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# Scottish Property VOICE




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## Chairman's Column

# Sales fall but markets show resilience

The SPF's recent analysis of sales, combined with CoStar's data on investment transactions, has suggested a reduction in commercial property sales and investment transactions since the equivalent period in 2018. This was not a uniform picture, and CoStar noted the rise in investment transactions for the 'alternative asset' classes relative to the traditional classes of office, retail and industrial. These alternative sectors include hotel and build-to-rent activity.

At just over £3bn, the twelve-month rolling total value of commercial property sales in Scotland is at its lowest level since the first half of 2014. This market trend is not unique to commercial property and is complemented by wider economic surveys pointing to low levels of confidence and activity across services, manufacturing and construction. The one consistent piece of good news is our relatively high levels of employment in both Scotland and the wider UK.

A drop off in sales is only one indicator of our markets, of course. Occupational transactions indicate a resilient level of demand and activity. Indeed, in certain hotspots the strength of the markets, for example Grade A rents in Edinburgh and Glasgow, are at record highs.

But, for new investment and development, we need new sources of capital. This has been an opportunity in Scotland since the financial crisis as we now compete in a global market. The uptake in real estate funds seeking a location for investment in recent years has been, and remains, hugely significant. However, some commentators are concerned this appetite for real estate will not be sustained. Perhaps a more fundamental and immediate question to ask is whether there is sufficient quality of product in the market to meet this demand for real estate investments? If not, the concern is that this investment will simply find other locations.

But what if there is a sudden change in global capital intentions? Specifically, what would a reduction in global capital for real estate mean and in Scotland, should we be concerned? You will be as aware as I am of the significant contribution that overseas investment has made to the Scottish real estate sector in recent years, sometimes even outweighing investment from domestic capital.

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But there now appears to be a renewed interest from traditional sources of capital, namely from the UK funds such as M&G Real Estate and Legal and General. In many ways, this is 'back to the future', as these organisations, which were predominant in the markets before the rise of the investment banks in the 1990s, are once again major players, albeit with a more diversified set of capital markets. What is also true is that our real estate finance markets have become more regulated with a greater variety of sources of capital - private equity real estate funds, specialist lenders and institutional funds among them.  This variety of capital as well as the continued low level of interest rates has provided a more stable funding environment and, hopefully, a more resilient system.

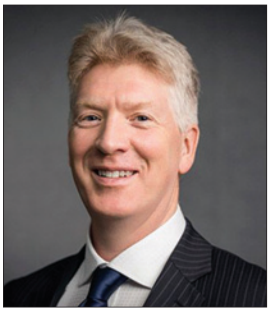
Turning to immediate matters at Holyrood, we expect to see work get underway on the implementation of the Planning Bill over the summer. As ever, the devil will be in the detail and we will be keen to ensure the specific measures to implement the Bill are delivery focused.

On the PRS front, we will respond to a Member's Bill seeking rent controls (as opposed to rent regulation) in Scotland.

Elsewhere, in this newsletter we focus on the engagement underway with the Scottish Government on energy efficiency measures. We will also be working with members on the detail of the Non-Domestic Rates (Scotland) Bill ahead of its key Stage 1 debate at Holyrood in autumn.  Finally, let me draw your attention to our annual dinner in November, when I will hand over the SPF reins to Robin Blacklock.  This has become our largest annual event and this year we will enjoy the insights of former UK Treasury Minister and FT leader-writer Ed Balls as our keynote speaker (see page 5 for further details).

In the meantime, have a great summer and I look forward to seeing as many of you as possible at the SPF annual dinner!

