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Scottish Property

VOICE

IN THIS ISSUE

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Chairman's Column

Has Scotland finally warmed to Build to Rent?

It wasn't so long ago that I remember looking at the first edition of our Build-to-Rent (BTR) map and feeling slightly disheartened. The map, produced by the BPF, outlines the location and size of BTR developments across the UK, and Scotland was notable due to a lack of BTR activity.

In mid-2016, Scotland had just 1% of all UK BTR homes at varying degrees of planning - a miniscule number given Scotland's population and its potential demand for high quality, professionally managed and institutionally funded PRS product. Not only was Scotland underrepresented on the BTR map, but the wider PRS sector was bedevilled by political controversy and uncertainty.

Since then, however, things have been looking a lot more positive and there is good reason to be optimistic about the future of this new sector.

This month saw the release of BPF's latest BTR map and report and it contains some very promising data, including that the number of BTR homes (in planning, under construction or complete) in Scotland is sitting at 3,365. This is around 3% of the total number in the UK, and while the sector has a long way to go North of the Border, the latest figures represent a substantial increase in units compared to this time last year.

Not only have more projects come on stream, but the Scottish Government is recognising the huge potential that BTR can bring to Scotland's chronic shortage of housing and lack of choice. This has been underpinned by the publication of Planning Delivery Advice, the establishment of Rental Income Guarantee Scheme and, just last week, the hosting of a one-day conference exploring the expansion of the sector.

There is a strong case for BTR's expansion beyond just its ability to alleviate a lack of housing supply. There are a multitude of other emerging economic and social reasons for pursuing more projects. Take the Capital as an example; Edinburgh has one of the highest qualified workforces in the UK, with 41% of residents holding at least one degree. However, a recurring concern that we hear is that holding on to those graduates is becoming increasingly challenging. This is not only because of a lack of employment opportunities, but also because of a lack of quality housing options.

Mobile, young professionals from cities across Scotland, who are not ready or able to buy, demand a quality of accommodation and service that the traditional Buy-to-Let market often can't meet. BTR provides an answer to this challenge and will help Scotland to continue to deliver a high quality of life, which is vital to keeping the talent produced by its world class universities.

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Chairman's Column

continued from page 1

Increased BTR development could also help boost Scotland's sluggish construction sector, which suffered its 8th consecutive quarterly fall in in Quarter 4 2017 - according to government data published a few weeks ago. Ending this construction recession is not only important for our industry but for the Scottish Government, which saw Scotland's economy grow at less than half the rate of the UK's in 2017. If BTR takes off in Scotland to a similar extent as seen in Manchester and elsewhere in the North West of England, then this would bring a welcome boost to our industry and lift Scottish GDP.

While 2017 and the start of 2018 have been positive for the burgeoning BTR sector, I can't pretend that its expansion in Scotland does not face headwinds. Of particular note is the challenge from those who view the sector as creating 'yuppy flats' or that somehow BTR is incompatible with affordable housing. Such views are sadly too common in local authorities, and that is why it is vital that the property industry works with councillors and local authority officials to inform them about the huge advantages BTR has over the other types of PRS, such as Buy-to-Let, that they are more familiar with.

This process will take time, but SPF staff are actively involved in reaching out to councillors and council officers to challenge misconceptions, and regularly meet with the Scottish Government to promote the sector.

I predict that with a clear regulatory regime in 2018, we will continue to see the announcement of new projects. A lot of hard work is still required from the SPF and other stakeholders, but with continued leadership and engagement from the Scottish Futures Trust, I am more optimistic about the future of BTR in Scotland than I have ever been.

Turning my attention away from BTR for now and before I sign off, I'd like to take this opportunity to thank the many members and invited guests who supported a number of regional lunch and dinner events over the past few weeks. The SPF team has been the length and breadth of Scotland, meeting with members and listening to their local perspectives on markets and issues. These events are very useful in informing the work we do and there will be further events later in the year.

Plans are also well underway to hold the SPF's first ever diversity conference on 26 June. The event will explore the ways in which our industry can be more representative of wider society, which is not only the right thing to do but is also good for business and our industry as a whole. Boosting diversity is a key issue for the SPF and I look forward to sharing more details about the event with you soon.

SAVE THE DATE

for the

SPF ANNUAL DINNER

SPF are delighted to announce that this year's SPF Annual Dinner will be held on **8 NOVEMBER 2018** in the Edinburgh International Conference Centre (EICC). Our annual black-tie dinner is our most popular members event and tables always sell out fast, so save the date in your diary to avoid disappointment. Further details will be released in due course. @gail_spf

Scotland's First Investment Portfolio is launched by UK Government Department for International Trade.

