



Retail Strategy Group

**The Retail Development
Process and Land Assembly:
Volume 1 – Report**

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1 Introduction: The Research Brief

The Research Brief

- 1.01 DTZ Piedad Consulting was commissioned by the Dti's Retail Strategy Group in November 2003 to carry out an overview of the issues influencing the assembly of land for retail purposes. The Retail Strategy Group, comprising retailers, employer and employee representatives and various Government departments, had identified a number of themes and is producing a report in the Spring of 2004 which will contain an analysis of the factors affecting competitiveness and productivity in the retail sector.
- 1.02 This study, examines the way in which land assembly creates impediments to the redevelopment of Britain's town centres and is one of a number of studies that the RSG is carrying out. The key objectives of this study are to examine: -
- i. The issues affecting decisions on the location of retail developments.
 - ii. The relative influence of local, regional and national planning policies in determining the precise location of retail developments.
 - iii. The time-scales involved in developing retail sites.
 - iv. Specific land assembly issues, including the nature of joint ventures, developer agreements and the use of Compulsory Purchase Orders (CPO).
 - v. The scope, if any, for improving the relationship between the major players stakeholders involved in retail development.
- 1.03 The general impression is that town centre redevelopment schemes take a long time to come to fruition in the UK. The RSG is therefore keen to establish whether there are possible improvements to this process that can help facilitate development and speed up the process.

DTZ's Approach

- 1.04 Our research approach has necessarily been brief. It has focused principally on reviewing current publications, articles and press comment on these issues. We have also undertaken case studies of a number of town centre retail developments. Where possible we have also consulted with the key parties involved in land assembly to discuss the key issues and barriers to development in the case study centres and generally. These include the local authorities, developers and retailers.
- 1.05 Our research, and that of others which we have reviewed, identifies very clearly that retail and town centre developments are highly complex and involve the full range of development, financial, legal and agency skills. There is little factual evidence that we have found on the time-scales, outcomes, values and reasons for the successful failure of particular schemes. There is however considerable anecdotal evidence on a number of the key issues that we have been asked to examine, and we have used these in preparing this report.
- 1.06 Because of the limited number of case studies that we have been able to complete in the time available, our recommendations and conclusions are necessarily in draft form. However we believe that there a number of conclusions that would be more robust if further time is given to examining the legal and financial implications of our

recommendations, by means of more detailed case studies and further discussion with the parties involved.

Report Structure

1.07 The report has been sub-divided into the following inter-related sections:

- **Section 2:** Discusses some of the key issues and trends driving the retail development process in the UK during the post-War period. This section inevitably focuses on shopping centre (mall) development as it has been the most researched, as well as town centre development and the processes – and players – involved.
- **Section 3:** Reviews the important role played by the planning legislation in determining the location of retail development in the UK, including the Government's latest proposals for new town centre policy guidance.
- **Section 4:** Examines some of the key influences in site assembly, namely landowners and their complex reactions to joining together in creating developments.
- **Section 5:** Reviews the various forms of delivery mechanisms that have been derived to assist in town centre and retail development, especially the use of compulsory purchase orders (CPO's).
- **Section 6:** Draws together our conclusions and sets out our draft recommendations for improving the processes involved in land assembly.

2 Issues Impacting On The Retail Development Process

“Without question, central area schemes are the toughest nuts to crack. To me it is a continuing miracle that any get built at all ... firstly, there is never a fixed site ... you can put money on the probability of it being changed – often, and sometimes radically ... then there is never a fixed brief for the designer to assimilate. The brief evolved from the subtle commercial pressures that shift constantly with time and fashion”.

(Keith Scott, shopping centre architect, in Maitland, 1990: p.20).

Introduction

- 2.01 Retailing is one of the most important sectors in all developed economies. In Britain the sector employs over 20% of the country’s workforce and it is estimated that retail sales constitute around one quarter of Britain’s entire Gross Domestic Product (GDP).
- 2.02 Retail companies form some of the largest enterprises in developed economies. In Britain, retail property – shops and shopping centres – constitute an important part of the country’s built environment. At the end of 2000, for example, there were some 1,500 shopping centres in the UK, representing a 10% increase in space (+21 million square metres) since 1998 (BCSC, 2001).
- 2.03 New retail floorspace development has constituted one of the most important areas of capital expenditure in Britain over the last three decades. The shopping centre industry fuels high levels of construction across Great Britain, with an estimated £685m plus spent on the construction of purpose-built shopping centres and retail parks in 2000.
- 2.04 Britain is probably the international leader in shopping mall development within existing town and city centres. British town centres appear to have been physically redeveloped for shopping centres much more than has been the case in other European countries, such as France, Germany or the Netherlands, where town centres have usually retained their physical form over the centuries without the wholesale redesign in Britain.
- 2.05 Town and city centres have radically changed in their appearance and function during the last thirty years. In some cases the traditional streetscapes of small shops, mixed with office, residential and other uses, have been replaced by large shopping malls. British town centres are also dominated by a number of major multiple retailers, to a much greater extent than the other parts of Western Europe.
- 2.06 Institutional factors are a major factor influencing the pace, types and locations of retail development. Particularly important are sources of finance for development, and the attitudes of institutions towards minimising risk in their investment income.
- 2.07 Inevitably, tensions exist between the requirements of retailers, property developers, financiers and planners, and these tensions are often resolved in the form of uneasy compromises which are not always fully satisfactory to any of these actors involved in retail development.
- 2.08 Another important feature of retail developments is its scale in relation to most of the property industry. Shopping centres often occupy very expensive land and are complex and expensive structures in their own right. Development within an existing retail area brings

extra cost and delays associated with land acquisition, planning negotiations and site preparation.

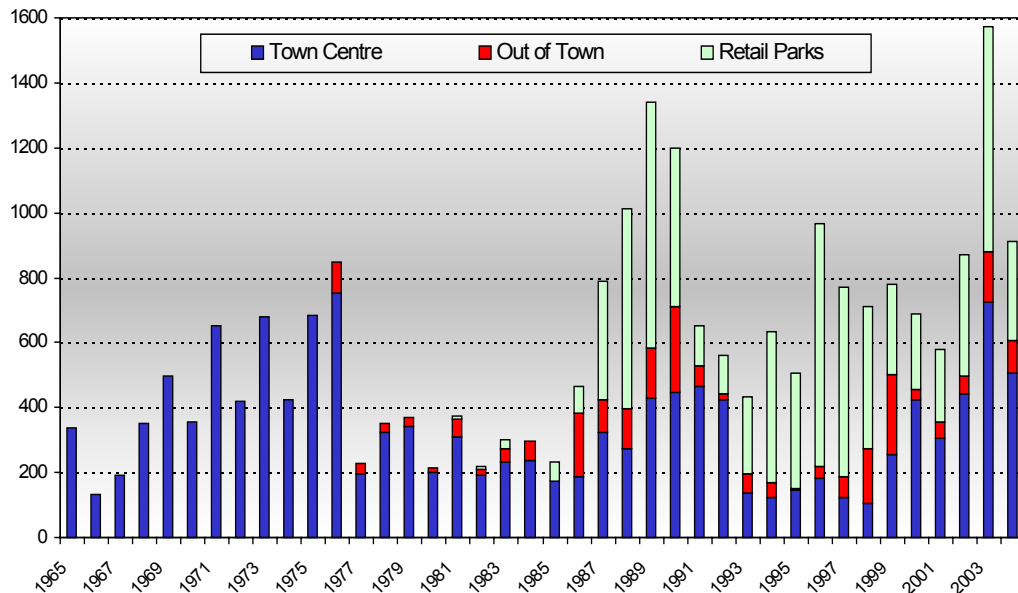
Retail Development in Town Centres: A Brief History

2.09

In the post-war period the enclosed shopping centre has emerged as the symbol of new town centre development and investment. The shopping mall was originally developed in North America as a freestanding, suburban shopping facility and their growth in British town centres can be traced back to the late 1950s. These early centres were mainly developed on sites bombed during the Second World War and generally comprised groups of shops around an open space precinct or uncovered walkway (Marriott, 1967). Following these early schemes, there has been a “golden-age” for managed shopping centre development, which can be broadly categorised into three waves or generations:

- **First generation** - During the **late 1960s and early 1970s** there was significant shopping centre investment and development in many of Britain’s larger towns and cities. The number of centres opened each year increased substantially during this period (see Figure 2.1 below). This dramatic growth resulted from the need to expand and modernise many central shopping areas during the post-war period. Development was largely fuelled by proactive local authorities and from the availability of finance for property development. However, few of these schemes were mixed use and they have since been criticised for being monolithic, inward-looking and single use, surrounded or capped by car parking (BCSC, 2002). Many were architecturally poor and their scale was often damaging to the traditional street pattern. The multiple retailer was perceived as the most important element of the scheme and little consideration was given to consumers’ perceptions, beyond the segregation of the car. Examples from this period include the Arndale Centres.
- **Second generation** - During the second half of the **1970s** there was relatively little new shopping centre development (see Figure 2.1). This lull reflected the low rate of growth of the retail sector and consumer spending generally, combined with the increased risks of property development brought about by the financial crises of 1974/1975 and by long-term high interest rates. The main examples during this period were the new town developments, including Basildon and Milton Keynes.

Figure 2.1: UK Annual Retail Floorspace Development ('000 sq.m)



- Third generation** - During the **1980s** there was a resurgence in new retail floorspace development and particularly shopping centre openings. This expansion was fuelled by the market-led approach to planning and development, along with significant growth in consumer spending and changes in lifestyle patterns. The first half of the decade was characterised by predominantly town centre development as local authorities increasingly competed with each other for new investment. However, the **late 1980s** was characterised by the growth in out-of-town shopping development, which dramatically changed Britain's urban and retail landscape. Out-of-town sites were relatively easy to assemble and the shopping centres were hugely popular with a new generation of shoppers who had easier to access a wide choice of large and modern shops under one roof, served by free and plentiful car parking. But, despite the trend towards out-of-centre development, some 75% of total space opened during this period was still in town centre locations. Moreover, half of the schemes opened were in towns which had already had a least one shopping centre development. Infill schemes were common, and so multi-level centres outnumbered single level centres for the first time (Dixon & Marston, 2003).

2.10 The result of the dramatic growth was the real and perceived threat to the future vitality and viability of many of Britain's towns and cities. This resulted in a change in Government thinking and policy during the 1990s, culminating in the publication of PPG6 in 1996. The policy guidance resulted in a major shift in planning policy from out-of-town to town centre development, supported by a return to a plan-led system.

2.11 PPG6 has subsequently been reinforced by various Ministerial Statements and the Urban White Paper, and town centres are now firmly at the heart of the Government's political and policy agenda. Research on new development clearly shows that the policy is working, as more in-town schemes are now being completed than out-of-town or edge-of-centre developments. A revised version of the guidance, PPS6, has recently been

published for consultation and further reinforces the Government's commitment to town centre investment.

Current Development

- 2.12 There are major city centre development either opening or planned in a range of towns and cities across the UK, including Bristol, Cambridge, Canterbury, Cardiff, Chester, Liverpool, Manchester, Norwich, Nottingham, Exeter and Sheffield. This is creating new challenges for both the public and private sector, as they have to deliver large retail schemes in town centres that also respond to the Government's urban design agenda. For example, the Bull Ring development in Birmingham city centre and the proposals for the Paradise Street scheme in Liverpool are pushing shopping centre development into new realms. These urban, mixed use schemes are regenerating and re-branding parts of towns and city centres by creating distinctive quarters with a network of streets and squares which are fully integrated into the urban fabric.
- 2.13 Balancing high quality design with the commercial need to generate sufficient values and returns to make development viable is a further challenge facing developers, investors and local authorities. This is further exacerbated by the shortage and complexity of large town centre sites. As a result, many of the identified development opportunities involve working with 'live sites', comprising a mix of under-performing buildings and businesses, different ownerships and planning constraints. The following lists some of the more common obstacles to new retail development in existing central areas:
- i. Assembling a sufficiently large site that allows a conventional layout, as well as providing adequate arrangements for servicing and access, can take several years to achieve in older and densely built of town centres without the assistance of CPO powers.
 - ii. Assembling the tenant mix, to include anchor store(s) and major space users can be difficult, particularly if all the potential retailers are already represented in the town centre.
 - iii. The provision of free parking, which is a characteristic of out-of-town centres, is usually not feasible in town centres as space is too scarce and land values too high. As a result car parking provided as part of the centre is likely to be multi-storey, because of the high cost of land, and this also raises costs to the developer.

