

JCTNEWS

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

HARLECH CASTLE

Any building project has its unique complexities and a project which includes renovation and refurbishment, new-build construction, and the implementation of a variety of sustainable and energy saving techniques, is no exception. But in the case of Harlech Castle in Gwynedd, Wales, the former had to be achieved in a building, next to a scheduled ancient monument, on a UNESCO World Heritage Site, in a conservation area on the edge of a Site of Special Scientific Interest (SSSI), within a National Park. A JCT Standard Building Contract With Quantities 2011 provided the contract solution.

Harlech Castle is regarded as one of the most important medieval castles in Wales and is a textbook example of the concentric castle design. It was built by Edward I as part of his campaign to conquer the Welsh principality of Gwynedd in the Middle Ages. The main structures of the castle were completed between 1283 and 1289.

Harlech belongs to a group of royal castles designed by Edward I's chief architect and engineer, James of St. George. James of St. George's designs rank amongst the most highly sophisticated and innovative examples of military engineering in Europe. Harlech boasts two rings of walls and towers, with an immensely strong east gatehouse. Impregnable from almost every angle, its secret weapon was a 200ft (61m) long stairway which still leads from the castle to the cliff base. In 1987, Harlech Castle was designated as a UNESCO World Heritage Site.

Back in 2009, recognising Harlech's value as a tourist destination, Cadw (the Welsh Government's Historic Environment Service)



Harlech Castle

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wanted to overhaul the visitor experience by developing and improving the surrounding facilities to provide a world class heritage attraction. With funding from the Heritage Tourism and Convergence Funding Project (itself jointly financed by the Welsh Government and European Union Convergence Funds) Cadw appointed RL Davies & Son Ltd to carry out the works.

The project consisted of refurbishing the existing Harlech Castle Hotel (a former 3-storey Victorian hotel) and converting it to accommodate 5 luxury apartments, a new visitor area, a new retail shop and offices. There was also the new-build construction of an electrical substation, plant room, tea room and toilet block. Completing the project was a 47m new-build bridge, linking the visitor centre to the castle gatehouse.

The original Harlech Castle Hotel was built in 1876 by Samuel Holland, a local quarry owner and entrepreneur. Following the construction of the railway in 1867, the hotel helped establish the town of Harlech as a holiday resort. The building

has been designed to incorporate the views of the Castle and Snowdonia National Park.

The Victorian building has been sensitively restored and adapted for modern use. The building has been re-roofed with recycled Welsh slate. The old cement-based mortar pointing has been replaced with lime mortar, allowing the building to breathe again. Internally, walls have been stripped of cement and thistle plaster and replaced with lime plaster. New interior works have been deliberately, yet sensitively, designed and constructed to provide contrast.

The new-build extension replaces a poor quality 1980s construction. Exposed laminate timber frame with expansive glass infill panels command spectacular views across the Snowdonia mountain range and provides a link with the landscape.

Whilst the hotel provided excellent access and control for daily visitors, the building had two upper floors that were surplus to Cadw's requirements. Discussions with Visit Wales

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Key Facts**Client:** Cadw**Main Contractor:** RL Davies & Son Ltd**Architect and CA:** EPT Partnership**Civil and Structural Engineer:** Mott MacDonald**M&E Consultant:** Jacobs**BREEAM Consultant:** Mott MacDonald**CDM Advisor:** Opus International**Bridge Technical compliance officer:** Mott MacDonald**Bridge Sub-Contractor and superstructure designer:** SH Structures, David Dexter Associates**Bridge Foundation Designer:** Opus International**PQS:** Rigby Thorpe**Landscape Architect:** Lingard Styles

The apartments and visitor centre

identified a shortage of 4-5 star accommodation in the area. These floors were converted into luxury self-catered accommodation with concession opportunities offered to local businesses.

During the pre-construction surveys, it was discovered that the hotel threshold level was less than one metre different from the level of the castle gatehouse. This provided an opportunity, through the building of the new extension, to create a level access between the two points.

Any bridge works between the visitor centre and the castle gatehouse would be subject to demonstrable design criteria, if approval from the Snowdonia National Park Authority (SNPA) and UNESCO were to be secured.

One of the big challenges for the project, both in terms of the nature of the works and the location, was working within the confines of a UNESCO World Heritage Site. The project required the delivery of a careful blend of conservation, refurbishment, re-build and new-build. For the bridge works, an 18 month period of modelling and consultation was required with the Design Commission for Wales, SNPA, UNESCO and the local community, in order to gain the necessary planning and design approval.

The solution for the bridge was to create a 47m 'S'-shaped steel under-slung truss structure with minimal visual connections between the spans and the ground. The lightweight, slender structure sympathetically and sensitively connects the new visitor facilities with the ancient fabric of the 13th Century castle. For the first time in 600 years, visitors of all abilities are able to access the castle as originally intended.

