SHOOSMITHS

Remaining resolute: UK's living sector

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FOR WHAT MATTERS

Contents

Foreword

Let's be honest, it feels gloomy at the moment. The ramifications of 14 consecutive rate rises are now materialising – creating additional hurdles for those seeking funding and bringing developments forward. Rising borrowing costs will always put pressure on the living sector.

However, the UK's real estate industry is remarkably resilient.

Markets such as build to rent and purpose-built student accommodation still have plenty of room for growth, with historic high levels of investment helping buoy development activity. Housing need in all parts of our communities, whether students, young professionals, families or seniors, is far outpacing supply, all of which creates opportunities.

The impact of the economic turbulence can't be ignored though. Evidence can be seen in the slowdown in residential development and transactions, with consumers facing higher average fixed-rate mortgages and falling home prices. This situation may well get worse as the Bank of England uses the tools at its disposal to attempt to bring down inflation.

The industry is no stranger to this type of volatility. The last three years have seen it overcome a near-total shutdown during the pandemic and the subsequent impact on supply chains. Those of us who have been around long enough also worked through the 2008 financial crisis.

What these challenges have shown is that UK real estate businesses are more than capable of adapting and innovating in light of changing economic conditions or new and difficult legislative changes.

It is also important to remember that those in the industry do not face these challenges alone. We work hand in hand with client teams and know that our trademark pragmatic and commercial approach is vital to untangling current issues and navigating a way forward.

As many of our experts also discuss in this report, the government has to better recognise the critical role that developers, operators, investors, and the many other real estate businesses play as part of UK PLC. These firms must be provided with the certainty and guidance needed to deliver on evolving legislation, particularly where changes are impacting live building projects, such as with the Building Safety Act 2022.

The scale of the UK's housing shortage cannot be underplayed either, with acute issues in areas such as purpose-built student accommodation, alongside senior living where a shortfall of 487,000 homes is currently projected and likely to grow.

To make any progress towards solving the imbalance in residential supply and demand, a shift in stance is required on multiple factors – the approach to housing numbers, uncertain planning policy, mechanisms for securing consents, and the protection at all costs of the green belt – that are creating hurdles for the real estate industry.

Rather than seeing this as the 'usual industry moans,' the feedback of those in the sector could enable the government to better understand the changes in the way people live. This is key to implementing the policy changes needed to unlock more viable development during a period when developers and funders are impacted by external factors and looking to minimise risk.

Now is the time to remain resolute, with the government, industry, and advisers working together to face down challenges. Though difficult, rest assured, we've done this before and will do it again – firm in the belief that the UK living sector's long-term prospects are strong.

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In the battle for political power, housing could rule supreme

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In the battle for political power, housing could rule supreme

While the next general election isn't due until January 2025, or earlier, housing is shaping up to be a key battleground for both parties. It could arguably even decide the election.

There seems to be clear blue water developing between the two main parties on this issue.

Now **ahead in opinion polling** - garnering 45% of headline voting intention - Labour's rhetoric on housing and planning is growing stronger, with party leader Sir Keir Starmer vowing in a speech to the British Chambers of Commerce to "choose the builders, not the blockers".

This sentiment was echoed at a recent discussion Shoosmiths held in partnership with Lexington at its Manchester office, where over 50 real estate professionals gathered to find out the views of Labour MP and former Leader of Trafford Council, Andrew Western MP - in the same week where the government set **out its measures to unblock the planning system and build more homes**.

Speaking on themes such as increasing housing delivery, planning policy and the green belt, Andrew Western MP remarked in his introduction: "I don't have a tremendous amount of time for people who want to look at the problems in our housing system without fairly swiftly coming to the overarching issue of supply. And so, I've said an awful lot in my six or seven months in Parliament about the need to just build - all tenures, all types."

Battle lines

The government's approach to housing is predicated on brownfield delivery, densification and focussing growth on cities, where 'demand is highest and growth is being constrained'.

These pillars were cemented in its announcement and **speech** by the Housing and Levelling Up Secretary, Michael Gove, where the government confirmed that it will meet its pledge to build 1m homes over this Parliament. This is critical new supply, but would require the delivery of about a further 300k homes – a number it has been unable to hit annually.

The government's vision seems to be based on achieving its housing targets, without taking land out of the green belt or relying on sites in the outer suburbs. This is a tall order given the scale of the UK's existing housing shortage, let alone its future requirements.

Labour's approach to housing delivering and planning policy is more inchoate and may well be better articulated by its party conference in October 2023. Its pronouncements to date do, however, suggest reinstating housing targets and boosting supply across all tenures.

Green belt release has not been ruled out in order to achieve this, with Andrew Western MP putting forward a potential approach: "What we have to do, in my opinion, is look at everything within one mile of a commuter train station to a major city, excluding Sites of Special Scientific Interest or areas of outstanding natural beauty, or any sort of protection, and you get somewhere in the region of 1.9-2.1m homes that you could build."

For the current government, the proposed revisions to the National Planning Policy Framework (NPPF) offer additional protection to the green belt - removing the requirement for local authorities to review and alter green belt boundaries if this is the only way of meeting their housing need. A stark contrast to Labour's potential flexible approach.

Andrew Western MP speaking at Shoosmiths' recent housing event in Manchester

Targets

Following the pre-Christmas rebellion where Conservative backbenchers sought to amend the Levelling-up and Regeneration Bill (LURB) to outlaw the use of mandatory targets in local plan production, the government has tempered its approach to housing targets.

This is reflected in proposed revisions to the NPPF that refer to the introduction of 'new flexibilities to reflect local circumstances' in the way that councils meet their housing needs.

The revisions to the NPPF, originally anticipated in the spring, may now not be finalised until after the LURB is enacted, which could be as late as November 2023.

In comparison, Labour now appears to be adopting a more robust approach to target setting.

Indications are that Labour is prepared to commit to the government's 300k homes a year figure that Clive Betts, Chair of the Levelling Up, Housing and Communities Committee, described as a "starting point". These housing targets could be formulated at a 'wider than local' level, with responsibilities transferred to combined authorities and city regions.

"I'd absolutely get those targets back in," said Andrew Western MP at Shoosmiths' event. "I might go above 300k, but I don't think the party are going to. 450k gets us to the European average over 25 years."

Infrastructure funding

It is fair to say that proposals to introduce a national infrastructure levy have not been well received by the real estate industry.

In June 2023, a coalition of organisations submitted a joint letter urging the Department for Levelling Up, Housing and Communities to abandon the levy. The general tenor of the response was that amalgamating financing for affordable housing and infrastructure could impact the delivery of the former, while potentially rendering brownfield regeneration unviable and perpetuating regional inequalities.

The government has now watered down the requirement for all authorities to charge the proposed infrastructure levy – they will not have to do so if it would make development in an area economically unviable. Labour has indicated that it will not proceed with the levy.

As the levy was due to be phased in over several years, the current infrastructure funding regime - using a combination of planning obligations and the Community Infrastructure Levy – is likely to continue irrespective of what party comes into power at the next election.

Delivery vehicles

There is a rare degree of unanimity between parties when it comes to the role of metro mayors, combined authorities and development corporations in driving housing growth.

When announcing the long-term plan for housing, Gove offered a commitment to "work with the metro mayors to align the new housing we envisage with the wider economic development that they are helping to drive".

