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

Watts Bulletin – November 2010

Editorial

Welcome to the November issue of Watts Bulletin. The dust has settled after last month's Comprehensive Spending Review and the industry is coming to terms with the enormity of the Coalition Government's cuts in public sector expenditure. Local and central Government now have the complex task of turning reductions in public spending into reality and providing a lot less work on capital projects for the private sector. However, Government departments and local authorities are unlikely to achieve the cuts that are needed without help and advice from the property industry. As Jo Stocks, Watts CEO commented in Property Week earlier this month, "…local authorities must now find imaginative ways to reduce overheads; all will have implications for property. This could open up a previously untapped market for property companies to provide expert advice, to generate efficiency savings and give the public sector a clear strategy for the future". The challenge now will be to turn a difficult situation into an opportunity – for both the public and private sectors.

In this issue

Construction growth proves illusive as figures slow

Despite strong growth in construction output from July to September, latest figures from the Chartered Institute of Purchasing and Supply (CIPS) reveal that this activity has not been sustained.

Construction output increased by 4% in the third quarter of 2010 according to figures from the Office for National Statistics released in October. The quarterly rise followed a 9.5% increase in output in the second quarter, which represented a total contribution to GDP of 0.6%. However, latest figures from CIPS tell a different story with new orders and activity slowing. Employment levels also continued to fall as October's cuts in public spending took their toll on confidence in the sector. Commenting on the results from the Markit/CIPS Purchasing Managers' Index for October, David Noble, CIPS CEO said: "The recent growth in the construction sector seems to be petering out. Further declines look inevitable as nervy customers and a spendthrift public sector put firms in a precarious position. Construction will have to look much harder for new contracts going forward, so it's no surprise that many are cutting jobs and reducing purchasing activity to provide a safety net against further falls".

David Noble described the data as "nerve-racking" in light of the contribution made by construction to GDP growth last quarter. "Commercial activity may have fared less badly than in the underperforming housing market, but overall expectations of future business remain historically low. The high hopes of earlier in the year seem to have given way to dire predictions on what the future may hold," he said.

For more information or for a copy of the latest report go to www.cips.org

Where will the work come from now?

Chancellor George Osborne's spending cuts, announced last month, cut a swathe through public sector construction programmes for the next four years.

The construction industry can expect to lose an estimated £20 billion of work over the next four years as a result of the Comprehensive Spending Review, despite the announcement that there is £3 billion more in the pot than was announced in the emergency budget in June (source: Building). Housing and regeneration were the hardest hit areas of public spending, with the Department for Communities and Local Government now facing budget cuts of a massive 75% by 2014/15. However there is still a limited amount of funding for capital projects, particularly in transport and energy and to a lesser extent in health and education.

The capital budget for transport has been reduced by 11% - representing an £800 million cut in funding by 2014/15, but a number of major projects have escaped the axe. The National High Speed Rail network, Crossrail, the Birmingham New Street Station upgrade and a number of regional projects that are expected to have a positive impact on the local economy, such as the A11 road widening scheme in Norfolk and the Mersey Gateway bridge, have been given the go-ahead. These are expected not only to provide work for those directly involved in projects but also to generate additional work by helping regenerate local areas and attract new business.

The Government has pledged £1 billion for a carbon capture and storage demonstration project, to promote renewable technologies, as well as announcing that £200 million is to be invested in port facilities and technology to facilitate development of both offshore wind and energy efficiency technology for buildings. There will be less money for the Green Investment Bank than the business community had hoped for, but there will still be £1 billion available to help promote the establishment of green technologies and businesses.

In the health sector, despite cuts of 17% over the next four years, priority funding has been given to key hospital schemes including a £150 million project at Papworth, the £288 million Alder Hey Children's Health Park project in Liverpool and a £400 million replacement for the Royal Liverpool University Hospital.

In education too, a limited number of schools projects have been given the green light, including 600 former Building Schools for the Future and Academies projects. Around 700 school projects remain on hold but the Government has said that some work on these will be funded, and has promised limited capital funding for essential maintenance and primary school building programmes.

