

Constructing Success



Company Profile

Working with those who procure and deliver construction projects achieve more assured delivery and equitable outcomes.

Helping Developer Clients, and their teams, optimise the outcomes of 'Construction Project Commercial Risk' through:

- **'Designing In'** Certainty - identifying and managing risk; aligning expectations
- **'Working Out'** Great Delivery - maintaining progress; mitigating distractions
- **'Closing Out'** Successfully, fairly - optimising outcomes and returns; minimising disputes



COMMERCIALRISK
MANAGEMENT

Contact: stewart.owen@commercialrisk.management

+44 (0)7817 143870 / (0)1494 778963

www.commercialrisk.management

Introduction

We are a specialist commercial construction consultancy. Our team of highly experienced construction specialists help clients, their consultants, advisors, and contractor partners, achieve successful and equitable project outcomes.

Our participation, at each and any stage of the project, helps to avoid, mitigate, or resolve those risks, conflicts or disputes so often an inherent part of the traditionally adversarial and frequently flawed construction process.

We deliver more assured outcomes by:

- **'Designing In'** Certainty - identifying and managing risk; aligning expectations; sharing objectives
- **'Working Out'** Great Delivery - maintaining progress; mitigating distractions and problems
- **'Closing Out'** Successful, fair completion - optimising outcomes; maximising returns and minimising disputes

Our focus is to identify and manage foreseeable risk, and to optimise the achievable outcome.

An intended legacy of our participation is helping clients acquire and deploy better procedures and protocols and thereby evolve their commercial advantage

Our aspiration is to contribute to, and actively participate in, initiatives that will raise the standards and financial performance of construction and make it a more attractive and appealing industry for investors, professionals, staff and operatives and tradesmen – a sector that will attract, retain, motivate and enable the best talent from the most diverse sources.

Our core skills are Quantum and Time/Delay and Planning, often deployed to help resolve construction disputes. We understand the causes and consequences of conflict.

In a seemingly constantly challenging sector, we undertake to deploy our skills, knowledge, experience and enthusiasm to make the most positive contribution to bringing long overdue change.

For an industry that achieves quoted 'failure' rates of 60% or more:

“It's about Time.....”

(.....and money!)

¹ Projects delivered late, by 10% or more, over original budget, by 10% or more, or below the expectation of quality and 'completeness'

Services

Commercial Risk Management provides:

Dispute Management

- Contractual Claims Support
- Adjudication Management
- Adjudicator
- Arbitration & Litigation Support
- Dispute Resolution & Mediation
- Expert Witness
- Expert Determination

Planning & Programming

- Delay Analysis
- Planning & Programming
- Project Monitoring

Commercial Management

- Contractual Advice
- Due Diligence
- Interim Management
- Project & Company Audits
- Project Monitoring
- Project Intervention and Recovery
- Record Keeping
- Training & Development

Depending upon a particular client's requirements the services we are to provide, scope of deliverables and fee arrangements are summarised into a proposal letter which forms the basis of our terms of appointment.

Clients and Recent Commissions

Our recent and live commissions include:

- **Tests on completion for a major waste to energy infrastructure programme** – narratives developed to demonstrate objective achievement of operational phase triggering transfer of facilities to the authority.
- **NEC3 commercial management for a design phase of a Crossrail infrastructure project** – system established to collect data and maintain records to enable change to be managed effectively.
- **Final account for an airport terminal accommodation project** – Operational project team administration files and data marshalled and presented to Employer’s representatives achieving a negotiated settlement of the account with the Contractual timeframes.
- **JCT 2011 D&B - Residential, commercial and façade retention project in Fitzrovia for a pension fund client** – progress monitoring and delay analysis.
- **JCT 2011 D&B – Mixed-use new build development in central London for a major developer / pension fund** – Analysis of delays and loss and expense entitlements upstream; identification of bracketry design delays and analysis of culpability between two major package contractors.
- **JCT 2011 D&B – Oxford College student accommodation development** – substantiation of entitlements to an extension of time with recovery of loss and/or expense; management of adjudication process & final account resolution.
- **JCT 2011 D&B – two adjacent projects under separate contracts, hotel and residential with common RC frame subcontractor** – defence of incoming claims from RC frame subcontractor including delay analysis and commercial narratives and management of pre-emptive adjudication on the variation account.
- **JCT 2011 D&B Subcontract – external envelop and winter garden on residential development in West London** – The Subcontract was arranged in multiple sections with multiple parts. Programme analysis undertaken to demonstrate entitlements to additional time for completion of the sub-contract works and defence against Main Contract damages pass through.

