







# ASSET

PROFESSIONAL PAPERS FROM THE

# ACES PRESIDENTIAL CONFERENCE

BASILDON, SEPTEMBER 2008



The Holiday Inn, Basildon  
– venue of the ACES Presidential Conference,  
Autumn 2008

# ACES

## The Association

ACES, the Association of Chief Estates Surveyors and Property Managers in the Public Sector, represents the chief estates and property management professionals in the public sector throughout the UK.

The Association was formed in 1986 with the amalgamation of two long-standing bodies, ALAVES, the Association of Local Authority Valuers and Estates Surveyors (founded in 1949), and CLAVA, the County Valuers and Land Agents Association (founded in 1908). Until 1995 the amalgamated Association operated under the name of LAVA, the Local Authority Valuers' Association.

## Membership

Membership of ACES is open to the senior estates surveyors and property managers from each local authority or other public sector organisation.

## Meetings

ACES has a very active branch structure with branches covering the whole of England, Scotland and Wales. There is also a Rural Branch for those members involved in rural property management or the work of County Councils.

Most of the work of the Association is carried on in the regular branch meetings held around the country. At a national level there are usually two professional conferences each year and an Annual Meeting. The occasional Study Days on major topics are also open to non-members of the Association.

## Publications

ACES has a full programme of publications of professional interest to the public sector surveyor. The yearbook 'Per Annum' contains up-to-date contact information for all members.

'The Terrier' is the Association's regular journal and is published quarterly. Each year, there are also usually two editions of 'Asset' containing professional papers compiled from ACES conferences and dealing with the latest issues.

## Government liaison

One of the primary roles of ACES is liaison with central government and this is carried out through a variety of means, both informal and formal, such as the DCLG/ACES Working Party and the Valuation Liaison Group.

## Further information and website

Further information on the Association and on membership can be obtained from the ACES Secretary at the address on this page or by visiting the ACES website at [www.aces.org.uk](http://www.aces.org.uk)

# ASSET

## The Publication

This edition of ASSET is a compilation of edited transcripts of the verbal presentations, including overheads, given at the ACES Presidential Conference in Basildon in September 2008.

Some are formal briefing papers; others are more informal and conversational in style.

## Use

The professional papers in this edition of ASSET have been prepared for the use and information of ACES members but no liability is accepted by ACES or by the authors for the contents of the documents or for the consequences of the use of any of the material.

## Copyright

The copyright in the text of each individual paper remains with the author of that paper.

## Copies

Additional copies of this or of any other ACES publications may be obtained from the ACES Secretary, Tim Foster MRICS, 23 Athol Road, BRAMHALL, Cheshire, SK7 1BR.

Tel: 01614 – 399 589

Fax: 01614 – 407 383

Email: [secretary@aces.org.uk](mailto:secretary@aces.org.uk)

## Thanks

ACES would like to record the Association's gratitude to DTZ, Basildon Renaissance Partnership and Nabarro's whose generous sponsorship made it possible to produce this edition of ASSET.



Thanks also go to our other sponsors who supported the Basildon conference, Malcolm Dawes Consultancy Ltd; NPS Property Consultants and the Tribal Group.

# CONTENTS

08.9/01	ARE WE POSITIONED TO DELIVER?	5
	James Grierson, Chairman Director of Corporate Real Estate Consulting DTZ Betty Albon, Corporate Property Officer, St. Edmundsbury Borough Council	
08.9/02	DELIVERING PLACES – Panel Session	13
	Chaired by Liz Peace, Chief Executive, British Property Federation Bala Mahendran, Chief Executive, Basildon District Council Stephen Oakes, Regional Director, London and Thames Gateway and English Partnerships Alan Cherry CBE, Founding Director, Countryside Properties Stuart Yeatman, Property Director, John Laing Projects and Developments	
08.9/03	COMMUNITIES AND PLACE SHAPING – The Homes and Communities Agency	27
	David Edwards, Director for Southern England, English Partnerships	
08.9/04	ROANNE AND PROCUREMENT	33
	Elizabeth Cooper, Partner, Nabarro’s Project Team	
08.9/05	DELIVERING REGENERATION – In a Changing Financial Climate	41
	Ian Butt, Development Project Director, Basildon District Council – Tim Johnson, Director, DTZ	





# ASSET

## ARE WE POSITIONED TO DELIVER?

ACES Presidential Conference  
Basildon, September 2008

ACES Paper No. 08.9/01 by

**JAMES GRIERSON**  
DTZ

**BETTY ALBON**  
St. Edmundsbury Borough Council



## THE AUTHORS:

JAMES GRIERSON is a Chartered Surveyor and Director of DTZ. Prior to its merger with DTZ, James was a Partner with Donaldsons for 17 years. During the 1980s he specialised in advising local authorities, financial institutions and property companies on the development of shopping centres and other large-scale commercial property developments across the North of England.

In the early 1990s he moved into a business development role, becoming Chairman of the firm's consulting business. This role was focused on public sector organisations and James worked with many Councils, Government Departments and Educational institutions on development, town planning and strategic property consultancy projects.

Following an undergraduate degree in Land Economy at Aberdeen University and ten years of work, James studied for an MBA at Bradford University Management Centre. He is also a Member of the Chartered Institute of Marketing.

BETTY ALBON is the Corporate Property Officer for St Edmundsbury Borough Council. She provides strategic property advice for the Council in property disposals and acquisitions and specialises in asset management and property review, and asset valuations for capital accounting purposes. She is also involved in major projects including town centre regeneration and the Public Service Village Phase 1, a new office development for co-located district and county services in Western Suffolk, which is due to be completed in late 2008.

Betty was President of ACES in 2005-06 and continues as the Communications Officer and the Valuation Co-ordinator and is a member of ACES Council. She is also a regular member of working groups at the RICS and represents district authorities on the National Property Performance Management Group.

## CONTENTS:

INTRODUCTION . . . . .	7
THE BIG PICTURE . . . . .	7
THE GLASS CEILING . . . . .	8
THE ACES SURVEY, SUMMER 2008 . . . . .	9
HEADS OF ESTATES . . . . .	9
WORKLOAD PRESSURES AND RESOURCING . . . . .	10
SUCCESSION PLANNING . . . . .	10
WORKING WITH THE PRIVATE SECTOR . . . . .	10
RESPONSIBLE APPROACH? . . . . .	11
THE MANAGEMENT OF THE ESTATE . . . . .	11
RELATIVE LACK OF INFLUENCE . . . . .	11
CHALLENGES AND OPPORTUNITIES . . . . .	12

# ARE WE POSITIONED TO DELIVER?

## INTRODUCTION

The purpose of this paper is to review the context in which we provide public/corporate estate management services and to consider some of the principle outcomes of the ACES Survey undertaken in the summer of 2008.

## CONTENTS

- **The Big Picture**, external influences and how these are affecting property people.
- **ACES Bath 2006**, the glass ceiling and 2 years on – have we risen to the challenge?
- **ACES Survey**, summer 2008.

## THE BIG PICTURE

*Strong and Prosperous Communities* was the title of the Government's White Paper of 2006. It focussed on reshaping public services, involving local citizens, empowering communities and partnering with the third sector. Since then the latter has expanded into The Quirk Review dealing with the managing and owning of assets, the use of well being powers, option appraisal, and trying to give or sell properties to the third sector. That was the big influence two years ago but in many ways it has not started to bite – yet.

*Comprehensive Spending Review 2007* CSR 2007 and finance are a much bigger pressure. The public sector is told to achieve £300 million worth of cash releasing savings to include £4.8 billion worth of asset sales. At 5% interest these sales will provide £240 million of the £300 million and the remaining £60 million is to be achieved through PFI schemes and asset sharing.

Another element of the CSR is the Office of Government Commerce (OGC) Operational Efficiency Programme officially launched in July 2008. This looks at such topics as cross cutting, front office, back office, IT, collaborative procurement, and, again, at asset sales. The OGC is producing a steady stream of documents including a paper in Summer 2008 that is to be regarded as a test year in which to establish measures for the 09 budget and CSR 2010. We have had the review for 2004 to 2007, 2007 to 2010 and 2010 to 2013. It is not going away. Local government will be continually being pushed on asset sales, particularly for housing. And property is a big issue on the revenue side in terms of minimising revenue

costs and implementing again the OGC High Performing Property initiative.

*The Modernisation Programme* is another big influence. The Varney Report deals with service transformation. The Audit Commission is taking up the shared use of space in a big way. Strategic Partnerships (Lyons) is still part of the Government agenda as are new methods of working such as hot desking and home working.

*Government Guidance Galore*, in the form of papers and pamphlets, continues to bombard local Government. CLG, as part of CSR 2007, brought forth the AMP Strategy, Building on Strong Foundations, which in theory we perhaps should not have seen as it was sent to our Chief Executives, but it nevertheless probably ended up on our desks, and probably unread. The Strategy is the same ideas all over again; sustainability generally, how properties can be made more sustainable, sales, releasing land for housing, and Quirk are all in there under the collective banner of making more efficient use of our assets. The OGC has produced 2 papers, the National Efficiency and Improvement Strategy and High Performing Property, with their Maturity Matrix that is addressing Government Departments rather than local authorities. When I first saw this Maturity Matrix aimed at Government Departments, I wondered why we in local government had not had the luxury of two years to nominate someone to take forward asset management with a further two years to do it. The Matrix is a highly technical programme when compared to how we were thrown into asset management back in 2002 with the requirement to produce asset management plans almost straightaway. But at least Government is still focussed on asset management efficiency.

There is more guidance about asset management and efficiency in the RICS AMP Guidelines, and its 8 pamphlets. ACES made a major contribution to this work.

Finally IDeA has published Front Office Shared Services, a study started in 2007 and continued this year through looking at projects where local authorities have taken on the idea of front office shared services including a case study of St Edmundsbury Borough Council's Public Service Village project.

*Performance and Bench Marking* CPA/CAA. This is all to do with property, strategic property delivery and outcome-based delivery. It might be a bit of a drag to fill in the tick boxes but it puts property right at the forefront of achieving change in local authorities and it is an opportunity for us to promote ourselves as well at what we do.

On benchmarking there are the OGC benchmarks and the NaPPMI indicators, a national property performance management initiative, again with a major ACES input. These indicators involve efficiency, cost per work station, costs floor space per employee, effectiveness, work space productivity, environmental sustainability again, energy costs, water costs and utilities, operability, which

is property condition, planned maintenance, and so on; all the things that we should be dealing with and taking the initiatives on.

Sustainability and climate change is now firmly on the agenda and the rate of change of our climate seems to be increasing in a frightening way. The question is what are we going to do about it as property people with our major involvement in strategic property delivery and outcome based delivery?

*Local Government Reorganisation* is something that seemed relatively unimportant until 3 or 4 months ago when Suffolk became one of the areas that the Boundary Committee began to get involved in. Now the County and the districts are at disagreement pending the final decision.

The rise of the generalist corporate director and the demise of the professional corporate director is another aspect of the change in the way we are organised. The current emphasis is on having general management expertise rather than a professional background as the latter is now more often seen as a barrier to achieving success in local authorities.

*Local Development Framework (LDF)* is set to become the primary guiding document incorporating Government growth targets and more housing allocations. LDFs tend to have two or three years as a time horizon. On the other hand with property, because of the length of time it takes to deliver, you are looking at "Visions". St Edmundsbury has up to 2025 as its Vision, a time horizon of more like 10/15 years. Hence there is already a conflict between the lengthy property timescale and the much shorter LDF horizon. And in any event the elected member timeframe more often than not only extends to the next election.

*Globalisation and the economy* The credit crunch and the imminent recession must impact on property. As yet we do not know exactly how that will affect asset sales and how it will affect corporate aspirations. For example how are we going to deliver projects when we suddenly change from buoyant times and high property values to something different and far more uncertain? The suggestion currently is that the market will not get back to "normal" until 2012. Meanwhile do we just sit around and wait hopefully to come out the other end; or what?

## THE GLASS CEILING

The theme of the ACES Bath Conference of 2006 was "Penetrating The Glass Ceiling". It is all now recorded in Asset Bath 06.

Keith Jones of Performant Consulting challenged us when he asked, "Are you an estates manager or a business manager?" He told us, "We have to be successful with property in the strategic arena" and reminded us of the way our function has changed with

modernisation, cross cutting, involvement of the third sector and he said our role had become, in his most excellent phrase, "The strategic orchestration of property." Keith urged us to consider that property could no longer be just a support service with estate managers hiding behind their technical expertise; property must become business and output driven. To achieve this we, in property, need to undertake a modernisation programme in order to achieve this cultural change. His perception was that, at that time, 80% of surveyors were still looking at pure operational use of property and using our professional and technical skills and that only 20% of us had penetrated the glass ceiling to become strategic asset managers. He said surveyors needed to develop strategic skills, become key decision makers in big property changes, develop a long term vision, look at co-location, the big issue of backlog and backlog maintenance, customer access, back office functions and front office functions.

David Bentley, also at Bath, came up with another excellent phrase, "the modern asset management decathlete." He said the modern asset manager had to be accomplished in many different roles to achieve success in the strategic property function. These disciplines include Interpreter, Communicator, Strategist, Evangelist, Teacher, Referee, Explorer, Statistician, Party Organiser, Marathon runner, Magician, and Juggler. Some of these roles can be explained in more detail as follows

- Interpreter; the ability to take the aims and objectives of our clients, elected members, other chief officers and directors and the community and translate them into property needs and aspirations.
- Communicator; the ability to convey an understanding of what it is we are trying to say in property to all people.
- Strategist; we will not achieve success in the strategic property function without any knowledge of strategy.
- Evangelist; we have got to be passionate about property and champion what we believe in.
- Explorer; we must be innovative and talk to each other, ie network, to establish what is best practice.
- Party Organiser; instead of just sitting back and letting others take the credit develop the ability to organise the celebration of success.
- Marathon runner; asset management does not stop once you have been round the entire portfolio and reviewed properties in a business like way. You then need to go back round again as meanwhile the world has changed.
- Magician and Juggler; it could be argued that all property people in local government are expected to have these skills already

Tim Stapleton, also at Bath, identified the four big issues

- Governance
- Responsibilities
- Finance
- Working Practices

That was 2 years ago but the four big issues are still the same. Finance was judged to be the most important and this is still true. We need to know what our property outcomes mean in terms of capital and revenue for our Councils.

Tim also identified 4 essential skills

- Asset management
- Financial
- Project Management
- Procurement

Asset management and project management were judged to be the most important skills with finance being thought to be the least important.

Finally Tim asked delegates whether they really wanted to break through the glass ceiling and 81% said yes we did. 2 years on have we risen to the challenge?

## THE ACES SURVEY – SUMMER 2008

The objective of the survey was to produce

- Hard useable valid statistics to fortify ACES campaigning and lobbying and
- Interesting insights and observations to inform discussions within ACES.

Many of the outcomes of the survey will not be unfamiliar to ACES members but some of the numbers that came out are interesting and will add weight to the arguments that you will need to sustain. There are some big discussions ahead.

410 electronic questionnaires were sent out in the summer. There were 168 responses. This is a high response rate producing decent and statistically valid results that speak for the sector as a whole. Although we need to do some more in-depth work on the numbers produced, it is possible to assert that the responses are proportionate to the population surveyed in terms of the mix of districts, counties and unitaries; rural and urban authorities; and the different regions in the UK.

The survey responses demonstrated no significant differences between authority types or locations. There was a real commonality. Authorities face the same issues whether county or district, urban or rural.

