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Pinnacle

Insights for
Institutional Investors

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Welcome to Pinnacle

Our Institutional Investor clients operate in a dynamic and fast-growing sector, facing a continuously changing landscape. This edition of Pinnacle, our publication especially for you, is focused on real estate.

With declining interest rates, there is increased optimism in residential and commercial real estate investments. The sector's ability to provide a stable income, capital appreciation and ability to spread risk over a diversity of assets, means that we expect real estate to remain a strong market for institutional investors during 2025.

This edition of Pinnacle discusses:

— ***Planning under a Labour government*** – we consider the new planning related Bills that will be promoted in the next session of Parliament, their potential impact and the opportunities they may create for investment.

— ***New dynamics in office lettings*** – insights for landlords in the post-Covid era – the nature of commercial lease negotiations have changed significantly in the last few years, with tenants having greater negotiation power. We discuss the changes that have happened and what they mean for institutional investors.

— ***Investing in the living sector –*** as significant investment is expected into the living sector over the next decade, this article discusses what investors should consider when investing into the single-family housing market and/or the affordable housing sector.

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Planning under a Labour Government: opportunities for investment

Caroline Stares, Senior Associate, Planning, and Robert Garden, Partner, Planning

Consistent with promises made in Labour's manifesto, planning reform has been at the heart of the Government's agenda in its first six months through a number of policy changes, consultations and working/white papers. Here we consider the new planning related Bills that will be promoted in the next session of Parliament, their potential impact and the opportunities they may create for investment, together with new and emerging policy.

> “The Government’s first six months have presented an ambitious agenda that prioritises planning reform, housing delivery, and energy and infrastructure development.”

Planning

A Planning and Infrastructure Bill will be introduced to reform planning and accelerate the delivery of high-quality infrastructure and housing. A draft Bill is expected to be published for consultation in the Spring.

The Bill has five key aims, which are to:

— ***Streamline the delivery process* for critical infrastructure** by simplifying the development consent regime and enabling new and improved National Policy Statements to come forward. This will seek to fast-track certain infrastructure projects through the planning system – with the Government adopting an ambitious target of determining 150 DCOs by July 2029.

— ***Reform compulsory purchase compensation rules*** to ensure landowners are paid fair but not excessive compensation and to speed up decisions on CPOs where they are in the public interest. The Levelling-up and Regeneration Act 2023 (LURA) already allows the Secretary of State to direct that “hope” value will be ignored for certain CPO schemes. However, Labour proposes to go further and introduce a general power enabling the Secretary of State to make a direction to remove “hope” value for a specific category of sites (rather than on a case-by-case basis) where justified in the public interest. This is a controversial proposal, which conflicts with long established valuation principles under the compensation code and which could see objections and challenges from landowners. Separate to this, the Law Commission has published a consultation paper as part of its review of the current law on compulsory purchase and compensation, which is open until the end of March.

— ***Improve local planning decision making*** by modernising the way planning committees operate. The Government proposes in its recent Planning Committees Working Paper to introduce a National Scheme of Delegation to provide clear rules on when applications are determined by officers or committees; establish new, dedicated committees for strategic development; and introduce mandatory training for planning committee members. Any initiatives to de-politicise the decision-making process will be welcome news to developers and investors.

— **Enhance the capacity of local planning authorities** to improve performance and decision-making. Resourcing issues faced by planning departments across the country remain one of the biggest constraints on development, with the most recent MHCLG skills and capacity survey revealing that 91% of responding local planning authorities have found some difficulty with recruitment, and 97% reported some planning skills gap with the most common gaps being in ecology and biodiversity, master planning and design codes. To fund the increased levels of staff that are needed, the Government has introduced draft Regulations which seek to increase fees from April 2025 for certain applications. Labour has also previously committed to appointing 300 new planning officers, but that amounts to fewer than one new officer per authority. It is to be hoped that Labour has some further proposals in the Planning and Infrastructure Bill to address this long running issue.

— **Leverage development** to fund nature recovery and deliver positive environmental outcomes. Nutrient neutrality has been a well-known barrier to housebuilding during a housing crisis. While the requirements in LURA for water companies in England to upgrade wastewater treatment works in vulnerable areas were a step in the right direction, they did not go far enough to address the challenges facing the industry. In its Development and Nature Recovery Working Paper, the Government proposes addressing environmental impacts at a strategic level in exchange for a financial payment from individual projects, so projects can proceed quickly.

Improvements to the planning regime are undoubtedly positive. However, the proposal to achieve this through yet another piece of primary legislation, in the form of a new Planning and Infrastructure Bill, raises concerns. The lengthy process the previous administration faced in enacting the last piece of planning legislation highlights the potential for significant delays. It is to be hoped that the large Labour majority will deliver the new laws quickly.

> "The use of CPO powers to accelerate development has the potential to unlock large sites and New Towns."

