New How: Perspectives

Investing in living

Winter 22/23

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Contents

Foreword

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1

Foreword

When we published our inaugural Investing in Living report back in 2021, the pandemic was receding, Brexit was (sort of) done and we dared to hope that the Living sector had resilience and opportunity on its side for 2022 and that things were looking up. There was definitely some optimism in the pages of our report although this was tempered by the supply chain issues earlier that year, ongoing materials and labour shortages and upcoming legislative change to contend with.

But 2022 had other plans for us: Partygate, the Ukraine War, energy prices, inflation, three Prime Ministers in the space of six weeks, the passing of Queen Elizabeth II and the days of reckoning in the bond markets after the Truss/Kwarteng "mini budget". The news cycle has been fast paced and exhausting. And all the days and weeks dealing with these huge events were days and weeks where the Department for Levelling Up, Housing & Communities (and other ministries of course) could not deal with the issues our sector needs to see resolved.

Turning back to the Living sector, what will the last year's events – macro and micro – mean for the sector? There are some chunky issues on the agenda, affecting how investors and developers will view the various asset classes in the sector – how will these be resolved? Is there still cause for optimism?

This report is less of a rollercoaster than the last few months but certainly does not shy away from discussing the good, the bad and the ugly.

Get in touch

Vibrant, versatile, and valuable

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2

Vibrant, versatile, and valuable

As we take stock on 2022, and look forward to 2023, let's briefly reflect on some of the topics that are current with our Living sector teams and clients.

It's the land, stupid!

Could a land value tax unlock property (and house) market problems of high house prices and rents, boom and bust cycles, lack of availability, and underused land?

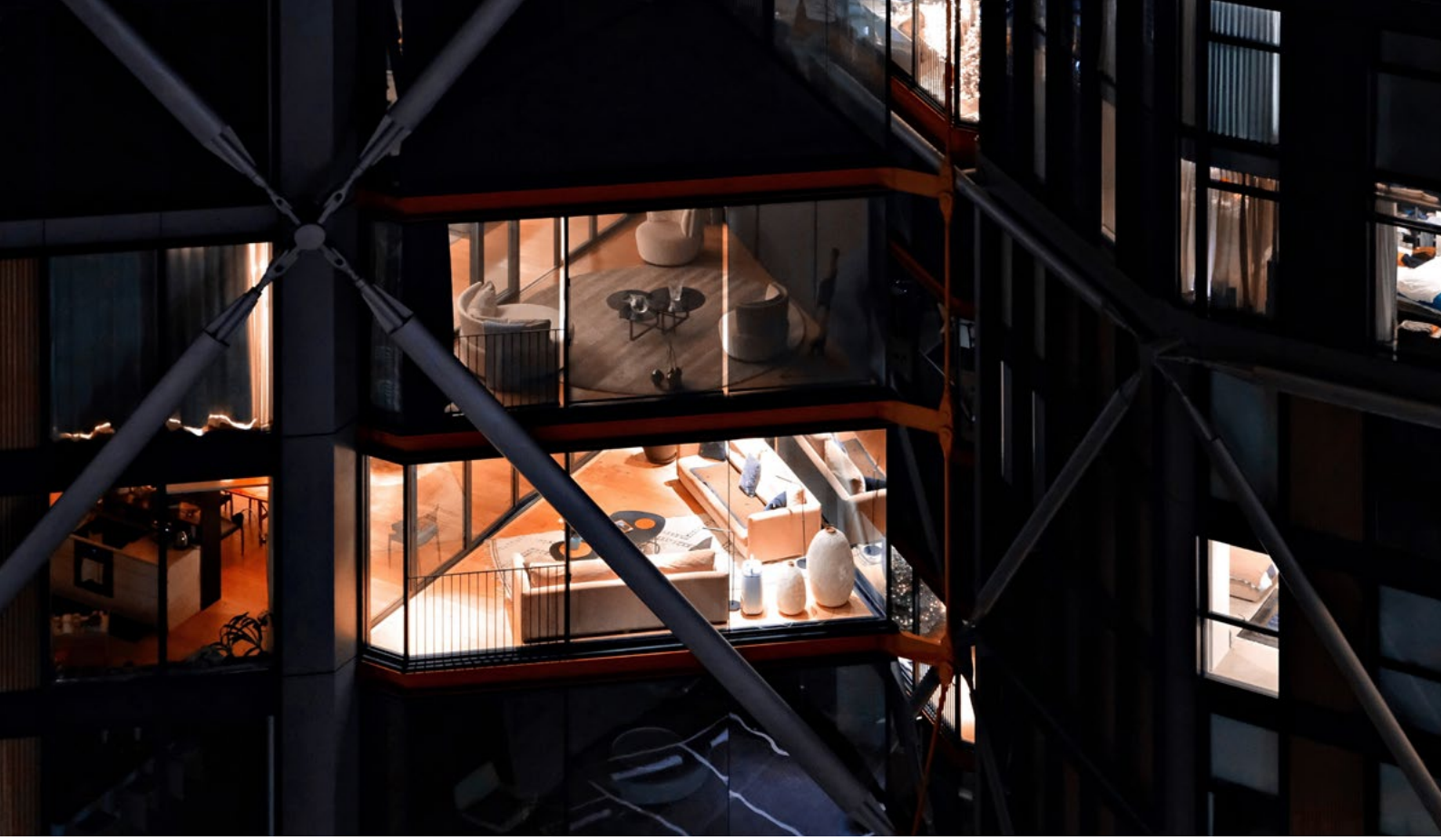
Maybe not – at the supply side starting blocks, strategic land promotion, we have seen (and continue to see) very high land price expectations from landowners and their agents, as the cost of unlocking land for development. Taken also with spiralling construction costs, that leaves developers and investors as the squeezed middle on margin – so something has to give. With house prices tailing off and sales volumes falling back because of external economic effects, a land value tax has the feeling of being a tax for waiting, and not something that drives delivery.

Maybe what's actually needed is a better alignment of expectations throughout the demand chain, so that landowners are rewarded in time for successful development, not just for being the only (land) show in town. Are we going to see national and regional development agencies stepping in to unlock land in areas of need, and partnering with developers to bring forward schemes in those areas, built using tax increment financing, giving people proper payment for success?

Please turn off the lights when you leave

Energy costs are now a massive challenge to the sector – both in the costs of provision, and for end users. Whoever thought that developers would struggle to secure connections for new schemes, or that "warm banks" would be one of the phrases of the year for dictionaries? Whole life carbon costs are now becoming a common topic of discussion, and it can only be a matter of time before they figure routinely in development and investment appraisals – particularly as ESG backed finance and sustainability-linked lending wraps further around the sector.

District heating systems are back on the agenda for new schemes, as is integrated solar as a regular offer to the institutional buyers, and just now we are seeing significant funding offered to homeowners to improve insultation. But, actually, many institutional landowners have seen the importance of 'fabric first' to address energy costs – fix the supply side of course, but there's a lot to be said for making housing less leaky in the first place. Don't forget that Registered Providers (RP) have been saying for some years that there's a huge amount of catching up needed on existing housing stock to address these historical problems, and there must be a place in the world of infrastructure finance to play into this requirement.



> Whole life carbon costs are now becoming a common topic of discussion, and it can only be a matter of time before they figure routinely in development and investment appraisals."

I have a cunning plan...

Planning has been very much to the fore this year – we can't ignore the impact of biodiversity net gain and nutrient neutrality challenges to delivery, and now Hillside has given (welcome but actually unhelpful) judicial guidance on managing drop in planning permissions. These issues all have to be at the forefront of developers' thinking in the coming year, and we are already seeing a growing market in SANG and BNG land deals to support larger scale development.

Planning reform is increasingly in the press, and the recent furore over housing supply management is going to rumble on for a while yet. We encourage developers and investors in the Living sector to stay involved in the debate; it's your land that this will affect, and planning policy is undeniably strategically important to sector success.