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The UK Government's Department for International Trade (DIT) has produced its first Scottish portfolio of Investment Opportunities. This was launched at MIPIM in Cannes by Minister for Investment Graham Stuart and highlights £2 billion of investment opportunities. The criteria for promotion include having gross development value greater than £100 million and being investor ready with clear business viability.

The portfolio showcases a wide range of large scale, high-quality, investor-ready opportunities in Scotland, representing a variety of sectors and opportunities. Working with Scottish Enterprise, Scottish Development International and Scottish Cities Alliance, DIT has brought together nine projects in Glasgow, Edinburgh, Dundee, Perth and Aberdeen show the breadth and depth of the opportunity across Scotland.

The process has been very helpfully supported by SPF highlighting this opportunity with its members.

Among the investment opportunities put forward in the portfolio are Grade A commercial offices, city centre developments and regeneration projects. Some of the specific projects include:

- Dundee Waterfront: A mixed-use development opportunity in UNESCO's only UK City of Design with a GDV of c. £500m.
- Edinburgh International Business Gateway: A mixed-use commercial-led project at the entrance to Edinburgh International Airport with a GDV of £185m.
- Glasgow George Street Complex: Situated minutes from Queen Street Station, the project has a GDV of £100m.
- Advanced Manufacturing Innovation District, Scotland (AMIDS) in Renfrewshire: 150,000 square metres of commercial space next to Glasgow Airport, looking for investment to finance and deliver demand led commercial space.
- Magenta at Clyde Gateway, Scotland's largest consented commercial development site with over £20m public investment already invested to create an immediate opportunity.

Minister for Investment Graham Stuart said:

"I am delighted to present this first investment portfolio for Scotland. There are many reasons why Scotland is a great place to invest.

"The property sector plays a vital role in furthering the objectives of the government to drive growth across the UK. As an international economic department, DIT stands ready to identify potential investment propositions and to understand how best to make a project attractive to overseas investors and package and present it in the right way."

Scotland has a strong investment offer with a stable and well-respected legal system, a highly-developed financial system, supportive investor-friendly policies and high-performing higher and further education institutions. During 2017, Scotland was the most attractive region in the UK for inward investment after London with total investment spend almost £2.5 billion. £952 million of this came from overseas investors.

The Department for International Trade (DIT) has overall responsibility for promoting UK trade across the world and attracting foreign investment into the UK. DIT's Capital Investment Directorate acts as a one stop shop to align investors with a credible project pipeline, helping them understand the returns.

Previous investment portfolios produced by DIT for the Northern Powerhouse, Midlands Engine, and Northern Ireland are proving to be powerful tools for promoting investment opportunities with private sector developers, local authorities and combined authorities benefiting from the advantages and support that DIT and other government departments can bring.

DIT is keen to grow the pipeline of Scottish projects and to bring forward more projects into the portfolio for promotion. For further information, please contact Marion Francis, Regional Manager Scotland in the Capital Investment team at Department for International Trade, marion.francis@trade.gov.uk

Adjudication of construction disputes

Pentland Investments v Aitken Turnbull Architects [2018] SC EDIN 16

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Adjudication is a very useful and swift means of resolving construction disputes in the course of a project which allows works to progress until final resolution. As Lord Ackner put it in the House of Lords debate on the drearily named Housing Grants, Construction and Regeneration Act 1996: "Adjudication is a highly satisfactory process. It comes under the rubric of "pay now argue later" which is a sensible way of dealing expeditiously and relatively inexpensively with disputes which might hold up completion of important contracts."

Section 108 of the 1996 Act provides that a party to a construction contract has the right to refer a dispute for adjudication. Where any of the qualifying conditions under that section are not met, the adjudication provisions of the Scheme for Construction Contracts apply. This is embodied in the Scheme for Construction Contracts (Scotland) Regulations 1998 and applied in this case. Regulation 8(2) provides:

"The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on related disputes under different contracts, whether or not one or more of those parties is a party to those disputes."

The adjudicator appointed to the dispute also had another related dispute referred to him at the same time involving another contractor. Aitken Turnbull declined to consent to that dispute being dealt with at the same time. That objection was disregarded by the adjudicator who proceeded to determine the dispute and thereafter made an award to Pentland. The architects participated under reservation of their position and refused to pay the award. The case was then referred to the Sheriff Court for enforcement of payment in terms of the adjudicator's award.