Case Studies



New Build 'Waste to Energy' Plant, Greater Manchester

Dispute Resolution: on behalf of Main Contractor

Client:

Main Contractor

Appointed by:

Commercial Director — Main Contractor

Procurement:

Bespoke Construction Contract and Interface Agreement for PFI Project.

Objective:

CRM were engaged, following legal advice received by our Client, to provide detailed analysis and reporting to help deliver harmonious and equitable resolution of the commercial elements of the contract.

These included: claims arising with and from the Employer; various insurance claims; including PI; issues resulting from party insolvency mid-contract; preparation for formal proceedings including potential adjudication; TUPE; defects and technical issues.

Timeframe:

Our involvement commenced in January 2012 and concluded in September 2018

Description:

Our client was contracted to deliver a programme of projects to provide 'waste to energy' facilities across the region, under PFI.

Arising from the complexity of the scheme and the multiplicity of parties involved, there were numerous disputes and consequent claims arising relating to operational effectiveness, programme, cost and contractual obligations.

**Engagement:**

The Commercial Risk Management team was working daily alongside and with the site team, as well as liaison with the Client's Senior Management and legal advisors.

Outcome:

This contract was extremely complex with the problems revolving around the failure of some of the facilities to achieve the targeted level of recycling, power output and landfill reduction. The contractual arguments were detailed and needed specialist input into the engineering principles involved in what is a relatively new form of waste management.

Learning:

The Contractor had a legal review system running for a number of months prior to our appointment. This had the benefit of ensuring the claim work being undertaken by Commercial Risk Management was in line with these legal reviews. However earlier involvement of Commercial Risk Management would have been beneficial in this process.





Park 25, Redhill

Expert Determination: Negotiated Equitable Apportioning of Incurred Costs on Complex Multi-party Residential Development

Client:

Residential Developer

Appointed by:

Commercial and Managing Director

Procurement:

Informal arrangement between three residential developers to divide up a parcel of land for them each to develop their portion, including cost sharing, to construct the site wide infrastructure (below ground drainage, roads and pavements and district heating system including energy centre). The only formal document which had been signed by the three parties was a 'collaboration agreement', which included an 'Expert Determination' provision.

Brief:

Undertake investigation into the costs incurred and assess the value of the works carried out to establish what a market value might be; the remedial costs and losses associated with the district heating system; and to prepare a cogent claim document for presentation to the infrastructure developer.

Our Client was prepared to prosecute its recovery through either a legal or Expert Determination route in the absence of a direct contractual dispute resolution mechanism.

Timeframe:

From initial briefing to concluding our report and findings the commission was four weeks.

Description:

One of the three developers undertook the infrastructure works and invoiced the other two on monthly for a third of the costs expended. There was no agreed budget and costs continued to accrue without any apparent limit. As the apartments were being finished and connected to the district heating system it was found that the system would not perform and defects were manifest, including silt entering into apartments through hot air distribution grills. Opening-up investigations highlighted that there were large quantities of silt in the below ground distribution pipes which may have been introduced through either poor workmanship or malicious damage.

Engagement:

We were engaged by the Commercial Director and had meetings with both the Commercial Director and the Managing Director, subsequently the exercise was completed as a desk top investigation.

We prepared our draft report and a meeting was held to present our draft findings. We also introduced a Solicitor at that meeting, as requested by the Client, who would

manage the prosecution of our Client's entitlements.

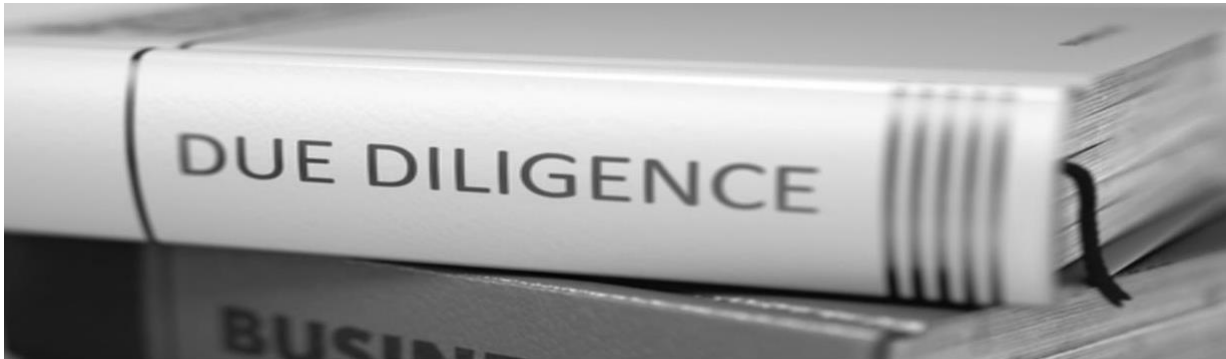
**Outcome:**

Our Client was able to reach a negotiated compromise agreement with the other developers in reliance upon our report.

