

## Legal Briefing

### Ted Lowery looks at a dispute over design obligations that rankled with the judge

*Workman Properties Ltd v ADI Building and Refurbishment Ltd [2024] EWHC 2627 (TCC)*

In the Technology and Construction Court

Before His Honour Judge Stephen Davies sitting as a High Court Judge

Judgment delivered 21 October 2024

#### The facts

On 6 January 2022 Workman engaged ADI to design and construct additional facilities at a dairy in Tewkesbury. The contract was based upon an amended version of the JCT Design and Build Contract 2016. Within the contract documents, the first section in paragraph 1.4 of the Employer's Requirements stated that the contractor would be fully responsible for the complete design, construction, completion, commissioning and defects rectification of the works. The second section in paragraph 1.4 stated that significant design had already been undertaken up to the end of RIBA Stage 4 (i.e. all aspects of the design completed) together with the Services design up to Stage 4(i) and elements of the contractor's specialist design. Paragraph 1.5 required that the contractor review the current design development in order to ensure that the employer's requirements were met.

ADI subsequently complained that the design had not in fact been developed to RIBA Stage 4/4(i) and commenced adjudication during August 2023 seeking declarations as to its design obligations. In a 23 September 2023 decision, the adjudicator concluded that Workman had warranted that the design had been completed to Stage 4/4(i), that the design was not so complete and that Workman's breaches of this warranty comprised Relevant Events under clause 2.26 and Relevant Matters under clause 4.21.

ADI commenced a second adjudication during May 2024 claiming extensions of time and £8.5m in loss and expense. In a 19 August 2024 decision, the adjudicator awarded ADI some £3m in loss and expense and extensions of time, relying in part upon the findings made in the first adjudication.

Following the first adjudication, Workman had issued a Part 8 application seeking declarations as to the contractual position regarding design but this application was not heard until 8 October 2024. At the hearing Workman contended that the contract placed all design responsibility on ADI. ADI countered that the second section in paragraph 1.4 of the Employer's Requirements clearly provided that the design was complete and this was consistent with the pre-contract exchanges including information received from the architectural and civil/structural consultants.

#### The issue

Did the contract include a warranty that the design had been completed in all respects up to Stage 4/4(i) so there was no need for ADI to satisfy itself that this was the case?

#### The decision

The judge observed that save for the second section in paragraph 1.4, all of the relevant contract terms pointed towards the construction proposed by Workman. He noted that on ADI's case, the obligation within the first section in paragraph 1.4 - to complete the existing design and to be fully responsible for the whole design - would have to be read as excluding all design work up to the end of Stage 4/4(i). ADI's case would also require treating the obligation in paragraph 1.5 of the Employer's Requirement to review and verify the existing design as not including any obligation to check the same, meaning that ADI could safely proceed to the construction stage without any consideration of the adequacy of the design.

The judge concluded that the wording within the second section in paragraph 1.4 was nowhere near sufficient to require the other unequivocal contract provisions as to ADI's design obligations to be read in such a heavily qualified manner and so as to override other express elements within the Employer's Requirements.

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Therefore, ADI did have a contractual responsibility to satisfy itself that the existing design was sufficient in all respects: if it did not and simply assumed that what had been provided was good enough, that was at ADI's own risk.

### Commentary

Here the court construed the overall contract terms and reached the not unsurprising conclusion that the outlier wording relied upon by ADI was insufficient to disturb the effect of the surrounding express wording and clearly stated obligations as to design (in what after all was a design and build contract).

The judgment is otherwise notable for the observations made by the judge in relation to the parties' conduct. He highlighted a failure to comply with judicial guidance for Part 8 applications requiring efforts to reach consensus on agreed and disputed facts. He also noted *apropos* witness statements that Section 9.4.3 of the TCC Guide does not create a blanket exception to the need for compliance with PD57AC if the dispute has no direct association with adjudication enforcement. Finally, where the dispute concerned a dairy in Tewkesbury with the parties and witnesses based in the West of England and the West Midlands, the judge suggested that Workman should have considered issuing the claim in either the Birmingham or Bristol TCC: this would have resulted in a speedier hearing and not added to the already heavy workload of the London TCC.

**Ted Lowery**  
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