For Labour, Starmer has voiced an enthusiasm for setting up locally-based development corporations with a housing focus. The shadow housing secretary, Lisa Nandy, also outlined in a recent media interview how Labour would look to work with combined authorities to identify areas of green belt land to declassify, before then handing development corporations the role to bring these sites forward and deliver new homes.

Planning reform

The LURB reflects the government's approach to planning. It embraces a 'plan led' system, albeit one where national development management policies can 'trump' local plan policies.

Alongside launching a £24m Planning Skills Delivery Fund and forming what it terms a 'super-squad' of leading planners, the government's recent housing announcement also featured several proposals aimed at promoting development. It mooted introducing new flexibilities to convert shops, takeaways and betting shops into homes, while also enabling barn conversions and the repurposing of agricultural buildings and disused warehouses.

For many in the real estate industry, these changes will be viewed as tinkering – falling short of the streamlining and resources that are needed for the planning system to work efficiently.

There are signs that Labour is contemplating more radical planning reform.

In a speech at Gillingham's Mid Kent College in July 2023, Starmer said: "I will bulldoze through planning laws to reignite the dream of homeownership."

Andrew Western MP went a step further during the discussion at Shoosmiths' Manchester office, stating: "These are my own views and definitely not attributable to the front bench, but I have said it on the record several times; I would scrap the Town and Country Planning Act 1947. It stymies development. We are one of the few places in the world that has a guidance based, case-by-case permission system, rather than a rules-based planning system."

The prospect of further changes to the planning regime, whether introduced by a Labour or Conservative government, could lead to uncertainty and delays in local plan production.

There is a lot to be said for simplifying, consolidating and properly resourcing the existing planning system. Whichever party comes into power must, however, allow developers and planning authorities to get on and deliver the housing that is required.

The average house in England now costs up to 10 times the average salary, according to Centre for Cities. Britain also faces a backlog of 4.3m homes missing from supply - not built for a myriad of reasons, but all contributing to what is now a systemic housing shortage.

With over a year until voters head to the polls, the outcome of the next election is far from decided. What is clear though is that housing policy will be a key deciding factor. The party that is able to put forward a robust, logical and viable plan for increasing residential development could well win over not only the real estate industry, but also the public.

In the battle for political power, housing could rule supreme.

Shoosmiths' recent housing event in Manchester

Biodiversity net gain becomes a reality

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Biodiversity net gain becomes a reality

The new biodiversity net gain (BNG) requirements are set to come into force from November 2023. This will legally mandate securing a minimum 10 per cent biodiversity net gain from new commercial and residential developments in England, with a few exceptions.

While the requirements - part of the Environment Act 2021 – will have financial and operational implications, the real estate industry has had several years to **prepare for BNG**.

Many developers are already delivering BNG in anticipation of the new rules coming into force, and while there is currently no legal obligation, some local planning authorities have adopted planning policies requiring a 10 per cent minimum net gain.

It is hard to argue that the real estate industry has not been afforded enough time to plan for mandatory BNG. However, three months out, the industry is still awaiting secondary legislation and guidance on fundamental issues, including what constitutes irreplaceable habitat and how local planning authorities should approach BNG for phased developments.

On a practical level, a template Biodiversity Net Gain Plan is also still to be published.

In the meantime, let's recap on what is known about the BNG rules and system that is soon to apply to most new development schemes.

Post-consultation

In a major update earlier this year, the government did publish its **response to a consultation** on how BNG will be achieved in practice. This was accompanied by **national guidance**, outlining how BNG affects land managers, developers and local planning authorities.

The consultation addressed key aspects of BNG, spanning delayed starts and exemptions, off-site gains, delayed delivery and habitat banking.

Local planning authorities were the largest single group to provide consultation responses. This is no real surprise considering their role in securing and policing the delivery of BNG.

The successful implementation of BNG hinges on local planning authorities possessing the skills and resources required to take on this new responsibility. This was acknowledged in the consultation response where the need for additional training and capacity was outlined.

Since then, the government has committed £9m of funding to support local authorities in recruiting additional ecologists and specialists, with Trudy Harrison, Nature Minister, saying: "Today's funding and guidance is the next step towards delivering this important part of our Environment Act, which will come into force later this year."

In the same announcement, the government also opened applications for 'responsible body status' - enabling organisations to enter into conservation covenant agreements with landowners. These covenants will most likely be used when a biodiversity scheme is located away from a development site and outside a local planning authority's area.

Conservation covenants and Section 106 obligations will help secure the delivery of BNG, either onsite or offsite, with provisions for ongoing monitoring and maintenance for a minimum of 30 years following the completion of a development.

Organisations can now **check if they are eligible** to become a designated responsible body and create a conservation covenant, with the government outlining three key categories: A local authority, a public body or charity where at least some of its main purposes or functions relate to conservation, and a body other than a public body or charity where at least some of its main activities relate to conservation.

Biodiversity credits

The government's consultation response did also reaffirm a desire to 'continue to incentivise a preference for on-site gains over off-site gains'.

However, this is a policy approach rather than legislation. Developers will still be able to deliver BNG either onsite or offsite, or through a combination of onsite and offsite solutions.

Should onsite delivery not be viable, the Environment Act 2021 introduces 'biodiversity gain sites' as a means of securing the delivery of BNG offsite. The market for this is now developing, with the Environment Bank and The Land Trust identifying suitable sites for BNG delivery, and now bringing forward and managing their own schemes. Other private landowners are now also establishing BNG sites that can be utilised by developers.

Where there remains a shortfall or lack of options, developers can purchase biodiversity credits from the government. There was uncertainty around this route, with many predicting that prices would be set higher to encourage onsite or offsite provision in the first instance.

The government has now revealed its **statutory biodiversity credit prices**, while also providing further information on calculating costs for developers buying statutory credits – stressing that this is a last resort option for developers that are unable to use onsite or offsite units.

A 'spatial risk multiplier' will apply to statutory biodiversity credits. This increases the number of credits needed where offsite solutions are being utilised – the aim being to encourage local or onsite mitigation. This can be calculated using the **statutory biodiversity metric**.

Natural England will be given the responsibility for selling statutory biodiversity credits on behalf of the Secretary of State. The guide prices will be reviewed every six months and price changes will be indicated 'well in advance to allow developers to plan ahead'.

Developers will, however, be allowed to sell excess biodiversity units. This can help secure offsite gains for another development, provided that the excess gain is registered and there is genuine additionality for the excess units sold. The consultation response acknowledged that this could impose an artificial ceiling on the gains achieved so will be kept under review.

Evolving system

While the government's consultation response and updates on statutory credits provided clarity on parts of BNG, more detail is needed ahead of the November 2023 deadline.

There are also questions to be answered around how BNG also fits with the government's shifting stance on the planning system and housing delivery more generally.

Its decision to double down on brownfield delivery, densification and focussing growth on cities could pose challenges when it comes to achieving BNG onsite, with developers then reliant on the offsite market, which is still in its infancy, or the costly statutory credit route.

All of this is, of course, happening during a period of high inflation and interest rates – factors that are already impacting lenders and causing a slowdown in parts of the market.

