

# Commercial development

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## Challenges to mixed use development

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**In many town and city regenerations, residential and commercial mixed-use development has been, and continues to be, seen as essential for the creation of attractive and sustainable environments that promote economic vitality, social equity and environmental quality.**

Nevertheless, there is sometimes a perception that those parties involved in mixed use development projects (namely, developers, investors, designers, constructors, purchasers and tenants) find such development more problematic and riskier than conventional single-use projects.

A proper understanding by the developer and all members of its professional team of the roles, practices and concerns of individual parties is essential at the outset of the development process for achieving the initially expected benefits of a mixed use development. This will enable developers to attract investors and debt finance by properly identifying and structuring multiple investment opportunities (with differing investment horizons and return expectations) within any given project.

It is important that a developer's legal advisers have the appropriate mixed-use development and institutional investment skills and experience necessary to deliver effective project documentation which creates flexible funding structures, realisable investment objectives and robust ownership and management controls. This is especially so given the differing development processes and regulatory frameworks governing residential and commercial developments. These differences need to be synergised in any mixed use development project. There are numerous planning considerations, build processes and ownership structures which need to be understood and properly aligned to ensure such synergy and to preserve project value.

### Planning obligations

Timing, user and occupational constraints are a common tool of the planning authority to ensure the delivery of planning obligations. Planning obligations should deliver sufficient flexibility to the developer's project, to ensure that the multitude of economic cycles that can arise from mixed-use projects are not missed.

Failure to do so could result in retail units standing empty and with no viable tenant prospects, whilst undertaking marketing of apartments in what was originally billed as (and budgeted to be) an exclusive and sustainable development.

### Ownership and management control

Statute confers on apartment owners the collective right to acquire their landlord's superior interest in their building in certain qualifying situations. A complete understanding of the regulatory framework, development layout and delivery programme is required to preserve ownership control and investment value in the project.

Statute also confers rights on qualifying apartment owners to challenge service costs and to self manage the building in which their apartments are located. Proper regard needs to be had to the ramifications of such statutory rights when creating the scheme's legal framework. For example, a blue chip commercial tenant will be concerned to avoid management funding shortfalls. A commercial tenant will also want to ensure that managerial control of a mixed use building vests with a viable and respectable managing entity, as this will directly impact on the investment value of its premises.



## Skills alignment of the professional team

Although it is possible for a single main contractor to have sole control of the planning and co-ordination for a mixed use scheme, such developments, by their very nature, often require multiple contractors and professional advisors. Effective interfacing of their skills, their contractual responsibilities and service delivery is therefore key to viable project management.

## Conclusion

There are many commonly-cited obstacles or barriers to the realisation of mixed-use development. The differences between mixed-use and single-use are evident in terms of the diversity of team members, the necessity of multiple market analyses and differing financing structures. Issues concerning ownership objectives and investment criteria are also identifiable challenges to the success of mixed-use development projects. These challenges can be effectively identified by engaging appropriate professional advice at the earliest opportunity of scheme design, which in turn should give the developer the greatest opportunity of scheme success.



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