CASE STUDY: St David's Centre, Cardiff

Some shopping centre developers have failed to provide any car parking at all for customers, leaving it to the local authority concerned to provide parking on adjacent sites at public expense. An example of this is the St David's Centre in Cardiff, which opened at a difficult time for developers (1981) when interest charges were high and consumer demand was sluggish.

- iv. The design and physical interaction of the new shopping centre with the town centre as a whole is also a key consideration for local authority planners and increasingly so for developers over recent years. One aspect of this is the relationship between the appearance, height, bulk and building materials used for the new centre and how this complements the existing streetscape of the older shopping area. Many

shopping centres built during the 1960s and 1970s have been widely criticised, not only for sweeping away older buildings, but also for being ‘monolithic concrete structures’ which are insensitive to their surroundings.

- v. A separate but related problem is the arrangement for pedestrian access and internal security in the new centre. Whereas the developer will often prefer the centre to be a self-contained unit, which can be made secure from unauthorised entry at times when the shops are closed, the local authority will generally require the centre to be open at all times to encourage pedestrian flows and linkages between different parts of town centres.

CASE STUDY: Capitol Exchange Centre, Cardiff

The Guardian Royal Exchange Company first proposed an enclosed shopping mall within the city centre of Cardiff in 1984. This scheme included 198,000 sq.ft gross retail area and included a department store as the major space user. Following rejection of the planning application by the local authority (and on appeal by the Secretary of State for Wales) a revised scheme was produced. This included a smaller volume of retailing (117,000 sq. ft), and the replacement of the department store by a five-screen cinema. The centre was also intended to attract specialist and upmarket comparison retailers to Cardiff. In this way, it complements rather than compete with the adjacent mass-market St David’s Centre. The retail element in Capitol Exchange (opened in 1990) comprises a two-level arcade running between two relatively small major space users.

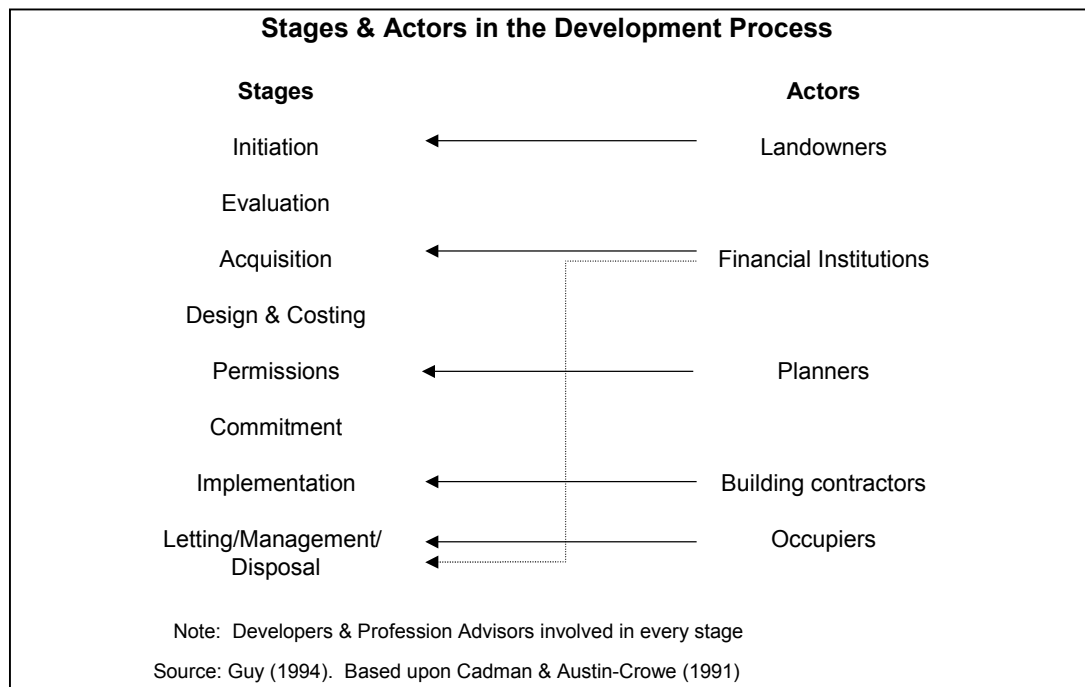
- 2.14 To conclude, retail development is increasingly more dynamic and sophisticated than ever before. In-town retail schemes are now more than just shopping centres. They are widely viewed as one of the keys to regeneration, providing the opportunity to re-brand towns, create quality public space, diversify the leisure offer and help sustain a whole host of other town centre initiatives, including housing and transport.

The Development Process: A Brief Review

- 2.15 Town centre and retail developments can be highly complex, with the larger schemes involving inevitably the more complicated procedures. The key to understanding property development lies in relationships between land use, land value and rent. Property development, as practiced in market or mixed economies, is justified by practitioners as an efficient means of providing the market with modern accommodation for its many and varied economic activities. The astute developer is aware of supply and demand relationships, and should provide accommodation that is actually needed by potential users.
- 2.16 However, the land market is not fully efficient for five main reasons:
 - i. Land and property is essentially “lumpy” – land is sold in parcels and buildings are developed and sold as complete entities. This means, for example, that minor changes in demand may not be matched by the minimum scale of change and supply which can economically take place.

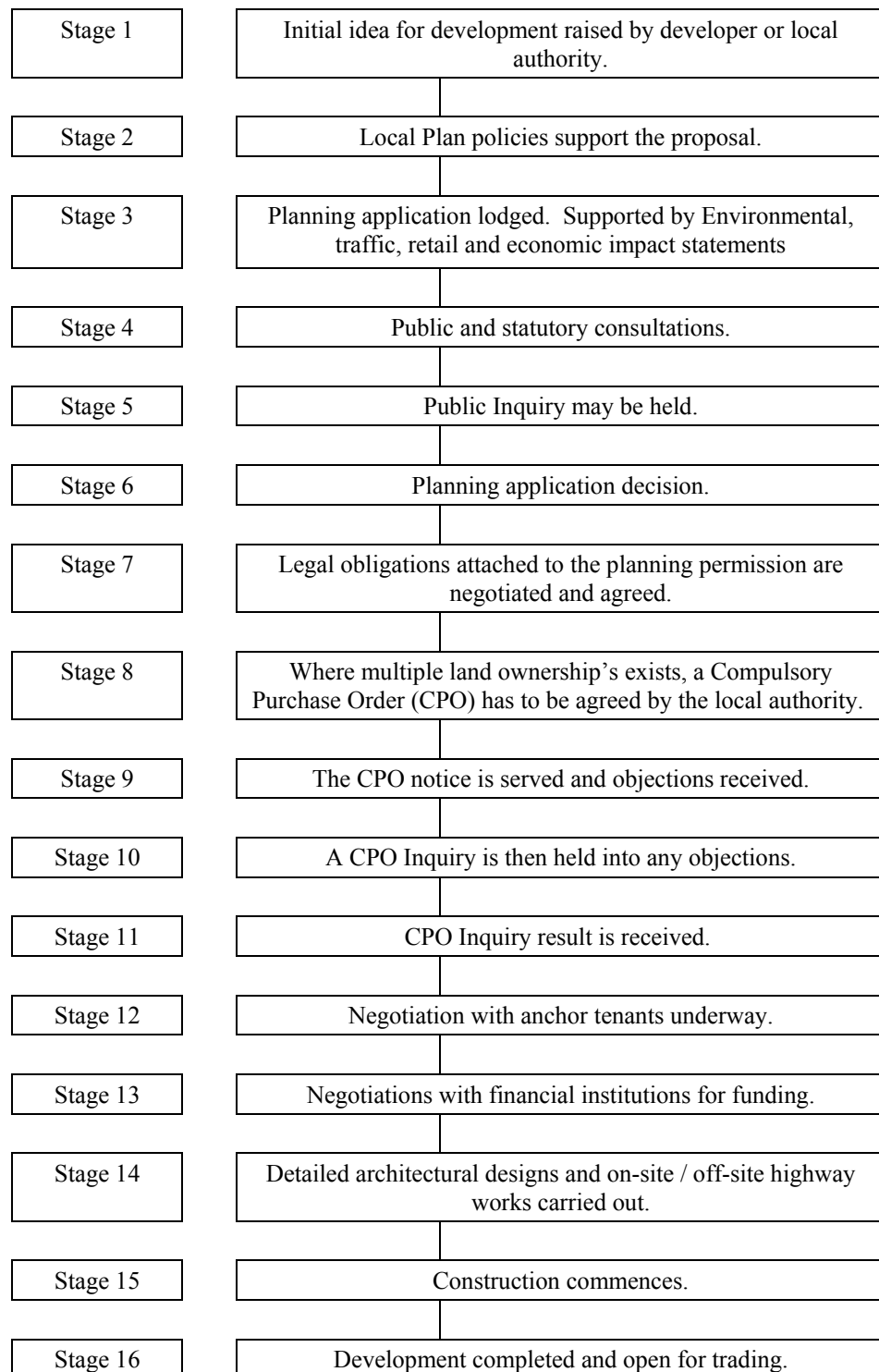
- ii. Property sales and purchases are subject to transaction cost, which may be substantial and may inhibit property market activity.
 - iii. There are time lags between identifying the demand for properties of a typical type and supplying those properties. As noted above, this can lead to short term scarcity and price increases.
 - iv. There are barriers to flows of information about demand and supply factors, prices and rents. The property market can be particularly secretive.
 - v. In almost all market economies, transactions in land and property are constrained by taxation structures and specific planning or zoning regulations concerning land development. These can arguably create scarcities.
- 2.17 The economic inefficiency in the land market has three main affects upon property development:
- i. Investment in property is regarded as inherently more risky than investments in a very secure medium such as government stocks. This has resulted in delayed decisions on property investment.
 - ii. It is possible for developers to make excess profits from development, for example, by withholding information from interested parties or by taking advantage of any scarcity caused by planning restrictions.
 - iii. It is also possible for even the largest developers to loose money or go out of business through developing unsuccessful schemes.
- 2.18 The process by which land and property is developed in the market economy has received considerable attention. The following two descriptive approaches provide particularly useful starting points for understanding the development process (also see Healey, 1991).
- 2.19 The first approach is the *event-sequence model*, which essentially describes the various stages that occur when a development takes place. A very simple model forwarded in the research (Cadman and Austin-Crowe, 1978 and 1991) divides the development process into four stages:
- **Evaluation** - involves the initiation of the development project in principle, either through “*a use looking for a site or a site looking for a use*”. The evaluation stage proper involves financial assessment of the likely risks and level of return from the project and consideration of any physical and legal constraints that might arise.
 - **Preparation** - includes arrangement of short-term finance, acquisition of the site, design and costing, and obtaining planning permission. At the end of this process, the developer decides whether to proceed with the project; if so, contracts with other agencies are drawn up and signed.
 - **Implementation** - involves construction of the project itself.
 - **Disposal** - involves letting the completed development to appropriate occupiers, and either managing the development or selling it to another company. This stage involves the acquisition of long-term finance.

