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Mace Construct Ltd v Baltic Investment Holdings Ltd [2026] EWHC 976 (TCC): Derogations Mean Derogations, Once Everyone Agrees They Exist

***Mace Construct Ltd v Baltic Investment Holdings Ltd* [2026] EWHC 976 (TCC)**

Adrian Williamson KC (sitting as a Deputy Judge of the High Court), 28 April 2026

Key Words:

Contractual Interpretation, Design Responsibility, JCT Design and Build Contract, Schedule of Derogations, Extension of Time (EOT), Adjudication, Adjudicator Powers, Scheme for Construction Contracts, Planning Delays, Listed Building Consents, Prospective Assessment, Part 8 Proceedings

Summary

This judgment concerned Part 8 proceedings brought by Mace Construct Limited against Baltic Investment Holdings Limited in relation to the proper construction of an amended JCT Design and Build Contract 2016 for the refurbishment of the Baltic Exchange Building at 38 St Mary Axe, London. [1]–[2]

The background included an adjudication in which an earlier Employer's Agent extension of time of 7 weeks and 5 days, granted on 24 December 2024, had been reviewed and revised to zero by the adjudicator. [3]–[4]

Mace sought seven declarations from the Technology and Construction Court addressing incorporation of tender documents, the extent and timing of design responsibility, planning-related risks, and the powers of an adjudicator or court to revise an extension of time. [7], [10]–[11], [15], [34], [42]

The Court granted declarations 1 and 2, confirming the incorporation of the Tender Clarifications and the Schedule of Derogations. [11]–[14], [53]

The Court also granted declarations 4 and 5, confirming that Mace did not assume design responsibility for the identified Derogation Items either at the date of the Contract or until the design solution for those items had been approved and instructed by Baltic. [15], [20]–[27], [33], [53]

Declaration 3 was accepted in substance on the design-responsibility issue, but the Court did not

finally approve its wording. The judge considered that its reference to “consents under clause 2.1.3” risked trespassing into the planning issue and invited counsel to agree revised wording, failing which a short further hearing would be convened. [33], [40]–[41], [54]

The Court refused declaration 6, which sought broad relief concerning planning-delay risk, and declaration 7, which sought to restrict the power of an adjudicator or court to revise an extension of time. [34]–[41], [42]–[52], [53]

Key Themes:

1. *Contractual interpretation is a unitary and iterative exercise, requiring the Contract to be read as a whole and effect to be given to all negotiated provisions, particularly bespoke amendments. [8]–[9]*
2. *Identification of the incorporated Contract Documents was the necessary starting point for determining the parties’ respective rights and obligations. [11]–[14]*
3. *Design responsibility under an amended JCT Design and Build Contract may be qualified and sequenced by a Schedule of Derogations. [17]–[27]*
4. *Standard-form override language will not lightly be construed so as to deprive bespoke negotiated provisions of contractual effect. [28]–[33]*
5. *Planning-related delay risk may be fact-sensitive and governed by express contractual machinery, making broad declaratory relief inappropriate. [35]–[41]*
6. *Paragraph 20 of the Scheme for Construction Contracts empowers an adjudicator to open up, revise and review an Employer’s Agent’s extension of time decision, unless that decision is final and conclusive. [49]–[52]*

Background

The parties entered into an amended JCT Design and Build Contract 2016 dated 15 December 2023 for the refurbishment of the Baltic Exchange Building. [1]–[2]

The Contract incorporated the Employer’s Requirements and the Contractor’s Proposals. The Contract Documents were listed in a Contract Contents List, which included the JCT Form, an extensive Schedule of Amendments, the Employer’s Requirements, and the Contractor’s Proposals. [2]

The Contractor’s Proposals included, among other documents, “Tender Queries.xls”, “Derogations Final.pdf”, a Contract Sum Analysis, and a programme. The declarations sought by Mace identified the Tender Clarifications as incorporated under item 2.19 of the Employer’s Requirements and the Schedule of Derogations as incorporated under item 3.3 of the Contractor’s Proposals. [2], [11]