As already mentioned we are still doing some work on the numbers and when this is complete we will produce a research report with a lot of numbers. The purpose of this part of the paper is to highlight some themes and illustrate them with numbers.

## HEADS OF ESTATES – SOME STATISTICS

Before dealing with these statistics I need to remind you that the survey was completely confidential and I do not know the identity of anyone who responded.

As a group of people, 85% categorised themselves as the most senior property professional in the authority and, interestingly, about half had responsibilities for a wider range of issues than just Estates, for example technical services and FM. The vast majority, 82%, are chartered surveyors, mostly general practice.

Also many have been with their authority for a long time, 43% for over a decade and about 25% for 15 years or more. That is something that does contrast with other parts of the property sector. A survey of heads of estates in corporate organisations would produce a different answer. The ACES response has both a positive and a negative connotation. It could be argued that Heads of Estates, as a group, are people who are set in their ways and have little stimuli from other organisations. Equally it could say a lot about continuity, depth of experience and knowledge of localities, portfolios, staff and how decisions are made. This all delivers a benefit to your councils on a daily basis and authorities may appreciate such loyalty and the associated benefits or, maybe, they take it for granted.

Surprisingly only 22% had worked previously for another local authority and 75% had worked in the private sector in either corporate organisations or private practice. This is both a surprising and interesting message.

Age produced another surprise. Observers inside and outside local government would have categorised heads of estates as an ageing cohort but 87% are under 50, although 7% found the question too embarrassing to deal with at all. So far the emerging picture is of a community of people that is younger and more roundly experienced than most would have expected, albeit that there is a tendency to remain within the organisation for a long time.

We also looked at reporting lines and here the balance was evenly spread between different senior corporate functions in the authority. However less than 25% reported to either the chief executive, finance director or director of resources and given that in most organisations those jobs sit absolutely at the corporate heart of the organisation, that might say something about the extent to which the estates view point is heard at that corporate heart. A similar percentage reported affectively into the planning/regeneration line and that does raise issues about the extent to which the estates voice is constrained in passing on the message through the very particular agenda that planning and regeneration often has. We also asked about reporting lines and relationships with members and we found that the majority of you feel that you have good relationships with members and good lines of communication. Moreover in looking at responses as a whole one of the strong themes to emerge is that as a community of people you seem to be more comfortable in your relationships and your work with members than you do with other senior officers members in your organisations, a factor that has some profound implications.

## WORKLOAD PRESSURES AND RESOURCING

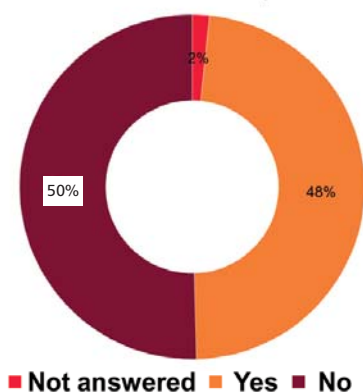
Overall the impression is that the demands that are placed upon you have increased whilst the available resources have decreased significantly. 89% said that the demands imposed internally on the estates function over recent years had increased significantly. 90% commented that external pressures, largely the Central Government interventions mentioned earlier in this paper, had imposed significant additional workload, requirements and burdens. On the other hand resourcing is challenged and half of you feel that your authority does not properly recognise the resource requirements of the property function. Only 7% of respondents felt able to say that local government as a whole had invested sufficiently in attracting new talent. Most feel that you suffer from having to rely too heavily on temporary and interim staff and that recruitment is a problem and the training schemes, a source of considerable pride in the sector some years ago, are not what they were. Strong messages here with lots of implications.

Going back to the earlier comment about “an ageing cohort”, and your relative youthfulness (using the word advisedly) as a group, it may still be the case that you are an ageing cohort of people and that points to some big challenges that you need to face and this is part of what ACES needs to talk to Government about. Notwithstanding the perceived pressures on recruitment, resourcing, promotion, job grading and so on there is a very strong sense of improved performance during this period in a number of areas. The ratio of management costs to income has improved significantly and 77% felt that overall team performance was now “very efficient”.

I would suggest that this situation of a resource squeeze coupled with performance improvement has not been adequately communicated to others; it is good news that has not been boasted about enough.

## SUCCESSION PLANNING

**If I left, would I expect one or more of my subordinates to be a credible candidate to replace me?**



The majority thought that if they left they would NOT expect one or more of their subordinates to be a credible candidate to replace them. This response means that 50% consider that my number two is not a credible candidate and neither is any of my subordinates a credible candidate to replace me. If this is so then the sector is looking at a succession planning issue of some magnitude, probably a reflection of the under resourcing that has taken place over much of the last ten/fifteen years. And again I think it is something that ACES would be well advised to make a big noise about.

## WORKING WITH THE PRIVATE SECTOR

The great majority of you commented that over recent years more use is being made of external advisors and so from my private sector perspective the way that this works is a matter of some importance. The great majority of you also expect this trend to continue and that there will be more outsourcing in the sector and greater use of frameworks contracts. We also asked if you thought long-term relationships work better and only 2% disagreed. As many of you are obliged by custom and standing orders to spend, what looks like from the outside, a great deal of time, delay and cost running tendering processes for quite small pieces of work, this suggests that you could be better off investing some of that time in creating better longer term relationships with external advisors.

Secondly the survey showed strong support for the need to focus on the development of clienting and strategic commissioning skills, such as the issuing of clear briefs, driving performance and building relationships. This clearly becomes a much bigger part of the role the more you use the private sector to deliver your outputs.

On regeneration 30% indicated that your expertise is routinely not captured in the making of regeneration appointments and regeneration decisions. In my experience in this area I have to say that we do frequently come across poor briefs that appear to have been written by somebody without professional property expertise. There is a need for more joined up corporate thinking in the regeneration area and an opportunity for ACES members to take the high ground.

Finally we asked about the extent to which councils saw long term partnering arrangements for the private sector as the key to the optimisation of property asset performance and only 13% believed that their authorities saw that as a significant thing for them in the future.

## DOES MY AUTHORITY TAKE A RESPONSIBLE APPROACH TO ITS ESTATE?

It is difficult to know how to interpret the quite precise percentage outcomes produced in this section. For example if 55% say yes then that is an endorsement because the majority already practice this but it is worrying that 45% were unable to agree.

However...

- 57% considered that their councils took a long-term view of asset management.
- 68% considered that their councils took a long-term view of land assembly.
- 52% considered that their councils recognised the distinct purpose of each property.
- 50% considered that their councils had a responsible approach to investing in and maintaining the estate.

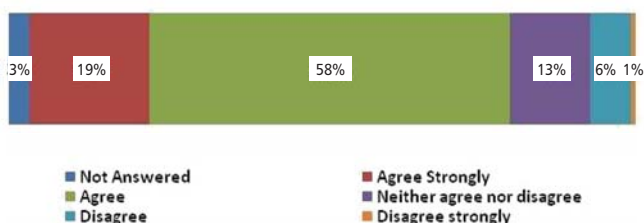
Again just to emphasise a cautionary approach the above response does not mean that 50% expressed the contrary view, there are quite a lot of "don't knows" involved.

However...

- Only 23% considered that their councils were prepared to invest in property to improve future commercial performance. That raises questions.
- 32% considered that their councils had no clear understanding of the relative priorities between economic and financial objectives on the one hand and regeneration outcomes on the other. This is, I think, an area where some serious research is overdue to develop some sort of consensus around the value of regeneration outputs where there is an element of financial trade off.

## THE MANAGEMENT OF THE ESTATE

I believe the Estates team is very efficient



The smaller numbers are interesting but overall 77% agree with this proposition.

Overall you are also comfortable with the level of member interference mainly, I suspect, because you regard that as part of their job and you are used to it. However one does deal with a lot with situations where members intervene in a way that is not always helpful

but only 4% found that a serious problem. And you are basically comfortable with the level, quality and completeness of estates data and with the support provided by colleagues in legal and finance, the latter being far more positive than I expected. But 20% considered that their councils did not give enough priority to the former. There were also good comments about the linkage between the estates and the FM processes.

63% considered that their councils had an agreed Property Policy meaning a statement of the principals about why the council holds property and the values it exercises in its use and management and not just a corporate asset management plan or an estate strategy. About 50% have a fully documented quality management system but there were a lot of "don't know" responses too that suggested the presence of quality systems not yet fully complete.

Overall I think some of these answers were more positive than I was expecting and I think this is probably a measure of the improvements that have been wrought in your organisations after some tough years of dealing with external pressures.

## RELATIVE LACK OF INFLUENCE

This takes us back to some of the issues discussed at the ACES Bath Conference and the influence that you really have on corporate decision-making. This topic featured overtly in a lot of questions and topics and it is the area where, in my opinion, you have both the biggest challenges and the biggest opportunities. Most of you believe that you are too reticent about expressing your views beyond technical matters and few disagreed with that. About 25% feel that you are able to make a contribution to the wider corporate agenda and about a third consider that the critical nature of estates skills in the regeneration process is not properly recognised, even though 95% say that those skills are central to delivering effective regeneration, quite a mismatch there.

Only 15% could be persuaded that general managers, the newer generalist corporate directors, have an appropriate understanding of estate issues. This reminds me of an RICS meeting a few years ago that debated why surveyors do not take their rightful seats in the boardroom. The view that emerged was that people running big organisations are expected to know lots about lots of different subjects, but can remain cheerfully ignorant about estate issues and property issues. One of the responses to that debate was that the Oxford Business School became the first UK business school to set up a real estate module on its general MBA programme.

The message I receive from this ACES survey is that your messages are not getting through for one reason or

another. General Managers do not know enough about property and the essential character of your skills to the regeneration process is neither properly nor adequately understood. Organisations have yet to make the link about the hugely value added role that people with estate skills can play in advancing the corporate agenda. There is a fundamental role that the estates can play and that connection is not being made adequately enough.

## CHALLENGES AND OPPORTUNITIES

*Resourcing and succession planning* There is an overwhelming consensus that the internal and external pressures you are under have increased. There is an overwhelming consensus that resourcing has taken a battering and has gone too far, in many cases below comfort levels. This issue has to be addressed corporately. The practice of training and recruitment and retention policies needs a lot of work as currently a third of your estates teams are propped up with temporary staff. This is an uncomfortable level. Every time a temporary member of staff leaves what little knowledge they have accumulated during their time with you goes with them, quite a problem. Succession planning is a huge issue for you. Although it is probably not an immediate problem the effects of it will become evident in a few years time. It has gone too far and needs attention.

*Clienting and strategic commissioning* In my opinion nobody will oppose a proposal that what you want is to develop your own clienting and strategic commissioning skills but it is a point that needs to be made together with a thorough review of standing orders so that you are not obliged to formally tender every minor commission.

*Estates and regeneration* There are too many projects, too many initiatives, and too many decisions that fundamentally affect the council's assets without taking fully into account available estates expertise. This is an area where you have real value and corporate benefit to add.

Performance has improved and you need to tell people all about it. On the question of influence I think there is every reason for you to feel confident but there are opportunities to reinforce this position. Many accommodation rationalisation projects are being considered, planned or in process of delivery. The estates surveyors' role should be moving from a focus on the commercial portfolio to the operational portfolio. This is where you can do your most important work. There is so much change going and this can either be supported or hindered by you. There are many interesting opportunities around and there is no obvious reason why HR or IT should drive these programmes. The onus for driving those programmes should be with estates.

James Grierson, DTZ  
&  
Betty Albon  
St. Edmundsbury Borough Council

---



# ASSET

## DELIVERING PLACES

### PANEL SESSION

---

ACES Presidential Conference  
Basildon, September 2008

ACES Paper No. 08.9/02 by

Chaired by **LIZ PEACE**

Chief Executive, British Property Federation

Panel: **BALA MAHENDRAN**

Chief Executive, Basildon District Council;

**STEPHEN OAKES**

Regional Director, London and Thames Gateway  
and English Partnerships;

**ALAN CHERRY CBE**

Founding Director, Countryside Properties;

**STUART YEATMAN**

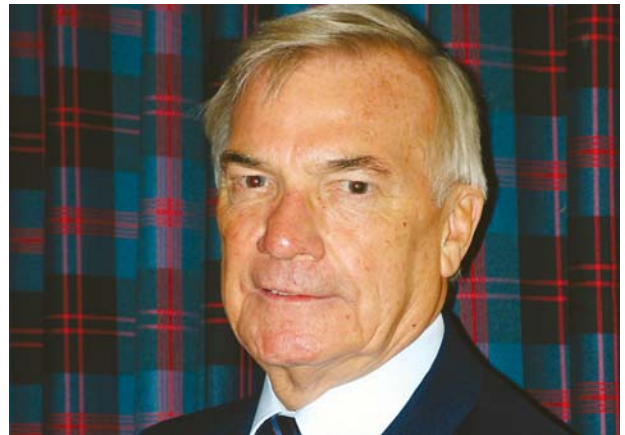
Property Director,  
John Laing Projects & Developments.



BALA MAHENDRAN



STEPHEN OAKES



ALAN CHERRY



LIZ PEACE



STUART YEATMAN

## CHAIR:

LIZ PEACE spent her early career as a civil servant with the Ministry of Defence working on a diverse range of projects from Northern Ireland to aircraft accidents, to land acquisitions and public inquiries. In the 1990s she became a key player in the team that set up the Defence Evaluation and Research Agency and led the first stage of the privatisation process, including the re-branding of the organisation as QinetiQ.

In 2002 Liz became Chief Executive of the British Property Federation and over the following six years managed to change the Government's perception of the commercial property industry, to establish it as a key voice in policy debate, to dissuade the Government from legislating on commercial leases, to win innumerable changes to planning and tax legislation and, working as part of a pan-industry alliance, to persuade the Government to introduce Real Estate Investment Trusts. Most recently Liz played a key role in campaigning for the abandonment of Planning Gain Supplement.

Liz believes there are still plenty of challenges left, not least to ensure that Government and the property industry reach a sensible agreement on how best to deliver the sustainability agenda, and that the BPF continues on its mission of improving the industry's standing not just with politicians and the media but with the public at large.

Liz was awarded a CBE in the 2008 New Year Honours list for services to the property industry.

## THE PANEL:

ALAN CHERRY CBE is Chairman of Countryside Properties plc, one of the UK's leading housing and property development companies. Countryside Properties is a developer specialising in the creation of sustainable communities, and urban regeneration.

He is currently a Board Member of MEPC Limited which operates some of the UK's largest business parks, Chairman of Clydesdale Bank Essex, Chairman of the Kent Thameside Economic Board, Chairman of Medway Economic Partnership, Board Member of Kent Thameside Regeneration Partnership, Member of Thames Gateway Parklands High Level Strategy Group, Member of the Manchester Salford Pathfinder Board, and a Member of the Medway Renaissance Board.

Alan Cherry is a past Member of the National Council of the CBI and past Chairman of the CBI East of England Regional Council. He was a Member of the Bank of England Property Forum; Board Member of the Teesside Development Corporation, and Board Member of the National Westminster Bank City and West End Advisory Board.

He has been a Board Member of the Thames Gateway Strategic Partnership, and a Board Member of the Thames Gateway South Essex Partnership, and was a Founder Partner of the Estate Agency Firm of Bairstow Eves and for some years was its Managing Director.