Rules, rules, rules

Legal developments have been many and varied this year, impacting across the sector. Ground rents are still gone (albeit the tidying up required within the sector around historical ground rents continues apace), and section 21 reform is following, though Commonhold seems to be about as popular as it always was. There was a strong view under the previous administration (or the one before the last one, they seem to come and go quite quickly at the moment), that generation rent should be aspiring to be generation buy, which was pretty blind to the different demographics of these market segments, although some valuable steps have also been taken to rebalance the rights of landlord and tenants.

Probably the one piece of law that everyone in the sector is thinking about is the Building Safety Act. Our construction team is actively involved in advising clients on the roll out of the Act, including developers, contractors and funders. That work is likely to continue for the foreseeable future, as process and practice evolves to accommodate the changes for sector stakeholders.

And the institutional landlords?

We see that the 'professional landowners' – BTR, PBSA, and Registered Providers – are very much in the ascendancy, and this is something certain to continue into 2023.

Recent reports suggested that £3.2 billion of capital has been committed to the UK BTR sector in the first three quarters of 2022, an increase of 10% year on year. Global figures for Registered Providers are available to March 2021 and, despite showing a 20% decrease year on year, still reveal that investment in new supply was £10.9bn and total spend on maintenance and repairs was £5.4bn. These are not figures to be sneezed at – the institutional landowners are financially major players, and the Registered Providers are becoming increasingly proficient at raising finance through the bond issuance as well as traditional debt markets. PBSA is also powering through, and many major towns and cities now are seeing the benefits that large scale investment in student accommodation can bring for their universities. These sector participants are massively important for community building and regeneration.

MMC, take a bow

We couldn't finish a review of the year without acknowledging the impact of Modern Methods of Construction (MMC). This has become very important and is really stepping into the spotlight now. MMC is now embedded as a valuable route to scale and pace of delivery. It's not without its challenges, including supply chain and skillset management, but MMC is clearly a desirable and developing delivery vehicle for addressing the housing crisis. At the time of writing this, L&G have just announced a 1,000-unit deal with a major south of England RP – this indicates the extent to which the sector has embraced the technology to drive housing delivery.

The future looks positive

The future is bright for the Living sector, and it is definitely one where developers and investors should "watch this space". Across the piece of "anything with a bed", sector stakeholders include some of the most forward thinking, innovative and ambitious organisations and individuals. It's their verve that makes the sector such an exciting place to work, helping to deliver social and financial value to investors and developers, and helping to drive community building at its best.

2023 – let's do it!

Get in touch

Student accommodation sector shows its resilience

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Student accommodation sector shows its resilience

The UK's purpose-built student accommodation (PBSA) sector remains resilient despite months of economic and political uncertainty.

"The fundamentals of the operational market in PBSA are very strong. I don't think anyone is sat there saying that we don't have great universities, we've got great occupancy and we've got growing demand," outlined Alex Pease, executive director at Watkin Jones Group, at a recent Shoosmiths' roundtable.

Bringing together funders, operators, developers and agents, as well as policy and legal experts, the discussion – held at the firm's London studio – focused on the evolution of PBSA.

One of the main reasons for the sector's resilience is a systemic undersupply of PBSA.

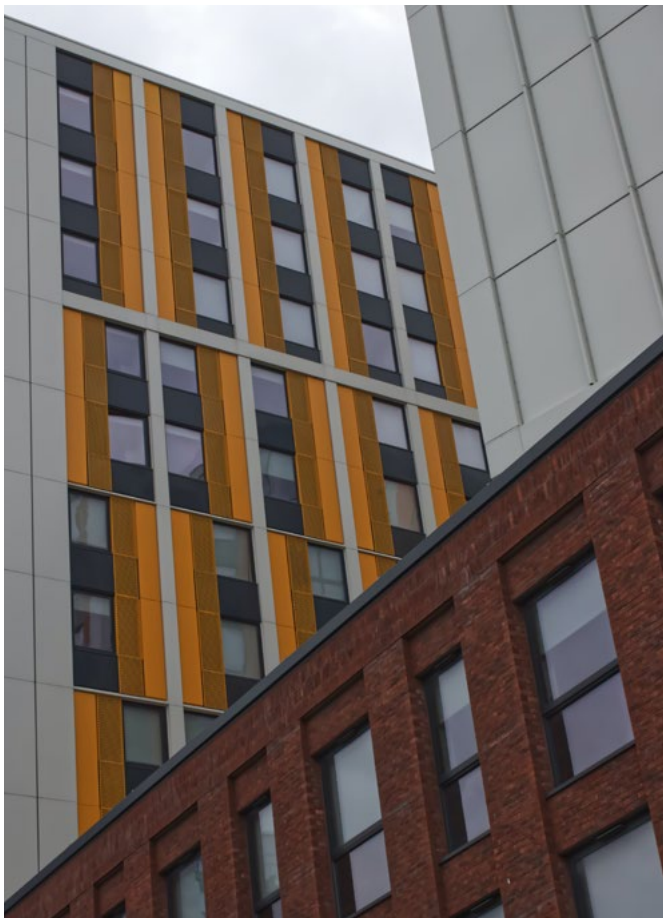
Martha Kool, senior policy officer at the British Property Federation, explained: "It is a resilient market compared to a lot of others, particularly during the pandemic. It has bounced back quite well, as it has from other crises in the past. So, I think positive in that respect. But there are supply issues."

The scale of the problem was revealed by the roundtable host Shoosmiths' Darren Cleveland: "A shortage of around 200,000 beds is anticipated to grow to 450,000 by 2025."

With increasing demand and overseas students returning to UK universities, it is clear that more must be done to tackle the PBSA shortage. This presents an opportunity for investors, funders and developers who can all play a role in bringing forward new accommodation.

There are challenges that the sector and real estate industry must navigate first, however.

"Operational costs are going the wrong way. And PBSA tends to sell as an all-in solution to its residents," said Mark Dawson, executive director at Vita Group. "So that includes utilities and that's going the wrong way. And coming to market, we've got challenges. Challenges in the debt markets, which are caused by rising interest rates and increasing swap rates. And construction prices have also been going the wrong way."



Upcoming legislative changes also pose potential hurdles for PBSA developers.

There are now less than 12 months until new mandatory biodiversity net gain requirements (BNG) are enforced as part of the Environment Act 2021. The legislation will require all new developments in England, bar a few exceptions, to deliver at least 10 per cent BNG.

Lisa Tye, planning partner at Shoosmiths, outlined the implications for student accommodation at the roundtable: "Particularly for PBSA, where you are unlikely to be delivering much onsite. It's getting those systems up and running. And again, the certainty of having a fund that you can pay in to discharge those liabilities."

Following the government announcing its intentions for student accommodation to be subject to the new regulatory regime laid out in the Building Safety Act 2022, Ian Hardman, construction partner at Shoosmiths, said: "As we all know with student accommodation, one of the big challenges is around completion. I can't think really of another sector where completion is so important given term start dates.

"One aspect of The Building Safety Act is that we can't have occupation without a completion certificate. The consultation is suggesting that this could take up to 12 weeks."

Projects are still being brought forward, however, showing the sector's ability to adapt.

"We've got a good pipeline. We've completed transactions recently. We've got stock coming to market and completing next year. There's a lot of positives in the market," said Dawson.

The latest research from Savills reveals that €11.7bn has been invested in PBSA across Europe during the first three quarters of 2022. This represents a 130 per cent increase on the same period in 2021, with the UK seeing the largest portion of this investment.

"From a lender perspective, we've still got strong appetite for the sector. It's difficult to put the cost of funds issue aside at the moment, but our margins have come down over the years as we've got more and more comfortable," said Kieran Redford, lending manager at AIB Group.

"We're happy with the demand and supply profile that there is in the sector. Fundamentally the bank likes this from a social perspective. Higher education is a big success story for the UK, but students need somewhere to live and to study, and to be safe."

The prevailing sentiment was that despite current headwinds, the sector has the potential to continue growing – buoyed by those funding, developing and investing in PBSA.

"€11.7bn has been invested in PBSA across Europe during the first three quarters of 2022. This represents a 130 per cent increase on the same period in 2021."

> The demand fundamentals for PBSA are looking very strong."