Another challenge for the project team, discovered during the excavation for the foundations of the new-build extension, was unearthed human burials, including 13 bodies dating back to the 15th Century, as well as the remains of two buildings, medieval street frontage and associated

features. At one time, the project employed six full-time archaeologists.

One of the significant drivers of this project is, within the confines of sensitively restoring a Victorian hotel, a commitment to sustainability in the construction and running of the building, along with a number of innovative, low-impact building techniques and features:

Breathability

The solid stone walls of the old building are not waterproof - when it rains some water is absorbed by the stone and mortar. The outside walls have been repointed using a breathable lime mortar and the inside walls are covered with a breathable lime plaster and special paint. The materials allow water to escape and help walls dry out if they get wet.

Insulation

The building has been well insulated to reduce heat loss to the outside. The large glass windows overlooking the castle are also double-glazed.

Green roof and storm water attenuation tank

Plants on the roof of the new build extension absorb CO₂ and release Oxygen. The green roof also provides some extra insulation keeping the building warm in winter and cool in the summer. Plant varieties for the green roof are specially locally selected in order to encourage indigenous insect species. The green roof has the additional function of collecting rainwater into a large attenuation tank and subsequently into a stream that runs under the carpark. In the event of a storm, the tank slows the flow of water into the stream and reduces the potential for flooding further downstream.

Bat roosting boxes and bird boxes

Bat roosting boxes have been fitted to the eaves of the building, which are heated and made of material specifically designed with the right humidity and climate to encourage bats. Bird boxes have also been installed to encourage smaller bird species to breed in and around the building. The project itself is on the boundary of a 'site of special

scientific interest (SSSI)' so close links to the natural environment are important.

Lighting

The building uses LED lighting combined with a unique scene control system - combining energy efficiency with a selection of aesthetically pleasing light arrays. The system is quicker, more accurate and more easily changeable to suit the environment that conventional manual switching.

Energy

Nearly 30m² of Photovoltaic panels generate electricity for the building, providing a long-term sustainable energy resource. The use of an Air Source Heat Pump instead of the existing propane tanked gas supply has improved efficiency and reduced costs. The combination of the ASHP with an underfloor heating system further reduces the building's carbon footprint.

A large proportion of the manufacture of the lighting is carbon neutral, achieved by the planting of trees locally to offset the carbon produced during the manufacturing process.

The project was awarded a 'very good' BREEAM rating at design stage, and is on course to achieve the same post-stage rating. The goal is to achieve 'excellent' for the operational energy use.

Delivery of the project has provided a significantly increased offer to visitors, has the potential to increase visitor numbers, provides facilities representative of a World Heritage Site and introduces new economic opportunities to local businesses through the provision of catering and holiday accommodation within the new facilities. Getting all the details of this project right, from planning, excavation, building and sensitively managing the new-build and restoration elements requires a contract that the project team can trust. The JCT Standard Building Contract With Quantities provides a framework to capture the requirements of complex and detailed projects to ensure that all parties have confidence in delivering world-class projects.

HOW WELL DOES PROCUREMENT AND CONTRACT PRACTICE ENABLE BIM?

Chairman's Letter



Richard Saxon CBE

We now have a government mandate to use BIM Level 2 for all centrally procured construction projects and the take-up of BIM usage is broadening out into the wider public and private sectors. Officially the concept of Level 2 is entirely compatible with established commercial arrangements. The CIC BIM Protocol (2013) is the key document here, agreed with the legal and insurance sectors. However, there have always been concerns in some quarters. JCT itself does not endorse the CIC Protocol in its entirety as it claims to override the contract in the event of discrepancies. There are other concerns about liabilities falling on the client.

The Centre of Construction Law and Dispute Resolution, King's College London has just published a research report, based on extensive conversations with clients and BIM users, on how well BIM Level 2 is being enabled by procurement and contract practices. This is with a view to overcoming issues and preparing to move towards BIM Level 3. The full report, which is being considered by the JCT BIM Working Group is available to read on <http://www.kcl.ac.uk/law/research/centres/construction/Centres-Publications.aspx>. This article will summarise the research and its conclusions as seen by this observer.

BIM affects the legal liability of users insofar as those providing reasonable skill and care need to be able to show that they know what they are doing in BIM terms. The law requires even pioneers to be prudent. The need to review the work of other firms in the team and to warn of error may be increasingly onerous as more searching access is given by BIM.

BIM is mentioned in JCT Contracts, although the research indicates it is not mentioned in most standard contract forms. But BIM-related issues do arise, in the agreement of interfaces and of deadlines for submissions, and in relation to clash detection, early warning and risk management. Collaboration is a key dimension of good BIM practice and some forms of contract address this need formally. The main way in which BIM is attached to the contract is through a BIM Protocol. A model protocol was produced in 2013 by the Construction Industry Council (CIC) and this became one of the 8 standard documents of the UK BIM Toolkit. There are some differences in how the model protocol relates to each of the standard forms of contract, with JCT in particular having concerns with the un-amended wording, as noted above.

