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Your ref:

[7] September 2010

Gee Construction Limited
Phoenix House
Christopher Martin Road
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Atkins Limited
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**For the attention of Mr Des McGuckin
Director**

**For the attention of Mr Steve Johnson
Director**

Atkins Limited
Woodcote Grove
Ashley Road
Epsom
Surrey KT18 5BW

For the attention of The Company Secretary

Dear Sirs

**Refurbishment of the William Penn Leisure Centre
Letter of Claim**

1. INTRODUCTION

- 1.1 As you are aware, this firm is instructed by Three Rivers District Council ("**TRDC**") in relation to the refurbishment project ("**Project**") at the William Penn Leisure Centre ("**WPLC**") in Rickmansworth, Hertfordshire.
- 1.2 You will also be aware that the Project since inception suffered considerable overall delay, with practical completion of the Project being achieved only on 30 April 2010, some 26 months after the contractual completion date.
- 1.3 It is TRDC's position that responsibility for the delays to the Project and the resultant expense lies with its main contractor Gee Construction Ltd ("**Gee**") and its consultant Atkins Limited ("**Atkins**"), together the "**Defending Parties**".

- 1.4 TRDC has instructed independent experts to investigate and report on the cause of the delays and defects identified during the course of the carrying out of the works ("**Works**") under the Project and to express an opinion on whether responsibility should lie with Gee or Atkins or indeed elsewhere. The reports prepared by TRDC's independent expert delay analyst and expert architect are highly critical of both Defending Parties.
- 1.5 This Letter of Claim is written pursuant to the Pre-Action Protocol for Construction and Engineering Disputes (the "**Protocol**").

2. **THE PARTIES**

- 2.1 The proposed Claimant: Three Rivers District Council
Three Rivers House
Northway
Rickmansworth
Hertfordshire WD3 1RL
- 2.2 The proposed Defendants: Gee Construction Limited
Phoenix House
Christopher Martin Road
Basildon
Essex SS14 3HG
Atkins Limited
Chilbrook
Oasis Business Park
Eynsham
Oxford OX29 4AH

3. **BACKGROUND**

- 3.1 The Defending Parties are of course familiar with the Project and the relevant background is set out in detail in the enclosed expert reports. For convenience the chronology of events and key facts are summarised below.
- 3.2 In 2004 TRDC investigated the feasibility of the refurbishment, expansion and modernisation of the WPLC with a view to improving leisure and recreational facilities for the benefit of TRDC's residents. After the feasibility of the Project was confirmed the tendering process took place.
- 3.3 Terms of engagement were agreed between TRDC and Atkins pursuant to which on 19 October 2005 Atkins was appointed (the "**Appointment**") to act as architect, quantity surveyor, building services engineer, structural and civil engineer and planning supervisor for the Project.

- 3.4 In January 2007 Gee was employed by TRDC under a JCT Standard Building Contract with Quantities (the "**Building Contract**") as main contractor to perform the Works which comprised refurbishment of the existing leisure centre to create two new swimming pools and associated wet-side facilities, two new dance studios and associated ancillary accommodation at WPLC.
- 3.5 The contractual date of possession of the WPLC site was 19 February 2007 and the planned overall completion date for both Section 1 (wet-side) and Section 2 (dry-side) of the Works was 25 February 2008, being a 53 week contract period.
- 3.6 During the course of the carrying out of the Works there ensued numerous delays which constituted material breaches of the Building Contract by Gee. On 9 January 2009 Atkins served on behalf of TRDC a formal Notice under Clauses 8.4.1.2 and 8.4.1.3 of the Building Contract. On 30 January 2009 TRDC terminated the Building Contract pursuant to 8.4.2 thereof.
- 3.7 During the course of Gee carrying out the Works extensions of time were granted by Atkins as follows:
 - 3.7.1 On 5 July 2007, extending the time for completion by 3 weeks to 17 March 2008;
 - 3.7.2 On 26 March 2008, extending the time for completion by 6 weeks to 29 April 2008; and
 - 3.7.3 On 20 October 2008, extending the time for completion by 3.14 weeks to 18 May 2008.
- 3.8 Following the termination of the Building Contract further extensions of time were granted by Atkins as follows:
 - 3.8.1 On 12 March 2009, extending the time for completion by 5 weeks to 24 June 2008;
 - 3.8.2 On 28 September 2009, extending the time for completion by 1.28 weeks to 3 July 2008; and
 - 3.8.3 On 20 January 2010, extending the time for completion of Section 2 of the Works by 13.14 weeks to 3 October 2008 pursuant to an Adjudicator's Decision to that effect.
- 3.9 Appropriate Certificates of Non-Completion were issued, the last being dated 28 September 2009 certifying that Section 1 of the Works should have been completed by 3 July 2008 and 20 January 2010 certifying that Section 2 of the Works should have been completed by 3 October 2008.