"I think in order to overcome some of these problems, there's going to have to be some real entrepreneurship," said Pease. "There's going to have to be some flexibility. I think we're going to see some contracts sort of vary and flex a little bit more. There's going to be a bit more risk sharing between parties, but there is always going to be, to our mind, like minded capital and developers who still fundamentally believe in the space and want to deploy."

Even when supply evens up, which could take years, PBSA can look to other parts of the student housing market for opportunities and become increasingly competitive against the traditional second and third-year HMO market.

"The demand fundamentals for PBSA are looking very strong," commented Will Hyslop, associate for alternative living capital markets at Montagu Evans.

"If you start projecting forwards, well, if you just take UK domestic 18 year olds they're looking to increase by two and a half per cent to 2030. In terms of investment and appetite, there is a very strong and growing demand from a wide range of parties.

"The market has matured enough that it is no longer viewed as an alternative asset class."

The focus must remain on bringing forward quality, versatile and varied PBSA to the market. This will enable the industry to put itself in the strongest position possible for growth, while delivering heightened student experience and boosting the supply of accommodation in the UK."

Watch the full roundtable discussion:

Student accommodation market has overcome crises before

Get in touch

The Mayhew Review – think big, remove inertia, innovate and incentivise

Author:

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The Mayhew Review – think big, remove inertia, innovate and incentivise

The Mayhew Review – Future-Proofing Retirement Living, issued in November 2022, has the premise that the UK is failing to adapt to the impacts of an ageing population. Mayhew bills this as both a housing issue (in the wider Living sector sense) and a care issue. Proposed solutions therefore need to be holistic and considered but if they are the expected outcomes, getting it right will not just have a huge positive impact on older people, but also younger people and everyone in the middle, social care and the NHS, which is compelling.

The magnitude of the later living problem

Some stats:

- The population aged 65+ is expected to increase from 11.2m today to 17.2 million by 2040 overstretching social and health care.
- People are living longer.
- 80% of people aged 65+ own their own home.
- An average of 7,000 retirement homes are built annually, falling far short of what is required.
- Current policy is that people should be supported to live independently in their own homes for longer, which some misinterpret as remaining in the original family home.
- Specialist retirement housing accounts for only 10% of older UK households.
- To get on track, Mayhew recommends at least 50,000 new retirement homes to be built each year.

Inertia

The Review recognises that we have got a bit stuck in our ways: older people's expectations are narrow, as are society's as a whole, and housing policy nearly always focuses on the first time buyer, not the last time buyer. The result of this is that family housing is essentially blocked and underoccupied. This inherent inertia is exacerbated by a number of barriers and, whilst Mayhew doesn't set too much store by the old "my home is my castle theory", he does note a number of practicalities that are off-putting for the older generation considering moving into retirement housing:

- Doing nothing is easy.
- Moving is stressful.
- Financial decision-making is hard.
- It is expensive to access good advice and older people tend to be asset rich and income poor.
- Concern about sufficient income until death and costs of maintenance.
- Not enough choice of retirement housing.

Supply side issues

The last barrier in the above list has been a self-fulfilling prophecy – a lack of suitable alternatives to staying in your family home in old age means there is just not as much demand, and so it goes on. Mayhew finds that many people want to age in the area in which they have lived all of their lives, suggesting that local developments are key. One of his recommendations is, as you would expect, to build more retirement housing (50,000 homes a year) but also to create "urban villages" as part of town centre reimagining to repurpose declining high streets. The Living sector is vital to this urban resurgence and will give retail and leisure the benefit of the "grey pound", making our town centres more vibrant and reflective of the wider community.

> The Living sector is vital to urban resurgence and will give retail and leisure the benefit of the "grey pound", making our town centres more vibrant and reflective of the wider community."

Innovation

Another of Mayhew's recommendations is to embrace Integrated Retirement Communities (IRC), the likes of which are successful in the US, Australia and New Zealand. IRCs are purpose built with different housing options and care packages with mixed tenures available. The argument for more IRCs is compelling from a health outcome perspective – there are fewer falls, shorter stays in hospital and fewer GP call outs. Evidence also suggests people live longer in IRCs than in standard housing. The main blocker to more IRCs (and retirement housing generally) being built, however, is seen as the planning system (a theme for all Living sectors).

The reasons range from suggestions (anecdotally) that Local Planning Authorities do not want to grant permission for schemes that could result in greater health and social care costs for that authority. Policy is also skewed towards delivery of housing for first time buyers or families. There is also the technical designation of later living developments with so-called extra care apartments, with their own front door being considered residential C3 Planning Use and Care Homes being C2 residential institutions. This distinction matters in terms of numbers of approvals and refusals, but also through the viability assessment as C2 use does not trigger CIL or affordable housing contributions.

The Review notes therefore that delivering care homes is easier than delivering retirement housing, and so there is an inherent bias/difficulty in classifying an IRC which combines both. One proposal is that there should be a planning policy presumption in favour of any older housing with care hybrids brought forward. Furthermore, the favouring of developments where local employment is supported also skews the dial towards care homes rather than housing with care. In short, the planning system needs to get with the programme and cater for these more modern solutions for later living so that there is more of an emphasis in how we live in our old age, not how we die.

> This problem is only going to grow in significance without thinking big, removing inertia, innovating and incentivising."

Incentives

Noting the significant blockers, what will persuade policymakers to get on and make changes to help us deal with this issue?

It needs to be a vote winner, right? The government probably has a maximum of two years to make any sort of inroads here before the next election. If it brings forward a policy that, not only helps first time buyers, but also relieves pressure on the NHS and social care, as well as contributes to dealing with the ageing population problem, surely this must appeal? But how do they do this?

Well, it is obvious to all of us (including Mayhew) that, in the same way that successive governments have sought to help first time buyers, helping last time buyers will have the appealing knock on effect of releasing family homes onto the second hand market. Mayhew recommends the following:

- The government should conduct research on financial incentives to downsizing.
- Stamp Duty for last time buyers should be put on an equal footing with first time buyers.
- Home buyers who improve energy efficiency by retrofitting and improving the thermal efficiency of their property should be entitled to a Stamp Duty rebate.
- Financial advice is given to last time buyers who want to move into retirement housing or similar.

All very sensible. However, to pick holes in what is an excellent set of recommendations, I would add that, in various places where last time buyers are mentioned, Mayhew could also consider the increase in the build to rent model for older people. They are often simultaneously last time sellers and first time renters and they too will most likely need a lot of support to make the leap to the rental model for all of the uncomfortable reasons set out above and more.

Surely, change which benefits older people, homeowners and the NHS is a Conservative vote winner and, if this is not obvious, we can spell it out (with thanks to Ipsos Mori):

- **Older people** – a large and growing share of older people vote Conservative.
- **Homeowners** – homeowners tend to be more interested in politics and, it is thought, favour Conservative.
- **NHS and social care** – the NHS continues to be the top issue for British voters.

It is clearly a no brainer that this needs fixing. However, Lucy Frazer MP is the fifth Housing Minister we have had this year and the fourteenth in twelve years. Any expectation that she can "fix this" or even start to grease the wheels of change must therefore be tempered with realism. She has a lot on her plate but this problem is only going to grow in significance without thinking big, removing inertia, innovating and incentivising.

Get in touch

The social impact of BTR

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The social impact of BTR

From gyms, pools, gardens and co-working spaces to group litter picking, charity fund raising and book clubs, the build to rent (BTR) sector is founded on the provision of social value and community.

The over-arching purpose of BTR is to create thriving communities of tenants whose willingness to utilise space and engage with neighbours goes beyond the mere occupation of a building. Done in the right way, the design, placement and use of a BTR scheme has the power to drive real social impact, bringing landlords, tenants, local authorities and local business owners together to connect people, drive footfall, revive underused areas and join up with local needs.

People and planet

Social value also extends to the sustainability agenda, with BTR investors and operators increasingly needing to demonstrate how their schemes are helping to support net zero targets. Sustainability measures need to be factored in at design stage, be it through locally sourced materials or energy saving features. Over time, the sustainability performance of a scheme will undoubtedly ripple through to investment valuations.