On 24 December 2024, the Employer’s Agent granted extensions of time totalling 7 weeks and 5 days in relation to three events. This was on the basis that the delays resulted from changes to the design contained in the Employer’s Requirements and/or the need to obtain further planning approvals and listed building consents, none of which was then held to be within Mace’s contractual responsibility. [3]

Baltic challenged the grant of extensions of time in adjudication. The adjudicator concluded that the extension granted on 24 December 2024 was not binding on him and reviewed and revised it to zero. [4]

Mace did not agree with a substantial part of the adjudicator’s reasoning, legally or factually, but confined the Part 8 proceedings to requests for declaratory relief on issues of contractual construction. [5]–[6]

Legal Issues and Analysis

Incorporation of Documents (Declarations 1 and 2)

1. Mace sought declarations confirming that the Tender Clarifications and the Schedule of Derogations were incorporated into and formed part of the Contract. [10]–[11]
2. By the time of the hearing, it was common ground that both documents had been incorporated, notwithstanding that Baltic had maintained during the adjudication that the Schedule of Derogations was not incorporated. [12]–[13]
3. Baltic resisted the declarations as unnecessary, but the Court rejected that objection. The judge held that determining which documents formed part of the Contract was the obvious starting point for construing the parties' rights. [13]
4. Declarations 1 and 2 were therefore granted. [14], [53]

Design Responsibility and the Schedule of Derogations (Declarations 3, 4 and 5)

1. The Court accepted that, in general terms, Mace had design responsibility under the Contract. Article 1 and Condition 2.1 required Mace to carry out and complete the design of the Works, while Condition 2.17 confirmed and warranted that Mace was responsible for the entire design of the Works. [15]–[17]
2. However, the Court also accepted that the Schedule of Derogations qualified and sequenced Mace's design responsibility for the identified Derogation Items. [20]–[27]
3. The Schedule stated that Mace was unable to take design responsibility, and associated risk of discrepancies, inconsistencies and inadequacies, for the listed items until the initial design development period was complete. It further stated that once the derogations had been concluded, approval from all parties obtained, and formal instruction received, Mace would take design responsibility for those items. [20]
4. Baltic argued that Mace bore full and unqualified design responsibility from 2 February 2024. The judge rejected that construction. [21]–[22]
5. The Court held that the parties had intended the derogation process to have real contractual work to do. The design of the listed items was to proceed through a process of development, approval and instruction. Until that process was concluded and a formal instruction issued, Mace did not assume design responsibility for the Derogation Items. [23]–[27]
6. The judge also rejected Baltic's reliance on amended clause 1.3 as overriding the Schedule of Derogations. The Schedule of Derogations did not impermissibly override the JCT Conditions; rather, it explained and supplemented them by clarifying how and when Mace was to perform its design obligations for the relevant items. [28]–[32]
7. The Court therefore preferred Mace's case on the design issues. [33]
8. Declarations 4 and 5 were granted as asked. Declaration 3 was not finally granted in its proposed form. The Court considered that its wording should be refined, particularly because the reference to "consents under clause 2.1.3" risked engaging the planning issue addressed under declaration 6. [33], [53]–[54]

Planning Delay Risk (Declaration 6)

1. Mace sought a declaration that it did not take on risks associated with delays by local authorities in granting planning permissions, approvals and/or consents where those delays were not reasonably foreseeable at the date of the Contract and where Mace had taken all practicable steps to avoid them. [34]

2. The judge described the proposed wording as muddled. In particular, the reference to unforeseeable delays appeared to be based on a misreading of an amendment to clause 2.26.14. [37]
3. More fundamentally, the Court held that planning delay was likely to be highly fact-sensitive. Delay could arise from late applications, inadequate applications, delay by the City of London, or some combination of those causes. [35], [38]
4. The Court also noted that the Contract already contained detailed express provisions dealing with consents, statutory approvals and Relevant Events, including Conditions 2.1.3 and 2.26.13. [36], [39]
5. The wording in the Schedule of Derogations stating that Mace would take design responsibility "excluding planning approval" was described as puzzling. It might assist Mace in some factual situations, but could not be construed in a vacuum. [40]
6. Declaration 6 was therefore refused. [41], [53]

Adjudicator's Power to Revise an Extension of Time (Declaration 7)