Figure 2.2



- 2.20 The model was subsequently expanded to eight stages (Cadman and Austin-Crowe, 1991) as shown by figure 2.2. Whilst this approach has been criticised by other commentators on the grounds that there is no standard sequence of events for a development project (Healey, 1991), the authors did recognise that the stages do not always follow this sequence and often run in parallel.
- 2.21 The other descriptive tool which is most commonly used to describe the development process is the *agency model*. This approach concentrates on the various types of “actor” (person, company or institution) involved in the development process and is useful in that it draws attention to the contributions from both private and public sector agencies in making developments happen. Figure 2.2 shows these actors and their relationships with the eight stage ‘*event-sequence*’ model of the development process.
- 2.22 Some of the relationships shown in the diagram are self-evident. However, three groups of actors – namely financial institutions, planners and occupiers – have wider ranging and complex impacts on development decisions and the development process. The important roles of these actors in the development process are considered in more detail later in this section.
- 2.23 The processes are inevitably involved because they encompass a wide range of planning, financial, market agency and legal issues, all of which need to be resolved according to particular regulations. Whilst the eight stages described by the research above provides a useful summary of the processes, in fact the detailed stages are more complex as Figure 2.3 illustrates: -

Figure 2.3 Detailed Stages in the Development Process



2.24 This process can take 15 – 20 years in many complex town centre situations. In the Case Studies included in the Appendix to this report, many schemes (including those in Didcot, Leamington Spa and the City Centre example) were conceived in the mid-1980s when the market was buoyant. Subsequently, the market moved away leaving schemes on the shelf, to await improved conditions.

- 2.25 The conclusions that can be drawn from this research is that whilst land assembly is in itself a key make-or-break factor in implementing a retail development, it is only one part of a highly complex set of processes. Improving the efficiency of land assembly will undoubtedly speed up the process by which developments materialise. But it will not always be critical.

Local Authorities and Development Control

- 2.26 The nature, scale and location of retail development in Britain during the post-War period has been massively influenced by the land use planning system. Local planning authorities have justified their intervention in the retail development process for a number of reasons:
- It can improve the efficiency of its operation. A prime example is the use of compulsory land purchase powers to accumulate sites for major retail schemes.
 - The operation of an uncontrolled market is likely to lead to inequities in the level of service to the local population. For example, the decentralisation of food and retailing since the late 1970s has caused concern for the disadvantaged consumer living in urban areas. Planners have used such arguments as support for restrictive or interventionist stances.
 - New development will have external affects that are unrelated to the commercial success or failure of a scheme. Positive effects can include the economic and social regeneration of untidy or derelict areas. Negative effects at a scale local to the development itself can include traffic noise and visual intrusion, as well as negative economic impacts on the vitality and viability of existing businesses and centres.
- 2.27 Local planning authorities in Britain have been the target of considerable criticism for their attitudes to and intervention in the retail development process. Much of this criticism has been from the development industry, which is hostile to the principle of strategic planning control over the retail development process. There is also a general frustration with the caution and lack of understanding which many planners and local authority councillors have typically shown when faced with proposals for new types of property developments (Gayler, 1984).
- 2.28 Nevertheless, the decision-making process of local planning authorities is heavily influenced by Central Government policy which has itself been heavily criticised for the inconsistent and often conflicting nature of the advice:
- ⇒ In the **1970s**, the Government supported the view that planners should determine the broad location and type of development, in the interest of protecting existing (generally unplanned) facilities and providing good quality shopping for the local population.
 - ⇒ In the **1980s**, however, the Government moved to a position of leaving the impetus for retail growth and change to private sector developers and retailers. Local authorities were no longer expected to specify the location and timing of new development. However leaving these decisions to the market led to intense pressures for off-centre retailing, leading to the boom in food superstore, retail warehouse parks and regional shopping centre proposals from the mid 1980s

onwards – described as the ‘three waves’ of decentralised retail development (Schiller, 1986).

- 2.29 At the same time, planning controls restricting the supply of sites has inflated land prices for retail development, to an extent where developers need to provide standardised, cost-minimising schemes which are intended solely to maximise sales densities. This criticism applies equally to town centre developments and off-centre large stores and retail parks.
- 2.30 However, changes in land use planning principles since the early 1990s have had a significant impact upon the scale and location of the retail development process, and we discuss this in more detail in Section 3. There was a rising national and global concern in the 1980s of the potential impact of the increasing consumption of natural resources and pollution of the natural environment. As a result official British Government policy, as elsewhere in the European Community, has refocused on creating more sustainable development.

Local Authority Support for Town and City Centres

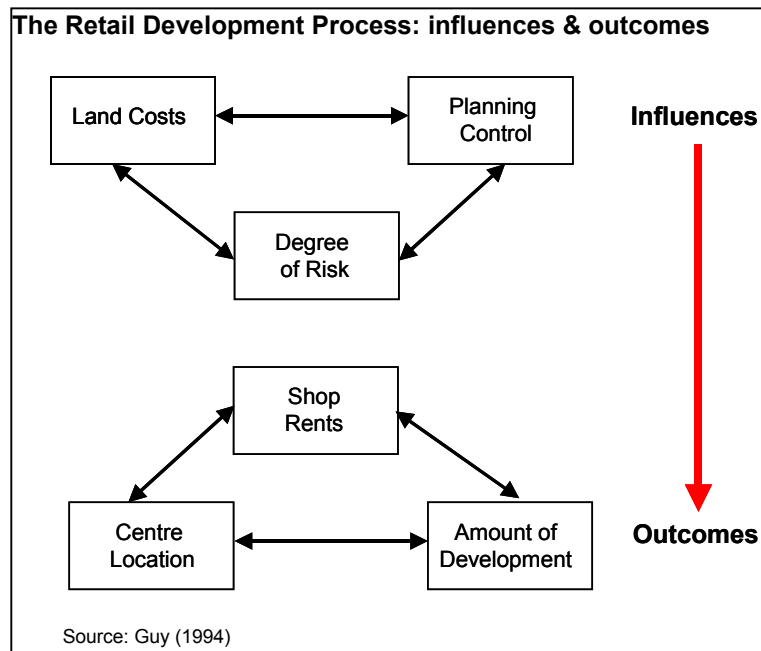
- 2.31 Apart from land use planning powers, many local authorities have also had a significant impact on the retail development process through land acquisition and/or by entering into joint developments with the private sector. Local authorities had two main reasons for acquiring central area land and entering in to large-scale redevelopments. The first was to improve levels of access by public transport and (particularly) private cars, in the realisation that car ownership was rapidly increasing. The second reason was to extend the main shopping area of towns and cities.
- 2.32 Acquisition of land which was suffering from problems of “*bad layout and obsolete development*” was first authorised under the **Town & Country Planning Act 1944**. This provision was intended mainly to allow local authorities to purchase, compulsorily if necessary, land which had been made derelict through wartime bombing. However, its use has extended well beyond this limited purpose.
- 2.33 During the 1950s and 1960s, local authorities made extensive use of the 1944 Act provisions to acquire land in or adjacent to central shopping areas. The designation of a Comprehensive Development Area (CDA) often presaged large-scale development of retail and other uses appropriate to a town centre, together with improvements to vehicle access and car parking. This process was encouraged by a publication by the Ministry of Housing and Local Government (1962), which praised comprehensive development of town centres and provided examples of possible schemes.
- 2.34 Before the reorganisation of local governments in England and Wales in 1974, many of the leading towns and cities were defined as **County Boroughs** and enjoyed complete control over planning and transport decisions within their area, tempered only by Central Government limitations on expenditure. Councillors saw that expending and modernising the central shopping area and improving vehicle access was a way of enhancing the status of their town. A number of private property developers saw opportunities to work with such councils. The developer would in effect design a scheme for a new shopping development, possibly with office and/or leisure space, and present it to councillors, sometimes bypassing professional planners working in the same councils (Marriott, 1967). Developers could not, however, complete their schemes without the council’s power to purchase all or part of the land required.

- 2.35 The results were a series of comprehensive redevelopments in towns and city centres, involving new shopping space, other commercial uses, and improved parking and access. Councils were sometimes able to extract other planning gains, such as libraries, swimming pools and stations.
- 2.36 Prominent among such developments were the Arndale Centres built during the 1960s and early 1970s by Town & City Properties, of which the largest were in Manchester and Luton. Several of these new centres were co-developed by private companies and local authorities, but the latter's main role was usually in purchasing the freehold of the land required for the scheme.
- 2.37 In the case of partnerships, various arrangements were made. The most common was where the town or city council remained as ground landlord, and the developer (or institutional funder) becoming principal lessee, taking a very long-term interest at a peppercorn rent.
- 2.38 By 1973 local authority involvement in the retail development process declined for a number of reasons:
- i. The property slump from the mid-1970s onwards made large commercial developments unprofitable. The costs of repaying capital at the time of high interest rates outweighed the probable return on such schemes, and after the passing of the Community Land Act by the Labour Government in 1975, leases of more than 99 years to developers or institutions became unlawful.
 - ii. The changes in local government administration meant that the County Boroughs were replaced by Metropolitan or Shire Districts. This led to a weaker identification of towns with local authorities, and to a greater level of strategic control over large-scale retail development in the new series of county structure plans.
 - iii. Although the powers to acquire land under the 1944 Act remained with District Councils, greater restriction on local government expenditure during the late 1970s and particularly during the 1980s meant that large-scale purchasing of expensive central area land for development purposes became increasingly unlikely. However, a few schemes were completed during the 1980s on land bought by councils under the 1944 Act (examples include the St David's Centre in Cardiff which).
 - iv. Equally important in hastening the demise of large-scale, joint public/private central area schemes, were the changes in wider attitudes to central area planning. The 1960s schemes had often meant the demolition of historic areas town centres, and the replacement of small-scale and sometimes historic townscapes with brutal, modernist architecture.
 - v. The final reason related to accountability. Certain councillors could in the early 1960s form alliances with developers to force through schemes which may have been contrary to wider public interest. There is little question that some town centre partnership schemes were damaging in terms of their environmental impacts and also possibly in their economic impacts upon other nearby town centres.
- 2.39 In recent years, local authorities policies for central areas have concentrated more on environmental and, in some cases, management and marketing strategies for the town centre as a whole.

Institutional Finance & the Retail Development Process

- 2.40 In Britain, retail development involves high costs of land acquisition and is funded mainly by large retail, development or financial companies operating in a highly regulated planning environment. Most schemes are completed only if there is substantial evidence that there will be a satisfactory return to investors, and completed schemes have a degree of permanence and cannot easily be recycled.
- 2.41 Figure 2.4 summarises these relationships. Influences on the retail development process – land costs, planning control and perceived risks – are interrelated. So are the physical outcomes of these influences: shopping centre locations, shop rents and the total amount of development.

Figure 2.4



- 2.42 This situation is in contrast with many parts of the US where retail development involves a profusion of low cost and often speculative schemes bought on cheap land by local and regional development companies operating in a favourable and neutral planning environment. Developers often take considerable risks in this low cost environment, as unsuccessful shopping centres can be recycled or redeveloped for some other use.

2.43 Table 2.1 summarises the contrasts in these influences and outcomes, between the UK and USA.

Table 2.1: Retail Development in the UK and US

	UK	US
Influences:		
Planning Control	Strict	Lax
Land Costs	High	Low
Degree of Risk	Low	High
Outcomes:		
Shop Rents	High	Low
Centre Location	Town Centre & Suburbs	Suburbs
Amount of Devt.	Low	High

Source: Guy (1994)

2.44 Three largest owners of major shopping centres in the UK are the Prudential, Capital Shopping Centres and Hermes. They account for over one-third of all stock, with the top ten owners/developers controlling some 48 million sq.ft (4.48 million sq.m) of major space, or some 71% of currently completed stock. Both Hammerson and Henderson have improved their ranking since 2002 due principally to the completion of The Bull Ring in Birmingham:

Table 2.2: The Top 10 Owners / Developers of Major Shopping Centres

Rank	Owner / Developer
1	Prudential PM
2	Capital Shopping Centres
3	Hermes
4	Hammerson plc
5	Henderson Global Investors
6	Land Securities
7	Standard Life Investments
8	Norwich Union / Morley FM
9	Lend Lease
10	Westfield Shopping Towns

Source: BCSC (2003)

2.45 The increased trend towards increased institutional ownership of shopping centres and town centre properties during the 1980s and 1990s has resulted in concerns about the future development and growth of Britain's towns and cities for a number of reasons:

- The majority of owners are pensions funds and insurance companies have invested in retail property as part of a wider portfolio. They often have no direct interest in retailing or in the life of the towns they are located. Institutional objectives that are primarily concerned with long-term capital appreciation and minimisation of risk, has led to criticism that they are less concerned with the attractiveness and environmental quality of retail areas. This was particularly the case with regard to

many of the shopping malls built in town centres during the 1960s and 1970s, although there now appears to be more awareness of these issues with shopping centre developers and town planners.

