Watts Bulletin

The technical companion to the Watts Pocket Handbook, keeping its readership abreast of industry news, every month.

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Costs rise while orders and tender prices fall

The latest figures from the Building Cost Information Service (BCIS) confirm tough times ahead, with tender prices falling as contractors compete for work in a shrinking market.

According to the latest Tender Price Index compiled by BCIS new orders for construction continue to fall, with a drop of 8% in the fourth quarter of 2008, representing a decline of 28% from the previous year. In line with this, the price of new construction work fell by 2% during the fourth quarter of 2008, compared with the previous quarter and the same quarter a year earlier. BCIS is predicting a further fall of 8% during the course of this year.

In contrast, costs are still going against the current falling inflation trend with an annual rise in materials prices of 7.7% and 4.8% for wage rates, putting struggling firms under greater pressure.

The outlook for new work gives the industry no cause for optimism during the next 18 months. A sharp decline of 12% in output is expected this year, with a more moderate fall of 2% forecast for 2010. BCIS predicts that growth will not return to the industry until 2011. Those working in the private sector, particularly those involved in housing, commercial and industrial projects, will suffer the most.

However, the public sector is expected to fare better over this period, particularly if the measures announced in the recent budget prove successful and have the necessary impact. Public non-housing and infrastructure work should continue to grow if public funding is made available in a timely way.

Commenting on the latest figures, Peter Rumble, BCIS Information Services Manager, said he expected unemployment in the industry to "rise sharply", leading in particular to the loss of skilled tradesmen, some of whom will be permanently lost to the industry.

For more information go to www.bcis.co.uk

Editorial

Welcome to the May issue of Watts Bulletin, in which we take a look at a selection of news stories from the last month. April's Budget received a mixed reaction from the property and construction industry. There was help for housebuilders in the form of a £600 million fund to kick-start development and the Community Infrastructure Levy was delayed by 12 months. However, the industry expressed concern that more was not done to stimulate construction at a time when help is most needed.

Also in this issue, we report on some good news for business rate payers, particularly small companies based in Scotland; we offer insight into when interest can be charged on late payments; and finally, the new BREEAM-In-Use rating is explained.

In this issue

Occupiers threaten low energy targets

Building users are 'sabotaging' low energy new buildings and preventing them from meeting low energy-use targets, according to new research from the Building Research Establishment (BRE).

Despite being designed for optimum energy efficiency, many new buildings are failing to operate effectively because occupiers are not using them properly. An ongoing study by BRE reveals that building users are preventing systems from working properly by blocking trickle vents, using heaters and even disabling automatic systems in order to adjust their working environment to meet their personal requirements.

BRE concludes that in many cases designers haven't considered the vagaries of occupant behaviour when designing environmental systems and controls. Findings from the study, which is being carried out by BRE social scientists, will be used to develop design guidance to help alleviate the problem.

For more information, contact Chloe Halfhide at the BRE by email at: halfhidec@bre.co.uk

New BREEAM rating system launched

The biggest opportunity to address the UK's environmental impact lies in better management and improvement of our existing building stock. The Building Research Establishment has risen to the challenge and launched its new BREEAM In-Use rating system at the Ecobuild event recently held in London.

The environmental performance of an organisation's built assets is a key factor in proving its sustainability credentials and reducing its carbon footprint. Operating a building also represents a major cost; with soaring energy prices and the current gloomy economic outlook, cutting energy, water, waste and other such costs can be a relatively easy way of improving profitability.

BREEAM In-Use is a new scheme to help building managers reduce the running costs and improve the environmental performance of existing buildings. It consists of a standard, an easy-to-use tool and a third party certification process that provides a clear and credible route-map to improving sustainability. The new rating system sits alongside the already well established BREEAM schemes for assessing the environmental performance of buildings at the design and construction stages. The aim is for all those involved in occupying, procuring or managing existing buildings to be able to easily evaluate, and improve, the performance of their property assets and the quality of their management regimes.

The new rating scheme has three parts:

- **Asset performance:** the inherent performance characteristics of the building based on its built form, construction and services.
- **Building management performance:** the management policies, procedures and practices related to the operation of the building; the consumption of key resources such as energy, water and other consumables; and environmental impacts such as carbon and waste generation.
- **Organisational effectiveness:** the understanding and implementation of management policies, procedures and practices; staff engagement; and delivery of key outputs.

