

Webinar:

IChemE Forms of Contract

with Paul Buckingham KC of Keating Chambers (UK)

Whipps Cross – collaboration in practice

with David McMahon, Director of Ryder Architecture (UK)

20 April 2023 | 11:00am UK (GMT)



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IChemE Forms of Contract



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The IChemE Forms of Contract

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20 April 2023

Barton Legal

- **Why process projects are different**
 - Civil construction contract
 - Process engineering contract
- **Standard IChemE Forms**
 - Contractual schemes
 - Key contractual terms
- **IChemE Dispute Resolution**
 - Procedures and rules
- **Concluding remarks**

- Physical appearance is important
- Requires large quantities of materials
- Onsite work scope is high
 - Materials transported to site
 - Significant onsite workforce
- Below ground work scope can be significant
- Physical completion defined end point

- Defined Industry Sectors
- Nature of the projects
 - Production driven
 - Proprietary technology
 - Offsite scope can be high
 - Completion regime very different
- Production losses often significant
- Generally fewer disputes

Features of an engineering contract



- Multi-disciplinary approach
- Design very important
- Handover regime more complex
- Extensive performance criteria
- Much more restricted liabilities

- Lump sum (Red book)
- Reimbursable (Green book)
- Target cost (Burgundy book)
- Sub-contracts (Yellow and Brown books)
- Minor works (Orange book)
- Professional Services (Silver book)
- Engineering, procurement and construction management (Blue book)

- Common in process industry
- More risk transfer to contractor
 - Employer information
 - Employer design
 - Unforeseeable physical conditions
 - Delay to completion
 - Performance warranties
- No role for an independent engineer
 - Project Manager is a key individual

“It is no excuse for non-performance of a contract to build a house or to construct works on a particular site that the soil thereof has either a latent or patent defect, rendering the building or construction impossible. It is the duty of the contractor before tendering to ascertain that it is practicable to execute the work on the site...”



- **Lump sum**
 - Greater price certainty
- **Cost reimbursable**
 - Greater project flexibility
- **Target cost**
 - Balances competing commercial positions
 - More complex to administer

