as a tool for mapping the Welsh government estate we realised that we had quite a hill to climb if we were going to introduce the full version across Wales – to a range of different organisations with diverse estates. While e-PIMS is web based with capacity to hold a huge amount of data (which makes it really valuable as a tool), much of this data is already held by organisations and there was an understandable reluctance to duplicate data held. We had to simplify it and to focus on its core selling point – its strategic capability. So we developed ePIMSlite. ePIMSlite captures in a far less onerous format, the strategic elements of e-PIMS and for the first time, allows access to the bigger picture about where our land and property is held and where the opportunities may exist.

With the support of estates managers across Wales, we have captured the location of land and buildings, their use, the extent of the holding and critically I think, for the first time, the name of the person who has responsibility for managing the asset. You can now just pick up the phone if you see an asset of interest, or if you are looking around for property in an unfamiliar location. We have 97% of the core public sector estate mapped on e-PIMSlite - over 21,000 properties.

Through the Vacant Space Register we can also now offer surplus assets directly to the public sector – before marketing wider. This opens up more opportunities for co-location, rationalisation and bundling. For example, new ways of working and staff reductions across the Welsh Government estate meant that our Llandudno Junction office was performing at far less than optimum level. The building was designed and delivered at a time when we anticipated increasing functions, staff numbers and perhaps more mergers. The landscape has since changed. It is a big building and our KPI's for usage per square metre per member of staff were quite poor. By using tools such as the Vacant Space Register we have been able to identify a suitable partner for co-occupation and have recently welcomed the Student Loans Company to the building. The SLC requirement of some 80-100 desks will improve building efficiency and our KPI's and directly benefits the public purse - SLC is funded by the Welsh Government. The message is as always, that you need to know about opportunities in order to explore them.

Cardiff City Council was using e-PIMSlite as the basis for their work to identify, with 11 other public sector bodies, the potential for surplus property in Cardiff. The figures around this work are high with the group estimating some £174m of potential disposals and approximately £7.25m of savings per annum.

Surplus Land Register

The Register currently hosts over 130 entries. From my point of view, the disappointing thing is that there are many more vacant properties and sites out there which are still not recorded. We are talking about the whole of Wales, yet 130 sites are probably what you would get in one authority! There is some reticence towards putting vacant or potentially

vacant sites and buildings onto e-PIMS and the NAWG needs to provide more support and reassurance on this front. This is not about taking control away from anyone; it is about offering opportunities. The SLR is widening the marketing of sites and properties as well as offering opportunities to identifying bundling potential. If I could ask you one thing; it would be to reflect on that particular issue.

FindMeSome GovernmentSpace

I talked about developing a tool to help with identifying meeting room facilities across the public sector. That was a direct response to a number of grumblings that we had heard - legitimate grumblings actually, about the public sector having to hire external facilities for meetings and conferences. We all knew that there may be existing facilities, council chambers, rooms, suites not being used. How could we make the most of those spaces? Find Me Some Government Space portal was developed for the database. We launched it in late 2013 and now have over 125 rooms recoded. This means that if you are on e-PIMS and you go into the FindMeSomeGovernmentSpace, you will be able to identify available accommodation - much of which is free of charge. If you have the opportunity, I would urge you to get involved with this, upload some of your own assets and also to make use of the assets of others. The potential savings to the public purse could be significant.

Land Transfer Protocol

The Land Transfer Protocol has proved to be very successful. Early on in our work we noticed that there was an awful lot of frustration around inter-public sector land and property transfers. These transactions were being handled in the same way as transactions between the public and the private sectors – which were not always appropriate It could be quite confrontational with separate valuations and long protracted negotiations. When talking about 2 public sector bodies working together, this seemed unnecessary because all the costs and resource were coming from the same pot. We developed the Land Transfer Protocol as a framework within which public sector bodies and organisations could transfer land and properties more easily, more efficiently and more transparently.

For example, once and asset is identified, parties agree the terms of reference for a single valuation. Whilst the default is the District Valuer, parties can determine who is used but the key is that having carefully scoped the terms of reference, the valuation is accepted and not subjected to negotiation. To make this work well parties must ensure, up front, that the terms of reference are appropriate and they reflect all the issues that you wish the valuer to consider – such as the basis of valuation. We have yet to fully calculate the impact on the total savings from using the Land Transfer Protocol; we know that it is over £100,000 in terms of straight valuation fees, but the opportunity costs in terms of the extended negotiations or indeed any agency fees would be much higher.

We are currently working on a refreshed version of the Protocol, which will include enhancements such as standardised templates for co-location and sharing of property [Ed – to feature in a future edition of the Terrier]. Those present here are in the right field to understand how these arrangements work, but when you are talking about community councils and the third sector, which do not necessarily have access to property expertise, having defined standardised templates with issues to consider, is really helpful.

We have used both the Land Transfer Protocol and the Surplus Land Register for the Welsh Government's offices in Aberystwyth. Our new offices in the town were established in 2009. Within Aber, we already occupied premises, which we had inherited as part of the former Welsh Development Agency portfolio; on the Marina – 'Y Lanfa'. Y Lanfa was not fit for purpose but with 6-7 years remaining on the lease and poor market conditions we were almost resigned to moth balling. We placed Y Lanfa on the Vacant Space Register. At the time, Her Majesty's Court Service was being re-configured and had a new, pressing need for premises in Aber to support a Magistrates Courts. Y Lanfa fitted the bill and having undertaken normal inspections and discussions, we smoothly transferred the building under the Land Transfer Protocol. The Welsh Government saved the best part of £1.6m over the remainder of the lease and the Court Service secured suitable accommodation in this strategically important town.

Location Strategy 2010 -2015

I am just going to indulge myself a little bit here. We are all involved in this profession and the reality is that the focus is now more on bricks and mortar than it's probably ever been. In the past, as property professionals we were allowed, dare I say encouraged, to operate away from the spotlight and to deliver assets that would effectively support functions. Efficiency and KPI's were never a primary driver, costs were borne by different parts of our organisations and there was no real cohesion or focus on how assets can be used to really deliver savings. This has changed. There is now a wider recognition at senior level of how our assets can be used to drive change, save money, deliver efficiencies and promote improved service delivery. It is an interesting and challenging environment and I personally really enjoy the challenge…even if it does mean that I get to see the Minister and the inside of Committee rooms more regularly!

In August of this year the Welsh Government Finance Committee reported on its inquiry into 'Asset Management in the Public Sector'. The report will be discussed at a plenary session next week. At the same time the Minister will also launch our most recent State of the Estate Report. The Finance Committee enquiry report contains 14 recommendations. Some of the recommendations are to do with the National Assets Working Group and some of them are directly aimed at us in the Welsh Government - around things such as corporate asset management plans. The Location Strategy 2010-15 is our administrative estate asset management plan and we will be looking to make that both more transparent and more aligned to the wider property portfolio. Property

Location Strategy 2010-2015

Achievements to date:

- 2010 offices - 65 + 10 specialist sites;
- Current - 32 offices + 8 specialist sites;
- 2015 – 26 offices + 7 specialist sites – a 56% reduction against 2010 figures;
- On course to achieve £18m savings over 5 years;
- By 2015, running cost savings of around £6m pa will be achieved – a 25% reduction against 2010 figures;
- A 17% reduction in our carbon emissions since 2010; and
- Phase 3 – from 2015-20 in development;

ACES, CITY HALL, CARDIFF - 1 NOVEMBER 2013

Division holds the baton for responding to all 14 recommendations, although almost every response will require contributions, feedback and opinions from a wide range of interested parties.

We can probably agree that compared to cutting other public sector services, such as schools or hospitals, cutting assets is a less painful approach to driving efficiencies. In the context of the size and value of central government property assets, the Welsh Government admin estate is comparatively small, but even so the savings we have achieved since 2010 are pretty significant. We started our journey with some 93 properties and are now at 40 – and dropping. Over the course of the 5 year strategy we remain on course to deliver £18m of savings and from 2015, a further£6m per annum in running costs savings. In addition and I think that this is really the important point - our estate during this period has been modernised, our KPI figures have improved, our carbon emissions have reduced and our running costs have fallen. The Location Strategy is ticking an awful lot of boxes.

We are working hard to develop the next phase - 2015 to 2020.

Similar activity is underway across the public sector though for some, it is a real struggle. Funding is tight and options are limited; leadership is patchy and the challenge is incredibly complex.

Collaboration isn't easy. I am particularly conscious of the political environment, where difficult conversations and expectation management hurdles need to be tackled. The more organisations you collaborate with, the more difficult it becomes, so that is why it is really important that both leadership and pragmatism exist. It is much easier to pull this agenda than it is to push it.

The National Assets Working Group has a role to play to influence colleagues in property, in planning, in financial and myriad other professions. This cannot be a pure 'property' issue and we have to make sure that where blockers can be removed, they are. If someone on the phone says that they are having problems with a colleague of yours about this planning consent or that right of way, let's just see what we can personally do to help out, let's try and move things forward. We need to be able to react more flexibly and the challenge moving forward is to maintain and improve this level of engagement, sharing experiences. We recently launched our website – www.AssetsWales.gov.uk and I would really welcome your contributions, comments case studies and observations so that we can keep it live and relevant so that collectively, those involved in public sector property can really help shape this agenda and deliver what needs to be delivered.

ETHICAL STANDARDS FOR A GLOBAL PROFESSION

David Pilling

David is Head of Global Regulation Policy and Ethics at RICS dpilling@rics.org.

Why has RICS changed its ethical standards?

Embracing ethics is at the heart of what it means to be a professional. And RICS is all about building and maintaining professional standards. As RICS grows and develops, so must our approach to reinforcing professional ethics; what may have been suitable for a UK-focussed profession and body may not be so appropriate for a truly global profession.

In 2009 RICS commissioned independent research to take a snapshot of how ethics was positioned amongst RICS members. This involved a survey going out to 12,000 members globally (two thirds in the UK and one third outside the UK) and focus groups held in the UK. This research revealed that over half of the people who completed the survey said that they had never looked at the then 12 ethical principles.

The focus group work - which involved a cross section of RICS members - those members new to the profession, members working in large firms and members working as sole practitioners and in small firms – highlighted that:

- members wanted RICS to provide more information and help around ethics, in particular the application of ethics in the business environment
- some members new to the profession sometimes felt under pressure to say they could actually do more or had more experience than they actually did
- ethical standards and behaviour is so central to what being a professional is about that there needs to be some consideration given to how members keep up to date on ethics.

These findings, combined with continuing economic uncertainty and the need to build confidence in the markets in which our members operate, convinced us that we needed to re-visit our position on ethics.

And so began a major project to review RICS' existing 12 ethical standards. This involved a 2 year consultation with input from members, independent consultants, external professional ethics experts, staff and other global stakeholders.

We needed to ensure that our ethical standards are expressed in a way that is fit for purpose for a global profession – wherever members are in their professional careers or wherever they might be geographically. With 100,000 members and over 60,000 student members in over 140 countries, RICS standards must be relevant and consistent across borders.

The review resulted in RICS' 5 new Global Professional and Ethical Standards which were approved at International Governing Council, RICS' top level decision-making body, in Beijing at the end of March 2012. Since then, the hard work of embedding the standards throughout the profession and organisation, and promoting our ethical position to stakeholders and clients, has been underway.

Key changes

The 5 ethical standards aim to provide clarity and simplicity around what is expected from RICS members on a global basis. The standards are:

- Act with integrity
- Always provide a high standard of service
- Act in a way that promotes trust in the profession
- Treat others with respect
- Take responsibility.

<u>Conceptual framework</u>

There is much more information and support available to members around ethics – the conceptual framework consists of:

- a definition of each standard
- examples of the type of actions and behaviours that would go to demonstrate the standards
- questions that members can ask themselves around each of the standards – the ultimate question being '…if your actions become public knowledge could you stand by them?'
- advice on some of the more common ethical issues that members and regulated firms come across, for example, conflicts of interest, gifts and hospitality, speaking up

and "whistle-blowing" and the link between ethics, laws and rules

- a decision tree to help members and firms when they are faced with difficult ethical decisions

- a range of case studies from ethical issues faced by members globally.

The conceptual framework can be found at: www.rics.org/ethics

Keeping up to date with ethics

As well as agreeing the global professional and ethical standards, RICS' Governing Council also took the decision last year that ethical standards and ethical behaviour was so central to everything that members do and represent that there should be a requirement of all members to keep up to date on ethics on a rolling 3 year period. Governing Council also requested that RICS provides an option to enable all members to fulfil this requirement at no cost. The requirement to keep up to date on professional ethics came into effect on 1 January 2013.

We have put in place a free on-line ethics walkthrough that members can access. This module has been translated into a range of different languages and takes you through the ethical standards, the supporting information, case studies and poses a range of questions. At the end of the module there are links to further information, video links and a quiz.

Members can, of course, undertake other training on ethics and many will do. What we have tried to do with the current ethical standards and supporting conceptual framework is to provide a practical and useful day to day basis as opposed to the more traditional philosophical discussions around ethics.

What are the business benefits of being ethical?

Following and meeting the ethical standards will serve to represent the profession as dynamic, responsible and sustainable. They will enable members to differentiate themselves in the markets in which they operate and allow us to effectively promote members' professionalism.

Also, by the whole profession keeping up to date on the ethical standards on a rolling 3 year basis will send out a strong message to clients, the public and other key stakeholders that acting ethically is key to what members do.

RICS members play a very important role in the economy. Property is capital intensive – a special commodity linked to confidence and lending capacity. Clients and customers need good advice, analysis and long-term data. By assuring the best in ethical standards as well as technical practice among its members; RICS can help build confidence in the profession.

Also, research and data shows that acting professionally and ethically is good for business: This makes absolute sense if you provide a professional and ethical service then this is going to be appreciated by your clients, which will lead to the possibility of repeat business and your client promoting your services to others. The opposite is not so good, if you provide a service that is not professional and/or ethical then clients will be less likely to use that service again, speak badly about their experience and possibly make a complaint to RICS Regulation – and who wants that?

With increased interest around the world in socially responsible investment, an ethical approach to business can attract investors and reduce costs associated with dealing with regulators, banks and insurers.

Ethical standards and the Code of Conduct are central to our model of "arm's-length regulation", that is, regulation where the principles are adopted by members and monitored and enforced by an independently chaired group which sits alongside, but at "arms-length" from membership. If we don't protect and promote our own model of regulation, we run greater risk of facing statutory state regulation.

What's next?

It is important that we continue to embed the ethical standards with members globally. The free on-line module will help with that. We will be looking to keep the conceptual framework up to date and as relevant for members as we can. We are keen to capture new case studies based on real life scenarios that members might face. So please if you can volunteer case study information, please send details to me at dpilling@rics.org.

TRANSPARENCY AGENDA UPDATE

David Bentley

David is Head of Asset Management for CIPFA Property david.bentley@cipfa.org.uk

AMP Network members received by e-mail in December an update on the transparency agenda, prepared by David, who has kindly given permission to include the information in the Terrier [slightly abridged by the Editor]. The AMP Network will be covering transparency in more detail at its February events and for more details please contact Denise.edwards@cipfa.org or phone 01244 399699.

We've been updating you for some time about the proposed property attribute information that will need to be made publically available by local authorities in response to the Transparency Agenda. The government's proposals are outlined at:

https://www.gov.uk/government/news/eric-pickles-champions-open-government-with-new-wave-of-town-hall-transparency

The property attributes are part of a much wider drive to help cut council waste and increase local accountability that includes information on:

- Spending on corporate credit cards
- Greater openness on the money raised from parking charges
- Subsidies given to trade unions
- Information on councils' contracts and tenders
- Grants given to voluntary and community groups.

We will cover all of this in our future AMP events and briefings, but highlights of the key requirements for property transparency are:

- The key proposals and government's response to consultation are included within https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265425/Code_of_Recommended_Practice_for_Local_Authorities_on_Data_Transparency_-_Government_Response_to_Consultation.pdf [Ed - deadline was 17 January]
- The government will regulate to require local authorities to provide - basic information about a local authority's land and assets on an annual basis. The government believes this will "enable better strategic management of the local authority estate, with opportunities for savings through co-location and sharing services, enable communities to hold their authorities to account over use of these assets and also to seek community asset transfer"
- The government will exempt parish and town councils from compliance with the revised Code, though it will remain recommended practice for those with an annual income or expenditure over £200,000
- Local authorities must publish details of all land and building assets based on Office of Government Commerce guidance 08/0514.

This includes:

- All service and office properties occupied or controlled by user bodies, both freehold and leasehold
- Any properties occupied or run under Private Finance Initiative contracts
- All other properties they own or use, for example, hostels, laboratories, investment properties and depots
- Garages unless rented as part of a housing tenancy agreement
- Surplus, sublet or vacant properties
- Undeveloped land
- Serviced or temporary offices where contractual or actual occupation exceeds 3 months
- All future commitments, for example under an agreement for lease, from when the contractual commitment is made.

Exclusions are as follows:

- Social housing
- Rent free properties provided by traders (such as information booths in public places or ports)
- Operational railways and canals
- Operational public highways (but any adjoining land not subject to public rights should be included)
- Assets of national security
- Information deemed inappropriate for public access as a result of data protection and/or disclosure controls (e.g. such as refuge houses).

- For each land or building asset, the following information must be published together in one place:
  - Unique Property Reference Number

- Unique Asset ID - the local reference identifier used by the local body, sometimes known as local name or building block
- Name of the building/land or both
- Street number or numbers
- Street name – this is the postal road address
- Postal town
- United Kingdom postcode
- Easting and northing
- Whether the local authority owns the freehold or a lease for the asset and for whichever category applies, the local authority must list all the characteristics that apply from the options of (1) for freehold assets - occupied by the local authority, ground leasehold, leasehold, licence, vacant; (2) for leasehold assets - occupied by the local authority, ground leasehold, sub leasehold, licence; (3) for other assets - free text description e.g. rights of way, access etc.
- Whether or not the asset is land only (i.e. without permanent buildings) or it is land with a permanent building.

- "It is recommended that local authorities should go further than the mandatory publication requirements set out above and "publish information on a monthly instead of annual basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication). It is also recommended that local authorities should publish all the information possible on ePIMS"

- Information recommended for publication is as follows:

- The size of the asset measured in Gross Internal Area (GIA, m2) for buildings or hectares for land, in accordance with the RICS Code of Measuring Practice
- The services offered from the asset using the services listed from the Effective Services Delivery government service function list http://doc.esd.org.uk/FunctionList/1.00.html (listing up to 5 main services)
- The reason for holding asset such as, it is occupied by the local authority or it is providing a service in its behalf, it is an investment property, it supports economic development (e.g. provision of small businesses or incubator space), it is surplus to the authority's requirements, it is awaiting development, it is under construction, it provides infrastructure or it is a community asset
- Whether or not the asset is either one which is an asset in the authority's ownership that is listed under Part 5 Chapter 3 of the Localism Act 2011 and/or an asset which the authority is actively seeking to transfer to the community
- Total building operation (revenue) costs as defined in the Corporate value for money indicators for public services at http://www.vfmindicators.co.uk/guidance/2010-11-Estates-Management.pdf
- Required maintenance - the cost to bring the property from its present state up to the state reasonably required by the authority to deliver the service and/or to meet statutory or contract obligations and maintain it at the standard. This should exclude improvement projects but include works necessary to comply with new legislation (e.g. asbestos and legionella)

Functional suitability rating 1-4 using the scale:

Good – performing well and operating efficiently (supports the needs of staff and the delivery of services)

Satisfactory – performing well but with minor problems (generally supports the needs of staff and the delivery of services)

Poor – showing major problems and/or not operating optimally (impedes the performance off staff and/or the delivery of services)

Unsuitable – does not support or actually impedes the delivery of services

- Energy performance rating as stated on the Display Energy Certificate under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

Brief CIPFA Property Comments

The only **Mandatory Attribute** amendment, we believe, is that 'Asset Tenure' options have changed slightly. There are however more changes to the **Recommended Attributes** as follows:

- Addition of a requirement to state whether an asset is a community asset [Ed - as defined above]
- Reason for Holding Property" attribute – options have changed
- Number of FTEs in office accommodation has been dropped
- Asset Condition has surprisingly been dropped when it is an important foundation of asset management strategy. 'Functional Suitability' has been retained
- VOA asset rateable value has been dropped
- Total building operation (revenue) costs has been retained.

