

Has design-and-build lost its way?

For complex schemes, it makes sense to bring in construction expertise early. But it must be early if it's to be a collaborative relationship, and it must deliver a building that is faithful to the design says Julia Park

Historians suggest that Design and Build dates back 5,000 years to Ancient Egypt, where the design and construction of the pyramids was reputedly overseen by a 'Master Builder'. Allegedly, it continued to work well until the Renaissance, when architects decided they wanted their own profession – distinct from the builder.

Here in its current form, it stems from the early 1980s. The first D&B contract was published by the JCT in 1981. There is widespread agreement that its main purpose was to protect the 'employer' (usually a public body), by placing responsibility for the whole process with a single party – invariably now the builder, not the architect. Increasingly, Design and Build is being blamed for the complete opposite – fragmenting responsibility to the point where it is so difficult to hold anyone accountable that redress is almost impossible. In the wake of Grenfell, the RIBA has suggested that this form of procurement must fall within the terms of reference of the public inquiry, and the Association of Consultant Architects has expressed concern about the diminishing role of the architect:

'While not being a specialist in any aspect of the construction of buildings, the architect is trained to understand the essentials of the functioning of buildings and to take a holistic view of both the building and the process of construction. We believe that this role is being undervalued and disrupted by a fragmentation of responsibility through changes to the process of procurement with the multiplicity of decision makers involved in this process. The independent role, standing sufficiently outside of the commercial pressures on a project, which was traditionally vested in the profession has all but been dismembered, notably with much public procurement. It is not certain that such a continuity and breadth of involvement would ensure that a disaster would never happen, but we believe that it most certainly would substantially reduce the risk.'

As well as simplifying responsibility, it was intended to save time and provide earlier cost certainty (by allowing processes to overlap) and reduce conflict (by encouraging collaboration between the

designer and the builder). It all sounds eminently sensible but the more you think about it, the less realistic it seems, given the way that projects unfold in practice and what motivates the various parties.

Like most clients, housing providers want to get through planning as quickly as possible and with minimum up-front expenditure on fees. Many are reluctant even to appoint structural and M&E consultants pre-planning, let alone a contractor, but they all want to see lots of detail, including fully-furnished, individual, internal layouts. When the columns and ventilation equipment finally start to be overlaid on the plans, the majority of layouts will need to be amended, if not re-designed.

Post-planning and with support from the design team, the Employer's Agent (often a quantity surveyor) produces the all-important Employer's Requirements (ERs). This is often a vast document, intended to describe how the building should perform but with as little information as possible about what that actually means to avoid tying down the bidding contractors.

When the contract is awarded, the successful bidder (usually the cheapest) starts to explain how he, or she (I live in hope...) intends to build the building for the bargain price that put him/her in pole position. Where the design has been predicated on the use of particular products or construction methods, this will often be caveated in the ERs by the words 'equal and approved'. As we know to our cost, the alternatives offered are frequently not 'equal', but noticing, and then proving that, often seems too difficult for the client or their agent, so they are 'approved' by default.

The Contractor's Proposals may be more radical. Increasingly I think they should, and will, but trying to retrofit a design to the millimetre precision and logistical constraints of craneable pods is a million times harder than designing it to suit the system in the first place. In reality, either the result will be a compromise, or the designer will need to spend double the time it should have taken. In allowing all this to happen, we seem to have forgotten two things; firstly that good designers are always think-



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ing about how to build something as they design it; and secondly, that planning approval is permission for the building shown on the approved drawings, not something faintly similar.

Arguably, the best way to protect the design is for the design team to be novated, but it's not always easy to switch allegiance or work to a new set of priorities, particularly if you are undertaking the conflicted role of quality monitor to the employer in parallel. Contractors are not always pleased either – and why would they be? Many have tried and tested relationships with executive architects who charge (and argue) less.

The package that gets handed over is poorly defined too. Take one example; now that accessibility requirements have been taken into the Building Regulations, we don't need to prove compliance until post-planning. But the new rules for wheelchair housing are very complicated. Even if our clients were willing to wait, we couldn't risk the executive architects coming back and saying they were unable to produce a compliant layout in the empty footprint we passed on. Suppose we had, and they were right, how would that work in terms of liability?

Design and Build can work really well, but the idea of asking someone to take responsibility for an initial design they didn't produce seems fundamentally problematic; almost as unpalatable as asking someone to hand over their initial design to a third party whose main aim is to build it as cheaply as possible.