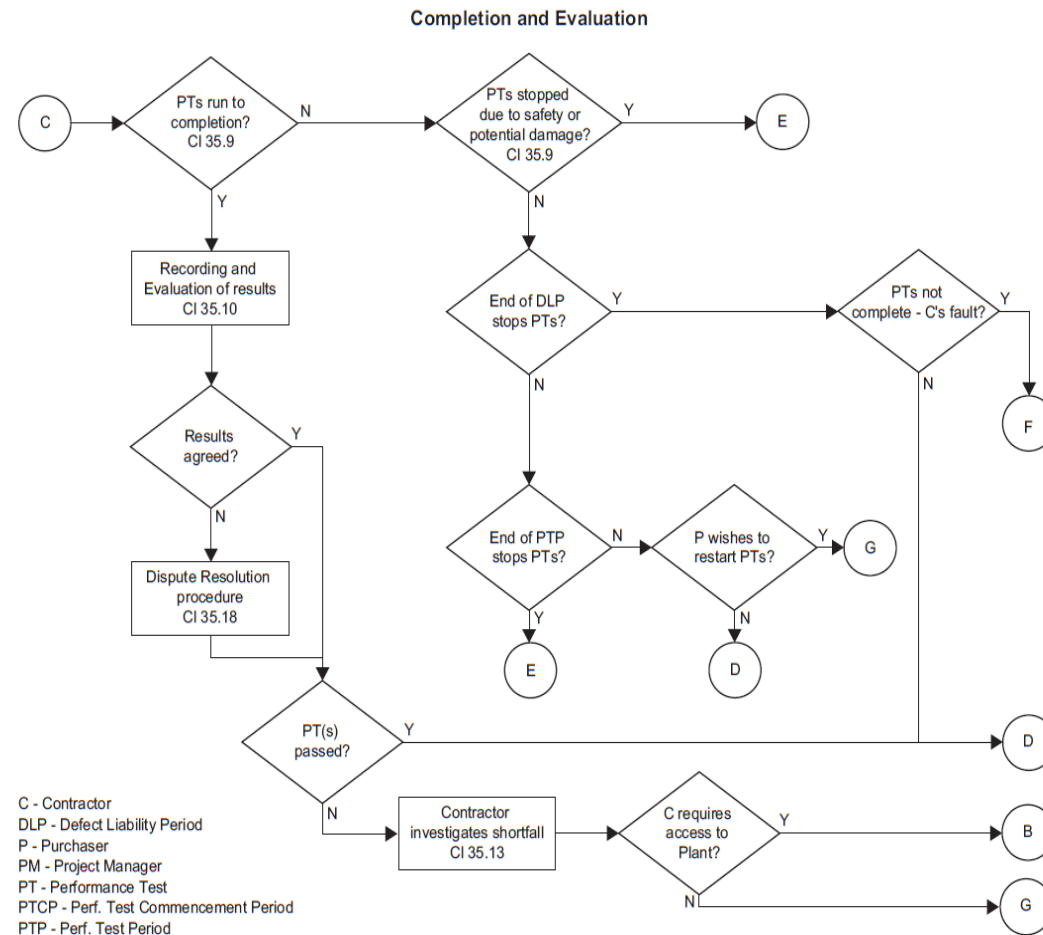


- Becoming more common in process industry
- EPCM Contractor has overarching project management role
- Purchaser contracts with multiple construction contractors
 - Purchaser can choose each construction contractor
 - Permits purchaser to maintain long term supplier relationships
- Less risk transfer to a single contractor
 - No single point of responsibility

Contractual terms: testing regime



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➤ Red Book clause 3.4:

“The Plant as completed by the Contractor shall comply with the Contract and shall be in every respect fit for the purpose for which it is intended as defined in the Specification or in any other provision of the Contract.”

Example: exclusive remedies clause



➤ Red Book clause 45.2:

“Except in the case of termination of the Contractor's employment under Clause 44 (Termination for Contractor's default) or a repudiation of the Contract by either party, the liability of either party to the other arising out of or in connection with the Contract or the Works, whether by reason of any breach of contract or of statutory duty or tortious or negligent act or omission shall be limited to the damages, remedies and reimbursements expressly provided in the Contract.”

Example: consequential loss clause



➤ Red Book clause 45.1:

“Notwithstanding any other provision of the Contract neither the Contractor nor the Purchaser shall be liable to the other for:

(a) wastage, loss or contamination during its use in the Plant of any process consumable which shall be deemed to include feedstocks, chemicals, biochemicals, catalysts and utilities; and

(b) loss or deferment of anticipated or actual profit, loss of revenue, loss of use, loss of production, business interruption or any similar damage or for any consequential or indirect losses of any kind resulting from or arising out of or in connection with the Works or the performance of them or any act or omission relating to them however caused.....”

- **Arbitration Rules (Pink book)**
 - Default position (save for short form professional services)
- **Expert Determination (White book)**
 - Express contractual procedure for defined issues
- **Adjudication (Grey book)**
 - Can automatically apply as a matter of law
 - Parties can opt-in
- **Dispute Boards (Beige book)**
 - Generally used on larger projects

- Process engineering projects are different from traditional construction works
- Range of IChemE forms of contract available
- Select an appropriate contract
- Have close regard to the contractual terms

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Whipps Cross – collaboration in practice



David McMahon, Director

Ryder

Whipps Cross Collaboration in Practice

Projects

Ryder works across many sectors with specialist skills in landscape, interior and urban design



Locations



Whipps Cross
Collaboration



Barts Health
NHS Trust

GREATER
LONDON
AUTHORITY



Waltham Forest



Transport
for London



Whipps Cross New Hospital Programme

Once in a lifetime opportunity to transform the hospital and the site to serve communities for generations to come, improving health outcomes and reducing inequalities

New models of care provided in a state-of-the-art 'smart' hospital - vastly improving the experience for patients and staff

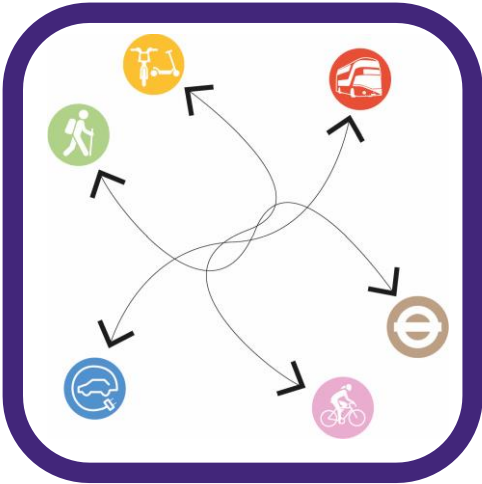
Wider site transformed delivering new homes, a community health building, new green and public spaces