3.10 After termination TRDC took steps to bring the Project to completion. On 5 March 2009 Atkins was appointed under a construction management appointment (the "**Construction Management Appointment**") to complete the Works.

3.11 Following termination of the Building Contract and prior to TRDC and Atkins entering into the Construction Management Appointment, Atkins carried out a survey which assessed the Works as being 80% complete but which identified a number of defects in the following areas:

- Pool Tank
- Existing Reinforced Concrete Structure
- Fire Protection to Steelwork
- Fire Stopping of Services
- Second Fix Items
- Roof
- Floor and Wall Tiling, Render and Plaster Works, Ceiling Installations and Fixtures and Fittings

3.12 Shortly after the commencement of the works to be carried out under the Construction Management Appointment further significant defects began to be discovered. Details of these defects are set out in the expert architect report of Christopher Miers which is sent with this letter, but broadly they comprised defects in the following areas:

- Structure
- Roof Works
- External Elevations
- Fire Protection
- Plastering
- Pool Tiling, Screeds and Renders
- Floor Tiling and Screeds
- Wall Tiling and Render
- Floor Finishes
- Painting and Decoration
- Fixtures and Fittings
- Drainage
- Concrete

- 3.13 The completion of the Works was further significantly delayed by reason of the substantial remedial works necessary. At all times Atkins was aware of the nature and extent of the defects and the necessary remedial works; Gee was informed on a regular basis when defects were discovered and given reasonable opportunities to visit the site and inspect the Works.

4. **RELEVANT CONTRACTUAL OBLIGATIONS**

- 4.1 We set out in Appendix 1 hereto the specific contractual terms upon which TRDC relies in its claims against Gee and Atkins under the Building Contract and the Appointment respectively.
- 4.2 Further, Atkins owed TRDC a duty of care to exercise all due professional skill and care in the performance and provision of its services to TRDC.

5. **EXPERTS REPORTS**

- 5.1 In support of TRDC's claims against the Defending Parties we enclose copies of the following independent experts' reports upon whom TRDC will rely:
- 5.1.1 the expert architect report regarding defects at the WPLC and Scott Schedule dated August 2010 prepared by Christopher Miers of Probyn Miers Limited ("**Expert Architect Report**").
- 5.1.2 the expert delay analysis report dated August 2010 prepared by Dr David Aldridge of Acutus Limited (the "**Delay Analysis Report**");
- 5.2 Both reports are provided on a without prejudice basis as working drafts (albeit well advanced) and are not to be disclosed in any future litigation.
- 5.3 TRDC has to date not instructed an M&E expert. Presently this is not considered necessary because the value of M&E claims in respect of the Project are likely to be relatively low. However TRDC reserves its rights to further investigate and claim in respect of M&E works as it deems appropriate.
- 5.4 TRDC has to date not instructed a quantum expert to determine the exact value of each individual defect. The quantum of TRDC's claim is set out in Section 7 below and if proceedings prove necessary TRDC reserves the right to obtain any appropriate quantity surveying expert evidence, the costs of which will form part of TRDC's claims.

Summary of Expert Architect Report

- 5.5 The Expert Architect Report makes the following findings which support TRDC's claims against Gee and/or Atkins.

Atkins' Duties and the Clerk of Works

5.6 The Appointment is clear that all services in the Services Supplement were to be provided by Atkins. This would include for visiting the site at a normal frequency, to inspect generally the progress and quality of the work.

5.7 The Architect's Job Book describes the role of a Clerk of Works ("CoW") and makes it clear that the extent of the CoW's powers and duties is dependent on the terms of his appointment. However this would not vary the terms of Atkins' Appointment in such a way that the architect's inspection duties would be extended or reduced.