*SPF Chairman, Miller Mathieson (right), with Cabinet Secretary for Finance, Economy and Fair Work, Derek Mackay MSP (left), at the SPF Annual Conference in March.*



# Exploring the Impacts of the Planning (Scotland) Bill

**Alastair McKie**
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The 20 June 2019 was an important day for the property industry as Stage 3 of The Planning (Scotland) Bill was completed and the Bill will shortly become an Act ("Planning (Scotland) Act 2019") of the Scottish Parliament. The Bill was much vaunted in its origins to be a "game changer" and part of a "root and branch reform". It is neither, but the SNP and Conservatives are to be congratulated for co-operating in unscrambling the Bill (as amended at Stage 2), which was unnecessarily complex, contradicting and quite simply unworkable. The additional financial burden on the property industry assessed for the Stage 2 amendments (if they had became law) were over a billion pounds.

The team at the SPF and its members should also take a bow and applause for a concentrated, sustained and focussed effort to support the politicians putting the Bill back on an even keel.

The Act may be notable for what it could have included but did not. Third party or community rights of appeal were avoided and to have included them would have put Scotland on a less favourable footing than the rest of the UK - and that would not be in Scotland' s economic interest. If approved, it might well have meant that almost all planning decision would be substantially delayed and decided on appeal before a Reporter or the Scottish Ministers- which would undermine local decision-making.

The amendment requiring the establishment and protection of "culturally significant zones" was not passed and their establishment might have undermined urban regeneration projects.

Statutory protection of the green belt on the basis that it cannot be developed unless the planning authority is satisfied that the development cannot take place on brownfield land was not supported-on the basis that it would be too inflexible and the matter can and is covered under development plan policy. Additionally, the novel but alarming concept of "land value capture" which would have allowed land to be compulsorily acquired at a value less than market value was not included.

The Act will be a relatively high level statutory framework with much of the detail to come by way of secondary legislation. It is "evolution" rather than "revolution" and only time will tell if it lives up to its billing of strengthening and simplifying the system, with a greater focus on delivery.

I summarise the main reforms below:

## Development plan

The development plan will now consist of both the Local Development Plan (LDP) prepared by planning authorities and the National Planning Framework (NPF) to be prepared by Scottish Government and approved by the Scottish Parliament. Both will have a 10-year span as opposed to the current 5-year span. The NPF will incorporate a new set of national planning policies which will be given "development plan status".

The LDP will have an accelerated process for completion and it is anticipated this will take around 2 years. One of the principal consultation opportunities (Main Issues Report) will be removed and the LDP will be underpinned by the examination by a Reporter of the planning authorities "evidence report". There are concerns in regard to the limited opportunities that may be available at this stage to test the evidence and concerns that the opportunity to test important matters at a later stage (during the LDP examination) may also be lost. Other concerns relate to the need to review the plan within the 10-year cycle.

For this first time there will be a statutory purpose for planning which will be to "manage the use of land in the long term public interest". Interestingly, the NPF will have national housing targets and the preparation of LDPs will require specific consultation with children and young people. Strategic Development Plans (SDPs) will be abolished as will Supplementary Guidance (SG). Transitional arrangements will be made to ensure stability in the system.

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# Exploring the impacts of the Planning (Scotland) Bill *continued from page 3*

## Regional Spatial Strategies (RSS)

Every planning authority must as soon as this part of the Act comes into force prepare an RSS either itself or in combination with another or several planning authorities. RSSs will not form part of the development plan, but will no doubt have a significant influence on their outcome, as they will identify the locations for strategic development. As with LDPs there are concerns regarding the opportunity for interested parties to engage and to test RSSs or the evidence on which they are based.

## Local Place Plans (LPPs)

These can be prepared by community bodies (e.g. a community council) and will set out their particular vision for development in their area. While not forming part of the development plan, (and although they must have regard to it and the NPF) they may not align with the development plan and may exert a significant influence on planning decision, as they will be a material consideration in any decision. Interestingly, the Bill was amended to include a requirement on planning authorities before preparing an LDP to invite local communities to prepare an LPP.

## Development Management

The Act will allow planning authorities to establish short term let control areas. Short term let includes lets through Airbnb and similar electronic platforms. In those areas the use of a dwellinghouse for providing short term lets is deemed to involve a material change in use, for which a separate grant of planning permission is required, and if it is not obtained, then that would be a breach of planning control entitling enforcement action to be taken.