The content of the CIC Protocol also concerns some clients and their advisers as it dilutes some of what clients have previously expected and adds duties. They need to be told clearly that this has occurred. The integrity of electronic information is not guaranteed by the software providers or design team; no liability to designers follows if their work is altered by others or used beyond agreed purposes and the licence to use any model can be withdrawn if the supplier is unpaid. The client has to obtain substantially similar protocols from all team members.

Clarity of the contractual status of BIM documents needs to be achieved. There are differing interpretations in circulation about what can form part of binding contractual documents and what is supporting material. Elements within the BIM Execution Plan, including the programme for each party to provide contributions, are particularly varied in treatment. Clarity is also lacking in practice over the role of the Information Manager set out in the CIC Protocol. Different terms are in use and BIM consultants from outside of the team are sometimes being used without clarity on their design or management responsibility.

The evidence from early BIM projects is that procurement routes do affect the results achieved from BIM. Early contractor involvement pays back, as do open book and partnering styles of working. Team formation from an established framework or experienced multi-discipline alliance helps with the speedy set-up of an effective group. The trend in government procurement towards whole-life, outcome-based goals is helped by the use of BIM and the data it can provide for analysis and for ongoing facility management.

The report concludes with thoughts on forms of procurement and contract suitable for BIM Level 3 where it is assumed that it will not be possible to distinguish the inputs of each party to the shared and frequently reconciled model. A revised BIM Protocol would be desirable, addressing the areas where clients are exposed by the present one. Multi-party forms of protocol are also likely to be favoured, to link all parties together for more effective data exchange and collaboration. This would naturally relate to a multi-party main contract. Asset performance following a 'soft-landings' handover should also feature in describing success and reward. Quite different business models for the supply of built environment are expected in the next decade and forms of procurement and contract must be ready for them.



JCT STUDENT COMPETITION 2016

SKILLS, EDUCATION AND BIM SPARK STUDENTS' CREATIVITY



The judges discuss the winning essays, with: (clockwise I-r) JCT Chief Executive, Neil Gower, Christine Townley, Tony Bingham, Alan Jones and Daniel Kemp.

Whether using the written word, video, visual graphics or designs - creativity, innovation and providing practical solutions were all hallmarks of winning students' work in the JCT Student Competition 2016.

The 2016 competition ran from 9 September 2015 to 16 March 2016 with judging taking place on Thursday 26 May. Students from over 40 institutions around the UK entered the competition, continuing the high level of interest and value that the competition generates for construction students.

This year's competition asked for creative ideas and solutions to address a range of industry topics and issues, including: skills shortages, sustainability, collaboration, BIM, and technology. In recognition of the different learning requirements of courses and the variety of requirements for different disciplines, the options by which students could enter the competition were broadened.

As well as traditional essay pieces, the competition saw students submit videos, architectural designs and drawings, graphic essays and presentations. The range of different types of entries correlates with the feedback from judges to focus on creativity and the originality of the ideas presented.

The judging panel for 2016 comprised experts in construction law, education and skills, and the media, and included: Tony Bingham (Barrister and Arbitrator, 3 Paper Buildings, Temple), Neil Gower (JCT Chief

Executive), Alan Jones (Course Leader, BSC Building Services Quantity Surveying, University College of Estate Management (UCEM)), Daniel Kemp (Features Editor, Construction News), and Christine Townley (Executive Director, Construction Youth Trust).

The JCT student competition continues to be very successful throughout the industry, and particularly within the education sector. JCT is committed to improving the understanding and learning of construction contracts and the competition is an important feature to enable us to provide contact and support to students, future JCT contract users. As the competition has become established, it has also evolved over time, recognising the different ways in which construction students learn and the various industry backgrounds and disciplines from which students are drawn.

The JCT Student Competition aims to provide a significant boost to construction students, to assist with their studies, and provide development opportunities. This year a winning prize of £1,000 was awarded, with £250 prizes for runners-up. The winners were announced on Thursday 9 June via press release, and on JCT's social media pages.

The winning entries are available to view in full on the JCT website at: <http://corporate.jctltd.co.uk/initiatives/education-students/jct-student-competition/>.

JCT Student Competition 2016: Winners

Tom Haworth, Westminster University, Professional Practice in Architecture RIBA Part III

“Work Placements For The Student’s Benefit, Not Their Employer’s”

Judges’ comments:
“An original idea, set out in a clear and individual turn of voice. Not only creative, but sets out a real-world practical solution, that we hope the candidate has the opportunity to develop and take forward into the industry .”

Peter Dorrell, Greenwich University, Design and Construction Management

“The United Kingdom’s Construction Skill Shortage”

Judges’ comments:
“A great deal of care, work and effort to produce both a quality essay and video. Precise and clear, keeping to the point exceptionally well”

Samuel Kapasa, RIBA North West, Advanced Diploma in Professional Practice in Architecture (ADDPA, Part III)

“TALK: BIM and the Future of Communication Protocol”

Judges’ comments:
“An original and exciting presentation that prompts discussion. An interesting idea that is clear to follow and well constructed.”