Development will be greener, with a hospital able to deliver net zero carbon emissions and a site that encourages more cycling, walking and public transport

Utilise Modern Methods of Construction



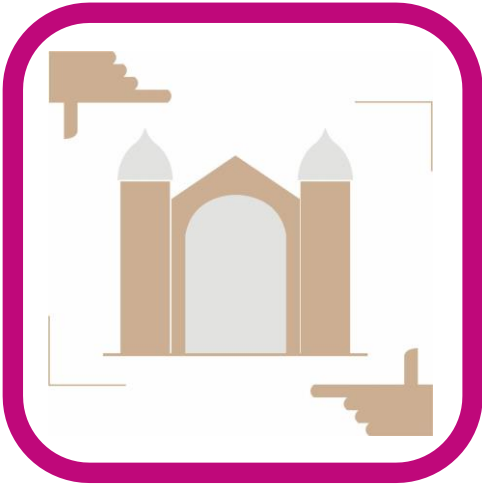
Masterplan Approach



Improving connectivity



Promoting biodiversity and green landscapes



Reframing heritage



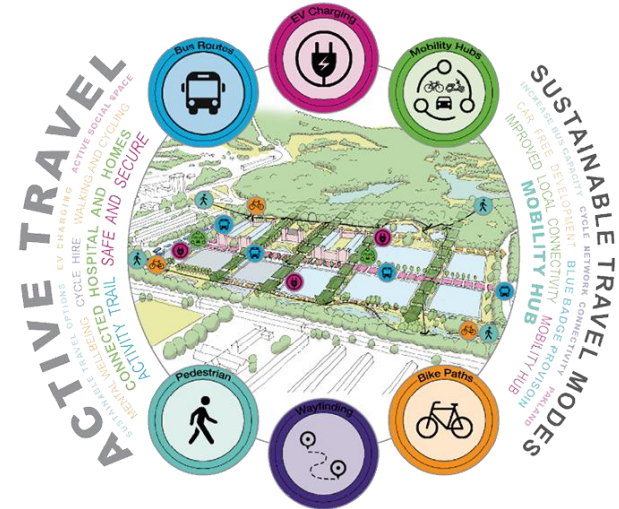
Creating a new identity

Creating Connections

Stronger connections linking Whipps Cross to surrounding local centres and transport hubs

Pedestrian and cyclists access prioritised

Local bus access and frequency improved and the electrification of transport infrastructure



Objectives

New acute hospital within a transformed Whipps Cross site with new homes, new green and public spaces and facilities for the whole community

Up to 1,500 homes with 50% affordable housing

Promote active travel and cycling

Improve access and connections to surrounding area to benefit patients, staff, residents and visitors

Promote biodiversity including new parks, habitats and green landscapes



- 1. New hospital
- 2. Residential led development
- 3. New park
- 4. Integrated landscape and flood alleviation
- 5. Ancient woodland
- 6. Epping Forest

Community

Affordable homes with mix of tenures and housing types

Keyworker housing provided for NHS staff through London Living Rent

Retention of elements of the original Edwardian hospital buildings reimagined as new homes, restaurants and commercial spaces around a new park