The health effects of national and major development must be considered.

Masterplan Consent Areas, which allow a planning authority to take more proactive lead in planning and cosseting future development, are available.

Applications for "major development" must be notified by the planning authority to each local councillor, MSP and MP.

An extension of the scope of delegated decisions is provided for, which will now include approvals under development orders, certificates of lawfulness and advertisement consent. This in turn means that appeals against these matters will be decided by the Local Review Body and not a Reporter appointed by Scottish Ministers.

A welcome but minor change is that it will be lawful to impose time limits by a deemed or express condition on a planning permission, which restates the pre 2009 position, will allow s42 applications in effect to extend the life of a permission by seeking to vary such a condition.

There is a specific "agent of change" requirement for noise sensitive developments (e.g. residential development) to include measures to mitigate noise impacts from an existing activity (noise source).

There are further limitations placed on the ability to make repeat applications following refusal.

## Miscellaneous

One of the more controversial elements of the Act is the ability of planning authorities to introduce an "infrastructure levy"-a charging scheme (local development tax) that can be placed on all new development requiring the developer/owner to make contributions towards a range of infrastructure, which is considered to be impacted by their development. This will apply in addition to contributions sought under s75 Agreements (Planning Obligations), there is a specific provision excluding double charging.

The Act allows greater flexibility in the varying and discharging of s75 Agreements, which will be welcome and where agreement is reached a s75 Agreement can be varied voluntarily rather than going through the s75A application process.

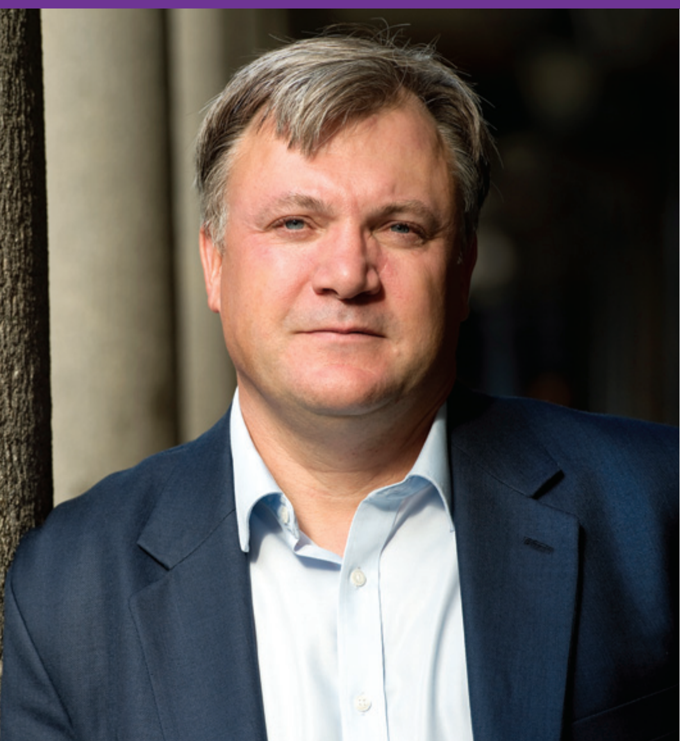
The Act has a raft of provisions relating to planning performance, the appointment of a "national planning czar", a requirement for annual reporting by each planning authority and compulsory training for council members who are involved in planning decisions. Each planning authority must also have a chief planning officer who is responsible for discharging the planning functions of the authority.

The Act also empowers mediation in relation to the preparation of LDPs and refers to its role in assisting the determination of planning applications.

SPF

# 8th Annual Dinner 2019

**Thursday 7 November 2019**
Edinburgh International Conference Centre
150 Morrison Street, Edinburgh EH3 8EE



## Keynote Speaker
## ED BALLS

Former FT leader-writer, new Labour economic architect and UK Treasury Minister.