OVERALL WINNER – JCT ESSAY COMPETITION 2016

WORK PLACEMENTS FOR THE STUDENT’S BENEFIT, NOT THEIR EMPLOYER’S

An essay addressing skills shortages in the construction industry, focusing upon the lack of experience-based architectural training during the early years of UK architectural education.

TOM HAWORTH - WESTMINSTER UNIVERSITY

The Challenge Of The Unknown

As a current Part Three student, I am approaching the end of a long qualification process. This essay contains my reflections on the process so far, and the change I would like to see, based on my observations.

The problem, is that architects are currently not taught how to deliver their ideas. It is my contention that this is sorely absent from the early years of architectural training, and it means that architecture as a profession is failing to match the growth and evolution of the wider construction industry.

When delivering any project, there are successes, mistakes and compromises. It is learning to adapt and deal with these peaks and troughs that makes a great architect. I’ll admit this requires experience which in construction takes years to develop, and the process is ongoing. However by starting the process sooner in the education system, by changing the conversations in and around architecture schools, students could start to understand how architects can fully deliver the value they bring to projects.

How does this relate to the Skills Shortage in the Construction Industry? There is a disconnect between the way in which the architecture profession educates its students and how they can contribute to the construction industry. I propose the introduction of a placement system to teach architecture

students about the industry sooner and in a more structured manner than what currently exists in their education.

Architects are revered by some but tolerated by many on construction sites up and down the country. It is my contention that if students were taught how to engage with other parties and stakeholders, they would have an appreciation of the processes and motivations beyond their own on a project.

Architectural Education Is Too Insular.

While design skill and creative thinking are the calling cards for the modern architect, great idea is not worth the paper it is written on, unless the mechanism for delivery is clearly understood and then shrewdly implemented. For example, understanding how much fee a structural engineer is allocating to the project in proportion to the total contract value, can go on to explain where their priorities/incentives lie in relation to the project as a whole.

From £50k extensions to a £500m football stadium, it is a collection of people from an array of backgrounds that deliver a project. A thorough understanding of this ecosystem is essential. It is my contention that architectural education should mobilise a student’s understanding of the construction industry at the advent of their training, not the end.

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TERMINATION UNDER JCT BUILDING CONTRACTS

ANDREW KEELEY – CHARLES RUSSEL SPEECHLYS

There is no general right to terminate without cause under most of the JCT contracts. This is unsurprising; a construction project requires a significant commitment from both parties and cannot be abandoned lightly. However, sometimes there is no other option but to part company. In these circumstances it is crucial to carefully check the particular contract terms of the contract you are using.

Here are some important points to consider before terminating a JCT Standard Building Contract 2011 (SBC 2011) or JCT Design and Build Contract 2011 (DB 2011).

1. Don't terminate unreasonably or vexatiously

Both employer and contractor are expressly forbidden from terminating the contract “*unreasonably or vexatiously*”, otherwise the purported termination may be void. In this context ‘vexatiously’ has been taken by the courts to imply an ulterior motive to oppress, harass or annoy (see *Reinwood Ltd v L Brown & Sons Ltd [2007] BLR 10*). The test is how a reasonable party would act in all the relevant circumstances. It may be relevant to consider whether the termination will disproportionately affect the other party.

2. Consider common law termination

The contractual JCT termination provisions are expressly stated to be “*without prejudice to any other rights and remedies*”. This is likely to preserve a party’s common law right to accept a repudiatory breach of contract and terminate the contract. However, many conceivable repudiatory breaches (for example, suspension of the works or non-payment) are already covered by the express JCT termination clauses. In such circumstances, the recent case of *Vinergy International (PVT) Ltd v Richmond Mercantile Ltd FZC - [2016] EWHC 525* confirms there is no general principle that a contractual clause requiring notice before termination (such as JCT clauses 8.4.1 and 8.9.1) will necessarily apply to repudiatory breaches within the scope of the clause. Therefore it may be possible to terminate on the basis of a repudiatory breach without reference to the contract. However, the safest course of action will usually be to comply with the contractual termination provisions.

3. Choose the right ground for termination

If one party becomes formally insolvent within the meaning of clause 8.1, then this will provide a straightforward basis for termination. Some of the other possible grounds for termination can be more controversial. In particular, many disputes have arisen over whether a contractor’s unsatisfactory progress

constitutes a failure to “*proceed regularly and diligently with the performance of his obligations*”, thereby entitling the employer to give notice of default and subsequently terminate.

Considering an identical clause in *West Faulkner Associates v London Borough of Newham [1994] 71 BLR 1*, the Court of Appeal held that:

“...*the obligation upon the contractor is essentially to proceed continuously, industriously and efficiently with appropriate physical resources so as to progress the works towards completion substantially in accordance with the contractual requirements as to time, sequence and quality of work.*”

However, assessing an alleged failure to proceed “*regularly and diligently*” is a question of degree, and where progress is simply slower than desired both parties may have difficulty in confidently predicting whether a future adjudicator will decide that grounds for termination have arisen. Caution should therefore be exercised.

