



Construction - The Week That Was

17 June 2022

Welcome to The Week That Was, a round-up of key events in the construction sector over the last seven days.

Stagflation set to hit the construction industry

Leading cost consultant Arcadis has warned that "stagflation" could hit the construction industry. "Stagflation" (also known as "recession-inflation") is the situation where inflation is high and economic growth is slow.

Arcadis estimates that the Ukraine War has magnified existing supply chain issues by adding 3-5% to the cost of typical projects. This is despite the fact that materials sourced from Ukraine only account for 1.2% of construction imports

Arcadis has also warned that a combination of energy and material price inflation, labour shortages and a high cost of risk transfer are fuelling further tender price rises. This tender price inflation for buildings is expected to peak at 8-10% in London and the regions, and 10% in infrastructure. Such rises (and the consequent difficulties in agreeing terms acceptable to all parties) is meaning an increasing number of projects are being delayed, prompting stagflation with a concurrent high interest rate and low growth in the industry.

For more information, please see here.

Consultation on the Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations

The Department for Levelling Up, Housing and Communities has commenced a consultation on the proposed Higher Risk Buildings (Descriptions and Supplementary Provisions) Regulations, which complete the definition of 'higher-risk building' for the new building safety regime. Higher risk buildings are defined by their height and use.

The consultation relates to the new, more stringent building safety regime brought forward by the Building Safety Act 2022 and it focuses on two elements of that regime: (a) the design and construction element and (b) the occupation element, on which views are sought as follows:

1. The overall definition of a building;
2. Which buildings are included and excluded in relation to the design and construction element, and the definitions of these buildings;
3. Which buildings are excluded in relation to the occupation element, and the definitions of these buildings; and
4. The method for measuring the height of buildings and number of storeys.

This consultation does not relate to buildings included in the leaseholder protection scheme or the building remediation funds. The Consultation will last for six weeks, from 9 June 2022 to 21 July 2022.

For further information, please click here.

Main Contacts

If you have any queries please do get in contact with a member of the team below, or your usual RPC contact.



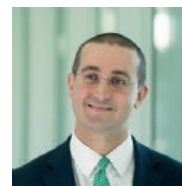
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Court refuses to enforce adjudicator's decision against company subject to CVA

In *FTH Limited v Varis Developments Limited*, an adjudicator decided that Varis had repudiated its contract with FTH. FTH then entered a CVA and in a subsequent adjudication it was decided that FTH was entitled to £757,538.94 from Varis.

Whilst *Lonsdale v Bresco* provides authority that an adjudicator's decision in favour of a company subject to a CVA may be enforced, the Court held that it should not enforce a decision if there is a "real risk" that it may deprive the defendant of security for its cross claim.

The CVA in this case was not designed to allow FTH to trade its way out of trouble. FTH's legal actions would not produce the recovery stated in the CVA and there was no evidence that it was undertaking profitable work. Accordingly, the court refused to enforce the adjudicator's decision.

The full judgment is available [here](#).

Construction industry needs 250,000 additional workers by 2026

The latest Construction Skills Network report has set out that at least a quarter of a million additional construction workers are needed by 2026 to meet growing demand in the industry.

The report also warns that with job vacancies at an all-time high and unemployment at the lowest level in 50 years, contractors will face a challenge in developing a highly-skilled workforce over the next five years. Large increases in annual demand are expected in occupations such as carpenters and joiners, construction managers and a range of technical roles.

While the growth levels indicated by the report are encouraging in the context of emerging from the COVID-19 pandemic, that growth is set against the backdrop of the current high energy costs, material shortages and price inflation across the sector. The industry may therefore need to evolve to reach its "*untapped potential*".

For more information, please see [here](#).

Housebuilding growth slows

The Chartered Institute of Procurement and Supply's (CIPS) housebuilding index registered 50.7 in May, its lowest level since the first COVID-19 lockdown in 2020, and down from 53.8 in April. While residential housebuilding has been rising for the past two years, the latest reading shows it has levelled off in recent weeks.

The index reading for non-residential building growth for May 2022 was 59.8 and so remained strong. Civil engineering activity also increased for the fifth month in a row to 55.5, given a sustained boost from major infrastructure projects. Although three in four purchasing managers reported price rises in May, delays in material supplies were said to be at their lowest level since February 2020.

The news comes as the Prime Minister, Boris Johnson, has pledged to increase housebuilding as part of a package of measures to tackle the cost of living crisis, and boost the economy.

For further information, please [click here](#).

Court decides limit to which adjudicator's decision is binding

In *Essential Living (Greenwich) Limited v Elements Europe Limited*, Elements sought to reopen a number of issues in the final account process. This included the amount due to it, variations, and liquidated damages due to delay which had been decided by an adjudicator in respect of an interim payment.

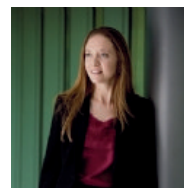
The Court held that the adjudicator's decision was not binding in respect of the Construction Manager's final determination of the Completion Period under the contract or for the purpose of deciding the Final Trade Contract Sum. This was because the contract provided a mechanism for the Construction Manager to review and revise the completion date post-completion (including reviewing a previous decision of an adjudicator).



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The adjudicator's decision was binding in respect of variations until resolved by the Court or unless either party identified a fresh basis of claim that permitted such variations to be opened up and reviewed under the contract. However, the Court held that it was a matter of fact and degree as to whether the adjudicator's decision was binding on any discrete issue and whether any matters referred to in a subsequent adjudication are substantially the same as matters determined by the adjudicator.

The full judgment is available here.

Authors for this week's edition: Oliver Bulleid, Harry Collins and Paul Smylie

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