

Chris Webber
Analyst
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Enterprise House
59-65 Upper Ground
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15 January 2009

Dear Chris,

During the last 12 months, we have seen a radical change in the fortunes of retail led development. The stark consequences of the UK banking crisis, combined with falling capital values and consumer demand has had a profound effect. Add to this the reluctance of banks to provide loan facilities to commercial property, and in particular, development, and we have the recipe for stagnation. Our research shows that virtually all development that is not under construction at present is unlikely to be delivered for several years.

Noting this backdrop, BCSC is pleased to provide the following response to the following selected questions set out in the APPG's call for evidence.

1. A development project can be viewed as a process involving three key areas of activity: financing, planning and delivery. Where do the key transaction costs arise in this process? And what specific shape do they take?

The experience of BCSC members is that, taken in the broadest context, transaction costs have grown (in terms of range, spread and quantum) in all three sub areas mentioned. Financing has become more complex during the last 10 years, with costs arising from a greater number of generally expensive advisors on all elements of structured finance for development projects.

Increasingly, public and private sector parties involved in transactions have each sought independent advice on the risks and implications of more and more elements of such transactions – thus indirectly increasing the overall transaction costs considerably. Whilst advice to each party may be necessary the complex nature of structured finance has significantly increased the overall 'transaction cost'.

Secondly, planning applications often have had to become more comprehensive in nature, detailing the potential impacts and benefits of a project. The cost of planning applications has therefore significantly increased.

Lastly, in regard to delivery, taking into account changes in European and UK legislation as well as many other factors has meant that there has been a significant growth in transaction costs in this area over the last 10 years.

2. Are there any other transaction costs that should be taken into account? What specific form do these take? And to what extent are they disproportionate? Please provide examples.

Increasingly as sustainability policy levers are pulled both by central and local government, the cost of meeting increased environmental standards will impact on the levels of viability of some sites.

We continue to support the use of building regulations as the mechanism to deliver sustainability advances, and urge Government to resist handing more powers in this area to the planning system.

The introduction of policies designed similar to that of the Merton Rule do not deliver the required flexibility to work towards meeting the 2010 or 2019 targets. It is crucial that each development is assessed on its own merit, and local authority-wide (often arbitrary) sustainability targets have not been shown to deliver the best results.

The Merton Rule is clearly popular with local authorities and is seen to be quick win to deliver energy reductions and improve a council's reputation in this area. However, the rule is restrictive in its application, and in certain circumstances introduces an additional element of risk in enabling developments to move forward.

A move towards such policies could serve to complicate matters and create further regional inconsistencies between different local authorities. This, we feel, could undermine the power of larger landlords and developers to make strategic decisions relating to the sustainability of more than one shopping centre at any one time, thus reducing economies of scale.

4. What kind of impact can transaction costs have on a development process? Please provide examples.

Cumulative transaction costs can completely derail development by driving up costs beyond the point of viability.

This is a particularly significant point – and at a time when developers and investors are putting all costs under the microscope in order to try to secure viable forms of development, it creates a very dispiriting context, if trends in transaction costs continue to show only a steady rise when other costs are potentially being reduced. Similarly, they can defer development for many years, which in turn has negative consequences for the regeneration of specific areas and communities. This can be even more dramatic if a site is stalled mid way through the construction process.

6. The Killian Pretty Review analysed the planning process and set out a series of options for how it could be speeded up. Did the review miss anything? How would you rate the government's response to the Killian Pretty Review so far?

We would urge the Government to continue to implement the recommendations of Killian Pretty to speed up the planning process, specifically legislating to allow the

local planning authority to make a decision after a defined timescale in the absence of a response from the statutory consultee.

Looking beyond Killian Pretty, we are concerned by the Government's intention to introduce a development levy (CIL) at this time. We believe that this will have the negative impact of further reducing the viability of potential projects. This will impact hugely on the Government's objective of delivering regeneration throughout the regions, with all the associated negative consequences for employment during the development phase, and job, training and housing creation upon completion and in use.

Our members believe that there are a number of additional concerns that still exist in the current drafting of the regulations. There is a lack of clarity how, when and if Section 106 will be scaled back. There is also industry concern about the inflexible nature of the regulations to allow "payment in kind".

BCSC would like to see Government establish clear mechanisms of hypothecation on both (any future) CIL and Business Rates Supplement (BRS) to ensure that the levy directly and transparently funds local infrastructure.

We are concerned that the CIL will be applied on the basis of the scale of the development, rather than on the additional impact that it may have on existing infrastructure. This could provide a further barrier to sway a decision against renewal and regeneration. For example, our members may seek to demolish an existing shopping centre and rebuild one in its place. There is also a common mix of partial redevelopment alongside partial refurbishment. Such projects should not be subject to the tariff as if they were whole new developments, placing entirely new demands on existing infrastructure. It would be much fairer to look at the added burden on infrastructure, created by the extra floor space.

