

863/M/PW/SM/L9

**BY EMAIL ONLY**

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*Also at Welwyn Garden City*

8 July 2008

Dear Patrick

**WILLIAM PENN LEISURE CENTRE**

In response to your request, dated 13 June 2008, we set out below our view of your options:-

1. Termination of Contract

The process to terminate Gee's contract is provided for in Clause 8.4 of the contract and specifically 8.4.1.2 "fails to proceed regularly and diligently with the he design of the Contractor's Designed Portion".

To implement the termination the Contract requires that, "the Architect/Contract Administrator may give to the Contractor a notice specifying the default or default's (the specified default or defaults).

Clause 8.4.1.2 then provides "If the Contractor continues a specified default for 14 days from receipt of the notice under Clasue 8.4.1, the Employer may on, or within 10 days from, the expiry of that 14 day period by a further notice to the Contractor terminate employment under this Contract."

The foregoing sets out the Contract position, however there is a need to fully establish the proper reasons for the delays to the progress of the Works, i.e. ensure that Gee construction have been provided with all the information required, in a timely manner, to allow regular progress of the Works.

The cost to complete the project if Gee Construction's employment was terminated cannot be fully identified however as a guide we set out the following heads of cost:-

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Value of Works to complete as Atkins Cost Report No 8. Anticipated Final Account.	3,777,892.00
Paid to date Valuation 16 June 2008	2,174,905.00
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Balance of Work Outstanding	1,602,987.00
Add inflation to rates from 22 February 2008 – August 2008, then add 6 months stopped time, add 6 months to complete	150,000.00
Uplift rates to 2 <sup>nd</sup> lowest tenderer	160,000.00
Add Premium to Contract say 10%	200,000.00
Allowance for further Gee claims	100,000.00
Allowance for Gee defects	45,000.00
Additional Security and Insurances	100,000.00
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	2,357,987.00
Additional fees	250,000.00
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	£2,607,987.00
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### 2. Gee Construction management of the Project

The client side of the Project has held the view that Gee's resource to this scheme has been inadequate and the job would benefit from a more proactive Project Manager, to provide a cohesive constructive programme and drive to completion.

Within the Contract under Section 3, Control of the Works, the Contractor is required to provide a competent person-in-charge.

The wording of Clause 3.2 is "The Contractor shall ensure that at all times he has on the site a competent person-in-charge and any instructions given to that person by the Architect/Contract Administrator or directions given to him by the Clerk of Works in accordance with Clause 3.4 shall be deemed to have been issued to the Contractor".

Also under Section 3, Exclusion of persons from the Works "The Architect/Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon".

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Whilst it probably would not assist the Scheme to lose the Site Manager Chris Wyman, in terms of his knowledge of the Project, he does need a Project Manager to drive the job. So the threat of implementing this action should be viewed as a lever to achieving the resource required.

### 3. Replacement Contractor

The options are not straight forward, and would be best achieved with mutual consent from Gee Construction.

- (a) Retender remainder of the Works, however endeavour to obtain consents with the key sub-contractors to be listed sub-contractors.
- (b) Negotiate remainder of the Works, sub-contractors as above.
- (c) Engage a management contractor for a defined management cost and fixed fee.

The advantages/disadvantages of the foregoing are:-

	<b>Advantage</b>	<b>Disadvantage</b>
(a) Retender	Maintains competition in the price for the Works, known price for the Works at restart.	Extended period of stoppage to the Contract and date for completion.
(b) Negotiate	Shorter period of stoppage and earlier completion. Known price for the Works at restart.	No competition in the price for the Works.
(c) Management Contractor	Shortest stoppage to the Works and earlier completion, fixed cost on Management and Fee.	Cost to complete not known at restart, higher cost risk to Employer.

### 4. Atkins Responsibilities

The full extent of Atkins performance will require a detailed and lengthy review. However, we have previously expressed our concerns in respect of the Enabling Works Contract, which failed to complete the key elements to facilitate the commencement of the Main Contract, in respect of the existing services.

With regard to the Main Contract there does appear to be a substantial number of design development items and in particular with regard to the mechanical and electrical installations all of which required detailed explanation from Atkins as to why they were not included within the original tender package.

We understand you have requested copies of all instructions and drawings issued to date and are currently awaiting receipt of this information.

Yours sincerely,



P Wilson  
for **PRESS AND STARKEY**