



SPF VOICE

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Kevin Robertson

SPF Chair
MD, KR Developments Group Ltd

Despite the summer holidays being in full swing and Scottish Parliament in recess, the past few months have been unseasonably busy for the property industry and the policy environment in which we operate.

One major development that I'm sure won't have passed anyone by is the significant easing of COVID-19 restrictions that has seen offices previously deemed 'non-essential' allowed to reopen and social distancing scrapped in most public buildings.

While these are very positive steps towards normality, we are continuing to work with politicians to bring more clarity to the Scottish Government's advice to maintain home working where possible. It's vital that these decisions are allowed to be made by businesses and their employees, recognising the value of being able to work collaboratively in workspaces alongside the priority of keeping people safe.

In just over two months, Scotland will be in the global spotlight with Glasgow hosting the hugely significant COP26. This conference will bring world leaders together for one of the best opportunities since Paris to reach an agreement that will limit the worst of climate change.

I'm therefore delighted to announce that the SPF is partnering with the UK Green Building Council's (UKGBC) virtual built environment pavilion at

Glasgow. In addition to showcasing some of the world's most sustainable developments, there will be a host of events taking place within the pavilion. I look forward to sharing more details with you soon.

In the run up to COP26, we've also seen a plethora of policy announcements and consultations on heating our built environment and ensuring that new and existing buildings can play their part in achieving net zero by 2045. These proposals could entail some significant changes for the property industry in Scotland and I urge you to feed your thoughts into the SPF team. A summary of some of the most recent announcements can be found on [page 3](#).

Before I sign off, I'd like to give a quick update on the Scottish expansion of the BPF Futures junior professionals network. Since the expansion was announced in June, we've not only seen lots of new faces join BPF Futures, but we now also have Scottish mentors and mentees taking part in the pilot mentorship scheme.

With lots of exciting opportunities coming up in the months ahead, please do encourage your colleagues with 10 or less years' experience to [sign-up](#) as we are keen to develop our junior talent and future leaders.

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POLICY INSIGHTS

NET-ZERO MOMENTUM INTENSIFIES AHEAD OF COP26

With just over two months to go until COP26 kicks-off in Glasgow, the Scottish Government has continued to signal its green credentials with announcements on potentially significant changes to the way buildings are designed and operated in Scotland.

With consultations on the draft Heat in Buildings Strategy and the New Build Heat Standard concluding earlier this summer, the government is now seeking views on proposed changes to energy standards for buildings that will require a warrant from next year. Also included in this consultation are amendments to regulations regarding ventilation and overheating risk, and proposals for providing electric vehicle charge points in new domestic and non-residential buildings.

The Scottish Government's preferred option on electric vehicle charging could mean that all new build dwellings with a parking space will need to have at least one EV charge point socket (7kW min). For new non-residential buildings with more than 10 car parking spaces, 50% of spaces will need ducting installed and 10% need to be provided with an EV charge point.

These proposals, combined with the future demand of the electrification of heat, with undoubtably stretch already limited capacity in the grid, and we continue to work with officials to understand and manage this significant hurdle.

Elsewhere, a working group looking into Section 63 (non-domestic energy efficiency) regulations has resumed after a COVID-related hiatus. The SPF has had a seat on the working group since its formation in 2019 and we're looking forward to exploring options to improve the performance of non-domestic buildings. A preliminary consultation on potential regulatory changes is expected by the end of the year, with the working group set to submit its recommendations to the Scottish Government in the autumn of 2022.

SNP-GREEN DEAL FOCUSES ON REAL ESTATE

History was made on 20 August as two Scottish Green MSPs were set to enter government as junior Scottish Ministers. The wider agreement reached between the SNP-led Scottish Government and the Scottish Green Party is also far-reaching with many implications for real estate.

The deal proposes the introduction of residential rent controls on a national basis to Scotland, with new legislation to provide some local discretion. Further residential sector measures include the establishment of a housing regulator for the private rented sector that will enforce tenant rights.

