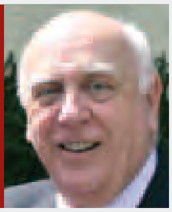
A TALE OF UNREALISTIC EXPECTATIONS



Stan Edwards chronicles a decade of the demise of the retail led regeneration CPO

The intervention by government funding fed, retail led, regeneration CPOs throughout the last decade and before leaves a legacy of many completed but half let retail schemes.

"Once you've seen one retail led town centre regeneration, you've seen a mall." *Stan Edwards*

Introduction

It is now a decade since the zenith of the retail regeneration led CPOs, which ended in tears with **the crash of 2008**. This was coupled with the simultaneous realisation that not only had the structure of our town and retail centres changed but the patterns of retail behaviour had also changed, putting the kybosh on arguments for future such schemes using tired outdated strategies. Much policy driven intervention was without any tinge of conscience as to the collateral damage that this would add to already failing town/city centres. The review even applies where a CPO for a proposed residential development impacted on retail in the form of traditional market traders such as in the recent **Court of Appeal decision** in respect of **Shepherds Bush**[1]. A little retro analysis here assists in promoting or challenging future retail led regeneration CPOs.

Mid noughties

The mid noughties desperation of councils for results was coupled with developers offering to solve all their funding problems by promoting retail led regeneration projects using councils' CPO powers and developer cash. If not for the 2008 crash, we would still be pursuing the same formula now, yet it still exists in a different guise, in that even if not financially viable developers can get unwitting councils to deliver schemes that the market would not touch, leaving only the developer the winner. Developers know how to make money out of gullible local authorities desperate to show that they were "**doing something**" – central government also still falling into a "**do something**" trap showing a lack of understanding of retail demand continuing to spin unrealistic policies. They have the same old advisors saying the same old things based on outdated theories and propositions. The professional institutions also fell short, joining with academics, many of whom had no practical experience, who could only spout from eminent papers of others of the same ilk.

I intend to focus on a couple of projects where a significant amount of detail is known personally, leaving readers to apply the issues to their own projects. Before then we have to clear a little of our nomenclature.

Needs, wants and demand

In general, needs are defined as something that a consumer has to have in order to satisfy some goal or appetite. On the other hand, wants are things it would be nice to have, but are not essential or mission critical. In retail development, demand is the key – this means that whatever the wants or needs, they have to be backed up with specific demand spending power. The outcomes of our real estate decisions to intervene should be both **market-based** and **socially responsible**, to ensure that development satisfies demand today, and demand well into the future.

Neath Port Talbot (NPT)

Neath Port Talbot CBC is like many local authorities that will have public funding based aspirational regeneration schemes that are unlikely to amount to much. Intervention occurs where the market has failed and the local authority attempts to make market orientated decisions. There may be a "**need**" for certain types of retail development and there may even be a "**want**" but the true demand and its implications are rarely deeply investigated.

Neath

NPT is an area overshadowed by the questionable vitality of the steel industry – the level of spendable income is relatively low. Notwithstanding that, at least one town centre, Neath itself, is relatively stable and a pleasant popular place to shop, even having its own traditional small M&S, fulfilling a niche role in its long time core central location whilst at the same time fulfilling all that PPW expects – a "**win, win**". However, many times it is important that if something works then don't fix it. The first phase of a recent Neath town centre redevelopment was funded by the **Regeneration Investment Fund for Wales**, wherein shops such as Wilkinson were encouraged to move in to a new unit on the town centre fringe. The interventionist need to tinker means that schemes can be put forward without any real market assessment and based merely upon irrational aspirational schemes that do not fully take on board possible collateral damage to the basic town core. Spending power at a given time is finite, so any scheme to create retail development will mean winners and losers and the perpetrators of such schemes cannot direct outcomes and collateral damage. We cannot conjure up spending power, its footfall, or say how it is distributed. Online shopping is a new consideration but there are features of physical shopping that have a practical and social interaction importance. With Neath, leakages to major centres like Swansea due to critical mass competitive factors will always be prevalent.

Port Talbot
NPTBC have a number of property grant schemes aimed at improving business premises in commercial areas. Nearby Port Talbot has a lower level of spendable income and even suffers from some leakage in spending to Neath. Improving the development offer of Neath has a negative redistributive effect on Port Talbot – a town thrown a nibble of funds for **cosmetic improvement**, cannot produce the necessary spendable income to survive. Desire is not demand.