Flexibility needs to be built into designs from the start so that new technologies can be accommodated as and when they come to market, allowing BTR landlords and communities to evolve their buildings' uses over time and adapt to their changing needs - decarbonisation needs to be a part of that.

However, the preparedness of tenants to pay what amounts to a green premium for their rents is still up for debate and arguably – for the time being at least – only a factor when sustainability measures are aligned to financial savings, for example when related to energy bills. With the BTR sector still in its infancy and currently making up only 1.5% of UK homes for rent (albeit in high growth phase), the concept of a green premium is unlikely to have fully shown itself just yet. But as the market matures and a greater range of stock becomes available, tenants will have an enhanced ability to vote with their feet, with environmental credentials becoming much more of a differentiating factor. As we are seeing with offices, there will be a flight to quality in BTR and tenants will increasingly make choices based on how their landlords are valuing the planet.

The need to future proof buildings now is critical for investors as it will have a direct impact on future valuations and occupancy rates, helping to ensure their buildings are still performing in 10-20 years' time.

More than just a product

For all the talk of high growth and investment yield, it is worth acknowledging that, different to commercial real estate assets, a BTR product is also a person's home. As such, there is a human element to this investment vehicle that requires BTR landlords to have a heightened focus on social responsibility, as well as a stronger connection with their tenants, in order to build trust and brand loyalty.

The cost of living, isolation and wellbeing are just a few of the issues that BTR landlords need to have an eye on, ensuring regular communication with tenants and offering support where they can. Doing so will drive lease renewals and boost customer satisfaction surveys.

Having a focus on how tenants are viewed and treated is a big shift from the commercial sector and an important consideration for new entrants coming into BTR.

> “The need to future proof buildings now is critical for investors as it will have a direct impact on future valuations and occupancy rates.”

Driving diversity

The BPF and UKAA's recent Who Lives in Build-to-Rent 2022 report showed that 75% of residents are aged 34 or younger. Add to that the inherent pressure on design standardisation to realise cost efficiencies and reduce overheads and there is a growing challenge for the BTR sector to ensure greater diversity of tenant and for it to appeal more to different demographics.

There is also potential for the sector to look at blending schemes to have different unit types targeted at a mix of demographics and ages, such as retirement, care, student and affordable. Doing so would help create more integrated communities, support social value and move away from the current homogenous approach that is focused primarily on younger professionals and a small number of young families.

Such schemes would need to be located in areas that appeal to a range of customer types with varying needs, and able to connect communities with local businesses, leisure districts and transport infrastructure. Through having this holistic perspective and working with local authorities and residents, the BTR sector could begin to redefine what 'place' means for a town or city.

Designed for life

Social value cannot simply be achieved through the construction and occupation of a residential building. It is difficult for tenants to create a sense of community themselves and to develop relationships with their neighbours.

Architects, planners and developers have a role in facilitating this, creating spaces that actively put tenants in contact with each other. Corridors and lifts aren't great places for generating conversation, so we need to think more creatively about how we use the space beyond the four walls of a residential unit.

Tenants want to be able to access space in which they feel comfortable enough to be in their slippers. They want natural daylight, areas to go with their children, a place to work. Offering a variety of accessible amenity and communal spaces is essential in a post-Covid world to make possible the convenient meeting of people.

We need to reconsider how we use the home, right from the design and planning stage, to make it bigger than it's been before. The home of the future can be a meeting place, a coming together of minds, a shared experience. Not just a place to eat, sleep and watch TV.

In that regard, BTR can be a social value trailblazer.

Get in touch

Safety first

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Safety first

The Building Safety Act 2022 (BSA) received Royal Assent in April 2022. Its aim is to improve building safety across the built environment, with a focus on the residential sector.

The BSA is being implemented in stages and a number of areas within the Living sector fall under its regulatory umbrella. The government recently confirmed its intention for purpose-built student accommodation to be subject to the new regulatory regime.

It is critical that the Living sector understands the BSA's current and future requirements and is ready to manage its operational and financial implications.

Currently in force

The BSA amends the Defective Premises Act 1972 (DPA), meaning developers, contractors and design consultants are at a greater likelihood of claims for fire safety related problems.

The DPA imposes a duty to carry out work to a dwelling in a workmanlike or professional manner with proper materials so that the dwelling is 'fit for habitation'.

One key change in this area is an extension to the period in which a claimant can commence a claim under the DPA. A claimant now has 30 years, from the completion of work carried out before 28 June 2022, to bring a claim that a dwelling was not fit for habitation.

For works completed on or after 28 June 2022, the time period for a claim is now 15 years.

Works to an existing dwelling were not caught by the original DPA. The BSA amends this, so that if any work to an existing dwelling causes it to be unfit for habitation, a claim can be brought.

Building Liability Orders have also been introduced, allowing a court to make a related company – a company in the same group of companies – liable if it is 'just and equitable'. These can be made for claims under the DPA or where it relates to a building safety risk.

Under the BSA, interested persons can also apply for a Remediation Order requiring a building owner to remedy specified defects or for a Remediation Contribution Order to require a company to financially contribute to the cost of remediating relevant defects.

New powers contained in the BSA also came into force on 1 September 2022 – enabling the Secretary of State to introduce regulations to establish building industry schemes to secure the safety of people in or about buildings or improve the standards of buildings.

Membership may be conditional upon remedying or making financial contributions towards remediating defects in buildings. The BSA provides for the introduction of further regulations that would prevent a developer obtaining a planning permission or getting building control approval.

> "It is critical that the Living sector understands the Act's current and future requirements and is ready to manage its operational and financial implications."

Evolving legislation

Future provisions may widen the application of the BSA, with many of the remaining provisions likely to be implemented between April 2023 – October 2023.

Secondary legislation is set to introduce a new dutyholder regime applying to all work covered by Building Regulations 2010. This will place duties on those who procure, plan, manage and undertake building work – ensuring it meets the building regulations.

This will be supported by a new 'gateway' regime, providing the basis for building safety risks to be considered at each stage of the design and construction of higher-risk buildings.

The regime will apply to buildings which are at least 18 metres in height or have at least seven storeys, with the definition to be developed in regulations. The government has proposed that the regime would apply to buildings that meet the height requirement and contain at least two residential units, or are care homes or hospitals.

The Building Safety Regulator (BSR), part of the Health and Safety Executive, will become the building control authority for higher-risk buildings.

Secondary legislation will provide the practical details of Gateway two, before construction begins, and Gateway three, the current completion and final certificate phase. Under current proposals, building work cannot commence until the BSR has given Gateway two approval.

A building will not be able to be occupied until the BSR then also issues a completion certificate at Gateway three and the building is registered.

The BSR could have an approval period of 12 weeks for each of Gateways two and three.

These requirements and the new approval period have the potential to delay the commencement of a development and its occupation once completed. This poses a significant risk for certain living sector developments where delays have a major impact, including for purpose-built student accommodation and the wider build to rent market.

Contracts will need to be drafted to set out which party, the developer or contractor, takes the risk of the delay in getting the BSR approvals at Gateway two and three.

Managing change

The importance of improving building safety cannot be overstated.

Developers must continue preparing for the impact the changes under the BSA. That means dealing with the increased likelihood of claims being made for historic defects, but also planning for the introduction of a building safety levy applying to new residential buildings requiring building control approval in England.

A recent government consultation proposes that the levy will be collected by local authorities as part of the building control process and calculated on a 'per unit' or a 'per sq metre' basis. It also proposed that different rates could be set based on local authority boundaries, reflecting land value and house prices, and whether a site is brownfield or greenfield.

The levy will be payable by the 'Client' – likely the developer – and certain building types will be excluded including hospitals, care homes and developments under 10 units.

It is crucial to consider the fees of the BSR during the Gateway process, alongside the costs of joining building industry schemes. Firms may also be subject to higher insurance premiums, as well as overhead costs to comply with the dutyholder and Gateway regimes.

These are all factors that the real estate industry must prepare for as part of the BSA.

Meeting current and future obligations is critical to developers so they can minimise risk, avoid unnecessary costs or legal implications, while keeping project timings on track.