There is no start date stated within the government's response although we understand it is still the intention for authorities to start publishing this data from 1 April 2014.

DISTRESSED TOWN CENTRES: "BEYOND RETAIL" - COLLABORATION BETWEEN LOCAL AUTHORITY AND BUSINESS

Edward Cooke

Ed Cooke is Director of Policy and Public Affairs at the British Council of Shopping Centres

This article summarises the work of the taskforce led by the British Council of Shopping Centres, which included Heather McManus representing ACES. "The ultimate aim of the taskforce was to produce in-depth research detailing how our town centres can be improved, building on the foundations laid by the Portas Review." The report "Beyond Retail" gives many proactive recommendations for local authorities to adopt.

Introduction

The establishment of an industry-led cross sector taskforce was recommended in the Government's response to the Portas Review (2013). Government considered that such a group would offer the means to understand the property related issues blighting town centres and investigate ways of improving their prospects for the future. The taskforce brought together a range of industry experts including ACES along with retailers, landlords, investors, and the British Council of Shopping Centres (BCSC) who played a key role in its representation of the retail property industry holistically. There was also vital input from the public sector including DCLG, BIS and the Treasury, ensuring that the solutions reached were workable from both private and public sector perspectives.

The ultimate aim of the taskforce was to produce in-depth research detailing how our town centres can be improved, building on the foundations laid by the Portas Review. This taskforce, which the BBC described as 'unprecedented' in terms of scale and range, presented its findings in the recently published "Beyond Retail" report.

Within the report

The Beyond Retail report encourages greater collaboration between the many town centre stakeholders, of which local government has one of the most crucial roles to play. The report urges greater controls and responsibilities for individual councils and the empowerment of local authorities to enable greater use of their existing powers. There is also an understanding that central government must offer a consistent framework to make the planning process clearer. The target must be to increase the opportunities for the right kind of development within town centres that will improve tired environments. The report also acknowledged that with budget constraints in the public sector, the private sector could help bridge the gap in funding and training. In this way, council teams could be up-skilled to the benefit of both public and private sector and ultimately to town and city centres nationwide.

Compulsory Purchase Orders

Positive measures already exist to allow local authorities to encourage development, chiefly Compulsory Purchase Orders (CPOs). Beyond Retail highlights the importance of CPOs when navigating the challenge of multiple ownership, an increasingly restrictive barrier to development. The report outlines that CPOs are not being used as aggressively as they could be by local councils. In the context of a struggling economy and restricted development pipeline, this only serves to further stall development and restrict opportunities for regeneration. The report calls on councils to take a more proactive approach in using this valuable tool, but there is also recognition of councils' limited budgets and the strain such approaches place on non-specialist staff. Very often councils cannot undertake CPOs with their own funds and this responsibility often falls on developers or investors. As such, the report encourages greater investment now, so that councils can reap the benefits in the long term – the "rainy day" for town centres is upon us so access to reserves is sorely needed to address development viability and incentivise investment.

Extract from "Beyond Retail" – Principal recommendations

Our vision for rejuvenated town centres fit for the future requires:

- Retail capacity models to be adapted for changing business requirements that will see fewer stores needed as online trade will continue to erode store sales
- Greater cross-border co-operation between local authorities to better understand the impact of broader evolving shopper patterns at a local level
- Greater engagement with the private sector in terms of developers, investors, landlords and housebuilders to create, support and complete the long-term vision, not least in providing appropriate upskilling and best practice support
- Long-term masterplanning to strengthen the retail core, re-configure town centre space and re-use obsolete areas by defining new uses
- Proactive use of Compulsory Purchase Orders (CPO) to bring about the scale required for major reconfiguration and regeneration within towns alongside an urgent review of the complexity and costs associated with CPO
- Town and city centres to be designated as 'infrastructure', and being incorporated in Government's National Infrastructure Plan
- A workable, private sector led Tax Increment Finance (TIF) model which works alongside traditional funding models for town centre redevelopment
- Local authorities to take more risk in investing capital reserves now, which can be replenished as the economy recovers
- Piloting the concept of a joint venture vehicle and associated high street property fund that will pool land assets and address fragmented ownership
- The National Planning Policy Framework (NPPF) to be adopted without ambiguity, further strengthening the 'town centre' first approach to planning policy
- Town centres to develop an integrated digital strategy, incorporating mobile, social media and website
- A business rate cap at no more than 2% until 2017. Use this period to undertake a full review of the business rates system as a sustainable means of raising money from local businesses to contribute towards paying for local government
- The quality, quantity and cost of town centre car parking to be reviewed in relation to free out-of-town provision using national benchmarks and the introduction of innovative and flexible parking policies is encouraged to attract shoppers and other town users during off-peak periods.

Change of use

A flexible approach to change of use is critical to the regeneration of our high streets. The needs of the consumer have fundamentally changed and future developments are compelled to be different, reducing retail space for other services. With the rise of multi-channel retailing and internet shopping, people must be further incentivised to step outside their homes to spend, meaning town centres need to provide a more attractive offer. The solution proposed in the Beyond Retail report is to reduce the quantum of retail space, making way for food and beverage outlets as well as leisure activities to enhance the consumer experience. More flexible change of use rules are needed and councils should be prepared to embrace this evolving landscape. With vacancy rates averaging around 14% nationally, there is the opportunity to change these units into something that adds diversity to the high street. Many developers are now encouraging residential property in close proximity to retail, increasing footfall and the need for small amenities, while satisfying the growing demand for housing throughout the country.

Town centre first

Increasingly, investors and town centre councils want to ensure investment opportunities are fully explored within town centres before turning to out of town development. By reinforcing the 'town centre first' element of the National Planning Policy Framework (NPPF), we will see much needed vitality return to our high streets. Indeed, the legal system has recently determined cases in town centres' favour, and the government has reaffirmed its commitment to town centres through positive statements from ministers,

putting the spotlight on the importance of planning proactively for commercial development in our towns and cities.

Nonetheless, the current situation remains very challenging for investors as the differences between councils' methods are so great. Many developers operate throughout the country and are met with the 'town centre first' approach in some areas but not others. This can reduce an investor's appetite for town centre development, ultimately preventing much needed regeneration of our high streets.

Collaboration

Perhaps the strongest message to come out of Beyond Retail is the need for close collaboration between stakeholders. It is important that both the public and private sectors understand one another's role in improving town centres. There must be transparency as well as clear procedures and ease of development should be consistent throughout the country. The need for clarity is crucial and the government must plainly detail the responsibilities of the public sector. The report states: 'Active intervention on the part of the local authority will be encouraged by a more flexible planning environment, reduced regulation and a mix of new public and private sector funding models'. This is not about transferring responsibility or diverting costs, it is encouraging a collaborative effort towards a common goal.

Human resources

Beyond Retail recognises the strain being placed on under-resourced local authorities. An investment in human resources is necessary in order for the system to be simplified and made more efficient. At a time of austerity it is difficult to imagine central government taking on the burden of funding and the report therefore suggests that funding should be shared by the private sector also. Therefore we believe it is important for councils to actively share information and expertise on retail planning matters, as some do, to address these resource and capability issues. We are also exploring how the private sector could contribute towards training local council officers and elected officials in retail planning and economic development related skills.

Conclusion

The improvement of town centres brings with it great rewards; job opportunities, infrastructure improvements, large scale refurbishment, as well as an enhanced community atmosphere. Ultimately this benefits local authorities as well as local business. The recommendations within Beyond Retail have been carefully constructed and provide an understanding of the difficulties faced by local authorities and the private sector alike.

To find out more or to download the report in full, please visit http://policy.bcsc.org.uk/beyondretail/index.asp

TOWN CENTRES - HIGH STREET INFORMATION PAPER

Jeremy outlines the contents of the draft Information Paper, which complements recent high street publications and offers practical surveying advice to members.

Jeremy Blackburn

Jeremy Blackburn is Head of UK Policy at RICS.

The high street and those businesses that occupy premises on these streets, have been at the centre of national debates about economic growth, commercial property and sense of community over the last few years.

While the RICS has contributed to the debate through evidence to the Mary Portas Review, helped SMEs and landlords by creating a best practice lease for small businesses with BRC, and been a partner in the Distressed Property Town Centre Taskforce – we are now bringing forward a formal Information Paper for members and other property stakeholders looking at the causes behind the decline of retailing on the High Street, and range of policy measures like planning reform or business rates affecting high streets, as well as discussing some possible solutions for the future of these places.

Most people will know that many town centres in England and Wales are suffering badly at present. The demand for retail space is declining. There are fewer shoppers, trade is down and there are more empty shops. Many shops that are not empty are occupied by charity shops, discount retailers, temporary uses and clusters of non-retail occupiers like betting shops.

Focus from government and market

In 2011 the government appointed Mary Portas, the retail expert, to undertake a review of the Future of the High Street. The government took up many of her recommendations. It launched an initiative to fund 27 "Portas Pilots" which were given small grants to try out experimental solutions to high street problems. It also supported an additional 330 smaller "Town Team Partners". These initiatives are continuing.

Alongside the Portas Review, the Department of Business Innovation and Skills published "Understanding High Street Performance" a study from Genecon. This was the first comprehensive review of the available research and data for many years and is a good starting point for understanding town centre performance.

The Portas review was followed by other initiatives, including a National Markets Fortnight, Pop-Up Britain (promoting temporary shop uses) and grants to town centre Business Improvement Districts (BIDs). A Future High Streets Forum has also been set up, co-chaired by the Minister, Brandon Lewis MP. DCLG and the British Council for Shopping Centres initiated the Distressed Property Town Centre Taskforce, with a range of partners including RICS and ACES, and whose final report 'Beyond Retail', Ed Cooke is also talking about in this Terrier.

Meanwhile, there have been numerous investigations and reports from other bodies including the DCLG Select Committee, the London Assembly and trade bodies such as the Association of Convenience Stores, Association of Town Centre Managers, British Retail Consortium and British Parking Association. In addition we have seen the emergence of a strand of 'anti-Portas' thinking, probably best exemplified by Bill Grimsey.

The role of the Information Paper

The RICS is very supportive of all these initiatives. However, the majority of them are being led by retail occupiers, their landlords, consultants and trade bodies. Inevitably their underlying focus is on preserving, or at least slowing the decline, of town centre shopping in underperforming centres – which can only ever be part of the solution.

Moreover, a focus on retail activity risks obscuring, or distracting from, the need for a much wider re-appraisal of the role of town centres. So, in this information paper, RICS has deliberately avoided duplicating the work of others and has tried to look more broadly at the future of town centres "beyond retail", as well as considering retail property. Because of the nature of the factors that come into play here, while the paper has been homed in the Planning & Development Professional Group, it has had significant input from across professional groups, as well as Policy and Economics teams.

The paper begins by explaining the most important national drivers of change in town centres, both retail and non-retail. It distinguishes between those that are caused by the short term economic slowdown and which ones are caused by long term structural change. Next,

it explains the major strategic options available for town centres and some of their implications. Lastly, it explores some of the technical considerations that may arise for surveyors and others.

Structure of the paper

In breaking down national trends we look at the decline in consumer spending, changes in consumer purchasing behaviour and evolution in retail property. The organisation and responsibilities of the high street, particularly looking at the split between public and private sectors, includes the roles of local authorities, BIDs, landlords and occupiers. We then consider what are the strategic choices facing public and commercial property managers? This includes improving competitive performance, reducing the cost base, diversity away from retail as primary use and grow the wider local economy.

What technical considerations?

The paper discusses in greater depth those technical factors, which need to be considered together, when developing a strategy for a high street or town centre. Understanding how these function within the context of national trends, and in distinctive local situations, is essential. For instance, how would a plan be formulated for a small town's high street that's dependent on the outlet of one major retailer, where this retailer is grappling with 'click vs brick' evolution – how does the retailer's plan for its local store (part of its own strategic plan for the overall company) integrate with the Local Plan, with existing traffic flows and footfall, with alternative uses/occupiers for any space the retailer vacates?

Shopping and retail accessibility

High Street accessibility is critical to town centre performance and because it is not as simple as it might look, it is important to understand the basic principles. Accessibility can be defined as a combination of the (perceived) time and cost of getting to a particular place, compared with an alternative destination. Improving accessibility through a better spatial understanding of the area concerned, and the flow and parking of vehicles and people, is therefore part of a strategy to improve the competitive position of the high street and capture a greater share of existing spending.

Planning reform and business led local plans

National Planning Policy Framework (NPPF) sets out national planning policy for town centres and restates the long established "town centre first" policy for retail (and office) development. Although it is mainly concerned with planning for new development it says "where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity". The NPPF requires local authorities to define a network and hierarchy of town centres and to define the boundaries of each one. The NPPF also sets out the circumstances when retail capacity and retail impact studies are required. Further guidance on the methodology for these may be issued by the government as part of its overall reform of planning guidance.

Health of the occupier market

In struggling high streets, the maintenance of high rental levels may be at odds with the need to keep shops occupied. In assessing the strength of a town centre, it may be important to consider the transactions that have not taken place as well as the ones that have. An apparently healthy high street may actually contain a number of tenants who are unwilling to renew their leases and who will leave vacant units behind in the foreseeable future.

Rating and rents levels

The next Revaluation in 2017 will be based on 2015 rents and is likely to see an absolute fall in values and a sharp drop in the contribution from high street shops (although transitional arrangements will smooth out this change over the following 5 years). The effect of all this is that shop rents have declined in many high streets but rates bills have not. So rates are a significant barrier to profitable trading. Moreover, empty rates are now payable at the full rate after a 3 month grace period. Surveyors need to be aware of this and consider taking specialist rating advice on opportunities to reduce the rates payable on shops in declining high streets.

RICS Commercial Market Survey

Our commercial market survey shows that the UK retail sector is beginning to feel the effects of the nation's fledgling economic recovery as demand to rent premises jumped considerably during the third quarter of 2013.

With winter fast approaching, 27% more chartered surveyors reported rises rather than falls in demand for shops, a record high (since the survey began in 1998). While demand is still historically very low, this sizable jump in interest from potential retail tenants does represent a welcome sign that the worst could now be over for the high street. Significantly, every part of the country saw demand for retail space increase, with London seeing the most notable growth.

In tandem with this more positive picture for the sector, the amount of new retail space being built across the country also rose slightly (net balance +6%). Meanwhile, demand for all types of commercial premises, such as office and industrial space, also grew during the 3 months to October as a net balance of 36% more respondents reported increasing demand. This growth in interest resulted in rental expectations for the coming year also increasing at the most substantial rate since the second quarter of 2007.

This pick-up in the desire to occupy retail space is broadly reflective of the improved trend in high street spending. That does not, however, mean that the big challenges facing the sector have disappeared. Rent expectations are still largely soft away from the South East and it is mainly in London where the numbers are strongly positive.

Conclusion

Many town centres still need to rediscover their raison d'être. The property sector itself knows that we have too much retail floorspace,

especially where it does not suit current or anticipated demand. The real challenge is how to pro-actively respond to that. We are seeing green shoots of recovery however, and as the RICS Commercial Property survey showed, greater consumer spending on the high street is feeding through into a nascent increase in demand for premises.

The 'Beyond Retail' report is therefore a timely call-to-action for government, both local and national, and the property sector. The changing nature of our high streets, and the retail and commercial sector within a gradual economic recovery, requires this analysis as we move beyond both Portas and Grimsey.

It's important however to focus on what can be delivered between now and the end of this Parliament – and then what needs to be picked up by the political parties for 2015 beyond. Realistically the window is closing for the Coalition Government to achieve any drastic changes now, even if they try to, so the focus of our efforts needs to be getting new vehicles for high street renewal on road at local level now, and on preparing our wider national measures for a new government to pick up in May 2015.

Note: The information paper is due to publish in early March; see the RICS website for more details. Additionally, the information paper on business led neighbourhood plans will also be coming out soon.

UNLOCKING RETAIL DEVELOPMENT

Rob Williams

Rob Williams is a Partner of Strutt and Parker and runs the Retail Agency and Development team. He has been involved for many years in advising both private and public sector clients on a wide range of retail development projects and the leasing / asset management of existing retail centres Rob.williams@stuttandparker.com

This piece complements the recommendations of "Beyond Retail". It is an agent's view which encourages local authorities to take a proactive and collaborative role in mixed use town centre redevelopments and gives some examples of where it has worked.

The development of new retail schemes in the UK has been constrained for some time. This isn't just a symptom of a weak economy but of structural changes which are likely to hold back development even as the economy recovers.

The travails of the physical retail sector have been much discussed in recent years, with its failings keenly documented and all and sundry offering an opinion on what is to be done. A notable result has been the anaemic development pipeline of new retail product post-2008, with declining physical retail sales and risk-averse investors and debt providers combining in perfect harmony to stifle activity.

Consensus from the industry asserts that physical retail can rarely compete on cost, with it having to justify its higher prices through 'the experience.' For those authorities focused on improving their town centre, and those private investors seeking to contribute in a profitable manner, a key step in achieving this experience is to offer a varied and changing retail and leisure mix, with major retailers and restaurants complimented by smaller, independent occupiers, which together are able to satisfy a wide range of consumer preferences.

However, providing this 'dream' mix can be problematic in terms of meeting the necessary financial returns to develop out a new retail scheme. Over and above the current challenges in making new development viable, small independent retailers with weak covenants and investors' own risk/return objectives make uneasy bedfellows. When one includes the relatively high cost of land in optimal locations and the uncertainty (risk) posed by a number of factors, including the planning system, the project may well be a non-starter.

Multiple-led retail schemes have the best potential to be financially viable in the short-run but ultimately may do little to offer long-term protection against the growth of online retail. Indeed recent research carried out by Kantar Retail suggests that of the consumers they surveyed, 71% reported that a greater range of independent shops would lure them back to the high street.

Investors cannot capture all the external benefits their developments create; but local authorities can

Given the current environment, retail-led development requires an open dialogue between local authorities, developers and long-term investors, all of whom have both differing objectives and contrasting timelines in which to achieve those objectives.

Much of the current funding available for UK property development ultimately emanates from risk-averse institutional investors. These are not organisations looking to make a quick buck; rather they seek long-term investments that meet their pension/insurance liabilities. As such they have serious responsibilities in terms of the risk they can take.

Indeed, much of the benefit generated by a tenant mix containing smaller, independent, retailers would not be captured by the end-investor on a particular scheme, but would take the form of 'positive externalities' benefiting the wider area. Property values and rents, including residential property, can benefit significantly from a prosperous town centre which retains more of the local consumer spend and creates a better public realm – yet what is the investor's incentive to provide this?

As these types of positive outcomes cannot be captured within an investment appraisal for a specific development they cannot contribute to its potential viability. But they can be sought by the public sector taking a long term view, and providing the necessary support to enable the private sector to deliver a project that achieves the objectives for all involved.

What options are being pursued for private / public partnership?

There are a number of meaningful examples where the public sector has

stepped in and bought the freeholds of shopping centres/districts in order to take control of a key town asset and commence a process where the private sector has been unable to move development plans forward.

Public sector purchases

- Wolsey Place, Woking – Woking Borough Council (£68m; February 2010): complete Masterplan with Moyallen
- Catford Shopping Centre, Lewisham – Lewisham Council (£11.5m; February 2010) – core of Catford Regeneration Partnership plan
- St David's Shopping Centre, Swansea – Swansea City Council/ Welsh Government (February 2012) – demolish and incorporate in master plan.