5.8 It was a matter for Atkins to brief the CoW about the inspection procedures Atkins wished to be followed. Mr Miers has not seen evidence that this was done.

Flat Roof Membrane

5.9 In relation to the damage to the existing flat roof membrane, Gee would have been responsible for protecting the roof, and much of the roof was not effectively protected and damage occurred. To the extent that the lack of protection was apparent from normal inspection, Atkins should have raised the matter with Gee for Gee to improve the protection.

Fire Protection

5.10 In respect of fire protection, it is clear that the work undertaken by Gee failed to comply with the requirements of the Building Contract. Deficiencies in the intumescent paint finish were known about before termination of the Building Contract. Whilst an appropriate cost deduction therefore should have been allowed for in the interim valuations such that Gee was paid only for that work which was in accordance with the Building Contract, it is not clear if all defects were known about, or if the full cost of remedial work was included in Atkins' estimate of the cost of incomplete and defective work. Once the problem had been noted, Atkins should have taken steps to assess the scope and extent of deficient work and included in valuations for payments to Gee only for that work which was in accordance with the contract.

Main Pool Render

5.11 In relation to the main pool render, it appears likely that the failure can be attributed to workmanship and protection issues. Such defects in preparation and execution of the works should have been apparent to a regular inspector such as the CoW, who should have brought these to the attention of Atkins. Mr Miers would expect Atkins to make specific inspections of areas of poor workmanship identified by the CoW and also to make its own inspections.

Learner Pool Render

5.12 In relation to the learner pool render, It appears from the CoW's records that preparation of the substrate was inadequate, and that this was brought to Atkins' attention. Atkins does not appear, however, to have issued any instruction to remedy

the work. Insofar as the learner pool render failed because of poor preparation of the substrate, it appears that Atkins was at fault in failing to instruct the necessary remedial work.

Pool Tank Floors

- 5.13 In relation to the pool tank floors, according to the CoW's records, the floors of the pool tanks were properly physically prepared, in line with the recommendations of the screed manufacturer. However, the CoW does not refer to a cement slurry coat being applied. If the pool tank floor screeds were correctly laid with the exception of a missing slurry coat, it does not appear to Mr Miers that Atkins should have been expected to notice this defect.

Floor Tiling and Screeds

- 5.14 Regarding floor tiling and screeds, Gee appears to have been clearly instructed, through Atkins' drawings, to lay screeds and to fix tiles to 'envelope' cuts. In most, though not all, cases, it did not do this. The other issues in relation to floor tiling appear to derive from Gee's poor workmanship. Atkins should have raised this issue with Gee when it became apparent and included in valuations for payments to Gee only for that work which was in accordance with the contract.
- 5.15 Problems relating to other floor finishes appear to result from a lack of protection of completed work.

Drainage

- 5.16 Regarding drainage, in the opinion of Mr Miers it is probable that the numerous defects in the below ground drainage installation were all or almost all a result of poor workmanship on Gee's part and/or of poor site management by Gee that allowed damage to be caused to completed work.
- 5.17 If Atkins did instruct tests of the below ground drainage (other than in the general terms set out in the contract specification) and then did not witness such tests, nor direct the CoW to witness the tests and then check with the CoW on the results of those tests, as appears to have been the case, then Mr Miers considers that Atkins was also at fault and that it did not meet the requirements of its Appointment.
- 5.18 It appears that the CoW also failed to witness any tests of the below ground drainage, but Mr Miers considers that the duty to instruct and the primary duty to witness these tests lay with Atkins. Atkins might have chosen to delegate to the CoW the job of witnessing some tests, but if that was its intention it would have had to make it clear both to the CoW and to Gee. Mr Miers has seen no evidence to suggest that Atkins did this. Atkins should, in any case, have witnessed some tests in order to establish the standard expected, and should have sought test results from Gee and the CoW.

Concrete

- 5.19 Regarding concrete, one issue relates to reinforcement not being correctly positioned within (and in some cases entirely outside) the pool surround slab. In the opinion of Mr Miers, either the architect, the structural engineer and the CoW all might have had the opportunity to notice the defect before the concrete was placed. Mr Miers has not seen any record of such a defect having been recorded. Mr Miers further notes that he has not seen any claim that a loss arose from this defect, other than in relation to the cost of investigation works.