1. Mace sought a declaration that an adjudicator and/or court did not have power to fix a completion date earlier than one previously fixed by the Employer's Agent. [42]
2. The Court rejected that argument. [47]–[52]
3. The judge accepted that the exercise under clause 2.25.1 was prospective. The Employer, or Employer's Agent, had to estimate the future effect of Relevant Events on completion. [44]–[46]
4. However, the Court rejected the further submission that an extension of time granted under clause 2.25.1, however incorrect, could not be reviewed by an adjudicator or the court. [47]–[48]
5. Paragraph 20 of the Scheme for Construction Contracts expressly empowers an adjudicator to "open up, revise and review" any decision taken or certificate given by a person referred to in the contract, unless the decision or certificate is final and conclusive. [49]
6. The Court held that this empowered the adjudicator to stand in the shoes of the Employer or Employer's Agent and perform the clause 2.25.1 task. That task remained a prospective assessment by reference to the material available at the relevant time. [50]
7. The judge accepted that this may be difficult in practice, because the adjudicator must travel back to the time at which the notice and particulars were submitted and avoid being improperly influenced by hindsight. But evidential or procedural difficulty did not amount to an absence of jurisdiction or power. [51]
8. Declaration 7 was therefore refused. [52]–[53]

Conclusion

The Court granted declarations 1 and 2, confirming incorporation of the Tender Clarifications and Schedule of Derogations. [14], [53]

The Court granted declarations 4 and 5, confirming that Mace did not take design responsibility for the Derogation Items at the time of the Contract and did not assume such responsibility until the design solution for those items was approved and instructed. [15], [20]–[27], [33], [53]

The Court accepted Mace's position on declaration 3 in substance, but did not finally approve the wording. The parties were invited to agree revised wording, particularly to avoid improper overlap with planning matters. [33], [54]

Declarations 6 and 7 were refused. [41], [52]–[53]

Key Takeaway:

The judgment confirms that carefully negotiated derogations can qualify and limit standard-form design responsibility where they are incorporated and properly construed. [8]–[9], [20]–[33]

At the same time, the Court reaffirmed that adjudicators possess clear statutory authority under paragraph 20 of the Scheme to open up, revise and review extensions of time previously granted by an Employer's Agent, provided they undertake the contractual exercise required by the relevant clause. [49]–[51]

Note on the Difference Between the Court Outcome and the Adjudication

A material reason for the difference between the adjudication and the Part 8 proceedings was that, by the time of the court hearing, incorporation of the Tender Clarifications and Schedule of Derogations was common ground. [12]–[14]

That had not been the position during the adjudication. Baltic had maintained that the Schedule of Derogations was not incorporated, and the adjudicator had extended that argument to the Tender Clarifications. [13]

The Court was therefore deciding the issues on a clarified contractual footing. The judgment should not be read simply as a rebuke of the adjudicator's reasoning process, but as the product of the contractual platform placed before the Court. [5]–[6], [12]–[14], [49]–[51]

Parting Thoughts

The decision in Mace Construct Ltd v Baltic Investment Holdings Ltd [2026] EWHC 976 (TCC) provides a timely reminder that construction contracts are not interpreted by elevating the standard JCT form above the parties' bespoke commercial arrangements. [8]–[9], [28]–[33]

The Court did not approach the JCT terms as a template before which all amendments must defer. Instead, it construed the Contract as a whole, giving meaningful effect to the parties' negotiated derogations where those terms were incorporated and operative. [8]–[9], [23]–[27]

There was, however, an important procedural nuance. By the time of the Part 8 hearing, incorporation of the Tender Clarifications and the Schedule of Derogations was common ground, whereas that issue had been disputed during the adjudication. That difference mattered. The judgment was not merely a rebuke of the adjudicator's reasoning process, but the product of a clarified contractual platform placed before the Technology and Construction Court. [12]–[14]

Once incorporation was accepted, the Court was required to give real effect to the Schedule of Derogations. It was not open to treat those provisions as peripheral or cosmetic. The derogation mechanism had contractual work to do. For the identified items, Mace's design responsibility did not arise simply because the standard design and build provisions were present elsewhere in the Contract. Responsibility arose in the sequenced manner contemplated by the Schedule of Derogations: completion of the derogation process, approval from all parties, and formal instruction. [20]–[27]