Overall, it has tended to distance architects from the construction stage and made us less inclined to think about buildability. That does the profession no favours. Clients are increasingly concerned that they >>>

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More homes for Londoners

The Mayor is using carrot and stick to incentivise developers says Shabana Anwar

In his new supplementary planning guidance (SPG), "Homes for Londoners – Affordable Housing and Viability" published on 16 August 2017, the Mayor of London, sets out a carrot and stick approach to incentivising developers to help him meet his long-term aim for half of new homes in London to be affordable by increasing the amount of affordable housing delivered through the planning system and bringing forward more public land for affordable homes.

The aims of the SPG are stated to be to:

- increase the amount of affordable housing delivered through the planning system;
- embed the requirement for affordable housing into land values; and
- make the viability process more consistent and transparent.

The detailed guidance sets out a new 'threshold' based approach to viability for development applications where 10 or more homes are proposed, with projects following one of two routes: either the 'Fast-Track Route' or the 'Viability Tested Route' depending on whether their affordable housing offering is greater or smaller than 35 per cent, with the aim of rewarding projects which are delivering more. If a development meets or

exceeds 35 per cent affordable housing without public subsidy (grant, public loans) or 50 per cent where it is on public land without grant, then it can follow the 'Fast Track Route' which as the name suggests means that developers are not required to submit viability information at the application stage, and applications are subject to review mechanisms only if an agreed level of progress on implementation has not been achieved within two years of permission being granted or as agreed with the local planning authority (LPA).

If a scheme does not meet the 35 per cent threshold without public subsidy, developers will be required to follow a 'Viability Tested Route' and submit detailed viability information which will "be scrutinised and treated transparently" and will be subject to two reviews (an 'Early Stage Review' and a 'Late Stage Review').

The SPG also contains some much needed clarity and guidance on viability assessments which have been the source of debate regarding their content and disclosure of what developers consider to be commercially sensitive information with a number of Information Commissioner decisions and subsequent appeals to the First tier Tribunal on this subject in recent years. There is a marked shift towards full disclosure with the guidance emphasising the importance of transparency and making it clear that regardless of the viability model used, there "must be no hidden calculations or assumptions in the model. This will allow officers to vary assumptions to ascertain impact on the conclusions. Without this the LPA and Mayor cannot properly assess the validity of the appraisal and the assumptions used to underpin the affordable housing offer". Whilst a developer will have the opportunity to argue that "limited elements" of the viability appraisal should be confidential, the onus is on the developer to make the case. There will only be very exceptional cases where "legitimate reasons for keeping limited elements of viability information confidential. For this to be the case the LPA, or the Mayor where relevant, would need to be convinced that the public interest in maintaining the exception outweighs the public interest in disclosing the infor-



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mation".

"Build to Rent" developments are subject to further specific guidance within the SPG as the Mayor believes that Build to Rent developments can make a particular contribution to increasing housing supply, being more robust to changes in house prices and beneficial in attracting investment into London's housing market.

Khan made some pretty bold promises for solving London's housing crisis during the Mayoral election campaign including a commitment for 50 per cent of all the new homes to be "genuinely affordable". This SPG aims to assist in delivering on this promise but it is not a promise which will be easy to fulfil when put simply, not enough homes are being built. The 2013 Strategic Housing Market Assessment (part of the evidence base for the London Plan) identifies a need for 25,600 additional affordable dwellings per year between 2015 and 2035, representing more than half of the projected total housing need for London of (a minimum) 49,000 new homes per year during this timeframe.

Whilst Khan is to be applauded for taking positive steps to increase the number of affordable homes for Londoners, and the clarity around viability assessment contents is welcomed, the SPG may well end up being more of a stick than a carrot. The new guidance could have the unintended consequence of reducing overall housing delivery and amount of affordable housing, thereby exacerbating the housing crisis. The SPG makes it difficult for developers to revise their initial affordable housing calculations to reflect the change in market conditions and economic circumstances. This in turn could result in housing schemes not being bought forward or those that have got consent, being abandoned. ■

>>> are not getting the sort of quality they expected and ask us to go much further with the ERs than we should. We're caught between wanting to do all we can to protect design quality, and knowing that our fees will be stretched with no guarantee of a good outcome as this relies heavily on the experience and tenacity of the Employer's Agent. It's a vital role but often a thankless one. ¹ For small or straightforward buildings, the traditional, architect-led contract has a lot going for it. For more complicated schemes, it does make sense to bring in construction expertise early. But surely that's the key? It must be early if it's to be a collaborative relationship, and it must be geared to a process that delivers a building that is faithful to the design, offers accountability and long-term value for money, and allows everyone to make a bit of profit. Evidence suggests that's not what Design and Build is doing. ■

¹ ACA, quoted in *Planning in London*, issue 102, July 2017.