Learning:

A formal agreement should have been prepared to manage the construction of the infrastructure works including a mechanism for valuations, settlement of the final sums due and for management of any disputes. Quality management records for the satisfactory construction of all common works and works to be adopted by the respective developers should have been prepared and inspected at the appropriate time so that any non-conformances or malicious damage could have been identified and dealt with as work progressed.





Project Twilight

CONFIDENTIAL DUE DILIGENCE: For potential acquisition

Client:

Housing Association

Appointed by:

Construction Commercial Director

Procurement:

A bespoke arrangement for the sale and purchase of a South East based regional residential constructing business.

Objective:

CRM was engaged to undertake commercial and programme due diligence on a port-folio of 24 projects, including 'live', recently completed and newly appointed projects which had been secured by the target business in its chosen sector and through existing relationships and frameworks. The findings from this due diligence exercise were required to be summarized into a written report to inform our Client's position on the potential purchase.

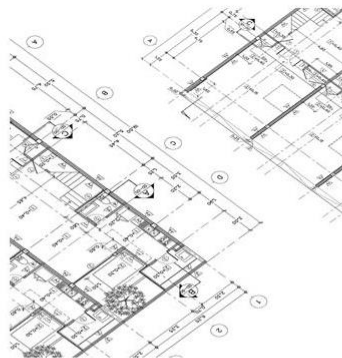
Timeframe:

The commission was undertaken over a six week period from population of the data room to presentation of our report and recommendations to our Client in order to enable it to conclude its negotiations within the specified timescale.

Description:

Our Client wished to acquire a construction business in order to be able to self-deliver its own developments rather than/ in addition to engaging main contracting organizations under standard construction contracting arrangements.

A target company had been identified by our Client, which comprised three regional business, one of which was being closed by its existing parent group - only the South East regional business was of interest to our Client.

**Engagement:**

CRM was briefed by our Client's Commercial Director and undertook a desk top review of the information that had been

uploaded into the data room by the target business. Meetings were then held with the staff and directors of the target business to interrogate the reports that had been reviewed, to clarify & test understanding and to enable an assessment of the key personnel within the business.

**Outcome and Learning:**

As a result of our report and recommendations our Client amended the structure of the offer it was prepared to make for the target business and the Vendor was required to warrant and under-write the out-turn margins on the 'current' projects (i.e. all of those which came over with the acquisition).





Gatwick Airport

FINAL ACCOUNT: Supplementing Main Contractors Commercial Team in Delivery of Airside Works

CRM Client:

Main Contractor

Appointed by:

Commercial Director

Procurement:

NEC Form of Contract - Option A



Timeframe:

18 months.

Objective:

Initially, Commercial Risk Management was commissioned to undertake a review of the contract and prepare a written report of its findings with rec-

ommendations and actions for the management of the commercial function for the construction phase.

Subsequent to the outcome of this initial review and report, Commercial Risk Management was engaged to provide supplementary commercial management services to assist with optimizing upstream entitlement and downstream administration of sub-contract packages.

Description:

Preparation and negotiation of support of Final Account; supply chain co-ordination.

Engagement:

Site based; liaising with Site Team and Management, Client and Legal & Technical representatives.

Outcome:

Negotiated Final Account settlement.

Learning:

Benefit of engaging outsourced commercial expertise and support in the currency of the project.





East London Mixed Use Development

Project Management & Cost Consultancy: Professional services provision from feasibility for realization of incomplete project, engagement of third party funding, through to practical completion, account agreement and occupation

CRM Client:

London based specialist construction Lawyer / Client

Appointed by:

Partner Solicitor initially subsequently appointed by the Client — restaurateur / investor / developer

Procurement:

Initial instruction through instructing solicitor to establish viability. Appointment for Professional Services including selection of replacement contractor through JCT Design & Build Contract.