He was awarded an MBE in 1984, and awarded a CBE in 2003 for services to housing and regeneration. In 2002 he was appointed a Deputy Lieutenant for the County of Essex. In 1991 Alan Cherry was elected an Honorary Member of The Royal Town Planning Institute. In 2002 he was awarded an Honorary Doctorate by Anglia Ruskin University in recognition of his long association with and great contribution to the development of the University and his assistance in the work of the Board of Governors as a member, Deputy Chairman and Chairman.

BALA MAHENDRAN is Chief Executive of Basildon District Council – the largest district council in the eastern region with the biggest economy in Essex. His vision for transforming Basildon focuses on delivering high quality services, ambitious social and physical regeneration and productive partnership working.

Bala's key role in partnership working includes chairing the Basildon Crime and Disorder Reduction Partnership – one of the country's most successful. He is a member of the Basildon Renaissance Partnership – responsible for an estimated £4billion of regeneration opportunities over the next 15 years – and the Thames Gateway South Essex Partnership.

He is passionate about social inclusion and is currently working with the Treasury as a member of their 'Financial Inclusion Taskforce'. He has worked on Bertelsmann's "Cities of Tomorrow" – an international project tackling issues affecting young people and had a leading role in the Essex response to the Tsunami Appeal.

Bala is a qualified engineer, a keen traveller and is married with two children. He loves all kinds of music, particularly live performances.

STEPHEN OAKES is Regional Director of London and Thames Gateway for English Partnerships. A Chartered Surveyor and qualified Structural Engineer, he has over 25 years' experience in land and property, particularly in the planning and delivery of large, complex regeneration sites for the public and private sectors.

Before joining English Partnerships he spent a large part of his career at a leading property organisation, delivering and enabling retail, residential and

commercial schemes across the UK, the majority of which were on brownfield sites.

In 2002, Stephen joined English Partnerships in Milton Keynes and soon after became an Area Director when the London and Thames Gateway region was first set up within the agency. In 2005 he also took on the responsibility of Project Director for the £1bn London-Wide Initiative, an affordable housing delivery programme.

Stephen is a Director of Barking Riverside Limited, a joint venture between English Partnerships and Bellway Homes Limited that will deliver a new community with over 10,800 new homes on one of the largest brownfield sites in the Thames Gateway. He is also an advisor for the CLG's Decent Homes Programme and was recently a member of the London Mayor's Intermediate Housing External Reference Group that contributed to the Mayor's Housing Investment Strategy for London.

STUART YEATMAN is Property Director for John Laing, and is a Chartered Town Planner with over 20 years experience of working in the public and private sectors.

Before joining John Laing Projects and Developments in September 2006, Stuart was involved in town centre regeneration and urban extension projects in the public sector and development and infrastructure projects for Laing Rail.

Stuart leads the team on recent appointments of preferred development partner for the Tunbridge Wells Development Partnership (in joint venture with Gladedale) and the Croydon Council Urban Regeneration Vehicle.

## CONTENTS:

INTRODUCTION .....	17
LIZ PEACE .....	17
BALA MAHENDRAN .....	18
STEPHEN OAKES .....	20
ALAN CHERRY .....	23
STUART YEATMAN .....	25



# DELIVERING PLACES

## PANEL SESSION

---

### INTRODUCTION

by JIM ROSS, ACES President

I have attended conferences now for about 8 years and the one thing that has always struck me is the high level of intelligence present within the conference hall, not just from our own members who are all senior property people within local government, but also from private sector colleagues too. And yet ACES tends to avoid interactive sessions, so I am delighted that Liz Peace is going to bring together excellent contributions from Bala Mahendran, Chief Executive, Basildon District Council; Stephen Oakes, Regional Director, English Partnerships; Alan Cherry, Founding Director of Countryside Properties; and Stuart Yeatman, Director, John Laings.

**LIZ PEACE, Chief Executive, British Property Federation**

I am delighted to be here because I have never been to Basildon before, I don't know a lot about ACES and I don't know a lot about the role of chief estates surveyors in local government. However, a long time ago, I did spend time in central government and was for a time in the Defence Estates Branch where there were lots of estate surveyors. Therefore I got to know central government estate surveyors extremely well; how property fits into an organisation and how important it is. That importance, in my opinion, is not always recognised corporately, particularly if one looks at the status of the people who look after it. When I first joined the property industry six and a half years ago, I remarked how little attention was devoted to property as a resource within a business. And when we asked the London Business School why it had no property element in its Sloane Fellowship, they looked bemused that people would want to learn about property let alone want to know how much the property owned by a business organisation is worth; how much cost it accounts for in an organisation, and how much money bad property management wastes for an organisation.

I think real estate property in local authorities is hugely important just as it is in business as a whole and anything that ACES and The British Property Federation can do to raise the profile of real estate and property is all to the good. I come from an organisation called The British Property Federation. It is unashamedly a lobbying organisation. I was hired because I had spent years in central government and so, in theory, knew

how government works. Primarily the Federation represents commercial property interests and membership comprises most of the big property firms and agencies. The organisation's focus is on commercial property, although there is a growing membership involved in residential property for rent. The federation believes that this residential rental sector is going to assume much greater importance in the future as the private, professional rented sector provision of good quality rented accommodation is going to be a safety valve for some of the obvious social disasters we are going to see over the next few years. You could consult our website for more details of the sorts of things we do.

Currently the Federation is engaged in a struggle to the death with Government on empty property rates. If any local authorities have views on that issue and would like to contribute to our campaign we would love to hear from you.

The theme of the 2008 ACES Presidential Conference is 'Delivering Places' and so setting the scene from the British Property Federation perspective this is exactly what the Federation is interested in. BPF members are in property to make money, but they will only make money if they deliver decent places and usually this has to be done in conjunction with the public sector, specifically through working closely with local authorities. I have been lucky to be in the property industry over the last six or seven years when regeneration and partnership activity has reached an unprecedented level. The private sector knows that if it wants to achieve anything it has to work extremely closely with the public sector and so we have seen a big growth in public/private partnerships. These partnerships, taking on varied shapes and forms up and down the country, have led to a massive investment in regeneration and what we get out of that is a win-win situation for all. The public sector gets renewed places, for example an environment like Basildon is renewed, and the private sector makes money.

I am never ashamed of saying that that is what Federation members are in property for. Most are public companies and have a fiduciary duty to their shareholders to make money. Consequently they will not, knowingly, get into projects that will not make money. They are not in it for charity, but the community can benefit along with the people who want to make a profit. The communities in which this development and regeneration takes place are, hopefully, improved and opportunities are enhanced for all. When real estate, properties and the environment are improved, this creates new activities, employment, places for social interaction, something for people to do. Regeneration is not just about the physical improvement; it is about the sociological improvement that comes with it. So much for the last six or seven years; BPF members will talk, and wax lyrical, about the various partnerships they have been

involved in and the fantastic things that have been produced as a result of them.

However, this is going to change and problems will multiply in the light of recent events in the world financial markets. In a way it is a refreshing change to deal with real people who have got real problems and real things to do rather than to try and cope with all the high level hysteria that is going on in the city. At the moment (18/09/2009), if you believe what you read in The Times, "the world is on the brink, the market is puking all over us, there is no capital left in the world". So much for a classical education, can I stay down here in Basildon? We now know all about sub-prime and the credit crunch. Intriguingly was it the sub-prime crisis and the credit crunch that caused the property market to go into its downward cycle? We all know that the property market is cyclical, and before recent events much was written about an impending downturn in the property industry and it does look as though it was the sub-prime business that tipped us into it. Unfortunately we may have got into a sort of "double whammy", a "double dip", because the start of the property cycle down turn may be coinciding with a possible move to recession, though no two economists can agree on whether we are or we are not heading that way.

What this means for the property industry is reduced occupier demand. There is no point building property unless somebody comes along and occupies it. Unless you have somebody in it paying rent you are not making money out of it. So far occupier demand is holding up well, save for a certain degree of irony, of course, with the Lehman building in Canary Wharf. The landlord of this modern plush building is the Songbird Consortium, which includes Canary Wharf Group, and they have up to four years loss of rent insured with, with wait for it, AIG; connectivity!

Despite that digression until now occupier demand has been holding up well. In the retail market, of new shopping centres coming on line, White City is 100% let, a fantastic success story, and it is the same elsewhere so there is still demand, but we are starting to see the occupier squeaking. What developers are facing is reduced margins, falling rents because of reduced occupier demand, higher prices and falling values. What we are unlikely to see for the next few years is any speculative build. No developer is going to go into a big commercial construction project without knowing he has got an occupier already signed up. All we shall see is scaled back or delayed development and a few quiet years for commercial property. On the other hand I do not think council development will stop completely but there will be issues of phasing.

I think we will see a particular impact on schemes having a big residential component. As mixed use has been the name of the game for the last ten years or so there will

be a major impact on some big town centre regeneration developments. But towns and cities still need investment so work cannot completely stop just because the property market feels it cannot make enough money out of it.

How can we ensure that the process of regeneration and renewal does not come to a grinding halt? This is where the ACES Presidential Conference 2008 'Delivering Places' is timely and particularly interesting because of the key role that local authorities can play. Whilst local authorities' control of the planning agenda is crucial what I am more interested in is the catalytic position of local authorities as property owners, real estate owners and therefore as potential equity contributors to regeneration projects and the facilitators of infrastructure investment. What is needed to facilitate achievement is partnerships, a concept even more important now than it has been in the past. We need to push the boundaries and find novel ways of achieving the outcomes that we need in providing infrastructure, and find novel financing arrangements, and tax incremental financing, a way of accessing the capital needed to provide infrastructure up front with payment for it later, something the Treasury hates but the Federation has been advocating for a long time.

We need to find a way to use local authority owned property as a catalyst for development. This can be the authority's equity contribution into some public/private sector vehicle to move a scheme forward now with the public sector staying in to share in the up side in due course. This means developing relationships with local authority property managers, planners and politicians to explore the best way of using this property and in an economic and sensible partnering arrangement with the private sector, this is absolutely crucial. ACES members are key to delivering places and further contributions to this paper will explore how we actually do it. These additional contributions will provide a local authority perspective, and an English Partnerships/Government perspective, the house builders view and the landlord's perspective.

#### **BALA MAHENDRAN, Chief Executive, Basildon District Council**

I intend to deal with place shaping and share my thoughts and reflections on 'Delivering Places'. As you know the council and its regeneration partner, Basildon Renaissance Partnership, have great aspirations for the town and district and I will try to reflect on the thought processes that we have gone through to reach this position with our place shaping role; where we are now in relation to that particular agenda; what we are trying to deliver for our communities and what next in these challenging times.

For the last 4 years Basildon has had an administration in power that is truly committed to the place-shaping role. On 4th January 2009 we will celebrate the 60th

birthday of Basildon but we are not yet ready to take the bus pass and retire, as it is also a time of change for the town. I believe our time has come, there may be challenges, but I truly believe our time has come. We are so confident that our time has come that two years ago we went to London and told over a hundred or so property professionals about our aspirations and ambitions for the community. We said what we want is regeneration and from our point of view it is not just the physical regeneration we have in mind but also the community regeneration that needs to go with it.

I will give you some facts about Basildon to demonstrate why we are so confident of the future. We are one eighth of the economy of Essex. The A127 corridor is one of the biggest industrial and commercial corridors in the country. We are the 31st most competitive business destination in the country. Clearly we have a successful economy. The town has weathered other downturns in the past but we feel we need to focus on getting the right things in place for the future.

There is strong political and managerial commitment to that agenda. We consulted our community and from that process decided against having a master planning exercise for the entire district. Instead we produced an ambitious development framework that is realistic and includes key themes.

The first theme is town centre regeneration. New towns have unique features, for example, the whole of the town centre is ageing together and that needs to be fixed. Also we need to bring communities back into the new town. If you drive around Basildon the traffic does not come into the town centre as the road structure takes you away from it. So how do you bring life back into the new town centre and how do we ensure that it thrives with a good night-time economy and the like.

Another "new town" feature is that everything that won awards years ago we have either to pull down or do something with it. The original architects were convinced that what was good in Sweden was good for Basildon, but it did not quite work because it was a different community. So we need to fix the way it was designed and some related major issues such as the way it was built. The property professionals view is that it is not going to last, there are infrastructure problems. Therefore estate regeneration is another theme. This includes both property and infrastructure regeneration and the regeneration of communities; how do we build capacity within our communities?

We also wanted to tell the world that our time has come by taking on a major project. There is an ageing swimming pool in Gloucester Park that needs to be replaced and that idea gathered strength so we said we would go for a sporting village with a 50-metre pool. Currently this project features in the Olympic brochure

as a possible training venue, provided we build it before 2010. This is a challenging prospect especially with property prices and the value of the enabling assets that were to help funding, crashing. Nevertheless, the council is still on track and committed to a sporting venue that will become an excellent facility for elite athletes, elite swimmers, and for the entire community. We see it as a phoenix rising in Basildon to facilitate our active life programme, health agenda and sporting agenda all of which are also supported by Gloucester Park itself. This too is next to the town centre and has been likened to Central Park, New York.

Other areas of physical regeneration, alongside the A127 corridor, the district's industrial and commercial heartland, is a health corridor with a new teaching hospital and a new cardio-thoracic hospital, plus aspirations for community development supported by physical regeneration.

And here I think Members have to be given credit for asking how do we deliver this and for realising that we cannot do it on our own. But Basildon does have a strong leadership role and the ability to bring clarity, focus and direction to the agenda. The agenda includes a strong partnership element particularly with other public sector agencies such as EP, DCLG and EEDA, the East of England Development Agency, the regional development authority. There is an agreed common agenda, and a common purpose but the key to delivery is the private sector. Basildon District Council has a facilitator role but not a delivery role; our job, as a local authority, is working with our regeneration vehicle, the Basildon Renaissance Partnership, which is funded jointly by all parties and its purpose is to help and support the private sector to deliver.

At the same time the council is embarking on a set of initiatives to raise aspirations and skills in order to maintain current economic successes. The skills agenda is the one thing that could hold back future economic success particularly if, in our community, there is a certain lack of skills, and a climate of low expectation or worthlessness is allowed to develop. Hence the skills or new education agenda will be critical and I am pleased to say in the dying days of the Local Skills Council we have managed to secure a £100 million investment in a new college in the town centre. It will happen as capital funding has now been allocated. Success to date is due to many factors. Being very clear about what we want is clearly important as is bringing together a working partnership of other public sector partners to work with private sector expertise, including DTZ and other property professionals, to advise and support the evolution of our strategy and outcomes. And we have not neglected the community developments aspects and building capacity so that local people can take advantage of the new opportunities. We feel we have a model that works, a

model that has creditability because, for example, DCLG agrees to fund it.

It has not been easy to keep the private sector engaged in these difficult times. Flexibility on our part helps. We cannot be too rigid about what is going to happen in the future and when. We need to be flexible and I am pleased to say that members have shown maturity in saying that anything is possible as long as the final outcomes are still there. Delivering on planning, ensuring there are no further delays and the creative use of our assets to add value are also important.

We need to capitalise on our unique location 30 minutes from London and to make Basildon a place people want to do business with. This is an area we are exploring with government and other agencies so we can get the infrastructure right through intervening and using some of our funding to buy the right land and then using those assets much more effectively, in partnership with the private sector, to keep our regeneration agenda on track.