- Funding institutions are risk averse and are generally unwilling to support retail developments that are regarded as unconventional, although they may have important environmental, design and/or economic advantages. Multiple retail stores appeal to the institutions as safe tenants, but can detract from the vitality and variety of centres.

The Retail Sector

- 2.46 Retail ownership patterns and the major competition between retail firms has affected not so much the overall level of demand for new floor space, but the nature of the floor space itself and its location. Since the 1950s in Britain there has been a marked transformation of retail firm ownership, from domination by small independent firms to domination by large multiple organisations. This concentration has given certain retail companies enormous influence over the development process.
- 2.47 The main characteristic that distinguishes retail development from other types is the need to lease all the units in a centre to tenants before the centre is opened for trading. Building speculative developments, which are intended to let to tenants after completion, is too risky. The retail sector therefore has a massive influence on the development process, for example.
- i. Not only does total demand have to be sufficient for a proposed scheme but the nature of the scheme itself will reflect the level of demand from different types of retailers.
 - ii. Developers will not usually proceed further than the planning stage until they have agreed terms with a major space user or users to anchor the scheme. Smaller stores need a large store to provide the level of attraction and footfall to make a scheme commercially viable. This process puts prospective major space users into a powerful position. In some cases, such users have become part of the development team.
- 2.48 Retail companies respond to changes in consumer needs and preferences, and this in turn influences the scale, type and location of new retail development. For example changes in consumer expenditure will influence retailers' decisions to seek new space, sit tight or even abandon existing space. Similarly demographic trends, such as population growth, changes in age structure, and increasingly sophisticated changes in consumer tastes and preferences have resulted in the evolution of new consumer goods and new forms of retail development and marketing. For example, the trends have resulted in "lifestyle" and "niche" retailing over the last two decades, and these have had a major influence on the design and layout of most retail schemes.
- 2.49 Another unusual feature of retail development, compared with other types of property development, is that they receive considerable on-going management after construction. Asset management is necessary to maintain the attractiveness of the centre and to draw customers, as well as to provide common services in centres where they may need many different tenants.

Conclusions

- 2.50 Britain has a lead in the retail development industry and has created many highly efficient areas of retail business, though by no means uniformly spread throughout the country. As a result, town and city centres, and the retail landscape generally, has radically changed in the last 30 years.
- 2.51 Retail developments have become dominated by a relatively small number of major companies and institutions from within the financial, development and retail sectors. The UK planning process has influenced this, particularly in the last decade, by focussing development initiatives back into town centres – and the larger centres particularly, following periods of more dispersed and diverse development.
- 2.52 The development processes involved in town centres are highly complex and time consuming. Numerous stages are worked through, involving a number of private and public sector organisations, frequently with different agendas. The state of the market itself, and the effects of changes in the economy, can cause some of the greatest delays to the development process, more so than the process involved in assembling the sites.
- 2.53 Whilst there has been considerable support for town centre and retail development in various forms in the past war period, the support has not been consistent. It has on occasions created developments of mixed qualities and benefits that have not always met the Government's and the industry's objectives.
- 2.54 The risk-averse policies of institutions, supported by the land use planning system, have strengthened the position of the more successful shopping centres. Prime retail areas and properties are defined quite narrowly in Britain and this has augmented land values and has in effect created very large sums of fixed capital within our town and city centres. Institutions have joined most of the major British retailers in supporting further investment in central areas, and, it could be argued, restricted the development of new forms of retailing or new retail locations.
- 2.55 Reconciling these objectives, and making the processes more efficient, is not therefore an easy task. Since developments involve many different players working with complex legislation in varying market conditions, improving the process can only be done selectively and in a piece-meal fashion. Changes are now being made to improve one of the key stages, that is the planning processes: we discuss this in more detail in the next section.
- 2.56 But we believe that opportunities do exist for improving the important processes involved in land assembly, and we will examine these in the later sections of the Report.

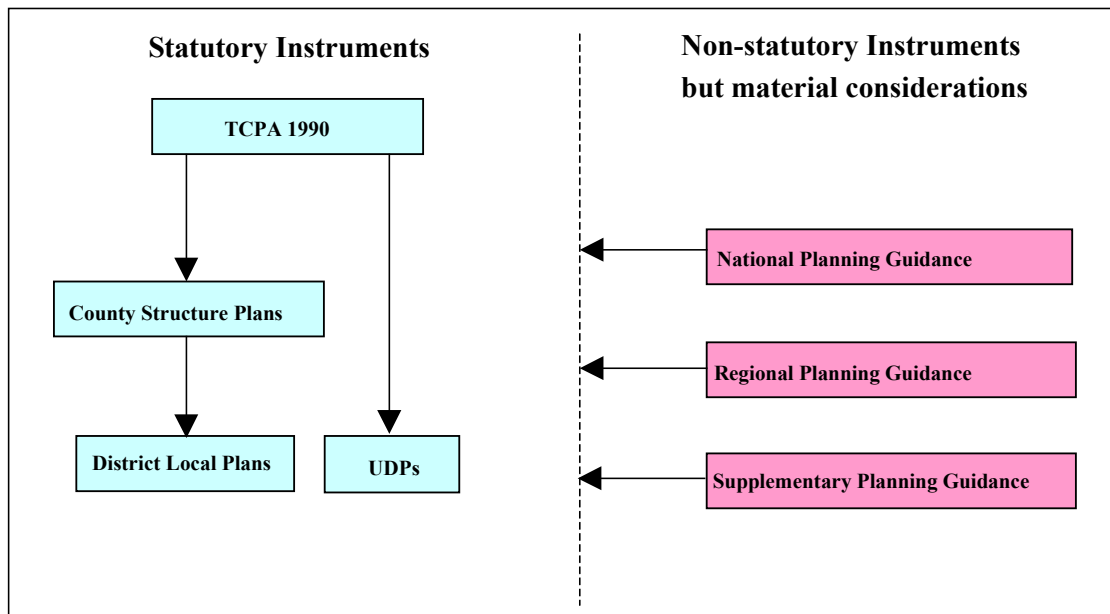
3 The Influence of Planning Policies

- 3.01 We have shown that a major factor in the scale and location of retail development has been the UK's planning system. The determining system is currently under review with a number of changes set to be implemented through the Planning and Compulsory Purchase Bill now going through Parliament.
- 3.02 It is important to consider what guidance and mechanisms are available through the planning system to facilitate land assembly for retail development, and whether the new system will improve these mechanisms.

The Existing Planning System

- 3.03 The current planning system in the UK is based on a development plan-led approach. Development plans sets out the strategy for the development of a local authority area, which contains a series of policies relating to land uses, such as employment, housing, retail etc. Figure 3.1 presents a summary of the existing plan-led system, highlighting the statutory planning status of Structure Plans and District Local Plans for rural and smaller urban areas and Unitary Development Plans for metropolitan areas. There are also three non-statutory instruments, each of which is considered to be a material consideration in determining a planning application.

Figure 3.1: Existing Land-use Based Plan-led System



3.04 Regional planning guidance is a non-statutory instrument used in the formulation of Structure Plans and Local Plans/Unitary Development Plans. The RPG's provide the regional planning and development framework, identifying areas for economic development and/or regeneration, where resources and investment should be focused. The guidance reinforces national planning guidance and the key Government agendas of brownfield redevelopment and sustainable communities. The RPG's provide no general guidance on preferred methods of site assembly.

3.05 *Planning Policy Guidance Note 6: PPG6 Town Centre and Retail Developments* published in June 1996 remains the principal document for guiding retail planning. PPG6 was intended to reinforce the plan-led approach to development and the promotion of development in town centres through policies and identification of sites for development.

- 3.06 The guidance introduced the ‘sequential approach’ for selecting sites for additional retail, leisure and employment uses, with town centres and district centres the preferred locations for such development. This policy and subsequent Ministerial Statements has had a profound impact on the location of retail developments. The note has been used by many local authorities as a development control tool to defeat out-of-centre and out-of-town retail developments in an attempt to focus new investment in town centres. However, in defeating these retail applications, local authorities have been slow to facilitate the development of town centre sites, due principally to the absence of a proper vision for retail centres; the lack of financial resources available to aid land assembly; and a general belief that the market alone would bring allocations forward for development.
- 3.07 PPG6 also recommends that local planning authorities develop a hierarchy of retail centres within their area, providing an indication of where future retail investment should be promoted. This policy has had the effect of encouraging development in the larger centres whilst also discouraging significant developments elsewhere.
- 3.08 PPG6 does not contain any guidance on how to facilitate land assembly, and the majority of development plans whilst identifying town centre sites provide little information on the pattern of land ownership and mechanisms available to help support the assembly of the identified sites.
- 3.09 Local planning authorities have tended to set out the general retail and town centre policies within the development plan and produce supplementary planning guidance in the form of a development brief for individual development sites. A development brief is a non-statutory document, but is regarded as a material consideration in determining planning applications, especially where the development brief is referred to in the development plan. The brief forms a link between the policies of the development plan and applications for planning permission, providing detailed information guidance on how a site should be developed, which enables developers to undertake a feasibility and viability appraisal.
- 3.10 The development brief usually contains detailed guidance on planning constraints, the design, layout and mix of uses supported by the local authority, as well as information on land ownership. For example, Essex County Council operates a design and masterplanning service to local district councils dealing with regeneration projects. The adoption of masterplans as supplementary planning guidance, which is a material consideration in determining planning applications within that area helps to reduce uncertainty and risk to potential purchasers wishing to assemble the site. Land assembly issues can be explored through the masterplan or development brief exercise providing an opportunity for consensus between landowners regarding the design, nature and scale of the development (LGA 2002). The brief can be an effective tool used by local planning authorities to gain support in principle for development from landowners. However, a brief alone is not enough to ensure the successful development of a site.

Reform of the Planning System

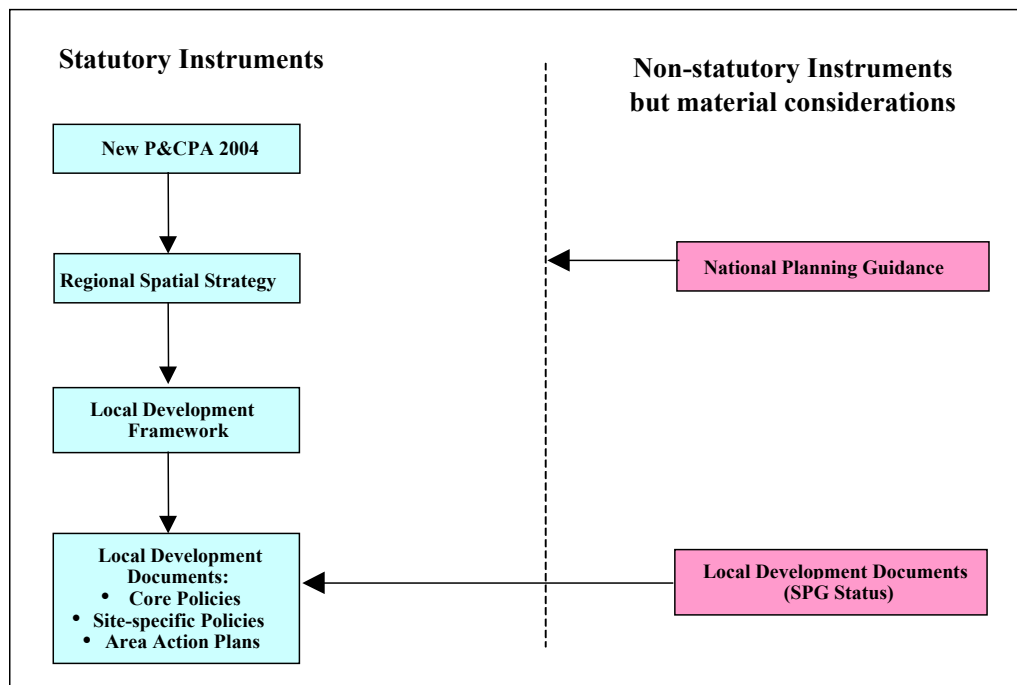
- 3.11 There has been growing recognition from ODPM, Royal Town Planning Institute and others that the existing development plan system is inefficient. Some of the problems

highlighted include the overly long time-scale for development plan adoption; the lack of a local focus; the slow reaction of development plans to political, social and economic change; the production of overly long documents, and; the lack of certainty for developers instilled in numerous and sometimes conflicting policies.