Summary of Delay Analysis Report

- 5.20 The WPLC As-Planned versus As-Built report produced by Acutus analyses in detail the delaying events that occurred throughout the project. It clearly demonstrates Gee culpability in the project overrun and required remedial works; however this in no way relinquishes Atkins of culpability.
- 5.21 As designer, Atkins had responsibility to ensure that information was as complete as necessary to start construction activity and to answer requests for information in a timely manner to ensure project continuity. As Contract Administrator, its responsibility was to ensure the obligations, rights and responsibilities of contracting parties were met. The report also demonstrates that on many occasions neither of these responsibilities was carried out efficiently.
- 5.22 The initial cause of the problems experienced at the leisure centre is attributable to poor pre-construction planning by Gee coupled with poor preliminary surveys by Atkins. As a consequence the Project quickly ran into difficulties with early activities, such as demolition, not being possible due to existing services remaining live. However, unforeseen events are commonplace when refurbishing existing buildings and Gee should have considered alternative construction procedures and re-sequenced options to mitigate further delays.
- 5.23 The construction programme was of poor quality, lacking key activities and a pragmatic thought processes which meant that any sort of re-sequencing was difficult. It would appear from the electronic copy passed to Acutus that the programme had not in fact been written for this project but was a poorly amended programme from a previous project.
- 5.24 A delay at the beginning of a project often means that there is plenty of scope for activity re-sequencing. However, (in the instance of the demolition) instead, Gee chose to do nothing and simply stood the demolition subcontractor down and awaited the service terminations. In fact, when the demolition contractor eventually returned to site to commence works it did so with the existing services in place, using a method that TRDC's own Clerk of Works had initially recommended.
- 5.25 Atkins did continually voice concerns about progress but when faced with claim requests by Gee, it failed to investigate the claims vigorously enough seemingly accepting the facts put forward, missing false claims and merely granting extensions of time. This is demonstrated by Acutus with regard to the relocation of a swimming

- pool sump (for which Atkins granted Gee extra time) when diary entries and photos clearly show that the activity had not even commenced. Time was also granted for the cessation of works to the entire learner pool, when Atkins had only instructed the cessation of works to a small backwash tank adjoining the pool. The stopping of works to the entire swimming pool was in fact required due to impractical (and near impossible) activity sequencing in Gee's programme.
- 5.26 There is also little evidence of Atkins proactively recording and checking the quantity and quality of work carried out on site and this general laid back attitude did nothing to assist a Project which was showing signs of becoming out of control very early on – signs which were realised as the Project continued.
- 5.27 Whilst Atkins is at fault, it is Gee that was carrying out day to day operations on site and that had the ability to make operational decisions and alter construction sequences to speed up progress on site.
- 5.28 The CoW diary and photographs show that at the beginning of the Project, when planning is crucial, the Gee site manager was on site only two days per week. When it finally became a permanent position both he and the Gee senior managers were unwilling to amend the poorly produced programme, instead endeavouring to follow it rigidly until it became impractical and finally impossible at which point the Project was out of control. It is recorded that the original site manager rarely walked the site, instead choosing to manage the site from his site office. Throughout the project Gee changed the site management on a number of occasions and finally a manager was employed that appeared to take control and the Project started to move forward. However this site manager was released and progress again slowed down.
- 5.29 During the construction process, sub contractors were also poorly managed and often had to leave site because of lack of continuity of work or even work areas. The mechanical and electrical sub-contractor (Scomac) for example was requested to attend site to commence installation only to find they were 6 months too early. When they returned six months later their director confirmed *"tradesmen would often get to site and commence work wherever work was available as opposed to in a sequential manner"*. Payment issues were also common with Gee making sub-contractor payments late – consequentially Gee often had to replace tradesmen at short notice which again hampered progress.
- 5.30 The quality of trades was also continually called into question by the CoW. The groundworks contractor (Shaca) for example was particularly poor. CoW diary entries confirm specifications and practical construction methods were often sidelined for cheaper alternatives. Photographs show formwork for poured concrete ground beams being supported by Cordek™ protective plastic sheets supported by earth ramps at the back as opposed to traditional formwork supports.
- 5.31 Gee's performance from the outset was woeful and Atkins was often late with design and instruction which hampered progress. Gee has not demonstrated the claims for extension of time well. They have used an "As Planned-Impacted" method of delay