There are other options in terms of upfront financial commitment the public sector can work in partnership with investors to jump some of the hurdles blocking a purely private sector play in many locations. This can be in the form of providing council-owned land, lowering s106 costs, removing restrictions on approaching existing retailers in the town and providing finance to developers (in the absence of bank funding).

Additionally with leisure and food & beverage seen as an increasingly important part of generating footfall, we have seen willingness from councils to forward-purchase these parts of schemes, consequently partially de-risking the development and enabling the local authority to achieve its desired outcome in terms of tenant mix.

Public private ownership

The Crescent, Hinckley – Hinckley and Bosworth Borough Council: forward-funding of leisure element (£4.5m) and rolling loan (£7m) to assist Tin Hat Regeneration Partnership.

Friars Walk, Newport – Newport Council: £90m loan to private developer Queensberry Real Estate to enable construction prior to pre-let threshold

The Crescent, Hinckley

Friars Walk, Newport

Old Market, Hereford

that commercial lenders would demand.

A proposal to lower upfront public sector costs, draw in private money and support independent retailers?

At the start of this piece we suggested that mixing smaller independent retailers in with larger multiples was key to creating a prosperous town centre with in-built resilience to online retail. Our suggestion to achieve this alongside making developments feasible revolves around the idea that a public sector head lease wrapped around an element of a scheme dedicated to smaller units/ traders can deliver an optimum outcome for both parties.

Local authorities acting as head lessees to independent retailers could potentially manage this portion of the scheme in the long-term interests of the town, and de-risk this element of the project for the investor - as their risk will be based on the longer head lease signed by the local authority. Certainly strict criteria would need to be laid down regarding who the local authority could lease space to and on what terms, in order to ensure that this section of the development worked alongside the more commercial part rather than against.

The premise of such an option recognises that an investor is unable to internalise the holistic benefits to the wider area of the riskier income streams, which provide the most 'experiential' element of the scheme. The local authority, however, with its bigger stake in the wider regeneration of a town centre can seek to accommodate the weaker covenants, and potentially lower rents, in aid of building an interesting, independent tenant mix.

Hereford – Old Market - The £90m forward-funding of Stanhope's Old Market scheme in Hereford by British Land in late 2012 was the first such deal for 5 years and provides a clear example of where the public and private sector have worked together.

In order for this development to progress a number of the interested parties accepted lower returns than would have previously been expected, including the local council – who determined that its short-term financial return was not the paramount reason to progress the project.

Ultimately all parties want town centres to provide a vibrant retail and leisure mix that genuinely provides meaningful competition to the internet. It's just that getting there requires mutual understanding on both sides and a bit of a leap of faith from public bodies in recognising the positive externalities created by development.

SELF-BUILD HOUSING

Ted Stevens

Ted is the chairman of the National Self Build Association (NaSBA). He helped set up NaSBA 5 years ago – essentially a lobbying organisation with the aim of seeing a significant expansion of the self-build sector in the UK.

Ted's first job was as a journalist for 'Building Design'. Later he became editor of Planning, and he launched the monthly publication called Energy in Buildings. During his time as a journalist he was voted RIBA Architectural Writer of the Year and RICS Specialist Property Journalist on the Year.

In the mid-1980s he set up a marketing and PR firm (Camargue) which grew to become the biggest and most active consultancy in the property and built environment sector. He ran the RIBA conference for about 5 years - staging it in a variety of European cities - and he master minded a major international housing summit in The Hague.

He retired in 2011 just days before the then Housing Minister Grant Shapps asked him to help prepare an Action Plan to grow the self-build sector.....so now he's even busier than he was before. tstevens@seafa.co.uk

Ted outlines ways in which councils can encourage and facilitate self-build housing, while potentially increasing capital receipts and meeting economic development and regeneration policies. NaSBA is producing a Guide document in 2014 on which, following a seminar with ACES members last September [2013 Autumn Terrier p 16], we will be consulted.

At present we build just over 120,000 new homes a year in the UK, when we need to build at least double this just to keep up with the number of new households that are being formed.

Self and custom build homes are seen as one of the ways this output can be increased. At present just over 10,000 homes a year are built this way in the UK. The government wants to see this figure at least double. And, in time, it would like to see the UK matching the levels of self and custom build housing that are delivered in most other nations. Currently in the UK we build about 8% of our homes this way; in most other countries it's 30-50%.

What are the top ten benefits of encouraging more self or custom build?

1. Self or custom builders will typically pay a premium for land. A recent study suggested that a self builder would pay 30% more than a volume housebuilder. This means that selling council owned land to self builders can generate a higher overall receipt

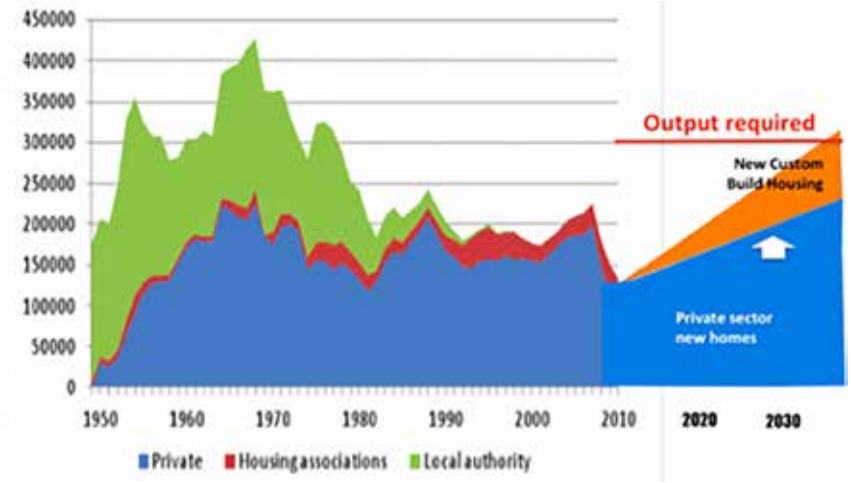
2. A quicker route through planning. Most self or custom build projects are welcomed by local communities, which means there are likely to be less objections during consultation

3. It can stimulate regeneration. Many volume builders are not interested in building new homes in marginal areas. But self or custom builders frequently are prepared to do so. And their new homes will help 'lift' local property values. This can help to kick-start activity in less desirable areas

4. Self or custom build homes help local young families on modest incomes to get a foot on the housing ladder. Many people on low incomes opt for a self or custom build home because it is possible to build a home for significantly less than any other route. This is affordable market housing with no subsidy

5. It provides a more diverse housing supply. Both the Office for Fair Trading and RIBA have undertaken surveys that show that up to 75% of the public would never consider buying a typical new speculatively built home from one of the volume housebuilders. By facilitating self or custom build you 'widen' the offer, and this, in turn, can lead to more new homes per year being built/ sold

6. It supports jobs. Every new self or custom build home sustains 7 construction jobs for a year. Most self builders hire local sub-contractors, craftsmen and tradespeople



7. It boosts local economic activity. Typically each self builder will spend £50,000+ on materials and plant hire. They also spend a similar amount on local tradespeople. This money finds its way into the local economy, helping to boost growth and local prosperity

8. Self builders tend to make their homes more sustainable. For example they often invest in additional insulation and include green technologies to heat or power their homes

9. Self and custom builders create stronger and more cohesive neighbourhoods. Self builders rarely move; they become supporters of local communities

10. Custom or self-build projects are built by people who have different objectives. Most other forms of new housing are built by speculators who are driven by profit, and the homes are often bought to rent by foreign investors.

There is huge demand

An Ipsos MORI survey conducted early in 2013 suggested there were 6m people researching how to do it (12% of the population), and 1m of these wanted to purchase a plot and get on with building their home in the next 12 months. The survey showed that these levels of demand were reasonably consistent right across the UK.

Why will self builders pay more for a plot?

In surveys of would-be self-builders the biggest hurdle they face is finding a suitable plot of land to build upon. Many search for years and never find anything that's affordable or suitable. Because sites are so hard to find, self-builders are prepared to pay a premium. In the summer of 2012, property consultancy Rightproperty undertook a detailed analysis of building plot costs across the UK. It concluded: "While a self-builder might be prepared to pay £100,000 for a plot, a developer would probably only be prepared to pay about £70,000 – as he will want to make a decent profit on the new home he builds. For self builders profit margins aren't the name of the game, so they are usually prepared to pay a premium of up to 30%."

What happens in other countries?

In other European countries it is commonplace for councils to facilitate the delivery of building plots. Here local authorities routinely use their existing land holdings, or acquire land to meet the demand from local residents. The land is then sliced up into building plots, with access roads and services provided to the boundary. The plots usually come with planning permission agreed (in principle).

Local people then buy the plots, hire local builders and architects (or kit home companies) to draw up their home and secure full planning permission; often this takes less than 3 months. Then they organise the construction and move in.

Some councils provide a range of different sized plots, and often they

make the smaller ones a little cheaper (per sq m) than the larger ones. The smaller ones are aimed at people on modest wages, and sometimes discounts are available for people such as key workers, or families with a long association with the area. The larger plots (priced at a slightly higher cost per sq m) effectively cross-subsidise these.

In the Netherlands many councils are proactive and offer a range of self-build opportunities. For example in Almere (a new town close to Amsterdam) thousands of self build plots have been sold on land reclaimed from the sea. Here the council operates a 'Plot Shop' where people can see what is available, reserve their chosen site and arrange finance for purchase. The plots start from as little as £25,000 for modest terraced homes like those shown in the photo. They are all fully serviced and often come with a simple 'Plot Passport' that sets out the main planning conditions (for example, where on the plot they are allowed to build, roof height limits etc.). Because the sales of plots has been so successful in Almere, many other Dutch cities now have similar programmes.

Don't councils have to get 'best value' on all land disposals?

Under s123 of the Local Government Act 1972, councils have discretion to dispose of land however they want and they are not obliged to always seek the highest price. The General Disposal Consent, Circular 06/2003, enables local authorities to make land disposals which will contribute to the promotion or improvement of the economic, social or environmental well-being of an area at less than best consideration, provided the undervalue does not exceed £2m.

What techniques can councils use to make land available?

There are a number of strategies already being explored scores of councils in the UK. These include:

1. Use your own land holdings, put in the infrastructure and directly sell off plots to self-builders. This is not a new idea. Milton Keynes BC started to sell individual building plots in the 1960s, and in its first 30 years it provided more than 1,600 self-build opportunities. More recently schemes are being progressed in Stoke on Trent, Cornwall, the Orkney Islands, Shrewsbury and Plymouth.

   Stoke on Trent City Council is keen to offer self-build plots as it believes this will add to the diversity of new housing that is potentially available in the area. It feels that the plots will help attract wealth creators to the area and as a way of stimulating economic activity. The council recently opened up a 1 acre site at Penkhull that it had originally acquired for a road scheme (that is now no longer progressing) to form 6 plots of between 365 sq m and 955 sq m. As part of the initiative the council installed a road. A public event was staged to gauge levels of interest and more than 100 people attended. The really keen ones were put in touch with a specialist self-build mortgage broker so they could check what they could afford to spend, and a private auction of the plots was organised in early December 2013. Each plot had a reserve price of £75,000. A total of £591,000 was raised (the highest bid was £124,000, the lowest was £75,000). Stoke spent £450,000 on the infrastructure – there were some complex water/drainage issues to resolve. The road access will provide for 3 more plots, at some time in the future. The successful bidders now have 6 months to get their planning permissions, and a further 18 months to build the homes. There is no Design Code, but the areas of the properties are identified on each plan and there is a 2-3 storey height limit.

2. Use your own land, and then team up with a private sector partner to manage the process. This approach has also been around for some time. For example many local authorities in the north of England (eg Leeds, Wakefield and Bradford) have worked with specialist developer/enablers since the 1990s to facilitate numerous self-build projects, and collectively these have delivered more than 100 new homes. More recently projects are understood to be in the pipeline in Swindon and Barnsley.

3. Acquire land and then split it up into serviced plots. A recent Policy Exchange report suggested that this might be a good option for councils with very little land of their own. In the UK the pioneering councils looking at this approach are Teignbridge in Devon (which has set up a £1m revolving fund to buy land that can then be split up and sold on to self-builders), and Cherwell in Oxfordshire.

   Cherwell District Council's Graven Hill site near Bicester will provide more than 1,000 serviced building plots

4. Make land available at a reduced rate/retaining a hold on the land to ensure future affordability. There are a number of ways of doing this – a very common solution is for councils to transfer part or all of the value of the land into a Community Land Trust.

   19 plots have been made available in Anglesey thanks to an innovative funding scheme that allows people

Housing in the Netherlands


Graven Hill site


Anglesey

on modest incomes to initially 'acquire' a building plot at no cost. The initiative is supported by the county council and a rural housing association. Once the self-builders have completed their homes they then have to get a mortgage on their properties and pay back the cost of the plot. The idea helps families get over the initial financial hurdle of funding the plot purchase, and has helped to deliver affordable homes for local people. Under the scheme self-builders could buy a plot for a quarter of the normal value – typically this was about £16,500. The council holds a legal charge on the other 75% of the value of the plot, and if the self-builder sells, he has to pay back the 75% of the land value to the council. The plots are only available to people who have lived locally for at least 5 years, and they were allocated by the housing association to those that will benefit the most. All 19 plots have been sold and most of the homes are now built.

5. Using the 'Build Now Pay Later' model to encourage regeneration. For many years the Homes and Communities Agency has made land available to large developers on this basis.

   The HCA and Middlesborough Council is jointly working on a project that employs this model at Middlehaven.

6. Encouraging self-build projects through proactive planning policies. There are many ways councils can encourage more self-build through own planning policies or by supporting the adoption of Neighbourhood Plans or Development Orders (NDO). The various "Community Rights" can also be powerful ways of supporting self-build. For example in West Sussex a parish council has drafted a Neighbourhood Development Order that calls for 18 self-build homes for local people as part of its expansion plans. And at the Upper Eden Valley in Cumbria a NDO permits single affordable new-build homes where these meet a local need.

Further information

NaSBA has a detailed Guide on Planning for Custom Build, and another report that explains all the new forms of community led self build housing that are now being trialed. These can be downloaded from the Self Build Portal (Technical Downloads page) www.selfbuildportal.org.uk

THE BRANDON CENTRE, SUFFOLK

Graham Macpherson BSc MRICS

Graham is Senior Estates Surveyor at Concertus Design & Property Consultants. Concertus Design & Property Consultants commenced trading in April 2013, having been divested from SCC. The business is 65 strong and is a multi-disciplinary practice with a wealth of experience and knowledge in the public and private sectors. Services include: project management, design, sustainability, quantity surveying and estates management www.concertus.co.uk

Graham describes a development his company has recently completed on behalf of Suffolk County Council (SCC). The Brandon Centre in Suffolk has acted as a flagship in demonstrating that public sector organisations can not only work together successfully sharing facilities, while at the same time reducing costs and increasing community capacity.

The brief

The Brandon Centre project comprised a former Victorian primary school that was in poor condition and used only in part by a pupil referral unit and a play group. Very little maintenance had been undertaken since the early 1980s when the school had vacated the building.

The project was initiated by the business development unit of SCC, who funded the development in conjunction with the owner of an adjoining car park, Forest Heath District Council (FHDC).

The brief was to investigate and propose a solution on how the former primary school building could be remodelled and refurbished to accommodate a number of services and organisations. The purpose for their co-location was to improve public access to services with a 'one-stop shop' which would also provide a more attractive environment for users. Further, the shared location would facilitate service improvements through opportunities for closer working and the possibility for integration.

There was also a remit within the brief to improve the existing building and create a flagship for the town, which would provide additional benefits through the improvements to the car park and better links to the shopping area.

The building comprises 748 sq m GIA and on a site of 0.2 ha excluding the public car park adjoining.

Location

Brandon has a population of just over 9,500 and is close to the Suffolk/Norfolk border. It lies around 16 miles north of Bury St Edmunds and 42 miles to the south west of Norwich. The small town was expanded in the 1970s by the building of a large council estate by the Greater London Council.

The former primary school is located in a prominent position in the town centre on a level site, flanked by a public car park, commercial properties and shops. The site forms a transitional link between commercial and domestic and is adjacent to Brandon Council offices.

Design and construction

Concertus was commissioned to

deliver a total project management package which included planning and consultation, design, project management, construction, costing, M&E, land transfers and lettings.
The building has undergone a major transformation with the creation of a new dedicated entrance and reception area, internal remodelling, full refurbishment and integration with the adjoining Town Council offices and FHDC car park.

The 10 month £1.3m construction programme had to encompass the following constraints and specification:

- From the outset, a sympathetic restoration of the building was sought as, although the building was not listed, it adjoined a conservation area
- A modern entrance was created off the main car park
- Improvements were made to the internal circulation of the facility to accommodate multi use of the building
- The red brick, slate roof, gothic windows and doors were repaired and retained
- A zoned heating system was provided using the existing five year old boiler
- New electrics were installed throughout
- Energy efficient lighting was included
- The roof insulation was significantly upgraded
- Energy efficiency, sustainability and renewable energy were all considered early in the brief as part of the refurbishment proposal
- The adjoining town centre car park was remodelled, extended and landscaped in conjunction with FHDC, including DDA spaces and spaces designated for exclusive use of a doctor's surgery nearby
- Public toilets were demolished and re-provided in the building (monitored and supervised) with a land transfer to facilitate the centre's new entrance
- Unisex public toilets were created. While a departure to the norm and controversial, they were specified due to the constraints of the building.

For a more detailed summary of the scheme – see: http://www.thebrandoncentre.co.uk/Planning-Design-and-Access-Statement.pdf

Use and tenure

There are 5 users of the building:

- Brandon library
- A pre-school play group
- A children's centre (for information and advice on parenting)
- Police (neighbourhood team)
- FHDC customer access point including rooms for public hire.

Additionally, there are 2 participating neighbours, Brandon Town Council (offices) and FHDC (public car park). Leases have been granted by SCC to the external organisations. Maintenance and running costs are recovered via a service charge.

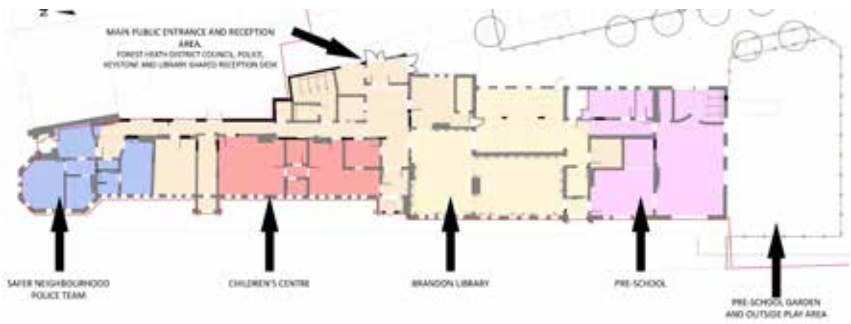
The managing agent for the property is Keystone Development Trust (social enterprise) on behalf of SCC who operates the building 5 days a week; an increase on the previous provision.

Outcomes

- Residents of Brandon are delighted with the centre and that a landmark building in the town centre has been upgraded
- A successful example of public sector users working together to create a hub for local services, with traditional boundaries set aside. For example, the reception to the building is manned by a rota by the library, FHDC, the police, Keystone and the children's' centre
- The building remains in the ownership of SCC, but has outsourced the management to a local charity. This has enabled the council to reduce its costs at a time of significant budget cuts, whilst increasing community capacity
- The Brandon Centre is a superb example of public sector users working together to deliver excellent community services right in the heart of the community they serve, in line with SCC's single public sector estate initiative
- Delivered on budget.