Strategic planning is also firmly back on the agenda with the proposed introduction of an English Devolution Bill. The Government has set out its proposals in an English Devolution White Paper. The Government will establish regional Strategic Authorities (Framework and Mayoral) with new powers, responsibilities and funding. They will be tasked with producing Spatial Development Strategies, which will eventually cover all of England and identify strategic growth areas, key infrastructure requirements and minimum housing requirements for each local planning authority. Mayors will be responsible for producing Local Growth Plans, a roadmap for long-term regional growth, and the Government plans to reorganise local government by replacing two-tier authorities with a unitary authority. It is hoped that a more strategic focus will help unlock the delivery of development which is currently hampered by a cumbersome Local Plan-led process. This may create further opportunities for partnership working between authorities and developers and investors. In the energy sector, strategic spatial energy planning is being taken forward for the first time with a view to a strategic spatial energy plan being in place in 2026.

All of these measures point to a period of high growth driven through faster and more predictable planning processes, especially for housing development, thereby encouraging investment in residential development opportunities. The use of CPO powers to accelerate development has the potential to unlock large sites and New Towns. However, there is concern that offering reduced compensation to landowners for their land could result in legal challenges. The removal of some local controls over development may also be controversial, being perceived as removing local democracy.

“There are likely to be strong opportunities for investment in housing, infrastructure, and energy in the short to medium term.”

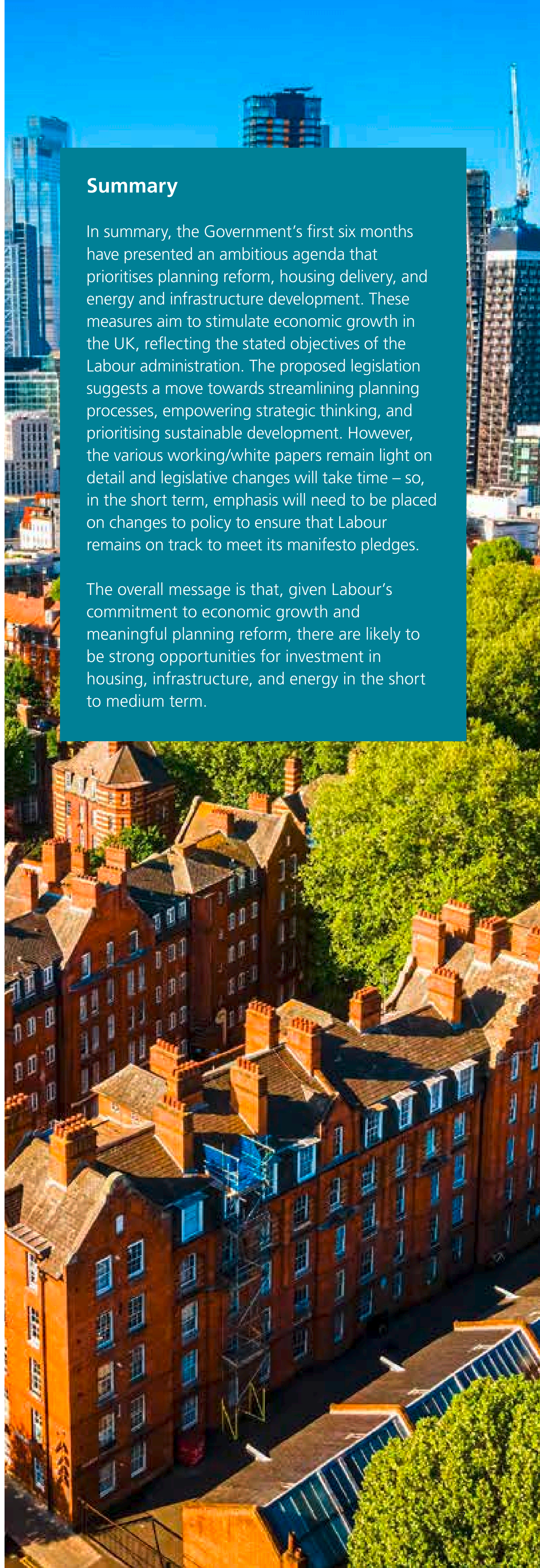
Housing

The Renters' Rights Bill has passed through the House of Commons and is currently with the House of Lords. It aims to alter the dynamic between landlords and tenants by ending no-fault evictions, enhancing tenants’ rights, and increasing regulation on landlords. While primarily affecting the rental market, this could indirectly impact planning by influencing the types of housing developments proposed and approved and therefore where investment should be directed.

The Government intends to publish a draft Leasehold and Commonhold Reform Bill in the second half of 2025. The Bill will reform the leasehold and commonhold systems, including regulating ground rents, removing the threat of forfeiture, and reinvigorating and promoting commonhold ownership. This could affect how developers and investors structure their developments and investments, particularly for apartment buildings and mixed-use developments.