These operating conditions must be taken into account. That's not to say the approach to BNG should be rethought – the real estate industry recognises the importance of implementing these measures as to safeguard habitats and encourage more biodiversity - but rather that clear and timely secondary legislation and guidance is critical to developers and local planning authorities being fully prepared for November and BNG coming into force.

The government must also continue to take the industry's views and recommendations into account. Issues will no doubt arise as a result of the requirements being enforced, especially as other legislation is brought in, including the Levelling Up and Regeneration Bill.

Maintaining good lines of communications between the government and real estate industry is also an opportunity to identify ways to improve the BNG system in the long-term.

Despite being years in the making, BNG must keep evolving post-November 2023. This is key to delivering the biodiversity enhancements, while sustaining a viable housing market that is capable of delivering the homes the country so badly needs.

Awaiting the outcome of Scotland's purpose-built student accommodation review

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Awaiting the outcome of Scotland's purpose-built student accommodation review

The summer is a welcome break for higher education students across Scotland. But, as coursework and exams are temporarily put to the back of minds, a potential reform is looming that could have major implications on the student living experience in Scotland.

This relates to the outcome of a much-anticipated review into its purpose-built student accommodation sector (PBSA) – first initiated in 2021 by the Scottish Government.

The review is based on the results of a research project by the Collaborative Centre for Housing Evidence - a multidisciplinary partnership of academic institutions, housing policy and practice – that seeks to address the challenges currently impacting the PBSA sector.

Considering the high-levels of investment into PBSA in Scotland, it is hoped that the outcome of the review will maintain the positive momentum that is being experienced within what is now a well-established, expanding and robust area of Scotland's real estate market.

Market demand

Demand for high-quality PBSA is strong. Analysis from Savills shows that the sector defied macroeconomic challenges in 2022, with £7.8bn of UK stock traded – up 89% on 2021.

Though investment activity has been more subdued in 2023 as a result of economic conditions, Scotland's PBSA sector remains an attractive proposition for investors. Its world–renowned universities continue to attract significant numbers of domestic and international students, fuelling the demand for accommodation in Scotland's university cities.

Savills ranked Edinburgh, Glasgow and St Andrews as top-tier locations in its PBSA Development League Table, with a high student-to-bed ratio and/or a limited pipeline.

In Glasgow, the city with the largest student population north of the border, 300 PBSA units are planned in a development announced in May 2023 by Nova Living. Notably, accompanying Nova's planning application was a 'statement of need' – citing the intense pressure within the city for rented accommodation, as student demand outpaces supply.

This demand for accommodation underlines the sector's growth potential. It is showing resiliency at a time when economic challenges are impacting the wider real estate market.

Review

As a result of this demand, however, some domestic students are now struggling to secure an affordable residence within a reasonable commute of their education centre.

Edinburgh University Students Association has published its concerns about the affordability of PBSA. The Association specifically referenced PBSA's exemption from the Private Housing (Tenancies) (Scotland) Act 2016 and local authority affordable housing criteria.

Joining calls to reform the sector is the National Union of Students Scotland, which has argued for the Scottish Government to introduce a PBSA regulator and for the creation of more 'rights to quit' student tenancies – providing greater control over ending leases.

These are just some of the factors that are set to be considered as part of the PBSA review. It will also explore the possibility of providing rights to terminate student leases on 28 days' notice to match the Scottish private residential tenancy, and for a rent control mechanism.

Meanwhile, in England, The Renters (Reform) Bill was given its first reading in May 2023 after five years of consultation and refinement. Though PBSA is exempt from the Bill's rules on assured tenancies, it will impact private lettings to students, with the legislation providing greater flexibility and security for student tenants, as is the aim of the Scottish PBSA review.

Striking a balance

Urgent action must be taken to boost the supply of PBSA, with estimates showing that the UK could potentially face a shortfall of up to 450,000 student beds by 2025.

The Scottish review must take this supply squeeze into account. It must also anticipate the impact potential measures could have on the market, investment flows and developers' ability to bring new beds forward, with the demand for PBSA showing little sign of relenting.

The challenge for the review is to identify a sustainable way forward that considers the interests of all parties. One that succeeds in striking a balance between allowing the sector to continue expanding, while ensuring students have access to quality accommodation.

Any significant legislative and regulatory intervention could risk undermining confidence and the goal of alleviating pressure on the private rental sector in university towns and cities.

There are also macroeconomic conditions that must be considered alongside any potential legislative or sector reform, with developers currently dealing with inflationary pressures and subsequent interest rate rises - factors that are already hampering the delivery of schemes.

Finding this balance isn't easy. By focusing on developing codes of good practice for the industry, however, the review could reaffirm confidence in Scotland's PBSA sector and stimulate the investment and development needed to rectify the accommodation shortage.

Calling for clarity as industry implements the Building Safety Act 2022

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Calling for clarity as industry implements the Building Safety Act 2022

Since receiving Royal Assent on 28 April 2022, the Building Safety Act 2022 (BSA) has continued to lumber along - coming into effect in phases and throwing up legal complications as it goes.

The government has therefore been required to create secondary legislation – regulations - to seek to clarify and untangle various provisions in the BSA.

The Act is reliant on regulations to provide the detail of many of its provisions. These clarifying regulations do, however, make understanding the obligations increasingly challenging for businesses.

More than 15 sets of additional regulations have come into force so far - not including the commencement regulations. These tweak various parts of the Act, including the rules in relation to approval of individuals as 'approved inspectors', or confirming how notices should be served under the Architects Act 1997.

Various other regulations are in circulation in draft, awaiting consultation and approval.

Leaseholder protection

One area of the BSA that has attracted scrutiny is leaseholder provisions for the 'in occupation' stage of a relevant building's life.

Under the BSA's leaseholder protections - as originally drafted - every time landlords and building owners were required to provide a landlord's certificate to each leaseholder, for example if remediation service charge was demanded or a flat was sold, the landlord would also be required to provide extensive information about its corporate structure. This included the names of all directors of each company in the group, plus various financial details and accounts.

Regulations making changes to these obligations came into force on 5 August 2023 - The Building Safety (Leaseholder Protections etc.) England (Amendment) Regulations 2023 (the "new regulations").

These amendments confirm that where a landlord admits that it is responsible for a relevant defect, and has a net worth that means it does not meet the contribution condition, it will not have to provide any company information as part of its landlord's certificate – a common sense approach considering the volume and cost of providing potentially commercially sensitive information.

Further reform

There is often little consistency across the BSA when it comes to defined terms in different contexts or regulations. Indeed, the new regulations have already been criticised for contradictions between the wording of the legislation and its Explanatory Notes.

Reports of defective drafting have also been lodged in relation to a different amendment and failure to provide for consequences where notice is not served by a current landlord on a 'responsible landlord' - the party obliged to pay remediation costs.

While fuelling the discussion around further reforms, it is likely that parties looking to understand this new legislation may seek judicial guidance on how the provisions of the BSA should be interpreted.

The Court of Appeal has already considered the provisions of the Defective Premises Act 1972 as amended by the BSA – confirming that developers may be owed a duty under the DPA by consultants and contractors.

Next milepost

1 October 2023 will see critical changes brought in under the BSA – impacting the real estate industry.

From this date, existing higher-risk buildings (HRBs) will need to have registered with the Building Safety Regulator (BSR). The Health and Safety Executive also suggests that from 1 October, the registration obligation will expand to include new HRBs. It will also be an offence to allow residents to occupy a building that has not been registered.