Planning Policy and CPO

The great error in retail led developments in the early noughties was poor assessment encouraged by planning policy that can only be effective in negative terms in the case of retail, never positively being able to say that any retail town centre regeneration development project will be a success. Predominately, planning policy (particularly PPW in Wales) revolves around the sequential test, needs test (both **quantitative** and **qualitative**) and provisions for non-car shopping – pedestrians cycling, public transport for the retail scheme to have a modicum of success – er, no!

A realistic look at retail policy in the light of market

1. Sequential test
Following the rules of this test forces competition closer to existing centres. The big worry which produced "**town centres first**" was retail drifting from town centres. Actually, with retail firms in town centres failing, forcing new operations closer leads to downwards spirals caused by competition. Adding to this the diminishing (negative) returns to agglomeration and congestion constraints associated with closeness to the centre only feeds the problem.

2. Needs test (quantitative and qualitative)
This is such a fallacy, based mainly upon raw number crunching, making a case for development based upon the premise that there are gaps in the retail profile (caused by leakage of spendable income). The problems with planning policy are that:

a. retail is demand orientated
b. one of the determinants of demand is consumer preference, at which planners can only guess
c. no-one knows for certain the quantum and direction of leakage in consumer spending or whether it could be it could be captured/recaptured
d. consumer spending at any given time is finite, so that in general any new successful scheme will take spendable income from various sources that presently may be stable, but no-one can say where from, how much and the actual amount of collateral damage to those other centres. There is a greater argument against using CPO powers to deliver a scheme to deliberately compete with and cause wide collateral damage to others. Using such powers would be to obtain a portion of someone else's slice of the available spendable income cake, or even take their portion. Such schemes require a stronger challenge by those impacted by unwanted and unwarranted competition.

3. Mode of transport
People travelling by foot, cycle or public transport are likely to have only marginal impact on the success of a retail centre. Depending upon the quality of the facilities provided, it would require a dense, close, indigenous population to make these things count in a meaningful way. Certainly the success of retail centres is geared to:

a. size of the catchment (spendable income)
b. derived footfall
c. high convenience available
d. a high level of relatively unrestricted accessibility.

CPO and retail projects

Many noughties schemes emanated from an irrational desire of politicians to fill voids or "**fix**" failing town centres by replacing old with new or even displacing centres. The concept that a centre fails through lack of demand was not fully understood. What was further not understood was that the "**evaporated**" demand had been taken up elsewhere. Nature abhors a vacuum and this certainly applies to local authorities who have been egged on by developers who have no intent to remain at a centre once they have taken their pull, sold on, and are never seen again.

Given that the requirements for justifying projects should be more stringent, a compelling case in the public interest has to be demonstrated, as something more than the bland nebulous statement with **a list of potential occupiers** that seemed highly acceptable for schemes of a decade ago.

Where is the logic in intervening in the market where vacancy rates in town centres are high, to provide modern replacements with similar vacancy rates? The effect of attempting to bring in more retail is that it competes with the struggling residue. Since then is the hastened failure of the traditional town centre as a major retail attraction. Some big cities manage but then again they have critical mass. Even so, Cardiff city centre is held as being quite successful but do not look too closely at the fraying fringes.

An "**ostrich**" approach to collateral damage prevails in failing to address and assess the impact outside the immediate schemes, either within the town, on the edge, or even a centre some miles from the scheme. It was a requirement for **Cwmbran New Town Centre** to be successful for the indigenous growing population, but its efficiency in delivering retail had an unintended devastating impact on Newport, its larger next door neighbour.

Given that at any one time the spendable income in the economy, both on a national and sub/regional level, is fairly fixed – the only thing that can meaningfully change is its distribution. This requires assumptions regarding market segmentation and rational decision making regarding consumers reflecting demographics.

A large residential development east of Newport caused a massive shift in spendable income, adding to the focus on the **Spytty (Newport) Retail Park**, central to that area, and in doing so created a much wider magnet. Reversibility of that shift to support central Newport is almost impossible.