Energy and Infrastructure

The government has set a target of achieving clean energy by 2030, with a new Great British Energy Bill intended to help achieve energy independence and unlock investment in energy infrastructure. Building on the scrapping of the ban of onshore windfarms, the Bill will establish a publicly owned clean power company, headquartered in Scotland, which will invest in renewable energy projects across the UK. The government will also support the development of nuclear power (with a draft national policy statement issued in January 2025), sustainable aviation fuel, carbon capture, and green hydrogen. This could lead to an increase in planning applications for renewable energy projects, potentially requiring planning authorities to adapt their policies and expertise. Updated National Policy Statements are expected in July 2025 and will be updated every five years. Currently, there is a policy gap for certain technologies that the government is prioritising, such as onshore wind and hydrogen. Quicker decisions will depend on clearer and more supportive planning policies (which are up to date), delivered through both National Policy Statements, the National Planning Policy Framework and updates to Planning Policy Guidance. Overall, the measures reinforce the continued importance attributed to energy infrastructure given by government and that this will continue be a strong area for investment.



Summary

In summary, the Government’s first six months have presented an ambitious agenda that prioritises planning reform, housing delivery, and energy and infrastructure development. These measures aim to stimulate economic growth in the UK, reflecting the stated objectives of the Labour administration. The proposed legislation suggests a move towards streamlining planning processes, empowering strategic thinking, and prioritising sustainable development. However, the various working/white papers remain light on detail and legislative changes will take time – so, in the short term, emphasis will need to be placed on changes to policy to ensure that Labour remains on track to meet its manifesto pledges.

The overall message is that, given Labour’s commitment to economic growth and meaningful planning reform, there are likely to be strong opportunities for investment in housing, infrastructure, and energy in the short to medium term.

New dynamics in office lettings: insights for landlords in the post-Covid era

Maddy Lomax, Senior Associate, Real Estate

The post-Covid era has redefined office occupation in the UK. Thankfully, we have moved beyond furlough, Covid-19 rent concessions and government-mandated lockdowns. However, the post-Covid era has seen a significant shift in how office space is used and a changing dynamic in negotiations between landlords and tenants.

In tandem with other ongoing market changes (such as a greater focus on sustainability), we have seen a number of key changes to commercial lease negotiations:

- the shift towards flexible working arrangements and the resultant changes in office space requirements have empowered tenants to negotiate more favourable terms
- a marked increase in tenant-friendly clauses
- a greater emphasis on certainty for tenants before, during and after lease terms.

This evolving landscape presents challenges and opportunities for landlords and tenants alike. Landlords who remain agile and informed about these changes will be best positioned to attract the best tenants and get the most value from their office assets.

Drawing from our extensive experience representing both tenants and landlords, we explore themes that have become more prevalent in office lease negotiations over the last five years.

Why do tenants now have greater negotiating power?

- The widespread adoption of remote work has reduced the need for physical office space, leading to higher vacancy rates. This surplus of available office space gives tenants more options and bargaining power in negotiations for new leases.
- Economic uncertainty has made companies more cost-conscious, prompting landlords to offer better terms to attract tenants.
- There is a growing demand for high-quality, flexible and sustainable office space. Tenants are now prioritising buildings with better amenities and environmental credentials. This shift has forced landlords to be more accommodating to meet these new requirements.

Increased popularity of the Model Commercial Lease

A major change in the post-Covid era is the enhanced negotiating position office tenants have - gone are the days when landlords could insist on heavily landlord-friendly leases. One noticeable shift is the growing support for the Model Commercial Lease (MCL).

The MCL provides a standardised lease to streamline the leasing process and offer a fair and balanced starting point for both landlords and tenants. Even where the MCL is not used (for example on larger headquarter office transactions) the MCL provides a useful reference-point for negotiations. Several significant landlords now use the MCL across their portfolios and having seen the benefits of this approach in the market, we expect the popularity of the MCL to continue.

> "Landlords who remain agile and informed about these changes will be best positioned to attract the best tenants and get the most value from their office assets."

Green lease clauses as standard

The concept of the "green lease" stands out as a pivotal solution for both owners and tenants navigating the evolving landscape of sustainable real estate. Green leases go beyond the ordinary lease obligations, with both landlord and tenant committing to additional obligations. The green lease clauses revolve around three pillars:

- optimising emissions and resource consumption
- providing for future construction and property modernisation
- sustainable management and utilisation.

It is now widely accepted that green lease provisions are included in commercial leases, however, there is no legal requirement and their inclusion is entirely market-driven. The pandemic contributed to greater focus being placed on considerations of health, sustainability, wellbeing and social impact, as they seek to encourage people back to working on-site and make hybrid working as seamless as possible.

Until recently, there had not been a standardised approach to green lease drafting. However, the Better Building Partnership's Green Lease Toolkit, which CMS contributed to, has provided the market with a standard that is now regularly used.

Green lease drafting has historically been proposed by a landlord, but we are seeing more tenants have their own green lease provisions that they want a landlord to commit to. We also see more tenants reject offices and landlords that are not willing to match their own sustainability ambition - one major corporate occupier client of CMS recently advised that sustainability credentials are now the number one factor in their choice of new office premises.

> "Green leases go beyond the ordinary lease obligations, with both landlord and tenant committing to additional obligations."