3.12 The reform of the planning system through the impending Planning and Compulsory Purchase Bill 2004 will create a number of significant changes. The principal change proposed is a shift from land-use based policies to spatially based policies within the development plan. The Bill will reinforce the plan-led system, maintaining that the statutory development plan will continue to be the starting point in the consideration of planning applications.

3.13 Figure 3.2 presents a summary of the new system.

Figure 3.2: New Spatially Based Plan-led System



3.14 Under Government proposals, a new set of national planning policy guidance notes, entitled Planning Policy Statements (PPS's) will replace the existing PPG's. The new PPS's will remain non-statutory documents that are material considerations in the determination of planning applications. The Government has published a draft of a new Planning Policy Statement on Planning for Town Centres (December 2003). This will in due course replace PPG6 and sets out the Government's broad policy objectives relevant to planning for town centres in England.

3.15 Because the Government's policy is firmly focused on reviving and regenerating Britain's town centres, the new PPS6 will be an important factor in influencing the location of new retail developments.

3.16 There are two particular policy areas which are strengthened from the old PPG6 and which also introduce some new ideas for town centre development: -

- The Statement provides guidance on all town centre activities and not just retail. It urges local authorities to plan actively for growth in retail, leisure, offices and other town centre uses by selecting the appropriate centres to accommodate the need for new facilities, and identifying sites within and adjoining those centres.
- For the first time, the Statement says that planning authorities should plan the distribution of growth in a way that will re-balance the network of centres to ensure that it is not overly dominated by the larger centres. The Government is now seeking a more even distribution of facilities and avoid over-concentration in the highest level centres. This contrast with previous policy (PPG6) which focused on establishing hierarchy and allocating growth according to that hierarchy of centres.
- The implications of this new approach is that local authorities will be able to encourage development across a larger number of centres. The question however that remains is whether the development industry, investors and retailers, will readily take up these new opportunities lower down in the retail hierarchy.
- The Statement is also much stronger in demanding that local authorities identify sites for development. Authorities should apply the sequential approach to site selection (where sites that are within the centre are given priority compared with those on the edge or away from centres). They should also be sensitive to the needs of developers, and identify sites that are realistic and allow for the accommodation of an identified need, including sites capable of accommodating a range of business models. This is an attempt to accommodate retailers who are coming forward with store formats (for example B&Q and IKEA) which are normally only associated with large out-of-town locations. The Government is urging local authorities in the new PPS6 to extend the boundaries of their centres if those centres are not able to accommodate larger stores formats within the existing town centre boundary.

3.17 Councils are therefore now in the front line for identifying and bringing forward sites of sufficient size to meet anticipated need over the next five-year periods, according to the new Statement. Significantly, the Statement encourages local authorities to take positive action by stating that: -

“.... An apparent lack of sites of the right size and in the right location should not be construed as an obstacle to site allocation and development to meet this need. Local Planning Authorities should consider the scope for effective site assembly using their CPO powers, to ensure that suitable sites within or on the edge-of-centres are brought forward for development”. (Paragraph 2.44).

3.18 The existing regional planning guidance notes will be replaced by Regional Spatial Strategies (RSS's) with statutory status reinforcing the Government's regional agenda and setting a more certain planning framework for each region. The new RSS's will be similar in content to the existing RPG's, but will need to provide a more detailed sub-regional strategy to replace the County Structure Plans that are due to be abolished under the new Planning and Compulsory Purchase Bill. There is unlikely to be any specific guidance contained within the RSS's on land assembly, but they will decide on broad strategies for directing new retail development.

- 3.19 The Bill also replaces the existing District Local Plans and Unitary Development Plans with Local Development Frameworks (LDF's). LDF's will comprise a series of Local Development Documents (LDD's) some of which will have development plan status with others having the status of existing supplementary planning guidance. Local planning authorities will be required to draw up a Local Development Scheme, setting out the LDD's that they propose to produce.
- 3.20 A significant new mechanism that may aid land assembly is Area Action Plans (AAP's) that will have development plan statutory status and will be drawn up for significant areas of change or conservation. The AAP's should provide a clear focus for development of local areas, a mechanism that has previously been lacking within the existing land-use based development plans.
- 3.21 The Area Action Plans could draw together information, similar to that contained within a development brief, with the opportunity for local planning authorities to provide detailed information on land ownership within the AAP and present options for the delivery of land assembly together with possible funding streams.

Conclusions

- 3.22 The existing land-use based 'plan-led' system is inefficient and is due to be reformed through the Planning and Compulsory Purchase Bill to be put before Parliament in 2004.
- 3.23 The development plan will continue to be the principal document in determining planning applications, although there is a shift in emphasis from a land-use based approach to a spatially-based approach. The new system places greater emphasis on plan making rather than controlling development.
- 3.24 The introduction of Area Action Plans and greater flexibility in retail development proposed in the draft PPS6, enables local authorities to be more proactive and positive in the identifying sites and taking the initiative to facilitate development.
- 3.25 The Area Action Plans should form the basis of planning for retail schemes, with local authorities taking the lead role in collected and publishing information on land ownership, as well as providing guidance on the availability of funding and delivery vehicles to assemble and build out sites.
- 3.26 Major questions remain through over the ability of local authorities to deliver some of the processes proposed by the new Bill, for example:
- Identifying the sites that the Government is urging them to find for new retail and other forms of development;
 - Creating the vision and leadership that the new draft PPS6 requires to drive town centres forward;
 - Re-directing development processes away from the larger towns, to which the market is naturally drawn, to a wider network of centres. The new PPS has opened the way for authorities to plan laterally and move away from the old hierarchy based approach. But clear directions and leadership will be needed to attract new investment to many smaller towns and centres.

- Having to reconcile conflicts between their planning obligations and the obligations that many authorities have as landowners in promoting developments. As we move on to discuss in the next section of our report, such conflicts do emerge and can lead to sub-optimal solutions being promoted. On the other hand, where authorities have the vision, these obligations can be turned to a centre's advantage.

4 Land Ownership and Site Assembly

- 4.01 The process of land assembly is influenced by many factors, relating to the aspirations of landowners, national planning and regeneration policies, the property market cycle, commercial viability of site development, and the funding opportunities available. We have examined a number of contrasting case studies set out in the Appendix to gain an understanding of the complex issues involved.
- 4.02 Three four common methods of assembling land for retail development schemes, which are:
- i. Voluntary negotiations between landowners;
 - ii. Public sector-led land assembly;
 - iii. Intervention through the CPO process.

Voluntary Land Assembly

- 4.03 Voluntary land assembly takes the form of an agreement between landowners to assemble their lands for development, or a willingness of an individual landowner to sell to a developer assembling a large site.
- 4.04 In cases where retail development is proposed in a town centre with strong market demand for additional retail growth and only a small number of land holdings, the use of voluntary land assembly would in general negate the need for facilitated or interventionist methods of site assembly.
- 4.05 However, there may be certain barriers to voluntary land assembly such as deficiencies in legal title; lack of information on certain parcels of land; other interests preventing immediate vacant possession; and unwillingness on the part of landowners to sell to purchasers for various reasons. Our “City Centre” case study illustrates this graphically where over 80 titles had to be investigated, ownership’s traced and statutory landowners rights (in this case the Strategic Rail Authority) overcome . Where there is willingness on the part of landowners to sell, the market value aspirations may be unacceptable to potential purchasers, especially where the gap between market value and hope value is unrealistically too large.
- 4.06 Assembling one or two properties to create a site is a low risk venture for developers, and can contribute towards relatively speedy development period and quicker return on investment. Out-of-centre and out-of-town sites are usually of this type and are more attractive to developers due to the fewer number of interests they have to acquire.
- 4.07 Where multiple ownership exists, the risk increases considerably. Town centre sites often have complex land ownership patterns containing a large number of interests taking several years to be assembled. Again the “City Centre” and Leamington Spa case studies illustrate this, the former with over 80 ownership’s interests to acquire and the latter having reluctant landowners. Not surprisingly, developers are reluctant to undertake land assembly on this scale, especially in a marginal retail centre. The costs of land acquisition with no immediate financial return, and the uncertainty and risk surrounding the negotiation of interests, impact negatively on the cash-flow position and usually makes a scheme unviable.

Public Sector-Led Land Assembly

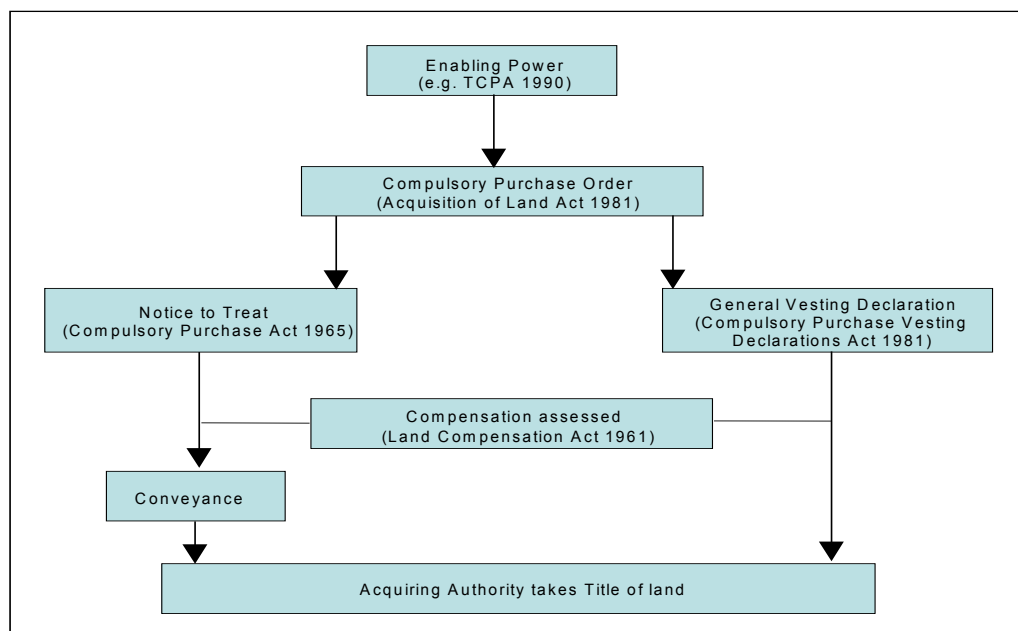
- 4.11 Where voluntary and facilitated methods of land assembly are inadequate, the public sector may take the lead role in site acquisition and land assembly. In marginal retail centres, where there is a multiplicity of land ownerships and viability issues, the public sector can stimulate the development market by assembling town centre sites through negotiation. The financing of such negotiations and purchases though can be a major stumbling block to many authorities.
- 4.12 In some circumstances, the public sector may have a strategic land holding that can enable the assembly and development of a larger development site. The development of Didcot town centre, included in our case studies, shows where this occurred and led to moving a long-awaited project forward.
- 4.13 There are more statutory powers available to local authorities, Regional Development Agencies and other public sector vehicles to acquire or dispose of land for regeneration purposes. These powers include the ‘Well-being Powers’, which provides a discretionary power to local authorities in England and Wales under Part I of the Local Government Act 2000. Under the Act, local authorities can incur expenditure in projects, which satisfies one or more of the three statutory objectives to “*promote or improve either the economic, social or environmental well-being of an area*”.
- 4.14 The ODPM advocates that local authorities should regard the power as a “*power of first resort*” with the aim of reversing the traditionally cautious approach adopted by local authorities to improving the well being of their administrative areas. The well-being powers are not subject to an expenditure limit, neither is there a need to demonstrate any direct or commensurate benefit (as there previously was under Section 137 of the Local Government Act 1972). Thus, the acquisition of land to aid the delivery of a retail scheme could be a legitimate use of the well-being powers, as it has the potential to promote and improve all three objectives.
- 4.15 An additional power open to local authorities with land holdings is given under the General Disposal Consent (England) 2003. This power removes the requirement for councils to seek specific consent from the Secretary of State for any disposal for less than best consideration, where the unrestricted value of the interest to be disposed of and the consideration accepted is £2,000,000 or less. This provides local authorities with additional flexibility in the disposal of land, where the regeneration and community benefit outweighs the market value of the land.
- 4.16 Where retail development schemes are led by local authorities, a joint venture arrangement with a developer is usually the most common vehicle in creating a successful delivery with the local authority assembling the land and the developer, constructing and letting the scheme.