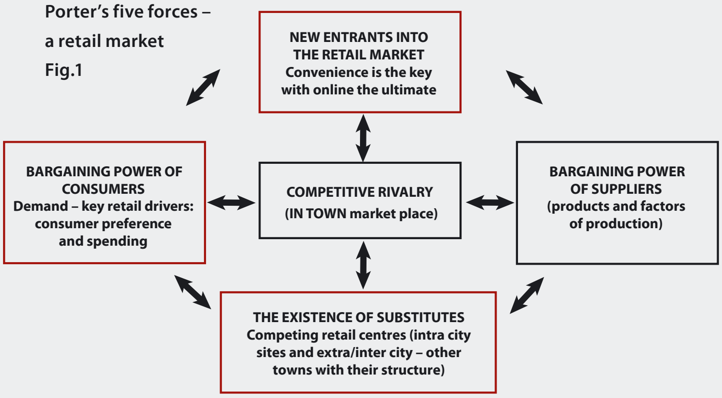
> ***"Where is the logic in intervening in the market where vacancy rates in town centres are high, to provide modern replacements with similar vacancy rates? The effect of attempting to bring in more retail is that it competes with the struggling residue."***

Retail market behaviour and factors

Retail market behaviour and associated factors have been largely ignored in terms of what has been happening to retail in the high streets in town centres.

In a previous article[2], I used an adapted **Michael Porter's "five forces" model** as a base (see Fig.1). The concentration then was on the importance of physical alternatives to traditional town centres and new entrants to the market, locationally – the retail parks and out of town (OOT) shopping. However, underlying multi-dimensional changes were also occurring in the retail market.

Porter's five forces – a retail market
Fig.1



Convenience and expedience

Whilst the concentration then was on the problems of OOT as being a more convenient physical retail market alternative, the online impact came to the fore, for which planning policy had no answer. The new entrants into the market, online, brought the ultimate convenience of the market to the consumer. The "**needs test**" has even less predictive value here. The nemesis to planning policy in terms of town centres had arrived and it was not just to do with physical convenience associated with OOT.

The forlorn hope for regeneration planning policy was that "**click and collect**" could redeem some stores in town centres from closure. Notwithstanding the ultimate convenience of "**click and (home) deliver**", the purchasing public would prefer to collect from a convenient shed with accessible parking than venture into the congestion and constraints of urban centres.

Intervention in retail led property regeneration, attempting to fix a multitude of closely competing towns, followed the culture of "**everyone's a winner**", but probably has just led to a majority of "**also rans**". Larry Winget says, "*Millennials are the people who have been raised in a society from birth who give them a trophy when they didn't win anything.*"

Friars Walk, Newport, a not so prime example: Veni Vidi Exii [3]

Newport is now ten years on from the John Frost Square CPO[4], that produced the Friars Walk development. No-one now seems interested in the original partnership scheme of Newport City Council (NCC)/Modus Corovest (MC), with a compelling case in the public interest and a reasonable prospect the scheme would proceed that were hardly addressed. Also not considered is how this related to the alignment with Newport's own planning policies/plan, rehearsed in the **Statement of Reasons** (SoR) which required the revitalisation of the city centre and the addition of retail opportunities to complement the traditional Commercial Street. Notwithstanding this, it soon became obvious that the plan was not to complement Commercial Street but to attempt to plunder it, making deals with **M&S, Boots** and **River Island** to move from Commercial Street into the new development. This went on beyond the challenge period, but was not to be, as events were taking a turn for the worse. Their deeds would not have come to light were it not for the crash of 2008 – Modus going into administration in 2009 and challenge by Iceland, an affected party, at the GVD stage in 2010. The Iceland decision[5] gave some insight into the conventional "wisdom" of the time. The Judge in the Argos case[6] commenting on Iceland said that "*the SoR referred to a mixed used development, which added nothing to the understanding of the CPO, and to a list of uses and floor areas. Some of the uses were not referred to – and those that were, were listed non exhaustively in the compulsory purchase order*" (Ousely J).

It always seemed quite flimsy to me too, and no-one thought to ask where all that required spendable income was to come from, as well as considering the demographic profile to achieve it – really challenging the needs test. Hold that thought!

What was obvious over time was that the promoters of the scheme seemed more interested in improving Newport's ranking as a shopping centre, having expressed in the media concerns of Newport's lost ranking to nearby Cwmbran.

The Judge in the Iceland case noted[7] that he had comparatively little detail contained within the papers before him as to what transpired between the confirmation of the CPO on 13th March 2007 and a Cabinet meeting of 16th June 2009, but noted that a significant percentage of the floor space was "**pre-let**". It was decided not to provide a hotel as part of the scheme and a number of persons or companies affected by the CPO vacated the premises which they occupied.