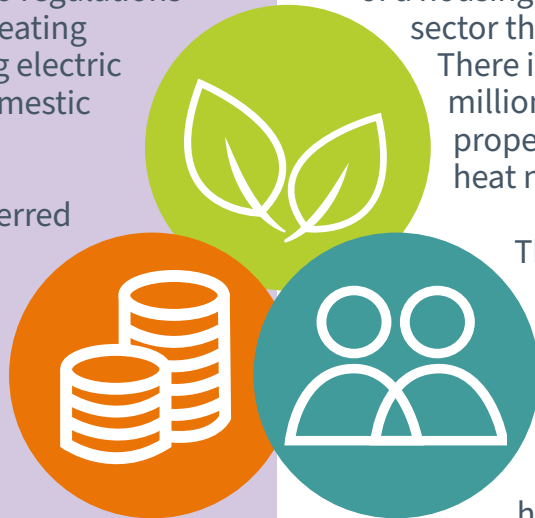
There is an undertaking to ensure that 1 million homes and 50,000 non-domestic properties are connected to zero-carbon heat networks by 2030.

The deal also appears to depart from the current trajectory of heat and energy efficiency regulations – proposing that from 2024 all new buildings requiring a building warrant will need to be based on zero carbon heating. Previously, the Scottish

Government has only indicated that the New Build Heat Standard would apply to residential buildings from 2024, and we will be seeking to clarify this proposal in the coming days and weeks.

Minimum EPC standards could also be introduced that require home and building upgrades at the point of sale, change of tenancy, and refurbishment to meet at least EPC C standards or equivalent, on a mandatory basis, from 2025 onwards. This proposal will, however, be subject to a detailed consultation next year.

The agreement also indicates that will be further land reform initiatives including an intention to capture planning gain achieved as a result of planning permission and to support further diversification of land ownership.



£924M

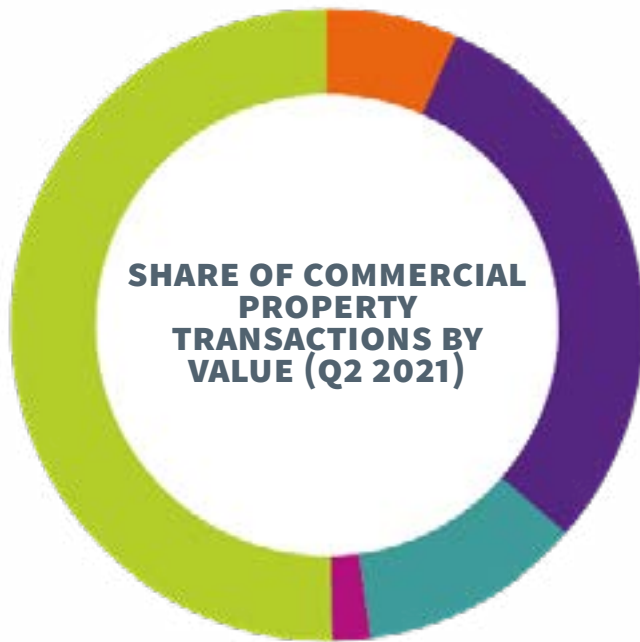
TOTAL VALUE OF COMMERCIAL PROPERTY SALES IN Q2 2021