Another important feature of the scheme is an easy-to-use online tool that allows users to self-assess their buildings or portfolio of buildings and the operations within them. BREEAM In-Use is designed to:

- reduce operational costs;
- enhance the value and marketability of property assets;
- give a transparent platform for negotiating building improvements with landlords and owners;
- provide a route to compliance with environmental legislation and standards, such as energy labelling and ISO 14001;
- give greater engagement with staff in implementing sustainable business practices;
- provide opportunities to improve staff satisfaction with the working environment with the potential for significant improvements in productivity;
- demonstrate your commitment to Corporate Social Responsibility (CSR);
- improve organisational effectiveness; and
- provide a genuine badge of proven sustainability.

The scheme has already generated such interest in the industry that the first training course for BREEAM assessors to be held in June was heavily oversubscribed.

For more information contact Sam Pickering in Watts' Bristol office on +44 (0)117 927 5800

New gypsum waste rules now apply

New guidelines on dealing with gypsum-based material, such as plasterboard, are now in force in England and Wales.

Since 1 April 2009, gypsum must be separated from other waste so it can either be recycled or reused. If neither of these options is appropriate gypsum-based material must be disposed of at landfill sites but kept separate from other types of construction waste.

Until the new guidelines were introduced last month, where mixed loads of construction waste contained less than 10% of gypsum board, separate disposal was not required. However, concerns over gypsum's ability to react with other wastes to produce toxic hydrogen sulphide have encouraged the Environment Agency to change the rules.

From now on plasterboard cannot be mixed with other construction waste on site unless a formal arrangement is in place with a waste/recycling contractor to separate it on your behalf.

Commenting on the new guidelines in April, Crispin Dunn-Meynell of the Gypsum Products Development Association said: "This is a significant change but provided the industry is aware of the new rules and works together to plan for them, it will go smoothly".

For more information go to www.environment-agency.gov.uk

First radon maps of Scotland now on sale

For the first time, the Health Protection Agency (HPA) has published a review and atlas that maps out radon levels in homes in Scotland.

Radon in Dwellings in Scotland: 2008 Review and Atlas is now on sale from the HPA. This new publication looks in detail at a project, funded by the Scottish Government, to map radon levels in homes throughout Scotland and brings together all the data held in the UK national radon database on radon levels in Scottish dwellings. It updates previous reports and presents the first complete radon probability map for the whole of Scotland, including the inhabited off-shore islands.

These maps are based on the national grid system and show some geographical detail, such as council boundaries, settlements and major roads. Tables are included, containing data from radon measurements in more than 19,000 Scottish homes, divided by local authority and post code.

The maps identify a number of Radon affected areas, those where there is a 1% or greater probability of radon levels in homes exceeding the Action Level. Now that these higher risk areas have been identified, the HPA recommends that a phased programme be developed in order to identify homes with high radon levels and to encourage owners and landlords to reduce these levels.

HPA-RPD-051 - Radon in Dwellings in Scotland: 2008 Review and Atlas is written by B M R Green, J C H Miles and D M Rees (ISBN: ISBN 978-0-85951-634-1). The book is available from the HPA, priced at £21.

For more information go to www.hpa.org.uk

Pain relief for business ratepayers

There was some relief from the pain of the business rates increase in April as the Government announced that payments can now be spread over three years.

New legislation announced in March means that companies will be able to defer business rates payments and ease their cash flow. The business rates are adjusted in April each year in line with the previous September's Retail Price Index (RPI). In September 2008 there was a 5% increase in inflation that would have meant an increase in rates at a time when many businesses are struggling for survival.

RPI inflation has now dropped to 0% and is expected to go into negative figures by the end of this year. In real terms this would mean a reduction in rates for businesses next year. However, instead of making companies wait for the impact of negative inflation on their rates, the Government has taken the decision to defer this year's increase and therefore ease cash flow for many businesses. As a result, ratepayers will be able to defer an estimated £600 million this year.

April also saw a boost for businesses in Scotland, as the small business bonus scheme was introduced in full. This will relieve many small businesses from paying rates at all, while others will find their bills reduced. According to press reports, the scheme represents an average saving of around £1,400 a year, with the smallest businesses saving up to £4,000 a year.

In England a property with a rateable value of £8,000 would have to pay more than £3,000 in non-domestic rates. However the Scottish scheme is structured so that a business eligible for the scheme and occupying an equivalent property would pay nothing.

