RETAIL DEVELOPMENT PROPERTY BRIEFING PAPER 3

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END OF YEAR ROUND-UP:
DEVELOPMENTS IN THE RETAIL PROPERTY MARKET

In recent years, Jim Morrissey has advised over 40 local planning authorities on retail strategies, policies and proposals, formerly as Director of Planning and Development Consultancy at Erdman Lewis, the West End Property Consultancy, and more recently as Planning Consultant to Chase & Partners, Commercial Property Consultants.

Graham Chase, Senior Director of Chase & Partners, is currently the Chairman of the Commercial Market Panel of the Royal Institution of Chartered Surveyors and in his capacity of Retail Property Spokesman appeared before the House of Commons Select Committee investigating Shopping Centres and their Future which is referred to later in this paper.

There has been a considerable turnaround in the fortunes of the retail property market over the past twelve months. This edition takes extracts from a seminar given by Chase & Partners and Trowers & Hamlins on 28 November 1996, which outlines a selection of recent commercial and legal developments.

The turnaround in the retail property market in the past twelve months is clearly demonstrated by these two statements:-

Third Quarter, 1995

"Retailers have found it increasingly difficult to sell goods. Consumers are saving, not spending, and credit cards are staying in their wallets. This is not surprising with people worried about job security and the depressed housing market, which are closely linked to consumer spending."
(Graham Chase, RICS Commercial Market Survey Results, 3rd Quarter 1995).

Third Quarter, 1996

"Chartered Surveyors practising in the commercial sector are at their most optimistic for over two years, as the office, retail and industrial markets advance on the tide of economic improvement. The picture for retail premises has been improved by greater consumer confidence and spending, falling unemployment, low inflation and low interest rates."
(Graham Chase, RICS Commercial Market Survey Results, 3rd Quarter 1996).

IN THE HIGH STREET:

Occupancy

- Shortage of prime shops available.
- Premium payments by prospective tenants now a feature
.
- Requirement for larger unit shops (3,000 sq ft to 5,000 sq ft).
- Large space units also in strong demand.
- Smaller secondary shops continue to struggle but upturn in the economy supporting recovery.
- Major city and tourist centres showing strongest demand for space and rental growth potential.
- Zone A rates recovering to 1980's boom peaks, eg Oxford Street back to £350.00 per sq ft.
- Shorter and more flexible lease terms depending on circumstances.
- Fashion retailers showing signs of strength, eg Burtons, Monsoon, Next, New Look.
- Sports retailers continuing to set the pace.
- Music/record shops and books healthy demand, eg Virgin, HMV, Ottakars, Waterstones, Dillons, Boots, etc.
- Discounters still a feature, eg Peacocks, Wilkinsons, Bewise.

- Caution required as strong management vital to drive retailers' margins.
- Failures in 1996 include Facia and Escom.

Central Area Redevelopment

- A number of schemes now being promoted, particularly in city centres.
- Redevelopment proposals being promoted:-

  ⇒ Birmingham: Martineau Galleries (Land Securities).
  ⇒ Birmingham: Bull Ring (Hammersons).
  ⇒ Southampton: Esplanade (Imry).
  ⇒ Norwich: Riverside (Gazeley).
  ⇒ Exeter: Princess Hay (Land Securities).
  ⇒ Plymouth: Drake Circus (P&O).
  ⇒ Gloucester: Blackfriars (Arrowcroft).
  ⇒ Canterbury: Longmarket (Land Securities).
  ⇒ York: Coppergate (Land Securities).
  ⇒ Glasgow: Buchanan Centre (AMP/Slough Estates).

- Mixed schemes being promoted in response to changes in market and PPG6 direction but a number of hurdles need to be overcome:-

  ⇒ Care in design.
  ⇒ Car parking.
  ⇒ Access and highways - congestion.
  ⇒ Estate management matters.
  ⇒ Investment market still to be assessed.
  ⇒ Vertical separation still required but changes in the wind.