Brian Prettyman, Senior Manager for Property Strategy at SCC commented on the project: "This scheme brings to life Suffolk's vision for the Single Public Sector Estate. This is an excellent example of public bodies working together to provide improved services to a local community. The key public sector and community organisations in Brandon are now under one roof, giving the public a single point of access for services. All this has been achieved whilst meeting the need to make savings in running costs.

The property accommodates a library and children's centre, both previously



housed in an inefficient and less than attractive 1960s building, together with the Police and Forest Heath District Council, previously located in separate buildings. There is also an enlarged and enhanced pre-school which was previously in the same building. Attached to the centre is the former head-teachers house, now owned and occupied by Brandon Town Council.

The Town Council has been closely involved with the project and we have agreement for reciprocal use of accommodation and facilities. Likewise FHDC has been happy to include its adjoining public car park in to the wider scheme concept, making the building visible and easily accessible to the public. Day to day property management is provided by The Keystone Trust, a not for private profit social enterprise, supporting communities in the Breckland areas of Norfolk and Suffolk. They also have a role encouraging integrated working in the building as well as developing the centres offer to the wider community.

The business case for the project has been driven by the reduction from 4 buildings to one combined with a willingness to share facilities wherever possible. The buildings have been refurbished to a high standard with better fuel efficiency than their predecessors. Providing this occupation solution has not, however, been easy. Encouraging different organisations to share a single reception and allow others to use their spaces when they don't need it has been difficult and it has taken significant time to develop necessary levels of trust and understanding.

It is still too early to provide much detail about success, but we are already seeing growth in the number of visitors and a significant increase in library membership. We believe the project will prove a major asset to the town with benefits extending out into the wider community."

BRENT CIVIC CENTRE, WEMBLEY

James Young MRICS DipFM

James is Head of Assets and Valuation at London Borough of Brent. He has been responsible for management of all operational property leasing in Brent and worked on the new civic centre strategy. He has extensive experience of local authority strategic and operational asset management, office relocations and day to day property management. He has over 25 years' experience in a variety of local authorities and the private sector.

James has kindly provided this article after a branch meeting was held at the Civic Centre, which impressed all ACES London colleagues attending.

Background

In July 2013 Brent Council hosted the London ACES branch meeting. The venue was I believe the first purpose built civic centre to be constructed in London in over 35 years and the first time the London branch had been to Wembley!

The London Borough of Brent was created in 1965 from the merger of 2 councils (Wembley and Willesden Municipal Boroughs); each had their own town hall built in 1939 and 1893 respectively. The name of 'Brent' was taken from the river that separated the original districts.

As local government expanded in the 60s and 70s a variety, of what were then, modern offices were leased and the council finally ended up with about 17 separate locations all predominately centred around Wembley and totalling about 30,000 sq m. They had been adapted over the years and were often generously laid out with individual offices for managers. Rents had remained very low, barely moving for 25 years; this meant that there had been little incentive to take a hard look at the portfolio. However with each department siloed in its own building it

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was difficult, costly and time consuming to coordinate operations between departments.

In the late 90s it became clear that all these buildings would require major refurbishment, being 30-40 years old at this time. By 2000 it became obvious that a new strategic approach was needed to rationalise the estate and create a single corporate home, bringing together all council functions under one roof it could call its own!

By this time the main Civic Centre was already 60 years old and would require at some point a major injection of capital to bring it up to a modern standard. It was also slightly isolated from the centre of the borough. It was decided to continue to renew leases for another decade, which would take many of the buildings to the limit of their economic life while a solution was sought. Refurbishment of buildings was considered but this all became too complicated when dealing with landlords and still failed to address the situation of too many buildings. The first step was therefore to begin to align leases with similar lease expiry dates.

Regeneration proposals

Work on the Wembley National Stadium started in 2001 with it opening in 2007. The decision was timely as the council at this time was championing the redevelopment of the area around the stadium, seeking to secure something more exciting and aspirational than retail warehousing and crinkly tin sheds. As many of you may know the environment around Wembley had become tired and shabby from the 70s onwards. Poor behaviour of football fans in many ways meant the old stadium had a significant negative impact on the council and the surrounding area. Improvement in the management and general behaviour of football fans along with the money that has gone into the game meant that the new stadium was seen as a key to help kickstart regeneration in the area.

Before a final decision could be taken, it was necessary to build a financial envelope to show the magnitude of revenue costs the council could expect if it sought to maintain the status quo over the next 30 years. This was compared with estimates of the costs of building and running a new single building. Those calculations were convincing and compounded by the boost the development would give to the regeneration around Wembley. This established in the minds of the council that when considering the overall benefits of efficiency from a single site, to maintain the status quo was simply not an option. It was a project worthy of fuller consideration and potentially relatively budget neutral - swapping rental and high maintenance costs for mortgage payments with some capital receipts partly funding the projects. Although not part of the financial evaluation, the initial feasibility also highlighted many non-financial benefits. These included issues such as new modern ways of working, savings in travel time, a confident statement about the Borough and a location based on an appropriate venue rather than an inherited accident of location.

Brent did not own any suitable sites in the central Wembley area. Market testing was undertaken in 2003 whereby owners of potential sites were invited to submit outline proposals for a building that could accommodate all staff. It was realised that the building needed to be more than just an office and to be a welcoming building for the whole community. Further detailed work was therefore required to establish the nature and scale of community facilities that should also be accommodated. The council was keen to get away from the idea of large council offices with a council chamber tacked on and was in favour of a modern open building that residents would use, not just by appointment. In the early stages there was much talk of making the building iconic. This term was dropped fairly on as it was realised iconic could easily be interpreted as risky, expensive and controversial!!

The council did not wish to get into complicated leasing arrangements with capital investment provided by developers. This would have made it difficult to get the precise building the council required and financially committed it to long-term rental payments. It also meant the building wouldn't be owned by the council.

Post 2007 (Lehman Bros collapse) the property market softened very considerably although there was not a flood of sites coming onto the market. Prior to 2007 the price of land being quoted did not really represent value for money for Brent. The council was able to take advantage of low interest rates and in 2008 purchased a 10,000 sq m office building, swopping rental payments for mortgage payments, which reduced annual costs. This gave the council a long term option for solving its office accommodation at a modest cost, which strengthened its position and enabled it to then acquire a 10,000 sq m development site in the heart of the regeneration area.

As preliminary plans for the new building were drawn up the council also made modest, incremental and affordable improvements to its existing offices. So, taking the chance whenever an internal office move took place to apply a lick of paint, install better kitchen facilities and gradually remove managers' cellular offices to create a more open plan environment. This coincided with many improvements in technology - computers were getting smaller (the Council moved to thin client), flat screens were the norm and phones were smarter; all of which meant that more flexible working was a more realistic prospect. Periodic purges of paper filing took place and storage was gradually reduced. This approach also enabled a reduction in the number of buildings in the run up to the final move. Anyone considering a similar venture should not underestimate the need to change the culture of behaviour of staff and Members. This was a critical component in the success of the project.

Development proposals and design features

With the site acquired and the brief finalised, the council appointed Hopkins Architects via an architectural competition to design the building to Stage E. The final design provided an office element of about 14,300 sq m providing 1,590 workstations to support 2,100 staff. The office element is only

about 60% of the total area of the civic centre (and 60% of what it was 10 years ago). About 9,500 sq m is given over to council functions, customer contact centre, multi functional council chamber, wedding facilities, an assembly hall that can cater for 1,000 people, public meeting rooms, library ,café and atrium and basement car park for 150 cars . The council appointed Skanska to construct the Civic Centre and the architects were novated across; the tender price at £85m was favourably helped by the recession.

Work started in November 2010 and P.C. was achieved in May 2013. A phased decant commenced in June with all staff being moved in by September 2013. We are currently awaiting the final letting to a branded coffee outlet and about 1,000 sq m is likely to be occupied by a major retailer. The building is also used by a number of partner organisations including the police and companies providing outsourced services.

The building has proved to be good value with construction costs around £2,150 sq m (GIA) plus fees. The offices are completely open plan and simply laid out in banks of mainly 6/8 desks; a wide variety of different sized meeting rooms are provided along with non-bookable quiet rooms. Staff are required to eat in break-out areas and lockers are provided for working papers and personal effects. Good quality desks and chairs were purchased. The vast majority of staff find the conditions excellent with the desk sharing not generally causing any problems. In the previous buildings there was much free car parking for staff. In the new building the parking is very limited and is effectively a public pay as you go car park. This was also part of the cultural and behavioural change process. We are a paper-free organisation, all post is scanned with the IT system at point of delivery.

The building is naturally ventilated and designed to be BREEAM outstanding. There is a CHP generator running on by-product of waste fish oil. Overall the building has very large areas of exposed concrete which helps to absorb thermal shocks and this summer the building coped well with high summer temperatures. The saving in energy costs over the lifetime of the building will be significant.

Pressure does exist at times for desks and while some people are able to work virtually paper free (through iPads), others still have the ability to print notes for meetings. A ratio of 10 staff to 8 desks was adopted and an overall density of 1 desk per 9.0 sq m. These initial targets have been bettered and while in theory it could probably have been possible to squeeze a few more desks in, this could have created an uncomfortable working environment and in a new unfamiliar building. Staff are also able to work from home, it being relatively simple for anybody to log in without complicated additional software. IPhones have been supplied to all staff; these automatically take calls wherever they are located, including at home and also double as landlines.

Conclusions

Brent has moved a long way in a decade. This was made possible through steady sound planning, attention to the detailed practical work and building a consensus. The whole project has been relatively free from party politics, with each of the 3 main parties being kept involved and supportive of the project. All bought in with the goal of creating a modern 21st Century authority.

The finished building has been much

commented on in the press and it really has done its job; it has put the area on the map and helped attract new shops, restaurants, cinemas and leisure facilities. Transport to central London has also improved, adding still greater value to the area. In conclusion the Civic Centre has provided staff with an excellent modern working environment. I have been involved in the provision and management of office accommodation for over 20 years; it's one of the best, if not the best, I have seen. The building provides a fantastically busy modern library and seems to be pulling in a wide variety of visitors. In addition the striking new building has really put Brent on the map and should help attract further investment.

ABOLITION OF DISTRESS FOR RENT ARREARS

Christopher Thompson and Julian Steed

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The ancient remedy of seizing goods where tenants have failed to pay rent is to be abolished. On 6 April 2014, new procedures come into force. Advice on lease requirements to meet the new regulations are highlighted.

Summary

When faced with a tenant who has not paid the rent, one option for the landlord to recover the arrears is to use the remedy of "levying distress for rent" or "distraining for rent". This is where the landlord instructs bailiffs to go to the tenant's premises and seize the tenant's goods and sell them to pay off the arrears of rent. It is an ancient common law remedy around which rules have accreted down the centuries. For example, the bailiffs cannot seize cash in the till or tools of the trade and distress must take place during daylight hours. As from 6 April 2014 a statutory procedure replaces it. The detail of the legislation is in part 3 of the Tribunals, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013. The new system is called the commercial rent arrears recovery procedure ("CRAR").

Tried and tested formula

The government regards distress as an archaic remedy which is too favourable to landlords. However, some landlords find distress a quick and effective method of recovering rent arrears. So its abolition and replacement with a statutory system may cause apprehension among some landlords. Those who have used distress in the past must now familiarise themselves with the new procedure. There are differences between distress and CRAR and some of the changes appear to disadvantage landlords.

Commercial premises only

A landlord can use distress in relation to commercial premises or the commercial part of the premises where the letting is of a building with mixed residential and commercial use. An example is a high street property where there is commercial use of the ground floor and residential use above.

In contrast CRAR is limited only to a lease where the use is solely for commercial purposes. If any part of the premises is lawfully let, sub-let or used as a dwelling, the landlord cannot use CRAR. So in the case of a high street property with a flat at first floor level, the landlord may wish to grant separate leases of the commercial ground floor and the residential area. By so doing the landlord preserves its right to use CRAR to collect rent arrears owing under the lease of the commercial area. However, having 2 leases complicates matters so the landlord may decide to have just one lease and forego the right to use CRAR.

The residential use must be "lawful" to exclude the use of CRAR. So if a tenant or sub-tenant uses or permits the use of any part of the premises as a dwelling in breach of the lease or sub-lease, the

landlord can still use CRAR. In addition, a landlord can only use CRAR for a written lease whereas distress is possible where the letting arrangement is based on an oral agreement.

Limited to annual rent

It is common for leases to reserve as "rent", payments such as insurance premium and service charge. One reason for this is to allow a landlord to levy distress for arrears of such payments. CRAR is more limited in scope. It is confined to recovery of the annual rent plus VAT on that rent and any interest which the landlord may charge on the arrears. So the landlord cannot use CRAR to obtain payment of arrears of service charge, insurance premium and other payments such as a contribution to business rates. Problems may arise where the tenant pays a rent which includes an element of service charge and insurance. In such a case the landlord can only recover arrears through CRAR which are "reasonably attributable to" the principal rent and not the service charge or insurance element of the rent. So in future it may be best if a lease with an inclusive rent expressly attributes a portion of that rent to items such as service charge and insurance.

Notice period required

One advantage of distress is that a landlord does not have to give notice to the tenant before sending bailiffs to the property to seize the tenant's goods. The rent need only be one day in arrears and the landlord can sell goods within 5 days of seizing them.

With CRAR the timescale is as follows:

- the rent must be in arrears for at least 7 days
- a landlord must then give the tenant 7 clear days' notice of its intention to use CRAR; Sunday, bank holidays, Christmas and Good Friday are excluded from the 7 day period
- a landlord must give a further 7 clear days' notice of the proposed sale of seized goods.

The initial 7 day notice period of the landlord's intention to use CRAR may strike landlords as the biggest difference between distress and CRAR and the one which is likely to disadvantage landlords the most. The fear on their part is that a tenant may use the notice period to remove from the premises any goods worth seizing. As the law stands at the moment, under the Distress for Rent Act 1737, a tenant who "fraudulently or clandestinely" removes goods from the leased premises with the intention of avoiding their seizure commits a tort i.e. a breach of a legal duty. He can be liable to pay compensation to the landlord for twice the value of the goods and the landlord may legitimately "follow" and seize the goods even if they are no longer on the demised premises. As part of the introduction of CRAR the 1737 Act will be repealed.

The legislation contains requirements as to the content of any notice. In addition, a landlord must instruct a certificated enforcement officer to serve the notice and carry out the procedure. The landlord must indemnify the officer against any liability which he suffers as a result of the procedure.

Collecting rent from a sub-tenant

Under s6 Law of Distress (Amendment) Act 1908 a superior landlord can serve notice on a sub-tenant where the head-tenant is in arrears with the rent. The notice requires the sub-tenant with immediate effect to pay rent direct to the superior landlord. The 1908 Act will cease to have effect once CRAR comes into being. CRAR provides for a similar procedure but any notice on a sub-tenant takes effect only 14 clear days after service.

Insolvency procedure

CRAR interacts with insolvency procedures in relation to the tenant in arrears. For example, if a tenant goes into administration a landlord cannot then use CRAR to recover arrears unless the administrator agrees or a court so orders. In fact, the landlord's 7 days' notice of intention to exercise CRAR may precipitate a tenant going into administration before the end of the period.

Other remedies

One solution which a landlord may consider to offset the abolition of distress is the taking of a rent deposit from the tenant when the lease is granted. If the tenant does not pay the rent on time, the landlord can use the deposit to pay off the arrears. Insisting that the tenant provide a guarantor may be another option.

In addition, a landlord can always exercise its right to forfeit the lease for non-payment of rent i.e. bring the lease to an end. Forfeiture is not without its problems for a landlord: a tenant may accept the forfeiture and give up the lease thereby leaving the landlord with an empty property. The tenant can also ask the court to award it relief from forfeiture i.e. to cancel the landlord's forfeiture action. However, a court is only likely to grant the relief on condition that the tenant pays the arrears of rent and the landlord's costs. So by initiating the forfeiture process the landlord may end up securing payment of the arrears though at the risk of losing the tenancy altogether.

PUT A CAP ON IT – DILAPIDATIONS AND SECTION 18(1)

Hannah Watson and Faye Hyland

Hannah Watson is an Associate at Field Fisher Waterhouse LLP, specialising in contentious commercial property issues. She is experienced in dealing with all types of landlord and tenant disputes, including dilapidations, arrears recovery and property-related insolvency, and has particular expertise in matters concerning the Landlord and Tenant Act 1954. She also advises regularly on easements, restrictive covenants, boundary disputes, trespass and nuisance, and has had experience in dealing with professional negligence matters arising out of property issues hannah.watson@ffw.com.

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Hannah and Faye focus on 2 very recent cases which involve the valuation of property to establish the loss at lease termination resulting from tenant disrepair. "The outcomes of the Hammersmatch and Sunlife cases reinforce the principle that landlords must consider dilapidations at the end of the lease with realistic expectations."

With fewer landlords redeveloping their buildings at the expiry of leases due to the economic and property recession, there has been a significant rise in the number of contested dilapidations claims. One of the points often taken by tenants in such claims is that the damage to the landlord's reversionary interest resulting from the disrepair at the end of the lease is less than the cost of the repair works. That being the case, the damages are capped at that lower amount by virtue of Section 18(1) Landlord and Tenant Act 1927. Section 18(1) has come before the court on several occasions in the last few years. The most high profile of those cases was PGF II SA v (1) Royal Sun Alliance Insurance Plc (2) London & Edinburgh Insurance Company Limited in 2010. However, since then, there have been 2 important cases which are considered in this article.

The Dilapidations Pre-action Protocol which came into effect in January 2012 (which prescribes the process that the parties to a claim should follow before court proceedings are issued) has also put the spotlight on s18(1). The Protocol will, in many cases, require a valuation of the property that is the subject of the claim by the landlord to establish the loss resulting from the disrepair (and therefore whether that value is less than the cost of repair). The cases which are the subject of this article have focussed on this Section 18(1) 'cap' on damages.

Hammersmatch Case

In the case of Hammersmatch Properties (Welwyn) Limited v (1) Saint-Gobain Ceramics and Plastics Limited (2) Saint-Gobain Abrasives Inc [2013] EWHC 1161 (TCC), the landlord brought a dilapidations claim against its tenant following the expiry of the lease of the Norton building in Welwyn Garden City. The main issue was whether the damages and fees that the landlord was able to recover were capped by Section 18(1). However, the first issue before the court was the appropriate standard of repair of this particular building having regard to its age, character and locality. The building was a 1930s purpose built manufacturing unit.

Importantly, the court held that the correct test was that the tenant had been obliged to repair the building to the level that a "reasonably minded tenant of the relevant user class" who was contemplating taking a letting of the building would reasonably have required. The relevant date for such an assessment of standard of repair was at the start (rather than at the end) of the lease.

The court held that the cost of the works which the tenant should have carried out under the lease amounted

to £3,087,712 (the court having made an allowance for fees and costs). It was acknowledged by the landlord that this amount would be capped by the diminution to the value of the landlord's reversion resulting from the disrepair, if that value was lower than the cost of works amount. In this case, the court held that the reduction in value was the difference between the 'in repair' value and the 'site value' (given the nature of the building). It found that the value of the building in repair was £3m and the site value was £2.1m. Therefore the damages were capped at the difference between those amounts (i.e. £900,000).

Consequently, the damages recoverable by the landlord in this case were less than a third of the cost of the repair works. This is therefore a powerful illustration of how important the section 18(1) cap can be in dilapidations claims.