That conclusion was both commercially orthodox and legally coherent. A derogation is not an afterthought or explanatory gloss. It is a negotiated qualification of an otherwise wider obligation. The Court's task was to construe the Contract as it stood before it, with the derogations accepted as incorporated. On that basis, amended clause 1.3 did not operate as a mechanism for nullifying bespoke provisions. The special terms had a defined role and the Court permitted them to perform it. [23]–[33]

Mace did not, however, succeed on every issue. The proposed declaration concerning planning delays was refused because it attempted to compress a fact-sensitive allocation of risk into a broad and abstract proposition. The Contract already contained detailed express machinery dealing with consents, statutory approvals and Relevant Events. Whether delay resulted from local authority inaction, late submission, deficient applications, or a combination of causes was a matter of evidence. The Court declined to elevate that contextual assessment into a free-standing declaration. [34]–[41]

Nor did Mace succeed in limiting the adjudicator's powers. The Court confirmed that paragraph 20 of the Scheme for Construction Contracts entitled an adjudicator to open up, revise and review an Employer's Agent's extension of time decision. In doing so, the adjudicator was required to stand in the shoes of the Employer or Employer's Agent and to perform the contractual task mandated by clause 2.25.1: a prospective assessment. That exercise might be practically demanding, particularly where hindsight lurked within the evidential material, but difficulty did not equate to absence of jurisdiction. [42]–[52]

The judgment therefore rests on two concurrent propositions. First, bespoke derogations in a design and build contract can meaningfully qualify design responsibility where they are incorporated and properly construed. Secondly, adjudication remains a robust reviewing mechanism: an Employer's Agent's extension of time assessment is not immunised merely because it was made first. [20]–[33], [49]–[52]

The practical lesson is direct. Where parties negotiate a regime that postpones or qualifies design responsibility until approval and instruction, the Court may well hold them to it. The case also illustrates the importance of identifying precisely what contractual documents and assumptions are before the decision-maker. In Part 8 proceedings, a clarified contractual footing may materially alter the construction exercise. [12]–[14], [20]–[33], [53]–[54]

#ConstructionLaw #ContractInterpretation #DesignResponsibility #JCTContracts #ExtensionOfTime #Adjudication #TCC #ConstructionDisputes #MaceVBaltic #LegalJudgment #ScheduleOfDerogations #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Contractual Interpretation: Reading the Contract as a Whole and Giving Effect to Bespoke Provisions

1. ***Wood v Capita Insurance Services Ltd*** [2017] UKSC 24 *— Relied upon for the principle that contractual interpretation is a unitary and iterative process requiring the court to ascertain the objective meaning of the language used by construing the contract as a whole. [8]*
2. ***Dwr Cymru Cyfyngedig v Corus UK Ltd*** [2007] EWCA Civ 285 *— Cited for the presumption that parties who include provisions in a formal written agreement intend those provisions to have legal effect. [8]*
3. ***PBS Energo AS v Bester Generation UK Ltd*** [2020] EWHC 223 (TCC) *— Cited as authority that incorporated provisions are presumed to have been deliberately included to affect contractual rights and obligations. [8]*

Interplay Between Standard Form Terms and Bespoke Amendments

1. ***Keating on Construction Contracts (12th ed)*** *– The Court referred to Keating's discussion of authorities addressing standard-form "override" wording and the courts' reluctance to construe such wording so as to render bespoke contractual provisions inoperative. [29]*

Prospective and Retrospective Extension of Time Assessment

1. ***Walter Lilly & Co Ltd v Dmw Developments Ltd*** [2008] EWHC 3139 (TCC) *— Cited in the context of extension of time assessment and the distinction between prospective and retrospective approaches to delay analysis. [46]*

Principles Governing the Construction of Complex Construction Contracts

1. ***(Implicit judicial synthesis rather than a single authority)***
   Although not tied to a single named case, the court relied on a well-established line of authorities establishing that construction contracts—particularly those with extensive bespoke amendments—must be construed so as to give ***coherent commercial meaning*** *to negotiated derogations and to avoid an outcome where standard terms arbitrarily override specific commercial allocations of risk. [8–9,22–33]*