#### **STEPHEN OAKES, Regional Director, London and Thames Gateway and English Partnerships**

English Partnerships is the national regeneration agency helping the Government to support high quality sustainable growth. The purpose of EP is to create well-served, thriving communities where people enjoy living and working, communities that are physically and socially sustainable and incorporate high standards of design and build; improve quality of life; and enhance the environment. To be fair I think that is what we all try to do. Communities are key to what all of us try to create in any regeneration scheme or major new development. Recently a survey asked people about their community with the outcome that there were two issues that individuals worried about: litter and dog dirt. This shows you what very localised issues concern communities when we do these very large schemes. We all think we have an idea about what communities want but the only way real way of finding out is to go and ask them.

Another interesting survey I would like to mention is the Rowntree Trust examination of London housing estates. We are all convinced of the need for great design and quality in building new homes for communities to live in. Actually some of the estates that come out "very good" in the survey were not well designed but they were well managed and very clean. Therefore we have to ensure that in any schemes we do we should not finish the regeneration and walk away as we all have an obligation to make sure there is a fabric to carry on with that afterwards.

The work of English Partnerships work falls into three core areas.

- Unlocking and increasing the **supply of land** to meet housing and other growth needs;
- Creating and sustaining well-served, **mixed communities**; and

- Increasing **quality** of life, enhancing the environment through **innovation** and raising standards.

Another key activity of English Partnerships is working in partnerships with local authorities through, to quote Sir Bob Kerslake, the single conversation. The single conversation is key to developing areas and local authorities are becoming much more important in this. Even so there has to be the blending of agendas and we have to blend these localised agendas with government policy. These are Government targets. The government wants:-

- To create 3 million new homes by 2020
- At least 70,000 affordable homes a year by 2010-11
- 200,000 homes on public sector land by 2016
- 60 per cent of homes to be built on brownfield sites
- All new homes to be zero carbon from 2016

They probably looked good a few years ago but it will take much effort over the next few years to get anywhere near them. It will exercise quite a few pockets as well. There are two priorities for the year ahead, 2008/2009. These are:-

- Business as usual – targets to achieve in relation to housing starts and completions; brownfield land reclaimed; employment space and private sector investment.
- Paving the way for the creation of the new Homes and Communities Agency in April 2009.

Why the Homes and Communities Agency? To quote, again, Sir Bob Kerslake, the Chief Executive Designate of the Homes and Communities Agency, "At its best it will be a bridge between national priorities and local ambition."

As the HCA comes into being the key issue is that it is inheriting two enormous programmes from the Housing Corporation and English Partnerships. There has to be continuity because if suddenly the HC and EP funding stopped it would have a serious impact on many organisations including Basildon. But the advent of the HCA does create an opportunity to look at new delivery models for regeneration and housing. In more detail the HCA will provide:-

- Broader and more streamlined service capable of increasing investment and housing supply for communities.
- Stronger link between Government, local authorities and developers, marrying national aspirations with local priorities.
- An annual budget of £5 billion will support delivery of 70,000 more affordable homes per year by 2011 and 3 million new homes by 2020.
- Enhanced buying and negotiating power to push up environmental standards design and build quality and attract private investment.

## INNOVATION AND BEST PRACTICE

English Partnerships pushes sector best practice by raising quality and standards:

- Code for Sustainable Homes – all sites briefed at:-
  - Code Level 3 since April 2007 minimum.
  - Code Level 4 from April 2010 minimum.
  - Code Level 6 from April 2013.
- Minimum quality standards – revised in November 2007 to:-
  - Increase space, reduce overheating, reduce noise and increase build and environmental quality.

We are not here to redesign the wheel, but we do look at things and modify them. There are few genuinely innovative ideas that start from scratch, but a number of opportunities we are looking at are Local Housing Companies and the alternative approach, Local Asset Based Vehicles.

## LOCAL HOUSING COMPANIES: THE NATIONAL CONTEXT

LHCs were introduced in the Housing Green Paper 'Homes for the future: more affordable, more sustainable.' The paper said that the launch of a new approach to the use of vacant land owned by Local Authorities will provide additional housing and the opportunity for a more active role for local government in the development of these sites. Fourteen new Local Housing Companies will be established by Local Authorities and partners, with a national programme of support from English Partnerships, to develop new market and affordable housing on surplus brownfield land.

## ALTERNATIVE APPROACH, LOCAL ASSET BASED VEHICLES

The key features here are balancing that risk and using public assets and the public sector risk more effectively in delivering schemes. And the main points of this alternative approach are:-

- Fund rather than project based – strategic engagement with private sector, over the long term
- Benefits from private sector innovation in delivery and funding
- Lets the public sector capture a share of value uplift
- Converts public sector assets into delivery outputs
- Alignment of goals with the private sector
- Sharing risks and rewards
- Helps provide certainty to private sector, but retains flexibility

We will need a much more realistic understanding of what we are putting into our schemes. Understanding risk is vital and considering whether it is a sensible solution to try and transfer all that risk to the private sector. The real question for all of us in these private/public sector operations is should not the public sector accept the risk itself on the basis that, "this is our risk, let's manage that risk and deliver a more successful project". We should be asking, how can we be more flexible, what are we trying to do, are we trying to get at outputs, are we trying to get capital receipts, or are we trying to get outcomes?

Concentrate on defining the outcomes of the project before engaging with the private sector.

## CASE STUDIES

### BARKING RIVERSIDE

This is an extensive brownfield site in East London that



will produce 10,800 homes, a town the size of Sevenoaks. It is a joint venture project, initially working with the private sector to bring in infrastructure then breaking the site down into plots and bringing in the house builders. The key to this scheme is the community. The first phase is to create community and we are establishing a community development trust so that right from the start people moving into this large area have ownership of its development. The total infrastructure cost for this scheme is about £350 million.

#### LONDON WIDE INITIATIVE

This is Newington Butts. The London Wide Initiative



comprises 16 sites, to deliver 5,000 homes via a £1 billion programme. We have taken the whole land assets of EP and invested them into the project. We do not intend to take land value out of the scheme but are looking to make the project happen and achieve good quality design, then using our asset or our value to create more shared ownership housing in a form called LWI Homes. In this scheme the focus of EP was not on a big cash return, what we wanted to do was to create a real outcome, a real outcome of quality building and more shared ownership homes.

#### CRAYLANDS AND FRYERNS, BASILDON

This regeneration project is two miles from the town centre and the project comprises two sites, the former Fryerns School (10.35ha) and the Craylands Estate (22.5ha). The intention is to re-provide up to 613 dwellings plus an additional 695 dwellings, 1,308 dwellings in total. Also 4,000 sq m of employment space will be developed including the re-provision of an improved local centre. EP has used enormous efforts here to transfer the risk of this project into the private sector. £70 million of public sector and £85 million of private sector investment has been secured to deliver the project.





## BLACKWALL REACH

This is a 2000 home scheme that became controversial due to listing problems that are still, in fact, to be resolved. But the key feature is that there is already a Bengali community on site and it wants to stay there, and not necessarily in the existing buildings as they want new ones. We can deal with this as fortunately we have that focus on community whereas other parties don't.

### ALAN CHERRY CBE, Founding Director, Countryside Properties

Anyone involved in property and housing will almost certainly be affected by the credit crunch currently being experienced around the world. Having just heard about £17 billion the HCA have to spend, that is insignificant compared to the \$300 billion that the American Government has just put in to saving one or two of its banks. All of this is all having a serious negative impact on the property and housing markets, with devastating consequences for some. Already several development companies have gone out of business and others are in serious trouble. It does not seem all that long ago that property values were at an all time high and the housing markets were booming. All, as we now know, funded by excessive, and some may say, irresponsible, lending by the banks and financial institutions. We all went along with it. It was never sustainable. It is easy to say it now but 100%+ mortgages for first time buyers was unsustainable and now we are feeling serious pain and upset as a result of this irresponsibility.

I do not believe that the banks and building societies, if they have got any sense, will ever return to those irresponsible ways of lending. As a developer of

housing and property specialising in the creation of sustainable communities, regeneration and renewal, we have been experiencing the impact of these significant changes and adjusting our business programmes appropriately as quickly as we can. We have slowed down many projects and delayed starts where construction has not yet begun. Financial viability has been seriously harmed and in some projects developers are suffering considerable losses. Cash generation has become our number one priority, cash flow is always a hugely important and number one principle of private sector business, but it is supremely important now. Countryside, like most developers, is financially highly geared so we are doing all we can to reduce debt and that means reducing our future development programmes. Fortunately we have been in business for many years and have experienced difficult trading conditions before including the economic recessions of the mid seventies and the early nineties. Of course no one downturn period is ever quite the same as before, but there are similarities and the lessons of previous experiences help us deal with the present crisis.

Where are we now and how and when will it all end? Property values have been upset, property prices have been falling, investment interest has been declining, yields have gone up and therefore years purchase has come down. Funding is extremely difficult to find unless you already have funding schemes in place, as indeed we have. Rents and occupancy are not yet under pressure but as the impact of this down turn has affected housing and property, the banking sector, and there are going to be increases in unemployment, then there must be, inevitably, an adverse impact on retailers and therefore the suppliers and manufacturers of retail and consumer

goods. This must lower the confidence of homebuyers and all those who are expected to invest in, or fund, property.

House prices have fallen some 15 to 30% since the peak in 2007. If you bought a site that was expected to yield you a gross profit of 15 to 20% you are in trouble. That is the problem for many developers now, and not just private sector developers because a lot of us are engaged in partnerships and joint ventures with the public sector, so it goes much further than just the poor old private developer who no one will ever shed a tear for as they have made so much money in the past. Affordable housing is also going to be upset. In the old days social housing was developed separately from market housing, a bad thing for us ever to have done. We tried to get involved in mixed tenure, integrating affordable housing with private housing and have been doing it very successfully, but the majority of affordable housing now in the pipeline for future delivery is the result of obligations under Section 106 Agreements. These are now having to be revisited because the financial liability of many projects just does not make sense any more and therefore, regrettably, the supply of affordable housing will also suffer from the overall impact of current economic problems.

This, obviously, has a huge impact on Government housing targets. In the industry we were all extremely excited when Government accepted that we needed 3 million new homes by 2020. I now believe that will be impossible to deliver and the targets will have to be revisited and reconsidered. Not as many homes were built last year as the year before, fewer homes will be built this year than last year and next year I think the numbers will be very low indeed. 3 million new homes by 2020 is a task impossible.

Market and prices are adjusting but it is a slow and painful process. My theory is that the whole market is dependent on the price of first time buyer housing. Owners cannot move from their homes unless somebody else buys them. At the start of every chain is a first time buyer or an investor; and investors are few and far between at the moment. What is the future for first time buyer prices if banks and building societies are limiting their lending to a maximum of 90% of valuation and four times annual income. Consider the South East and assume that the average income for a first time buyer is £30,000. This means the maximum mortgage for that first time buyer is £120,000 plus whatever they themselves have saved or can borrow from mum or dad or granddads. Therefore I expect first time buyer prices in the South East are going to come down to something like £140 to £150,000 thousand, a significant difference. Now the whole market has got to move to prices that are fixed by what people can or are allowed to borrow to enable the first time buyer. All the rest of the market tiers up from there. It will take some time before we reach this new level of pricing structure for housing. And not just in the South East but right across the country. My

company also operates in the North West, which has been our most difficult region recently. Recently we had a huge uplift in house prices, more than the South East in percentage terms, and therefore the adjustment here is even greater, playing havoc for all of us.

Housing requirements in the future are another issue. As a result of Government policy the emphasis on higher density development, the emphasis on brownfield land and urban regeneration, all of which I support, has caused the private sector of the regeneration industry to mostly build one or two bedroomed flats. Inevitably this means that, in some areas, there is a huge excess in the supply of one or two bed flats. In any case building too many such properties is not conducive to the concept of creating sustainable communities. Hopefully lessons will be learnt but we must not go that way again and ensure that we build a range of housing that is appropriate to the objective of creating socially sustainable communities. I predict that house types and densities are going to be a hugely important future issue.

I am in no doubt that the housing markets need some Government stimulus, and more than we have seen so far to help the situation. The relationship of housing to the wider economy has never been realised or appreciated before. It is now. The collapse of the housing market here is having huge consequences, even more than has been seen in the United States. The American Government is doing something to help but then it has far more resources, seemingly, out of which it can help. But our Government has not just got to deal with this present short term, three to five years is my guess, difficult problem, but it has got to come up with new schemes and initiatives to help the first time buyer. Why not some form of tax incentive for savers? When I was a young I did not need any encouragement to open an investment account with a building society and when my fiancée and I had saved enough money to pay a 10% deposit we went out, got a mortgage and brought a house. Many first time buyers have not had to do that recently so we have to adjust to new circumstances. Government has got to be the main source of new initiatives to help the first time buyer. This could be helping people to save in the first place although that would take a little while to have an impact, or it could be in other ways, like the English Partnership's first time buyer initiative. The EP initiative has been a huge success albeit moderately small in its overall impact. All new initiatives are going to be very important. I think local authorities also have got to join into this process of how to help people into housing. I make this point, in case you think that I am just talking about owner/occupied housing. If we do not help the first time buyer or people who could be first time buyers, they are going to be looking to the affordable sector to house them, so it is a problem for all of us. My concern is not just directed at first time buyers.

Section 106 Agreements and obligations is another issue we are already revisiting. Some of the obligations

developers have already entered into can no longer work now and local authorities have to realise that they cannot expect as much from Section 106 Agreements as previously. This will affect the delivery and the range of provision that used to be realised

Partnerships will become increasingly important and the ability of the public sector agencies (and therefore Government) to assist with front-end pump priming linked to a share of added value and surpluses will become more important. Partnerships have got to reflect local circumstances. What might be appropriate to achieve a regeneration project or redevelopment project here in Basildon may be quite different to similar schemes in the city of Salford. There is no one size fits all approach to this and I believe that local authorities, government agencies and the private sector have to look at the local problem and how should that be resolved.

I want to mention the planning process. Government has already tried hard to increase the efficiency of the planning process. And hard though it has tried it has not achieved it. The process overall is slow. If you look at the number of local development frameworks put in place since the legislation was passed four years ago, it is pathetic and plays havoc with understanding local policies and how to deal with them. It is also as difficult for elected members, the decisions makers here, as it is for we developers in trying to respond. I plead with everyone involved to help improve the planning process.

The sustainability agenda is with us now and forever and we have to try and balance sustainability issues with the economic aspects of development and regeneration and, of course, the social aspects too. Quality matters and we must not relax the demand for quality development. Today award-winning buildings are being pulled down. My cousins have become experts in the demolition and redevelopment of award-winning buildings.

Long-term management has been neglected for a long time. We have designed and built some fine places around the country but with a lack of attention to the important issue of long-term management. Some good schemes of years past have failed because of the lack of attention to this issue. Various solutions about how to deal with long-term management, maintenance services and management charges have been tried but great improvements are still needed here.

I have covered a number of issues in this paper, all of which are important, and it just goes to demonstrate the complexity of development and difficulties facing the development industry today, in these difficult times.

**STUART YEATMAN, Property Director, John Laing Projects and Developments Ltd**

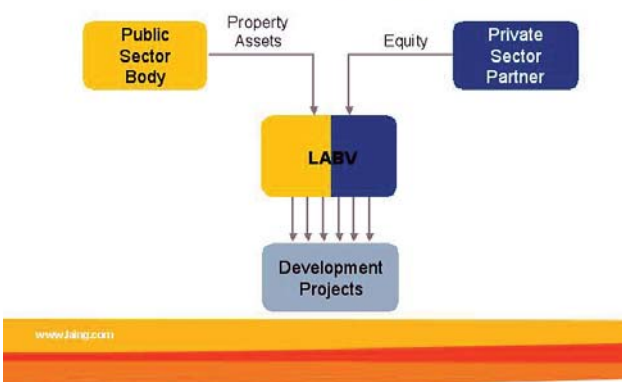
Some of you may have had long associations with John Laing but we are a slightly different company these days, as I shall explain. I also intend to deal with local asset backed vehicles, an area which John Laing is targeting.