CMS Expert Guide to ESG in Real Estate 2025

CMS has reviewed the legal environment and market practices for green leases in 19 European countries and have summarised them in the CMS Expert Guide to ESG in Real Estate 2025. Click here to view a country and the answer to questions including:

— How widespread are green lease provisions?

— What do institutional investors and banks/other financing institutions require in terms of the green lease drafting?

— How are green lease provisions enforced?

Demand for Category A Plus works increasing

The popularity and convenience of serviced office arrangements are also being felt in traditional leases. It is becoming increasingly common for landlords to deliver premises in a Category A Plus condition, instead of offering the more traditional tenant incentives such as rent-free periods or capital contributions.

A Category A Plus office provides tenants with well-equipped office space that requires minimal setup. When leasing a Category A Plus office, tenants often insist on having greater control over the works, for example in connection with works variations and the practical completion process, than is generally accepted where the landlord is delivering traditional Category A works. To ensure a tenant will be given an acceptable warranty package, landlords should factor this in from an early stage when appointing contractors and other advisors

We have also seen some interesting agreements reached on how to *rentalise* these Category A Plus works. Increasingly, leases reserve a separate, additional, rent to reflect the existence of these works (which will be subject to uplift on review).

Dilapidation provisions remain important

Ease and certainty are factors tenants are seeking at the end of a lease term, specifically in respect of terminal dilapidations. In recent years we have seen a rise in fixed dilapidations provisions. Fixed dilapidations payments involve a pre-agreed sum that the tenant pays to the landlord at the end of the lease, regardless of the actual condition of the premises. This sum is determined at the start of the lease and is intended to cover the cost of any repairs or reinstatement work that may be required. Fixed dilapidations are generally considered to favour tenants, who prefer the certainty they offer. We have seen protracted negotiations where it is not established whether the fixed sum is subject to index-linked increases over the course of the lease term. We would recommend landlords consider carefully whether the lease should include these provisions (which will be more relevant in longer lease terms) and specify the same in heads of terms to avoid arguments during legals.

It is also becoming more common for a tenant to have no reinstatement obligations or dilapidations liability at the end of a lease, where a tenant commits to taking a longer term (and not exercising break rights). It will be interesting to see how this trend plays-out over the coming years, especially in respect of prime Grade A office space.

"It is also becoming more common for a tenant to have no reinstatement obligations or dilapidations liability at the end of a lease."

Inherent defects carve-outs should be clear

Risk allocation and the strengthening negotiating position of tenants are also present in negotiations regarding defects inherent in a building's original construction or design. Traditionally, commercial leases (especially full insuring and repairing leases), make tenants responsible for maintenance and repair, including any such inherent defects. However, there is a growing consensus that it is unjust to hold tenants accountable for these defects and the inclusion of inherent defects carve-outs in leases is becoming increasingly common.

There are a variety of approaches to this, for example:

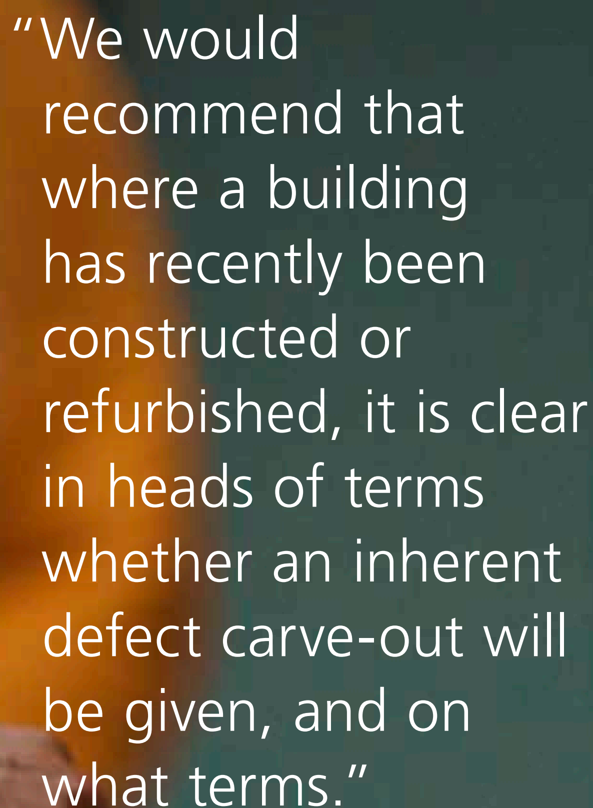
- where a carve-out is agreed, it is often accepted that tenants are not responsible for repairing inherent defects and costs associated with rectifying inherent defects are excluded from the service charge for a fixed period (often, now, at least 24 months following lease completion depending on how recently works have completed).
- there is a rise in landlords placing insurance that covers the cost of repairing inherent defects, providing further protection for tenants.

We would recommend that where a building has recently been constructed or refurbished, it is clear in heads of terms whether an inherent defect carve-out will be given, and on what terms, to avoid potentially protracted negotiations.

Increasing importance of amenity space

Post-Covid, office tenants are more focused on collaboration, communal space and the employee experience.