Sunlife Case

Another Section 18(1) case, which went to appeal in 2013, was the Sunlife Europe Properties Ltd v Tiger Aspect Holdings Ltd v (1) Tiger Aspect Holdings Limited (2) Tiger Television Limited [2013] EWCA Civ 1956. The case related to premises in Soho. Tiger Aspect was the tenant of 2 leases of 35 years which expired. The premises were built in the 1970s as 'state of the art' offices (at that time) with high quality heating, ventilation and air-conditioning systems. By the time Tiger Aspect took over the leases in 2000, the premises had been allowed to deteriorate into a poor state of repair (as a result of a lack of repair work by previous tenants). Tiger Aspect carried out limited refurbishment work before the leases expired in November 2008. However, disrepair remained at the end of the leases.

The landlord served a schedule of dilapidations on the tenant claiming £2.172m in damages. A large proportion of this sum related to upgrading works that the landlord had carried out after the lease expiry to bring the premises to modern standards, including installing a new up to date heating and ventilation system. While one of the issues between the parties was whether the tenant should have upgraded the equipment with a modern equivalent (as the landlord had done after the leases had expired), the main issues before the court at trial related to the application of the Section 18(1) cap.

However, at the start of the trial, the tenant argued that, of the sum incurred by the landlord in carrying out its works, £700,000 related to works of repair and the remainder to improvements which fell outside the tenant's repairing covenants. On this point, it is for the court to consider whether, if the tenant had adequately complied with its repair obligations and handed back the premises in good repair and condition, the landlord would have been able to let or sell the building without any significant discount. If the answer was yes, then damages would be assessed by reference either to the cost of putting the building back into condition or to the difference in the value of the building in its actual state and the state in which it ought to have been delivered up, whichever is the lower. If the answer was no, the court would have to consider the work required to put the premises into a condition that would enable it to be let to the appropriate type of tenant at a fair market rent. By the end of the trial, that issue had been agreed between the parties.

Another issue that had been in dispute between the parties (which was also resolved before the court had to decide the matter) was the question of supersession. Supersession is the extent to which any repair works that the tenant might have done have been superseded (i.e. negated) by the landlord's refurbishment works. In relation to any such items, the landlord cannot recover from the tenant. However, where a landlord has carried out repair works as part of (but not superseded by) its refurbishment, then it can recover the cost of such works from the tenant. Indeed, the landlord will be in a strong position in relation to such claim as it will contend (often with merit) that its loss is the cost of such works.

The main issue that was before the court in the Sunlife case was whether a Section 18(1) cap applied to the landlord's claim and, if so, the level of that cap. In relation to this issue, the quality of the valuation evidence that was presented by each party in relation to Section 18(1) was considered by the court at first instance. In a surprising twist, the court elected to disregard the valuation contained within the landlord's expert evidence and relied solely upon the tenant's valuation which was not part of the expert evidence before the court. On the basis of that evidence, the court assessed the damage to the reversion resulting from the disrepair at £1.408m. As this figure exceeded the already determined costs of repairs, the court determined that the Section 18(1) cap did not apply. That being the case, the loss suffered by the landlord (and therefore the damages due to it) was the cost of the works. Such costs were £1,353,254, plus interest. The tenant appealed.

While the tenant did not appeal the cost of works finding of £1,353,254, it did appeal the first instance court's finding as to the value of the landlord's reversion. It contended that the damage to the reversion was less than £1.353 million. When the matter came before the Court of Appeal in December 2013, the approach of the court at first instance in relation to Section 18(1) was considered. The Court of Appeal reaffirmed the principles regarding the assessment of damages for disrepair - the measure of damages for disrepair remains the cost of the works, subject to the statutory cap imposed by section 18(1). The Court of Appeal found that the judge at first instance had been correct in concluding that, in the absence of any satisfactory evidence that the diminution was lower than the cost of repair, the diminution could be inferred from the cost of the works that the landlord had carried out. With regard to the valuation evidence before the first instance judge, the Court of Appeal found no fault in the approach of the judge in relying upon the tenant's valuation report as a template, adjusting it to insert the correct inputs for the cost of works. The Court of Appeal therefore dismissed the tenant's appeal.

The Sunlife case is an important reminder that landlords will generally be in a better position in a dilapidations claim if they have carried out the repair works. In those circumstances, the (rebuttable) assumption is that the

landlord's loss is the cost of the repair works.

Where does this leave landlords and tenants?

The outcomes of the Hammersmatch and Sunlife cases reinforce the principle that landlords must consider dilapidations at the end of the lease with realistic expectations. They should consider not only the cost of repair, but also the damage to the landlord's reversionary interest resulting from the disrepair and whether this caps the loss. Tenants should always explore whether Section 18(1) may cap the damages sought by landlords but, at the same time, be aware that, particularly where a landlord has carried out the repair works, the loss may very well be the cost of repair.

These 2 cases are also a reminder that, when many landlords are refurbishing (rather than redeveloping) at the end of the term of a lease, the question of whether any of the landlord's works amount to supersession is likely to be contentious between the parties. Again, realism is important from the landlord's perspective – it may well not be able to recover the whole cost of its works, if repair works are superseded by such works, or if upgrade works go beyond mere repair. As for tenants in such situations, they should interrogate precisely what works have been undertaken and whether or not there are any works of supersession or upgrading – any such works should be assessed and quantified (and subtracted) before arriving at a settlement sum with the landlord.

As with many landlord and tenant issues, landlords and tenants should take specialist surveying and legal advice in respect of dilapidations claims, both before and after the end of a lease term. By doing so, they should ensure that dilapidations, which can be very valuable claims, are settled at the correct level.

SPLIT DECISION - Determining the land and buildings split in local authority asset valuations

Susan Robinson and Chris Brain

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As a response to the Editor's awareness of a confusion amongst valuers about land and buildings split for valuations for capital accounting purposes, Susan and Chris provide compelling useful guidance.

Local authority valuers who undertake asset valuations for the balance sheet will often be requested by their finance colleagues to provide a land and buildings split of their valuation. Many valuers struggle with this concept and because they do not understand the purpose of the split, corners can sometimes be cut.

The purpose of this article is therefore to:

- Explain the purpose of undertaking a land and buildings split
- Set out which assets require a land and buildings split and which do not
- Clarify what should be included within the 'building' part of the split
- Outline the risks of getting the split wrong
- Describe some of the approaches in general use by local authority valuers and which of these is 'compliant'

Why is a land and buildings split necessary?

The principle purpose of undertaking property asset valuations for local authority balance sheets is to ensure that the Financial Statements of the authority give a true and fair view of the financial performance and cash flows of an authority. A true and fair view requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the CIPFA Code.

One element of these transactions is the depreciation charge relating to an asset. Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. Put simply, an asset wears out over time and this must be reflected in the balance sheet of the authority. An asset is depreciated in the financial statements to the extent that is appropriate given the estimated remaining useful life of that asset to the authority. Where an authority does not have any future plans for the asset and it is fair to assume that the asset will continue in its current use for the foreseeable future then the useful life is often determined by reference to the physical life of the asset.

If an asset was not subject to depreciation then the carrying amount of that asset would not change; however the asset would be depreciating in value as it is wearing out and becoming less fit for purpose. This would result in the value of the asset being misstated in the financial statements. This is an important aspect of the financial statements and is as critical as ensuring that valuations are kept up to date.

Which asset valuations require a land and buildings split?

A land and buildings split is necessary where depreciation relating to one part of an asset is significantly different to another part of that asset. Many valuers will have become familiar in recent years with componentisation of building assets. Componentisation of a building asset takes place when there are significant components that are wearing out over a shorter period than the main asset. This is done so that each significant part can be depreciated separately and the balance sheet remains robust. Undertaking a land and buildings split is nothing more than an

earlier form of componentisation.

Depreciation applies to all property, plant and equipment (PP&E) assets, whether held at historical cost or re-valued amount, with certain exceptions. Firstly, land is not depreciated where it can be demonstrated that the land has an unlimited useful life, which will be the case with most land assets. But there could be circumstances, for example land subject to depletion (i.e., quarries and landfill sites) where there is a determinable life and the land should be depreciated. In these circumstances the life of the land asset is often measured in units of consumption (e.g., tonnes of rock in the case of a quarry) rather than measured in years.

Buildings however rarely have an unlimited life and will wear out physically over time, simply through age, usage and general obsolescence. But not all buildings are subject to depreciation. For example heritage and community assets that have an indefinite life are not depreciated and neither is Investment Property. The reason that Investment Property is not depreciated is simply that the assets are investments and intended to provide an investment return, either through rental income or capital appreciation, or both.

An asset is not depreciated until it is available for use, i.e., when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. This means that where there is an asset under construction and the carrying amount in the balance sheet is the aggregate of the bills of quantities, this figure is not depreciated until the asset is brought into use.

If an asset becomes an 'asset held for sale' (in accordance with s4.9 of the CIPFA Code, see also IFRS5) then the asset is no longer depreciated.

In effect all this means is that apart from Community Assets, Heritage Assets, Assets Held for Sale, Assets under Construction and Investment Property, depreciation applies and a land and buildings split of the asset valuation must be undertaken.

What should be included within the 'building' part of the split?

Anything that has a life that can be determined should be included in the 'building' part of the split. It is not simply a case of splitting away any buildings on the land. The 'building' element should include any improvements to the bare land, including external areas such as hard surfacing, hard landscaping, access roads, retaining walls etc. This should include items such as boundary walls and fencing. It should also include utility connections and drainage if these are significant and capable of being measured.

What are the risks of getting the split wrong?

There are 2 high level risks:

1. Qualification of the accounts if errors are regarded by auditors as being material

2. Censure from RICS Regulation if the approach to determining the land and buildings split does not meet professional standards expected.

In terms of the first risk, this is naturally going to be of greatest concern to the accountants, as qualification of the accounts is a serious matter to them and to the authority. It reflects badly on their professional standards and also upon the reputation of the organisation.

The second risk area will be of greater interest and concern to the valuer. As we have mentioned in earlier Terrier articles, RICS Regulation is becoming more active in the regulation of local authority valuers following the introduction of valuer registration. Their role is to ensure professional and ethical standards are being maintained. We do not at the moment have any intelligence that suggests that RICS Regulation is specifically examining how local authority valuers are approaching land and buildings split in asset valuations.

However, it should be remembered that such valuations, including the land and buildings split are covered by RICS professional standards. As RICS Regulation is generally more concerned with approaches and processes, if you were to receive a regulatory visit from the RICS then they could quite easily ask to see your approach to the land and buildings split. If there are flaws in your approach that place your professional standards in question then you could find yourself in an uncomfortable situation.

What approaches are being taken and are they 'compliant'?

We deliver quite a number of valuation training events and workshops each year for local authority valuers, and from these events we have a fairly good idea of the practices in use for arriving at the land and buildings split. Sadly not all of these approaches are either compliant with the CIPFA Code nor, in our humble opinion, meeting RICS professional standards.

The 4 principle approaches we have come across are as follows:

- Land comparison method
- Residual valuation
- % split
- The £1 approach.

We will discuss the relative merits of these in turn. We should just make the point at this stage that the methods we are about to describe and discuss relate to asset valuations where there is a 'market', in other words those asset valuations that are undertaken other than the DRC approach. As readers will be aware, where DRC is used to arrive at the opinion of value, there is a ready land and buildings split produced as part of the process and no further consideration of land and buildings is necessary for such valuations.

<u>Land comparison method</u>

The asset valuation will have been undertaken by reference to market comparables for the asset as a whole. But the big question for the valuer is how much of this value to allocate to which element - land or buildings. One

fairly safe route is through the use of the comparison method using market transactions for land sales, if there are any available. This is a simple task of calculating the land value from the available comparables, and deducting this from the overall asset valuation to provide the proportion appropriate to the buildings element.

Residual valuation

However, where there is a shortage of land comparables that can be relied upon, it is possible to estimate land value on a residual basis, using the cost of construction as a means of arriving at land value. By estimating the construction cost of the buildings and other improvements to the land, and allowing for obsolescence factors, as in the case of a DRC valuation, it is thereby possible to estimate the land value. This is a basic valuation technique and should be well within the skillset of a competent local authority valuer.

% split

An approach that we find in common use is the % split approach. This approach has serious weaknesses and raises some significant concerns about accounting and valuation standards.

In discussions we have had with local authority valuers that have adopted this method it is quite often difficult to ascertain how any percentage split was actually arrived at, who arrived at it and what it is based upon. The method is predicated on the assumption that the relationship between the value of land and the value of improvements to the land will always follow the same approximate percentage split. In some authorities the adopted percentage split is the same for all asset valuations. In other authorities, the adopted percentage varies depending upon the asset type.

This approach is difficult to defend adequately in our view. The only possible defence is that the percentages that have been adopted are the result of a detailed examination of relative land values and build costs, and are reviewed as necessary to keep up-to-date with movement in land values and construction inflation.

We would suggest that if such detailed work is being undertaken, to the degree necessary to maintain robustness of the valuations, that there is no need to 'assume' a percentage split as the data needed to perform a 'proper' valuation in each case is available to the valuer. Nevertheless, this percentage approach we suspect, is the approach that the majority of local authority valuers adopt. **We would caution against its use, and would advocate one of the 'proper' valuation methods described further in this article.**

Let us examine one of the problems with this approach. If one considers an asset that has an asset value of, say £2m the % split adopted could make a significant difference to the depreciable amount that the accountants need. At 75% this would be £1.5m whilst at 60% it would only be £1.2m. This difference of £300,000 is equivalent to 20% of the 75% depreciable figure and 25% of the 65% depreciable figure. This means that adopting a fixed percentage that is incorrect can make a proportionately significant difference to the deprecation in the financial statements.

Finally we turn to probably the least acceptable approach of all - the £1 approach.

The £1 approach

It may come as a surprise to many, but we still do encounter local authorities that are effectively not undertaking a land and buildings split at all, as they are simply splitting the asset value by allocating £1 to the land and the remainder to the 'building'.

It is very difficult indeed to image many circumstances when such an approach will be justified, and where this approach is taken it presumably is adopted due to one of the following:

- Inability to understand the requirement and how to apply valuation expertise to the situation
- A sacrifice to speed of completing the annual valuation programme, or
- Pure laziness

Whichever is the case, this approach does not comply with the CIPFA Code nor the RICS professional standards. It understates the value of the land, overstates the value of the 'building' element, results in higher depreciation than should be applied and could result in material misstatement of the accounts.

In valuation terms in our opinion it is not possible to justify.

In conclusion

When undertaking the land and building splits on your asset valuations, consider very carefully the approach you are intending to take. It should go without saying, but as with all valuations, it is dangerous indeed to simply adopt an approach because that was the approach adopted by the person who last valued the asset. It must always be remembered that this is your valuation and you are accountable both to your client and to the RICS to ensure that each valuation meets professional standards and complies with the relevant accounting code.

Our advice would be as follows:

- Look to move towards an appropriate balance of comparable and residual valuation approaches
- If you are still using the £1 approach then find a way to ditch this as soon as possible
- If you are using a fixed % split which is the same for all asset valuations, then you should again look to find a better method
- If you are using a fixed percentage split by asset type, again this would be something we recommend you move away from. If you still believe in your approach we would recommend you at the very least undertake some pilot valuations across a number of assets in the asset type to validate your arrangements as a defence through the audit or RICS Regulation inspections.

COMPULSORY PURCHASE AND COMPENSATION UPDATE

Gary Sams

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The purpose of this article is to provide an update on changes to the law and practice of compensation for compulsory purchase over the last year or so, by reference to new statute or case law. It concentrates in particular on 2 cases which look at disturbance under rule 6 and the extent to which the disturbance claim can include items based on the value of land.

The House of Lords decision in Transport for London v Spirerose Ltd [2009] 1 WLR 1797 is one of the most important cases in recent years and makes significant changes to the planning assumptions to be made when valuing land subject to compulsory purchase. It also casts doubt on the well established principle that land should be valued as if offered for sale by a hypothetical willing seller in its actual physical condition at the valuation date. It suggests instead that the land should be valued as if sold at such time, and together with such other land, as would have been likely in the no-scheme world.

It is inevitable that such an important decision will be used by advocates to stretch the established boundaries of the compensation claim, and in this update I will look at an aspect of one of the cases in which those boundaries have had to be reaffirmed. Specifically, Spirerose does not permit property to be valued at the valuation date as an operational hotel, when it is actually a scruffy parade of shops and flats!

Disturbance items based on the value of land

Acrofame Properties Ltd and The London Development Agency (2013) ACQ/144/2006 was a long and complex case mainly concerning the value of shops and flats in Dagenham which were the subject of a CPO for regeneration purposes. It did, however, raise a number of points of principle, particularly around the extent to which a disturbance claim can include items of loss directly based on the value of land.

Loss of rent as part of the disturbance claim

Rule 6 of s5 is the nearest there is to a statutory basis for disturbance and states that "the provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land". The wording implies that disturbance is a matter not directly based on the value of land and that matters based on the value of land, such as rent, cannot be claimed as disturbance. Another reason for arguing that loss of rent cannot be claimed as disturbance is the risk of double counting. If compensation for an investment property is assessed under land taken based on a capitalisation of the rent, then clearly there cannot be a disturbance claim for the permanent loss of rent as this is compensating the same loss twice. The lands tribunal (as the Upper Tribunal (Lands Chamber) will continue to be known, at least by me) has had no difficulty in the past in finding circumstances when loss of rent can be awarded as disturbance. A simple case would be where a flat is taken and 3 months before the valuation date the tenant vacates as a direct result of the CPO. The landlord has not only permanently lost the rental income, which will be dealt with under compensation for land taken, he has lost the rental income temporarily for the 3 month period prior to the valuation date. This temporary loss of rent can, and should, be awarded as disturbance.

However, in the real world the distinction between loss of rent which can be claimed as disturbance, and that which can't, is often much less clear and this was the case in Acrofame. The claimant claimed loss of rent in respect of a restaurant unit that was vacant at the valuation date, and had been for the last 7 years since the last tenant had left, in his view as a result of the proposed scheme. The claimant argued that he could have re-let the restaurant, but no tenant would take it due to the threat of the CPO. The property was in poor condition but the claimant argued regardless of condition, the blight and vandalism resulting from the scheme would have deterred any tenant from taking a lease. "It was inconceivable that Acrofame, a successful developer, would have left no.4 vacant for several years if it had had any alternative. But the prospect of compulsory purchase

deterred any sensible retailer or restaurateur."

The acquiring authority pointed out that considerable expenditure would be necessary before the unit would be lettable and that even before the scheme, 35% of units in the parade were vacant. The cost of refurbishment would have been greater than the rent lost. The claimant had made no attempt to market the unit. There was no causative link between the loss of rent and the scheme.

The Tribunal agreed with the acquiring authority. There was no evidence that the original tenant left due to the scheme and the problems of high voids in the parade and vandalism could not be attributed solely to the CPO. The claimant's decision not to market the property was due to his knowledge of the lack of demand in the local market.

"By failing to market no.4, even before the threat of a CPO was established, Mr Patel did not mitigate his losses; he made no attempt to attract new tenants at any time from August 1997 onwards and he cannot now claim for losses that he did nothing to prevent or reduce. As Lord Nicholls said in Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111 at 138G: 'He [the claimant] cannot simply let his business run down, and then seek to recover compensation for his losses.'"

Value as an existing hotel

Another interesting aspect of this claim was the primary basis of valuation proposed by the claimant for one of the properties. In his view the property should not be valued as it actually was at the valuation date, vacant offices, café and bed and breakfast accommodation, but as a newly built hotel because this is what it would have been at the valuation date in a no-scheme world. The property would, the claimant contended, have received planning permission for a 33 bedroom hotel, which would have been built and in use by 2002, 4 years before the valuation date. Following Spirerose v Transport for London [2009] 1 WLR 1797, the property had to be valued as it would have been at the valuation date in the no-scheme world, a fully operational hotel, and compensation for disturbance should reflect not only the capital value, but also the 4 years' loss of profits which would have been made between 2002 and 2006.