4. Give proper notice of termination

Certain notices under a JCT contract must be either delivered by hand or sent by Recorded Signed for or Special Delivery post. This includes all termination-related notices under section 8 of SBC 2011 and DB 2011. As usual, the notices should be sent to the recipient’s address as stated in the Contract Particulars or such other address as may have been notified. It is good practice for such notices to clearly identify the express reason for termination.

It is also important to correctly observe the relevant time periods as, for example, in some cases notice of termination can only be given if a specified default has continued for a certain period. Bear in mind that public holidays are excluded when calculating the number of days.

Conclusion

Termination of a building contract is clearly a serious step for an employer or contractor to take. Termination also provides fertile ground for disputes. The relevant JCT provisions are detailed and prescriptive, so it is important to avoid making a difficult situation worse by failing to carefully comply with the contractual requirements for an effective termination. By its very nature, the question of termination will tend to arise when the parties’ relationship has irretrievably broken down, so you can expect your termination notices to be carefully scrutinised by hostile eyes.

MAKING AMENDS

PETER HIBBERD



Peter Hibberd

Amending standard form building contracts is done more than is necessary and sometimes even changes the nature of the contract. Amendment might be done so as to change the risk apportionment or simply because of office practice without regard to risk – whatever, problems frequently arise. In addition to any imbalance of risk created there is also potential for inconsistency, conflict and or incoherence in the contract. Consequently, the effect of an amendment may become costly in an unknowing way.

JCT Standard forms of contract are devised by experienced practitioners to meet a specific procurement route and to apportion risk fairly between the parties. Project specifics are achieved through completion of the Contract Particulars (CPs) and by the selection of the various options provided within the contract. It is not intended that the forms should be amended generally.

Nevertheless, not all amendments are wrong; the industry has clearly changed and JCT itself recognises through the use of its digital contracts that amendments can be made. However, JCT takes a similar view to that stated by RICS's ISurv, namely, 'take care to amend only what is completely necessary'.

That is sound advice because many disputes under construction contracts flow from amended provisions of a standard form. Just such a situation arose in the case of *Grove Developments Ltd v Balfour Beatty Regional Construction Ltd* [2016] EWHC 168 (TCC). The JCT Design & Build Contract 2011 (DB2011) contained a series of bespoke amendments and it was those specific to payment that caused a problem. Under DB2011 the method of payment is either by stage payments (Alternative A) or periodic payments (Alternative B) which is determined by making the appropriate selection in the CPs; either by inserting the stages for Interim Payments or the first date for an Interim Application as relevant. In the Grove case it was found that the 'Contract Particulars in respect of Clause 4.7 elected for stage payments in accordance with Alternative A and deleted, by striking through, the option of periodic payments in accordance with Alternative B. In respect of the stages referred to in Clause 4.8.2, the parties agreed and wrote: "TO BE AGREED WITHIN 2 WEEKS FROM DATE OF CONTRACT".'

The standard contract, however, requires the stages either to be inserted in the CPs or to be set out in an annexed document referred to therein, not as in this case, to be

agreed later. Amending the contract in this way was the first mistake. Despite the intention of using stages for payments these were not agreed – second mistake. Instead, the parties agreed a payment schedule that set out interim valuation dates during the period from shortly after commencement through until the month of the Date for Completion. Apparently, no one questioned what the position would be regarding further interim payments in the event of a delay – third mistake. That is surprising, especially so for experienced commercial organisations. What is not surprising is that a delay to completion occurred. The court was then asked to consider the point on further payments and it decided that no further interim payments were payable: the payment schedule having failed to cover any period of the works beyond the stated Date for Completion.

Strictly, a payment schedule is unnecessary under DB 2011 where the CPs are completed properly. Clearly the use of a payment schedule may be dangerous in that it may create questions regarding the schedule's status and consequently whether it overrides or conflicts with the standard provisions. If it takes the place of the standard provisions, such as in the Grove case, problems become manifest and any deficiency can prove both troublesome and expensive. A deficiency, as in that case, will not necessarily invoke the scheme for construction so as to fill in any gaps.

Where a payment schedule is to provide supplementary details by way only of supporting details that is another matter and indeed understandable. Its intention is to assist the payment process but in doing so care must be taken to ensure that is all it does. It is essential that it is compatible with the standard form provisions and certainly best that it is not made a contract document.

The Grove case is a perfect illustration of how having got things wrong, making amends for the error is fraught with difficulty because agreement between the parties will usually be required - something that frequently proves difficult, if not impossible. This case is yet another example of not making decisions at the appropriate time and failing to follow the standard provisions in the contract. Why change the standard contract provisions when there is no need. If either Alternative A or B under clause 4.7 of the contract had been properly selected and completed, the particular problem would not have arisen.

This article was first published in *Building* (31 May 2016).



JCT INTERVIEWS...