For more information go to www.hm-treasury.gov

CRC revenues will go to Treasury

Following October's Comprehensive Spending Review, businesses expecting to benefit from up to an estimated £1 billion a year recycled from the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme, are to lose out. Revenues will now go directly to the Treasury rather than to participants in the scheme.

The Spending Review document issued by HM Treasury in October, outlined the change: "The CRC Energy Efficiency scheme will be simplified to reduce the burden on businesses, with the first allowance sales for 2011/12 emissions now taking place in 2012 rather than 2011. Revenues from allowance sales totalling £1 billion a year by 2014/15 will be used to support the public finances, including spending on the environment, rather than recycled to participants. Further decisions on allowance sales are a matter for the Budget process."

This fundamental change to the CRC scheme, which comes into force from April 2012, will hit business hard at a time when cash-strapped firms can ill afford to lose money. The British Property Federation (BPF) called on the Government to clarify its plans for the scheme as soon as possible. "The coalition said they wanted to simplify the complexities of the CRC and they have certainly found a novel way to do that. This will not however, 'remove the burden on businesses' as they claim, but ensure that the CRC will cost the wider business community almost £3.5 billion more than it would have," said Liz Peace, BPF chief executive. She also criticised the Government for providing scant detail of its full intentions with regard to the CRC league table and how the revenues from the scheme will be collected and used.

The scheme aims to cut emissions and improve energy efficiency in the private sector, via a system of carbon allowances. The Department of Energy and Climate Change website indicates that the Government aims to begin shortly a public dialogue with participants in the CRC on proposals to simplify the scheme. A further announcement is expected this autumn.

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

‘Effectiveness and simplicity’ key to Tariffs regime, says RICS

RICS has published a paper titled Tariffs and the property market, outlining a number of recommendations for the proposed Tariff regime, which is expected to replace the Community Infrastructure Levy and Section 106 agreements in England and Wales.

Tariffs will take the form of a payment by owners of development land to the local planning authority. Payments will then be used to fund local infrastructure and other capital projects. The institution believes that in order to achieve the Government’s aims, a balance must be achieved between effectiveness and simplicity; sustainable development supply must be maintained while at the same time minimising planning costs and maximising infrastructure provision.

Following consultation among members, the RICS aims to help Government develop effective, workable proposals on Tariffs by proposing the following key recommendations:

- Different levels of tariff should be set for different uses and different areas, ie lower tariffs to encourage development in deprived areas and to differentiate between green and brownfield sites.
- Realistic and deliverable assumptions should be made when calculating tariff levels, particularly in relation to the availability of grant for affordable housing.
- Tariff levels should be determined with regard to the viability of projects and their knock-on effect on job creation and housing supply, rather than as a result of their contribution to the cost of local infrastructure.
- Tariffs should be regularly updated in order to keep track with changes in market conditions in order to encourage rather than deter development.
- Open book tariff calculations should be ‘based on existing use value where necessary, to achieve site-specific viability’ and the new Homes Bonus, National Affordable Housing programme, Tax Increment Finance and tariff revenues should all be used to make schemes viable where this open book approach is used.
- Policies should be established for the allocation of different tariffs to different types of infrastructure and locations and these should be updated on a regular basis.
- Section 106 agreements should be limited to items ‘necessary for the delivery of developments that need to be undertaken by the local authority’.

In setting out these recommendations, the RICS also identifies a skills gap within local planning authorities and recognises the need for training in development economics. To address this problem, the RICS, in conjunction with the Department for Communities and Local Government, British Property Foundation and the Royal Town Planning Institute has launched a joint report on Training in Development Economics.

For more information go to www.rics.org

Industry action plans aim to improve sustainability

The construction industry currently contributes a third of the UK's annual waste. Now five new action plans aim to reduce that waste by looking closely at products that have a significant impact on the environment.