Brief:

CRM was required to provide professional services in conjunction with members of the Client's team to assist with the resistance of an enforcement notice followed by completion of the development.

Timeframe:

From initial instruction to project completion we were engaged for four years.

Description:

Project management and cost consultancy services in connection with resistance of demolition order, assessment of viability and suitability of the incomplete building works to be brought within approved planning consent and progress to completion.

Engagement:

Services included engagement of structural engineer, procurement of Architect, procurement of contractor and cost consultancy throughout the project.

Outcome:

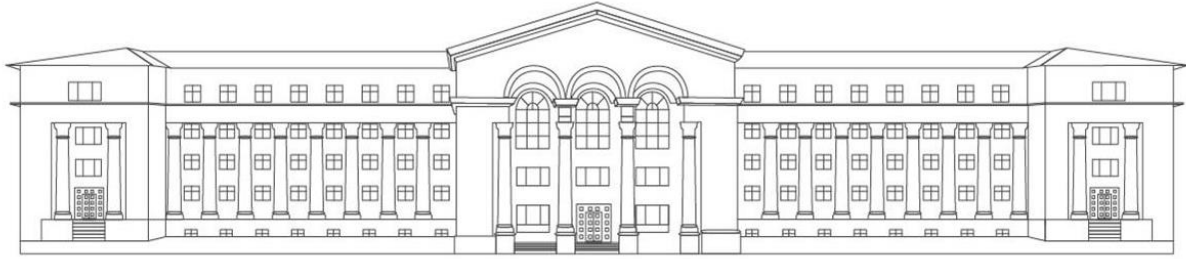
Project was completed to the approved planning consent and demolition order averted.



Learning:

Lessons learned from this project would be to carry out a thorough tender process and appoint an appropriate contractor at the outset.





New Build European Bioenergy Research Institute Building, Aston University

Preparation of Extension of Time and Loss and Expense claim: Specialist Sub-contractor

Client:

Specialist Mechanical & Electrical Sub-contractor

Appointed by:

Specialist Sub-Contractor – Commercial Director

Procurement:

JCT Standard Building Sub-contract With Sub-contractors Design Conditions – SBCSub/D/C 2011



Objective:

Equitable reconciliation of Final Account and Valuation Account.

Preparation of Extension of Time and Loss and Expense claim

Timeframe:

The duration of the commission was 8 months.



Description:

Commercial Risk Management was engaged to undertake commercial management of the preparation submissions, negotiations and agreement of the final account, including the variation account, the ascertainment of any delay entitlements and associated loss and expense for prolongation and disruption, and also the agreement of the contra charges with other sub-contractors involved in the project.

Engagement:

Based at our offices with meeting held periodically with the site team. Desk top and site based support.

Outcome:

Extension of time entitlement submission prepared and loss and expense claim substantiated leading to negotiated final account settlement.





Learning:

Knowledge gaps due to management changes and losses of key personnel.

Benefits of early involvement of specialist external commercial support to upscale and upskill and in dealing with issues contemporaneously. Timely, effective management of emerging issues. Systematic record keeping supported by robust protocols and procedures.



CV's of key personnel

 COMMERCIALRISK MANAGEMENT	
Jason Farnell – Managing Director	
Profile	<p>In excess of 30 years' experience gained in senior positions managing the commercial activities of major contractors and consultants including claims preparation and defence. Sound contractual knowledge in the following fields: retail, commercial, industrial, leisure, residential, health, transport infrastructure, education, home office and MOD. Familiar with most procurement routes including PFI in both the public and private sectors.</p>
Memberships / Qualifications	<p>Fellow of the Royal Institute of Chartered Surveyors Fellow of Chartered Institute of Arbitrators CEDR Accredited Mediator Business Arbitration Scheme (BAS) Panel of Arbitrators Certificate of Competence - Academy of Construction Adjudicators RSPH/RICS Diploma in Construction Adjudication Member of the Society of Construction Law Liveryman of the Worshipful Company of Constructors</p>
Adjudicator Panel Appointments	<p>RICS President's Panel of Construction Adjudicators TeCSA Panel of Adjudicators FMB Panel of Adjudicators RICS Homeowners Adjudication Panel</p>
Expertise	<p>Project administration; quantum and commercial management; delays and entitlement; business management; system implementation; PFI Contracts; industry standard forms of building and civil engineering contracts; Design & Build; business change management</p>
Adjudicator Experience	<p>In excess of 125Nr published decisions in adjudication under FMB, RICS Homeowners, RICS President's Panel, TeCSA and direct appointments in commercial and consumer disputes and including rail disputes, district heating, waste extraction, termination, quantum and delays</p>
Mediation Experience	<p>Commercial and consumer mediations as party representative and mediator.</p>
Due Diligence for Acquisition	<ul style="list-style-type: none"> • International contracting business seeking to establish UK contracting capability - due diligence carried out on portfolio of projects on contractors in voluntary liquidation and change of parent holding company. • Residential social landlord seeking to establish in-house construction capability – due diligence carried out on portfolio of projects on contractor in trade sale and independent contractor with specialist sustainability construction credentials.