Many landlords now offer tenants shared amenity space, such as roof terraces, business lounges and workout space in addition to the more traditional services like end-of-trip facilities. Tenants are also insisting on dedicated reception areas, usually in common areas on the ground floor. Landlords need to carefully consider how, in practice, tenants will use these spaces and what rights need granting and reserving to ensure that the building can properly function beyond a traditional office configuration. Careful consideration is also required to ensure that costs are fully recoverable from tenants.



Investing in the living sector

Single family homes and affordable living

Mark Heighton, Partner, Real Estate, and Rebecca Moore, Partner, Real Estate

The Living Sector is widely regarded as one of the real estate sectors where significant investment is expected over the next few years. The focus that started on BTR/PRS schemes and student accommodation, has more recently expanded to include senior living, affordable housing and single family homes. Though the sector faces some challenges it presents significant opportunities for investors. The Living Sectors have a number of common features, but also some individual nuances, which investors need to be aware of. This article highlights some of those nuances for investors looking to fund/invest in two of the newer Living Sectors - single family homes and affordable housing.

Common challenges

The Government needs to address a number of common challenges across the sector, if we are going to significantly move the dial on housing supply. In particular:

- ***Planning*** – planning considerations include viability as well as timing on delivery of affordable compared to private units. With the increase in institutional investment and For Profit Registered Providers (FPRPs), the sector may need an education and engagement programme with all local authorities and other key stakeholders across England and Wales to ensure they understand how housing can be delivered.
- ***Rent caps*** – during the election campaign, the Labour Party indicated it might introduce rent controls. The industry sighed a breath of relief when this was subsequently rebutted. Investors into England only need to look at the impact on investment into the Scottish real estate market following the introduction of rent caps to see the devastating consequences that rent caps may have for the sector. We need to hope that the government does not do a U-turn on rent caps over the coming months/years.

> "If the government does introduce a new home ownership scheme, then we would need to question the impact on appetite from end users for existing shared ownership schemes."

> “Housebuilders generally utilise a whole series of trade contracts or bespoke contracts, rather than appoint a single contractor under a Joint Contracts Tribunal contract.”

Single family homes

Barely a week goes by without a deal being announced in the real estate trade press where a housebuilder has partnered with or sold to a single family home investor.

Housebuilders

The main “suppliers” of units in this space are the traditional housebuilders. Housebuilders have always entered into “bulk investment” sales. By and large they have continued to adopt their traditional private sales model when doing so. This involves standard form agreements for sale (which are very housebuilder friendly); substantial agency deposits during the building programme; buyers being required to complete following practical completion; buyers having no damages for delays; provision of a National House Building Council (NHBC) (or equivalent) new home guarantee; and a housebuilder covenant to make good defects (with no collateral warranty/third party rights package).

Housebuilders generally utilise a whole series of trade contracts or bespoke contracts, rather than appoint a single contractor under a Joint Contracts Tribunal contract – so the housebuilders are not really geared up to providing comprehensive warranty packages.

Investors

These are very different arrangements to what institutional investors normally look for when either forward funding or forward purchasing investment assets. They usually seek control over developer variations to the works; damages for delays; substantial warranty protection from the contractor, professional team and sub-contractors for defects; and a right to approve practical completion and the making good of defects.

Investors looking to invest in the single family homes sector will need to adapt their traditional approach in dealing with housebuilders. The key issues for funders are late delivery, defects and, if a funder is forward funding the project, the ability to step in and take over the project in the event of developer insolvency/breach. Taking each in turn:

Single family homes: Snapshot

- Funders may rely on **Liquidated and Ascertained Damages (LADs)** for late delivery and NHBC or equivalent guarantees for defects
- **Step-in rights** are needed to complete construction if the housebuilder defaults and can be secured through **collateral warranties**
- The **lack of experience amongst local planning authorities (LPAs)** can mean policies are inconsistent and bespoke negotiations are often required
- Funders need to be aware that **developers may require security** for their balancing/ profit payment

Late delivery

On forward funding and forward purchase transactions, late delivery can generally be covered by Liquidated and Ascertained Damages (LADs) (although the housebuilder may not have the ability to pass these LADs onto the contractors). This is a commercial matter for the parties to agree.

Defects

Funders will need to get comfortable with relying more on NHBC or equivalent guarantees with maybe just an employer’s agent/monitoring surveyor warranty from the relevant consultant – the one signing off Practical Completion (PC) – rather than a full warranty/Third Party Rights package. This puts them in the same position as an individual house buyer for each house they have acquired. It may not be ideal but considering there should be no common areas or facilities in the way there would be in a leasehold apartment scheme, funders may well be able to get comfortable with this. They may also be able to build into the appropriate documents both inspection rights and the right to make representations at PC, with a requirement that PC is actually signed off by an independent consultant, rather than just relying on the NHBC Cover Note.

Step-in

This is the most difficult of the three issues to deal with. A forward funder is always looking for step-in rights. The funder will have paid for the land early in the construction process and needs the ability to build out the houses if, for some reason, the agreement with the housebuilder is terminated, for instance through developer default, insolvency or failure to achieve long-stop dates.