For more information or to book your table, please visit our **website**. Should you wish to discuss our sponsorship opportunities for this event, please contact Gail Hume: **email** or DDI: 0131 357 8667.

To stay up to date with **#SPFdin19** follow us on **twitter** and **LinkedIn**.

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# Power of Partnerships

Councillor John Alexander
Chair of the Scottish Cities Alliance and Leader of Dundee City Council
Email: john.alexander@dundeecity.gov.uk

Collaboration has become something of a buzzword these days but Scotland's cities have been working hard at this for several years, using our collective attributes to compete successfully on a world stage for the vital investment needed to achieve out ambitions for sustainable economic growth.

Scotland's cities contribute more than half of Scotland's GVA and more than 60% of employment, representing a critical contribution to both the Scottish and UK economy. Scotland has held its position as the second most important region for UK Investment since 2014 in the EY Attractiveness Survey, with cities as key drivers of this accolade.

The Scottish Cities Alliance is the mature partnership of Scotland's seven cities - Aberdeen, Dundee, Edinburgh, Glasgow, Inverness, Perth and Stirling and the Scottish Government - and builds on this strong economic foundation by working together on a range of joint programmes such as investment promotion, Smart Cities and hydrogen, which ensure that cities are seen as drivers of innovation and cutting edge technologies.

As most of you will know Scotland's commercial real estate industry contributes almost £4.8 billion to the Scottish economy and supports more than 92,000 jobs. We want to attract more long-term, high quality investment to our cities, so through the Alliance we are making our cities as sustainable as they can be - a key priority for investors.

It makes sense at a time where we are experiencing the impact of climate change to ensure our cities are sustainable through more efficient travel and use of energy, cutting waste and, in doing so, improving the quality of life and cutting emissions, which are essential if we are to remain attractive to the talent and investment we need to continue to thrive. To help achieve this ambition, the Alliance has secured £25 million from European structural funds to create one of the only country-wide Smart Cities programmes in the world. This money is matched by the cities and this will mean that the collective will be proactively investing more than £60 million in a wide range of sustainable activity.

Through our international work at events such as MIPIM in Cannes and Expo Real in Munich, we have attracted investor interest, which it is anticipated will turn into multi-million investments in Scotland's cities. We are in the process of following up with several interested parties as a result of our latest MIPIM attendance and one message is clear - investors like the one-stop shop approach that the Alliance offers, connecting them to the full spectrum of Scotland's cities' offerings.

As ever, we are always striving to make our investment opportunities as investor-ready as possible in order to create interest, so through the Alliance we are in the process of completing a financial model which can be used by all of the cities. This will ensure our range of investment opportunities are robust as possible and meet all market-led expectations.

Supported by the Alliance, I am delighted to say that Dundee secured £3 million of match funding from Transport Scotland, enabling it to partner in the ambitious JIVE 2 programme, and secured €1.8 million of funding for 12 hydrogen fuel cell buses and the associated refuelling infrastructure. Aberdeen has pioneered the use of hydrogen buses and this additional funding will build on the work to help our cities meet Scotland's ambitious carbon reduction programme, which in turn will make them more attractive to investors, who are increasingly looking at sustainability as a key factor.

Sustainability and resilience have undoubtedly become hugely important factor for cities for the way we live, work, travel and invest, and I am delighted that these are central to the Scottish Cities Alliance's work. This, combined with our highly-educated talent pool, makes the cities very attractive destinations of choice for investors.

Our collaboration continues to make great progress in driving our aim of sustainable economic growth forward and I look forward to working with our partners and indeed our wider stakeholders, including the Scottish Property Federation, to keep powering the momentum we have created in order to reap the economic benefits for Scotland's cities.