Investment

- Investment demand strengthening.
- Yields for prime shops between 4.5% and 5%.
- Shopping centre investments have been popular.
- Schemes sold in past 12 months include:-

  ⇒ Preston: Fishergate.
  ⇒ Croydon: Whitgift Centre.
  ⇒ Victoria: Victoria Place.
  ⇒ Mansfield: Four Seasons.
  ⇒ Falkirk: Howgate Centre.
  ⇒ Hemel Hempstead: Marlowes.
  ⇒ Wood Green: Shopping City.
  ⇒ Birkenhead: The Pyramids.

- Shopping centre yields between 6.25% and 8.5%.
- Investment demand outstrips availability of product.
- Regional shopping malls showing strongest growth:-

  ⇒ Metro Centre Zone A rates: £150-£240.
  ⇒ White Rose Centre, Leeds - 97% pre-let: Zone A rate £120 per sq ft.
  ⇒ Bluewater Park 60% let pre-let:

    * John Lewis @ third of a million sq ft (30,650 sq m).
    * Marks & Spencer 200,000 sq ft (18,650 sq m).

  ⇒ Cribbs Causeway, Bristol - John Lewis, Marks & Spencer, BhS: 700,000 sq ft (65,000 sq ft) plus 7,000 cars.

⇒ Emphasis on tenant mix and leisure facilities- extending dwell times.

⇒ Car parking and ease of access proving to be main strength.

⇒ Sunday shopping added to turnover potential.

Retail Warehouses

- New PPG6 redirecting retail emphasis - to town centre edge of centre.
- Reduction in supply of suitable sites.
- Occupier demand remains strong:-

⇒ 10,000 sq ft (930 sq m) units standard in past but size requirements increasing to 12,000-20,000 sq ft (1,200-2,000 sq m).

- Retailers showing fastest growth include:-

⇒ Sports - expanding market.

⇒ Pets - gap in market.

⇒ Computers - new market.

⇒ Furniture - taking up the slack.

- Differential between traditional retail warehouse and High Street (power centre) schemes.
- Rental growth significant over past twelve months:-

⇒ Good quality standard schemes have jumped from £10 per sq ft to £1215 per sq ft.

⇒ Best rents over £15 per sq ft.

⇒ Rents from High Street type operators for "power centre" schemes rumoured to be over £30 per sq ft.

⇒ Leases still standard on 25 year full repairing and insuring terms.

- Asset management becoming more important including:-

⇒ Tenant mix.

⇒ Impact pitch.

⇒ Extension of existing schemes.

- Assessment of planning permission and conditions:-

⇒ Negative and positive require more careful investigation.

- Design and quality of specification improving.
- Leisure content increasing and becoming a more important feature.
- Retail warehouse parks:-

⇒ Yields continue to fall.

⇒ 6.5% for prime investments.

⇒ 5.5% paid at Birmingham, The Fort.

⇒ Large schemes in demand @ £50 million capital values~~:~~
* Fosse Plaza, Leicester
* Team Valley, Gateshead
* Kinnaird Park, Edinburgh

LIVING WITH PPG6:

June 1996 saw the issue of the revised PPG6, "Town Centres & Retail Developments". It represents confirmation of the Government's policy, as enthusiastically espoused by John Gummer, Secretary of State for the Environment, in respect of the grant of planning permission for retail and other "town centre" uses, such as leisure.

It is clear, therefore, that the Government's enthusiasm for town centres, seen by some to be at the expense of edge of and out-of-town developments is here to stay. As a result, it is important to consider not only the restrictions PPG6 imposes, but also the opportunities it offers.

Government Policy

The Government's stated objectives are:-

- To sustain and enhance the vitality and viability of town centres.
- To focus development, especially retail development, in locations where the proximity of businesses facilitates competition from which all consumers are able to benefit and maximises the opportunity to use means of transport other than the car.
- To maintain an effective competitive and innovative retail sector.
- To ensure the availability of a wide range of shops, employment, services and facilities to which people have easy access by choice of means of transport.

It is to be noted that PPG6 also supports the idea of a plan-led approach. Local authorities, consultation with business interests and the local community, are encouraged to consider existing retail provision and to identify sites for development.

Importantly, PPG6 confirms the use of the sequential test in assessing the suitability of sites for development.

"Planning for Prosperity"

This document sets out the Labour Party's views of the planning system in general. None of it is particularly revolutionary.

