



SPF VOICE

November 2019

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Good thoughts, good deeds



Robin Blacklock
SPF Chair
Managing Director Dowbrae Property Consultancy

This is not a column about Bohemian Rhapsody or even Freddie Mercury but those who have seen the film may recall Freddie's dad repeating this mantra to his superstar son, 'good thoughts, good deeds.' I think there is a message in this for us in the property industry. We must believe in doing the right thing and be seen to be doing the right thing.

Our colleagues at the BPF have addressed this issue by commissioning a survey that revealed the perception of the property industry among stakeholders and the public alike. The results were disappointing but perhaps unsurprising.

At least in part, our negative perception stems from not making the most of the positive contribution we make to the economy, people and places. The public does not realise how commercial property investment supports their pensions, or that inward investment is a key measure watched by the Bank of England as part of its Financial Stability analysis. As a

former development director, I know that it is a rare occasion for a positive piece of community engagement to make the local news. While this lack of balanced coverage is not confined to real estate, it is inherently a barrier to our industry and undermines all our businesses.

So, in my year as your Chair, I intend to make the positive case for our industry with the increasingly sceptical public and our stakeholders at large. For this, I will need your help. If we do not meet the challenge of negative perceptions head-on by redefining our industry in the public eye, we risk a perpetual situation of having to secure an audience before we can win an argument.

I look forward to meeting as many of you as possible during my year as Chair and engaging with you on how we move our industry forward.

Best wishes

Robin Blacklock

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AT HOLYROOD

SPF contributes to the Scottish policy agenda

PLANNING & DEVELOPMENT

- Four sets of regulations have now been laid in the Scottish Parliament, which bring various parts of the Planning (Scotland) Act 2019 into force. Going forward, the SPF will be contributing to several workshops in the coming weeks.
- We have joined a team of experts from Glasgow University to collaborate on the delivery of new housing. We will be contributing to the sub-committee of the Collaborative Centre for Housing Evidence (CaCHE), a multidisciplinary partnership between academia, housing policy and practice.
- We learned at a policy forum meeting that a new round of policy and guidance is set to be initiated by Historic Environment Scotland (HES). The new policies and guidance statements will be proposed over the next 18 months.

PROPERTY TAX

- The Non-Domestic Rates (Scotland) Bill was significantly revised at Stage 2 including the delegation of setting of the business rate poundage to local authorities. An even more radical shift, which would have seen the liability for paying business rates shifted from the occupier of a property to the owner, was voted down following an SPF briefing on the consequences of such a move. We will continue to work with all political parties to ensure that they are aware of the potential impacts on the industry.
- We joined Public Finance Minister Kate Forbes MSP and stakeholders to consider how LBTT is affecting the residential markets. Figures tracked by the Scottish Government suggest that residential LBTT revenue is currently higher than forecast for this year to date. This is contrary to statistics in England and Northern Ireland where residential SDLT is currently not on track to meet its forecast. To remain competitive, we will continue to make the case for an increase to £500,000 for the 10% threshold.

COMMERCIAL REAL ESTATE

- As part of a Scottish Land Commission (SLC) advisory group we discussed the progress of the Scottish Government's land reform and land use policies. The advisory group will help the SLC to develop a series of land use protocols, which are due to be published in the next year.

RESIDENTIAL INVESTMENT & MANAGEMENT

- At our recent Residential Investment & Management Committee members discussed the Scottish Government's draft [vision for housing to 2040](#) and how the SPF contributes to its key principles and objectives. We are currently preparing a position statement that sets out the SPF's views and highlights any concerns. Please contact [Mandy](#) if you could like to contribute to the SPF paper.

BUILDING STANDARDS & SUSTAINABILITY

- The SPF attended the first meeting of the Scottish Government's Section 63 Working Group, which is looking at potential changes to the energy efficiency regulations for non-domestic buildings. Bill Ritchie of Atelier Ten is representing the SPF on the group.