From a legal perspective step-in rights are normally provided to funders via collateral warranties from the contractor/professional team. A funder will always insist on these warranties as a pre-condition to any forward funding payment (other than the cost of buying the site). In practice, if there is not a normal warranty package available and if a funder steps in to finish a project, they may well need to appoint their own contractor/consultants, rather than simply taking over the developer's team. Obviously, this can be done but it is something that will involve more time and expense from the funder's perspective. Funders will also need to look closely at the amount of the balancing payment that they are retaining, which is only normally paid out following practical completion, to make sure they have sufficient funds to potentially finish the works and cover other liabilities.

Where individual units being acquired are pepper-potted across an estate or the funder's scheme is part of a larger, multi-phased development, another material issue is that the funder will need to be sure that if they step-in, all the relevant infrastructure (roads, services, etc) have already been provided and there are no site-wide planning conditions or planning obligations which affect their ability to build-out and occupy their units. For example, it is very common for a section 106 agreement to provide for affordable housing to be built and transferred to a Registered Provider before a certain percentage of the private units can be occupied. If the affordable housing is being delivered on other elements of the estate, then the step-in rights do not really help the funder as they do not actually have control over building out the affordable housing elements as well. These issues can be dealt with in part by looking closely at when the funder acquires the land (because it is only from that date it needs the step-in rights). Funders are likely to choose not to acquire in forward funding scenarios until all required infrastructure and site-wide planning conditions/obligations have been satisfied.

> "Investors looking to invest in the single family homes sector will need to adapt their traditional approach in dealing with housebuilders."

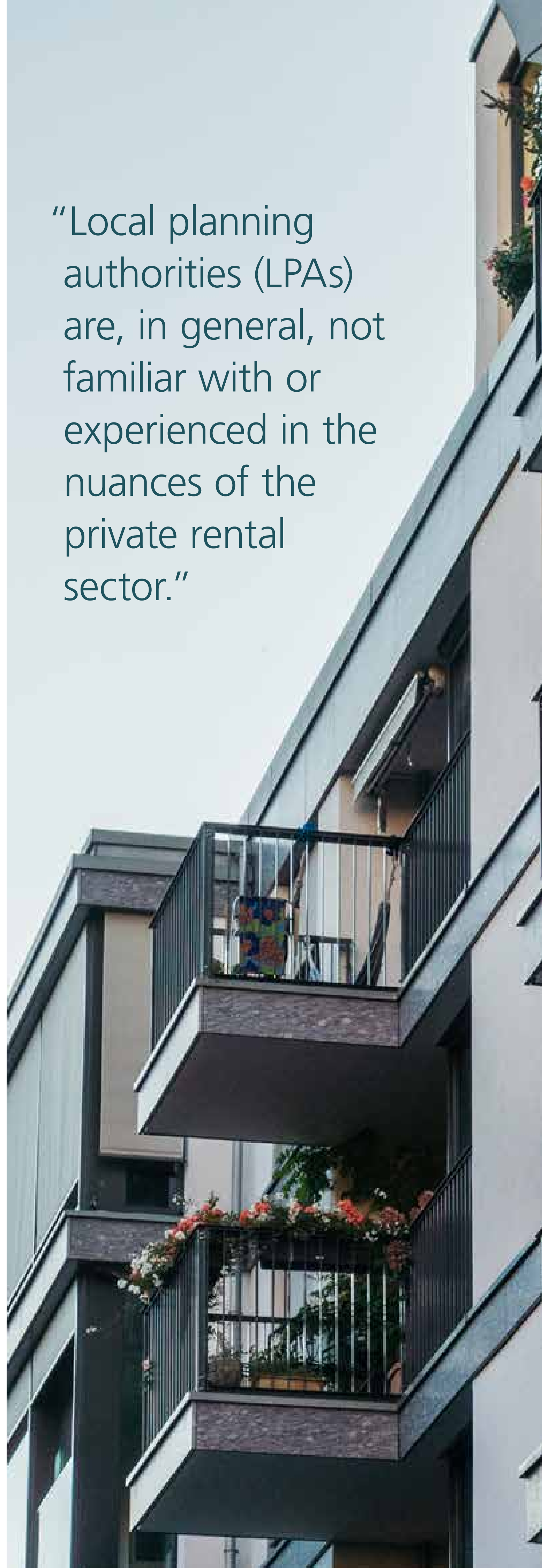
Broader planning issue

Our experience is that local planning authorities (LPAs) are, in general, not familiar with or experienced in the nuances of the private rental sector, especially where that market is focused on single families. This includes a lack of local policy and guidance outside of London on how to deal with these tenures, including how to ensure the provision of affordable homes and the associated viability review/clawback mechanisms. In particular, the definition of "affordable rent" is subject to real debate and inconsistency across LPAs, with a need for education and bespoke negotiation on each development to reach a reasonable position which fairly allows local, low-income renters access to the product but does not render delivery or management of a scheme unviable.