In respect of retailing, it appears that there is general agreement with the advice currently embodied in PPG6. There is support for town centres (including the possibility of tax incentives to encourage the private sector to re-invest here) coupled with apparent support for out-of-town shopping, where it delivers special benefits.

Even if there is a change of Government next year, therefore, the advice contained in PPG6 is likely to remain for the foreseeable future.

Recent Appeal Decisions in Respect of Retail Proposals

- Tewkesbury
- South Coventry
- Salisbury
- Croydon
- Bristol

All confirm the advice contained in PPG6: no adverse impact upon the vitality and viability of the town centre; compliance with Government advice in respect of transport, as contained in PPG13; the onus to show that the sequential test is satisfied, being on the applicant; and the importance of the plan-led approach.

Edge or Out-of-Town Sites

The location of a proposed retail development is now of primary importance. If planning permission is to be obtained for edge or out-of-town retail development, an applicant needs to show that the sequential test has been applied and that it confirms the proposed development site to be one closest to the town centre available.

A flexible approach when assessing other sites is required. It will not be possible to say that a particular site is unsuitable because it does not comply with a particular, specific requirement of the applicant.

Moreover, the onus of proof is upon the applicant. Whilst PPG1 states that planning permission should be granted unless the proposed development would cause demonstrable harm to interests of acknowledged importance, PPG6 states "if a developer is proposing a development, the onus will be on the developer to demonstrate that he has thoroughly assessed all potential town centre options".

The plan-led approach, encouraged by PPG6, means that a joint assessment of potential sites with the local authority, prior to the preparation of its Local Plan, will be a worthwhile exercise. Having put the effort into finding a suitable site (with which the local authority agreed), it will then be forthcoming as a policy in the Local Plan and planning permission should then be relatively easy to obtain, albeit with something of a delay. Note also the risk of a call-in by the Secretary of State.

Town Centre Sites

Given the encouragement offered by PPG6, the obtaining of planning permission for the town centre sites is an easier matter. There are, however, practical problems with which the local authority should be able to assist. Again, a "partnership" approach is suggested.

Matters to be considered are:-

- Mix of development.
- Site assembly.
- Planning process.
- Highway.
- Listed buildings and conservation areas.

Partnership Opportunities

PPG6 does offer opportunities for development, both in town centres and in edge and out-of-town locations, but there is a need to work in 'partnership' with the local authority and to take advice from those who are used to advising both the private and public sectors.

COMMERCIAL LEASE ISSUES:

Keep Open Clauses

Two cases this year (one England, one Scottish) have suggested that a covenant requiring a tenant to keep premises open for trade is more onerous than ever before. In the past, the courts have refused to grant an order for specific performance of a keep open covenant but it is now available even if the tenant has not behaved wantonly as it did in *Co-operative Insurance Society v Argyll Stores*, although it is still a discretionary remedy. Before *Arygll* a landlord's remedy was in damaged only.

Some tenants with keep open clauses will no doubt be arguing for a discount on rent review so landlords need to check whether a keep open clause is always appropriate.

Privity of Contract

In the eleven months since the Landlord & Tenant (Covenants) Act 1995 came into force the property industry has seen a wide variety of alienation clauses. There is little uniformity in spite in the introduction by the Association of British Insurers of some standard clauses. However, the following circumstances and conditions are appearing in leases on a regular basis:-

- The requirements of an authorised guarantee agreement.
- The lease payments are up to date.
- That there is no other breach of covenant.
- That a surety should be provided by the assignee.
- The provision of a rent deposit.
- The banning of intra-group assignments (very topical in the light of the Facia collapse).
- That there should be no diminution in the value of the landlord's reversion.

Profits tests are also popular even though they are unreliable and can sometimes be avoided. A simple test should be used which looks at an assignee's financial suitability generally.

Rent Reviews

The impact on rent review of the 1995 Act is as yet unknown but the Act has not altered the doctrine of privity of contract for leases already in existence. The hypothetical lease on rent review under an old lease is notionally granted on the review date. This means it will be a new lease and valued as such. However, the tenant does not in reality have the benefit of the 1995 Act and so is likely to be paying for a benefit he has not got. No doubt tenants will be asking the courts to apply " a presumption of reality" so as to avoid paying an uplift.