Interventionist Land Assembly

- 4.17 Where negotiations have failed to acquire strategic parcels of land for a holistic development, the use of Compulsory Purchase Orders, or CPO’s, may be required to resolve the issue.
- 4.18 It is common to have a few landowners within a retail site “holding out” for a perceived higher market value for their interests, especially where they have a “ransom strip” effectively blocking the development of an entire retail development scheme. The use of

- CPO in this instance may be required to remove the ransom strip for the benefit of the wider scheme.
- 4.19 Developers have to weigh up the cost-benefit of the implementation of a CPO in association with an acquiring authority to gain the ransom strip at market value but over a longer time-scale, against negotiating an inflated market value but over a much reduced time-scale. The latter solution is often more attractive to developers who can then bring the scheme to market on time within the property cycle, reducing certainty and the risk associated with delivery.
 - 4.20 CPO's are the principal statutory power used by acquiring authorities to intervene in land assembly. Under various acts such as Housing Acts, Education Acts and the Town and Country Planning Act, authorities are empowered to apply for a CPO.
 - 4.21 For example, under Section 226(1) of the Town and Country Planning Act 1990 local planning authorities are empowered to acquire compulsorily "*...any land in their area which is suitable for and required in order to secure carrying out of development, redevelopment or improvement, or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated*".
 - 4.22 Most modern compulsory purchases take place by means of a CPO, which are confirmed by the Secretary of State. In the case of a CPO for retail development under the Town and Country Planning Act 1990 the Secretary of State would be the Deputy Prime Minister.
 - 4.23 A summarised diagram outlining the current CPO procedures is presented in Figure 4.1. Compensation is payable to landowners where the whole or part of a property is compulsorily acquired by the acquiring authority. The acquiring authority is usually the local planning or highways authority. However, more recently, Urban Regeneration Companies funded by Regional Development Agencies and supported in some cases by English Partnerships have been set up as the vehicle for bringing forward CPO's in association with the local planning and highways authority.

Figure 4.1: Compulsory Purchase Order Procedures



- 4.24 In implementing the CPO, the acquiring authority must follow the procedures as set out in the Acquisition of Land Act 1981. A 'Notice To Treat' (NTT) or 'General Vesting Declaration' (GVD) is served on interests in a property, depending on the nature and time-scale of the interests to be acquired. The key difference between the two procedures, is that the GVD combines the NTT and conveyance in one step enabling title of the land to be acquired at an earlier stage. The NTT's primary advantage is that possession of land (but not legal title) can be taken within 14 days of a serving of a Notice of Entry, whereas the GVD procedure takes three months. The RICS suggests that the GVD with a minor modification should be adopted as the only procedure for implementing the CPO in order to simplify the system (RICS Letter to DTLR 27 March 2002).
- 4.25 Compulsory Purchase Orders remain an important procedure to bring forward sites, although the use of CPO powers has diminished in recent years due to a number of inherent problems. The principal problems are as follows:
- *Long time-scales* – typically the process can take in excess of five years from the lead-in time to site assembly before development begins;
 - *Uncertainty over the powers* – Section 226, Town and Country Planning Act 1990, was unclear as to whether local authorities were limited to using CPO powers for redevelopment only, or for wider regeneration. Guidance in Circular 14/94 (which implies that orders would not be confirmed unless the acquiring authority had a worked-up scheme, and had a proposed developer and funding solution in place) was unrealistic because neither developers nor funding materialises until there is certainty about land availability.
 - *A lack of skills to delivery CPOs* – especially within local authorities, which has led to a general reluctance to use the procedure;
 - *A lack of financial resources* – available to local authorities to cover the costs of compulsory purchase with private developers reluctant to under-write the risk of schemes involving compulsory purchase;
 - *Inadequate compensation* – for all property owners, who's land is taken by an acquiring authority.
- 4.26 The current Planning and Compulsory Purchase Bill will make changes to the compulsory purchase order procedures that should ensure that the system is more efficient and fairer, and shorten the time-scales for implementation. The key changes proposed through the Bill are as follows:
- *Speeding up the process* – by enabling acquiring authorities to confirm their own CPO orders, if they are unopposed, and by removing the requirement for local authorities under Section 226 of the Town and Country Planning Act 1990 to demonstrate that the land is "suitable for and is required in order to secure development, redevelopment or improvement". In line with the recently created "Well-being Powers" under the Local Government Act 2000, local planning authorities can justify a compulsory purchase order if it is likely to contribute to the promotion of economic, social or environmental well-being, thus widening the range of justification for compulsorily acquiring land.

- *Removing uncertainty* - by defining in statute the valuation dates for compensation claims;
 - *Making the system fairer* – by making advance compensation payments to be made direct to mortgagees, where this is agreed by all parties, thereby reducing the financial burden landowners can have with large mortgages while negotiating their final compensation settlement.
 - *Greater compensation* - Clause 74 will insert a new Section 33A into the Land Compensation Act 1973, enabling a claimant to be entitled a basic “loss payment” in addition to the compensation paid for the market value of his or her interest in the property, as well as any costs for disturbance relating to businesses. RICS suggests that a payment equivalent to 20% of the market value of the interest would be a fair and appropriate sum (RICS, March 2002). The loss payments for all claimants should act as an incentive to landowners to co-operate in the CPO process, helping to reduce delays.
- 4.26 The new Planning and Compulsory Purchase Bill will go some way to alleviating a number of these problems. However, the lack of professional skills to implement the CPO procedures combined with a lack of funds for many local authorities may restrict the use of CPO powers in some areas.

Alternative Methods of Land Assembly

- 4.27 In some European countries, the use of ‘land pooling’ had negated the need for CPO’s. The process of land pooling arises when landowners combine their interests in order to participate in land assembly in accordance with a development plan, with the opportunity to retain a stake in the development.
- 4.28 In the UK, land pooling on a voluntary basis may be frustrated by several landowners holding out for unacceptable land values or having control of ransom strips, which may be symptomatic of the lack of transparency in the existing planning system as well a reflection of the limitation of statutory powers to facilitate land assembly.
- 4.29 Land pooling in Europe is often assisted by the Government to promote partnership between landowners with the aim of producing a fair and equitable sharing of profits and risk amongst willing and unwilling landowners addressing the issue of value and property rights. A very detailed planning system underpins the process of assisted land pooling, creating greater transparency in terms of market values, risk and profits to be accrued, as well as legislation requiring landowners either to participate in the scheme or sell up.
- 4.30 The underlying assumption of land pooling is that the “marriage value” of all the lands assembled with the planning consents and infrastructure in place should be higher than the sum of the individual plots. In Europe, land pooling is rarely tested on large brownfield sites with multiple land ownership. Land pooling tends to favour rural or urban fringe locations, where fewer numbers of landowners make the process simpler to implement (Golland A, 2003).
- 4.31 Connellan, a leading writer on land assembly suggests that some form of assisted land pooling could be achievable in the UK with the formulation of a suitable delivery vehicle. However, the Urban Task Force (UTF) considers that under the existing statutory powers

the use of land pooling to assembly town centre sites with tens, if not hundreds of property interests would be ineffective (Urban Task Force Report 1999). The UTF recommends that more research be undertaken to consider how assisted land pooling could be utilised in the UK in certain circumstances.

- 4.32 Neither the Planning and Compulsory Purchase Bill nor its supporting documents make any reference to the use of assisted land pooling in the UK. It appears that without a change in legislation it is unlikely that this mechanism will aid land assembly in the short term.

Summary

- 4.33 The existing retail planning focus on town centre development sites with complex patterns of land ownership is likely to place increasing emphasis on local authorities entering the development process at the site assembly stage to facilitate or lead development.
- 4.34 Recent and impending statutory instruments, such as the “Well-being Powers” and the amended CPO procedures in the current Planning and Compensation Bill, enable local authorities greater flexibility in committing financial resources and staffing to retail land acquisition through negotiation and/or compulsory purchase for the wider regeneration benefits of a town or community.
- 4.35 Examples of land assembly mechanisms in Europe, indicate that some form of assisted land pooling may be an appropriate tool to be used in the UK, as a measure to fit between voluntary land assembly and compulsory purchase. The introduction of land assembly would require statutory legislation with the benefit of compelling landowners either to commit to a scheme or sell-up within a short and certain time-scale and at market value. More research on land pooling needs to be undertaken however to assess whether the mechanism is effective in assembling town centre sites.

5 Delivery Vehicles and Funding

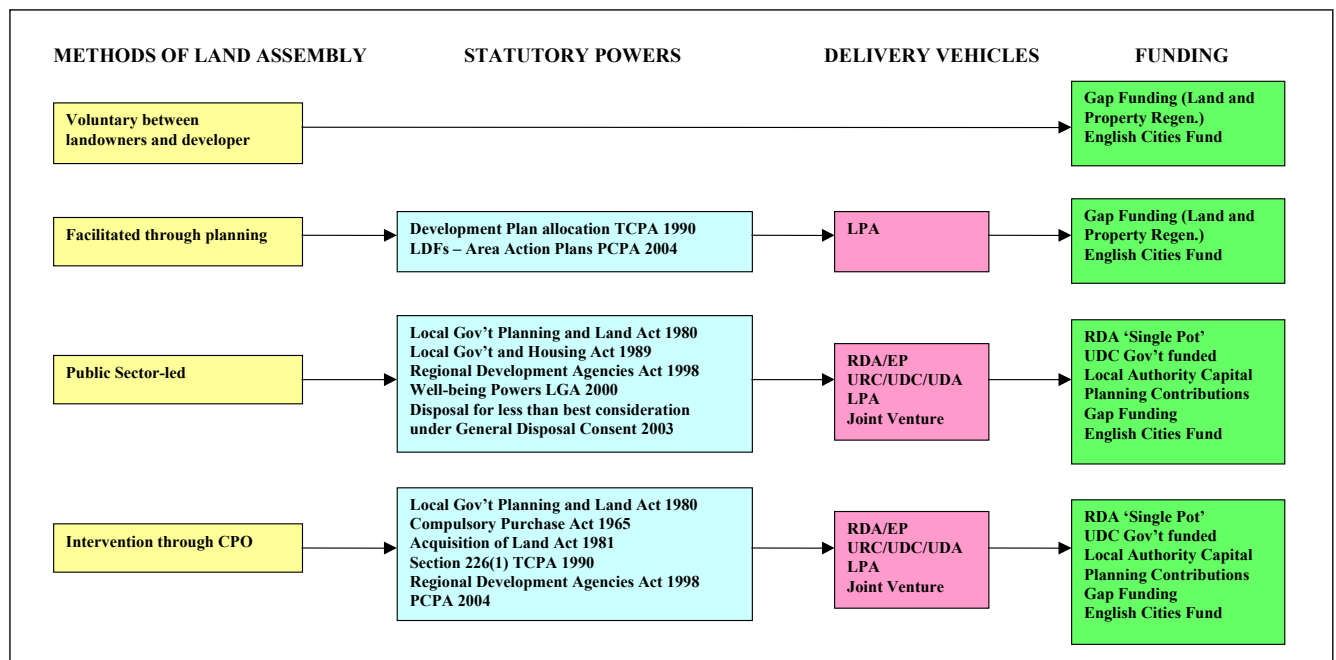
- 5.01 Funding is critical if a retail development is to succeed. Generally, the larger the schemes and the more dominant the centres in which they are located, the more attractive and fundable the developments are likely to be to the market.
- 5.02 However, where retail development is marginal and time-scales for development uncertain due to the complex nature of land ownership, the private sector is increasingly reluctant to invest money upfront on site assembly with no prospect of immediate returns.
- 5.03 In these circumstances, the public sector can play a critical role in assembling sites ready for development that can be implemented by the private sector. There are many examples in the UK where retail schemes have been delivered with public sector involvement, either as a development partner or by exercising its powers of compulsory purchase.