John Laing is no longer a traditional developer, our homes division went to Wimpey in 2001 and, at the same time, construction went to O'Rourke. John Laing is now an investor in and a provider of public and social infrastructure. We operate in partnership with the public sector in the UK and abroad. We have just over 60 ongoing successful infrastructure projects in the UK, mainland Europe and elsewhere ranging from North America to the Far East. Our approach is to partner with our clients from the beginning and we believe that successful partnerships are developed because we work closely with our partners and we tailor make them as we go forward. We have lots of experience in the provision of social infrastructure and believe this is important. We know what is involved in stimulating regeneration in some fairly tough areas. One example we use is a project we have in Greater Manchester providing police stations in local neighbourhoods and health hubs through the LIFT model; these show that through investing, with our partners, in core elements of social infrastructure, what can be done to raise confidence in local communities, increase local values and then to see the domino effect work as areas uplift.

At the moment we focus on the Local Asset Backed Vehicle (LABV) and believe it is an excellent long-term model to bring forward regeneration in large mixed-use schemes. Its main features are:-

- Limited liability corporate entity
- Between public and private sector partners
- Able to utilise debt financing
- Shared control
- Flexible duration and membership
- Clear reporting mechanisms

### LABV – Basic Partnership Diagram



We see LABVs as a model that will not work in all cases. Some local authorities will not have the surplus portfolio or the range of portfolio that make it work or values in their area that can generate sufficient surplus value to fund projects. For a lot of local authorities there is surplus estate and opportunities to rework a range of life expired accommodation and along the way look at transforming working practices. Now is a very good

time to start to see how such projects might move forward.

The benefits of LABVs for the public sector are that they can accelerate the regeneration delivery process and if they are done in true partnership it means that an authority can have more control than the traditional route of teaming up, through a development agreement, with a developer. This is because the authority is in there making decisions over and above the planning decisions. The authority will be involved in making decisions, sharing risk and sharing rewards.

### Comparison of Development Options

	Flexibility	Control	Maximise asset values	Holistic	Structured Delivery
Land sale	-	×	×	×	×
Development Agreement	×	✓	×	×	-
PFI	×	✓	×	×	✓
LABV	✓	✓	✓	✓	✓



You can take a long-term approach and really control the delivery of regeneration both as a shareholder and as an authority. For the private sector, we can influence the structure of long-term partnerships and can inject commercial insight and expertise from the beginning. A healthy asset backed vehicle will also give your private sector partner a steady pipeline of work, geared to the local regeneration agenda, and gives your partner the confidence to work through the process by looking at a range of projects through a long term partnership. Also the private sector can take a blend of return, a mixture of traditional developers profit and a return on investment, where the private sector partner injects equity and potentially retains a lasting stake in the project.

Whatever “public/private” vehicle is chosen to promote the delivery of regeneration it is a fact that without that true partnership from the beginning they will not work, or they will fail to work as intended. John Laing very much promotes a co-operative approach with local authority clients. We see “local authority clients” as more than the officers around the table. We feel it is important for us to know that the Chief Executive and members are on board and there is cross party support for the chosen projects. Local elections happen, by and large, every four years so if there is political support across the parties we know that the chosen vehicle is likely to run the life of the project.

Successful partnerships, in our experience, are those that bring in other local development partners so they can feel part and parcel of the regeneration agenda.

On that basis I would not restrict these other partners to only commercial interests. Look at the RSLs that are active in your area, look at your local health sector, and your local further and higher education sectors. We have heard a lot about the credit crunch; we all read the newspapers. We find that the successful projects are the ones where we involve potential funders early on. Potential funders can then give a view as to what sort of terms and gearing they are prepared to accept. We know that it is difficult to arrange funding but we do feel, and hope, that those organisations that have excellent relationships with banks will succeed in arranging funds ahead of new business.

We have already heard about the importance of engaging with the end users and John Laing supports this view. Therefore please identify with the end user of your proposed projects, be they people who are going to occupy the affordable housing, be it the health authority coming in to share the proposed accommodation and social infrastructure.

It is important to understand that these are long-term deals. We are talking about projects that should be able to last for 10 to 20 years. Do not be frightened by that, because if the project structure is set up correctly opportunities can be brought forward at the right time in the market. In any event the partnership will want regular reviews to make sure that the partners are still getting on and working well together, to make sure that the model and the partnership is working and that it is worth going on to the next stage. That will deliver the flexibility that you need to adapt to local needs and changing market conditions.

In conclusion Local Asset Backed Vehicles are the way forward in the current market. They are based on long-term partnerships and the sharing of both risk and reward. If you are thinking of going to procurement then I believe that now is particularly a good time to do it. Remember how long the procurement process takes. By the time you have chosen your partner, and are through planning process on major schemes the market place should be a much rosier place in 4 or 5 years time for you to take your schemes forward and to regenerate your areas.

- Bala Mahendran  
Chief Executive, Basildon District Council;
- Stephen Oakes  
Regional Director, London and Thames Gateway  
and English Partnerships;
- Alan Cherry CBE  
Founding Director, Countryside Properties;
- Stuart Yeatman  
Property Director,  
John Laing Projects & Developments



# ASSET

## COMMUNITIES AND PLACE SHAPING:

THE HOMES AND  
COMMUNITIES AGENCY

---

ACES Presidential Conference  
Basildon, September 2008

ACES Paper No. 08.9/03 by

**DAVID EDWARDS**

Director for Southern England,  
English Partnerships



## THE AUTHOR:

DAVID EDWARDS is the Director, Southern Region for English Partnerships, joining in 2007. Previously he combined the roles of Head of Regeneration, Land and Property and Chief Estates Officer at Communities and Local Government for a period of three years. He was responsible for English Partnerships, the Urban Regeneration Companies, the Coalfields Communities Programme and the National Brownfield Land Strategy. He also had responsibility for housing market delivery, including surplus public sector land, and for the commercial property sector including leasing, development and investment. He established the LABV initiative (local asset backed vehicles) and helped create the first tariff and regional infrastructure structures. He contributed to the Housing Green Paper, in particular establishing the frameworks for surplus public sector land and Local Housing Companies.

David was a Director of Arup, the international design and development consultancy, and led the firm's consulting business in development, planning, economics, transport planning, and environment. His assignments ranged from planning and development advice on the major developments at Stratford City, King's Cross, Greenwich and Paddington, through to regional programmes for the UK and European Commission. He is a chartered surveyor, planner and economist. David is a Board member of the RSL East Thames Housing Group and chairs the Group's development subsidiary, East Regen. He chaired the RICS Public Sector Advisory Board and is a Director of a community sports trust.

## CONTENTS:

INTRODUCTION .....	29
HCA MISSION .....	29
NEW APPROACHES .....	29
PARTNERS' EXPECTATIONS .....	29
KEY POLICY ISSUES .....	29
HCA FUNDING .....	30
HCA TOOLKIT .....	30
THE SINGLE CONVERSATION .....	30
LOCAL AMBITION .....	30
HCA INPUT .....	31
DESIGN AND VALUE .....	31
DESIGN: THE HCA STATEMENT OF INTENT .....	31
SKILLS: CURRENT RESOURCES, DELIVERY AND PRIORITIES .....	31
CASE STUDY: DEVONPORT, PLYMOUTH .....	32
CONCLUSIONS .....	32

# COMMUNITIES AND PLACE SHAPING:

## THE HOMES AND COMMUNITIES AGENCY

---

### INTRODUCTION

This paper deals with the purpose and objectives of the proposed Homes and Communities Agency (HCA) and the issue of communities and place shaping as illustrated with a case study and lessons and issues arising.

The HCA is a new agency which builds on and extends the work of the organisations which are being incorporated into it:-

- English Partnerships;
- The Housing Corporation (investment function, with regulation going to the Tenant services Agency).
- Communities and Local Government (housing delivery programmes and Thames Gateway);

The agency becomes fully operational in December 2008 and will have a unified investment, land and affordable housing remit.

### HCA MISSION

The mission is to create the opportunity

- For people to live in homes they can afford in places they want to live and
- For local authorities and communities to deliver the ambition they have for their own areas

It will be a national agency that works locally to

- **Support** the delivery of new homes
- **Secure** the delivery of affordable homes
- **Accelerate** regeneration
- **Improve** the existing stock and transform neighbourhoods
- **Ensure** delivery is economically, socially and environmentally sustainable

It is important to emphasise that the agency will be concerned about the provision of new homes, the improvement of existing homes and the regeneration of communities.

### NEW APPROACHES

The agency intends to shift the focus from an involvement with individual projects to a much larger and more intensive involvement with programmes and areas generally. The new themes that are emerging are:-

- Focused on the needs of communities and people
- Based on programmes of activity rather than funding projects
- Integrated to meet the needs of areas
- Responsive and innovative to meet changing circumstances

It is important that colleagues in local authorities or in other organisations that intend to engage with the HCA in the future appreciate these new approaches. The agency will need to have the whole story, if I can put it in those terms, and not just focus on one off projects here and there, although some of those projects may well be important.

### PARTNERS' EXPECTATIONS

In talking to colleagues in local government we are aware of the sort of expectations that are out there, including,

- Commitment, passion and quality
- The importance of place
- Long-term flexible partner
- Market facing
- Existing as well as new housing
- Build on current strengths
- Skills and capacity challenge
- This is about people

These issues are being built into HCA thinking going forward and hopefully, on 1st December, it will all work. There will also be many things that will have to evolve in terms of policy, thinking and operations as the new agency develops. But remember many programmes coming to the agency are already committed and in train so there may not be much initial flexibility. Times are hard and budgets are stretched and it is not possible to switch everything off and start again.

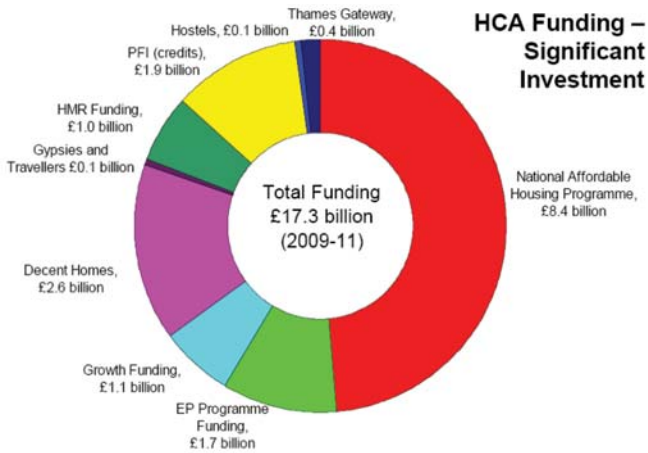
### KEY POLICY ISSUES

There are quite a few key issues that both the HCA and partners are focusing on. The market downturn is obviously the major and most current problem but there is a set of wider issues that were identified well before the market changed, for example

- Homes for vulnerable people
- Homelessness
- Rural issues

- Surplus public sector land
- Public-private partnerships
- Community engagement
- Design and sustainability
- Regional working

## HCA FUNDING



Total funding of £17.3 billion, 2009 to 2011, is a lot of money and the diagram shows where it comes from. Most of it, almost half, comes from what was effectively the Housing Corporation core budget. Although there are a lot of commitments already in the pipeline one of the purposes of the agency is to move the funding around and to work with it more flexibly.

## HCA TOOLKIT

The tool kit that HCA is developing will have a number of components and is likely to be used in different and more flexible ways. Its components include the following.

- Advice, support and capacity building
- Master-planning and project management
- Preferred developer panels
- Strategic relationships with lenders and investors
- Surplus public sector land
- Investment: growth, renewal and affordability
- PFI credits, joint ventures and funding
- Land assembly and site acquisition/disposal
- Compulsory purchase

## THE SINGLE CONVERSATION

The three key elements of the single conversation concept are that

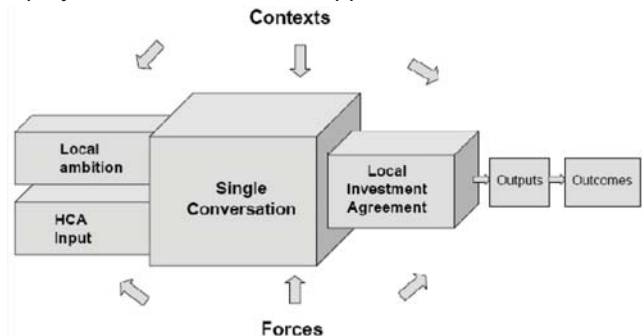
It is a **dynamic** process for how the HCA will agree and secure delivery at the local level in support of national objectives...

...by working with local authorities and their partners in an **ongoing relationship** to achieve their ambitions for

housing growth and renewal, whilst ensuring an appropriate contribution to the delivery of regional (and therefore national) objectives...

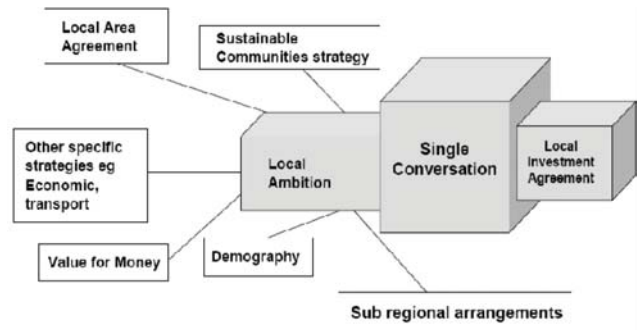
...and by **covering comprehensively** the whole range of issues in an area which previously would have been discussed by a range of different agencies and departments

The need is for a longer-term set of programmes and investment, bringing onboard other partners as well as the HCA and the local authority, with the ultimate objective of changing areas for the better and for the long term. Thus it is not just about a quick fix for a single project but a more holistic approach.

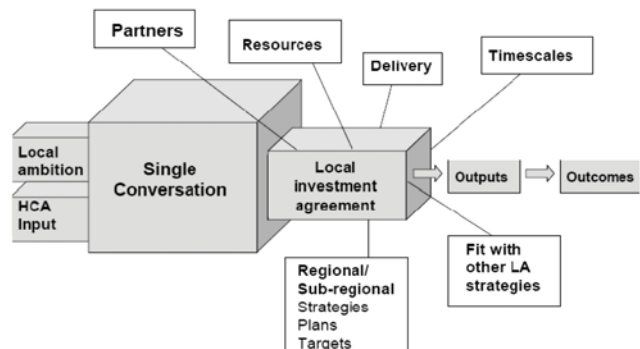


This is the single conversation concept in diagrammatic form. It is taking local ambition, particularly local authority ambition, and involving other partners and players, as well as the HCA, and pulling that all together to produce an investment plan called here a Local Investment Agreement.