The Modus wheel comes off

In May 2009, the financial viability of Modus was in doubt. NCC met with MC, who informed the council, amongst other things, that the scheme was undeliverable "**in the current economic climate**" and that Modus Ventures was about to go into administration, which eventually happened. Also, the development agreement between the NCC and Modus was due to expire on 31st July 2009. Corovest wished to take forward a smaller scale project and associated cost, but it would require extensive evaluation. The council were advised that such a scheme would be a significant departure from their tendered scheme and breach EU procurement rules.

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Notwithstanding this, the NCC's Cabinet were quite upbeat[8], but the impact of the credit crunch hit hard and funding opportunities diminished, with investors severely affected by banking funding difficulties and the economic downturn. NCC still argued that the mixed use redevelopment scheme envisaged by the CPO was effectively well placed to proceed, other than for the critical issue of available funds. The NCC Cabinet was advised that the essential elements of the large scale redevelopment set out in the original brief and the SoR put forward at the CPO inquiry was still in place. Having regard to an extant planning permission and based upon the level of pre-lets previously agreed by Modus, NCC members were also satisfied that there is a continuing demand for this type of redevelopment. Also, the acquisition of the land interest under the CPO would effectively "**de-risk**" one of the major elements of such when the council re-tender the scheme. In these circumstances, the NCC Cabinet was advised that the appropriate way forward was to offer the city centre development scheme as an opportunity to the market. Hold those thoughts!

In the intervening period (2007-2009), NCC proceeded with the CPO, the argument being that they were the promoting authority and could take on the acquisition themselves, with a new developer chosen to deliver the scheme. At the GVD stage, Iceland challenged the purpose of the CPO – dealt with in the previous article. In layman's terms, the upshot of the Iceland decision was that if Newport CC marketed the scheme on the same terms as those negotiated with Modus, the CPO should be upheld. According to the Judge, the scheme envisaged by the CPO remained viable even if the development agreement with Modus was not deliverable, due to the financial circumstances of that particular company and the prevailing economic climate at that time. He accepted the NCC submission[9] that the scheme was not financially viable, on the basis that the developer funded the scheme in its entirety, but NCC intended that the scheme which is presented to the market should be funded, at least in part, from sources other than sources provided by the developer. Hold that thought too!

Same horse, new jockey – Queensberry

All seems hunky-dory as far as the conventional wisdom of noughties retail regeneration is concerned. NCC did indeed remarket the scheme and Queensberry Real Estate, the developer, won the bid with a scheme anchored on Debenhams and leisure facilities. By this time, M&S had successfully moved to Newport (Spytty) Retail Park and Boots decided to stay secure in Commercial Street. M&S, in Spytty, also succeeded in realigning M&S customer spending patterns firmly establishing within Newport, but providing a more convenient wide range to customers previously shopping in Cwmbran, Cribb's Causeway and Culverhouse Cross. This added to the Spytty magnet. There was however a problem with Friar's Walk. When it came to the crunch, Queensberry could not get market funding for the project. This should have started alarm bells to reconsider the project and the delivery mechanism. NCCs solution was to apply for a £90 million Public Works Loans Board loan to pay Queensberry to deliver the project. The exact relationship between Newport and Queensberry in this respect is not known but they gleefully proceeded.

Cost/revenue factors?

CPO costs (acquisition and administration) are always a problem but the prime driver in retail is revenue (demand). That has been the niggle all along – where was/is all that spending power going to be captured from? Perhaps in a situation such as New Town, where a phased retail facility grows with the population, it is acceptable, but as we have seen with Cwmbran, the town centre became so successful that it impacted on town/retail centres way beyond its boundaries.

The delivered scheme

Fig.2

These are important now, as is the sequence of events leading up the present status. Friars Walk opened in November 2015 with a "**rolling**" opening. At the time of writing (April 2016), the picture (Fig.2) shows a block of unoccupied units to the rear of the main mall, which itself has vacant units within it. It would also seem that the mix of users has changed from that originally conceived.

Reflections – macro masked micro

I leave the reader to decide how the finished development aligned with the CPO struggling with the compelling case in the public interest and that there was a reasonable prospect that the scheme would proceed. Actually it could have failed way back, because it has produced a pretty monolithic structure, with half-filled shops, a plethora of existing vacant shops, with still the same hovering reputation that gave Newport its low ranking. The blinkered plan was to build the edifice of Friars Walk. Debenhams came, but a much scaled down version of people's expectations – some other multiples along with new modern restaurants and coffee bars forming a destination leisure enclave (Fig.3). M&S even returned to operate an M&S Food Hall, but the aspirational shopping

Fig.3

mall fell unsurprisingly short, with unlet units in a "**Marie Celeste**" of a retail centre. Admittedly there was the expected pre-Christmas flurry, with a curiosity factor, but as William Rushton once said, "*a thing of beauty is a joy for two weeks*".