The Sheriff dismissed the claim for payment. He set out a set of principles which apply in such cases which is useful for parties involved in construction contracts to be aware of. The main reasons for his decision were as follows:

The essence of the procedure introduced by sec 108 is practicality. A dispute referred to an adjudicator must be prepared, heard and decided within 28 days, which is likely to be a demanding timescale. In general terms then, it will be difficult for an adjudicator to reach a sound decision within a short time scale if he requires to consider more than one dispute at a time. There is also an issue regarding natural justice in that there is a risk that the adjudicator might take into account or be influenced by matters which he has become aware of in relation to the connected dispute when dealing with the one referred to him by one of the parties. In those circumstances, one or other or both of the parties might not be aware of those matters and therefore could not comment upon them.

Having said that, Regulation 8(2) allows an adjudicator to hear multiple adjudications at the same time. This does not derogate from, or contradict, section 108 of the 1996 Act. The adjudicator may not do so, however, unless he has the consent of all the parties. Any party has the absolute right not to consent. The appointed adjudicator in this case did not request or receive that consent. His proceeding to hear and decide this adjudication at the same time as another adjudication of a related dispute, without the defender's consent, was ultra vires. Therefore, the decision could not stand and the claim for payment following from it could not be enforced.

Whilst dispute resolution of this kind is a useful alternative to the main courts, it can be subject to abuse. In the case of *T Clarke (Scotland) Ltd v MMAXX Underfloor Heating* 2015 SC 233, a judge in the Outer House of the Court of Session refused to grant an interdict against a defender, who had raised 8 separate adjudications within a 9 month period, preventing it from raising any further. This was upheld by the Inner House on appeal who stated that the court would be slow to interfere in the adjudication process unless there was clear evidence of an abuse of process.

It has been said that adjudication provides a form of rough justice. Leaving aside extreme cases such as the one just mentioned, it is nonetheless very useful in the context of the construction industry and follows a current trend towards greater use of alternative means of dispute resolution. On that note, readers might be interested to know that both counsel in the Pentland case, myself, and increasing numbers of the Faculty of Advocates hold certification in recognised forms of Alternative Dispute Resolution such as Arbitration and Mediation.

LBTT Update

2017/18 Full Year Data

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2017/18 - Annual Revenue Data

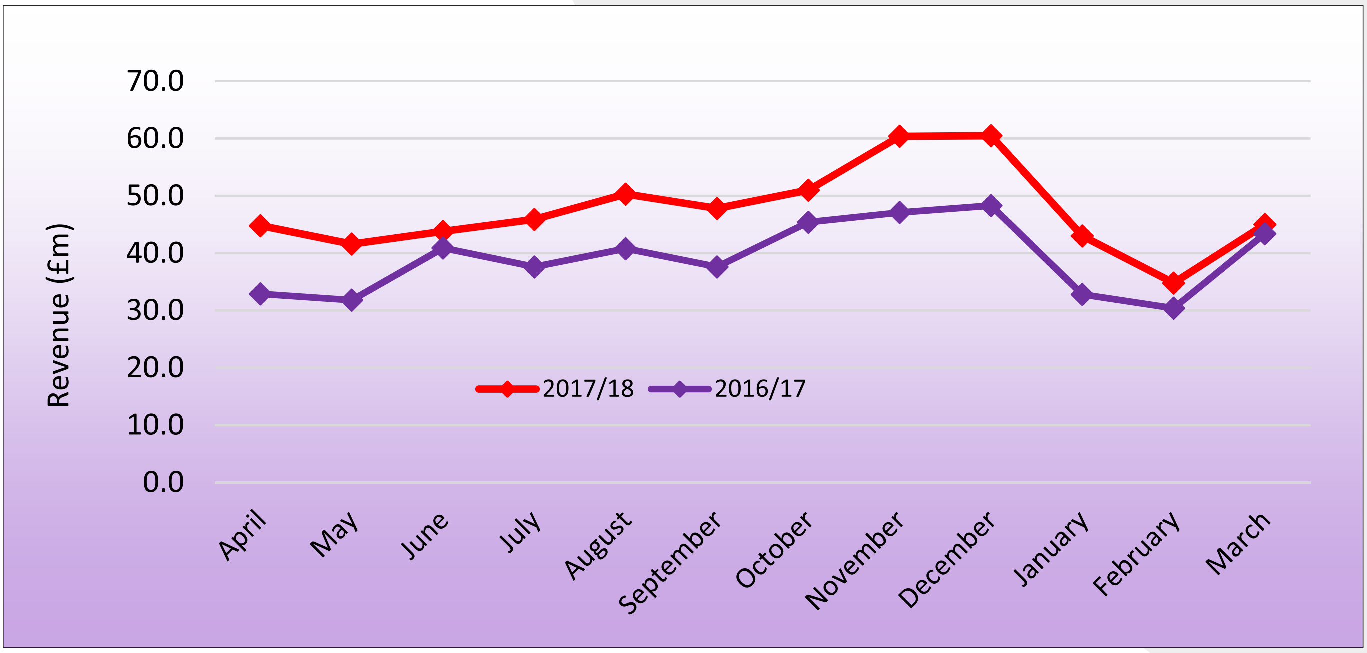
	Residential LBTT	Commercial LBTT	ADS	Total LBTT
Scottish Government 2017/18 Revenue Forecast	£211m	£224m	£72m	£507m
Actual Full Year Revenue	£260.4m	£201.1m	£107.3m	£568.9m
Actual Full Year Revenue (% of Forecasted Total)	↑123.4%	↓90.7%	↑149%	↑112.2%