1,208

NUMBER OF COMMERCIAL PROPERTY SALES IN Q2 2021

↑ 224% UP FROM Q2 2020
£639M

↑ 130% UP FROM Q2 2020
683



ABERDEEN £63M

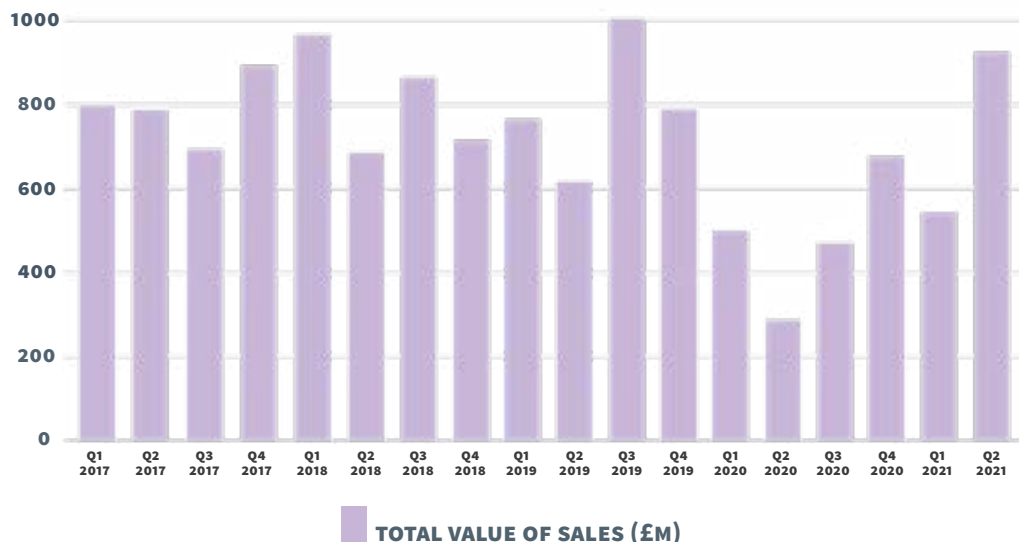
EDINBURGH £274M

GLASGOW £105M

DUNDEE £18M

REST OF SCOTLAND £464M

TOTAL VALUE OF COMMERCIAL PROPERTY SALES IN SCOTLAND (Q2 2021)



Figures may not sum due to rounding. Figures from the Registers of Scotland includes all commercial property transactions.

OVERVIEW

The SPF's analysis of the latest commercial property sales data from Registers of Scotland has shown that the total value of sales in Scotland rose by £639m (224%) in Q2 (Apr-Jun) 2021 compared to the same quarter in 2020. The data points to a recovery in commercial property sales following a year that was heavily impacted by the coronavirus.

Meanwhile, the rolling one-year total for the total value of commercial property sales in Scotland rose for the second quarter in a row in Q2 2021 and now stands at £2.61bn. However, this remains below the pre-COVID rolling total of £3.17bn in Q4 2019.

CITIES

Scotland's four largest cities (Aberdeen, Dundee, Edinburgh and Glasgow) accounted for half of all commercial property sales by value in Scotland at £460m.

The city with the most sales by a considerable margin was Edinburgh at £274m, an increase of £183m compared to Q2 2020. This saw the Capital secure almost a third (30%) of the Scottish Commercial property market by value in Q2 2021. Sales also recovered in Glasgow, with £105m transacted in Q2 2021 – up £81m on the same quarter in 2020.

£5M+ SALES

There were 31 sales that transacted at a value of £5m or over in Q2 2021 – the highest number since Q3 2019 and 20 more than in Q2 2020. In total, these sales had a combined value of £509m accounting for some 55% of the total value of all sales in Scotland.

Future of offices

Thursday 16 September
12.30 - 13.30

This SPF webinar will focus on the post-pandemic future of offices exploring all aspects of the debate. JLL will present their Future of Offices research and we'll consider the implications both from the perspective of staff wellbeing, and from a development and investment viewpoint.

In partnership with: 

Chair:

Robin Blacklock
Managing Director
Dowbrae Property Consultancy

Speakers:

Charlotte Steedman
Founder
Conductor

Stephen Lewis
Managing Director
HFD Property Group Ltd

Elaine Rossall
Head of UK Offices Research &
Strategy
JLL

REGISTER
HERE

Future of towns & cities

Tuesday 21 September
12.30 - 13.30

This SPF webinar will focus on the post-pandemic future of Scotland's town and city centres, and in particular will explore Scottish Government's '20 minute neighbourhoods' initiative. With commentary and insight from all sides of the debate, we'll consider the implications for the retail industry and assess the opportunities presented to the real estate sector.

Chair:

Kevin Robertson
Owner & Managing Director
KR Developments
Chair - SPF

Speakers:

David Lonsdale
Director, Scottish Retail Consortium
and Head of Devolved Nations, British
Retail Consortium

Jonathan Guthrie
Director for Strategic Partnerships
Robertson Group

Irene Beautyman
Place & Wellbeing Partnership Lead
Improvement Service & Public Health
Scotland

Martin Perry
Director of Development, Real Estate,
Europe
Nuveen Real Estate

REGISTER
HERE

INDUSTRY INSIGHT



Scottish Planning Policy – Scottish Government changes ruled unlawful

Craig Whelton

Partner
Burges Salmon LLP

1. Background

In July the Court of Session upheld **two separate legal challenges** brought by (i) Graham's the Family Dairy with Mactaggart & Mickel Homes and (ii) Elan Homes Scotland, against amendments to Scottish Planning Policy (SPP) and associated guidance note PAN 1/2020

This has resulted in the quashing of the amendments and the PAN.