The industry must, however, be provided with the secondary legislation and accompanying guidance. This certainty is key to firms being able to plan effectively, with a clear understanding of the Act's detail and timetable for when provisions will come into force.

Get in touch

The in-house lawyer forum

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7

The in-house lawyer forum

With office attendance down and face to face events less frequent, the ability to meet and network with industry peers has been somewhat stymied in recent years.

This is particularly true for the in-house lawyer community who, having worked through a period of sustained legislative, societal, economic and regulatory change, have arguably been one of the groups to have suffered the most from the inability hear how other IHLs across the industry have managed these challenges.

It was this thought that prompted Shoosmiths to host our inaugural Living sector In-house Lawyer Forum, delivering a series of presentations on some of the biggest legal challenges facing the Living sector, but also providing an opportunity to build new relationships and to 'chat shop'.

Offset or off-centre

First up were planning lawyers Matt Stimson and Lisa Tye, discussing the lessons learned so far around nutrient neutrality and biodiversity. With the UK being found to be one of the most nature-depleted countries in the world, with 15% of UK species threatened with extinction and having the lowest level of biodiversity of all G7 countries, the enormity of the challenge facing us all is stark.

The Environment Act 2021 has ushered in a step change in how developers are expected to support nature and biodiversity in their schemes, with the mindset moving from one of conservation to enhancement, in particular with the biodiversity net gain (BNG) requirement coming in from November 2023.

With a biodiversity uplift of 10% being required of all new developments after this date, the question of how to realise that net gain is a pressing one – onsite or offsite? Where perhaps the natural tendency is to want to preserve – and contribute to – the biodiversity of the location where a scheme is being developed, the counter argument is that it might not necessarily be the most effective location for biodiversity to flourish, suggesting an offsite solution could be preferable. Such calculations need to be had early on in a scheme so as to find the most cost-effective solution.

Layering and additionality are also factors that will need to be considered, requiring developers to think more broadly than just solving an immediate issue, such as nitrates, and look at how a site can deliver multiple biodiversity benefits. Flood alleviation, recreation amenities and educational elements are all supplementary benefits which would bring additional value to a site beyond the obviously quantifiable.

Despite this legislation not currently being included in next year's Retained EU Law (Revocation and Reform) Bill 2022-2023, chances are that the focus on preserving biodiverse habitats won't be taken off the government's agenda any time soon.

You can read a more detailed summary of the BNG requirement on page 37 of this report.

> With 15% of UK species threatened with extinction and having the lowest level of biodiversity of all G7 countries, the enormity of the challenge facing us all is stark."

What lies ahead?

Richard Valentine-Selsey, Head of European Living Research at Savills, presented a fascinating session on what we can expect from the Living sector in terms of performance in the coming years.

Richard talked of how, off the back of a period of sustained value growth, the housing market has reached a tipping point, with further drops in prices anticipated throughout 2023.

Continued divestment of mortgaged Buy to Let landlords and falling rental supply is driving strong rental growth, with BTR volumes expected to continue to see interest, including in the still embryonic suburban single family housing segment.

Rising construction costs, a stretched planning system, environmental restrictions for new developments, end of 'help to buy' and policy uncertainty are just some of the headwinds facing the Living sector. But the sector is proven to be resilient and resourceful when it comes to battling economic and regulatory challenges – this time will be no different.

The Building Safety Act and cladding

Construction partner, Ian Hardman, then discussed the Building Safety Act and the implications for residential developers. Just a few of the points Ian raised included:

- The definition of a higher risk building and the building categories caught by the Act.
- The extension of the limitation period for claims from six years to thirty years "retrospectively" and from six years to fifteen years for new claims.
- The introduction of the right to enable claims to be brought against construction product manufacturers and sellers for their role in causing problems associated with building safety.
- Issues around special purpose vehicles and Building Liability Orders.
- The role of the new Building Safety Regulator.
- The creation of a "gateway" regime, which will be intended to ensure that those involved in a project turn their minds to building safety issues at three distinct points (gateways) during the design and construction process.
- The need for a 'golden thread' of good quality building safety information to be created before building work starts and kept updated throughout the design and construction process.
- The introduction of a Building Safety Levy to apply to developers of any residential or mixed-use building to pay for the remediation of orphaned buildings, where no person is available to take responsibility for repairs.

Shoosmiths trainee, Eloise Ryan, then talked of the wider scale and impact of the Building Safety Act for developers, with the predicted total cost for the Living sector being around £3 billion, £812 million of which will be seen in the next two years. The Construction Industry Council has expressed concerns that the burden of the Act could force competent professionals to leave the sector, leading to even more challenges around labour shortages and the viability of projects.

Rakhee Kotecha, head of legal disputes and compliance at Countryside, then discussed the steps that Countryside have gone through since Michael Gove's building safety announcement on 10th January 2022 in order to prepare and begin implementation of the requirements of the Act.

Rakhee talked of the limitation period and the challenges of being able to access building records beyond 15 years, as well as the difficulties in obtaining contributions to liabilities from third parties for buildings completed more than 12 years ago. These challenges have led Rakhee to establish a dedicated specialist business unit to deal with legacy buildings, as well as create new streamlined systems and processes to ensure that there is a consistent and proactive approach to fire safety for legacy buildings across Countryside.

You can read a more detailed summary of the BSA on page 21 of this report

The resurgence of ESG

Joanna Tomlinson, consultant at sustainability consultancy, EVORA, presented on how ESG issues have been elevated into the board room in recent years, now being embedded into corporate strategies across all industries.

However, with this heightened focus comes closer scrutiny of sustainability claims and greater risk of 'greenwashing'. Now more than ever, organisations need to ensure they are able to support their ESG claims, for fear of regulatory attention. A combination of new commitments and regulations, concerns of stranded assets across portfolios and increasing public interest is leading to greater transparency of operations.

Joanna then talked of the sustainability reporting landscape and the various frameworks, ratings, global goals and principles and regulations, and how complex the market now is in terms of compliance.

The ESG landscape is fast moving, and in-house lawyers will need to stay close to developments in this area.

All in all, a content-packed day, with hopefully some fun thrown in for good measure. If you would like to join us for future IHL Forums, please contact anna.lowe@shoosmiths.co.uk.

Get in touch

The ESG landscape is fast moving, and in-house lawyers will need to stay close to developments in this area."

Changes now – Supreme Court rules on drop-in planning applications

Author:

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Changes now – Supreme Court rules on drop-in planning applications

Making variations to planning permissions as a scheme evolves is rarely a straightforward process, particularly where the changes go beyond the scope of non-material or minor material amendments.

One tool that has been used extensively to achieve variations is the 'drop-in' planning application where a new consent is granted for an area that overlaps with the original permission. The conditions and any planning obligations for the new consent are tailored to ensure that they dovetail with those associated with the original permission. However, reliance on this process has been brought into question as a result of litigation concerning a site at Balkan Hill, near Aberdyfi in Snowdonia.

The Hillside litigation

This site has a long and controversial planning history.

Planning permission was granted in 1967 for an estate of 401 dwellings. The planning permission was accompanied by a master plan, which specified the location of each house and the layout of the roads serving the development.

However, the requirements of the 1967 permission have been more honoured in the breach as of the 41 houses that have been built, none of them reflect the requirements of the master plan.

In practice, the developers have relied on a series of separate planning applications to develop the site out. In 2017, the Snowdonia National Park Authority decided that enough was enough and informed the owners of the site, Hillside Parks Limited, that it could no longer continue to build out in accordance with the 1967 permission as it was not physically possible to carry on with the development in a manner consistent with the master plan.

This prompted Hillside to take High Court proceedings seeking declarations that the 1967 permission remained valid and could be carried out to completion as set out in a High Court declaration obtained back in 1987. This had stated that the 1967 permission could still be lawfully completed in accordance with the master plan "at any time in the future".

In contrast to the 1987 High Court declaration, both the High Court and the Court of Appeal decided that that development pursuant to the 1967 permission could not now lawfully be continued. The Supreme Court has now endorsed this conclusion.