Small companies are urged to check their eligibility for the scheme with their local council in order to reap the benefits of the scheme and improve their cash flow, releasing money to support and develop their businesses.

For more information go to www.mybusinessrates.gov.uk

Community Infrastructure Levy delayed to 2010

The Budget announcement that the introduction of the Community Infrastructure Levy (CIL) will be delayed until April 2010, has been welcomed by the property industry.

As part of a package of measures designed to help the beleaguered construction industry, Chancellor Alastair Darling announced that the CIL would now not be introduced until April 2010. Once in force, the CIL will give local authorities the power to levy a charge on developers for most types of new build scheme. However it was judged that in the current climate, with development at its lowest level for years and many construction companies struggling to stay afloat, measures to stimulate development would be more effective in boosting the economy.

Measures designed to support construction, introduced in the Budget included:

- 10,000 new homes to be built, supported by £600 million of public money, two-thirds of which will be directed at stalled housing developments;
- £375 million to support energy and resource efficiency in business premises, homes and public buildings;
- £300 million to kick-start the Building Colleges for the Future programme; and
- capital allowances for new investment have also been doubled to 40% for the next 12 months and the Treasury is to look into the viability of local authorities using borrowing against future tax receipts to fund infrastructure development.

Commenting on the budget, Liz Peace, Chief Executive of the British Property Federation (BPF) voiced the concerns of many industry leaders, saying, "The measures designed to support housing sound impressive but it is not wholly clear how much new money is really on offer and how easy it will be for developers to access these funds, a large part of which must be spent this year."

For more reaction to the budget, go to www.bpf.org.uk

When can interest be charged on late payments?

A recent decision in the Court of Appeal spells out the circumstances in which high interest rates may be charged on late payments under construction contracts.

In the current climate, late payment is a serious issue that affects cash flow and may make the difference between businesses staying afloat and failing. A recent survey carried out by the National Specialist Contractors Council confirmed that payment periods in the industry are getting worse, with only 2% of their members being paid within 30 days during the last quarter of 2008. There was also a sharp rise in the number of contractors reporting payment periods of more than 60 days.

However, there is some good news for beleaguered contractors who find their payments delayed under a contract. A recent report from Cameron McKenna explains that under the Late Payment of Commercial Debts (Interest) Act 1998 (generally known as the Late Payments Act), there are four ways that parties to a contract are able to recover interest for delayed payments. These are:

- under a specific contractual provision that allows payment of interest;
- under the Late Payments Act, which allows for payments of up to 8% above the Bank of England base rate;
- by proving either the financing costs or loss of investment return as damages for breach of contract; or
- under the general principal by which courts (and in some cases adjudicators) are able to add interest to their judgments/awards.

The Act applies to most payments under construction contracts but parties to a contract can draw up their own agreement if they prefer. However, any bespoke agreement must provide a 'substantial remedy' for late payment. Where this is found not to be the case, then the higher rate of interest allowed under the Act will still apply. According to the Law Now report, "it remains to be seen whether the lower rates found in all standard forms will amount to a substantial remedy". It was recently suggested in the Technology and Construction Court that they may not.

A recent case heard in the Court of Appeal (Ruttle Plant Hire Ltd v Secretary of State for Environment Food & Rural Affairs [2009] EWCA Civ 97) related to invoices issued by a contractor, which were later found to have been agreed at a lower amount in the Final Account. The employer wanted interest to be calculated based on the Final Account document, whereas the contractor argued for interest calculated from the original invoices.

The Court of Appeal found in favour of the contractor; an overvalued claim was still able to set time running under the Late Payments Act. The original invoices effectively served this purpose, containing enough supporting information for the employer to be able to accurately calculate the true value of the claim. As a consequence, the higher rate of interest under the Late Payment Act applied.

Despite the fact that the Late Payments Act can be sidestepped by agreeing a different interest rate, according to Cameron McKenna this decision will prove useful to contractors preparing claims relating to the following contracts:

- those with no provision for late payments;
- standard forms in which interest provisions don't cover all payments that might be made;
- those which exclude interest on certain types of late payments; and
- those where interest provisions don't provide a 'substantial remedy' for late payment.

It is now clear that in these circumstances, the Late Payments Act may still apply to payments they do not cover or claim to exclude.

For more information go to www.cms-cmck.com

The Watts Bulletin is the technical companion to the Watts Pocket Handbook, the essential guide to property and construction, as used by professionals since 1983.

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