*For more information on the Scottish Cities Alliance and to view the Investment Prospectus, visit* ***www.scottishcities.org.uk***

# Energy Efficiency Climbs the Political Agenda

Murray Horn
Policy & Communications Officer
Scottish Property Federation
Email: mhorn@bpf.org.uk

The political spotlight has turned to the issue of sustainability recently, with the passage of the *Emissions Reduction Targets Bill* in the Scottish parliament and the declaration of a 'Climate Emergency' in both Westminster and Holyrood. As policymakers across the UK grapple with the reality of climate change - and the effect that it could have on our economy and prosperity - the legislative response has been ramping up and our industry has been the focus of much attention.

In Scotland, the government's Energy Efficient Scotland (EES) programme is continuing to gain momentum in its agenda to effect significant improvements to the energy efficiency of Scotland's built environment. The ESS Route Map was published last year and set out the Scottish government's timetable to regulate for minimum energy efficiency standards in domestic properties, as well as expanding the existing section 63 regulations for the non-domestic sector.

Among the proposals contained within the *Route Map* was the plan to regulate for improved energy efficiency in the private rented sector (PRS) by setting mandatory EPC standards. Subsequently, the Scottish government published draft regulations for PRS using provisions in the *Energy Act 2011* in June. If approved by the Scottish parliament, the regulations would require privately rented properties to meet EPC E standard at a change of tenancy by April 2020 and EPC D standard at a change of tenancy by April 2022. The draft regulations also stipulate that there will be a backstop of March 2022 for EPC E and March 2025 for EPC D in place for properties in the sector that have not seen a change of tenancy.

During the pre-regulation consultation period, the SPF consistently made the case that some properties would not be able to meet the proposed standards. We highlighted that the reasons for this could be complex and varied and could include cost, a tenant refusing access, planning restrictions, or other owners refusing to give permission for energy efficiency improvements.

The Scottish government appears to have taken heed of a number of our concerns, and there is a series of limited exemptions within the draft regulations that are available to landlords who encounter blocks to improving their property. The draft regulations stipulate that most of these exemptions would last for 5 years, after which a landlord would either have to carry out the energy efficiency improvement work or reapply to renew the exemption. We also highlighted the potential for landlords leaving the sector due to the regulations, which could add to the housing crisis.

Owner-occupied properties may soon see regulations directed at them too, with the Scottish government's most recent EES consultation seeking views on if - and when - mandatory action could be required. We made it clear that the government's priority should be on supporting homeowners to improve energy efficiency through increased funding and education, before creating a minimum energy efficiency standard in the owner-occupied sector. The *Route Map* suggested that mandatory standards may be introduced in 2030 under section 64 of the *Climate Change (Scotland) Act 2009*. However, with the average cost of bringing each Scottish home up to EPC C estimated at £6,000, introducing any regulations could be a political challenge.

On the non-domestic side, the Scottish government has also signalled its intention to review regulations made under section 63 of the Climate Change Act. At a meeting with the SPF's Building Standards and Sustainability Committee in June, the government's section 63 policy team encouraged members to engage with them ahead of their review, which is expected to take place later this year. In particular, the government is looking for views from owners on their experience of working with the existing regulations. If you would like to contribute to this call for views, please feel free to get in touch with the SPF team.

The Scottish government has previously indicated that it wants the section 63 regulations to apply to all non-domestic buildings regardless of size by 2040, with other possible revisions including a constriction of the ability for property owners to delay implementing improvement plans. It is expected that a formal consultation on amended non-domestic regulations will take place in 2020, with any new regulations coming into force from 2021.

**Additional Information**

You can read the draft regulations for a minimum energy efficiency standard in the private rented sector at: **https://www.gov.scot/publications/energy-efficiency-private-rented-property-scotland-regulations-2019-consultation/**. These draft regulations are currently being consulted on and if you would like to contribute to the SPF's response, please get in touch with Murray **(mhorn@bpf.org.uk)**

# Policy Round-Up June/July 2019

## Some key policy developments for the industry

Mandy Catterall
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In a very busy month, June finally saw the **Planning (Scotland) Bill successfully pass its final stage of scrutiny in the Scottish Parliament**, following three days of debate in Holyrood. Since the independent planning review got underway in 2015, we have called for reforms to achieve a streamlined and delivery-focused planning system, with community views incorporated into plan-making and development proposals at the outset.

