

WHAT TO DO IF YOUR BUILDER GOES BUST

By **Graham Kinnear**

The number of construction firms becoming insolvent is increasing. **4,378 firms ceased trading in 2023, a figure 36% higher than 2019.**

There are many reasons why, whether it is being contractually bound to deliver fixed-price contracts when material and labour rates have risen or the increased cost of finance.

As a property investor you will invariably engage builders and you must try to ensure they do not go bust whilst working on your project.

So this month we look at some tips to try and minimise the risk of you falling foul to this scenario and what steps you could take if the worse does happen.

- 1) Select your builder carefully.** Sadly, a private members bill in 2021 failed in its effort to introduce compulsory licensing for builders, and so you have to do the due diligence yourself. Ask for recommendations from friends and it is perhaps wise to pick a firm who has been established for a number of years and perhaps one which survived the 2008 downturn. Ensure any recommendations you receive are from those who have had similar work undertaken. It will be of no comfort to consider a firm for a new-build housing scheme when the job they did for your friend was changing a kitchen tap. You need to ensure your contractor has the necessary competence and experience.
- 2) Be aware of firms that ask for significant sums upfront** or those who are significantly cheaper than other quotes.
- 3) Ask questions about their other jobs** to establish how overstretched they are. Ensure they agree that payments be made in stages as the work progresses. Ensure they are happy for a retention to the contract to cover any defects at the end of the build programme.

- 4) If your contractor operates as a limited company,** check the Companies House website and look at their accounts. A positive cash in bank figure could be reassuring.
- 5) An insurance-backed guarantee** to cover against their insolvency would be the ideal position. This will make their quote a little higher but will give you peace of mind that the project can get finished even if the worst happens.

If you are told that your building firm has gone out of business, the best advice I can give you is to act quickly. My tips to minimise the issues you face are as follows:

- 1) Check your contractual position.** If your contract is with a limited company, check on the Companies House website. If your builder is a sole trader then you can check on the Insolvency Register. If the builder has gone out of business, get the name and address of the insolvency practitioner and the official receiver who are settling the builder's debts.
- 2) Secure your site immediately** and change any locks to avoid issues with suppliers who may seek to remove materials from the site if their invoices have not been settled by your builder. Do not allow materials to be removed until your legal position has been clarified.
- 3) Contact trades and subcontractors.** This could pay dividends to avoid a cement lorry turning up if the builder left before digging a foundation. Be open and honest with the supply chain – it may be that you employ some of them directly to progress with your site.
- 4) Ensure that you secure any paperwork** such as wiring diagrams, compliance certificates and the like. This should demonstrate what has been undertaken and make it easier for a new tradesperson to pick up where your builder left off.



- 5) Reclaim payments for work not undertaken.** If you made staged payments only for works which have been completed you can relax. If you have forward-funded the project then you should try and recover some of that money. Contact the receiver or insolvency practitioner and state your claim. If you are owed more than £1,000 you will likely have to produce a formal statement of debt. Do this as soon as you are able to. If you paid by credit card then you can ask the finance company to return the money using Section 75 of the 1974 Consumer Credit Act.

My advice throughout this process is to not panic, and this applies when you are sourcing a replacement builder. Don't pick the first you find and explore whether the trades who have been working on your site may work for you directly. Before doing so, ensure you have properly terminated the original building contract. The fact that a builder is insolvent may not automatically end the contract and the last thing you want is to be sued for a breach of contract!

As always, I am happy to assist YPN readers and can be contacted on 01863 583000 or graham@grahamkinnear.com