In this series we shed some light on some of the key people who are involved with or give their time to support JCT, to ensure that all areas of the construction industry are represented and can contribute to the development of our contracts. We will look at how our interviewees contribute to JCT specifically, and gain their views on JCT's wider role within the industry.



JOHN TURNER

JCT Council Member

Member of the JCT Drafting Sub-Committee

John Turner is a Project Manager at Derwent London; a property investment and development company with a portfolio of over 6m sq. ft. of commercial offices and mixed use buildings primarily in London's West End and City fringe.

After graduating from South Bank Polytechnic, John joined the London Borough of Harrow before moving to building surveyors, John Pelling and Partners, after gaining RICS chartered status in 1987.

John joined Beard Dove in 1992, who were subsequently acquired by Capita, where he became Director of Building Surveying in their London office, managing a team of surveyors and project managers involved in refurbishment and development projects for a variety of diverse private and public sector clients including property developers and investors, The British

Museum and Government departments such as HMRC and the Prison Service.

In 2002 John moved to a client-side role as Head of Building at property investment company, London Merchant Securities (LMS), managing a wide variety of projects ranging from commercial office refurbishments and developments in London, to construction of an out-of-town retail park near Glasgow and major repair works to the Thames river wall at Greenwich Reach.

In 2007, LMS merged with Derwent Valley to form Derwent London where John manages a variety of schemes across the portfolio, utilising the services of teams of consultant architects, engineers, surveyors and other specialists to deliver buildings with the quality of design upon which Derwent London's name has been forged. John's role at Derwent London also involves advising upon JCT contracts and consultant appointments.

JCT: John, how did you first come to be involved with JCT? Why do you think it is important to be involved?

JT: I was first introduced to the client's college as a representative of The British Property Federation (BPF) by Marc Hanson (now of Berwin Leighton Paisner), who was providing construction legal consultancy advice to London Merchant Securities where I worked at the time. I recall my first JCT drafting sub-committee meeting where, following some fairly robust and extended debate, I did wonder what I may have let myself in for!

I do believe it is important to be involved in order to represent the interests of the BPF through the drafting of contracts and the wider commercial issues concerning the JCT Council, such as the priority to be afforded to production of certain revised or new contract editions above others. I am also conscious that, like myself, all of my fellow college members are busy and so it is important to maintain our numbers to help ensure that we can collectively provide the necessary time to attend the various JCT committees, working groups and Council. My involvement also helps me to keep abreast of current contract issues to the benefit of my role at Derwent London.

JCT: You are a member of JCT's Drafting Sub-Committee, can you tell us about your role in the group and what the priorities have been in preparing for the new 2016 edition?

JT: My role is to represent the BPF as a member of the client college. I see my main contribution as using my knowledge and experience of hands-on management of construction projects to provide practical advice as to

how our contracts are interpreted and put to use during the procurement, design and construction phases.

The main priorities from my point of view have been in further improving the clarity of payment terms whilst reconciling these with the requirements of the Housing Grants, Construction and Regeneration Act. Additionally, extension of the insurance provisions relating to existing structures during tenant works are particularly pertinent to my day job.

JCT: Do you have any personal career highlights? What are you most proud of about the construction industry as a whole and where do you think it most needs to improve?

JT: Part of what attracted me to the industry in the first place was to be able to see the result of my efforts being realised in physical form in the shape of buildings being constructed or regenerated and that feeling has stayed with me ever since. I have been fortunate enough to have worked on a number of schemes that I could cite as stand out moments in my career which leads me to think that the real highlight has been the variety and breadth of project that I have been involved in.

These include some great Derwent London buildings such as our recently completed conversion of former recording studios and retail premises to create stunning new office space and a new retail parade on Tottenham Court Road, the refurbishment of the Buckley Building (originally a paper works and printing factory), the development of our Qube office building in Fitzrovia and a prototype mock-up of our White Collar Factory currently under construction.

Aside from these more conventional projects, my project management experience has extended to the installation of large artefacts in the completed Great Court refurbishment at The British Museum, including a 1.5 ton carving of a stone head from Easter Island; major structural works to renew a length of the Thames river wall at Greenwich Reach; refurbishment of the listed Welsh Office building in Whitehall (I still have a lump of the original defective stone cornice from that building sitting in my garden which I have been contemplating what to do with for many years now!), works to various prisons and, latterly, repairs to an outflow tunnel from a Scottish loch originally constructed in the 17th century purportedly by Spanish prisoners of war.

Certain of these projects obliged the use of contracts other than the JCT forms, which helped form my opinion that I should always be working with the latter given the choice.

I also look back on my success in growing the surveying department under my management at Capita as a particular career highlight, particularly as this spanned two industry recessions.

As for what I consider the construction industry should be most proud of, I'd say the ingenuity and innovative thought it exhibits and ability to solve the myriad of problems that must be overcome in order to get buildings built, particularly in dense urban locations such as London. This extends across the piece from funding arrangements, through planning, design, procurement and construction itself. And how about a pat on the back for the JCT also, who can be justly proud of the suite of documents they have produced and the contribution they have made to the industry for so many years.