The Delivery of Land Assembly

- 5.04 The new Planning and Compulsory Purchase Bill places more emphasis on local authorities and other public bodies to assemble sites for development, especially through the use of CPO.
- 5.05 Recent Government reports and associated research that one of the principal problems with the CPO process is the loss of skills and expertise at the local authority level due to years of inactive use. The Urban Task Force Report, 1999 for example, stated that:
- “If there is going to be increased commitment to public acquisition, there will need to be more public investment in public land assembly through dedicated capital resources from Government.”*
- 5.06 A report undertaken by CB Hillier Parker on behalf of the Royal Town Planning Institute in 2002 found that local authorities were prepared to use CPO powers but were limited by the lack of financial assistance and the time-scales and difficulties in implementing the orders.
- 5.07 The Government is encouraging retail developments to form part of mixed-use developments in an attempt to create more sustainable and socially inclusive developments. However research commissioned by the Office of the Deputy Prime Minister led by University of Westminster found that failure to secure funding support remains the single most common reason for the non-implementation of mixed-use proposals. (Scates, 2003).
- 5.08 An Estates Gazette seminar (2003) discussed mixed-use development with a number of developers, agents and local Government officers. Developers have largely taken on board the Government’s policies to create mixed use rather than single use developments in town centres. A particular concern was the fact that the complex mixed use scheme which are not being led by a strong local authority tend to lose out when it comes to attracting financial interest. A lack of clarity and vision to the objectives for the mixed use scheme, together with a lack of strong leadership in the local authority were blamed as factors compromising the smooth processes of finances mixed use schemes. A contrast was made in Europe, between Barcelona and Montpellier, which have strong mayors and big ambitions, and Hackney and Tower Hamlets where the local authorities are traditionally under staffed and overwhelmed by major applications.

- 5.09 Within this context, there remains some doubt over the technical and financial resources available to local authorities to undertake land assembly. With the increasing planning and funding powers of regional organisations and specialist delivery vehicles, it is pertinent to consider whether a more streamlined, simplified structure to deliver land assembly is required.
- 5.10 To assess this issue, the links between the methods of land assembly, statutory powers, delivery vehicles and funding regimes has been assessed. Figure 5.1 presents a summary of these linkages, identifying the various mechanisms to implement land assembly.

Figure 5.1: The Delivery of Site Assembly



- 5.11 Voluntary land assembly, where land acquisition is negotiated between a developer and landowner usually requires limited public sector involvement, although the developer may be eligible for funding. All public funding given to the private sector now has to comply with the European rules on State Aid, following the abolition of the Partnership Investment Programme (PIP) in 1999.
- 5.12 There are now six gap funding programmes operated by the Government to replace PIP and subsidise private sector regeneration projects legally without distorting competition between companies. The principal source of funding for land assembly is the 'Land and Property Regeneration' programme available to private sector developers. The programme enables regeneration bodies (principally the RDAs and EP) to provide a regeneration grant or loan to developers to support land and property development where the costs of the development would exceed forecast values. The level of funding is geared towards assisted areas, where developers can apply for a grant of between 35-50% of the total eligible costs in a Tier 1 Assisted Area or between 10-30% in a Tier 2 Assisted Area.

- 5.13 The English Cities Fund (ECF) is not a grant-making fund, but a joint venture fund between English Partnerships, AMEC and Legal & General providing in excess of £100M of investment to deliver mixed-use regeneration projects within eligible Assisted Areas in England. Although, private sector developers will be unable to apply for funding, the ECF will be used to lever other private sector investment into brownfield regeneration, which may involve the assembly of sites for development.
- 5.14 The Government's sustainable regeneration and brownfield agenda is providing new opportunities for both the public and the private sector in major regeneration areas. The AXA Real Estate Investment Manager's UK Regeneration Fund was launched in January 2004 with an institutional fund of £400M for regeneration projects. The attractiveness of mixed-use development in prime regeneration areas supported by retail, leisure and other uses is likely to encourage more financial backing from the private sector, where "easy wins" can be identified. However, the private sector is likely to be less attracted to more marginal economic areas, or smaller retail markets, especially where there is multiple land ownership and a lengthy assembly period.
- 5.15 It appears that priority areas in the UK will benefit greatly from the resources available for regeneration, with the prospect of direct funds and gap funding grants being allocated for site assembly for mixed-use development, incorporating retail development. The introduction of Area Action Plans through the new planning system should provide a more focused spatial tool to concentrate funding resources, although these are likely to favour Assisted Areas or major regeneration areas.
- 5.16 The **Regional Development Agencies (RDAs)** have the funding power to implement land assembly programmes. Each RDA has a 'Single Pot' of Government funding and the power to allocate funds and resources to deliver its Regional Economic Strategy. The introduction of statutory Regional Spatial Strategies should provide a clear link between the regional planning framework and the economic priorities for each region to which funds from the 'Single Pot' will be allocated.
- 5.17 The use of Urban Regeneration Companies (URCs) led by RDAs, Urban Development Companies (UDCs) and Urban Development Areas (UDAs) are increasingly being adopted as the most appropriate vehicle for town centre regeneration, including land assembly.
- 5.18 **Urban Regeneration Companies (URCs)** have been established in a variety of locations to co-ordinate redevelopment and attract new investment in declining areas. URCs are non-statutory vehicles limited by guarantee with partners who own them. These partners usually include the RDA, EP, local authority, the private sector and other bodies. For example, Catalyst Corby's board includes local employers, landowners and developers, the local MP, Northants Chamber of Commerce, community and voluntary bodies, Corby Borough Council, Northants County Council, EMDA and EP. Establishing a URC does not bring additional resources or powers over and above those that the partners themselves are willing to commit. The planning and CPO powers would need to be exercised by the local authority, with funding for the URC provided by the partners.
- 5.19 In contrast to the URCs, the new breed of **Urban Development Corporations (UDCs)** currently being established are more powerful delivery vehicles. The UDCs are statutory vehicles, established by ODPM through legislation with planning powers to decide all strategic and major planning applications, as well as powers to implement CPOs. The UDCs are directly funded by central Government by way of an annual grant, which is supplemented with the capital receipts from land and property sales.

- 5.20 The new breed of UDCs are to be set up in principal areas of regeneration and economic growth, such as Thurrock, London and West Northamptonshire. The ODPM's justification for establishing the Thurrock UDC is to tackle specifically the complex pattern of land ownership, which is constraining housing and economic growth. The UDCs are likely to have a significant impact on site assembly within these areas in the short to medium term.
- 5.21 The new **UDA** to be established in Milton Keynes is a similar model to the UDC, whereby the Milton Keynes Partnership Committee led by English Partnerships will have development control powers for major applications. The key difference between the two vehicles is that in the case of the UDA, once planning permission has been granted, the planning powers for a particular site will be passed back to the local planning authority (Milton Keynes Council). This new delivery vehicle has probably been devised to take advantage of EPs large land holdings in Milton Keynes and the ease of land assembly, which is in stark contrast to Thurrock UDC.
- 5.22 At the local authority level, District Councils and Unitary Authorities in non-assisted areas have limited opportunities to lead site assembly. Where there is political will and a clear regeneration need, some "cash-rich" Councils (often utilising the interest made on receipts from the sale of the Council housing stock) are able to assemble sites through negotiation and/or compulsory purchase. The Didcot case study described in the Appendix is such an example.
- 5.23 A Joint Venture arrangement with a private sector development partner is the most common vehicle adopted by local authorities in these circumstances to deliver a retail scheme. The Council enters into a development agreement with a preferred private developer through a competitive tendering process, with indemnity being provided by the developer to under-write the scheme. This usually happens when a certain percentage of the scheme, or key anchor tenants are secured with pre-let agreements signed between the developer and retailers. Following these agreements, the local authority undertakes the land assembly and arranges a ground lease with the developer for the construction of the scheme. Both parties take an equal share of any profits accrued from the development.
- 5.24 The issue of indemnity is common within marginal town centre, where brownfield sites exist, and in some circumstances can lead to the collapse of a development. A private developer may be reluctant to under-write the risk of a development scheme, especially where a CPO is to be implemented and the time-scale for implementation is delayed. This issue was highlighted by RICS in their report for SEERA *'Delivering Urban Renaissance in the South East; Overcoming the Financial Barriers to Mixed-use Brownfield Development'* 2002. RICS investigated the St. James' Area of Dover, where Dover District Council was attempting by joint venture to implement a mixed-use retail-led town centre scheme. The District Council owns 40% of the site and was seeking to acquire the remaining land holdings, possibly by compulsory purchase. The development agreement was in place, but the land assembly was being held up by the developer's non-commitment to provide indemnity for the scheme.
- 5.25 Development companies have also been set up in some towns and cities to aid development. Longer term joint venture arrangements between local authorities and the private sector can be an effective way of pooling skills, expertise and financial resources together to tackle complex redevelopment projects. An example of a successful, joint venture arrangement is Widnes Regeneration Ltd formed by Halton Borough Council and St. Modwen Developments Ltd to tackle brownfield development. The Borough Council provides the technical planning and CPO expertise, and St. Modwen provides the day-to-

- day commercial development expertise. One of the principal benefits of the joint venture company is that it provides a long-term development vehicle for tackling hard to assemble sites (LGA 2002).
- 5.26 Joint venture partnerships that involve local authorities are restricted in terms of their activity under Part V of the Local Government and Housing Act 1989, which introduced different categories of local authority companies: controlled; influenced; arm's length or minority interest, classified according to the level of local authority involvement. The Local Authorities (Companies) Order 1995 added the extra test of 'effective control' which distinguishes between companies 'effectively controlled' by the private sector and those 'effectively controlled' by local authorities.
- 5.27 The reform of the planning system, with the impending changes to planning obligations (Section 106 agreements) may offer local authorities an additional financial power to exercise in the development of retail schemes. The ODPM's consultation paper '*Contributing to Sustainable Communities: A New Approach to Planning Obligations*' published in 2003 presents a series of possible options, including the establishment of a new optional planning charge, as an alternative to negotiated planning obligations, and the opportunity for local authorities to pool contributions together for wider regeneration or infrastructure projects that can be delivered on a pan-local authority basis.
- 5.28 The new system needs to provide flexibility to local authorities, say for the funding of land assembly of land investigations and production of information, as well as land acquisition based on sites identified in the Local Development Framework through Area Action Plans. In addition, the power for local authorities to waive contributions, which impinge on the commercial viability of development sites, could help to bring forward schemes.
- 5.29 The introduction of land pooling to assemble retail sites may reduce or negate the need for public sector funds for certain development, enabling the market to financially deliver sites with the technical planning support of local authorities.

Alternative Delivery Vehicles

- 5.30 Urban Partnership Zones (UPZ) have been put forward by Adams et. al. at the University of Aberdeen as a potential delivery vehicle to enable fast-track land assembly. The concept of Urban Partnership Zones is taken from the paper '*Managing Urban Land: The Case for Urban Partnership Zone*' by Adams, D et. al. December 2000.
- 5.31 The UPZ appears to combine the instrument of land pooling within a joint venture development company or URC-type delivery vehicle, underpinned with a clear set of planning policies and urban design framework.
- 5.32 An UPZ would be an area specially designated for development by the local authority where a development partner is also selected by the authority through open competition. The joint venture development company could be formed with the RDA, EP or a private developer.
- 5.33 Following the declaration of an UPZ, new legislation would give the local authority a statutory right of pre-emption to purchase land before anyone else, and allow landowners to exchange their lands for shares in the partnership. The shares could amount to a financial stake or reserving a unit within the proposed new scheme. A compulsory purchase order would be implemented to acquire the interests of landowners, who were unwilling to participate or sell to the partnership.