The Supreme Court decided that the effect of the 1967 permission was to authorise development as an integrated whole – rejecting Hillside's argument that where planning permission is granted for multiple units, the permission should be interpreted as authorising a number of discrete acts of development.

Accordingly, the starting point for interpreting a planning permission for a multi-unit development is that it does not authorise a set of permissions to construct each individual element of the scheme. It is important to note that the Supreme Court acknowledges that a planning permission may include clear express provisions that provide that individual elements are severable – more of which later.

Guidance

The judgment provides helpful guidance on issues arising from overlapping permissions:

- **Pragmatic Pilkington** – The Supreme Court has endorsed the so called 'Pilkington' principle – with a health warning. Pilkington provides that a planning permission does not authorise development if and when, as a result of physical alteration of the land to which the permission relates, it becomes physically impossible to carry out the development for which the permission was granted – without a further grant of planning permission.

  However, the Supreme Court stressed that the Pilkington principle should not be taken too far. The benefit of a planning permission will not be lost if there are minor rather than material departures from it and this is particularly relevant when considering changes to large multi-unit developments.

- **Abandonment abandoned** – The Supreme Court rejected Hillside's argument that the Pilkington principle was rooted in a principle of 'abandonment', i.e. that the right to develop land under a planning permission will be lost if a landowner acts in a way, which would lead a reasonable person to conclude that the right has been abandoned. The Court confirmed the general principle that there is no scope in planning law for a planning permission to be abandoned mid development.

- **All is not lost** – The Supreme Court expressed the view that if a development cannot be completed fully in accordance with the planning permission, then this does not render everything built unlawful – even in relation to a single building. This was a question left open by the Court of Appeal and if it had gone the other way could have resulted in a raft of retrospective planning applications for works that have already been consented.

Where do we go from here?

So, how does this impact the approach to varying planning permissions? Here are some initial thoughts:

If the variation can properly be regarded as a non-material or minor material amendment to the planning permission then specific statutory procedures remain available.

When it comes to an existing consent, it is worth reviewing it to see if it does include clear express provisions to the effect that individual elements are severable. For example, if the development is divided into discrete phases this may well be the case.

In terms of framing new permissions, in order to build in flexibility, it is worth considering including conditions that make it clear that individual elements are severable.

If, as in the case of Balkan Hill, it is apparent that the planning permission authorises development as an integrated whole and cannot be disaggregated, the Supreme Court did offer one possible way forward. This is an appropriately framed additional planning permission that modifies the development, but which covers the whole site.

The developer would then benefit from two separate permissions and could proceed to implement the second. As what is being applied for is the modification of the approved development scheme rather than a new 'stand-alone' proposal. This should influence both the supporting information that should accompany the application and also the approach to its determination.

Final thoughts

The Explanatory Notes to the Levelling-up and Regeneration Bill (LURB) suggest that "the existing framework for varying planning permissions is often seen as confusing, burdensome, and overly restrictive by applicants and local planning authorities. Recent case law has compounded these issues".

While the Supreme Court has gone some way to providing guidance on the approach to variations, uncertainties remain and the case for a more proportionate mechanism to achieve scheme amendments remains compelling.

Whether LURB's new s73B mechanism to allow non-substantial changes to be made to planning permissions will fit the bill remains to be seen.

Hillside Parks Limited v Snowdonia National Park Authority

Get in touch

> Uncertainties remain and the case for a more proportionate mechanism to achieve scheme amendments remains compelling."

A place for living

Author:

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A place for living

Over the last eighteen months, Shoosmiths has been working with Radix think tank, the British Property Federation, charitable trust Power to Change, local government network New Local and the High Streets Task Force on an ongoing project to explore how retailers, local authorities, asset owners and community organisations can better work together to access and use space in our urban centres to support positive social change.

We published a report back in June, A Platform for Places, which featured a set of proposals designed to enable new businesses to launch from premises in our towns and cities, taking inspiration from existing community-focused schemes from around the country that are already helping to drive footfall in underutilised urban areas, rejuvenating stale retail districts and breathing new life into high streets.

The role of residential

The next step in the planned resurgence needs to consider the role the Living sector has to play in urban revival.

As we come to terms with the idea that our urban centres have long been oversubscribed to retail and that a rebalancing of asset types is now taking place – a process that started years before the pandemic accelerated it – the need to create greater diversity of tenant is now accepted as an essential part of the solution.

The RICS's UK commercial real estate impact report[1], published in March 2022, showed that the capital value of all types of commercial assets in the UK nearly doubled from 2000 to 2020. However, since 2018, the value of retail assets, which amounted to over 40% of total commercial real estate value between 2000 and 2013, now represents less than 30% by 2020. From life sciences and healthcare to education and light logistics, this decline has led to a new wave of sectors emerging to plug the gap left by retail. But what of residential?

It seems odd to be talking of residential as being the new kid on the block but, with thousands of homes in our town centres having been transferred into commercial use over the last couple of decades, efforts are now being made to reverse that trend. With research suggesting the optimal ratio between commercial and residential spaces is 0.25[2], more and more developers are taking advantage of newly vacant or underused retail space to re-urbanise residential and, in so doing, create a more harmonised, economically resilient urban property ecosystem, whilst at the same time supplying a readymade customer base for the retail, leisure and offices that remain.

It was recently reported that the number of BTR homes in the UK is projected to increase fivefold to reach 380,000 by 2032 and become a sector worth £170bn[3], with the majority being in urban centres including Manchester, Birmingham and Leeds, as the most popular destinations following London. Even with the headwinds of rising operational costs, affordability and land availability, this level of predicted growth suggests the residential market will prove resilient through the oncoming economic storm.

This is borne out through notable examples of urban centre repurposing currently happening, including Hammerson's plans to convert a major portion of its Oracle shopping centre in Reading into 475 new homes for rent; Unibail-Rodamco-Westfield's plans for 1,225 BTR homes at its Westfield Stratford City site; and L&G and Urbo's Sheffield West Bar development, a £300m mixed-used scheme that contains 368 BTR apartments.

At a more macro level, a recent survey[4] from Knight Frank showed that 80% of leading institutional investors are expecting to 'significantly increase' their exposure to residential assets over the next five years. With the number of full-time undergraduates forecast to increase by over 240,000 in the next five years, the number of over 65s expected to increase from 11m to 13m in the next ten years and with mortgage rates hitting their highest level in 14 years, it is easy to see why the rented residential markets of BTR, student and retirement are attracting so much attention from investors looking to diversify their portfolios.

