Facing up to the funding squeeze

For the forseeable future, the outlook for local government is a tough one. Budgets are being cut, while demand for services is increasing. In response, local authorities are being put under pressure to get best value from their built assets – valued at around £250 billion in England alone.

In June, a report published by the Audit Commission slammed local government for poor management of its property portfolio. Two thirds of the value of public sector property assets is managed by local councils but the report titled 'Room for improvement' reveals that opportunities to maximise the benefit of the public estate are being overlooked at a time when it is paramount that taxpayers get value for money from their public services. The Audit Commission urges local authorities to take a more strategic approach to property management, to actively manage property by disposing of unnecessary premises, change their use, reorganise or share them. It also recommended councils collect data on size, use, occupancy, condition and running costs, in order to effectively inform property decision-making.

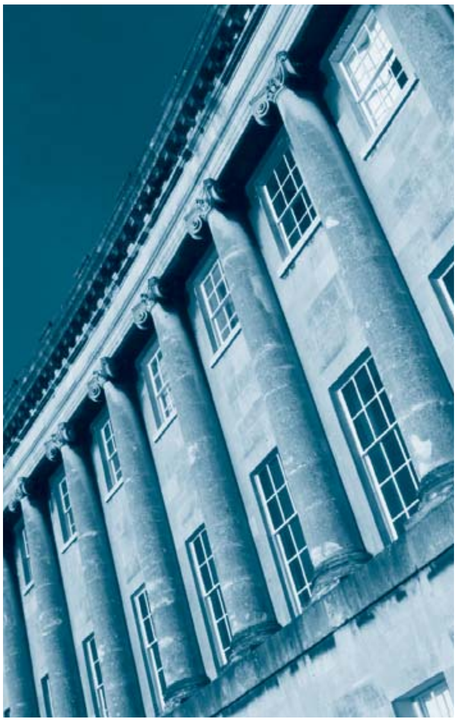
Speakers at the recent Association of Chief Estates Surveyors (ACES) conference held in Glasgow in May, reinforced the importance of strategic property management. Colin Mair, Chief Executive Officer of the Improvement Service, told delegates that in order to maximise the benefits of their substantial portfolios, local authorities must develop:

- clarity about their corporate and service property requirements both now and in the future and review portfolios in that context;
- an investment plan to create and maintain required capacity;
- effective delivery systems; and
- an empowered asset management function.

Recognising the problems many authorities are facing in the current climate, and aware that they could be making their built assets work harder for the taxpayer, RICS has produced a series of new best practice guides aimed specifically at local government. The aim is to provide practical solutions, giving an overview of the key policy areas that should be considered including the transfer of assets, gaining value for money, measuring asset performance and improving the customer's experience.

Local government in the UK is responsible for a very significant proportion of the public estate. By developing effective property strategies, authorities may be able to gain financial benefit in an extremely testing fiscal climate.

To download free copies of the guides go to www.rics.org or for more information call Mark Few, Director in Watts' Public Sector Team on 020 7280 8000.



Editorial

The public sector is facing a dilemma. At a time when the demand for public services is greater than ever before, local government funding is being squeezed from every angle. Our ageing population is putting pressure on social care and the NHS and there is an increasing need for more and better housing and schools. Restricted budgets will force many local authorities to re-consider schemes in favour of consolidation and refurbishment. This will involve some tough property decision-making, particularly as departments are now facing tough sustainability targets and are expected to achieve greater energy efficiency.

In the face of future funding cuts and without dramatically reducing much-needed public services, the only way that many local authorities can reduce expenditure is to look carefully at their property portfolios and look for ways to rationalise and economise.

In this issue

Sustainability: looking at the bigger picture

We all think we know what we mean by 'sustainable development' but is meeting the right environmental standards really enough?

Proposed new environmental legislation calls for the 'flower labelling' of buildings. This is a new EU standard creating a single set of environmental criteria, indicating that the life-cycle of a building will cause the minimum possible environmental impact. Given the problems that owners and occupiers have had in complying with energy certification of buildings, flower labelling may be a regulation too far. But it does raise questions as to the genuine environmental credentials of many of our apparently 'sustainable' buildings.

Energy efficient design has moved on dramatically in the last decade. The Department of Trade and Industry claims that even a building constructed in 2006 was 40% more energy efficient than premises built in 2001. But sustainability is not limited to energy use. Responsible sourcing, re-use and recycling of products have a major part to play, as does the calculation of embedded energy in building materials and the carbon footprint of the supply chain. In October 2008, BRE Global launched the BES 6001 framework standard for the responsible sourcing of construction products, which offers a way to objectively compare products from the source of raw materials through the supply chain to delivery, use, re-use and recycling. However, all this ignores the rogue element that is the building user. Even a BREEAM 'excellent' rated building cannot claim to be 'sustainable' if, for example, the occupiers continually override heating and lighting controls. It is here that the public sector has a major role to play, both by taking the opportunity to pioneer sustainable development within their own estates and by providing a benchmark of environmental excellence for others to measure themselves against.