The process was very politicised with many MSPs attempting to add policy to the primary legislation. After lobbying across the whole Holyrood political spectrum, we are pleased that unworkable amendments introduced at Stage 2 were, in the end, either improved or removed from the Bill.

The revised Financial Memorandum for the Planning Bill brought into sharp focus the alarming costs of the Bill as it stood after Stage 2 for both the development industry and planning authorities.

We are now more optimistic that the Bill can support much needed development in Scotland. However, a key issue going forward will be to ensure that any further increases in planning fees go hand in hand with tangible improvements in planning services.

Meanwhile, **a letter has been published by the Chief Planner, which provides an update on current workstreams** being taken forward by the Planning and Architecture Division.

**June also saw us join the renewed Scottish government Strategic Historic Environment Forum (SHEF)** to review progress on Heritage policies, and the Built Heritage Investment Working Group, to which many SPF members have contributed.

Earlier this year, the Scottish government adopted the Place Principle, and this month **we took part in the Scottish government stakeholder meeting to explore the Place Principle further**.

The **SPF also contributed to a round-table discussion held by the Scottish Parliament's Finance Committee on the Additional Dwelling Supplement (ADS)**. ADS was increased this year to 4% and now makes up a significant part of the Scottish government's LBTT revenue. However, there are significant issues with its operation and some 25% of ADS has been repaid to eligible taxpayers in previous years.

At a local level, **we responded to the City of Edinburgh Council's call for comments on proposals for the Edinburgh City Centre Transformation strategies**. The **Draft Dundee Housing Land Audit** 2019 has also been published for consultation from 14 June to 12 July.

We also **met with local authorities in Aberdeen and Edinburgh to discuss city-living and transformation**. In the capital, we supported the quarterly Edinburgh Development Forum and attended an excellent Edinburgh 2050 City Vision event organised by Turley. In Aberdeen, we hosted a well-attended regional dinner with SPF members and city deal programme manager, Julie Wood.

The SPF **also attended a consultation event for the build-to-rent sector in Edinburgh City Chambers**, which was facilitated by our vice-chair Robin Blacklock, MD Dowbrae Property Consultancy. The event allowed the industry to offer candid views on the development of a policy framework for build-to-rent in Edinburgh.

June saw us **submit comments on the Scottish government's Non-Domestic Rates Bill** to the Scottish Parliament's Local Government & Communities Committee. While we supported a number of positive measures, including relief for new development and the three-yearly revaluations, we also raised a number of concerns.

We **submitted comments on the Scottish government's proposals to change its tax policy consultation process**, citing the current process as too narrow and subject to high level political considerations. We also supported the notion of a separate Finance Bill on a regular basis to allow for a more effective approach to maintaining tax policies.

Views were also **submitted to the Scottish Parliament's Finance Committee on the financial memorandum accompanying the Non-Domestic Rates Bill**. Our main concerns are the costs associated with an increased use of penalties for non-provision of information to Assessors or local authorities.

We welcomed a move by **Scottish Ministers to exempt vacant listed buildings from the intended devolution of empty property rates relief policy** to local authorities.

At official level, an SPF delegation led by Alan Cook, chair of the SPF Commercial Real Estate Committee and Partner at Pinsent Masons, **met with the Scottish government Land Reform Policy Team**. Among the issues discussed was the new Right to Buy for Sustainable Development and opportunities for collaboration between landowners and communities. Also discussed were Land Value Tax and Compulsory Sale Orders, and the Scottish Land Commission's report on scale and concentration of land ownership in rural areas as compared to urban areas. These are all complex issues and policy development remains at an early stage.