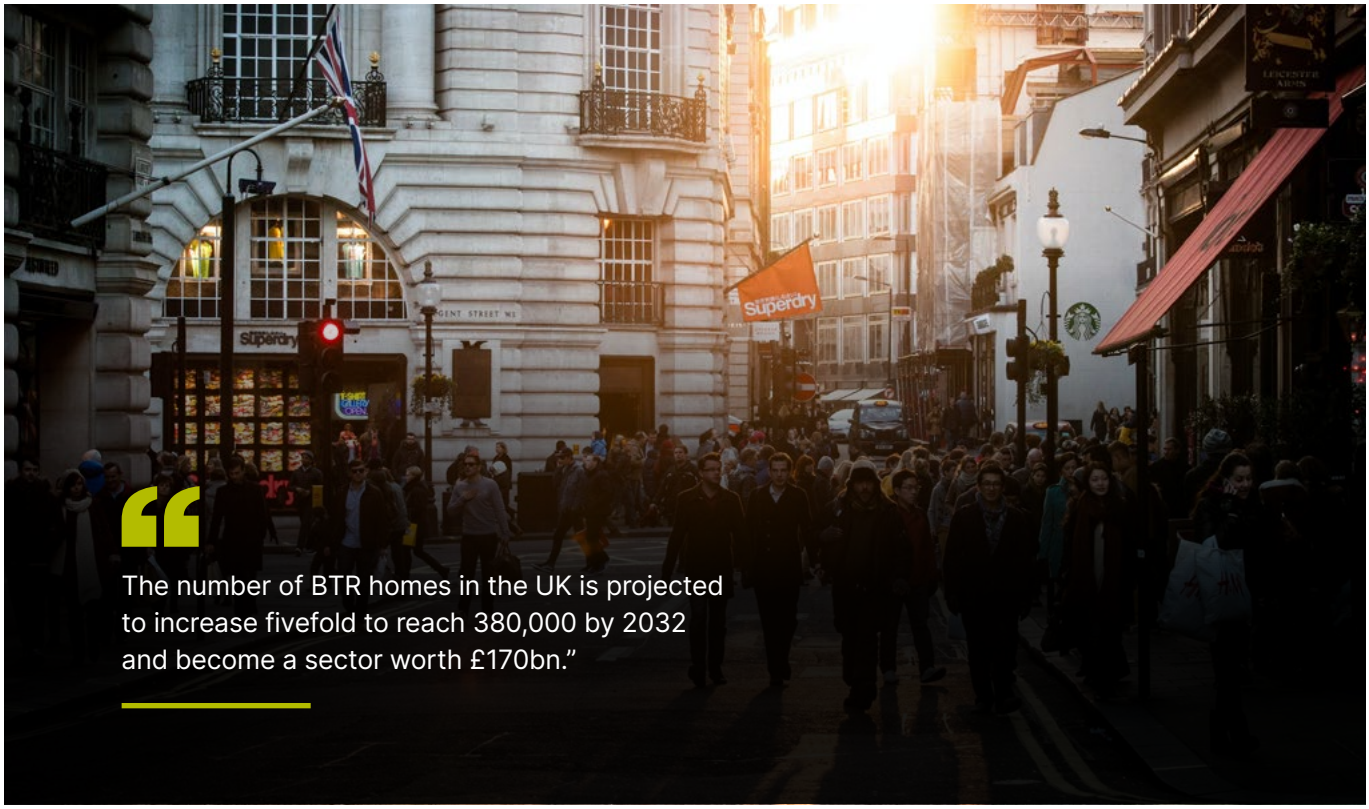
As such, the UK's Living sector is showing itself to be a white knight, enabling positive urban regeneration that meets social, economic and environmental objectives.

[1] https://www.rics.org/contentassets/ba1019b025b54ac1ab8db979115acc2c/rics-uk-commercial-real-estate-impact-report_march-2022.pdf

[2] https://www.sciencedirect.com/science/article/abs/pii/S0306261919304283?via%3Dihub

[3] https://btrnews.co.uk/build-to-rent-to-increase-fivefold-over-next-decade/#:~:text=Over%20the%20next%20decade%2C%20completed,Federation%20(BPF)%20and%20Savills

[4] https://content.knightfrank.com/resources/knightfrank.com/reports/residential-investment-report/residential-investment-report-2022.pdf



> The number of BTR homes in the UK is projected to increase fivefold to reach 380,000 by 2032 and become a sector worth £170bn."

Retail to resi

It has been well trailed that John Lewis and Lloyds Banking Group are entering the investor landlord market, converting underutilised space across their portfolios into residential. Lloyds is said to be building up a portfolio of 50,000 rental homes by 2030 and John Lewis is planning on creating 10,000 rental homes by 2030.

However, while the idea of changing empty shops into occupied homes is sound (helping to meet housing targets, more effective use of space, rejuvenating derelict districts), the process of doing so is not always easy.

Urban repurposing can present numerous challenges including: the cost of renovating what is often a neglected site; the fact that retail values have historically tended to be higher than residential values, impacting on investment yields; and the difficulties of designing a living space from what was once a commercial footprint. There is also the fact that empty units are often dispersed around a town centre, separated by currently occupied units that are owned by various landlords, making viability a challenge with limited economies of scale.

And then there is planning. The introduction of permitted development Class MA in August 2021, allowing for a change of use from retail or office to residential without the need for planning permission, offers a potential route through the planning process. However, there are significant conditions and limitations associated with Class MA (including prior approval requirements on transport, contamination, flooding, noise, and natural light, as well as a requirement that the unit must have been vacant for at least three continuous months). Some local authorities also have Article 4 Directions in place restricting the use of Class MA permitted development rights because of concerns relating to the vitality and viability of town centres.

With this in mind, the meshing of residential with other uses in our urban centres clearly offers huge benefits but it is worth considering the bigger picture, in particular how a new development will interact with nearby existing buildings and infrastructure. Working with local authorities, communities, asset owners and corporate occupiers to understand the overall vision for a place is important if we are to create truly liveable neighbourhoods. In the age of hybrid working/living, the need for flexibility and convenience is only going to grow and we need our urban spaces to work for us in this regard.

> The high street is not dead but it is being challenged like never before – the return of residential could be just what it needs."

Retrofit v redevelop

M&S has famously found itself at the centre of the retrofit v redevelop argument – the retailer claimed that its Oxford Street store could not be modernised and that demolishing the existing structure and developing a far more energy and carbon efficient building in its place would be the most sustainable option. The counter argument was that the demolition itself would emit 40,000 tonnes of carbon and so it would be better to retain and retrofit the existing building.

While M&S is looking to develop the site for retail and office space, the challenge to preserve our heritage assets is happening up and down the country and, with residential being positioned as a core ingredient in our future high street mix, there is a huge opportunity for developers to reuse existing sites to create homes of real architectural interest and value. In so doing, not only does the Living sector have a chance to move our towns away from the identikit model of the last twenty years, but it can also lead the way on climate-conscious development, helping to build and create sustainable communities for the long-term.

We need our towns and cities to be places that connect buildings with people, providing access to housing, mobility, retail, workplaces, services, education, and leisure, whilst also being vibrant, inclusive and catering to all sections of society.

Our A Platform for Places report presented some excellent recommendations for how we can move our town centres on from what has been a primarily retail-centric approach to support more community businesses to access space – the next challenge is to look at how we can further enrichen the town centre blend to accommodate the Living sector, from BTR and co-living to PBSA and retirement.

As Alexander Graham Bell once said "when one door closes, another opens" – rather than mourn the loss of certain retailers on our high streets, we need to see the opportunities presented by newly available space to grow thriving, new communities with social value at their heart. With React News reporting that €151bn is anticipated to be invested in European Living sectors over next five years, it's safe to say that the market is going to be active.

The high street is not dead but it is being challenged like never before – the return of residential could be just what it needs.

Get in touch

Countdown to new biodiversity net gain requirements

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10

Countdown to new biodiversity net gain requirements

New biodiversity net gain (BNG) requirements are set to be enforced in November 2023, giving developers and the wider real estate industry less than 12 months to prepare.

The legislation will require all new developments in England, bar a few exceptions, to deliver at least 10 per cent BNG – impacting commercial and residential developers.

The requirements form part of the Environment Act 2021, which received Royal Assent in November 2021. Secondary legislation will enable the relevant provisions to take effect and require that the natural environment is left in a better state than it was pre-development.

This legislation is likely to pose new financial and operational challenges for developers. It is, therefore, critical that they realise the extent of these changes and ensure they are prepared when it comes to how biodiversity will be measured, and the routes to achieving net gain.

Current status

There is currently no legal requirement to deliver at least 10 per cent BNG.

The National Planning Policy Framework does require local authorities to consider opportunities for contributing to and enhancing the natural and local environment. This is a material consideration when determining planning applications though, and is capable of being outweighed by other material considerations on a case by case basis.

Some local planning authorities are already embracing biodiversity policies, with analysis from Cater Jonas revealing that one quarter of 322 English local planning authorities had either adopted or were preparing BNG requirements in their local plans.

Once the new provisions are in force, the minimum 10 per cent net gain will automatically have legal effect and local authorities will not need to update their plans to account for it. Some authorities may assess requiring more than 10 per cent net gain. This will need to be included in their revised policies, with appropriate justification for doing so.

> Developers will need to monitor the delivery of BNG, with local planning authorities having a duty to report on BNG delivery for their local area."

Legal mechanism

A new standard planning condition will be used to secure BNG. This will be a pre-commencement condition to submit a scheme to the local planning authority for approval.

The scheme will set out how the minimum BNG target will be delivered, either onsite or offsite, with provisions for ongoing monitoring and maintenance for a minimum of 30 years following completion of development. Section 106 obligations and conservation covenants – introduced by the Environment Act 2021 – will outline how schemes will be implemented.