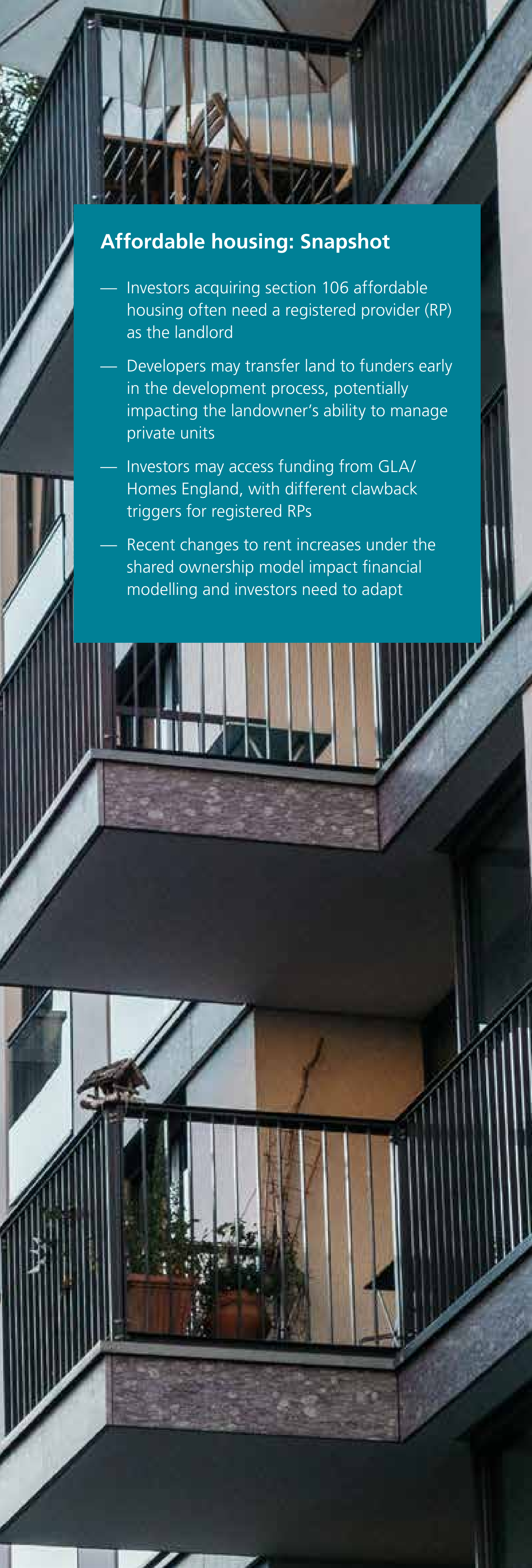
This inexperience can make approaches hugely inconsistent across LPAs, such that the value and complexity of developments (and the terms for any associated funding and purchase transactions such as this) need to vary significantly across the country to consider local requirements, and to provide for the unknown/any uncertainties. It can also make it difficult to understand how to deal with the risk and cost of a potential viability review – as, depending on the terms of the final section 106 agreement and the specific financial implications of each scheme, a viability review may or may not end up being required. But, if it is, this could lead to further affordable rented homes or associated financial contributions being required many months after completion of the development. This may have to be dealt with contractually to fairly allocate the risk and cost between the funder and developer and understanding these risks will be a key part of the DD.

Security

There is one other issue that funders need to be aware of. Developers will be concerned about what security they have for their balancing/profit payment which is to be paid following practical completion. Therefore, funders may find that the developers are looking for some form of fund guarantee as the funder parties to the funding agreement itself may just be SPV's. They may also find that developers are looking for alternative security such as a charge over the site which raises additional issues then for funders. For instance, it may affect their ability to borrow and it potentially changes the balance of power if a funder is looking to terminate a funding agreement because of developer breach and the developer still has a charge over the property.



"Local planning authorities (LPAs) are, in general, not familiar with or experienced in the nuances of the private rental sector."



Affordable housing: Snapshot

- Investors acquiring section 106 affordable housing often need a registered provider (RP) as the landlord
- Developers may transfer land to funders early in the development process, potentially impacting the landowner's ability to manage private units
- Investors may access funding from GLA/ Homes England, with different clawback triggers for registered RPs
- Recent changes to rent increases under the shared ownership model impact financial modelling and investors need to adapt

Affordable housing

Institutional investment in affordable housing has continued to grow despite the challenging market conditions over the last year and we have seen the close of numerous funds, the purpose of which is to invest in purpose-built affordable rent and shared ownership housing across England and Wales.

All signs indicate that the market expects the affordable housing sector to remain attractive given the massive disparity in supply versus demand and the Government's focus on delivering 370,000 new homes per year, of which 145,000 need to be affordable (90,000 of them being for social rent) together with this sector being able to deliver stable, secured inflation-linked investment returns.

This growth will be driven by institutional investors and For-Profit Registered Providers as these entities are not encumbered by the need to retrofit legacy housing stock like the Housing Associations. The industry is estimating there will be circa 100 registered FPRPs by 2028 and we need to ensure that the Regulator has a sufficient taskforce to keep up with the process for registration so that progress in delivering houses is not delayed.

