
From: Gill Lindsay [Gill.Lindsay@edinburgh.gov.uk]
Sent: 02 March 2009 23:45
To: Fitchie, Andrew
Subject: RE: ETN

Hi Andrew

Thank you for this very helpful update. Sorry to hear you are unwell. Take it easy , if possible! I will try to join you on Thursday.

Gill

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 02 March 2009 22:19
To: Gill Lindsay
Subject: Re: ETN

Legally privileged and FOISA exempt

Gill - apologies for slight delay. I am knocked down at home today after weekend with 'flu/virus. I have agreed with Colin to come up to see Donald and yourselves(?) on 2pm Thursday at Market Court.

Developments since Friday in a nutshell:

1. BSC are on Princes St carrying out setting out works, trial pits and some OLE pole foundation excavations. Western bus lane constraint now removed as of noon today so that there is no conceivable impacted access argument to run anymore.
2. Despite efforts on Friday (by tie- my own read is that BSC (UK management) had no real intention of or authority to agree anything, save their unacceptable preferred stance) no agreement was reached on the two issues put into DRP by tie. Formal position papers were therefore exchanged this afternoon at around 5pm. I have sent these to you under separate cover, with very short comment since we have not really had enough time yet to reflect what BSC say - which is not much and deliberately obtuse, as you will see.
3. Tie's Position Papers have been fully developed (factual, financial and contractual) to make the real arguments clear and to try to anticipate and deal with various obscure/veiled BSC points about impeded access, missing design problems and 'obstacles to progress'. This makes the step into formal phase simple. In the BSC Position Paper, these matters we tried to understand/anticipate now appear to have evaporated, due to BSC's effort to restrict the dispute to the narrowest of issues and, frankly, the points' lack of credibility on the facts.
4. These parties' position papers must now be discussed by the two CEOs, with a view to attempting agreement. We will be producing an Exec summary. You will see what BSC seek from the process is again couched in terms which avoid/dampen the real issues: their incorrect approach to valuation of preliminaries and their breach of contract in refusing to enter Princes St when instructed to do so. If there is no resolution within 20 BD of 19th February, there will be a referral to adjudication/mediation/litigation by agreement or by either party electing adjudication. The adjudication timetable for this is as previously advised.
5. I have to say that I am encouraged by this weak Position Paper. I had expect a heavier and obviously carefully premeditated rebuff- but we need to bear in mind that this is not BSC's final hurrah. That comes at formal external DRP stage. I will ask Stuart Jordan, my construction litigation partner, who spent last week with the tie project management team to sit on a call with you tomorrow/Wednesday to deliver the specialist litigator's view.
6. Lastly, as planned David Mackay met with the MD of the BB European civils holding company this morning (at his request) to look at proposals for improving works process and communication channels. The meeting was very difficult, with theatricals as I gather. We are to discuss this tomorrow and are waiting to hear the detail so as explore crafting a unique protocol on Princes St, with a pragmatic approach which could allow both sides to deal with certain known poor ground conditions in an equitable and efficient way (neutralising what BSC would otherwise do- produce an inflated and poorly prepared time and cost estimate and stand behind the contract change mechanics, refusing to progress the works). All this would of course rely on the MD of BB reflecting positively on what he and David discussed as a potential idea, certainly not any form of agreement yet.

Kind regards
Andrew Fitchie
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From: Gill Lindsay
To: Fitchie, Andrew
Sent: Mon Mar 02 18:36:15 2009
Subject: RE: ETN

Andrew
Thank you. Any further update would be helpful ie BSC response to formal instruction and course of action now being considered.

Best wishes
Gill

From: Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]
Sent: 27 February 2009 07:08
To: Gill Lindsay
Subject: ETN

Gill

Legally privileged and FOISA exempt

Info flash:

1. David Mackay is meeting Keysburg of BB on Monday at K's request. Person to person, agenda not known.
2. BSC were formally instructed again to proceed with Princes St. yesterday afternoon, after safety restrictions (imposed by tie on Friday as a result of BB earlier stating that work would be at tie's risk' and refusing to with draw this vague statement) were lifted by tie.

Kind regards
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