Gateways 2 and 3 are anticipated to come into force from then, meaning that building work cannot start until the BSR approves a building control approval application at gateway 2. Residential units cannot be occupied until the BSR has issued a completion certificate at gateway 3 and the building has been registered, with the 'golden thread' of information also given to the accountable person.

The government has now published its long-awaited response to the consultation on implementing the new building control regime for higher-risk buildings and wider changes to the building regulations for all buildings.

The provisions will be implemented through secondary legislation (The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 and The Building Regulations etc. (Amendment) (England) Regulations 2023)) that will come into force on 1 October 2023.

As expected, the response confirms that much of the detail remains unchanged from the government's original consultation proposals, with the necessary levels of detail added.

The response provides the industry with greater certainty as to the detail of the new gateway regime for higher-risk buildings and dutyholder regime. The consultation received 160 responses and there are some positive areas where the government has listened to the industry's comments and adjusted its position.

Fire safety defects

Regulations setting out the terms of the Responsible Actors Scheme came into force 4 July 2023.

The scheme is aimed at major housebuilders and other large developers. Members are required to sign Self Remediation Terms - agreeing to identify and remediate, or pay to remediate, life-critical fire safety defects in residential buildings over 11m that they have developed or refurbished.

It is expected that this Scheme will be expanded over time to cover other developers.

A looming issue for the real estate industry is how long it will take implement the remainder of the BSA, and how much notice those operating in the industry will be given.

Further detail is awaited including the new homes warranty and government response to the second consultation into the proposed building safety levy that will be payable on all new residential building developments in England.

Those operating in the real estate industry understand how important the BSA is. Businesses have taken robust steps to ensure they are meeting obligations and preparing for future changes. The successful implementation of the Act and its further phases does, however, hinge on the government providing the real estate industry with the time, certainty and legal guidance it needs to deliver it.

Artificial intelligence heralds a new era for the build to rent sector

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Artificial intelligence heralds a new era for the build to rent sector

Artificial intelligence (AI) is revolutionising the global real estate landscape.

In the United States alone, AI companies are predicted to have a 1.6m sq m real estate footprint by the end of 2023, according to JLL.

Aside from the immediate impact the technology's rise is having on the demand for office space and supporting infrastructure, including data centres, AI has the potential to change real estate at an industry level – providing a valuable tool for developers, investors, agents and operators that can successfully harness its capabilities and use it to their benefit.

One part of the market where AI could bring about significant change is build to rent (BTR).

Front foot

The development of AI is sparking innovations across BTR. In the UK, it is enabling owners and operators to secure new insights into their developments and future projects.

As in other sectors, there is a fear that AI will alter the future of BTR and its workforce needs. While AI can no longer be ignored by businesses given its potential to automate a range of existing tasks and processes, the idea that the technology will completely remove all jobs from humans is unlikely to materialise.

Rather, in the BTR sector, its uptake will likely be as a tool that can supplement, streamline and improve the work of real estate professionals and the systems they operate.

To benefit from the improvements it can deliver, however, those operating in BTR will need to stay ahead of the curve and pinpoint where it could best be used to improve overall service and customer experience.

Managing properties, in particular, can be time-consuming and involve significant admin.

Given the focus of BTR operators on providing a quality and all-encompassing living experience, BTR developers and operators could consider using AI to automate or streamline tasks, such as rent collection, maintenance scheduling, waste management and filtering tenant requests.

Online AI tools such as virtual assistants and chatbots already have the functionality to help property managers to quickly respond to tenant queries – either resolving them without the need for direct workforce intervention, or escalating to second-line human support.

There are also instances of AI algorithms being used to predict maintenance requirements in advance of issues arising, before then scheduling the required repairs. This can be utilised across building systems, including water, electric, heating, ventilation and air conditioning.

While helping to reduce repair costs that would otherwise spiral if left unchecked, AI may also be key to bringing in the technology needed for management teams to work proactively in monitoring and preventing issues, rather than intervening on a reactive basis.

Market analysis

The ability to successfully navigate the BTR market is already heavily reliant on data.

By deploying AI's ability to interpret data quicker and more efficiently, landlords and letting agents can also implement measures aimed at reducing issues such as void periods, arrears, evictions, and otherwise maintaining a higher level of tenant satisfaction.

Away from property management, AI may also support the process of identifying or evaluating investment opportunities. Whether it's understanding different geographies, potential tenants, yields or land prices, AI can provide an additional tool for investors and developers when analysing and anticipating market trends. It could also be used to help predict the likelihood of lease renewals, while identifying factors that contribute to tenant turnover, helping to reduce potential risk and maximizing return on investment.

Efficiency

The BTR sector has led the way in recent years when it comes to the environment, with firms like Aviva Investors and Packaged Living driving forward the development of energy-efficient homes for rent, embracing air source heat pumps and electric-only energy solutions.

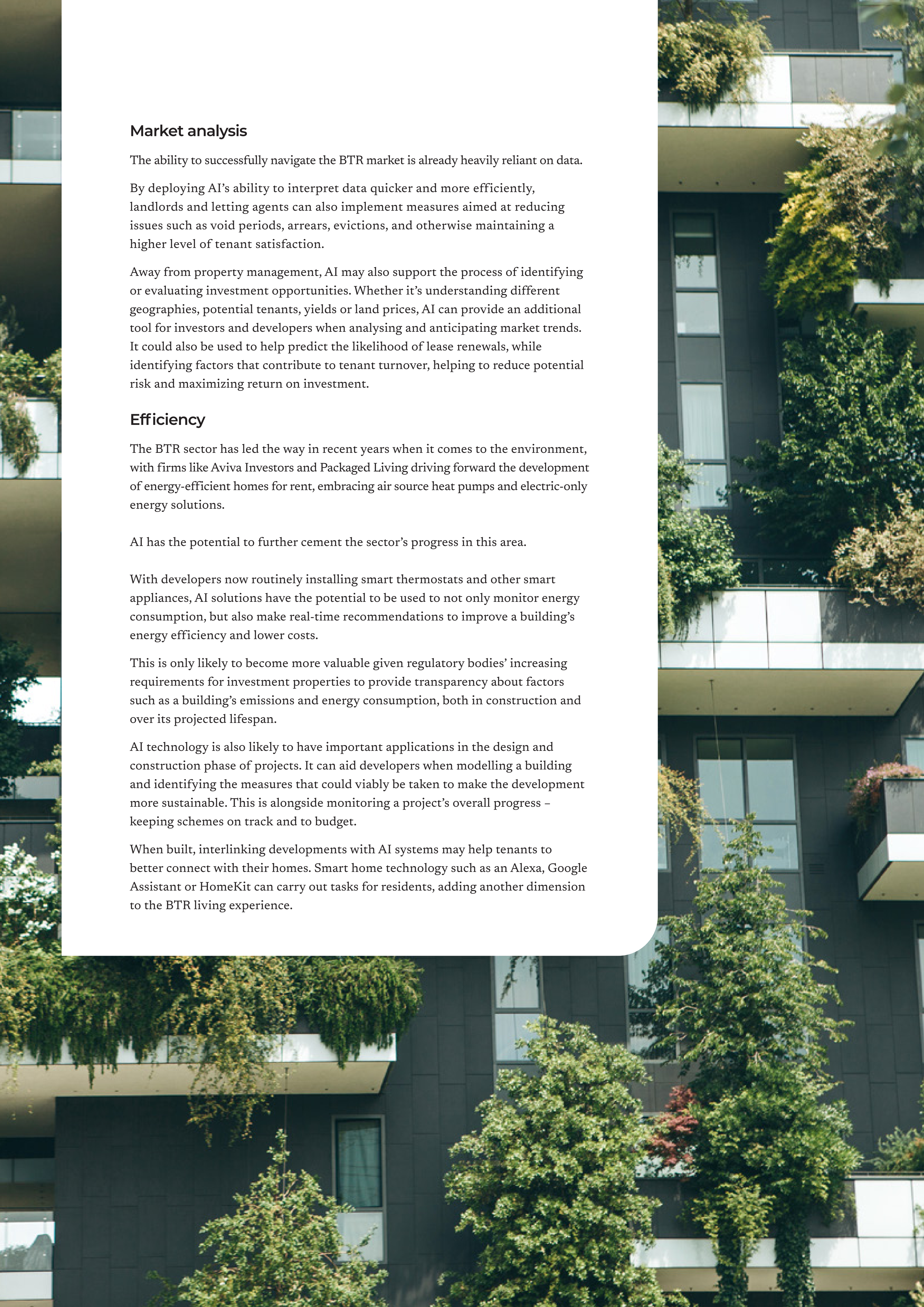
AI has the potential to further cement the sector's progress in this area.

