
“HOW MUCH?!” EXPECTATIONS V ASPIRATIONS

Hamish Clark, Technical Director, UK, HKA

RIVA PROPERTIES LTD & OTHERS V FOSTER & PARTNERS LTD

As well as providing some insightful comment in respect of both expert and factual witnesses, the recent judgment on 18 October 2017 by The Honourable Mr Justice Fraser in the Riva Properties Ltd v Fosters and Partners case, in my opinion, goes to the heart of a client’s expectations of a professional advisor.

The client proposed to build an “iconic” 500-bedroom, five-star hotel with impeccable green credentials next to Heathrow airport. The client’s stated budget was £70m, but it was recognised that this might have to stretch to £100m. The first budget cost, produced by the client’s quantity surveyor, was £195m, almost twice the revised budget. The architect agreed to value engineer the design to achieve the £100m budget and proposed that an application for planning consent be submitted on the basis of the original proposal. Planning consent was obtained but the value engineering could not achieve the budget.

“Budget was a key requirement and constraint.”

The Honourable Mr Justice Fraser

The client was left with planning consent for a project that could not be delivered within his commercial

parameters in advance of the 2012 London Olympics. The accrued architects’ fees were just under £2.1m.

The client sought to recover his fees, costs and losses incurred on the basis that the architect produced a design that he could not afford.

“The ‘scale and character of the development’ can only be established if the existence, or absence, of a budget is also established.”

The Honourable Mr Justice Fraser

While the case involved a £100m project with international architects, the scenario is not, unfortunately, new. Very often, the architect’s position is that they are simply “responding to a client’s design aspirations”. Equally, the client’s response is that architects “should know if they are going to exceed the budget”.

It could have been a house extension. We have all heard it before. The budget is a key element to a brief for any building project. Projects, where the budget is not a consideration, are few and far between. While the architect is not in a position to provide actual cost advice, he must understand what the budget is and how this impacts upon the design. If the architect is not clear what implications the budget may have upon his design, he needs to make that clear and obtain the

necessary advice at an early stage. An architect cannot design in a vacuum with no regard to cost.

The RIBA Job Book makes this clear. It states that, in stage A, the architect should:

“Obtain from the client the project requirements, budget and timetable. Check these carefully, question incompatibilities and agree priorities.”

Interestingly, the triumvirate of quality, cost and time, that anchor the future building contract, are being established.

In *Riva v Fosters*, the judge found that the client was entitled to recover £3.6m from the architect. It is a salutary lesson regarding the responsibilities of a professional. A professional advises a client as to how they should proceed. Very often this direction will result in further work for the professional and the professional will be the beneficiary of the project's development. It is essential that professionals place themselves in their clients' shoes.

Ask yourself the question: *“If I were the client for this project, is this what I would do?”*

ABOUT THE AUTHOR



Hamish Clark is a Technical Director, Architecture, at HKA with over 30 years of experience as a Chartered Architect. Hamish was a Partner of Honeyman Jack and Robertson, Chartered Architects, for 28 years, specialising in Education, Commercial, Retail, Ecclesiastical and Conservation work. He has acted as an expert in respect of building defects, design and personal injury cases.

For queries and comments relating to this article, please contact hamishclark@hka.com