Jason Farnell – Managing Director cont...

Expert Review of Adjudication Referrals / Submissions	<ul style="list-style-type: none">• Review of prospects strengths and weaknesses of submissions in contemplation / during currency of proceedings.• Advice on strategy following adjudicator’s decision.
Expert Reports	Quantum reports for: defence of claim under warranty proceedings; rectification of defects and costs of completion following termination; in disputed final account negotiations; mediation proceedings.
Trouble Shooting	Distressed projects – completion strategies and prosecutions and defence of claim. (Mixed use scheme; high end residential; commercial property)
Expert Determination	Quantum; assessment of liability between parties for joint liquidators.
Adjudication Party Representative	Various: final account entitlements; declarations on liability; valuation of variations; extensions of times, repayment of LAD’s; quantum.
University of Westminster	Degree students lectures – development of systems of internal controls for governance – lessons learned.
RICS CPD Roadshows	Presentations on Risk Management in Construction.
Training Sessions and Workshops for Main Contractors including:	Risk Management Early Warning Notices NEC / JCT Contracts Contractor Duties Change Management Entitlements Compensation events Construction Act



David Page - Senior Consultant

Profile:

David is chartered qualified with over 30 years' experience; he is instrumental in assisting clients in unravelling complex contractual disputes and managing the adjudication process. David has just concluded six years of work with an international construction company on the largest waste management project in Europe. This work involved not only providing contractual advice and commercial support, but also a large involvement in significant insurance and PI claims, both on the technical aspects of these claims as well as quantum analysis.

David has an in-depth understanding of contract law and dispute resolution and even lectures on various forms of contract. He has strong analytical skills and a sound understanding of programme drafting and delay analysis techniques. He also has experience of interim management roles putting commercial and contractual control documents and procedures in place.

Having trained as a quantity surveyor with Marples Ridgeway and Higgs & Hill, David managed commercial matters on a number of large and varied projects. Before joining Commercial Risk Management in October 2005, he was commercial director for a large interiors fit out contractor where he was instrumental in setting up commercial controls and building the QS team.

Memberships/ Qualifications:

Member of the Chartered Institute of Building
Member of the Society of Construction Law
RICS Accredited Expert

Notable Commissions

Felixstowe South Reconfiguration Phase 1

Initial review of entitlement and culpability for delays on a live project followed by a detailed re-modelling of the contract programme and bargain leading to an agreement to vary the Contract. Phasing of the delivery of the remainder of the project enabled the Employer to bring on revenue generation earlier than originally envisaged funding the development. A mutually beneficial outcome.

Energy form Waste, Greater Manchester

Initially involved in assessing whether 'tests on completion' thresholds had been archived. Involved in establish entitlement to recovery through PI insurance claims and mitigating culpability and exposure in claims in and out arising from defects, insolvencies and disputes. Instrumental in negotiating termination of contract and achieved equitable walk away settlement.

Heads of the Valley Road

Review of culpability for delays in non-conformance by principal designers. Establishing upstream entitlement to additional payment, relief and compensation.



Phil Giles - Senior Consultant

Profile:

Phil is a chartered quantity surveyor who has been in the construction industry over 40 years.

He has extensive knowledge of the various contract forms and procedures and has been heavily involved in problem solving whether this is via negotiation or adjudication, arbitration or litigation. Phil is very much a team player with a commercial attitude towards solving difficult situations amicably.

Phil works closely with solicitors providing technical support on contractual, procedural and quantity surveying matters. He has detailed knowledge of most forms of contract and delivers seminars and workshops on this subject.

Qualifications and Memberships:

Member of the Royal Institute of Chartered Surveyors
Member of the Society of Construction Law

Notable Commissions

Cambridge Guided Busway

Valuation of compensation events for bridge abutments and cuttings. Instrumental in evaluating overall parameters for settlement through adjustment of un-recoverable costs.