With developers now routinely installing smart thermostats and other smart appliances, AI solutions have the potential to be used to not only monitor energy consumption, but also make real-time recommendations to improve a building's energy efficiency and lower costs.

This is only likely to become more valuable given regulatory bodies' increasing requirements for investment properties to provide transparency about factors such as a building's emissions and energy consumption, both in construction and over its projected lifespan.

AI technology is also likely to have important applications in the design and construction phase of projects. It can aid developers when modelling a building and identifying the measures that could viably be taken to make the development more sustainable. This is alongside monitoring a project's overall progress – keeping schemes on track and to budget.

When built, interlinking developments with AI systems may help tenants to better connect with their homes. Smart home technology such as an Alexa, Google Assistant or HomeKit can carry out tasks for residents, adding another dimension to the BTR living experience.



Legal issues

Though AI has the potential to bring measurable improvements in the BTR sector, developers, investors, agents and operators will need to ensure these solutions are deployed in a way that complies with relevant legal requirements.

At a global level, legislators in all major economies, including the UK, are looking closely at how AI can effectively be regulated. It's likely that the next few years will see increasingly concrete statutory requirements around the use of the technology.

The EU, for example, is already in the final stages of implementing the AI Act, a significant regulatory regime that will regulate AI based on the level of harm it could cause, and will extend in its reach beyond the EU's borders. Equivalent legal requirements are likely to follow in the US and UK, albeit not necessarily following the EU's template.

Existing legal requirements, however, are likely to have just as much impact on the use of AI by BTR companies in the UK.

Data protection requirements, in particular, will apply to AI systems in exactly the same way as they do elsewhere. Given AI's heavy reliance on data, any use of personal or sensitive data – for example information relating to occupiers and their use of a building – will need to be subject to appropriate levels of protection from unauthorised use or disclosure.

Where AI makes recommendations regarding the management or operation of a building, or takes decisions likely to impact occupiers, the company relying on those recommendations should also ensure these remain subject to appropriate levels of human assurance and oversight, to avoid unintended - and potentially significant - liability.

These factors can be effectively managed through the implementation of appropriate governance and legal compliance processes at all stages of deploying AI – from initial identification of solutions, through the contracting process and ongoing oversight of its use.

Opportunity

Fuelled by strong levels of investment, BTR is undergoing its own period of growth. New players are entering the sector and as an increasing number of developments are brought forward across the UK, the market is only likely to become more competitive.

Harnessing the potential of AI and AI-powered technologies could therefore provide developers and operators with the opportunity to standout and innovate. It's also a chance to keep elevating the BTR living experience, which is critical to sustaining the sector's growth.

Those that implement these technologies effectively, while complying with the relevant legal requirements, will steal a march on their competitors.

Striking a balance between living in the city, and the life of the city

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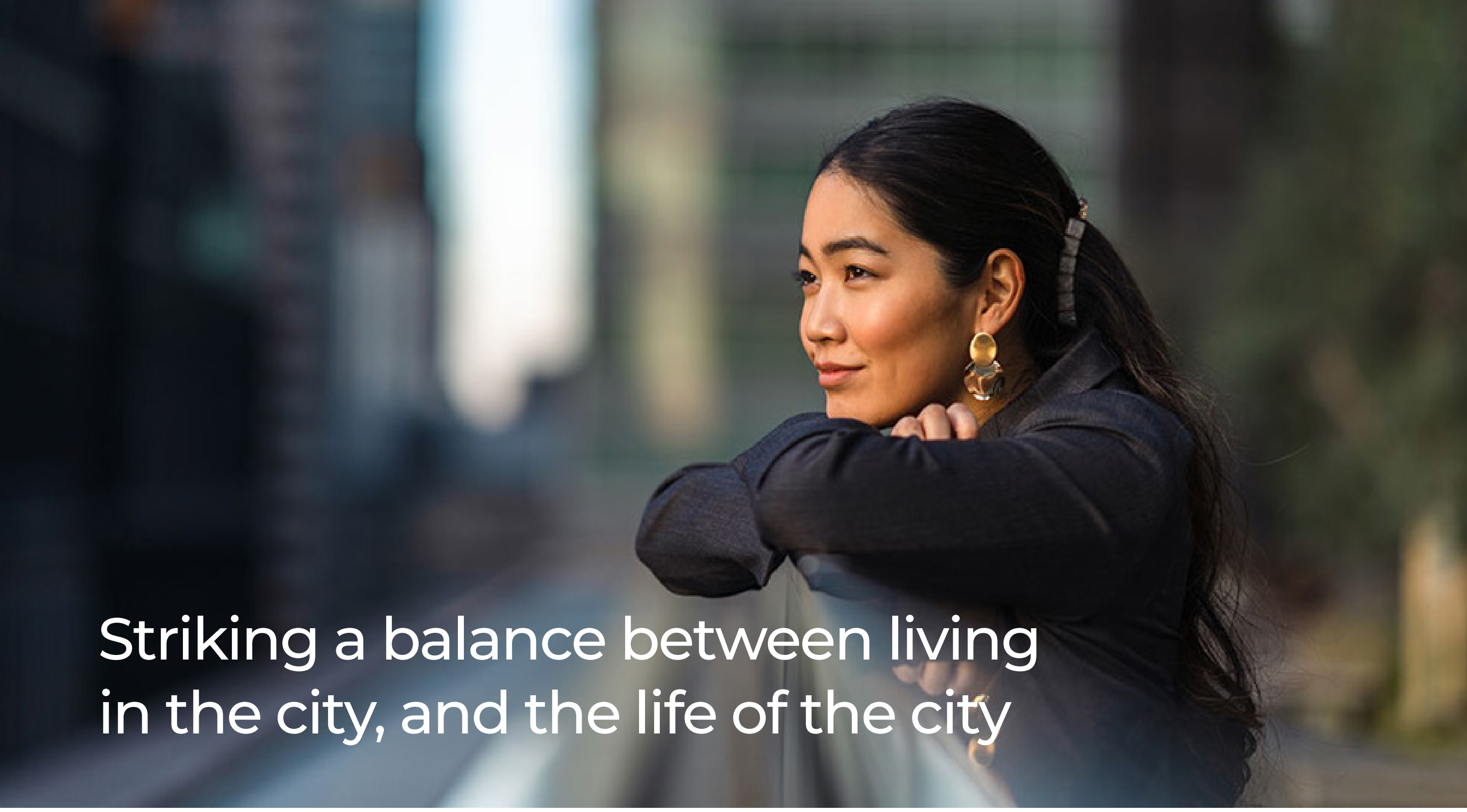

Striking a balance between living in the city, and the life of the city

The Planning (Agent of Change) Bill was a private member's bill introduced in Westminster in 2018 by former government minister John Spellar to 'require specified planning controls in relation to developments likely to be affected by existing noise sources'.