LBTT Revenue Targets and Actual Revenue 2017/18 - Sources: 'Revenue Scotland' & 'Scottish Budget: Draft Budget 2017/18'

Figures released by Revenue Scotland and analysed by the Scottish Property Federation have shown that revenues from the Land and Buildings Transaction Tax (LBTT) exceeded Scottish Government forecasts in 2017/18.

LBTT generated £568.9m between April 2017 and March 2018, 12% more than the government's forecasted revenue of £507m (as set out in the 2017/18 draft Scottish Budget). This is in stark contrast to annual LBTT revenue in 2016/17, which stood at £468.6m - £69m short of expectations and some £100m less than in 2017/18. Indeed, in every month during the 2017/18 tax year, total LBTT revenue was higher than in the same month the year before.

2017/18 and 2016/17 Monthly LBTT Revenue Comparison



Source: 'Revenue Scotland'

LBTT Update

2017/18 Full Year Data

Of the three separate elements of LBTT - residential, commercial and the Additional Dwellings Supplement (ADS) - only commercial LBTT revenue was below its forecast as set out in the 2017/18 Scottish Budget. Having had a predicted revenue of £224m, commercial revenue ended the year just under 10% short at £201.1m. A sluggish commercial market at the start of 2017/18 was the biggest factor behind the shortfall, with transactions and tax receipts only picking up from October 2017.

Despite commercial LBTT falling short of Scottish Government forecasts, residential LBTT and ADS more than compensated for the difference. Residential LBTT was expected to generate £211m in 2017/18 but a buoyant market saw that target exceeded by almost 25%, ending the tax year with £260.4m.

Meanwhile, few could have foreseen the government's windfall from ADS in 2017/18. The Scottish Government had predicted that the second homes tax would generate £72m, however, as 2017/18 unfolded it quickly became clear that this was a sizeable underestimate. Total revenues of £107.3m were almost 50% above forecast and played a significant part in the government exceeding its total LBTT expectations.

Caution does have to be applied to the ADS data, however, as the charge can be claimed back in certain circumstances. This will reduce the net total as it currently stands. In the 24 months that ADS has been in existence around 19% (£43.3m) of the initial liability of £229.3m has been repaid to taxpayers.

2018/19 - Forecast and Outlook

	2018-19	2019-20	2020-21	2021-22	2022-23
Total LBTT	588	628	668	707	748
Residential LBTT	305	336	366	395	426
Commercial LBTT	190	194	200	206	212
ADS	93	98	102	106	110

Scottish Government's LBTT forecast until 2022/23 - Source: 'Scottish Budget: Draft Budget 2018-19'

The Scottish Government expects to see LBTT bring in £588m in 2018/19 - £19.1m (3.5%) more than was generated in 2017/18. On the face of it this is a realistic target, but the forecast does depend on another substantial uplift in revenue from residential LBTT. Residential LBTT revenue in 2017/18 was £260.4m, however, the forecast for 2018/19 expects this to rise to £305m. While the residential market is particularly buoyant just now, it is constrained by limited supply and by LBTT rates and thresholds that continue to subdue the upper section of the market. Therefore, a 17.5% annual increase in tax take from the sector could be a tall order.