## LOCAL AMBITION

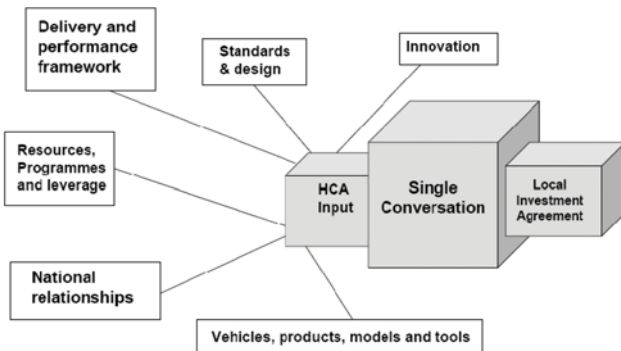


Local ambition includes those elements in the diagram such as Local Area Agreements, Sustainable Communities Strategies, and the like. These are brought together with the HCA tool kit, already mentioned, to build a long-term plan, the Local Investment Agreement.



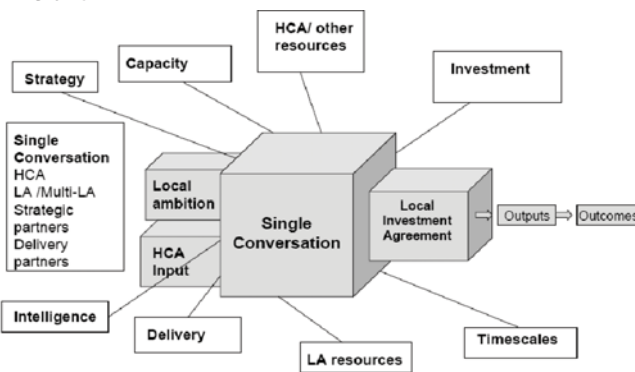
This delivers long-term commitment in terms of eventual outcomes and long term investment commitments from the local authority, its partners, the HCA and others.

## HCA INPUT



These are the inputs of the HCA. A key issue is design. Design is not only about making places attractive but also about improving the long-term sustainability of areas and getting value for money. English Partnerships and the Housing Corporation have always seen design quality not as an extra, but embedded in the process and essential to achieving value for money.

The outcome, the single conversation model that evolves when all the inputs and outputs are put together looks like this.



## DESIGN AND VALUE

When I see in the Estates Gazette an authority selling another piece of land occasionally I send for the pack to see whether there are any design standards attached to the sale and am usually told “that’s all in the planning”. But I firmly believe that as stewards of public sector land, including surplus public sector land, we need to do much more than merely state that we have a planning brief and therefore we have discharged our role in terms of design and sustainability, and proceed to focus on maximising a receipt. Most local authorities have got good green credentials backed up with agreed green environmental policies but if these are not carried through into the management, development or sale of assets then there is a gap. Planning often sets minimum standards, and alone will not deliver high quality development, but sale conditions incorporating authorities green environmental

policies, high quality design briefs and a well informed, responsible and effective disposal strategy will. So in terms of design we will be using the English Partnership and Housing Corporation design standards and making sure those apply not just on a project basis but across the whole programme.

There is a strong business case for good design; it is more than being just about making places visually attractive. Good design fosters making the best use of resources, can ensure the product is fit for purpose, gives value for money, encourages community identity, improves long term liveability and creates commercial value.

## DESIGN: THE HCA STATEMENT OF INTENT

- Good design and sustainable development to be indivisible
- Consistent and high core standards across all HCA activities
- Address the ongoing management of projects
- Promote market improvements and exemplar initiatives; encourage innovation and efficiency
- Have mechanisms and procedures in place to ensure standards are delivered
- Build capacity both internally and externally
- Work in partnership with other national, regional and local agencies
- Consult with partners on our approach

## SKILLS: CURRENT RESOURCES, DELIVERY AND PRIORITIES

A number of consultancies operate under HCA predecessor organisations, for example ATLAS, the National Consultancy Unit, Policy and Economic Teams, and an Urban Finance Team I set up some time ago, and a Low Cost Home Ownership (LCHO) team. All of these have produced a range of guidance, tailored training packages and information and support. This will continue through HCA and will be easier to access.

This area will need to evolve and respond to your views on the type of expertise that would be helpful, for example building licence agreements, information on Escos (energy supply companies), and the like.

HCA wants to raise the game on skills and is looking to build that into the single conversation by

- Developing the key professions (planners, regeneration specialists)
- Enhancing the supply and quality of professionals
- Improving leadership
- Developing a shared framework for individual and collective action, within and between organisations across the sector.

## CASE STUDY: DEVONPORT, PLYMOUTH

In Devonport, down in the South West, is an old Defence Estates site where redevelopment has now started in accordance with an agreed master plan.

Initially we are taking down some massive dock walls that surround the site. The local community helped to kick off the process, and were fully involved from the outset.



It is a massive regeneration project with a firm focus on sustainability. The first phase of development will produce 500 homes, plus extra care facilities, plus affordable homes, and community infrastructure. HCA is working with the local authority and partners on collaborative master planning with planning policy work upfront with an emphasis on speed of delivery and partnership with the private and RSL sectors. The outcomes will be market, affordable and extra-care homes. We will be putting in community management via a Trust and there is a focus on design and sustainability. This project is already an RTPI 2007 National Sustainable Community winner.

It will produce an integrated mixed tenure/income walkable neighbourhood plus employment, schools and education, retail and leisure. The long-term vision is a sustainable community. Conventionally, surplus public sector land is put on the market, sometimes even without a development brief, but almost inevitably whatever happens thereafter is down to the developer. That is not the HCA approach, and I believe that responsible public sector land owners have the responsibility to ensure that disposals not only deliver value for money to meet financial requirements, but part of that responsibility is to ensure development meets the wider sustainable and community objectives that all our organisations subscribe to.

## CONCLUSIONS

The HCA is a new agency intent on developing new approaches and new methods. There is much work to do on detail but it is not too early for local authorities to approach us with proposals. HCA intends to be flexible in achieving both local ambitions and national objectives. Using the single conversation model we have a very clear commitment to collaborative relationships, national, regional and local. But collaboration and dialogue are two way relationships and our partners need to be clear as to what they contribute to deliver the outcomes we both want. I am very much looking forward to working with you.

David Edwards  
Director for Southern England,  
English Partnerships

---





# ASSET

## ROANNE AND PROCUREMENT

ACES Presidential Conference  
Basildon, September 2008

ACES Paper No. 08.9/04 by

**ELIZABETH COOPER**

Partner, Nabarro's Projects Team



## THE AUTHOR:

ELIZABETH COOPER is a partner in Nabarro's Projects team. Her previous experience as an in-house lawyer for the London Boroughs of Camden and Lewisham is invaluable in providing an excellent service to local authorities and other public sector clients.

She specialises in PFI/PPPs and EU procurement. She acts for both public and private sector clients and has advised on completed PFI/PPP schemes in the education, health and social services sectors. Elizabeth has extensive experience of advising on European procurement law and local government vires issues and is currently leading on a number of innovative strategic partnering projects including Building Schools for the Future.

Elizabeth is a regular speaker at conferences and client events on EU procurement rules. She also responds to the European Commission and the Office of Government Commerce (OGC) on directives and regulations affecting procurement and has an in-depth knowledge in this field. Elizabeth also contributes articles and commentary to a number of publications, including Construction News, PPP Journal, Municipal Journal and Tolley's "Local Government Contracts and Procurement".

## CONTENTS:

INTRODUCTION .....	35
WHAT IS PROCUREMENT? .....	35
THE EU PROCUREMENT RULES .....	35
WHEN DO THEY APPLY? .....	36
ARE DEVELOPMENTS SUBJECT TO THE PROCUREMENT RULES? .....	36
DEVELOPING CASE LAW FOR DEVELOPMENT WORKS .....	36
KEY ASPECTS OF ROANNE .....	37
RISK OF CHALLENGE .....	37
PROCUREMENT ROUTES .....	38
CHOOSING A PROCUREMENT ROUTE .....	38
GOING FORWARD: FUTURE SCHEMES .....	39
AND FINALLY .....	39
APPENDIX 1 .....	40

# ROANNE AND PROCUREMENT

## INTRODUCTION

European case law on procurement is a growth area and only yesterday (at the time of writing – 18/09/2008) a case was referred to the European Commission dealing with planning and working in partnership with others. Apparently the Valencian Authority in Spain set up a joint venture to carry out town and urban planning and have been undertaking works and land disposals under that Arrangement. The case has been referred because the joint venture, when it was set up, was not subject to a procurement process. It will be interesting to see what the outcome is because there is now increasing pressure on local authorities to go through a proper procurement process and even where, historically, certain projects have not been procured through the OJEU, they will probably have at least been advertised throughout Europe.

The developing case law, and the Valencian case mentioned above, has not reached the European Courts of Justice yet, but the Commission are looking at the implications of recent decisions, particularly the Roanne case that has set the cat amongst the pigeons with local authorities.

## THE SCOPE OF THIS PAPER

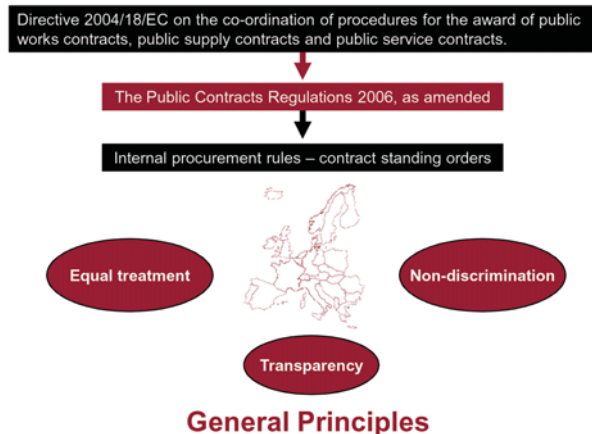
- intend to deal with the following topics
- What is procurement?
- When do the procurement rules apply?
- Are developments subject to the procurement rules?
- Developing case law
- Factors to consider
- Risk of challenge
- Procurement routes
- Going forward

## WHAT IS PROCUREMENT?

Procurement is the way in which public bodies, particularly local authorities, receive works, services and supplies from the private sector. However a recent communication from the European Commission states that where you are setting up partnerships/joint ventures call them "Institutionalised PPs". Where you set up IPPs, even though it is a public/public venture, if that public venture is going to be letting services or works contracts to other bodies or even back to

themselves, then there should be one procurement to set up your joint venture and that procurement should also include the kind of contracts and the arrangements that are going to be let by the partnership. The scene is becoming increasingly complex but it is worth looking at the communication as it shows the increasing pressure from Europe and the European Commission on how public bodies procure. Procurement involves a competitive process and I will deal with possible alternative procurement routes later. Procurement in the public sector involves public expenditure.

## THE EU PROCUREMENT RULES



A few years ago the EU procurement rules on procedures for the award of public works contracts, public supply contracts and public service contracts comprised three sets of regulations that came from three different directives. In the UK these were then amalgamated into one set of consolidated regulations, The Public Contracts Regulations 2006. These have, in fact, been amended already, but not in a way that needs to be detailed in this paper. The regulations set out the different procedures that can be followed in terms of public procurement. Some of the procedures are detailed, some not so, which is interesting, as the broad brush regulations give the flexibility to do what you want to do and many authorities want to do everything within their power to avoid going out to procurement under the European Regulations. Frankly it is often quicker and easier to go out to OJEU Notice than not. A lot of time and effort can go into avoidance but sometimes it is just as quick to publish an OJEU Notice. Also each authority has its internal procurement rules and contract standing orders and these are equally important in considering whether to tender or not. The hierarchy is indicated above, the Directive comes first, the Regulations second and then an authority's standing orders. In theory you could comply with your standing orders, but breach the other legislation.

The EC Treaty principles underlying the regulations are equal treatment, transparency and non-discrimination and each is equally important. Previously if an authority breached the regulations an action would be for a

specific breach of a specific regulation, but now you will see increasingly cases that include breaches of the general principles. Damages can be awarded against an authority carrying out a procurement that does not comply with the principles and an increasing number of actions are citing transparency and non-discrimination. Therefore it is possible to comply with the regulations, publish an OJEU Notice and go out to procurement and often this might be a long term process that could last over two years for example and during which you must ensure that all the bidders are treated equally, and fairly, and that there is a transparent process and non-discrimination. It is extremely difficult to sustain that kind of compliance because the nature of projects means that you are going out and are consulting with stake holders, residents, local groups and so on and word is going to get out sometimes about the details of other bidders solutions for example. You must put procedures in place to ensure that you think about these issues.

## WHEN DO THE EU PROCUREMENT RULES APPLY?

Procurement rules apply to public works, supplies and services contracts. The current threshold value for works, that is the cost over which a local authority is required to tender, is £3,497,313. This is quite high compared to the supplies and services threshold that is currently about £139,000. (Different thresholds apply to Government Departments and higher education establishments etc.) There are certain exemptions and most of us know that normally for any kind of land disposal an authority is not required to go out to OJEU Notice, as it is exempt from the European Procurement rules. It is acceptable to publish a notice in the Estates Gazette or locally, as many of you do, but there is no requirement to go to OJEU Notice. There is also the "exclusive rights" exemption, which is being looked at in more cases now to see whether or not you can rely on this exemption, for example, where a developer might come to you with a proposal for land that they own which borders land that the local authority owns and they want to do something with you that covers the whole area. Now if a supplier has exclusive rights to deal with property, and not just land, it could be intellectual property rights, for example, where the supplier has a patent or copyright for certain information or rights, then if the supplier does have exclusive rights unless it would put you to extreme effort, cost and time to acquire rights over that land they can rely on the "exclusive rights" exemption. But be cautious as this has been looked at in some development cases and it is quite hard to sustain the argument in every case, because the Courts will say the authority could have relied on its CPO powers; something to think about.

## ARE DEVELOPMENTS SUBJECT TO THE PROCUREMENT RULES?

The usual reason why developments are not put out under OJEU Notice is that the scheme is essentially for the transfer of property rights and that you are not actually procuring works within the meaning of Works in the regulations and the developer is bearing all the risks of the development. When developments are considered there is often discussion about risk transfer, sharing risks, setting up partnerships, and all those things start little bells ringing in my head thinking procurement, procurement, procurement?

There are some searching questions that need to be asked, and answered, about the nature of the development arrangements before deciding on procedure. If the development is for retail, commercial, industrial and for private use rather than public facilities a key questions is what are we trying to achieve:-

Are we trying to pass the site on to a developer to develop in such a way that the developer will own the site, will own the risks, and will produce facilities that the developer would get the benefit of?

- Or is the authority trying to determine and specify what the development is to include?
- Is there a regeneration element the authority is trying to lead?
- What is the authority specifying in terms of types of works?
- Will the involvement of the authority in the land be maintained after development?

It is essential to look at the situation in the round to determine whether it is just a disposal of a site, what it will be used for and the nature of the authority's continuing involvement, if any. Careful analysis will show if it is simply a "land transaction" or a works transaction. If it is the latter then the works regulations do apply.

Remember to consider your proposal in the round to determine whether it is a land or works contract but do not overlook threshold values.

## DEVELOPING CASE LAW FOR DEVELOPMENT/WORKS

**Gestion Hotelera Internacional SA -v- Comunidad Autonoma de Canarias and others (1994) Case C-331/92**

The Government in the Canary Islands issued two invitations to tender. One was for the award and final concession to operate and build and open a Casino at an existing hotel site and for the use of the hotel installations and operation of the hotel business. Mr. Gestion was the licensee of the hotel at the time and he wanted an annulment of the invitations to tender because they only went out to a limited number of bidders and there was no advertisement in the official

journal. He wanted the invitation annulled because of his interest in the hotel operation. The Court held that this was not a public works contract but a mixed contract and it related to both the performance of the works and the assignment of property and so did not fall within the scope of a public works contract. The Court considered whether or not the works were a major feature and decided that the works were merely incidental to the assignment of property. Many people have cited this case for some time.