Now commonly referred to as the Agent of Change principle, the planning control places a requirement on those carrying out new development to be responsible for managing and mitigating the impact of that change to protect neighbouring uses.

In England, in response to John Spellar's bill, the Agent of Change principle was incorporated into the National Planning Policy Framework (NPPF) in 2018. The NPPF provides that where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, it is the applicant's responsibility to provide suitable mitigation. Agent of Change policies are also a common feature of policy at local level. For example, the London Plan requires London Boroughs to ensure that Development Plans and planning decisions reflect the Agent of Change principle.

In Scotland, the then Minister for Local Government and Housing, Kevin Stewart MSP, said: "I am attracted by the prospect of embedding the Agent of Change principle into our planning system so that we can protect the established and emerging talent in our music industry."

The Minister's statement prompted a letter from the Chief Planner reaffirming that the Scottish Government recognised the cultural and economic contribution of Scotland's music industry and its importance to the vibrancy of town centres and night-time economy, but noted Agent of Change's relationship to established policy and practice.

There is a requirement to assess the impact of development on the character and amenity of a local area. Potential noise and its mitigation have also long been a key consideration in the determination of planning applications - supported by Noise Impact Assessments and regulated by planning conditions. The real estate industry is familiar with these requirements and has adapted to bring developments forward in compliance, while remaining viable.

Despite the aim of the Agent of Change principle being well intended, there is a growing tension over its practical application in Scotland.

Scottish Ministers have used powers to 'call-in' applications for residential schemes in urban locations, which have been considered and scrutinised by a planning authority - in knowledge of the site context and technical reports – before granting permission for development, satisfied that planning conditions could regulate and mitigate noise issues.

By 'calling in', Scottish Ministers are reassessing planning applications to "give further consideration of the Agent of Change Principle and implications for live music venues and the recovery of the night-time economy," on the basis that Agent of Change is a "nationally significant issue".

Dilemma

The challenge now arising is that city centre living is seen as a critical component to successful regeneration. Indeed, the UK government has reaffirmed its commitment to brownfield delivery, densification and focussing growth on cities where it believes 'demand is highest and growth is being constrained'. This is in direct conflict to the impact the Agent of Change principle is now having – blocking development in city centres, which have always been residential hubs, as well as home to the night-time economy, including music venues.

There are also environmental factors to consider. City centre developments have the potential to reduce private transport use and transform disused brownfield sites – often delivering onsite biodiversity enhancements and introducing new green spaces, for example.

Though the ambition to increase urban regeneration is clear – on current evidence, it is likely to be compromised in its delivery.

It does not need to be this way, however. City centre development and cultivating a lively night-time economy must not be seen as mutually exclusive, but rather inextricably linked.

That is why it is critical to strike the right balance when navigating the conflict between people living in the city and the life of the city. Otherwise, there is a major risk of stymying cultural progression and the successful regeneration of the UK's urban centres.

Where does the Renters (Reform) Bill leave England's student accommodation sector?

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Where does the Renters (Reform) Bill leave England's student accommodation sector?

The Renters (Reform) Bill was given its first reading in May 2023 after five years of consultation and refinement.

The Bill seeks to provide greater flexibility and security for residential tenants in England by imposing additional restrictions and obligations on private landlords. The reforms also look to improve the leasehold system through increased regulation, digitisation and standardisation.

A noticeable omission from the Bill, however, is an exemption for private lettings to students.

One of the ways it does this is by making all assured tenancies periodic - abolishing fixed term contracts and the Section 21 'no-fault' eviction process.

Under the draft legislation, in order to regain possession of their property, landlords must use the Section 8 process for ending a tenancy - specifying grounds for eviction - while tenants are only required to give a minimum of two months' notice to end the agreement.

Purpose-built student accommodation (PBSA) is specifically exempt from the rules on assured tenancies. The Bill will not apply as long as the PBSA provider is registered for government-approved codes. This permits universities to continue to let PBSA to visitors and non-students during academic holidays.

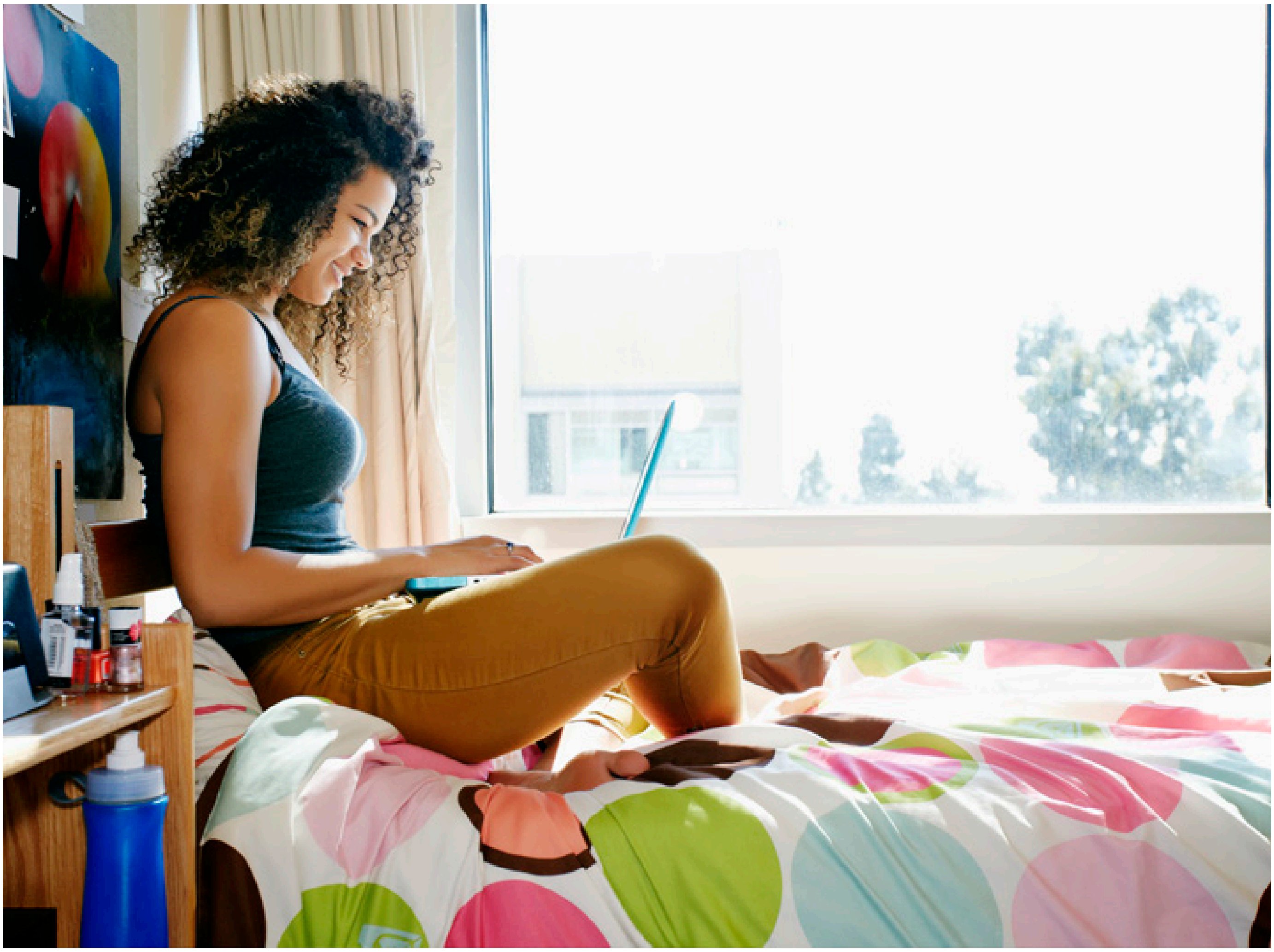
However, private lettings to students are not exempt and are expected to move to the single periodic system.