SCOTTISH GOVERNMENT

- [Transient visitor levy: consultation](#)
2 December 2019
- [Local Energy Position Paper](#)
Closes 4 December 2019
- [Extending permitted development rights](#)
Closes 28 January 2020
- [Consultation on aspects of planning obligations](#)
Closes 10:00 a.m. 3 February 2020
- [Replacement of European Structural Funds post EU-Exit](#)
Closes 12 February 2020

£1.2BN TOTAL COMMERCIAL PROPERTY SALES VALUES IN Q3 2019

↑ **£586M**
96%
UP FROM Q2 2019

↑ **£336M**
39%
UP FROM Q3 2018

Our analysis of the latest commercial property sales figures has revealed that the total value of sales in Scotland rebounded in Q3 2019, following a subdued start to the year.

In total, £1.2bn was transacted in the quarter, nearly double the total value of commercial property sales in Q2 (April to June) 2019.

CITY BREAKDOWN

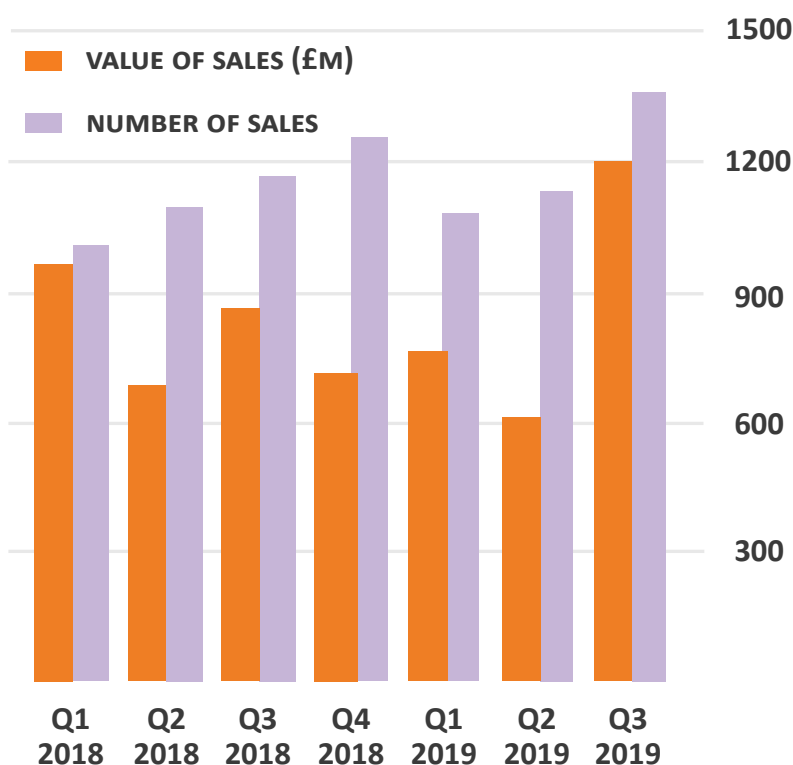
Edinburgh was a key driver of the increase in the value of commercial property sales, with sales in the capital more than tripling to £462m in Q3 2019 when compared to the previous quarter. Partly as a result of several high-value transactions, Edinburgh dominated the commercial property market in Q3 2019, with a 38% share of the Scottish market by value.

Glasgow also continued the positive momentum with £216m transacted in the city during Q3 2019. Its total value increased by £44m on Q2 2019 and £63m against the same period in 2018.

Commercial property sales in Aberdeen remained steady at £32m. Aberdeen's total value of sales rose slightly on Q2 2019 (by £2m) but remained £20m below values recorded in the same quarter last year.

INVESTMENT

Scottish commercial property investment volumes also rose sharply on both a quarterly and an annual basis, according to property data experts CoStar UK. Investors spent £798m in Q3 2019, the highest quarterly amount since Q1 2018.