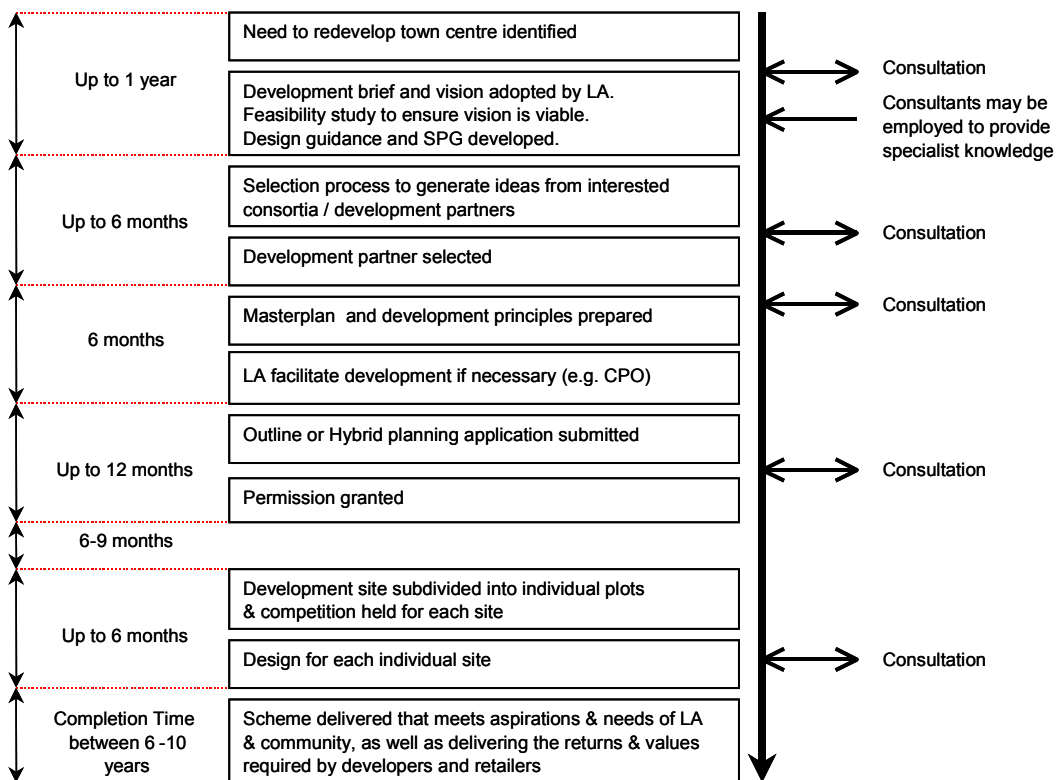
- 5.34 The time-scale for land acquisition would be quickened with an initial short period (e.g. six months) for landowners to participate, sell-up or formally object. If a CPO was to be confirmed, the procedures would be in place to vest all remaining interests within the development partnership by means of a general vesting declaration with the additional opportunity for landowners at this stage to either be compensated or exchange the market value for shares in the partnership.
- 5.35 Taxation incentives could be employed within the UPZ to finance the costs of development and in particular land assembly creating opportunities for private capital investment and reducing the burden on public spending.
- 5.36 The concept of the UPZ pulls together a number of existing statutory instruments available in the UK and in Europe. The concept would be enhanced by the amendments to the CPO procedures and the changes to the planning system creating more spatially-based policies for local areas, which could form the basis for the UPZ. However, the Planning and Compulsory Purchase Bill makes no recommendations to make the right of pre-emption for local authorities a statutory instrument.

6 Conclusions & Recommendations

- 6.01 The retail development landscape has changed dramatically in the post-war period and particularly since the 1980s. Over recent years the market has seen a reversal from the trend of out-of-town regional shopping centres and retail parks, due mainly to the changes in the Government's political and policy support of town centre regeneration. The recently opened Bull Ring in Birmingham and Grosvenor's plans for Paradise Street in Liverpool are examples of the significant shift in trends.
- 6.02 Retail development is becoming increasingly difficult and complex as it needs to embrace a wider mix of uses to satisfy the urban agenda. Retail companies are changing their formats to meet new consumer demands, and to adapt to formats more suitable for town centre, rather than out-of-town, locations.
- 6.03 To varying degrees most town centre development involves 'live sites', often characterised by poor buildings and architecture, but which nevertheless are income producing and occupied. This means that interventions are becoming more complex to achieve critical mass and the necessary step change in values. Together these make projects disruptive, expensive, sensitive and time-consuming. In turn, this means that planning certainty, speed of delivery, managing of the total process and phasing the project to allow the town centre to function at all stages of the project are even more critical.
- 6.04 A broad involvement of many parties is an essential part of the process, which means there is a need to meet the aspirations of all stakeholders.
- 6.05 Research and experience have demonstrated that value, timescale and process have to be understood by all involved in retail-led development. Value creation is fundamental to the financial players, although it should not be allowed to distort the ability of the development to deliver a variety of planning and political aims.
- 6.06 Analysis of many retail developments in this study, and other research, indicates that large (mixed use) retail developments from conception to completion take on average eleven years and often longer to deliver. This is due to the complexity of the schemes, the issues associated with assembling 'live sites' and the various stages in the planning process. Some schemes have been delivered more quickly, but in general terms shortcuts that save on time and/or build costs can generally lead to more time and expense in the long run.
- 6.07 An inclusive process is vital in delivering large retail developments that meet the needs of all town centre stakeholders. False starts, ad hoc planning applications, lack of briefs, unclear goals and little consensus among key players is what makes the process lengthy and complex. Land assembly is but one of the stages in this process.
- 6.08 Although there is no risk-free process for delivering large, mixed use retail schemes, research has identified a number of potential barriers that can be avoided. Research by the BCSC (2002) proposes a "*logical process*", illustrated by Figure 6.1 below. It is acknowledged that much of the 'best practice' in terms of new retail development is still at the strategy or design stages. This means that there are few exemplars of good practice in the current cycle of retail-led development in the UK that can provide a model for developers and local authorities.

- 6.09 At the conception stage, before devising the strategy, it is recommended that planning mechanism be put in place – including setting clear goals and developing a strong brief from the outset. Local authorities need to set a clear vision and role for their town centres and to take a strong lead in driving development forward. The mere publication of a development brief and then waiting for a developer to come along, will not be sufficient. The brief should provide guidance on how the site should be developed. Putting these mechanisms in place will enable the local authority to promote what they want and to deflect diversionary alternatives.
- 6.10 The end result should be a scheme that meets the aspirations of the local authority and the community, as well as delivering the returns and values that the developer and retailer(s) require to develop such schemes.

Figure 6.1: The Development Process: Towards Best Practice?



Source: BCSC (2002) Urban Design for Retail Environments

- 6.11 Both the retail industry and local authorities are on a steep learning curve when it comes to retail-led regeneration. But the retail industry is dynamic and able to meet the challenge, so long as local authorities lead the way in terms of developing and managing the vision.

Towards a New Delivery Mechanism

- 6.12 The resources available to local authorities to facilitate and intervene in land assembly is unlikely to change significantly in the short to medium term. The skills to implement long-term development schemes, incorporating compulsory purchase orders is absent at the local authority level, added to which there has been a general reluctance to use the instrument. The decision-making at local authority level involving elected members for a

term of four-years can in some circumstances breed a short-term mentality and a lack of commitment to long-term land assembly, especially where compulsory purchase is a realistic option.

- 6.13 Due to the limited resources available, local authorities should focus on their key statutory function as planning authority. The new planning system provides new opportunities for local authorities to enhance skills in plan-making and produce a clearer vision and set of policy objectives for individual sites through the new system of Local Development Frameworks. The added-value that local authorities can bring to the development process in the form of more detailed investigations of sites and release of information would help to kick-start retail and mixed-use development and provide greater clarity and certainty to developers.
- 6.14 In situations, where the local authority is both the planning body and development partner there can be issues raised concerning probity and transparency, which can damage the process. The move to regional governance with the creation of RDAs and Regional Assemblies in England with significant funding powers and the impending statutory regional spatial strategy, places greater emphasis on regional bodies, such as the RDAs, to deliver land assembly through negotiation or compulsory purchase orders. The RDAs have the funds available to acquire land and to underwrite the financial risk of town centre schemes with the private sector if required.
- 6.15 The use of Urban Regeneration Companies (URCs) led by RDAs and Urban Development Corporations (UDCs) will continue to be appropriate vehicles to deliver land assembly and redevelopment schemes in major areas of regeneration. However, for smaller, more marginal retail locations, the opportunity to establish a dedicated delivery vehicle with allocated funding is limited. In these circumstances, the RDAs are more strategically positioned with the funding powers in place to delivery land assembly at the local level in association with the local authorities, with its planning powers.
- 6.16 In these situations, a clear distinction between the local authority's role as the statutory planning authority and the RDAs role as site assembler would create transparency and clarity for a developer. It also appears logical that the technical expertise on land assembly should be pooled together within a regional site acquisition unit to be transferable from town to town across a region. The unit could link into the proposed ODPM Planning Advisory Service, to have a national remit in assisting local authorities with difficult planning procedures.
- 6.17 A dedicated fund for site acquisition as recommended by the Urban Task Force and reinforced by CABE and URBED in the ODPM report '*Towns & Cities: Partners in Urban Renaissance – Breaking Down the Barriers*' could be set up within the RDA to be implemented by the regional site acquisition unit.

Recommendations

- 6.18 Our recommendations can be summarised as follows:

Separating Planning Processes from Ownership Rights

- Hard choices need to be taken over location and scale of development.
- There is a need to resolve conflicts between Planning Policy aspirations and market influences.
- PPS6 requires long-term implications as well as short term benefits to be assessed.

- A separation of the planning policy process from the implementation of the development would be a logical step towards creating a more transparent and efficient process.

Speedier Land Assembly through Better Data

- Site ownership information can be complex, particularly in historic centres and with larger sites.
- As part of new Action Area Plans, Local Authorities should prepare ownership titles and other key information for each site – similar to “Home Sellers’ Packs”.
- This will reduce risks and uncertainties for developers.

Rail and other Statutory Land Ownership

- The SRA and other statutory organisations are able to hold land and avoid Compulsory Purchase where land is required for “strategic” reasons.
- There should be a more equitable process that balances the conflicting needs of town centre and other statutory developments.

New Funding Regimes

- European rules on State Aid restricts gap funding for more affluent towns.
- The majority of Local Authorities do not have the funds to acquire land or undertake a CPO.
- RDAs/EP and UDCs already have funding power.
- ‘Land pooling’ mechanisms may reduce the need for direct funding.
- New PPS6 and Area Action Plans provide an opportunity to create a new fund for land assembly to deliver the Government’s Sustainable Communities Agenda

New Development Vehicles

- RDA’s and English Partnership now have greater roles in economic and social regeneration.
- Many Local Authorities lack the expertise to handle and promote CPO’s.
- A new regional based Delivery Vehicle, staffed by dedicated teams with specialist experience, should take on the role of “Development Facilitator” for selected centres.
- These could be run by the RDA, EP, or by the Counties, with powers to act on behalf of the LA first to carry out due diligence, check for scheme viability and then to assemble sites, promote and run CPO’s and select development partners.
- The new teams would be run a sub-contract basis from the Local Authorities.
- Local Authorities would retain strategic planning and development control powers.

Monitoring Developments

- There is a need for better data on all town centre development processes.
- Improved information can be shared among Local Authorities and developers.
- There could therefore be a possible role for an industry organisation such as the RICS or BCSC to monitor development and assist in creating best practice guidance following their earlier research on the subject.

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