Legislation:

Statutory Adjudication: Powers of Review and Jurisdiction

Scheme for Construction Contracts (England and Wales) Regulations 1998 *(as amended) — The Scheme was identified as applying to the Contract by common ground between the parties and formed the statutory basis for the adjudicator's jurisdiction. [49]*

Paragraph 20 of the Scheme was relied upon as conferring power on an adjudicator to "open up, revise and review" any decision or certificate given by a person under the contract unless that decision or certificate was expressed to be final and conclusive. [49]

The Court relied on paragraph 20 to conclude that an adjudicator was entitled to review and revise an extension of time previously granted by the Employer's Agent. [49–52]

The Scheme was treated as requiring the adjudicator, when exercising that power, to stand in the shoes of the Employer or Employer's Agent and to carry out the contractual task entrusted to that role. [50]

The Court relied on the Scheme to reject the argument that an extension of time granted under clause 2.25.1 was immune from review by an adjudicator or the court. [47–50]

The Court accepted that the Scheme required the adjudicator's review to follow the contractual methodology, namely a prospective assessment, but held that evidential difficulty in doing so did not amount to a lack of statutory power. [50–51]

Summary of Legislative Emphasis

The only statute or regulation expressly identified and relied upon within the judgment was the ***Scheme for Construction Contracts (England and Wales) Regulations 1998*** *and it occupied a* ***central position*** *in the Court's reasoning on the adjudicator's powers. [49–52]*

No other statutes or regulations were cited or applied within the judgment.

Legal Texts & Commentary:

Contractual Interpretation: Construing the Contract as a Whole and Giving Effect to Bespoke Provisions

Lewison, Interpretation of Contracts, 8th edition *— The Court relied on Sir Kim Lewison's text as authoritative commentary for the principle that a contract must be interpreted as a whole and that each part of the document is presumed to have been deliberately included to have effect in relation to the other parts. [8–9]*

The text was expressly relied upon to support the approach that courts should seek to give effect to all contractual provisions, and avoid constructions that render negotiated terms inoperative or surplus. [8–9]

Lewison's discussion was used to reinforce the presumption that bespoke provisions, once incorporated, must be accorded real contractual effect when construing the parties' rights and obligations. [9]

Standard Form Contracts and Bespoke Amendments

Keating on Construction Contracts, 12th edition *— The Court relied on Keating on Construction Contracts for commentary on how courts have historically approached standard-form contractual provisions which purport to override or modify other contract documents. [29]*

The text was cited to support the proposition that, notwithstanding "override" wording in standard forms, courts have generally sought to construe contracts so as to give effect to the entirety of the contractual documentation, including bespoke amendments and schedules. [29]

The Court used Keating's analysis as a sense check against interpretations that would allow standard form provisions to negate carefully negotiated special terms. [29–30]

Extension of Time: Prospective and Retrospective Assessment

Keating on Construction Contracts, 12th edition — The Court relied on a further passage from Keating on Construction Contracts addressing the distinction between prospective and retrospective assessment of extensions of time. [46]

This commentary was used to explain the conceptual difficulties inherent in assessing delay long after the relevant events, while recognising that standard forms require prospective assessments during the life of the works and permit review at completion. [46]

The text informed the Court's analysis of how an adjudicator, when reviewing an extension of time, must nonetheless perform the contractual exercise prospectively, notwithstanding the availability of hindsight. [46,50–51]

Lexicographical Commentary (Limited Use)

Oxford English Dictionary (OED) — *The Court made limited use of the OED to explain the ordinary meaning of the term "derogation," in order to illuminate the commercial purpose of a Schedule of Derogations within the Contract. [23,30]*

The definition was used as contextual support for the conclusion that the derogations were intended to qualify and limit Mace's obligations rather than to be merely descriptive or decorative. [23]

Summary of Commentary Emphasis *— The primary legal texts relied upon by the Court were* ***Lewison on Contracts*** *and* ***Keating on Construction Contracts****, both of which played a substantial role in shaping the Court's interpretative approach and its treatment of bespoke contractual provisions. [8–9,29–30,46]*

Lexicographical material was used only as ancillary context and did not form part of the core legal reasoning. [23,30]

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