SOURCE: REGISTERS OF SCOTLAND

£761M TOTAL COMMERCIAL PROPERTY SALES VALUES IN Q3 2019 IN EDINBURGH, GLASGOW, DUNDEE AND ABERDEEN

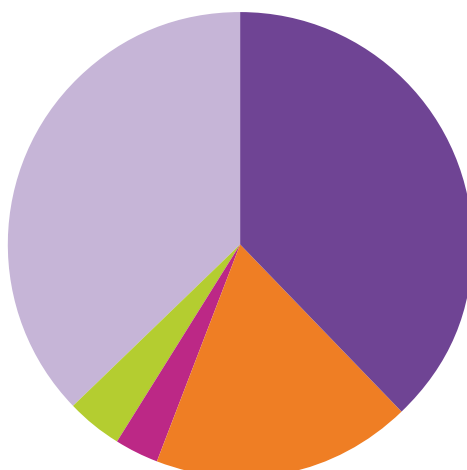
EDINBURGH
£462M

GLASGOW
£216M

DUNDEE
£51M

ABERDEEN
£32M

REST OF SCOTLAND
£440M



Adjudication in construction disputes

Mars Black Sheep Hotels Ltd v Douglas & Stewart Ltd [2019] CSOH 64



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In the words of Lord Ackner in the House of Lords: "Adjudication is a highly satisfactory process. It comes under the rubric of "pay now argue later" which is a sensible way of dealing expeditiously and relatively inexpensively with disputes which might hold up completion of important contracts."

The above case recently decided in the Commercial Court arose from a construction contract and provides another recent example of the use in practice of the adjudication procedure. The pursuer company is a hotelier. It entered into a contract with the defender company for substantial construction works at three hotel properties owned by the pursuer. The contract between the parties incorporated the standard terms of the SBBC Scottish Minor Works Building Contract (2011). In terms of clause 7 and clause 8.2 of the conditions of the standard form contract, either party was entitled to refer any dispute or difference arising from the contract to adjudication.

Between Autumn 2018 and May 2019, substantial works had been carried out for which the pursuer had made payments totalling in excess of £6.5m. The parties then fell into dispute as to whether further payments were due. The defender gave notice of its intention to suspend performance of the contract. The pursuer responded by giving notice of termination of contract. Thereafter, the defender served a notice of adjudication, followed six days later by a notice of referral (to an Adjudicator).

In response, the pursuer raised court proceedings seeking a number of remedies which included interdict against the defender taking any further steps in furtherance of the adjudication already commenced and suspension of that adjudication. It also sought and obtained interim interdict. That meant that the defender could not proceed with the adjudication until such time as the court action raised by the pursuer had concluded. Accordingly, the defender sought to recall the interim interdict at a hearing before Lord Docherty.

Lord Docherty decided to recall the interim interdict thereby allowing the defender to proceed with the adjudication process. As part of the decision, he required to establish the balance of convenience. In other words, which party would suffer the greater prejudice if the

order for recall was either granted or not granted.

If the interdict were not recalled, he noted that the defender would be deprived of the right to go to adjudication. It would not have the opportunity of persuading an Adjudicator that a provisional decision should be made in its favour. Rather, it would require to vindicate its position by litigation or arbitration, with the delay and expense that that is likely to involve. In his view, Parliament intended that parties to construction contracts should have the right to refer disputes to adjudication. The court should be very wary indeed of preventing a party from pursuing a right to adjudication.

That determination reflected the decision in the case of *T Clarke (Scotland) Ltd v MMAXX Underfloor Heating 2015 SC 233*. In that case, a judge in the Court of Session refused to grant an interdict against a defender, who had raised 8 separate adjudications within a 9 month period, preventing it from raising any further. This was upheld by the Inner House on appeal which made the following observations:

The purpose of the legislation introducing the adjudication procedure was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional, interim basis.

The decision of an adjudicator is binding and is to be complied with until the dispute is finally resolved.

It is therefore an important practical procedure available to those who operate in the construction industry.

It is a right provided by Parliament and in that particular case (as here) was incorporated into the contract between the pursuer and the defender.

It was said that the above considerations indicate that the court should be slow to intervene in the adjudication process. In other words, a party should not be prevented from pursuing its right to adjudication save in the most exceptional circumstances.

The recent decision from Lord Docherty affirms the above observations demonstrating the usefulness of the adjudication procedure for parties wishing to avoid full-blown litigation.



SPF ANNUAL DINNER 2019 GALLERY





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Client: S Harrison. Image courtesy of ICA



Client: Atkins / University of Glasgow. Image designed by and courtesy of Atkins



Client: Ashfield Land. Image courtesy of Cooper Cromar

Client: Summix Capital Limited. Image courtesy of 3D Reid Architects

We are delighted to support the SPF in its role as the voice for the Scottish property industry

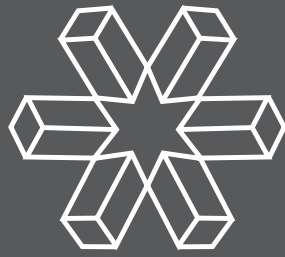
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