Luton Guided Busway

Application of lessons learned from Cambridge Guided Busway to establish parameters for account settlement leading to an equitable agreement of all matters in the currency of the project.

Gatwick Airport – Airside Works

Managed Direct and freelance commercial team following completion of the physical works. Organized compilation of the Contractor's Final Account Application and instrumental in establishing negotiation parameters leading to an agreed settlement of all matters.

Nova, Victoria

Assessment of upstream and downstream entitlements and culpability for delays. Compilation of entitlement submissions and evaluations of loss and expense enabling our client to negotiate an equitable account settlement.

Battersea Power Station

Detailed analysis of commentary on the bespoke Sub-contract agreement and in particular the programme and time obligations. Preparation of detailed delay entitlement narratives and evaluation of consequential loss and expense entitlements to facilitate account settlement negotiations.

Exeter College, Oxford

Management and preparation of adjudication Referral demonstrating entitlements to extension of time, reimbursement of damages deductions and recover of compensation where the Employer had taken the unusual step of issuing an early PC Certificate. An agreed account position was then negotiated.

Ocean Village, Southampton

Management of prosecuted pre-emptive adjudication against major sub-contractor on this mixed use development, where inflated, cost-driven claims were being pursued. Established value of sub-contract sum adjustments, reducing scope of their account differences within reasonable parameters enabling account settlement negotiations to succeed.



Peter Harper – Senior Consultant

Profile:

Peter has over 20 years' experience as a Commercial Director and has the ability to work in areas outside of his direct responsibility.

He has extensive construction industry experience on a range of project values and market sectors, including Retail, Commercial, Defence, Education, Health, Leisure, and High Rise Residential.

He prides himself on developing good relationships with Clients and Subcontractors alike and has a thorough understanding of risk management (commercial, legal and construction).

Peter is a practical problem solver and focuses on achieving successful project outcomes by developing strategies to unlock issues and creating solutions to progress matters to a conclusion.

Qualifications and Memberships:

Fellow of the Chartered Institution of Quantity Surveyors
RICS Accredited Mediator

Notable Commissions:

London Housing Development - Adjudication

Detailed research into delay caused and preparation of commercial narratives to support delay analysis demonstrating time entitlements.

Preparation and management of adjudication referral, successfully establish entitlements to additional time, repayment of damaged and compensation.

Heathrow Airport – Airside

Review of entitlements to adjustments to the contract sum and time for performance of the works arising out of compensation events in an complex airside aviation project on a major airport.

Regeneration – East Village, London

Reviewed of M&E Contractor's incoming delay claim and subsequent programme analysis exercise to establish both entitlements to time and culpability for delays. Following this Peter assisted the Main Contractor to prepare the final adjustment of the Sub-Contract sum and the final statement.

Heathrow Airport –

Detailed analysis of the trade package contract bespoke conditions followed by an assessment of the trade package contractor's entitlements to further time for carrying out its works and culpability for delaying the project.



Paul Fletcher - Senior Consultant

Profile:

Paul has management and surveying experience in all stages of the construction process from inception through tendering, contract award, subcontract procurement, construction to final account and dispute resolution.

Memberships & Qualifications:

Member of the Royal Institution of Chartered Surveyors

Notable commissions:

Commercial Offices – London

Initially appointed to assist with ensuring that timely notices were issued to subcontractors and that sub-contracts were administered effectively. This subsequently changed to management of settlement of the sub-contract accounts and defence of incoming claims.

Private Dwelling – Knightsbridge

Appointed to act as the Contract Administrator for the second phase contract for the conversion of an external terrace to form internal accommodation. The leasehold property was owned by Crown Estates. This was a high end finishes, conservation project on one the most valuable pieces of real estate in London.

Mixed Use Development – East London

Initial involvement was to assist with drawing together a multi-disciplinary team to resist a Local Authority demolition order and establish the vitality for completing this partially progressed mixed use development in compliance with the granted planning consent. Once the building viability had been secured Paul acted as cost consultant for the procurement of a contractor to complete the scheme and to administer the contract through to completion.

Office locations

Our main UK office is in Chesham:

7A Waterside Business Park

Waterside

Chesham

Buckinghamshire

HP5 1PE

Tel: +44 (0)1494 778963

Fax: +44 (0)1494 773484

Email: contact@commercialrisk.management



COMMERCIALRISK

MANAGEMENT