JCT: What do you think makes JCT unique? What are the benefits of the way in which JCT contracts are produced?

JT: Without doubt the uniqueness of the college structure of the JCT enables true representation across the construction industry. Obviously, the interests of the various groups can be quite disparate on certain matters, but through combined debate, compromise, many years of legal precedent and the development over time of wide standardisation across the JCT document suite, all parties entering into a JCT contract can benefit from and be confident that their interests are properly and fairly represented.

The extent of the industry wide knowledge of the various JCT contract forms is another example of what makes JCT as well as being a benefit in that the processes and procedures to be followed have become almost second nature to clients, consultants and contractors alike, thus avoiding the need for constant referral to the contract documents and possible dispute which, ultimately, can only assist in reducing disruption to the progress of works on site.

JCT: What do you see as the main challenges for the construction industry over the next five years?

JT: There never seems to have been a time when the construction industry has not been faced with a multitude of perceived or real challenges and this appears to be no different at present, be it labour shortages, skill gaps, material availability, inflation and, at the time of this interview, the possibility of Brexit and the effect that may have.

Aside from these perhaps more obvious challenges, making full use of technological advances must be considered a key target for the industry over the next five years such as increased use of offsite prefabrication to improve lead times and quality control, bring cost efficiencies and certainty of programme delivery, which must be improved.

The increased use of Building Information Modelling will continue and BIM software systems further developed to their full potential to provide full integration with post completion building maintenance and facilities management processes. An offshoot challenge to the

industry will be to see whether BIM can contribute toward closer collaboration within the project team leading to a more collective acceptance of design liability between designers and contractors and a reduction in contractual disputes.

One thing is certain, when one considers that the Olympic park was nearing completion five years ago (are the next Olympics really already upon us?), the next five years will seem to pass in an instant.

JCT: Does JCT have a wider role to play in the industry beyond producing contracts?

JT: I believe it is important that JCT does continue to explore how it may expand its industry role beyond producing contracts because this will bring commercial

benefits in raising its profile and maintaining and enhancing its market position. This should obviously not be to the detriment of the core business of producing contracts since resources are finite.

Sharing knowledge and opinion through the website, contributions to trade press and other publications and the production of guides to procurement and tendering are examples of how this may be done along with continued contributions to Government white paper consultations and-the-like.

Education is another field in which the JCT can play a wider role in introducing those entering the industry to JCT contracts and the important contribution they make in the construction process. The student competition is an excellent initiative in forging this early relationship.

Continued from page 5 >> A concern that could be raised about my proposal is that immersion in the details of the construction industry too soon in a student's career hinders their creative development. However it is my contention that a design process without constraints is not reflective of the world in which we live and work. It may be affirming to those with great design dexterity to achieve great heights at university, but those who have succeeded are in fact those who made their ideas marketable and more importantly, deliverable.

I would hate to try and put hours to the time I spent (and my employer paid me for), learning how to plan a bathroom, how to draw a staircase, complete a fire escape plan.

These basic tasks are the bread and butter, but instead of learning them at University, the obligation is put onto employers. Young architecture graduates are made to serve the large commercial practice format, they aren't actually trained to be useful, fee-earning employees.

Architects should be in a stronger position in the construction industry and the built environment as a whole. We are often lead consultant, but our inability to adapt to the introduction of design and build contracts, the complexities of risk apportionment, amongst other things, have so far limited our capability to add value to projects.

The Problem - Too Much, Too Late

I am studying Part 3 this year, and I am enjoying the course; but I can't help feeling that the volume and intensity of information is too much, too late. We get saturated with information at a crucial stage of the training, overloaded by law, finance and management lectures. This is the learning equivalent of cramming for an exam. Just when we start to get some responsibility afforded to us at work, we are laden with legal jargon and are expected to process it in time for an exam and interview a few months later. What I propose aims to

build a student's understanding of how we contribute to the industry sooner in their career.

Following the inescapable law of supply and demand, the education system is answerable to the job market. Students are moulded to fit the business models of the practices with highest buying power. However, it is my belief the profession is not doing enough to tell graduates what standards are expected of them, giving the schools permission to continue on a more academic discourse, while turning out graduates with limited technical and regulatory knowledge.

There are many different roles a new grad can step into once beyond university. But students come out of University and don't understand the processes and day-to-day undertakings of an architectural practice. This affects quality control and production methods of all practices, often requiring a square-one approach to training new staff.

Graduates do not have the relevant business or relationship skills.

Some students are fabulously talented, but if an idea cannot be communicated to its audience, it will not stick and it will not sell. There is a sector in architecture that gives a more charitable and benevolent offering to the built environment, but these are ultimately underwritten by capitalist enterprise. For example, the Foster + Partners teams working on issues affecting the developing world, such as power, infrastructure and sanitation. But these are only possible due to the initial capital being provided by a hugely successful, highly capitalist front for the practice.