However, the claimant recognised that this imaginary hotel could not be valued as if it were real, with no regard to the cost of building it. In the claimant's view the best approach "was to add the loss of profits before acquisition to the capital value of the completed hotel at the valuation date (such value reflecting future profits) and then deduct the development costs as at the time, work on the hotel would have commenced (1999) and not at the valuation date. This gave effect to the principle that compensation should be the value to the owner."

Capital value as part of the disturbance claim

Rather surprisingly, the claimant's valuer argued that the whole of this claim was disturbance, because if the imaginary hotel were valued under rule 2, there could be no allowance for development costs and this would produce an unrealistically high claim. Also, rule 2 requires the property to be valued in its actual physical state at the valuation date, not as a non-existent hotel.

We have established that disturbance compensation can include some matters based on the value of land, but surely to include the whole of the property value as disturbance, and nothing as land taken, is stretching the point too far. This was certainly the view of the tribunal which noted that the claimant accepted that the property could not be valued as a hotel under rule 2, and was trying to get round this problem by claiming under rule 6. In its view rule 6 could not be used to claim for the value of property acquired, even when that valuation is based on the profits method of valuation.

"Loss of profits that would have been realised from developing the land are not in principle compensatable under rule (6) because the prospect of such profits is what gives the land its value for development and a claim for such loss would therefore be directly based on the value of land…. The claimant's claim for the loss of profit that it would have made after the valuation date from developing the land as a hotel is directly based upon the value of land and is thus excluded from a rule (6) claim."

The lands tribunal went further and gave guidance on how it felt the claimant should have proceeded. The correct approach was one that the claimant had advanced at an earlier stage of the negotiations, but dropped before the proceedings. The claimant intended to develop a hotel but was prevented from doing so by the CPO. He was entitled to claim for the profits lost by not being able to develop earlier (2002 on the claimant's evidence). The rule 2 valuation would then be based on hotel development potential as at the valuation date of 2006, and therefore reflect future profits.

"This approach would not have led to a conflict between rule (2) and rule (6) and would not have required the assumption that the hotel was actually in existence on the valuation date. In my opinion the difficulties faced by the claimant arise because it insisted on arguing that what would have happened in the no scheme world must be assumed to have happened as a fact at the valuation date in the scheme world."

The only remaining basis of valuation

The tribunal thus rejected the claimant's primary approach of valuing the imaginary hotel under rule 6, and the claimant had dropped the tribunal's preferred approach of valuing the property as site with planning permission for a hotel. This left the claimant's only remaining approach as the one on which the tribunal had to base its award: that the land benefited from residential planning permission for 30 habitable rooms.

The tribunal had still to consider the disturbance claim for loss of profits which would have been made on the imaginary hotel between 2002 and 2006, as this did not conflict with rule 2. However, it rejected the claim on the facts. There was simply not enough evidence that the claimant had the expertise or the funds to develop a

hotel, let alone that his calculations of anticipated profits were reliable.

It is clear from this that, even if the approach of including the value of a hotel in the disturbance claim had not failed on the conflict with rule 2, it would have failed on the facts.

Lettings and rents in a no-scheme world

Similar issues of lost rent being claimed as disturbance arose in the case of GPE (Hanover Square) Ltd and Others v. Transport for London (2012) ACQ 83 2011, which concerned 2 preliminary points of law. The second point, and the most directly comparable to the Acrofame case, was not considered by the tribunal as it decided that its conclusion was too dependant on the facts of the particular case. This point was whether, if the subject properties were let at a lower rent than they would have been in a no-scheme world, as a direct result of the impending CPO, the difference in rent would be claimable as disturbance under rule 6. An answer to this question would have been interesting, but it is understandable that the tribunal felt that an answer would be dependant on the facts of each case.

Value the actual tenancies or the no-scheme world tenancies?

This left the first point to be decided – whether, in assessing compensation under rule 2, the effect of s9 of the 1961 Land Compensation Act (that any reduction in value caused by the CPO must be left out of account in assessing compensation) is to require or to permit the value of the interests in land taken "to be assessed on the basis that the parties to and certain terms of certain leases of parts of the property had not been as they actually were, but instead as they would have been likely to have been if no indication had been given that the property was, or was likely, to be acquired by the Acquiring Authority." In other words, is it necessary to value investment properties having regard to the covenant strength of the actual tenants, and the terms of the actual leases, even if the ability to attract tenants and negotiate favourable lease terms was damaged by the threat of compulsory purchase? Alternatively, should the valuation be on the basis of the better quality tenants and more favourable lease terms which were likely to have been negotiated in a no scheme world. This, itself creates substantial issues of fact, as it will be difficult to prove that better tenants could have been attracted on more favourable terms in a no scheme world. However, in this case the tribunal felt able to address the principle, prior to knowing the facts.

The tribunal considered in detail rules 2 and 6 of s5 of the 1961 Act concerning land taken and disturbance, as well as s9 which states:

"No account shall be taken of any depreciation of the value of the relevant interest which is attributable to the fact that (whether by way of allocation or other particulars contained in the development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority possessing compulsory purchase powers."

The tribunal looked at the claimant's contention that "in valuing the interests that are the subject of the claims before the tribunal, it should be assumed that certain of the terms of those leases were not as they in fact were but as they would probably have been if there had been no indication that the property was or was likely to be compulsorily acquired."

Value each interest as it actually is

Its conclusion was that under rule (2) of s5, the value of land is its open market value, and under s37(1) "land" includes any interest in land. "So what has to be determined is the open market value of each interest as at the date of vesting. That must mean, in my judgment, each interest as it actually was"

As s9 is a provision dealing with the valuation of the interest it cannot have the effect of creating an assumption that the interest to be valued is other than it actually was. "That, it seems to me, is the short and conclusive answer to the claimants' contentions in relation to the preliminary issue."

In the tribunal's opinion there was strong case law to support this approach and Spirerose does not change the established position. Spirerose concerned assumptions as to planning permission and cannot be used to justify other assumptions such as assuming that the interest to be valued is something other than it actually is at the valuation date.

CPO CASE – NO 'WELL-BEING' FOR BROMLEY BY BOW?

Stan Edwards

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Stan explains the failed CPO at Bromley by Bow, which is useful to attempt to analyse the sources of errors in preparing recent CPOs: "no matter how good the scheme or how great the need, unless you can demonstrate that CPO principles have been followed there is a greater likelihood that the CPO will fail."

"Peep at Bromley by Bow
Lost a CPO
Even with planning behind them
Leave them alone, they'll have to atone
For leaving statute and guidelines
behind them" Stan Edwards

Introduction

Bromley by Bow (BbB) is an area of London in serious need of regeneration and the Inspector at the BbB CPO Inquiry acknowledged that. The serious lesson for everyone is that no matter how good the scheme or how great the need, unless you can demonstrate that CPO principles have been followed there is a greater likelihood that the CPO will fail and rightly so.

It provides comfort when reading a judgment, or a CPO Inspector's Report where the decision demonstrates that the inspector has scrupulously followed the guidelines - we expect him/her to do so. At the same time it amazes me that, as the lines of argument are so easy to follow for those that know the rules, why those who promote a CPO think that inconvenient components can be glossed over and presumably assume that, with a bit of luck, no-one will notice.

Many of us delivered numerous successful CPOs before and after 2004 without encountering challenge. It is easy to demonstrate that many losses of CPOs have been though extravagant creativity and a somewhat disregard for the rules. Since 2004 we have had Supreme Court decisions (e.g. Wolves) and those of sentient inspectors in the Bromley by Bow and Heron's Quay Inquiries (both in Tower Hamlets) beginning to apply the rules many had forgotten and by which we all attempt to live. Those, and their advisers, who do not seem to follow the rules, only have themselves to blame.

Background

The case of BbB stems from a regeneration project in an area of East London within the designated area of the London Thames Gateway Development Corporation (LTGDC), involving the proposed delivery of a 2-phased retail-led scheme in The London Thames Gateway Development Corporation (Bromley by Bow) (South) Compulsory Purchase Order 2010 using the Corporation's CPO powers. The Order was made on the 2 March 2010 with the Inquiry sitting in late July and late September 2010. The purposes of the Order were "to secure the regeneration of the area by bringing land and buildings into effective use, encouraging the development of new commerce, creating an attractive environment and ensuring that housing and social facilities are available to encourage people to live and work in the area by the provision of mixed use development." Both phases had planning permission, the 1st phase (the Tesco element) had detailed consent and the 2nd was in outline. A misconception is that if a project fulfils planning policy and is an accepted regeneration project, it fulfils the CPO requirements to demonstrate a compelling case in the public interest or that it justifies the use of CPO powers.

The case

At a Public Local Inquiry, the Inspector considered the issues generated by objectors to the CPO. There seems to be little dispute between all parties that there is a need for regeneration of the area. The prime area of contention was the handling of the scheme delivery and the CPO process.

The only people surprised by the Inspector turning down the CPO were those who had not fully understood the requirements of the CPO process. Two key aspects highlighted by the Inspector:

- The enabling power and the application of specific guidance

- The general guidance of ODPM Circular 06/2004.

However, the simple application of the guidance of the Circular, particularly Appendix D Para.7, by the acquiring authority and its advisors would have killed these 2 birds with one stone.

The power

Since 2004 we have become used to the empowerment of regeneration CPOs to be the Town & Country Planning Act 1990 Sect. 226 (as amended) and as such are used to looking at whether the acquiring authority had complied with the terms of the statute in respect of 'think will facilitate' (Section 226 (1) (a)) the development, redevelopment, improvement of the land, as qualified by the social, economic and environmental well-being qualification of Section 226 (1A).

Such was not the case here. Social, economic and environmental well-being as a qualification in terms of empowerment were not required. However the compulsory purchase empowerment under the Local Government Planning and Land Act 1980 (LGPAL Act) Section 142, although very wide, did include its own 'socio/economic well-being' provision – that relating to businesses affected by the CPO and the specific requirement by the acquiring authority to find alternative premises. The usual CPO mitigation principles (noting Shun Fung provisions) were overridden by the statute. The specific requirement of the Act is stated in the Circular that 'so far as practicable, to assist persons or businesses whose property has been acquired, to relocate to land currently owned by the UDC.' The acquiring authority seems also to have overlooked the basic regeneration ethos of its empowering Act to encourage the development of both **existing and new** industry to achieve its regeneration objectives.

Employment objectives

The 2 employment issues were:

Assistance to relocate existing businesses - There had been contact by Tesco to negotiate with the nationwide scaffolding services firm the Trad Group and others but as the Inspector noted, there appears to have been little account taken of existing occupiers' relocation at the time the Order was made. The important point to be made here is that it is the Corporation's CPO and not that of Tesco, and the Corporation/advisors, apart from any perceived requirement to expedite the project and compel acquisition, should have ensured CPO compliance. It seems that much was left to be sorted out at or around the Inquiry – a common, but risky strategy. This is not an isolated practice. The Inspector noted that Confirmation of the Order would pose a significant risk to the continuation of Trad's business and the quantity and quality of employment it provides. In addressing the issue of relocation, the Inspector considered that the Corporation's approach had not been consistent with the guideline of Circular 06/2004.

The quality and quantity of the jobs that were being lost -In general terms, the Inspector did not consider that the existing jobs in a well established company can be regarded as having the same social and economic values that may result from the proposed development. This is an important statement for many gloss over the socio/economic implications of **'trade diversion'** and **'job transfer'** in purely retail schemes but how much more is it important here?

The Inspector picked up on this point of great public interest. Admittedly here it was to do with specific requirements of statute but in the realm of many 'so-called' town centre regeneration CPOs 'new employment' is provided as a major argument for progress. Even without the statutory requirement in BbB it could be argued that the public interest is not being served in town centre, district or local centres where established retail businesses and livelihoods are competed away delivering social impacts on the community. NPPF is unable to address this in terms of policy because it is pro-competition which for socio/economic reasons is not in the public interest; the cases have to be considered on their merits. This point is picked up by many consultants delivering retail advice but is, perhaps, ignored by promoting local authorities because it does not align with their corporate agenda.

Delivery

There were numerous points that the Inspector made, notwithstanding that there was no demonstration that there was a realistic prospect of the Corporation's proposals being delivered within a reasonable time scale particularly in respect of the 2nd phase. In fact the Inspector stated that "whilst the regeneration of this part of London is an important strategic planning objective the Corporation did not identify any specific reasons for urgency." What makes it compelling?

Negotiation

The Inspector stated that that there is no reason to doubt that Tesco made a genuine attempt to assemble land by agreement. However, whereas Tesco entered discussion from 2006/7 and agreed conditional terms, it withdrew from these. Negotiations were attempted by Tesco again in 2009 which eventually culminated in the Corporation making a CPO on behalf of its partner, Tesco. For one claimant in particular, no offer to purchase was made until June 2010 - well after the Order was made and only shortly before the Inquiry opened.

The acquiring authority must be careful to ensure that it is not perceived as merely being used as a 'banner CPO' for a developer to deliver private interest at the expense of a compelling case in the public interest – no tails wagging dogs. However, there seems plenty to alert the Inspector to the fact that the acquiring authority was not using compulsory powers as a last resort and did not accord with the advice of the Circular. This was a scheme to require deep scrutiny.

The games people play

In the ideal CPO world, purists speak of all CPO valuations ultimately being resolved by the Upper Chamber (still Lands Tribunal to me). In the real world games are played where even a legitimate objection demonstrating

that there has not been a compelling case in the public interest is bought-off before it even sees the light of day. Such is the case with retail led town centre CPOs where adherence with planning policy does not mean that the public interest has been heard or protected. There may be a public interest test to satisfy beyond getting a NPPF compliant consent. The statutory objector is the major factor in the decision to trigger a Public Inquiry.

Cynically speaking, most objections are a means of attempting to enhance the total compensation beyond that would be paid following the CPO compensation rules. However, we all know that if it was the acquiring authority alone they would be left with the traditional position of demonstrating compliance with the statutory rules of compensation. Where the developer is involved, the developer will be willing to sacrifice developer's profit, as seen in the BbB case to achieve delivery of the scheme, probably factoring-in future sales and market share as being more important.

Many cases related to the CPO process have really been gamesmanship in terms of the price that will be negotiated. Rather than have the value settled at the Upper Chamber, the parties take a view as to the quality of the CPO process and the degree of success in objecting or challenging a CPO. It is galling for those who pursue 'good practice' that many CPOs' 'poor practices' become just a commodity to be negotiated away. There is nothing like a successful objection or challenge to sharpen the approach and content of others undertaking CPOs.

Price brokerage v value (appraisal)

To a point in the early stages of CPO negotiations such is the world of price brokerage as opposed to value (appraisal). In the USA this is more formal where a 'broker price opinion' may be delivered. Within the CPO process there are a number of stages where a price can be brokered: from before the objection is submitted to prior to withdrawing the objection even up to the steps of an Inquiry. The only objection of any real value is where the claimant is the only one to identify a serious defect in a CPO before it goes public.

There are those that say that the decision in respect of BbB swings the pendulum in favour of the claimant. I would disagree. Each case has to be judged on its merits. A well constructed and presented CPO following the rules should hold no fears for the promoters. It would appear that the objectors and claimants are beginning to learn and apply the rules faster than the promoters.

Tower Hamlets

The point was made in the Tower Hamlets CPO (2009) (same locality) where the Inspector confirmed that Public Law principles apply when a private entity is negotiating on behalf of an Acquiring Authority and that developers that negotiate alongside or on behalf of public bodies are expected to adopt higher standards than in private deals.

CPO 'good practice'

How many times in CPOs has it to be hammered home?:

- POLICY
- PURPOSE
- POWER
- PROCEDURE
- PRACTICE

How many times does it need to be reiterated that:

- If you change the power the parameters change in line with the Statute?
- There has to be a demonstrable compliance with the guidance in the Circular?

How many times do we have to see in the Statement of Reasons the one line statement "There is a compelling case in the public interest"? It leaves us to ask where and how was it assessed and demonstrated? If the inspector found ways of stating where it was not so why were these not in the minds of the promoters? At the end of the day the developers and superstores such as Tesco are not to blame; it is the acquiring authority's CPO. Surely someone in the acquiring authority or its advisors are watching over CPO compliance and considering the waste of public resources in respect of a possible challenge.

Again quoting Lord Collins in the Wolves case with an attribution to Blackstone of "a caution to the legislature in exercising its power over private property, is reflected in what has been called **a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights.** As a practical matter it means that, where a statute is capable of more than one construction, that **construction will be chosen which interferes least with private property rights".** It is comforting that the courts ultimately take seriously reinforcing decisions that taking someone's rights require guidelines to be followed for all our protection.

Wolves and Tower Hamlets (inc. BbB) in context

It is sometimes useful to put CPOs in context of others and see whether the sequencing and cross impacts could possibly have influence. Observations on the CPO events which follow:

- Tesco partnered Wolverhampton CC in respect of the Wolverhampton case which ultimately failed through non compliance with the T&CPA 1990 (as amended) in respect of Section 226(1)(a) and 1A regarding 'well-being' connectivity and any cross subsidy not forming part of a comprehensive programme. Found deficient in following qualification requirements of the empowering statute (T&CPA 1990 –as amended)
- Tower Hamlets LB (Heron Quays CPO). The developer Canary Wharf Group (CWG) partnered the London Borough of Tower Hamlets

Chronology of CPO events at Tower Hamlets and the Wolverhampton case

DATE	EVENT
7 May 2009	The London Borough of Tower Hamlets made The Heron Quays West, Canary Wharf CPO. The Order was made under the Town & Country Planning Act 1990 (as amended)
31 July 2009	Court of Appeal judgment on the Wolverhampton case
27 January 2010	The Inspector recommended that the Heron Quays Order not be confirmed
2/3 February 2010	Supreme Court heard the Wolverhampton Case
2 March 2010	Bromley by Bow (in Tower Hamlets) Order made
2 May 2010	Judgment given by the Supreme Court on the Wolverhampton case
20 July 2010	Bromley by Bow Inquiry starts
30 September 2010	Bromley by Bow Inquiry ends
11 January 2011	Inspector delivers his report on Bromley by Bow CPO

for a T&CPA 1990 (as amended) CPO. Found no compelling case in the public interest – no demand demonstrated for office use. Circular 06/2004 had not been not followed

- Tesco partnered the LTGDC (in Tower Hamlets) in the BbB CPO that would avoid the apparent 'well-being' qualification of the T&CPA 1990 and could demonstrate connectivity in 2 phase scheme and part of a comprehensive remit. Found deficient in following a 'socio/economic well-being' qualification requirements of a different empowering statute (LGPAL Act 1980) and that Circular 06/2004 had not been followed.

These decisions send out a clear message. The rules (statute and guidance) are there to be followed.

Lessons to be learned

General -Reverting back to the learned Judge's statement in 2004, much could be achieved and objections/challenges avoided if there was some simple quality control/good practice checklist to be signed-off during the making of a CPO. However that would upset those who say we have too many rules but even more to those who make a living from conflict.

Bromley by Bow and Wolves

- Consider in strict terms the empowering Act
- Make every attempt to comply with the guidance
- Remember that 'creative expediency' can only lead to problems
- The inspector reads and applies the rules even if the acquiring authority and its advisors apparently do not
- An acquiring authority on its way out of existence may feel pressures to undertake a CPO before it was quite ready to do so.

In the BbB CPO 'well-being' was the unstated victim both in non compliance with statute and not being able to demonstrate a compelling case in the public interest. Whether it be statute or public interest considerations 'well-being' should be at the core of all activities and openly demonstrated.