The possible strength of the commercial property market in 2018/19 is also in question and this too has the potential to derail government revenue forecasts. Of the overall LBTT target for 2018/19, £190m is made up from commercial revenue. Interestingly, this forecast is £11m less than the sum generated in 2017/18, but it is still uncertain as to whether the government will reach it. Anecdotal evidence from SPF members speaking at committee meetings suggests that this year will see demand for offices reduce on 2017 levels, with the market expected to have only an 'average' year. This could materially reduce the government's LBTT lease duty.

Policy Round-Up April 2018

Some key policy developments for the industry

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Residential

There has been a good deal of activity across the residential sector this month. Colleagues in the British Property Federation published a first set of annual data on the build-to-rent (BTR) sector's growth. While Scotland lags behind other parts of the UK, there has been a promising boost in the number of homes, with 3,365 homes now at varying stages of the development process. The BPF BTR map shows that there are 8 projects in Scotland, including multiple sites in Glasgow and Edinburgh.

Elsewhere, the Scottish Government has published its framework for monitoring the compliance and enforcement of letting agent regulation in Scotland and launched a consultation on changing the current rules on landlord registration. A series of draft proposals have been published, which will now be subject to a public consultation.

In the build to sell sector, the Help to Buy (Scotland) scheme will be extended beyond 2019. From April 2019, a further £100m will be invested over two years into the scheme. A Bill seeking to reclassify Housing Associations as private rather than public sector bodies has also received cross-party support from MSPs. The earlier reclassification of HAs as public bodies by the ONS impacted on the amount that the Scottish Government could borrow and invest, as net borrowing by RSLs count against its borrowing limits.

Property Tax

April saw significant new business rate changes come into effect in Scotland. The changes mean that there will now be no business rates for unoccupied new build commercial properties, and new occupants of new build properties will be rates-free for the first year of occupation. Additionally, where properties are improved, there will be no additional rates applied as a result of the improvement for 12 months.

Meanwhile, the SPF has responded to a Scottish Government consultation, which proposes secondary legislation under the LBTT Act. The aim of the proposals is to make clear that group relief is available to taxpayers for intragroup property transfers, where a lender requires share pledges over the property. The Scottish Government responded to calls from the SPF and other stakeholders to propose secondary legislation to enable group relief in such circumstances. However, retrospective legislation is needed to ensure taxpayers who have transferred properties intragroup since April 2015, are not unfairly caught.

Investment

This month also saw the Scottish Government launch a major new campaign that it hopes will put Scotland in the international spotlight and showcase the country's 'world-leading assets' to a global audience. Launched simultaneously in North America, London and China, 'Scotland is Now' seeks to promote Scotland as an attractive place to live, work, study, invest and visit.

The campaign is a collaboration between the Scottish Government, VisitScotland, Scottish Development International and Universities Scotland and will have a combined spending of up to £6m. Meanwhile the Scottish Government opened its latest Investment Hub in Berlin. Housing Scottish Government and Scottish Development International staff the Germany Hub will complement the wider international network covering London, Dublin, Brussels, Beijing and Washington DC.

Regional Activity

The SPF met this month with the City of Edinburgh Council's Executive Director of Place, Paul Lawrence. Among the issues discussed was the performance of planning and building standards functions of the council as well as an overview of the current property market in Edinburgh.

In Aberdeen, local developers Cromdale kindly hosted an SPF lunch with a number of members in the region. Members reported strong demand in industrial property as well as stabilised rent values, albeit with incentives. The potential for boosting residential occupancy in the city centre was also discussed.

We also held a small dinner in Dundee with a range of industry members and key guests including Mike Galloway, Dundee City Council, and David Littlejohn, Tay Cities Deal. Members once again noted growing local demand for industrial property, in line with other regions in Scotland.

Moving to Inverness, we hosted a short working lunch with Highland Council Director of Development and Infrastructure Stuart Black. In a recurring theme, members reported good demand locally for industrial property and hotel investment.

Finally, an event held in Glasgow, kindly hosted by Macroberts, saw members meet with the Head of Planning and Building Standards at Glasgow City Council, Forbes Barron.

Guidance on Engaging Communities

The Scottish Government published its 'Guidance on Engaging Communities in Decisions Relating to Land'. This document provides guidance to those taking decisions relating to land on the benefits of, and ways of going about, engaging with communities about those decisions.