Disability Discrimination Act 1995

This new Act applies to both new and existing buildings. Everyone involved in the construction, management and disposal of premises, together with employer tenants and service providers, will be affected. The Act also regulates the supply of goods, facilities and services to disabled people.

Anyone selling or letting premises to disabled does not have to alter them to make them more accessible. However, a tenant may ask its landlord for consent to make alterations so as to make premises more accessible. Basically, the landlord must given consent unless there are good reasons not to. If the landlord refuses to consent or ignores the request or imposes unreasonable conditions, he may find himself joined in discriminations proceedings.

If a lease contains an absolute prohibition against making alterations but alterations are required, the Act operates to amend the tenant's lease.

Repairing Covenants

Landlords now have much more flexibility since the Court of Appeal decision in *Jervis v Harris* to enter premises following a breach of the tenant's repairing obligations and recover the costs of repairs incurred by the landlord, without obtaining leave of the court.

Tenants should therefore resist clauses giving landlords wide rights of entry and recovery when negotiating new leases, otherwise they will be saddled with hefty repair bills which they will have to pay.

Service Charge

The recent case of *Postel Properties Limited v Boots the Chemist* has given some guidance on the reasonableness of repair works carried out by a landlord, the cost of which will be recovered through the service charge. In this case, work was done to flat roofs and windows of the Milton Keynes Shopping Centre. The total sum involved was £3.5 million.

The court was persuaded that the flat roofs should be replaced rather than repaired. It also decided that the landlord could recover the cost of repairing the windows even though this had increased because the landlord failed to the work earlier. The tenants had not had to pay anything in the meantime.

THE MAIN RETAIL STORIES OF 1996 (January-November)

January 1996

- Sears announces that it is to dispose of its Saxone and Curtess shoe chains.
- Signet invites offers for its H Samuel and Ernest Jones jewellery chains.
- Esso promises to match supermarket prices for petrol in competitive locations.
- British Rail Consortium and CSO retail sales figures for December show the strongest year-on-year monthly sales growth for that year.
- J Sainsbury announces that Dino Adriano is to be made Joint Chief Executive in response to City pressure.

February 1996

- W H Smith issues its second profits warning in a year.
- J Sainsbury issues a profits warning (its first in 22 years).
- Selfridges announces plans for open a 160,000 sq ft store at Trafford Park.
- Sears sell Saxone and Curtess Shoes to Facia.
- Paul Eyre Carpets winds up its 53 stores.
- Thorn EMI publishes its de-merger plans.

March 1996

- Storehouse buys Children's World for £62.5 million.
- Escom, the German PC retailers, announces heavy losses, and sought additional financing to help its expansion.
- The Body Shop cancels plans to go private, owing to the realisation that the cost of borrowing would inhibit further growth.
- UniChem's bid for Lloyds is referred to the MMC.
- Sears sells Millets Leisure to a management team.
- Capital Shopping Centres announces plans to extend the Metro Centre by 35,000 sq m.
- The electrical retailer Powerhouse is sold to a management buyout team following Hanson's announcement that it is closing 195 of the company's stores.
- Facia expands abroad, buying the 100 store German retail chain Bata.

April 1996

- Harvey Nichols announces plans for its flotation.

- Liberty announces a profits warning, accompanied by the news that its Chief Executive and three Directors are resigning.
- Kingfisher's annual results show that B&Q performed poorly.
- The electrical retail Powerhouse applies to go into Administration.
- Lingerie retailers La Senza is to fund ambitious plans through AIM flotation.

May 1996

- Sports retailer JJB Sports reports sales up nearly 50% to £89.6 million.
- Allders confirms that it is to sell off its duty free business to BAA.
- There is mounting speculation concerning Facia, culminating in the DTI announcement that it is to begin proceedings to disqualify its founder, Stephen Hinchliffe, a company director.
- Kwik Save announces a 28% fall in interim profits.
- J Sainsbury announces first profits fall for 22 years, also announcing its own loyalty ''Reward' card.
- GUS makes its first profits warning since coming to the market in 1964.
- Calvin Klein announces plans to open a store in London.