According to the Government's waste and resources action programme (WRAP), we should all be using natural resources efficiently, as many times as possible while minimising their impact on the environment. This is the thinking behind some new action plans launched in October, which aim to make the construction industry more sustainable by reducing the amount of waste it produces. The five action plans are:

- The Plasterboard Sustainability Action Plan
- The Windows Sustainability Action Plan
- The Joinery Resource Efficiency Action Plan
- The Flooring Resource Efficiency Action Plan and
- The Construction Products Packaging Resource Efficiency Action Plan

Each of the plans examines and documents the impact of a particular type of construction material throughout its whole lifecycle. Each plan identifies the actions being taken to make the material more sustainable and highlights areas where more work is needed.

The plasterboard and windows action plans have resulted from a Department for Environment, Food and Rural Affairs funded collaboration with the construction industry as part of its Sustainable Consumption and Production programme. The remaining action plans were produced as part of the Strategy for Sustainable Construction supported by the Construction Products Association and were funded by WRAP and the Building Research Establishment Trust.

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

Do not ignore rights of light

Developers ignore rights of light issues at their peril. A recent High Court judgment in the case of HKRUK ll (CHC) Ltd v Marcus Alexander Heaney disproves the idea that paying damages will solve any issues arising.

Flouting a neighbouring property owner's rights can have costly consequences, as developer Highcross subsidiary, HKRUK II (CHC) Ltd, found in September when it was ordered to demolish parts of the top two floors of its office building,Toronto Square, in Leeds, despite the building having been fully furnished and the part of the property at issue let to tenants. It is estimated that the cost to the developer of infringing the rights to light of neighbouring building owner Marcus Heaney, could be in the region of £2.5 million.

His Honour Judge Langan QC, awarded adjoining owner Heaney a mandatory injunction – rather than damages – for the 'actionable interference' with rights of light to the former Yorkshire Penny Bank building adjacent to Toronto Square. The case revolved around the issues arising when the developer bought Toronto Square and undertook a redevelopment programme which included building a new sixth and seventh floor. Highcross were aware of the possible rights of light issue and negotiated a discounted purchase price for the site to reflect the possible damages they considered they may have to pay.

From commencement of the development, Marcus Heaney protested to the developer, claiming that the additional height of the redeveloped building would infringe his rights of light. Highcross and Heaney had been in negotiations regarding the right of light issue, though no settlement had been agreed. However, proceedings against Highcross were never issued and Toronto Square was duly completed and partly let.

In 2009, Highcross issued proceedings for a declaration that, as a result of acquiescence, Heaney was not entitled to an injunction. However, Heaney then made a counterclaim for a mandatory injunction to force Highcross to remove the infringing parts of the two additional floors or pay damages.

The acquiescence claim was then abandoned and the judge had to determine whether an injunction or damages, should be awarded. Case law sets a precedent whereby unless four specific circumstances apply, the court will normally grant an injunction. The circumstances surrounding Highcross's infringement of Heaney's rights were deemed not to meet these four criteria and therefore the judge did not consider that Heaney had to accept damages. Highcross is planning to appeal against the injunction.

Watts' rights of light specialists advise developers not to ignore this judgment. It is dangerous to assume that neighbours can simply be paid damages – developers should always consider that an injunction is a very real outcome of any rights to light claim. This case demonstrates that developers must consider and deal with rights to light issues early and efficiently and reinforces that conduct of parties will be considered by the courts.

For more information on Watts' national rights to light advice, contact Paul Lovelock in Watts' London office on: 0207 280 8000 or Tom Kibblewhite in Watts' Manchester office on: 0161 831 6180.

JCT publishes project bank account documents

In October, the Joint Contracts Tribunal (JCT) published its Project Bank Account (PBA) documentation for use in conjunction with its main standard forms of contract.

Publication follows an industry-wide consultation aimed at polling the views of those undertaking construction projects on the use of the JCT PBA provisions. The consultation, which took place last year, found that:

- 90% of respondents thought the JCT PBA provisions were suitable for their purpose;
- 5% of respondents had been involved in a project using a PBA; and
- Estimates of the number of projects likely to use PBAs ranged from zero to 100%, the average being 30%.

The published edition of the JCT PBA documentation (which includes a summary of the consultation findings) is available from Thomson Reuters Sweet and Maxwell and can be purchased from www.jctcontracts.com or via specialist and trade bookshops.

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