A verse of promoters who produce failed CPOs

"My adversary's argument
is not alone malevolent
but ignorant to boot.
He hasn't even got the sense
to state his so-called evidence
in terms I can refute." Piet Hein

The Terrier

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ENERGY INDEX 2013

Catherine Penman

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Catherine gives a summary of research undertaken by Carter Jonas in the Energy Index 2013. The full report can be seen at http://www.carterjonas.co.uk/~/media/Publications/Energy%20Index%202013%20Winter.ashx

The key objective of the Energy Index 2013 is to rank the 5 renewable onshore technology types in order to illustrate the high degree of variance between them. The purpose of this process is to assist in the decision making process of whether to commence and develop a scheme and also to inform interested parties of relative performance. The 5 onshore renewable technology types included in the report are:

- Wind energy
- Anaerobic digestion (AD)
- Biomass heating
- Solar photovoltaics (PV)
- Hydroelectric power

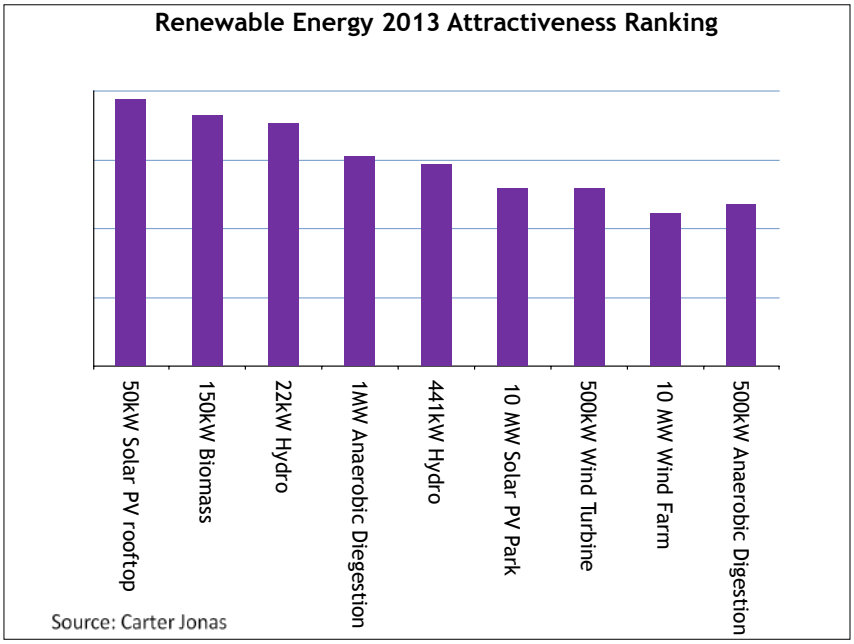
The methodology implemented in the report enabled each onshore renewable technology type to be compared to one another via a number of variables. However, it must be noted that the technology's performance will be driven by site specifics and no 2 sites are identical.

The variables that each technology type were ranked by include:

- Proposed installation costs versus energy output produced
- Development timeframe (i.e. from project inception to commissioning)
- Planning approval rate (the rate of approvals against all planning applications for the technology type across England for the last 3 years)
- Operating and maintenance costs based on annual costs
- Financial support mechanism (this is a ranking of the financial support available for each technology).

The rankings of the variables listed above were aggregated in the Carter Jonas renewable energy 2013 attractiveness ranking, the key points of which are now detailed.

- The 50kW Solar PV rooftop scheme ranked first and is the most attractive onshore renewable energy type according in the Index. This is primarily due to a very short development timeframe, as in the majority of cases no planning permission is required and projects benefit from minimal operating costs. In addition, the 50kW solar PV rooftop project has a signifi-



cant positive boost from financial support. While it is not the most efficient technology due to the lack of energy production outside of daylight hours, when all variables are included, this technology type proved the most attractive.

- Interestingly, the 2 scales of solar PV energy analysed within the Index have very different drivers, with the large-scale commercial 10MW solar park ranking 6th of 9 technology types. The planning approval rate had the largest positive impact on the solar park, with 81% of all schemes submitted receiving permission over the last 3 years, significantly above all other technology types (with the exception of the solar PV rooftop scheme).

- Annual operating costs have a larger impact on the solar park compared to the rooftop scheme, although in comparison to other technology types remains relatively low. Despite the higher planning risk, the development timeframe remains comparatively short which has been accelerated in recent months due to the urgency from developers seeking to commission schemes prior to reductions being made in the financial support available and potential increases to EU levies.

- The 150kW biomass heating project is ranked 2nd in the 2013 Energy Index. The low cost of installation proved to be the key variable for the success of this technology. In addition, the relatively short development timeframe and high planning approval rate also proved to be significant in boosting its overall ranking.

- The smaller (22kW) hydroelectric scheme ranked 3rd and the larger project (441kW) ranked 5th. Interestingly, the hydroelectric schemes are relatively expensive to install and operating costs escalate in line with scale. Hydroelectric schemes benefit from high levels of financial support and also have a high planning approval rate, although planning and permitting can be lengthy in timescale. Planning success is partly due to the extensive pre-planning reporting, feasibility and licensing which is required prior to submitting the planning application, and at that stage developers should be reasonably confident that the scheme will be met with approval. That said, this technology is very site specific.

- Onshore wind energy is arguably the most controversial of the onshore renewable energy technology types. Current planning approval rates for the last 3 years have the largest negative impact on both of the wind energy projects, with an estimated 50% of applications for schemes over 1MW receiving permission, the lowest ratio of all technology types analysed within the Index. It could be argued that this figure is artificially high as it has not made allowances for those schemes that may have been refused first time around and then approved at appeal. In addition, the development timeframe has a significant impact upon projects, and is estimated at 60 months for a large 10MW wind project. However, projects are comparatively economical in capital expenditure terms per MW to install and benefit from relatively low annual operating costs. Financial support, particularly with regard to the smaller 500kW project, is deemed to be a significant benefit to this scale of technology.

- Both anaerobic digestion (AD) schemes benefit from high levels of plant efficiency. However, they are relatively expensive to install. Annual operating costs are comparatively high and labour intensive, particularly for the larger plant. Development timeframes for both schemes are comparatively short and the planning approval rate is high, which is a key benefit to this technology.

The renewable energy sector is fast paced and continues to evolve with significant alterations to financial support expected within the short-term. Therefore this Index will be subject to change and it is our intention to update this Index on an annual basis.

GREENHOUSE GASES AND AIR-CONDITIONING SYSTEMS – DEADLINE LOOMING

Christopher Thompson

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In his second article in this Terrier, Christopher outlines the changes needed by the phasing out of R22. "The interesting question in the context of a leased building is whether the landlord or the tenant has to pay the cost."

Background

R22 is a refrigerant gas used in air-conditioning systems, refrigerators and freezers, process chillers and industrial refrigerant plants. It is a greenhouse gas which damages the ozone layer. The use of R22 and similar hydrochlorofluorocarbons ("HFCs") is being phased out as a result of an EU directive – the Ozone Depleting Substances Regulation 2009 (regulation EC No. 1005/2009). The domestic legislation implementing this directive is the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (SI 2011/1543). They came into force on 20 July 2011.

What do the regulations do?

The regulations ban the use of R22 and other HFCs except in the following limited cases:

- The HFCs used are recycled ones as opposed to new ones
- They are used to service or maintain existing air-conditioning or refrigeration equipment
- Work involving their use is completed before 1 January 2015
- The conditions in the regulations are observed.

It can seen from the above that R22 (even if it is recycled gas) cannot be introduced into air-conditioning or refrigeration systems after 31 December 2014. However, a system using R22 does not have to be switched off on 1 January 2015. The user can continue to use it. But how feasible is this? Systems need regular maintenance and topping up and this will be impossible if one can no longer use R22. Eventually the system therefore will become unusable. At that point someone, whether it be a landlord, a tenant or an owner-occupier will have to spend money to remedy the situation. The interesting question in the context of a leased building is whether the landlord or the tenant has to pay the cost.

Works needed to comply with the regulations

The works ("R22 works") needed to ensure compliance with the regulations can be:

- Complete replacement of the existing system with a new one
- Adaptation of the existing system so that it uses compliant gases. This may be cheaper than replacement. It may be possible but not sensible as the system may not cope well without R22 and this may lead to frequent breakdowns and maintenance costs. Property owners and occupiers need to take the appropriate expert advice.

Another option is to continue till January 2015 to use recycled R22 units in topping up a system. However, this simply postpones dealing with the problem.

Who pays for the costs of compliance?

When considering liability for R22 works in the context of a letting of a building, one must begin by looking at the wording of the lease. The lease is the contract which creates the rights and obligations of the landlord and the tenant. If the letting is of the whole of the building to the tenant, one must ascertain whether the tenant has to carry out the R22 works as part of its obligations in the tenant's covenants in the lease. If the premises are multi-let, the landlord wants to establish if it can carry out the works and recover the cost through a service charge contribution from tenants.

The repair covenant

The first covenant which a landlord is likely to check in the lease to answer this question is the repair covenant. A simple repairing obligation might be something like this:

"To put and keep the demised premises in good and substantial repair".

There are 2 problems with using such a covenant to make a tenant carry out R22 works or for the landlord to recover the cost of such works from tenants under a service charge:

- Case law shows that disrepair and the consequent obligation to repair is only triggered where there has been a physical decline in the fabric or surface of a building or any fixture attached to it
- Repair generally does not mean improvement.

Replacement of a R22 cooling system which is in working order does not arise because of physical disrepair but because the law says one can no longer operate such a system. Furthermore, installation of a new compliant system is probably an improvement and therefore does not fall within the ambit of a repair covenant. So a traditional repair covenant is unlikely to make a tenant liable to carry out the R22 works. The same point applies to a landlord who tries to recover the cost of R22 works through a service charge where the tenant's obligation is limited to paying for the cost of repairs.

However, when one looks at the lease, one may discover that it contains repairing obligations which extend beyond the traditional, simple repairing covenant. By so doing it may cover R22 works. Examples of the way in which the wording may do this include:

- A tenant of a building may have given a covenant to keep all plant and machinery "in good working order and condition". This must surely make the tenant liable to carry out R22 works as carrying out such works must fall within an obligation to keep an air-conditioning system in good working order

- A service charge clause in leases of a multi-let building may oblige the tenants to pay the landlord's costs of improvement, renewal or refurbishment of common areas and services

- Green lease provisions allowing a landlord to recover the costs of works which enhance the energy efficiency of the building or reduce its impact on the environment.

The covenant to comply with statute

The question of whether a repairing covenant extends to R22 works is problematic and will differ from lease to lease. However, the covenant which is likely to determine the matter is the covenant to comply with statute. A lease usually requires the tenant to comply with statute, regulations and legislation as regards the demised premises and to carry out any works necessary to ensure compliance. R22 works are needed to comply with regulations. So a tenant is likely to have to carry out R22 works under this covenant. Equally a landlord should be able to recover the cost of the works from tenants where the service charge provisions allow it to charge for the costs of works to ensure the building complies with statute. Below are examples of the type of wording one often encounters in a lease.

- A tenant's covenant to comply with statute - "The Tenant must comply in all respects with the requirements of any statutes, and any other obligations imposed by law or by any byelaws, applicable to the Premises or the trade or business for the time being carried on there."

- Heads of charge in a service charge clause relating to works needed to comply with statute- The execution of all works and the provision and maintenance of all facilities that are required under any Act to be carried out or provided at the Centre generally.

- Any further services provided at any time by the Landlord for maintaining and securing the amenities of the Centre.

Length of tenants' leases and service charge recovery

Even though there may be a liability for tenants to pay service charge to cover the landlord's costs of compliance, case law suggests that the length of the term remaining under a lease, is a factor which may prevent a landlord recovering the full cost from a tenant.

In Scottish Mutual Assurance plc v Jardine Public Relations Ltd [1999] All ER (D) 305. The tenant covenanted to pay a service charge limited to expenditure "reasonably and properly incurred". The landlord carried out works to the roof costing in excess of £30,000 and the tenant refused to pay. It argued that the works would last some 20 years whereas its lease had only a 3 year term. The expenditure was therefore not "reasonably and properly incurred". The court held that in view of the short length of the tenant's lease, it was liable to pay only 40% of the cost of the works.

Fluor Daniel Properties Ltd v Shortland Investments Ltd [2001] 2 EGLR 103. This was a dispute about whether a landlord could charge its tenants via a service charge for the cost of replacement of an air-conditioning system. In its judgment the court emphasised that the length of time remaining under the tenants' leases was a factor in determining whether it was reasonable for the landlord to recover the costs from the tenants - "the landlord cannot … overlook the limited interest of the tenants who are having to pay by carrying out works which are calculated to serve an interest extending beyond that of the tenants".

Time to take action

The deadline of 1 January 2015 is looming. It is time therefore for property owners, landlords and tenants who occupy or own buildings with R22 systems to plan how they are going to deal with problem and decide who is liable to pay the cost. It is better to deal with the issue now than to wait until January 2015.

SOVEREIGN WEALTH FUNDS

Kevin Joyce

Kevin is a strategic asset manager at the Royal Borough of Kingston upon Thames

Kevin gives us an insight into global sovereign wealth fund investment in property and infrastructure in Britain, particularly in London, and illustrates how councils can gain from this investment.

Readers of the national property press may well be aware of the increasing influence of sovereign wealth funds both in the financing of large scale property developments and entering into major property investment acquisitions in the UK. The changing central London skyline in particular reflects the impact of sovereign wealth funds' finance underpinning new development schemes, such as the Shard at London Bridge and the former Olympic Village in the Queen Elizabeth Olympic Park at Stratford.

Why do sovereign wealth funds exist and how do they operate?

The Funds are government investment vehicles largely funded from commodity export revenues, foreign exchange reserves and, in some cases, pension reserves. Most developed countries have at least one sovereign wealth fund.

A number of the major funds were created for economic and social stabilisation purposes, typically involving:

- transforming non-renewable resources such as finite oil and gas reserves into sustainable and stable long-term income, through the reinvestment of fiscal surpluses into income-generating overseas assets, and/or
- developing a broader and self-sustainable base for economic growth in the funds' home economies.

The size of the investment sums under funds' management, estimated at c£3.228 trillion (tn) for the largest 35 funds, is impressive in itself. The 8 largest Middle East Funds manage over £1.1tn of this sum, and the 4 largest Chinese funds manage almost £1tn. A successful conclusion of a nuclear deal between Iran and the West leading to the lifting of sanctions would enable Iran, a country with the 4th largest known oil reserves, to again export oil in volume and potentially increase commodity export revenues in the Middle East yet further.

Many funds are not permitted to borrow or use leverage, but they can commit finance to a wider range of investment portfolios than is possible with investment of central bank managed reserve assets, as well as prioritise asset returns. Islamic finance from the Muslim world may be required to be Shariah (Muslim or Islamic law) compliant, meaning that financial transactions of these funds need to be geared to profit and loss sharing rather than the charging of interest or 'usury', defined by the Shariah as ' any payment received above the principal loaned'.

What kind of investments in the UK economy can we expect from funds in the years ahead?

The funds have different investment sector preferences but their keenness to make investments in PLC companies and private companies shows little sign of abating. The nature of their investments is also quite diverse. The largest fund, the Abu Dhabi Investment Authority, owner of the Excel Exhibition Centre in London Docklands and part-owner of Gatwick Airport, is now investing heavily in renewable technologies such as the London Array offshore wind project (and solar thermal power plants in Spain).

In June 2013, the Government Pension Fund of Norway, which is the 2nd largest Fund, bought LondonMetric Property's British Warehouses portfolio for £248m, in a joint venture with the logistics specialist Prologis.

The 3rd largest Fund, China's SAFE Investment Company, which is responsible for managing the country's foreign exchange reserves, has bought stakes in both UPP Group Holdings, a major British/UK university accommodation provider, and the Affinity Water utility company. Another major Chinese fund, the China Investment Corporation, holds stakes in Heathrow Airport and the Thames Water utility company.

It is rumoured that the Qatar Investment Authority is looking to spend £10bn on UK infrastructure projects which, should such a level of investment be committed, would be welcome news for this sector. A report by the Centre for Economics and Business Research in May 2013 indicated that the annual costs of Britain's crumbling infrastructure is £78bn, with the report also noting that GDP increases by £1.3bn for every £1bn of infrastructure investment made (Impact of Infrastructure – Centre for Economics and Business Research, 14 May 2013).

In July 2013, the IMF reiterated its earlier advice to the Treasury that the UK should offset £10bn discretionary fiscal consolidation in 2013-14 by borrowing more to spend on infrastructure projects. Government's reported concern though was that borrowing itself to invest in capital investment projects would have a negative impact on economic credibility and interest rates.

Beyond new infrastructure funding and further investment across the board in successful public and private companies, the UK manufacturing sector could prove increasingly attractive for funds'

investment should labour rates in China and other parts of the Far East continue to rise, thereby making UK home economy finished and semi-finished goods more competitive.

As funds generally consider property investment to be an alpha generator, delivering returns well into the upper traditional range of yields, property investment appears unlikely to lose its allure, whether this be in the form of a direct involvement in the financing of new developments, the acquisition of prime standing investments, indirect investments in listed property companies or unlisted property funds, or buying into real estate debt.

In the UK, London has been, and remains, a magnet for funds' property investment.

There are signs though that funds are also starting to invest beyond the capital. Norway's Fund has bought a 50% stake in the Meadowhall shopping centre in Sheffield, while the Qatar Investment Authority has entered into discussions with the House of Fraser about a £300m plus investment in the retailer's 63 strong nationwide chain of stores.

Do councils benefit from sovereign wealth funds' investment in UK property?

Councils located in areas where funds are investing, and where the form of investment involves the financing of new development schemes rather than the acquisition of existing property investments, can benefit both from the regeneration impact which new development can bring and from planning gain contributions particular to individual projects. In London for example, a 448 homes £3bn scheme to redevelop the 13 acre Chelsea Barracks site by Qatari Diar, the property investment arm of the Qatari Investment Authority, will deliver area regeneration in the form of extensive new housing, retail units and a sports centre. The proposed development, which was very much in the public eye some 3 years ago following personal lobbying of the Emir of Qatar by Prince Charles about the original design proposed, additionally promises Westminster Council and its residents some £78m and 123 on-site affordable homes.

Qatari Diar is also a development partner of the Canary Wharf Group, where the majority shareholder, Songbird Estates, is itself partly owned by the China Investment Corporation, in the £1.2bn part redevelopment of the 5.3 acre Shell Centre on London's South Bank, with 500,000 sq ft of new offices, 800,000 sq ft of housing and 80,000 sq ft of retail and leisure, in 8 new buildings. The scheme has been approved by Lambeth Council and the London Mayor Boris Johnson, although it is subject to review by government following objections to the development.

Canary Wharf Group has revisited its own plans for the redevelopment of Wood Wharf on London's Isle of Dogs, with the new masterplan proposing a new retail and cultural development and some 3,000 new homes. As with Westminster Council, Lambeth and Tower Hamlets Councils could benefit significantly from the physical regeneration of parts of their boroughs as well as planning gain contributions arising from the redevelopment of the Shell Centre and Wood Wharf sites respectively.

BOB PERRY, SOUTH WEST BRANCH

Once again, the Branch held its AGM at Oake Manor Golf Club, near Taunton, on 22 November. Last year those present battled through severe flooding to make the meeting, but this time we had very benign conditions. Unfortunately 2 of our regular attendees were prevented at the last minute from being present, but those who did make it enjoyed a useful discussion on a variety of current professional topics. We were pleased to welcome Andrew Brown from NHS Property Services, and it was good to see a former branch chairman, Michael Lyon, in such excellent form. Andrew is a member of the Association, and was able to explain what NHSPS was doing. This is a new organisation which acts as a one-stop shop for property expertise within the NHS. The branch already has a member who is employed in the police service, and we were pleased to have with us someone else who works in the wider public sector, rather than in local government.

Tim Mander from Sedgemoor District Council was re-elected as our Chairman, with Donna Best from East Devon District Council once again taking the Vice-Chairman's post. Alison Fisk remains our Treasurer, and on consideration of her report we decided to reintroduce a small charge for attendance at our spring and summer events. Our financial position remains healthy, but we felt that if we to continue to provide high-quality training opportunities for our members we needed to top up our balance a little. After 2 spells in the post Bob Perry handed over the secretary's pen to Peter Scarlett from Dorset County Council.