June 1996

- Facia goes 'spectacularly' into Receivership (KPMG are Receivers) after it failed to meet payments to Sears and bankers called in the company's debts. A sale of constituent chains begins:-
  - ⇒ Some Salisburys go to Mr Minit, others to Carlton International.
  - ⇒ Contessa goes to Theo Paphitis (owners of Rymans).
  - ⇒ Read or Dead is sold to its original owners.
  - ⇒ 75 Sock Shops are acquired by knitwear retail Jumpers.
- Somerfield announces that it is to float within the next two months.
- Liberty is close to 20 branches in the provinces.
- W H Smith paid Boots £50 million to take its 50% share of Do It All, allowing Boots to close the 50 underperforming stores that had dragged down the Group's performance.
- W H Smith's long-awaited strategic review is announced, involving a radical slimming down of its head office, and cost savings of £8 million being identified.
- Monsoon announces plans to float at the end of the summer.
- Halfords announces expansion plans that will see the opening of at least 25 year new superstores.
- BRC and CSO retail sales figures for June show strong year on year increases.

July 1996

- Escom UK goes into Receivership after its German parent company went into Administration.

- Harveys and Cantors merger to create H&C Holdings, with sales of £140 million and about 320 stores.
- Pentland buys Red or Dead.
- Trading in Wickes' shares are suspended following the discovery by the company of 'serious accounting irregularities' which will remove most of 1995's operating profit. Chief Executive, Henry Sweetbaum, and Finance Director, Stuart Stradling, resign.
- C&J Clark announce a restructuring that will see the loss of 1,400 jobs.
- Littlewoods announces a £500 million expansion programme that will see 40 new store openings over the next four years.

August 1996

- Sears sells its 119-strong Hush Puppies chain to Stylo for £19.2 million.
- Sears announces plans to expand its Selfridges department store.
- Colorvision goes into Administrative Receivership.
- JD Sports, Fosters and Allied Carpets announce plans to float on the Stock Market.
- Elf Oil UK forms an alliance with Somerfield which will see the development of supermarkets of around 2,000 sq ft at Elf service stations.

September 1996

- Safeway launches the UK's first unstaffed supermarket checkout.
- Asda announces that its Chief Executive, Archie Norman, is to step up to be Chairman of the Group, leading to speculation that he may branch into a political career.
- Sears announces, together with poor interim results, plans to open up to four regional Selfridges stores, together with the extension of its Oxford Street flagship store.
- Allders purchases eight Owen Owen stores for £23.6 million.
- New Look announces an 'aggressive' five year expansion programme, which will see the opening of 200 new stores.
- Argos announces major expansion plans, both in the UK and Europe.
- Dixons announces plans to expand into the Irish Republic.
- Retail sales figures for August show a 1% rise on the previous month and a 4.4% increase on the corresponding month last year.

October 1996

- Speculation mounts that 'between five and ten' House of Fraser stores are to be closed, following a House of Fraser strategic review.
- JJB Sports announces a 50% increase in interim profits.

- Lend lease announces that its Bluewater scheme is already 60% let.
- Boots announces plans to open five stores in the Irish Republic.
- Burton Group buys Racing Green for £19 million.
- There is increasing speculation that Wickes will be a take-over target.
- Upton & Southern (the department store group) has returned to profit for the first time since 1989, and is looking for further stores in the North East.
- UniChem relaunches a £638 million bid for Lloyds Chemists.
- Pet City announces plans to merge with the US-based PetsMart.

November 1996

- Scottish retailer, Sports Connection, announces a major expansion programme which could see it move south of the border.
- J Sainsbury announces a 13.8% fall in Group interim pre-tax profits, also announcing plans for a new town centre format supermarket, to be introduced from December.
- IKEA buys the Bristol Greyhound Stadium for £19 million in order to expand into the South West.

Further Information

Further copies of this briefing paper may be obtained from the authors, as may additional information or assistance on planning and development issues.

Chase & Partners provide comprehensive retail planning and development services to local authorities and the private sector, including 'health checks', retail impact assessments, and the sequential test. Graham Chase and Jim Morrissey have advised over 50 local authorities on retail matters.

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