To read Tom's essay in full, please go to: corporate.jctltd.co.uk/initiatives/education-students/jct-student-competition/

BIM AND HOUSING ISSUES COMBINE AT JCT'S PARLIAMENTARY RECEPTION

RICHARD SAXON CBE – JCT CHAIRMAN



L-R: Mr Oliver Colville MP and JCT Chairman, Richard Saxon CBE

JCT's Construction Industry Parliamentary Reception was held at the House of Commons on Tuesday 17 May 2016, bringing together construction industry professionals, clients and government to reflect upon current issues in construction and their impact on contracts.

Introduced by JCT Chair, Richard Saxon CBE, the event was an opportunity to update delegates on some of JCT's current activities, including work JCT is taking forward in relation to Building Information Modelling, and the forthcoming JCT 2016 Edition of contracts.

Richard Saxon said:

"We are having an eventful year, with the 2016 issue of our standard contracts in progress, family by family, from next month.

"We also have a new website and the JCT Network, an online group to improve communication between JCT and its users.

"JCT is keen on Building Information Modelling as a route to better construction performance. We recently published a bulletin on BIM Level 2 which has been very popular, and has been downloaded about 1000 times so far in UK and also abroad.

"We are extremely pleased by the government's commitment to take BIM forward over the next five years to advance us to BIM Level 3.

"It rightly sees that, as well as improving Britain's environment, the UK's leading position in BIM is likely to lead to strong export prospects for our consultants, constructors and product makers. JCT's contracts, suitably amended, are also being increasingly used abroad. JCT is working on developing the kind of contracts that Level 3 will need."

The event, hosted by Oliver Colville MP, also joined JCT with the All Party Parliamentary Group for Excellence in the Built Environment (APPGEBE). In his capacity as Chair of the APPGEBE, Oliver Colville was able to provide an update on a forthcoming report by the APPGEBE on the quality of new-build houses in the UK.

Oliver Colville said:

"The government has aspirations to build 200,000 homes per year over the course of this parliament. That, in my view, is a good step forward and will go a long way to combat the

chronic shortage of housing in the UK.

"[...] my opinion, and that of the panel, [is that] we must ensure these new-build homes are of the highest quality and standard.

"Starting in late 2015, I chaired an enquiry into the quality of new-build homes. Four enquiry sessions took place and took evidence from house builders, consumer groups, insurance companies, and home buyers.

"Although the report hasn't been finalised, we will be able to share a number of recommendations, including a recommendation to increase the level of standardisation of house building contracts."

It is anticipated the APPGEBE's report on the quality of new house building in England will be published late May/early June.

JCT contract users can keep up-to-date about the forthcoming 2016 Edition by signing up to the JCT Network at <http://corporate.jcttd.co.uk/jct-network-sign-up>. JCT Network members will receive first notification of the availability of the 2016 contracts, as well as exclusive information about the changes found in the new edition.

WRITE FOR THE JCT NEWSLETTER

JCT is looking for new contributors to provide articles and blogs for the JCT Newsletter and JCT website.

The JCT Newsletter provides readers with a variety of information relating to contractual issues and wider construction topics.

Share your knowledge

If you have an article or would like to write a piece on your specific field of expertise, we would be happy to hear from you. If your article appears in the JCT Newsletter or as a blog on the JCT website you will have a unique opportunity for your name and business to reach a broad audience of construction professionals.

Contact stanform@jcttd.co.uk if you are interested in writing or submitting articles.



JCTNEWS

JCT MINOR WORKS 2016 OUT NOW

The 2016 Edition of the Minor Works Building Contract family is out now and available from jctltd.co.uk and JCT stockists.



Contracts available:

- JCT Minor Works Building Contract 2016 (MW)
- JCT Minor Works Building Contract with contractor's design 2016 (MWD)
- JCT Minor Works Sub-Contract with sub-contractor's design 2016 (MWSub/D)
- JCT Minor Works Building Contract Tracked Change Document 2016
- JCT Minor Works Building Contract with contractor's design Tracked Change Document 2016
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MORE 2016 EDITION COMING SOON ...

Short Form of Sub-Contract 2016
Sub-subcontract 2016

What new features are included in MW 2016?

- We've incorporated the provisions of the JCT Public Sector Supplement 2011 that relate to Fair Payment, Transparency & BIM.
- We've made adjustments to reflect the Construction (Design & Management) Regulations 2015 and the Public Contracts Regulations 2015.
- We've made the works and existing structures insurance provisions more flexible.
- We've revised and simplified the Section 4 Payment provisions, including:
 - Establishing (for Fair Payment purposes) Interim Valuation Dates that apply to main contract, sub-contract and sub-subcontract levels
 - Increased flexibility in relation to fluctuations provisions
 - Consolidating the notice requirements of the Housing Grants, Construction & Regeneration Act 1996.

The views expressed in the articles in JCT News are those of the author(s) and do not necessarily reflect JCT's views.