Analysis from the National Residential Landlords Association reveals that there are some 850,000 bedspaces for students in the private rented sector. These tend to be let on a July-July annual cycle and often on 12-month fixed-term contracts.

The Bill could pose challenges for landlords of private student property, with uncertainty over whether they can regain possession of properties in time for the next academic year. Tenants could also serve notice before the year is up or stop their tenancy beginning before the academic year, with significant financial and operational implications for landlords.

This could lead to some landlords instead choosing to seek professional, longer-term tenants – as has happened in Scotland, where most tenancies, including private student lets, became open ended under the Private Housing (Tenancies) (Scotland) Act 2016.

Research from the Scottish Government indicates that this has resulted in some private landlords moving away from the student market, with domestic students now often struggling to secure an affordable residence within a reasonable commute of their education centre.



At the same time as the Renters (Reform) Bill is being brought forward in England, the Scottish Government is now focusing specifically on reforming the PBSA market - launching a review in 2021, which on its publication could lead to major legislative changes. This includes the possibility of providing rights to terminate student leases on 28 days' notice to match the Scottish private residential tenancy, and for a rent control mechanism.

Whether the Renters (Reform) Bill will be amended in its progression through Parliament to tighten the exemption for PBSA is uncertain.

For now, as an alternative to changing sector, landlords of private student property in England may respond to the proposed changes by electing to let each individual room in a property under a separate tenancy, rather than one agreement for a whole house.

Though this approach will mean an additional administrative burden – particularly if it triggers houses in multiple occupation (HMO) licencing obligations - it could be a way for landlords to minimise risk and avoid losing all tenants where only one party has served notice to quit.

The ultimate aim of the Bill is to protect tenants. The National Union of Students has warned against the government making any changes that would water down the protection of students as a class of private renters. The proposed introduction of the Property Ombudsman and Portal could also support this, whether or not the Bill is amended.

There are clearly many factors left to consider and it is important to remember that the Bill is only draft legislation and likely to be amended.

Both the Rt Hon Michael Gove and Housing Minister, Rachel Maclean MP, have commented that this is an area that the government could look at amending or changing, especially in relation to the concerns raised by landlords operating in the student sector and more widely.

Residential landlords should follow the Bill's progression closely, with it heading for a second reading and into the committee stage next.

Breaking the stasis on senior living development

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Breaking the stasis on senior living development

The UK is facing a veritable housing crunch.

The gap between residential supply and demand continues to widen, and the current high interest rate environment is only serving to compound the issue – posing real challenges when it comes to funding and bringing much needed new schemes forward.

One part of the residential market that is really feeling the strain of these supply constraints is the senior living sector.

The most recent Census, completed in 2021, showed that nearly one in five people in England and Wales are aged 65 or older. This is the highest proportion in this age bracket ever recorded – and the elderly population is projected to only keep expanding, with people aged 65 and over set to make up 24% of the population by 2043.

So, with supply in the sector squeezed and demand acutely increasing, where will these older people live?

Delivery

2022 was the strongest year for senior living housing delivery since 2018. Data from Knight Frank shows that 8,000 new senior living homes were built last year – up on the annual average of 7,000 that was outlined in **the Mayhew Review published** in November 2022.

Momentum may be building in the sector following high levels of investment, but the number of new homes being brought forward is still lagging behind the 50,000 that are predicted to be needed every year. The culminative impact of this lack of delivery means that the UK now faces a shortfall of 487,000 senior living homes, according to BNP Paribas.

While this is a nationwide, systemic issue, there are parts of the UK where if swift action isn't taken to increase development, the chronic undersupply of senior living homes could have a detrimental impact on older communities, with implications on health and wellbeing.

Regional imbalances

One prime example is in Manchester where CBRE is forecasting the city to have one of the highest increases in the 65+ year old population across its top 10 UK growth cities.

Data from the Greater Manchester Combined Authority (GMCA) backs this up, showing that 454,000 residents in Greater Manchester are over the age of 65. By 2035, three in 20 residents will be 75 years or older. Almost one in three will have a long-term illness.

The GMCA is responding to this challenge, launching a framework for Creating Age-Friendly Homes in Greater Manchester and committing to creating a Greater Manchester Age-Friendly Housing Charter that 'sets out a practical guide of considerations when developing new homes and retrofitting and investing in existing homes, to deliver age-friendly homes'.

The creation of the framework and charter raises important themes. This includes a focus on rightsizing - breaking barriers preventing older people from downsizing and unlocking housing stock, particularly for families and young people.

When combined with the Greater Manchester Ageing Hub and Greater Manchester Age-friendly Strategy, senior living now forms a key part of the conversation on housing delivery and planning policy in Manchester. A range of schemes are now also coming forward.

For example, Manchester City Council recently updated on plans to create the first purpose-built apartments for LGBTQ+ older people in the city. The 100-unit scheme has, however, been in the pipeline since 2017 – demonstrating the time it can take to bring projects forward, even when Council-led and initially proposed during a period of relative stability, or at least less instability.

Reform

To make any progress towards hitting the Mayhew Review's recommendation of delivering 50,000 new senior living homes per annum nationally, it's clear that urgent action must be taken to break the stasis on development. This is reliant on the resources and skills of – and co-operation between - local authorities, investors, developers and operators, but, most importantly, it is dependent on national reform.

One of the key tools available to boost the delivery of senior living housing is planning policy.

Steps must be taken be to strengthen the National Planning Policy Framework (NPPF) and prioritise developing senior living homes. The framework currently refers to 'older people' as a group that should be catered for when it comes to 'delivering a sufficient supply of homes'.