**R -v- Brent London Borough Council ex parte O'Malley (1998) 30 HLR 328**

This case concerned part of the Borough's Chalk Hill Estate. Mr O'Malley was one of the residents on part of the estate that was to be transferred to a development company but only after the authority had demolished the existing houses and cleared the site. The Borough was to rehouse the displaced residents and after demolition the site would be disposed of for redevelopment including a supermarket, private residential, social housing and public car park. The housing trust was to be the sole provider of the social housing element and a number of the tenants took action about this and in the High Court the tenants lost but the case went on to a Court of Appeal that decided that the authority was correct not to put the scheme out to tender in this case as it was not a public works contract, but a mixed contract. The Judge stated that the purpose of the scheme as a whole must be considered.

**Auroux and others -v- Commune de Roanne (2007) Case C-220/05**

This case excited everyone's interest as it goes a lot further in looking at what actually constitutes a works contract. The Court did not only look at whether or not works were being provided but considered the kind of risks involved, whether risks were transferred, the consideration, what the local authority is paying, and what benefits accrue to the local authority. The Court went a lot further than merely looking at whether the works were incidental to the main purpose.

This case concerned the phased construction of a leisure centre. The contract was awarded to SEDL, a public authority here acting as an "economic operator". The Court decided that the purpose of the development went beyond execution of works. The first phase was a multiplex cinema, commercial premises to be transferred to third parties and works including a car park, access roads and public spaces to be transferred to the contracting authority. The Court looked at it overall and what was being delivered. The Court followed the Gestion case and it was held that the contract contained elements of two types of contract and it was the main purpose of the contract that had to be considered. The Judge decided that the main purpose of the contract was the construction of a leisure centre and the other aspects in the contract were not enough to convince him otherwise. The authority (of the town Roanne) were looking overall to regenerate the area and the leisure

centre was part of this and despite the fact that there were other works involved not for the authority's benefit, it was held that this was a works contract and that the authority was in breach of the legislation.

## KEY ASPECTS OF ROANNE

I Development of a leisure centre in successive phases consisting of the construction of a multiplex cinema, hotel and commercial premises to be transferred to a third party as well as a car park, access roads and public spaces to be transferred to the authority

- Held to be a "works contract"
- A "works" objective
- Buildings for authority's own use and to be transferred to 3rd parties
- Authority to pay consideration

**Commission -v- Italy (Re Public Works Contracts) (2008) Case C-412-04**

Here the European Commission brought an action against the Italian Government for failing to fulfil its obligations under the Treaty and Directives for Public Procurement, because Italy had adopted laws that removed certain public contracts from the scope of Community Legislation. The Commission had to analyse what a public works contract was and decided that it is the main purpose of the contract that determines whether or not the Directive and EU Regulations will apply on public procurement, or not.

The message is clear from all the cases that whether the Directive and EU Regulations apply is linked to the main purpose of the contract and the main purpose has to be determined in an objective examination of the entire transaction to which the contract relates, including:-

- Main object/purpose of the contract
- Land interest
- Authority involvement
- Financial contribution
- Risk transfer

## RISK OF CHALLENGE

You have to be an economic operator to challenge for breach of the Public Contract Regulations 2006 and the procedure is that if there is any breach of the regulations, then anyone who wants to challenge should do it within three months of the breach occurring. Normally the challenge will be made when you become aware that a breach has happened. If the contracts have already been entered into then the only remedy is damages. Often now there is a requirement to notify all unsuccessful tenders, including those that submitted pre-qualification questionnaires, to notify all of them that the award decision has been made, and to whom, and that you are about to enter into contracts. Then there is a minimum ten-day standstill period before

entering into contracts to allow anyone who is unhappy to mount a challenge. These formal letters should go out when an award decision is made, but some leave it until much later than that. If you are getting near to signing contracts and someone comes along to say you did not advertise this, but here you are entering into contracts with them and we would have made a bid had we known. Here they can seek an injunction to stop you entering into the contract and they would have a good strong cause of action. Often someone is incensed and threatens legal action but does not see it through. There are fewer projects out there in the current market and so competition is intense and there will be more challenges. More and more challenges are coming through and whereas in the past the cases have mainly been in other European states there are more coming through now in the UK.

Alternatively if an individual is not happy with what you are doing, then they are not eligible to take action against you for breach of the regulations but they can go to the European Commission, or even the European Commission can, without prompting, take action but not against the individual local authority, the Commission goes after the National Government. Then Government has to make investigations into the circumstances of why there has been non-compliance and then take action. And if the European Commission believe there are grounds they may commence with a European Court of Justice Action as well, but this does not happen that often.

The New Remedies Directive 2007/66/EC lays down additional regulations and requirements and part of it is already implemented in the UK at the time we incorporated the Consolidated Directive. But some other member states have not implemented the new directive. The other big difference with this directive is whereas at the moment if contracts have been entered into the only remedy is damages, but when the new directive comes into UK law in December 2009 contracts may be set aside in certain circumstances. Consequently, with the new system, if a contract award notice has been published an economic operator will only have 30 days to challenge, but if there is no notice published, which is probably the case, because most authorities forget to publish contract award notices, then there is a 6 month window for challenge. That is a long period of uncertainty as to whether or not you are safe from challenge and can move on.

## PROCUREMENT ROUTES

The different types of procurement are open, restricted, negotiated, and competitive dialogue. The open and restrictive procedures are not suitable options for most developments and the European Commission's preference is competitive dialogue for complex projects. The OGC's preferred procedure is also competitive dialogue and most PFI, Strategic Partnerships or large-scale project guidance recommends the same.

Authorities may still use the negotiated procedure but decisions have to be justified. Ideally there should be an audit trail of reasoning and often authorities will complete and retain a questionnaire about alternative routes.

Competitive dialogue can work for developments and it allows the promoter to open a dialogue with bidders, a good thing, much earlier than the negotiated procedure. The competitive dialogue route is a lengthy and expensive process for all. Partnerships for Schools has just decided to change their guidance and what they now do is testing out the partnership aspirations of bidders early in the dialogue to judge whether they can meet and work with the authority over a long term period. In my opinion it is a good idea to bring that forward. Decisions made at this stage are used to remove from the short list those bidders the authority feel they cannot work with and then they are able to get into the serious competition with two bidders who meet their aspirations. However it still remains a costly and lengthy process.

There is provision in the regulations that enable an authority to pay bidders to dialogue with them but I do not know of any authority that has done this. But be aware that most bidders will know this is an option although most will just price the cost of the bidding into the process.

There is another regulation known as the Public Works Concession. It can be applied to a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the works to be carried out under the contract. The test is whether:

- The contract is a public works contract and
- The consideration involves the grant of a right to exploit the work (not all of the work need involve the grant of such a right)"

The promoter still has to publish an OJEU Notice but after that, apart from having to comply with a tender return date period, you can effectively do what you want. For example it is possible to negotiate with only one bidder.

## CHOOSING A PROCUREMENT ROUTE

Factors to consider:

- Flexibility when structuring negotiations. Competitive dialogue can give you that flexibility. You cannot negotiate in competitive dialogue after you have closed dialogue, but can only fine-tune and clarify, terms that are not defined exactly.
- Time constraints. Different procedures, different time rules.
- Financial constraints. The more complex procedure, the more it will cost.
- Complexity of sub-contracting arrangements
- Market response. It is always worth doing soft market testing.

## GOING FORWARD; LEGACY DEALS UNDER EXISTING CO-OPERATION/ EXCLUSIVITY AGREEMENTS

Where an authority has arrangements already in place, legal advice may have been sought on whether or not you could continue with these existing arrangements. Often it is impractical to unwind these and to be honest in some cases it may be more of a risk to try and get out of existing arrangements than it is not to have procured. Because significant sums are invested on all sides, if I was a developer and was told that the authority wanted to pull out in such circumstances, I would be straight on to my lawyer asking what can we do about this. That sort of action does not bode well for good partnership working. In my opinion it is a case of weighing up the legal risks in changing routes and then deciding which the greater risk is, abandonment or to continue. Having advertised the development initially in the Estates Gazette is one mitigation but it is not a full defence.

## GOING FORWARD; FUTURE SCHEMES

A thorough analysis of procurement law is needed by both contracting authority and developer and both need to consider particularly for the scheme in hand whether or not it is likely that the regulations will kick-in in the light of the element of works you want delivered according to the specification. These are the factors that need to be looked at and the key action is to look at the transaction as a whole, thereafter any decision has to be taken on a scheme-by-scheme basis.

## AND FINALLY, SOMETHING FOR YOU TO THINK ABOUT

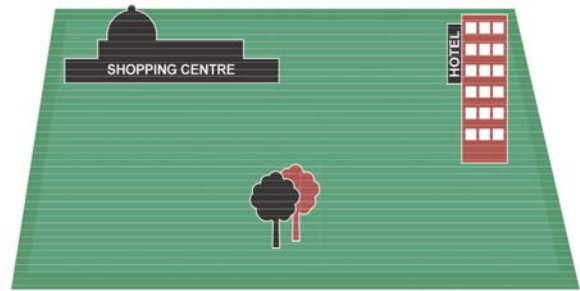
This is something for you to think about. I am not going to give you the answers; it is all down to you.

A local authority wishes to dispose of a site with a tatty old building on it and a developer approaches with a proposal.



The developer has suggested purchasing the site, demolishing the derelict building and building a new hotel. Are there any procurement implications?

And



What if a shopping centre is added?

And a leisure centre; and a large car park on which the authority wants allocated parking, and.....



And finally a housing development with X% affordable housing?

At each step can you assess whether there are any procurement implications?

The authority may operate the leisure centre or it could be operated by the private sector; will it make a difference?

Will it make a difference if either party specifies what the centre looks like?

The big car park will be used by the shopping centre and the leisure centre, but the authority want to have some of the car parking allocated for its own use and will pay a consideration; will this affect your decision?

# APPENDIX 1

## Additional Note on Cases on Procurement of Public Works Contracts

Prepared by Nabarro LLP, September 2008

### 1. *Gestion Hotelera International SA v Comunidad Autonoma de Canarias and others* (1994) Case C-331/92

#### Facts

The Presidential Counsellor of the Canary Islands issued two invitations to tender. These were for the installation and opening of a casino on the premises of the Hotel Santa Catalina in Las Palmas; and for the use of that hotel, its installations and the operation of the hotel business. The lessee of the hotel (Gestion) applied for the annulment of the invitations to tender, arguing that it was a public works contract because the successful tenderers had to carry out renovation works.

#### Decision

It was not a public works contract. This is because a mixed contract relating to both the performance of works and the assignment of property does not fall within the scope of a public works contract, if the performance of the works is merely incidental to the assignment of the property.

The court held that the main objects of the two contracts were the installation and operation of a casino and the operation of a hotel business. The contracts did not contain a description of any works that would be required. Therefore the renovation was incidental and did not justify treating the contract as one of public works.

### 2. *R v Brent London Borough Council ex Parte O' Malley* (1998) 30 HLR 328

#### Facts

This case is concerned with the Bison Estate, which Brent proposed to redevelop. After demolition of the estate, part of it would be disposed of for redevelopment as a supermarket; part of it was to be turned into a privately owned residential development; and the remaining part was to be used for social housing and a public park.

Eight tenants of the Bison Estate challenged the legality of the scheme. One of the limbs of this challenge was that the scheme should have been put out to tender.

#### Decision

Following *Gestion*, this scheme was characterised as a mixed contract and its purpose as a whole must be considered. The judge stated that a public works contract is a contract for the construction or design of building and civil engineering works, or a contract to engage someone to do those things. Although this scheme included *some* work of this type, it was fundamentally a contract for development. This was because the main point of the construction was to provide residential developments. It was therefore not a public works contract.

### 3. *Auroux and others v Commune de Roanne* (2007) Case C-220/05

#### Facts

The municipality of Roanne signed an agreement with SEDL (another public body) for the construction of a leisure centre. The first phase of this scheme was to construct a multiplex cinema, as well as commercial premises to be transferred to third parties and works (a car park, access roads and public spaces) to be transferred to the contracting authority. The French government referred the case to the ECJ, asking whether it was a public works contract.

#### Decision

The *Gestion* case was followed – i.e. where a contract contains elements of two types of contract, it is the main purpose of that contract that must be looked at.

The court agreed that SEDL had to do more than just execute works by dealing with the legal aspects, the acquisition of the land and town planning. However, the contract's main purpose was construction of the leisure centre as a whole. The other aspects covered in the contract did not override its fundamental nature as a contract of works.

The specific circumstances of the case – i.e. that one public authority was engaging another to carry out the project and that any land not disposed of to third parties would automatically transfer back to the first contracting authority at the end of the works – did not remove it from the scope of a public works contract either.

### 4. *Commission v Italy (Re Public Works Contracts)* (2008) Case C-412-04

#### Facts

In this case, the Commission brought an action against Italy for failing to fulfil its obligations under the Treaty and Directives, concerning the procedure for public procurement. In particular, they had adopted laws that removed certain public contracts from the scope of Community legislation.

#### Decision

The Commission held that a contract will be regarded as a public works contract; only if it has an object set out in the Directive and there are no ancillary works that justify treating it as anything other than a public works contract. The Commission also referred to the *Auroux* case, by stating that it is the main purpose of the contract that must be looked at. This main purpose must be determined after an objective examination of the entire transaction to which the contract relates.

Elizabeth Cooper  
Nabarro



# ASSET

## DELIVERING REGENERATION

IN A CHANGING  
FINANCIAL CLIMATE

---

ACES Presidential Conference  
Basildon, September 2008

ACES Paper No. 08.9/05 by

**IAN BUTT**

Development Project Director,  
Basildon District Council

**TIM JOHNSON**

Director, DTZ



## THE AUTHORS:

IAN BUTT as Development Project Director for the regeneration of Basildon town centre is responsible for the procurement of the strategic development partner and the delivery of the £1 billion regeneration of Basildon town centre. The plans will create a new town centre, incorporating not only the commercial and residential elements expected, but a developer's master plan prepared through extensive public consultation and engagement.

Basildon has the biggest economy in the Thames Gateway after its western suburb of London. As such effective engagement with the commercial sectors is crucial. Being a former New Town, residents have been used to growth and change, but as the town has matured resistance to development has grown. Constant consultation and engagement forms a major element of Ian's work to minimise the surprise.

A Chartered Town Planner, Ian Butt has worked at Basildon District Council since November 1988. Prior to his appointment as the Development Project Director in August 2007, Ian was the Manager of Strategic Development Coordination responsible for a diverse regeneration programme in Basildon District for the Basildon Renaissance Partnership.

Ian has considerable experience developing and delivering regeneration and economic development projects, and contributed towards securing Basildon's position within the Thames Gateway. He co-wrote the Vision for Thames Gateway South Essex and helped to establish the Basildon Renaissance Partnership in 2003.

Married with two children, Ian enjoys music, travel, and fine wine, and is a keen armchair Birmingham City fan despite their unenviable historical record!

TIM JOHNSON is Director, Development Consulting, London & SE for DTZ and has been a driving force from the consultant side on the Basildon town centre regeneration project. He specialises in urban regeneration, development strategy & delivery vehicles, master planning and town centre development.