For more information call Mark Rabbett, Director in Watts' London Office on 020 7280 8000.

How energy efficient is your estate?

In April 2010, the Government will introduce its Carbon Reduction Commitment (CRC). This will apply to the public as well as the private sector, placing new emphasis on energy management.

Wasting energy is about to become not only unacceptable but unaffordable for the public sector. If the Government is to meet its target of reducing carbon emissions by 80% from 1990 figures by 2050, then it is not only private sector property owners who must put their house in order. "Energy and carbon inefficiency will no longer mean just too high a spend on energy, it will also mean additional cost and bad PR," warns the Local Government Association (LGA).

The CRC is an emissions cap and trade scheme that will be mandatory for organisations that spent more than £1 million a year on electricity, which equates to 6,000 megawatt hours, during 2008. The government estimates that up to 5000 organisations will be affected by the new regime, and in many cases that will include local government. Those local authorities will have to buy allowances at an expected initial rate of £12 per tonne for the energy they are likely to use during the year. If they use too much they will have to buy more allowances but if they use less than expected, they will be able to trade the surplus. An annual performance league table is to be published, showing the comparative environmental performance of organisations that are involved in the scheme. The revenue raised from selling allowances will be recycled back into the scheme and league table position will determine how much each organisation will receive.

For local authorities, there is the added complication that emissions from academies, city technology colleges, and maintained schools are included in their CRC calculations. This means that, when a local authority is assessing whether it meets the CRC qualification threshold, it must collect energy data from all of the schools it is responsible for, all schools maintained by the local authorities and any academies and technology colleges within their area.

Anecdotal evidence suggests that there is considerable ignorance as to how the CRC will impact on organisations in practice. In order to help local authorities understand and plan for the new scheme, the LGA has produced a useful guide, outlining the new mandatory requirements and setting out strategies to enable authorities to participate successfully in the new scheme.

In order to meet the requirements of the CRC, authorities will need to:

- calculate emissions responsibly;
- purchase allowances to cover emissions;
- monitor and report annual energy consumption and surrender sufficient allowances to cover stated emissions; and
- keep an evidence pack which provides an audit trail to demonstrate how total energy use has been calculated.

The new scheme will have cash flow and manpower implications for all participating local authorities. Management systems will also have to be put in place prior to April 2010 to ensure the new rules are followed.

However, there is also a need for behavioural change if the scheme is to provide the benefits it promises. Energy saving initiatives must be effected and maintained to ensure that organisations maximise their opportunity to stay near the top of the league table and so attract the greatest possible benefit from the scheme. A Chartered Institution of Building Services Engineers publication, 'Modern Building Services', recommends that organisations establish energy committees and appoint energy champions to ensure staff buy-in to quick wins such as turning off lights and controlling temperature levels.

Local authorities have a huge sphere of influence and a duty to promote the social, economic and environmental wellbeing of their community. Ultimately, not only do they have a central role to play in reducing their own carbon emissions but by the way in which they exercise their powers, they can help their wider communities to do the same. The Carbon Trust helps authorities do just this via its Local Authority Carbon Management Programme. To date, The Carbon Trust has provided 270 public sector bodies with technical and change management guidance and mentoring that has helped them identify practical carbon and cost savings. The primary focus of the work is to reduce emissions under the control of the local authority such as buildings, vehicle fleets, street lighting and waste.

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Timely tendering: delay at your peril

A recent judgement in the High Court offers food for thought for anyone involved in the procurement of public projects.

In JB Leadbitter & Co Ltd v Devon County Council, part of a tender for a framework agreement was submitted to Devon County Council 26 minutes late. The bid was rejected on the basis that a complete tender was not submitted in time to meet the deadline. The Invitation to Tender (ITT) clearly stated that all documents must be submitted to the contracting authorities' portal before the 3.00pm deadline and that those tendering would only have one opportunity to make their submission. Part of the tender comprised a number of case studies which the claimant, despite submitting its tender prior to the deadline, had forgotten to include. It then attempted to submit the case studies, also before the 3.00pm deadline, but was unable to upload the documents because the portal would only accept one submission per bid. At 3.26pm, the claimant successfully emailed the documents to Devon County Council but they were rejected on the basis that a complete tender had not been submitted by the stated deadline.

The court upheld Devon County Council's decision, judging that the tender had been properly rejected within the public procurement rules and that the claimant had not been treated disproportionately or discriminated against. This decision was based on the fact that although the ITT allowed for errors in tenders to be rectified once the deadline had passed, the court did not accept that the failure to include the required case studies was an 'error' but that the documents were incomplete.

The claimant argued that Devon County Council should have waived strict compliance with the ITT and allowed them to submit the case studies after the deadline. Not allowing this amounted to unequal treatment and discrimination, the claimant argued. However, the court disagreed on the basis that Devon County Council's strict compliance with the ITT was applied equally to all tenderers.