Members also debated a number of professional issues, including benchmarking (which does not appear to be the hot topic it was some years ago when it seemed very much to be the flavour of the month), the importance of asset disposals (our employers do not appear to be buying very much at the moment) and viability assessments for affordable housing sites.

These and other issues were also discussed informally over an excellent lunch. Those members who were able to do so then enjoyed a most informative visit to the nearby Somerset Heritage Centre. Charlie Field, a member employed by Somerset County Council, hosted our visit there and we were joined by a manager from Somerset's Heritage Service who showed us some of the county's most important historical artefacts, as well as enabling us to see how the modern building "worked".

Our next meeting will be held in Cornwall during March.

[Ed – thank you Bob for your contributions to ACES, both as secretary (the most consistent contributor of branch reports), as Council member and as President in 2009/10]

DUNCAN BLACKIE, EASTERN BRANCH

Eastern branch met for its AGM and CPD meeting on 8 November in Bury St Edmunds. Chairman, Neil McManus opened the meeting, which was to be broken into branch business, Annual Round Table – updates from members, lunch, then formal CPD presentations.

Neil thanked the branch for the support he has received during the past year and said that he has found the role very enjoyable and rewarding. Neil will continue as chairman next year. Mike Shorten, Treasurer, reassured the branch that the financial position remains healthy, and it was agreed to maintain branch subscriptions at current levels.

The branch discussed how to attract new members from unrepresented authorities in the area, including other public sector organisations, by direct approaches by members. National issues were discussed, including the recent Annual Meeting in Cardiff, which was well attended, with interesting contributions from Carter Jonas [sponsors] and the Welsh Government, where great strides have been made in populating ePIMS Lite and in agreeing a land transfer protocol whereby negotiations between public bodies have been greatly streamlined; RICS and CPD records; and that around 14 staff from the Government Property Unit have joined ACES.

In the Annual Round Table, Neil elicited valuable contributions including asset valuations and RICS valuation reviews; Peterborough's growth projects; Epping Forest's intensification of commercial uses at North Weald Airfield as part of its local plan review; Basildon's land disposals where social issues need to be balanced with best consideration. Peterborough, amongst others, confirmed that similar decisions have had to be worked through; Cambridgeshire CC's investigation of revenue producing opportunities in preference to capital receipts, which might include developing and acquiring housing assets; Norfolk CC's controversial wish to develop an incinerator, and the refurbishment of county council offices, and proposals to undertake development and realise benefits from growth opportunities. Norfolk & Suffolk have also agreed to collaborate to achieve savings from service efficiency; Kier [having acquired May Gurney] has taken over Suffolk CC's Highway Department; Watford's growth projects and outsourcing of waste management and the Council is to become a centre for excellence for client commissioning; and Broxbourne's negotiations for a new cemetery and crematorium.

Excellent formal CPD presentations were then received from:

- Mills & Reeve Solicitors. A topical legal update by Christopher Thompson, included town & village greens, business rates and empty property exemptions, VAT on storage leases, flood risk and the Law Society Note to members re due diligence and warning of exclusion of commercial property from the new 'Flood Re' arrangements, judicial review and new time limits, distress for rent and new CRAR rules, and other sustainability issues [Ed – see article in this edition]

- Strutt and Parker. The session was taken by Jon Jennings covering rural planning matters; James Thompson on agricultural topics of yields and commodities prices; and Laura Gibson Green on farm tenancies and rental values

- Simon Cartmell, ACES member, on the review of Suffolk County Farms Estate.

Branch meetings for 2014 were agreed at Chelmsford, hosted by Lambert Smith Hampton, and Peterborough, to look at progress in the growth projects.

RICHARD ALLEN, HEART OF ENGLAND

Branch meeting
31 October 2013

The offices of Central Bedfordshire Council at Chicksands was the venue for this meeting which also included the Branch AGM. Unfortunately the location, being right on the edge of the branch geographical area, the date clashing with school half term holidays and the attraction of the National ACES Annual Meeting the next day resulted in a much lower turnout of members (just 11) than at recent meetings.

The morning session commenced with Steven Gould, Director of Regulation at the RICS, giving a most interesting and thought provoking presentation on Professional Ethics, highlighting that in the modern digital world, reputation can be lost in seconds. He said that behaving ethically goes to the heart of what it means to be a professional: it is what distinguishes professionals from others in the market place. He emphasised how important it is to have a good understanding of the pitfalls, the standards of behaviour expected from chartered surveyors and importance of putting the client first. There are 5 RICS ethical standards. All members must demonstrate that they: act with integrity; always provide a high standard of service; act in a way that promotes trust in the profession; treat others with respect and take responsibility. He explained that these apply to all RICS members globally and, through the use of examples, showed how failure to adhere may lead to disciplinary action. He handed to members at the meeting the RICS Global Professional and Ethical Standards guide which includes a decision tree to help when confronted with what appears to be an ethical issue. Such concerns could be gifts and hospitality or conflicts of interest. Supported by a photograph of Lance Armstrong he said that a good acid test was to ask yourself 'would you want others to know of your behaviour'.

Before lunch Richard Allen led a workshop on the future role of ACES. It had been included on the agenda to support the exercise being undertaken by Fox International on behalf of ACES Council, looking into the role and way forward for ACES. The workshop concluded that ACES provides mutual support for its members through exchanging information and ideas, providing advice and sharing problems and good practice.

Benefits of ACES were considered to be that it is principally a networking organisation that works best by providing 'one to one' opportunities. It provides up to date and relevant CPD. Through its wide and diverse membership base and various forms of communication, it is the best network for ensuring continuity of knowledge and experience which is rapidly being lost through a large number of retirements and turnover of staff. It enables members to keep up to date and in some cases ahead of the game with public sector property developments.

It was considered that government cutbacks and drive for greater efficiency gives ACES an opportunity to take control of the public property agenda and increase membership. Consideration should be given to a name change as very few authorities or organisations now have chief estates surveyors. Changing the name to the Association of Property Professionals

in the Public Sector was suggested as this better reflects the current position. Membership could be opened up to all property professionals in public sector organisations and the private sector who provide services specifically to the public sector, with different membership and subscription levels. Offer trial membership for short periods. Get members to identify quantifiable benefits of membership - one member at the meeting had had to make a business case to their authority to retain membership. Promote better the corporate strategic property role of ACES members, rather than just being a provider of technical services. Use ACES to identify better ways of working and new work opportunities through collaboration. As the role of ACES is often unclear to chief executives and public sector senior management promote the benefits of ACES membership to the Society of Chief Executives in Local Authorities (SOLACE).

The Branch AGM was held immediately after lunch. Peter Burt handed over the Chair to David Willetts from Sandwell MBC and said in his annual report that he had enjoyed his 2 years as Chair and that one of his objectives had been to increase branch membership, which had been achieved.

The Secretary/Treasurer in his report said that during the year the branch had welcomed 3 new members - Simon Peters (Nottingham), Roger Kirk (Luton) and Andrew Stephens (Nottinghamshire). He reported a financial loss of £228 on the year but the branch was still in a healthy position with £4170 at the bank. It was agreed that the branch subscription would remain at £30, noting that there would be a £5 increase in the national subscription. Although no claims had ever been made, it was also agreed to still undertake to reimburse its members full subscriptions and reasonable expenses incurred in attending branch meetings where their authorities would not meet such costs.

Branch officers for the year are: Chair - David Willetts, Vice Chair - Peter Burt and Secretary/Treasurer - Richard Allen. There was a discussion on whether to set up a branch executive but the new chair felt that he could call on the support of branch members as necessary to identify meeting topics, organise events, speakers etc.

It was agreed to continue with 3 meetings per year. Dates, hosts and topics to be:

6th March, Sandwell - presentation by DTZ on work they are doing for the Council.

3rd July, Rutland - visit to and tour of the new Oakham Enterprise Park which is being developed on the former Ashwell Prison site.

13th November, Bedford - Town centre regeneration projects. Will include the Branch AGM.

During the general branch meeting members were told that further discussions had taken place with the RICS East Midlands Regional Board and that the first joint RICS/ACES HofE workshop was to be held in November. Members were urged to support these events which represent excellent CPD and value for money.

It was reported that Nottingham Trent University first degree final year students would undertake a public real estate assignment concerned with the public sector concept of the 'corporate landlord'. Both Simon Peters (Nottingham) and Andrew Stevens (Nottinghamshire) had offered their support and the students would be visiting these authorities. A prize would be awarded by the branch for the best assignment which will be featured in the Terrier.

The Chair and Secretary briefly reported on some notable aspects of the ACES National Conference in Glasgow which they both considered had been very well organised by the President.

There was a general discussion on how members are addressing the change in the rules requiring VAT to be paid on storage facilities. One authority had already decided to charge VAT on all their small industrial units based mainly on the view that most tenants are registered for VAT and so can reclaim the payment and also because VAT is charged on some units already.

Reference was made to the 'Avocet' case and the pitfalls in implementing a conditional lease break clause highlighting that some major landlords are adopting an aggressive approach in order to retain blue chip lessees such as the public sector. Agreed that legal advice should be sought first before trying to trigger a break clause.

Other general issues discussed included the joint Development Trusts Association Scotland/ACES Asset Transfer Guide, proposed changes to how asset valuations are undertaken for local authority accounting purposes and whether a claim for injurious affection could be made for the effect a new railway bridge was having on a property where only part of the land was being taken to build the bridge.

Nottingham Trent University Corporate Landlord Coursework Assignment

On 26 October over 40 students from Nottingham Trent University visited Loxley House, Nottingham City Council's headquarters (see article in Spring 2012 Terrier p38) as part of their 'corporate landlord' coursework assignment referred to earlier in this report. Simon Peters, ACES member and Acting Head of Estates at Nottingham City Council welcomed the students before handing over to Stuart Knight, Director of Strategic Asset and Property Management, who explained in particular his strategic role. He said that the Council was using its significant property holdings to support economic activity in the city by 'making things happen' and referred to a very recent strategic acquisition of property from the police and fire authorities to support future development of the university on the edge of the city centre. He then explained that to promote the better use of operational assets, his approach had been to say to a head teacher for instance that 'you would much rather deliver your service without the nuisance of looking after a building but you have no choice'. It was, therefore, the role of the property team to help services get more out of the use of the

building by 'sweating the asset'. This would be achieved through the more effective use of space and changing working practises. He mentioned that Loxley House was going to be further developed from just being a back office building to a public building on the ground floor which would accommodate the Job Centre plus health, fire and police services.

To support the student's specific project he then explained that under the 'corporate landlord' approach the property team were the landlords and services the tenants. The property team was responsible for ensuring that all buildings were legally compliant, controlling the capital programme, achieving better looked after buildings and incentivising services to reduce their operational space through identifying and achieving budget savings.

The students were then shown around Loxley House before Gary Shaw, Head of Workplace Strategy, explained that by moving to Loxley House from over 30 buildings in the city the staff, who initially did not want to move, had been forced to change their ways of working. He told some amusing stories relating to the move, such as to demonstrate how set in their ways many staff had become, the coffee cup that was found welded to a fridge. He concluded by saying that the move to Loxley House had been successful because staff were now in much better property, it had achieved cultural change, improved speed of decision making and staff now worked more flexibly.

Joint RICS/ACES CPD Workshop

Block bookings from Leicester City and County Councils made up much of the 16 delegates that attended the first joint RICS/ACES Heart of England Branch workshop, also referred to earlier in this report. The event was held at the Link Hotel Loughborough on 28 November. Stephen Meynell, past Branch Chair, represented ACES at the workshop. At the commencement he explained that the RICS and ACES were working together to provide affordable and relevant technical CPD aimed at public sector RICS members. The workshop which provided 3 hours' CPD for just £25 was delivered by Mark Lloyd, then of Newcastle and now Leicester City Council, who spoke on asset-led regeneration and rationalisation using examples from Newcastle, and Mark O'Brien of DVS, who covered collaboration at a level aimed at practitioners. Both speakers also commented on each other's presentations to develop and amplify points made. Further workshops are proposed for the new year and details will be sent to branch members once available.

JOHN READ, NORTH EAST BRANCH PRESS OFFICER

Buckets of rain, but on 25 October 2013, West Offices, York gave the North East Branch shelter from the storm when York City Council hosted the autumn branch meeting and Annual General Meeting.

The venue for the meeting was York City Council's newly refurbished civic headquarters which claimed 4 accolades and winner of overall Project of The Year at the 2013 RICS Pro Yorkshire Awards. The property has undergone a £32m redevelopment programme and now provides a modern, efficient, cost effective, sustainable and functional council headquarters and customer centre. As a key element of a rationalisation project reducing the number of council offices from 17 to 2, it will deliver cost savings of £17m over the next 25 years.

The site of the property lies within the historic walls of the City of York and previous uses on the site included 2 substantial bath houses, a medieval friary, a house of correction and in 1841 the site of a new railway station built at a cost of £7,786 8s by the 'Railway King' George Hudson.

Back to the future, the branch meeting itself was well attended with 25 members from across the region and started on track with a welcoming address and announcements from Daniella in the Chair and introductions from Philip Callow on behalf of our hosts. It was at this point that things went a little off plan. With technical problems with the IT equipment the first presentation of the day was delayed and we covered some of the issues raised by members planned for later in the day. These included a short discussion on Fair Value and IFRS13; Community Asset Transfers; One Public Sector Estate; Future Cities and the Government Property Forum. [Ed's advice – never work with children, animals and IT equipment!].

As soon as the technical issues were resolved, the branch was pleased to welcome Glenn Walker, RICS Director of UK Regulatory Operations. With the aid of an excellent PowerPoint presentation Glenn explained what we mean by ethics, what the RICS expects of its members and outlined some of the common themes and examples, followed by a short audience participation quiz. The presentation was well received and not only gave the audience the opportunity to reflect on the 5 Professional and Ethical Standards but also provided part of the mandatory formal ethical learning required under the new CPD requirements [Ed – see article by David Pilling in this Terrier].

Philip Callow then gave a presentation on 'The Burnholme Project', a scheme which will see a secondary school (with a high level of local community use), that is to close in 2014, converted into a Community Health and Wellbeing Centre and small scale housing

development. Philip outlined the story so far and how the council had examined asset maps and data to identify other community, council and public sector assets that may have a demand for space and how the project could link in to their 4 main asset management objectives to:

- Maximise the use of council assets
- Reduce costs by co-locating services in other council buildings
- Create community value by partnering with other public or 3rd sector organisations
- Create new homes – supporting Get York Building programme.

As a key part of the project, the council undertook a comprehensive local consultation exercise, including an on-site event which attracted over 300 people interested in the future of the site and saw many positive ideas and contributions from the local community. Philip also reviewed the option appraisal process undertaken, which included exploring potential demand for broader community and sports use and investigating a range of alternative uses for the site, including health and well-being, retail and housing.

When Philip gave his presentation, a report was due to go to the council's cabinet early the following month. That report can be accessed on the York City Council web site and the project is progressing in accordance with the Cabinet decision "to agree to a community consultation exercise being undertaken, in relation to the Burnholme site, in order to seek views on the options set out in the report and for further work to be done to assess affordability which will be brought back to Cabinet in early 2014 to inform a decision on the preferred option." We all wish Philip and his team every success in this project going forward.

Following lunch, there was further general discussion on a range of topics including:

- Feedback from the successful APC event held earlier in the year at York which attracted over 50 delegates
- HRA asset valuations and Regional Adjustment factors
- Rating changes for LA maintained schools
- Recent caselaw on post valuation date evidence.

This was followed by the North East Branch Annual General Meeting at which Daniella Barrow handed over the badge of office to John Murray of the Valuation Office Agency. Verbal reports were given by Daniella as outgoing Chair, John as the new Chair, The Treasurer, The Secretary and Press Officer. As there were no new nominations for the branch executive the composition of the executive remained unchanged.

Following the AGM delegates were given an escorted tour of West Offices and an insight in to the modern open plan offices and the flexible working practices adopted by the council and the 1,300 staff occupying the building.

The Times They Are a-Changin' – John Murray accepts the badge of office from Daniella Barrow, outgoing Chair of the North East Branch

THE SUFFOLK SCRIBBLER

A tale of 2 goalies

The fastest Premier League goal this season was scored on 2 November 2013 in the fixture Stoke City v Southampton. The official time was 13 seconds. Stoke kicked off and after a couple of passes going forward the ball eluded both defenders and on-rushing forwards and bounced "harmlessly" into the Southampton penalty area. In order to clear his lines, Begovic, the Southampton goalie, lustily booted the ball back up-field. A strong following wind helped the ball on its way and it landed, first bounce, mid-way between the half way line and the Stoke penalty area. Here physics took over and the ball bounced high and over the head of the Stoke goalie who had wandered far from the goal line. This bounce took it straight into the Stoke goal.

The Stoke goalie, Boruc, (pronounced Borrux; yes weally) was rightly mortified by this and spent the remaining 44 minutes and 47 seconds of the first half muttering his own name under his breath in self admonishment; oh borrux, borrux, borrux [Ed – I'll let this one go!].

The Mediterranean diet

This diet is currently making a comeback as it has recently been identified as of possible assistance in delaying or avoiding the onset of dementia, a completely heartless disease that we will all need to face up to eventually, should we live that long. I first came across the diet about 20 years ago and at that time it was also being heralded as a possible miracle cure for something or other.

The Mediterranean diet is based on the traditional dietary patterns of Greece, Spain and Southern Italy. Its principal aspects include a high consumption of olive oil, legumes, unrefined cereals, fruits, and vegetables; moderate to high consumption of fish, moderate consumption of dairy products mostly as cheese and yogurt, moderate to high consumption of spring water, one to one and a half litres per day was recommended, moderate red wine consumption, and low consumption of meat and meat products.

At the time I took up the diet I had only heard about it via the radio and had never seen it defined in print and the version I tried to follow became a little garbled. The mention of spring water was overlooked and the recommended daily consumption of up to one and a half litres was transferred to the red wine element, thus making the whole concept look rather attractive. Consequently, despite my most valiant efforts, I was never able to reach the recommended red wine "target" though it was fun trying.

I still follow the recommended version of this diet apart from the dairy products for which I have substituted goats' cheese and soya based yoghurt. I have to say that I feel much better for it.

Arsène Wenger OBE cracks a joke

Arsène Wenger is a French football manager who is in charge of Premier League side Arsenal. He is the club's longest-serving manager and most successful in terms of major titles won, having led Arsenal to 11 trophies since 1996. Football pundits give Wenger credit for his contribution to the revolutionising of football in England in the late 1990s through the introduction of changes in the training and diet of players.

His nickname "Le Professeur" is used by fans and the British media to reflect Wenger's studious demeanour.

His approach to the game emphasises an attacking mentality, with the aim that football ought to be entertaining on the pitch. He has been criticised for his regular refusal to splash the cash when the transfer window was open instead preferring to rely on home produced talent brought on through Arsenal's own youth programmes. Until the start of this football year anyway when, uncharacteristically he spent a few tens of millions on the German star Mesut Ozul who has settled in remarkably well into the English Premier League scene. Ozul hadn't put a foot wrong until recently when, astonishingly, he missed a penalty; a most un-Germanic thing to do.

When asked to comment on this during the post-match TV interview Wenger adopted his most studious demeanour and said, "Well, that's good news for England." (That was his joke by the way.)

I thought he might have been at it again during his post-match interview after the Manchester City v Arsenal fixture in December when, in response to a question about his opposite number he said, "Well, Pellegrini is an offensive manager; as indeed am I." This was said in his usual manner and I took it to be another joke; but now I'm not so sure.

What do you think?

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