"If a retail scheme, which of necessity should be market orientated, has to receive public funding to make it happen, it causes the grim reaper to arrive with the non-market funding."

The argument made for the restaurants was that they would cater for Admiral Insurance office staff, following its opening in the city. However, what was not assessed by moving from the original "**pie in the sky**" mix was/is the impact of a rebalanced centre on all the businesses that now have to enter the competitive arena or compete even more. This was the case for all those eating places out of centre that suddenly have unexpected competition, due to the changes in Friars Walk delivery mix. A lesson to be learned on the dangers of intervention (interference) in the competitive retail/leisure market is that such malls are paved with good intentions. Based on mid noughties understanding, the Inspector at the CPO inquiry concluded that there was a compelling case in the public interest which outweighed the private loss arising from the expropriation of the land and rights, sufficient to justify the interference with human rights. **What now?**

The promoters of Friars Walk concentrated on the macro effects in the economy, believing that a down turn would eventually be followed by a corresponding upturn. What actually happened was that the market (including the funders of retail development) were beginning to see the dynamics of failure in town centres plus the changing pattern of retailing itself in global macro masking multiple micro retail changes and impacts. Queensberry themselves found that the market would not fund the scheme.

I am not against retail development but many are coming to the same conclusions as me, in that the assessments of the immediate past were grossly inadequate. Friars Walk, and other schemes, have shown that it was relatively simple to deliver a scheme that should have failed at many points on its development journey, only to produce a centre with units poorly let with sparse customers. The question to be asked by anyone assessing a retail development has to be where the spendable income comes from – captured locally or some innocent external centre. It is a question of public interest that is only realised when the impact is felt. This puts a great pressure on Planning Inspectors, both at the Development Plan stage and when a compelling case in the public interest is considered. For those genuinely interested in producing a retail scheme, the developer has formerly attempted to think like a tenant. **To ensure long term success is the ability to think like a shopper!**

A long delayed dawn

I believe that global macro masked the changing retail market in the noughties with out of town and the convenience of internet shopping, whereas schemes like Friars Walk blamed the crash for the changes in its fortunes and are waiting for a new dawn (global/national macro upturn). The problem is that the market itself has changed and retail in town centres may be in for a very long night.

The retail litmus test

If a retail scheme, which of necessity should be market orientated, has to receive public funding to make it happen, it causes the grim reaper to arrive with the non-market funding. Projects of intervention by public bodies for the purposes of regeneration should reflect on seeking to protect the public purse from the pursuit of waste. Examples of such schemes are those emanating from the dreamland aspirations of politicians and eager kudos-seeking regeneration urbanists feeding profit seeking developers. On the other hand, those challenging such schemes have a dilemma deciding whether it is efficacious to fight, being left with an untenable position, or taking advantage of a negotiated opportunity to move. I have to smile at Iceland. They challenged in the High Court regarding Newport and in the process relocated in a new prominent location in Commercial Street, away from all those empty units in Friars Walk (Fig 4). Don't you just love irony?

Fig.4

FOOTNOTES:

1 Horada & Ors v Secretary of State for Communities and Local Government & Ors [2016] EWCA Civ 169
2 IRRV Valuer June 2012
3 I came I saw I went
4 Newport City Council (Redevelopment of John Frost Square) Compulsory Purchase Order 2006
5 R (on the application of) Iceland Foods Ltd Claimant v Newport City Council. Defendant Neutral Citation Number: [2010] EWHC 2502 (Admin) Case No: CO/2654/2010 in the High Court of Justice Queen's Bench Division Administrative Court at Cardiff before Mr Justice Wyn Williams
6 R (on the application of) Argos Limited Claimant v Birmingham City Council and Network Rail Infrastructure Limited. Defendant Neutral Citation Number: [2011] EWHC 2639 (Admin) 17 August 2011 in the High Court of Justice Queen's Bench Division Administrative Court at Royal Courts of Justice Strand
7 Iceland Para 26
8 Iceland Para 27 – 2 The Present Situation
9 Iceland Para 33

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