He is a Member of the Royal Town and Planning Institute, and runs DTZ's Development & Planning team in London. He has worked on a variety of projects, including the Crawley town centre business plan, delivery vehicles for Southampton, the economic vision for Milton Keynes, and an SME accommodation strategy for the London Borough of Lambeth.

## CONTENTS:

INTRODUCTION . . . . .	43
THE PERFECT STORM . . . . .	43
THE SIX POINT PLAN	
1. DO YOUR DUE DILIGENCE . . . . .	44
2. FLEXIBILITY . . . . .	44
3. MINIMISE BIDDER WORKLOADS . . . . .	45
4. RESOURCE . . . . .	45
5. MANAGE THE PROCESS . . . . .	45
6. WORK AT THE RELATIONSHIP . . . . .	46
SUMMARY . . . . .	46

# DELIVERING REGENERATION

## IN A CHANGING FINANCIAL CLIMATE

### INTRODUCTION

The future is all about public/private partnerships; we must all work together. Partnering is a complex way of working and it is getting more complicated all the time. Economically we have had over the last twelve/fifteen months a lot of doom and gloom and it is steadily getting worse with major banks and insurance groups going down. At times the daily news is beginning to sound like an epic Hollywood story along the lines of, say,



In fact the real title of our paper could well be The Perfect Storm for your regeneration project.

The Perfect Storm, as presented by Hollywood, was the coming together, in 1991, of a number of different forces off the North East Coast of the United States. Three major weather fronts collided to create what was the most vicious storm ever seen on this planet since records began. To a certain extent the downturn that we are currently experiencing is similar.

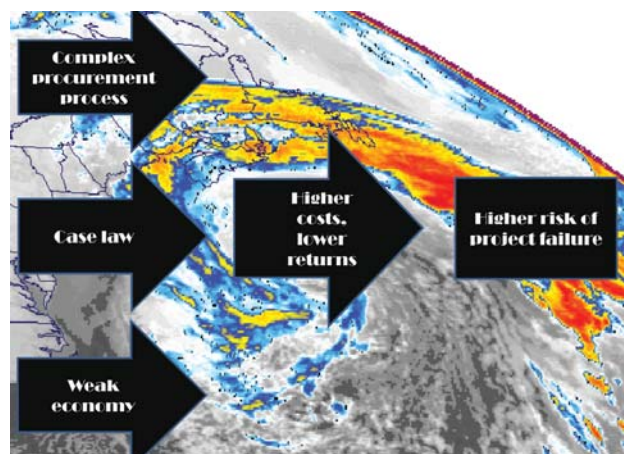
We are involved in the regeneration of Basildon Town Centre. Basildon is a New Town and the town centre was built in the 1960s as a complete pedestrianised area surrounded by a big ring road. It is a town centre that needs more than tinkering; it needs a substantial and comprehensive redevelopment – a £1 to £1.25 BILLION redevelopment.

The Council commissioned DTZ to put together

development framework, we have been through the public consultation process and soft market tested so we knew there was real interest before we took it to the market. The outputs are big, 3,650 new homes for example, which is a new community. As there are already about 180 homes in the town centre we are creating a new community of about 10,000 people, and about 5,000 jobs with a new college and the usual public car parking and so on. This ambitious project will take 20 years to deliver. If the predicted cost of £1 billion is spread over 20 years it is only a realistic £50 million per annum in a good market.

We now want to procure a strategic development partner, that is a single partner to take the lead role in the regeneration under contract to the Council, and we are already into confidential competitive dialogue. As this is a confidential process we must not reveal anything about the terms we have been discussing but we are able to share with you some of the experiences that we have had going through the process. We are confident that this project will transcend this downturn. The big projects, the viable projects will transcend this downturn and will probably still be around when the next one comes.

### THE PERFECT STORM



These are the forces that are coming together to make for a difficult time for all regeneration projects.

**The Complex Procurement Process** We are being recommended to go down increasingly complex and lengthy procurement processes in order to marry the resources and skills of the public and private sectors. For the Basildon Town Centre project we are going through the Competitive Dialogue Process. It is too early to say how helpful this is but there are advantages. It is refreshing to be able to discuss with tenderers key elements of the project and exchange ideas. We have learnt that there is no monopoly on where the best ideas come from and it is useful to be able to talk and possibly incorporate new ideas from the bidders as part of the dialogue process. However it is certain that Competitive Dialogue lengthens the process and adds to the expense

for both public and private sector partners. This could be because the process is new.

**Case Law** More and more “Regeneration” cases are being reported including such major decisions as Roanne and all these are impacting on the process.

**Weak Economy** The turbulent environment surrounding the economy is an obviously more significant factor than anything else at the moment.

**Higher Costs, Lower Returns** This huge uncertainty and increasing costs mean lower returns for the development partners on your project. There is now less money available and in any event the cost of credit is much more expensive so developers have less available cash to pitch competitively for projects. The lack of cash means that there are fewer mortgage approvals so house prices are being affected. Consumer expenditure is going down and beginning to affect retail rents. All property market indicators are pointing in the wrong direction at the moment.

**Higher Risk of Project Failure** Even if some local indicators for your project look good the economy and national and international property market indicators may still overshadow them. This affects the ability of developers to bid for projects and see them in a positive light. Lower returns, higher development costs, and a more riskier environment are not a good combination for a development manager seeking board approval to spend money on bid costs and proving projects are viable. This means that there is a higher risk of your regeneration project failing.

Bearing all this in mind it is essential in promoting your project to keep two principles in mind. First do what you can do to make your development project more viable and second be smart about the procurement process. Remember developers look at your project in two senses. They need to be convinced that the project can be delivered and is viable. And developers will be comparing the cost of bidding for and winning your project, against other projects elsewhere in the country, or Europe, or internationally. Observe the following six point plan to get you home and dry through the perfect storm.

## THE SIX POINT PLAN

### 1. Do your due diligence

Do your homework! It is important to know all there is to know about the project, the local market place and values. Even if values within your area are holding up well this may not be so elsewhere and potential tenderers may be being affected and squeezed on other projects so it is equally important to understand their position and to know the overall market. Schemes may look good locally but a critical factor is the ability of developers to raise finance at national and international level. Ultimately it does not matter how notionally profitable your scheme is if it is costing a developer 8%

to fund them, for a lot of developers, it is unpalatable. Understand what your opportunity is and where it sits in the market place.

A project needs a unique selling point. In the Basildon project the Council has a lot of land ownership. There is a second landowner, a non-profit organisation, which owns the car parks and the public realm. The Council and the second landowner are in partnership. The Council is also adopting a comprehensive approach and as Basildon is in the Thames Gateway we have the leverage to bring in other public sector funding too.

You need to de-risk your project as far as possible before going to the market. Make sure you do your market testing too. Through the development framework process DTZ talked to a number of companies some of who expressed interest and ended up being short-listed. Two years ago we invited the property industry to a presentation at the Royal Commonwealth Club with Andrew Neal as guest speaker, and he did a good job summarising how Basildon fitted in within the Thames Gateway, nationally, and globally. The event cost a lot of money, and was risky, and a brave thing to do in the market but since then there has been a lot of talk about Basildon where things are happening. It is well worth planning for such an event when beginning to engage with your bidders. So entertain them and show them that you mean business and that you want them as much as they want your project.

Do your research and share it. We have six lever arch files of town centre land registry information and land ownership appraisal. We have full details of all covenants. Share this information with your bidders by way of an open book process. You know your project better than they do. Share all your knowledge with your bidders and this will strengthen future relationships. We have set up an electronic data room containing about 150 documents. It is a huge data resource about this project that all bidders can access. Also use your knowledge of your local area to best effect. Part of Basildon town centre was a flood plain. We know it was a flood plain because in 1958 it flooded, despite being about ten miles away from the nearest estuary. Since then the National Rivers Authority and the Environment Agency have undertaken a number of improvements and have put flood alleviation measures in place. This seriously questioned the flood plain designation. Accordingly we challenged it and as a result the flood plain designation of the town centre was removed. That avoided the need for flood mitigation measures costing about £5 to £10 million.

### 2. Flexibility

You have got to be flexible. This is one of the most critical factors. Flexibility is all about promoters being able to respond to, for example, the changing economic realities that we are now facing. Clearly it is necessary to do a lot of work up front and get agreement at member and officer level and with partners on what fundamental

objectives are to be delivered and to be clear and transparent about things like scoring, weightings and so on. Also it is important to recognise that there are a number of ways to deliver projects and achieve the same outcomes.

Work with tenderers to think creatively about different ways of delivery in a climate where revenues have gone down, costs have gone up and risks are increasing. Focus on the important things and what control the authority has over things that have maximum beneficial impact on the project. Consider phasing as developers are finding cash hard to find at the moment. Think about the viability of the project from the developer's point of view and their cash flow. Can expensive items be back end loaded? Can we get some early revenue generation?

An authority can de-risk planning through clarifying Section 101 and infrastructure requirements. It is possible to be clear about those, and what exactly is fixed, what might be up for negotiation. This makes life easier for a development partner. Share with potential partners expected levels of returns from assets used and remember outcomes versus financial returns is a potential trade. This is all about value engineering and working how to control things to assist developers and make projects more viable. As an example in Basildon we opted for a town centre development framework, not a blue print, not a master plan. The framework had clear principles but included much flexibility in terms of delivery and we established an early important principle that the Council was prepared to be entrepreneurial and think creatively about alternative solutions.

But beware of the issue of flexibility in the context of the procurement process. If you have gone to the market with a certain set of particulars and defined framework then if there are any changes you make during the competitive dialogue process it is best always to do the legal check to ensure the Council is still procuring in accordance with the regulations and has not veered away from what was originally put to the market to such an extent that the Council is at risk. A procurement expert is an essential addition to the team.

### **3. Minimise Bidder Workloads**

These are tough times and to create an advantage as a promoter you must aim to minimise your bidders' workloads. Even the most cash rich, or seemingly cash rich, developer is looking to save every penny. If you go out to the market with a long and expensive procurement process at the end of which you are going to want them to write a lengthy submission then either they will not be interested in your project or, after an expensive competitive dialogue process, and prior to the tender stage, the bidder sees the size of your tender documents and tells you he cannot afford to carry on as his Board will not give approval.

For example when you put out the contract notice be aware that if the Chief Executive of a potential bidding

company expresses an interest your notice and supporting material will land on his desk. He will not want to see voluminous information or cheap pieces of paper with a staple in the corner. He will want to see a well-presented, authoritative and brief summary that gives him all the information that he needs to decide if he wants to investigate further. The way to help bidders through the process is to give them something that leads to something else and make sure that bidders are aware that all the information they need is available.

And remember too that if you aim to minimise bidder workloads then it minimises the promoter's workload too. If you have three or four bidders for your competition, they do everything once whilst you may end up having to do everything three or four times.

### **4. Resource**

One of the key lessons from the Basildon experience is not to underestimate the amount of resource that both the promoter and the development partner need to put in. As the procurement process gets ever more complex it takes longer and costs more money. And before the bidding process gets under way lots of resources are used up in bidding for growth area funding, local transport plan funding, and the like and in trying to bring in potential public sector partners such as PCTs and Schools/Colleges that might help to make the scheme more viable. Whether to fund the bidding costs of tenderers, and how, is a difficult problem but this option is another way to make your project more attractive than any other schemes your bidder could instead spend their resources on.

The authority's staffing requirement should not be underestimated. The scheme needs the right amount of staff resource at the right level of seniority as part of the team through preparation and procurement. This is a resource intensive, work intensive process and the staffing resource must be dedicated to the project and hence available at all times. Seniority is important because potential development partners pitching for work with you need to know that they are talking with people who matter at the authority and who have the power to make and implement decisions. During dialogue sessions bidders also need to receive expert opinion across a range of topics.

In Basildon the Council formed a dedicated regeneration team with the responsibility of leading, championing and coordinating regeneration projects. There is the project director, senior representatives from finance, legal, planning and from property. This is fundamental for project delivery and for gaining the respect of the future development partners.

### **5. Manage the Process**

The two key points in managing this complicated process are good leadership and dedication. The project director must have good leadership qualities. The team involved in the procurement of Basildon town centre is a

dedicated team of both in-house experts and external consultants. Leadership is important in managing the team, in managing the process, and in managing elected members whose input to the process is vital. We have built up exceptional relationships between the project leader, the project team and elected members so much so that members are seen to be part of “the team” and not just on stand by to make the tough decisions. We have been through difficult times together and I have found that involved members have been very supportive in helping to find solutions.

We have also brought in our other partners as part of the Basildon Town Centre team. Essex County Council sit at the table with us, as do English Partnerships and the other major landowner. This also helps in the continuous enhancement of the scheme. There is going to be a brand new FE college included which will change the scheme and make it more viable.

In addition to managing the whole process we also manage the risk and every month the risk team meets to do further risk assessments incorporating every single change to the project that has occurred. The message is “If you fail to prepare then you are preparing for failure.” The other message is that you are selling yourself to your bidders as much as they are selling themselves to you and they will be looking to you and how you manage and conduct the process and thinking is this somebody I can do business with? Is this an authority I can commit my company to spend a very long time with?

Basildon Council is creative and proactive in the way it has approached its regeneration projects and has encouraged open and constructive discussion as an essential part of the process. Constructive criticism of ideas with development partners, within the Council and with advisors is one of most fundamental parts of the process and ensures the best ideas come forward.

Developers need to respect local authority processes and that respect needs to go both ways. Developers considering these projects have the objective of making a profit. That is what makes the world go around. Show that you are listening when the development partner tries to tell you something. If you can then discuss and analyse it and, may be, end up dismissing it for perfectly sensible reasons, that should not be a problem but you are looking for a long-term relationship with a partner and they are looking for is a partner who listens and takes heed of what is being said.

## 6. Work at the Relationship

Confidence is a key aspect in building the relationship. If the promoter does not champion the schemes why should the private sector? The promoter must be confident that the scheme on offer is the right thing to do and is being done at the right time. In Basildon we have built up a good relationship with our bidders in three major projects going through competitive dialogue process. That says as much about the bidders as it does

about us. The bidders have put good teams on these projects and that is good news from the outset as one day one of those bidders is going to be Basildon’s long-term partner so it is best to get off on the right foot. Also unsuccessful bidders may one day try to invest in your area and if the original relationship was not good they may think twice and decide not to get involved or worse still tell others not to go to Basildon. Similarly bidders will bring along with them consultancy teams who may also represent other investors and if they do not see you as willing, proactive and pragmatic partners they may advise their other clients to keep away. So it is absolutely imperative that you get the relationship right from the start as that relationship will carry through the procurement process, to delivery stage and after you hand over the project to the community.

## SUMMARY



These are the six points you must remember and work hard to achieve even though they may seem unremarkable and simplistic; they are not easy. But we firmly believe that if you follow these six points from doing your homework to working on the relationship then you will see calm waters when you come out at the other end.

Ian Butt  
Development Project Director,  
Basildon District Council  
&  
Tim Johnson  
Director, DTZ







This edition of ASSET has been published with sponsorship from:



Basildon  
**Renaissance**  
Partnership



**ACES**  
**100**

1908-2008 – ONE HUNDRED YEARS of managing PUBLIC PROPERTY for the PUBLIC GOOD

THE HOLIDAY INN, BASILDON  
– venue of the ACES  
Presidential Conference  
Autumn 2008

ASSET • BASILDON-08 • ASSET • BASILDON-08 • ASSET • BASILDON-08 • ASSET • BASILDON-08 • ASSET • BASILDON-08 • ASSET •