Investors looking to invest in affordable housing will need to consider some of the following key points when negotiating heads of terms and transaction documents:

> "Growth will be driven by institutional investors and For-Profit Registered Providers as these entities are not encumbered by the need to retrofit legacy housing stock like the Housing Associations."

> “If the investor is taking a grant, it is important to ensure that all the GLA/Homes England requirements from the grant agreement can be met by the investor.”

Registered Provider requirement

If the investor is acquiring section 106 affordable housing, especially where there will be a rent and nominations agreement, there is often a requirement for the “landlord” of the occupiers to be a registered RP. Not all investors own their own RP, which means they need to structure their deals to include an interest granted to a third party RP. This can have adverse tax implications, for example, additional SDLT. It can also impact the due diligence process, and therefore timing, as the RP needs to satisfy itself of any liabilities and may want the benefit of reliance and warranty packages. Investors should ensure they’re engaging with any third party RP at the outset so that the deal with the developer addresses any requirements of such RP. If, in order to avoid such tax and timing issues, an investor wants to set-up its own RP, the process with the Regulator for Social Housing can be time-consuming and so this should be a consideration at the outset of any fund set-up.

Transfer of land

Developers/landowners of large development sites will often look to dispose of the affordable housing units as part of a forward funding or forward commit deal. This will involve the landowner transferring the land to the funder at an early stage in the development even where the landowner is building up the affordable units and relinquishing its ability to “control” those units. If, for example, the investor stops paying the landowner/developer under the development funding agreement this will have a knock on effect on the landowner’s ability to deal with its retained private units because of restrictions in the section 106 agreement. The restrictions may go further than simply requiring the affordable units to be built. It might require, for example, a lease or transfer of units to an RP. The landowner needs to be sure that the funder is going to comply with these obligations as its profit will largely come from private units.

Grant funding

Funding from GLA/Homes England is available for certain affordable housing acquisitions (we are currently in the 2021-2026 programme and await details of the availability and size of the grant pot for post-2026). There are different arrangements and clawback triggers depending on whether the applicant is a registered RP or not. Depending on the structure, a percentage of the grant might be available on acquisition with the remainder payable following practical completion, which means investors need to consider any cash-flow implications. If the investor is taking a grant, it is important to ensure that all the GLA/Homes England requirements from the grant agreement can be met by the investor, which might necessitate including obligations on the landowner/developer to deliver items ahead of PC/handover of the units.

Shared ownership

One of the current ways of disposing of affordable units is by way of the shared ownership model, where occupiers have the ability to staircase their capital interest in the property until such time as they own it outright. There have been recent changes to how annual rent can be increased under the shared ownership model (from RPI plus 0.5% to CPI plus 1%), which could impact on modelling as it might well lead to lower rental growth. Without any new government schemes (like the previous Help to Buy scheme), this model is likely to be used more across the industry. Investors need to ensure they are using the correct modelling for these assets. If the government does introduce a new home ownership scheme, then we would need to question the impact on appetite from end users for existing shared ownership schemes. The industry should be speaking to government to ensure that any such scheme compliments shared ownership rather than impacting on valuations of the same.

> "As an industry, we need to be working out how to achieve more deals and how to ensure we have a taskforce that can then deliver the housing stock."

Additional challenges

Together with the common challenges mentioned at the start of this article, there are numerous other challenges facing the affordable housing sector, some of which are briefly outlined below.

- Traditional not-for-profit RPs need to focus their time and money on improving the safety and quality of existing housing. Construction costs remain high and this coupled with the higher cost of debt and the perceived lack of availability of debt means that these RPs are unlikely to play a large part in delivering new stock over the next few years. This is unless there is public subsidy made available to assist these RPs with retrofitting homes.
- The sector desperately needs confirmation on a long-term rent settlement. The Autumn 2024 budget included a top-up for the Affordable Homes Programme (AHP), a five-year rent settlement and Right to Buy reforms, alongside an additional £3bn in guarantees to support small house builders. The call from the industry is that any such settlement must have "cast-iron guarantees" so that it cannot be amended part way through any such period.
- Even with institutional investment, the sector still needs public money to achieve the housing numbers required for the country. This can be achieved in a myriad of ways including the provision of GLA/Homes England grant or debt funding. Also, the (re)introduction of tax incentives (such as multiple dwellings relief) or exemptions for development and acquisition of affordable housing, such as a lower rate for SDLT, would assist investment. The British Property Forum is leading discussions on this, which will hopefully be listened to by the government.

Summary

Multi-tenure sites is what the country needs to achieve the ambitious housing numbers. As an industry, we need to be working out how to achieve more deals and how to ensure we have a taskforce that can then deliver the housing stock. There needs to be a sector campaign to educate communities, housebuilders and local authorities that there is place for institutional investment in the affordable housing and single family markets. Not an easy ask but, if we are all in it together, there is optimism (and opportunity for investment). Notwithstanding the above challenges, none of them are insurmountable and the sector is galvanised to deliver, it just needs to be given the right environment for investment and delivery of homes.

Pinnacle

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