The claimant then argued that as a general principle of European Community law, Devon County Council was obliged to act proportionately in dealing with the tender. By not doing so, said the claimant, the county council was in breach.

According to law firm CMS Cameron McKenna, proportionality involves an authority:

- acting to suit the purpose of their powers;
- achieving that purpose by means least burdensome to those affected; and
- imposing burdens that are proportionate to the intended goal.

The Court determined that the ITT was quite clear on the requirement for a single upload of documents and submission by the stated deadline. Therefore, Devon County Council's decision to reject the tender did not mean that it had acted disproportionately.

Cameron McKenna believes this judgement, "gives important guidance on the application of tender rules, particularly timing, and also considers the viability of proportionality arguments in procurement challenges". In a climate in which an increasing number of challenges are likely to be made in courts against contracting authorities, anyone involved in the procurement of public projects should be keeping a close eye on relevant judgements to ensure they are aware of the latest legal developments, advises the firm.

For more information call Mark Few, Director in Watts' Public Sector Team on 020 7280 8000.

Refurbish or replace?

Non-domestic buildings account for nearly a fifth of the UK's carbon emissions (source: The Carbon Trust).

With the majority of these being built more than a decade ago, there is a strong argument for promoting low carbon refurbishment projects. The public sector has a major part to play in leading the UK's green agenda and putting its own built assets under scrutiny is a good place to start. The Carbon Trust has produced a guide titled 'Low carbon refurbishment of buildings' in which it points out that "Nearly all building refurbishments offer opportunities to reduce carbon emissions...through refreshing a building's fabric and services equipment".

Re-use is ultimately the best type of green development. No embodied energy is wasted in demolition and by carefully planning maintenance and refurbishment schedules, resource-efficient systems can be incorporated in a timely and considered way. The key to success is to be aware that whole-building opportunities often arise during refurbishment, so take advice at the planning stage. For example, the wholesale replacement of lighting in an old building provides an opportunity to fit lighting controls. Choose a pale interior colour palette to maximise natural light and use energy efficient light bulbs. Solar shading to the exterior could also be an option. By planning these measures in advance, local authorities will reap the benefits.

Heritage buildings are often ignored in the sustainability debate, as they are frequently deemed 'untouchable' due to the listing system. However, sensitive refurbishment carried out in sympathy with the fabric and history of the building will pay dividends. Many local authority buildings have historic significance and specialist advice is vital if works are to be carried out that will not be detrimental. According to Allen Gilham, Watts' building conservation specialist, there is little point in trying to hermetically seal a building that needs to breathe, in an attempt to increase energy efficiency. In a Georgian building, instead of triple glazing, he suggests considering going back to internal wooden shutters. "These are in keeping with the original building, equally effective as modern glazing in keeping out light and retaining heat and are made from a sustainable resource," he says.

Taking timely and appropriate advice can reduce the carbon footprint of the public sector estate and maintain our valuable stock of existing buildings.

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Cheques and balances: are your suppliers solvent?

In the current economic climate, it pays to check the financial viability of suppliers.

Lists of approved suppliers are commonplace in the public sector for all areas of purchasing. But how often are contractors credit checked? With an estimated eight building firms a day going insolvent (source: Building) the financial viability of suppliers is more important than ever before.

According to PricewaterhouseCoopers (PwC), 692 construction firms went into insolvency in the last quarter of 2008, up 28% from 540 the previous quarter, and Jonathan Hook, PwC's construction and house building leader, expects this trend to show further deterioration during 2009.

Construction projects are typically high risk because contractors rely heavily on positive cash-flow to fund projects. The failure of one link can have an impact on the whole supply chain. It is not possible to protect projects completely from failure, but there are ways to considerably reduce the risk. Here are some simple suggestions:

- Consider the potential for insolvency at the start of a project as part of your risk management strategy and put in place mechanisms to protect yourself.
- Credit-check all suppliers and main contractors. This may sound obvious but many firms are engaged without this simple procedure being undertaken.
- Take credit references from the main contractors' supply chain - speak to at least three main suppliers and subcontractors and ask whether they have changed their credit terms in the last 12 months and if these have been honoured. Have references in writing signed by their financial directors.
- Contractors' cash rich reputations come from a full order book - ask them how full they are as any reduction in turnover will create a cash demand.
- Obtain warranties with step-in rights from key suppliers/subcontractors.
- Take-out a performance bond - even a bargain basement bond will still give up to 10% of the contract sum in cover should the contractor fail, the ease with which a contractor can provide a bond is a good third party financial health-check.
- Check to see when their accounts were last lodged at Companies House, they should not be late.
- Check whether there are any outstanding court actions or arbitration proceedings.
- Be alert to late payment and payment schedule changes, slowdowns on site and/or of service delivery or the withholding of payment on the basis of unexpected claims.

If any of these indicators of insolvency become apparent, take professional advice and act quickly to protect yourself. And finally, take care to pay your suppliers on time, don't create the situation you want to avoid.

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