Community healthcare provided in addition to the new hospital

Placemaking at the heart of proposals



Sustainable Development



Transport and Access



Landscape Led

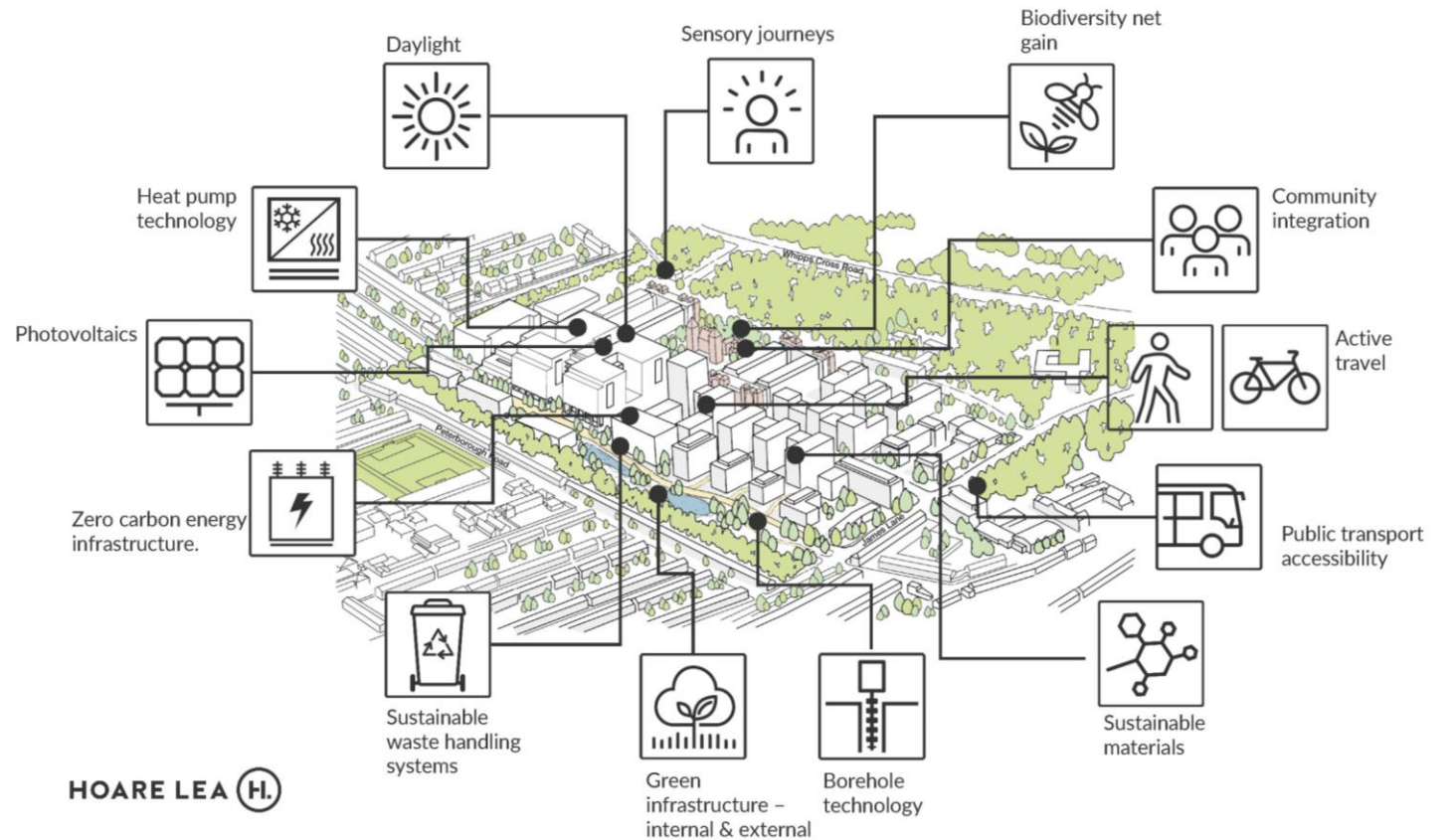


Heritage



Local Character

	PHYSICAL	SOCIAL	ECONOMIC	NATURAL	HUMAN
Aspirations	A future proof flagship of net zero carbon in the NHS	An inclusive community	A catalyst for opportunity	Enhanced integration between human and nature	Health at its heart
Outcomes	<ol style="list-style-type: none"> Whole-life net zero carbon Digitally heightened life style & care 	<ol style="list-style-type: none"> Connected neighbourhood Empowered local community 	<ol style="list-style-type: none"> Growth underpinned by equity Advancing knowledge, skill and experience 	<ol style="list-style-type: none"> A positive diversity of nature Connecting people with nature 	<ol style="list-style-type: none"> World leading centre of health & wellbeing Catalyst for healthy lifestyles



Key Lessons

Working closely with partners and key stakeholders including the Barts NHS Trust, the Local Authority, the Greater London Authority and TFL amongst others

Design through collaboration successful planning outcome across both land parcels within 9 months

Maximising land optimisation delivering new health environments, new homes and supporting infrastructure

Position placemaking at the heart of the project prioritising sustainability and green connected communities

Engagement with stakeholders throughout the design process



QUESTIONS



NEXT WEBINAR

18 May 2023 | 11:00 AM UK (GMT)

Concurrent delays in international projects
with Xavier Leynaud of Leynaud Associés (France)

The future of international dispute resolution
with Kim Franklin KC of Crown Office Chambers (UK)

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Thank You



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