



Welcome to the June edition of *Insight*, Fenwick Elliott's newsletter which provides practical information on topical issues affecting the building, engineering and energy sectors.

**In this issue find out how to survive London 2012.**

# Insight

## Surviving London 2012

London 2012 is fast approaching and the deluge of visitors to Central London for the Queen's Jubilee celebrations has provided an inkling of the effect London 2012 might have on London's transport network and the knock-on effects on construction projects near the various London 2012 venues.

This issue of *Insight* considers what can be done both now and during London 2012 to mitigate against any possible consequences.

### The transport issue

Many parts of London will be busier than normal during London 2012. Events will be taking place between 27 July and 9 September and it is estimated that around three million additional visitors will come to Central London.

In order to deal with the additional visitor numbers, the government has implemented road closures and traffic restrictions under the London Olympic and Paralympic Games Act 2006 ("the 2006 Act"). The purpose of the 2006 Act is to create a 109-mile Olympic Route Network ("ORN") which will connect key venues and accommodation and transport hubs across London to ensure that athletes, London 2012 officials and the press reach events on time. The ORN will be put in place around two weeks before London 2012 begins.

In addition to the ORN, a Central London Zone ("CLZ") will operate from Marble Arch and Hyde Park Corner to Victoria Embankment and Trafalgar Square, and daily road changes will be made to accommodate those London 2012 events which are to be held in Central London.

The impact of these changes will depend to a great extent on the day of the week, time of day and location, but current estimates suggest that around 30% of the routes around venues that are hosting London 2012 will be adversely affected. Dual carriageways will be restricted to one lane only and there will be no right-hand turns, parking, stopping, loading or unloading within a mile radius of any London 2012 venue. It is anticipated that there will be a huge increase in people travelling by the public transport network and it has been said that waiting time to board a tube train may increase to an hour at some stations.

The potential impact on the construction industry is such that some developers are delaying or reprogramming projects for the duration of London 2012 and work on Crossrail is being scaled down. Will things really be that bad? If so, what should the industry be doing about it?

### The possible effects on the construction industry

The most obvious problem is congestion on the road and transport networks and this may have three adverse effects.

Contractors' staff may be unable to get to site and/or there might be delays in the delivery of materials to site and/or construction programmes may fall behind if the delays are such that they cannot be accommodated by the float.

It may also be more difficult to obtain local authority permissions to close any roads that are in the vicinity of London 2012 or which are subject to restrictions and this may have an impact upon programmes.

### Practical advice

The key to avoiding encountering any issues during London 2012 is to ensure that programmers and the supply chain understand the extent to which the changes to the road network might impact upon (i) routes used by contractors to reach site and (ii) those supplying or delivering materials to site.

#### Programming

Particular thought should be given to which phase the project is likely to be in for the duration of London 2012. If excavation or demolition works are programmed to take place, then the volume of site traffic will greatly increase, whereas other phases might require perfectly timed deliveries if the works are to progress smoothly and in the correct order. If necessary, reprogramme, suspend or accelerate any critical elements of the works that might be affected by congestion.

#### Deliveries

You should ensure where possible that deliveries to site are reduced, retimed or rerouted to avoid any known areas of congestion that may impact upon the programme. Volume forecasts and dummy schedules should be prepared now having regard to any known road restrictions that will be in place from mid-July.



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If deliveries are to be made outside of normal working hours then check whether there are any planning restrictions protecting nearby occupants from nuisance out of hours. Any traffic from 18-tonne-plus vehicles may need specific consent and this should also be considered now in advance.

## Staffing

As far as staff are concerned, try and arrange for them to arrive at and leave work earlier or later than usual to ensure any train and/or road travel is as smooth as possible and takes place outside of peak hours. Avoid out-of-hours working if you can as this will increase staff costs due to overtime payments.

## The contractual position

As can be seen from the above, there is a possibility that London 2012 will have a delaying effect on some construction projects. The question then is where does the risk lie contractually?

## JCT

Under the JCT suite, any delays could fall under various relevant events which might entitle a contractor to an extension of time.

The most likely event that will be relied on by contractors is the exercise of a statutory power by the government after the base date which directly affects the execution of the works.

### (i) Exercise of a statutory power

The implementation of the ORN in particular (and to a lesser extent the CLZ) ought to constitute the exercise of a statutory power.

### (ii) Base date

What is more problematic is determining what the base date might be.

It could be (i) the date on which the government first exercised its statutory power (i.e. the coming into force of the 2006 Act on 30 March 2006), (ii) the first date on which the ORN and/or CLZ were announced, (iii) the date on which the roads affected by the ORN and/or CLZ are announced or (iv) the date on which the road restrictions and changes under the ORN and/or CLZ are actually implemented.

An extension of time would only be granted if the base date of the contract was on or after whichever of these dates applies. And currently there is no binding authority on this point.

### (iii) Direct effect

Finally, you would have to establish that the exercise of the statutory power after the base date directly affected the execution of the works.

If there is any failure on your part to properly prepare and mitigate against any ill-effects caused by the ORN and/or CLZ then any causative effect may be indirect as opposed to direct. If this is the case, it may be difficult for you to prove this third element and no extension of time would be granted.

As regards the financial consequences of any delays, any extension of time would only relieve you from liquidated damages. Any loss and expense (for example, any additional costs caused by out-of-hours working) would be at your own risk.

## NEC3

It is likely to be very difficult to claim a compensation event under NEC3 by virtue of the operation of the ORN and/or CLZ.

The only argument that might be available to you would fall under

the remit of clause 60.19. Under this clause, you would have to show that any road restrictions and closures have such a small chance of occurring that no experienced contractor would have allowed for it. The extent of the publicity surrounding the road and transport arrangements that have been put in place to accommodate London 2012 are such that this argument would probably fail as a matter of fact.

## Conclusion

The key to operating successfully during London 2012 is preparation and continually reviewing the logistics to prevent problems arising in the first place.

Any financial loss that might arise from London 2012 (for example, in relation to overtime payments for staff) will ultimately rest with contractors. Mitigation is therefore of upmost importance.

You should keep a close eye on the national press so that you understand exactly how the ORN and CLZ will operate, the extent of the road closures that are expected and when these are likely to occur, and try and plan work around them.

If you have any concerns about the logistics of construction works during the London 2012 period, you should make contact with Transport for London who ought to be able to provide practical guidance.

Should you wish to receive further information in relation to this briefing note or the source material referred to, then please contact Lisa Kingston. [lkingston@fenwickelliott.com](mailto:lkingston@fenwickelliott.com). Tel +44 (0) 207 421 1986

Fenwick Elliott LLP  
Aldwych House  
71-91 Aldwych  
London WC2B 4HN  
[www.fenwickelliott.com](http://www.fenwickelliott.com)