Section 106 obligations will most likely be used when delivering BNG offsite, where the offsite land is within the local authority's administrative area.

Conservation covenants can also be entered into between a landowner and a 'responsible body' designated by the government, with a likely use being when a biodiversity scheme is located away from the main development site and outside a local planning authority's area.

BNG will be evaluated using the 'biodiversity metric' – a tool created by the Department for Environment Food and Rural Affairs. This will enable developers to calculate the biodiversity value of a site, based on its distinctiveness, condition and extent of habitats, while translating any losses and gains resulting from a development into an overall score.

The pre-development biodiversity value of a site will be compared to the post-development value, taking into account any measures a developer proposes to enhance biodiversity. The post development value must exceed the pre-development value by at least 10 per cent.

Developers will need to monitor the delivery of BNG, with local planning authorities having a duty to report on BNG delivery for their local area.

Onsite or offsite

BNG can be delivered either onsite or offsite, or through a combination of onsite and offsite solutions. This follows the recognition that BNG cannot always be provided fully onsite.

The Environment Act 2021 introduces 'biodiversity gain sites' as a means of securing the delivery of BNG offsite. A market is to be created to bring forward suitable sites for BNG purposes, which will supply 'biodiversity units' through a national register run by Natural England. Landowners will be able to enhance the biodiversity of their land to a sufficient standard and register it as a biodiversity gain site worth a certain number of units.

Until this market is established, or where there remains a shortfall, developers will be able to purchase biodiversity credits from the government – avoiding development delays. Prices may, however, be set higher to encourage onsite or offsite provision in the first instance.

Developers must be taking steps now to ensure they are ready for the new BNG requirements, particularly for schemes that are likely to be consented from November 2023.

Identifying the BNG requirement of a site as early as possible, preferably at acquisition stage, should be a key consideration for developers. With the support of the metric tool and advisers, developers can evaluate what will be required to achieve the 10 per cent uplift and whether it may be delivered fully onsite or may need an offsite solution.

This due diligence will have financial implications for developers, before they even consider purchasing biodiversity units, or providing and managing net gain schemes. This may impact viability and some sites may not be worth pursuing if the requirement cannot easily be met.

It is important to remember that there are opportunities associated with BNG.

Enhancing biodiversity onsite can allow developers to protect the environment and create more attractive schemes – putting placemaking and green spaces at the core of their approach. When overdelivering on a scheme, there may also be an opportunity to sell or bank surplus biodiversity units for other schemes, as indicated in DEFRA's consultation.

Delivering on these requirements could also provide dual benefits by enabling developers to deal with other environmental factors, including flood attenuation or nutrient neutrality.

Furthermore, land promoters are able to bring a specific skillset in being able to utilise wider land promotion for BNG purposes, offering a useful ally in meeting BNG targets.

These potential opportunities must be grasped in order to protect the environment, provide a better experience for residents, and ultimately, futureproof developments for years to come.

Get in touch

Renting property in Wales

Author:

Simon Foster
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Renting property in Wales

Fundamental changes to the housing law regime in Wales took effect on 1 December 2022 when the Renting Homes (Wales) Act 2016 came into force

New form of rental agreement

The Renting Homes (Wales) Act 2016 (the "Act") introduces a new form of rental agreement for residential property in Wales known as an "occupation contract". The Act largely dictates the content of that contract and introduces new rights for "contract-holders" (formerly known as tenants or licensees). The majority of residential tenancies granted after 1 December 2022 will now be occupation contracts and existing residential tenancies and licences will have automatically been converted into occupation contracts on that date.

There are two forms of occupation contracts: a standard contract that applies to the private rental sector and a secure contract that applies to social housing.

What must a standard contract contain?

Standard contracts can be granted for a fixed term or can be periodic. A fixed term standard contract will terminate at the end of the fixed term and, at that point, will automatically convert into a periodic standard contract if the contract holder stays in possession.

Every contract holder must be given a written statement of their occupation contract by their landlord within 14 days of the contract holder moving into the property. Where a tenancy agreement has converted into an occupation contract, the landlord has six months to give the contract holder a written statement.

The Welsh government has issued model written occupation contracts that most landlords are likely to use.

The Act introduces terms which are defined as "key matters", "fundamental terms", "supplementary terms" and "additional terms".

Key matters and fundamental terms are set out in the Act and must be included within an occupation contract. They cannot be excluded. However, some fundamental terms can be amended by the agreement of the parties and provided that the amendment benefits the contract holder.

Supplementary terms are also included within the model contracts but may be amended by the landlord provided that they are agreed by the parties.

Additional terms are terms that the parties negotiate and agree to include within the occupation contract. For example, a term allowing the contract holder to keep pets.

Termination of occupation contracts

An occupation contract can only be terminated in accordance with the fundamental terms that are incorporated into the contract by the Act.

A landlord has the right to seek to terminate an occupation contract where there is a breach of contract by the contract holder.

Provided certain requirements are met, a landlord also has the right to terminate the contract where there is no fault by the contract holder and, in this regard, the Welsh Government has not (to date) indicated that it will follow the UK Government's stated intention to legislate to outlaw no-fault evictions.

A contract holder can terminate a contract on giving the landlord four weeks' notice, provided that such notice does not end before the expiry of any fixed term (unless there is a break clause in the contract).

> "The Renting Homes (Wales) Act 2016 introduces a new form of rental agreement for residential property in Wales."

Termination on breach (general rules)

If a landlord wishes to terminate for breach of contract, it must serve a possession notice on the contract holder.

The amount of notice which needs to be given depends on the nature of the breach relied upon. If the breach concerns antisocial behaviour or other prohibited conduct, a landlord can make a possession claim as soon as it gives the possession notice. For other breaches (save for serious rent arrears), the landlord must wait for one month before making a possession claim.

If the contract holder remains in possession after the expiry of the possession notice, the landlord needs to issue a possession claim. All claims for possession based on breach of contract are discretionary and the Court must be satisfied that it is reasonable to make a possession order. When exercising its discretion, the Court must have regard to the probable effect of the Order on the contract holder and any permitted occupiers, the effect on the landlord of not making the Order and the nature, frequency and duration of the contract holder's breaches. The Court retains the ability to postpone possession if it considers it reasonable to do so. If it is reasonable to do so, possession can be ordered even if the breach has been remedied by the date of the hearing.

After six months from service of the possession notice, the landlord loses the right to make a possession claim.

Termination on breach (serious rent arrears)

The procedure for termination where there is serious rent arrears is slightly different. Whether there are serious rent arrears will depend on the amount of rent unpaid and whether the rental periods are weekly, monthly, quarterly or yearly. For example, where rent is payable monthly, a contract holder will be in serious rent arrears if at least two months' rent is unpaid.

A landlord must give a contract holder a possession notice specifying the serious rent arrears ground. Possession proceedings cannot be issued until 14 days from the date of giving the possession notice and any claim for possession must be brought within six months of the date of the possession notice. The contract holder must remain "seriously in arrears" on both the day the possession notice is served and on the hearing date. If that is the case, the Court must make an order for possession.

No-fault termination

A landlord may bring a periodic standard contract to an end by giving not less than six months' notice to the contract holder or two months' notice where the contract is a converted contract.

A landlord cannot serve a notice to terminate the occupation contract within the first six months starting with the occupation date stated in the contract. If the contract is a converted contract, the relevant period is four months starting from the date of occupation.

In order to serve a no-fault eviction notice, the landlord must have provided the contract holder with a written statement and information relating to the occupation contract, have complied with the tenancy deposit requirements, have complied with the Welsh equivalent of the Tenant Fees Act, and have served EPCs, gas safety certificates, electrical condition reports and smoke and carbon monoxide alarms on the contract holder. The Act also requires the landlord to be registered and licensed with Rent Smart Wales.

If the contract holder does not vacate the property after service of the no fault eviction notice and the landlord wishes to recover possession, they must serve the possession claim within two months of the date specified in the landlord's notice.

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12

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