7. What other types of reforms could be introduced to help minimise transaction costs or remove unnecessary costs? For example, what kind of changes or clarifications to procurement rules would help? Are there ways in which the SDLT rules should be clarified or simplified in the complex urban regeneration context?

We strongly support the potential reduction of the burden on developers, operators and key stakeholders involved in the planning process. In August, in response to the Government's consultation on "Greater Flexibility for Planning Permissions", we urged that local planning authorities should consider granting permissions with a longer duration on a case-by-case basis – taking into account schemes where there is the potential issue of viability.

We believe that the consultation outlined a positive context for providing a more flexible approach in the difficult economic climate. We particularly welcomed these three areas:

- **We supported the proposed changes to the planning system to allow the time limits for implementation of extant planning permissions to be extended.**

Ahead of this position being finalised, we argued that there must be the opportunity to grant permissions with a longer duration in those complicated schemes where additional time may be required for the further submission of detail or where there is the potential issue of viability.

We were pleased, therefore, to note that in October of this year, the Government amended the legislation to amend the procedure for planning applications which are made for a planning permission to replace an extant permission, granted on or before 1st October 2009, for development which has not yet begun, with a new planning permission subject to a new time limit.

It is probably too early to say whether the amendment has helped significantly. It is unlikely to have produced any negative results. However there is currently too little development pressure, but there is probably already some evidence that developers/investors and their advisors may be taking advantage of this change.

- **We supported the recommendation that the Government should take steps to allow a more proportionate approach to minor material amendments in development proposals after permission has been granted.**

Although we appreciate there is some latitude in the determination of that which constitutes a 'minor amendment' to a proposal, this is in almost all cases dependant on the nature and approach of the relevant planning authorities. It is also set against the backdrop of there being established in case law with there being no such thing as a 'non material' minor amendment. Sadly, in some cases this is seen by planning authorities as necessitating a new planning application, supported by (in many cases), a new planning application fee.

Clarification and a framework in this regard to judge what may constitute a non material minor amendment and what is a 'material' minor amendment is therefore most welcome - as is the further definition of the proportionality of information required to support such minor material amendments.

This will ease the pressure and administrative burden on those developers and operators which are required to make minor changes to approved schemes to incorporate operational and other requirements.

- **We supported the commencement of S.190 of the Town and Country Planning Act 1990 (and therein S.96A) which provides a mechanism for the making of non material changes to planning permissions.**

The latitude in the determination of that which constitutes a 'minor amendment' to a proposal depends on the nature and approach of the relevant planning authorities.

This position is particularly unhelpful when there is a need to target investment quickly to realise return, notably on new retail and other development proposals. Such an approach can wrap changes of a relatively minor nature in the red tape of planning procedure. As we have identified above, sadly in some cases, this is seen by planning authorities as necessitating a new planning application, supported by (in many cases), a new planning application fee.

Looking to broader context, although we welcome the guidance on the application of the public procurement rules to development agreements produced by OGC in October 2009 we believe more needs to be done to ensure local authorities take a proportionate approach to whether a partnership between a local authority and a developer might require a tendering process via the Official Journal of the European Union (OJEU).

This guidance must now be comprehensively communicated and widely understood so that developers and landlords can press ahead with projects that may previously have been held up by the potential risk of falling foul of EU procedures.

It is now important that local authorities take a pragmatic approach to the implementation of these procedures, so as not to delay vital regeneration projects unnecessarily.

BCSC would like to encourage the APPG to look at how the Government is trying to push back these barriers further it would also be helpful if the APPG could prompt the development of research to test out whether local authorities can provide evidence that they are taking a more proportionate and flexible approach to procurement.

8. In terms of improving the operation of the property development and urban regeneration process, what should be the top priorities for whichever party is in power after the next election?

- **We urge Government to commit to the rapid rollout, where viable, of a UK variation of Tax Increment Financing (TIF).** We strongly support the introduction of TIF in the UK for several reasons, including its more efficient approach to infrastructure financing than the current public sector approach and its very significant capital raising potential. We welcome the emerging focus on TIF, and we feel that it is important that momentum is maintained to urgently establish their detailed relevance and applicability in the UK.
- We would welcome a commitment from Government to **further review the implications of its ineffective policy on empty rates.** The effect is simply additional cost pressures on retailers and landlords alike who are finding it extremely challenging to sub-let or sell property due to a lack of demand.

The combination of reduced income from rent and increased taxation following the decision to remove empty property rate relief after three months also increases the likelihood that landlords will default on their loan agreements. Banks, including those which the Government has a significant interest in, have been forced to take ownership of these assets that in many cases have had equity wiped out, further increasing their exposure to toxic debt.

- Finally, we urge any future Government to support measures which **ensure local authorities work with their development partners in constructive and progressive ways** to aid the processing of planning applications. The planning system must not be seen as a means for local authorities to add a host of additional planning gains, which have over-burdened many of the existing development proposals. The planning system should be utilised in a way that ensures the best regeneration outcomes for communities are delivered.

We would of course be happy to discuss any of the points raised above with you in more detail. If you would like to receive any further information from BCSC, please feel free to contact me.

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