The December 2020 amendments to SPP followed the Court of Session decision in *Gladman Developments v Scottish Ministers* in 2020 (*Gladman 2*). *Gladman 2* confirmed SPP provided a “tilted balance” in favour of the grant of planning permission where a shortfall in housing land supply was identified and/or a development plan was out of date.

Scottish Ministers' December 2020 amendments to SPP retained a presumption in favour of sustainable development, but removed the “tilted balance”. A shortfall in the housing land supply could be a material consideration, but only where that shortfall was identified using the approach set out in PAN 1/2020, what Ministers termed the “average method”. The amendments deleted the wording in SPP that development plan policies would be considered out of date where more than 5 years old.

2. The legal challenges

The two legal challenges followed a similar approach, and put forward seven separate, but linked, grounds of challenge. Ground One related to the consultation carried out ahead of the December 2020 amendments by Ministers, arguing it had been so unfair as to be unlawful; Grounds Two to Five argued Ministers had acted irrationally due to errors in their decision making process. Grounds Six and Seven applied the same arguments of irrationality to the individual impact assessments carried out in relation to the amendments to SPP and PAN 1/2020.

Affidavit evidence was provided by the petitioners' instructing solicitors in support of Ground One.

Scottish Ministers' argued that the amendments had to be seen in the context of being interim measures pending NPF4, and in response to the impacts of the Covid 19 pandemic. Ministers also confirmed that PAN 1/2020 was technical guidance, introduced for the purposes of SPP.

The Court upheld the challenge on Ground One, and ruled that the consultation had been so unfair as to be unlawful. In reaching its decision, the Court noted:-

- The conclusion in the impact assessments undertaken to support the amendments that there would be “no impact” from the changes to policy was at odds with Ministers' own internal advice, and ignored the effects of the *Gladman 2* decision. It was also based on a comparison between the

changes and an approach Ministers claimed (although did not evidence) had been taken by appeal Reporters pre-*Gladman 2*.

- There was little or no evidence to support the assertion the amendments would have no impact on housing decisions.
- There was no assessment of how the “average method” would affect the ability for local authorities to meet their Housing Land Requirement.
- There had been no assessment of the effect of deleting the provisions regarding development plan policies being considered out of date where more than 5 years old.
- Ministers were incorrect to describe the changes as clarifications, or as technical and procedural. In the view of the Court, the changes were “substantive and potentially far-reaching”.

The Court, relying on previous court decisions, applied the test that to be irrational a decision had to be “so outrageous in its defiance of logic of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it”.

Against this test, the Court ruled Scottish Ministers had not acted irrationally, and Grounds Two to Five were rejected. Likewise Grounds Six and Seven.

3. What happens now?

Scottish Ministers have confirmed they will not appeal the Court decision, and will look to address matters through NPF4.

The Court decision returns national policy to the pre-December 2020 position. SPP should be applied in accordance with the Inner House decision in *Gladman 2*, ie where there is a shortfall in the five year housing land supply and/or development plan policy is out of date, the “tilted balance” in support of sustainable development applies and permission should only be refused where adverse impacts “significantly and demonstrably” outweigh the benefits.

As the SPP amendments and PAN 1/2020 did not seek to prescribe any particular methodology to calculate housing land supply, it remains for the individual planning authority or Reporter to decide which methodology to use, and explain that decision.

Perhaps the most telling part of the Court judgment, was that Ministers had underestimated the significance of the proposed changes and the impact these would have on individual planning decisions. This echoed the concerns of many in the development industry, particularly those involved in housing. NPF4 is an opportunity to address this criticism.

Burges Salmon advised both Gladman in “Gladman 2” and Elan Homes in the most recent legal challenge.