The Levelling-up and Regeneration Bill includes a requirement that the Secretary of State must issue guidance for local planning authorities on how to address housing needs that result from old age in their local plan and any supplementary plans.

The Bill's consultation also included a section on senior living, and referenced adding an additional expectation to the NPPF to ensure 'that the needs of older people are met, [and that] particular regard is given to retirement housing, housing-with-care and care homes'. This legislation could add more weight to older people's housing needs.

Further changes are essential, however, to bringing in the top-level reform required to establish a more consistent approach to the delivery of housing for older people - facilitating more development, but also ensuring the provision of quality and diverse housing choice.

The Older People's Housing Taskforce launched in May 2023 and is due to produce an independent report to the government. As part of this, it has launched a **consultation** – closing 18 September - to better understand the market and needs for older people's housing. The consultation is aimed at organisations, providing developers and operators in the sector with the chance to share recommendations and ultimately shape future policy.

With the Taskforce now operational and Levelling-up and Regeneration Bill moving through Parliament, there is an opportunity to implement impactful policy changes – utilising the planning system to promote development and begin tackling the UK's senior living housing shortage.

Higher base rate, lower development

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Higher base rate, lower development

Activity levels in the residential development market remain lower than developers, lenders and other real estate professionals have become accustomed to over the last 15 years.

With 14 base rate rises implemented by the Bank of England (BoE) in the last 18 months - now at 5.25% - the UK is currently subject to the highest base interest rate since 2008.

It is recognised that raising the base rate is necessary to halt and lower high rates of inflation brought on by the Covid-19 pandemic, supply chain pressures, increased global economic costs and prices, alongside the war in Ukraine and resulting energy price crisis.

Despite the challenging consequences of the BoE's repeated base rate increases, there is evidence that the approach is working. The rate of inflation in the UK has fallen since October 2022, with energy and food price growth also slowing. This is, however, leading to a tightening in the lending market and overall slowdown in residential development.

Property agents are reporting a fall in the sales of new homes, as well as sales and acquisitions of development sites. Savills recently reported that it expects the sales of new homes to drop by 50,000 annually due to market conditions and the planning system. This is coinciding with an increase in the time it takes developers to sell the majority of properties in a development, with buyers facing an average two-year fixed-rate mortgage of 6.50%.

Debt

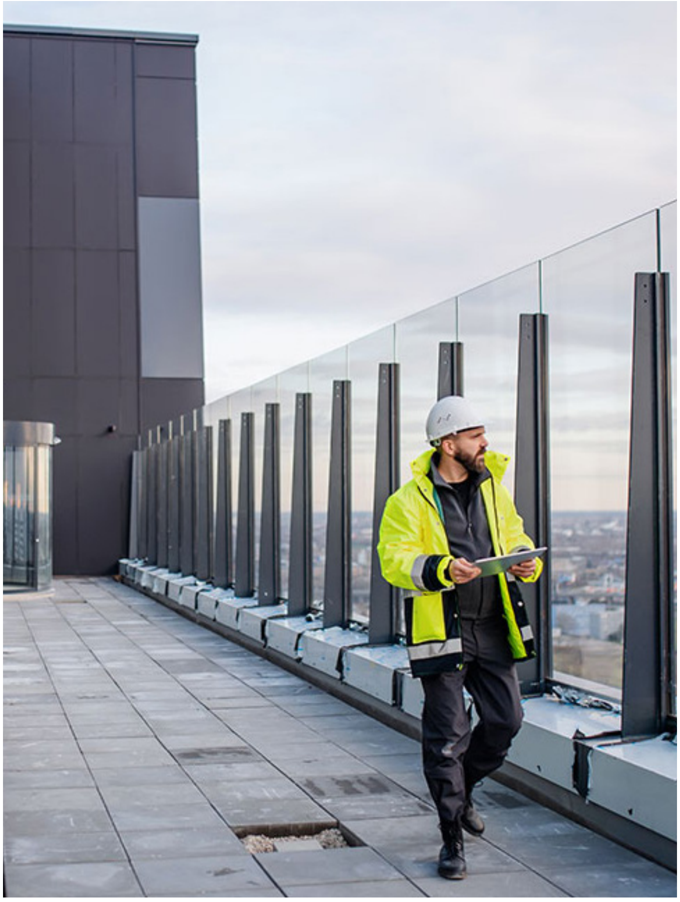
The availability of accessible, and until recently, relatively cheap, debt has powered the residential development market over the last two decades. The majority of property development projects in the UK are often reliant on debt provided by a third party lender.

As an industry dependent on debt to operate, higher rates of interest have a direct and material impact on the cost of funding a development. When combined with higher material costs and a skilled labour shortage in the construction industry, successfully completing a project, as well as extracting profit from it, is becoming more challenging.

To compound matters, there are millions of pounds of existing loans in place that will be maturing in the next six-24 months. The large chunk of which will need to be refinanced at significantly higher interest rates. This is already evident in the residential mortgage market, but is more than likely to impact an increasing number of developers.

These pressures could risk developments not commencing or being suspended, and unfortunately, potential developer and contractor insolvencies.

As lawyers in the real estate finance market, we are increasingly being instructed on transactions that include pre-dispute factors, such as contractor insolvencies, re-negotiation of commercial terms, reduction in loan amount - due to falls in asset value - and financial covenant breaches. The real estate industry must recognise and prepare for these risks.



Outlook

The BoE's next decision on the Bank Rate is due on 21 September. Financial markets are predicting an 80% chance of a 0.25 percentage-point rise, to 5.5%. The wider outlook is that further rises are likely, as the BoE aims to put further downward pressure on inflation.

Though some analysts are predicting that the base rate should level off or even decrease by the end of 2024, the BoE's recent base rate announcement was accompanied by a commitment to 'ensure that Bank Rate is sufficiently restrictive for sufficiently long to return inflation to the 2% target sustainably in the medium term, in line with its remit'.

Those operating in the real estate industry should anticipate that a return to the ultra-low interest rates seen in recent years is highly unlikely, at least in the short to medium term. Rather, the 'new normal' could likely be a base rate of around 2%.

Mortgage approvals in the UK did hit their highest levels in June since October 2022. This is in part due to slightly lower mortgage rates, as well as an increase in the typical mortgage term to between 31 and 35 years according to the RICS Economy and Property Market Update August 2023. It could also indicate that the market is slowly adjusting to higher rates.

Demand for rental properties also remains high, meaning the requirement for new homes is still the same. When financial conditions improve, housebuilders and property developers will be able to increase their activities knowing that the market appetite is high – a report from Centre for Cities found that Britain has 4.3m homes missing from supply.

Other parts of the real estate market are also showing their resiliency. For example, the strong levels of demand for student accommodation, coupled with a shortage of private sector rental properties, means purpose-built student accommodation projects are going to remain essential. Investment into the sector reached a record £7.8bn in 2022.

A drop in development sales could also see housing associations – with good access to funds - begin to acquire more sites, while providing developers with opportunities to partner on schemes as the sale market cools. There are also a growing number of examples of traditional housebuilders partnering on build to rent schemes, with 2022 seeing several forward funding agreements agreed, including in the single-family housing sector.

Ultimately, opportunities will arise and the UK's real estate market will recover.

Businesses will remain invested and, with the assistance of professional advisors, continue exploring innovative ways to sustain the production of quality and profitable developments.

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