

Building Control Alliance

Policy Note 2



Commencement within the '5 day Period'

(amended March 2011 in reference to 2010 Building Regulations)

We would recommend that all BCBs accept and adopt this policy note as commonly held policy.

This policy does not affect the rights of any Local Authority to discharge its powers in an alternative way if it feels that the individual case merits more flexibility but such a decision can not be held by any Approved Inspector as applicable in any case other than the one in question.

There are two aspects to this policy:

- Whether work can start within the 5 day period without affecting the validity of the Initial Notice.
- Whether an initial Notice can be submitted for parts of the work not yet commenced but clearly inseparable parts of the same project.

It can be argued (and often is) that an Initial Notice is either valid or not at the time of deposit and can not be legally affected by actions that occur afterward, even within the 5 day period.

It is clear however that the Approved Inspectors official role, and the suspension of the Local Authorities general enforcement powers does not occur "until the Initial Notice becomes in force"

Building Act

Section 47 (4)

An initial notice—

(a) comes into force when it is accepted by the local authority, either by notice given within the prescribed period to each of the persons by whom it was given or by virtue of subsection (3) above
...

Section 47 (3)

Unless, within the prescribed period, the local authority to whom an initial notice is given give notice of rejection, specifying the ground or grounds in question, to each of the persons by whom the initial notice was give, the authority is conclusively presumed to have accepted the initial notice...

Therefore if an Initial Notice cannot be invalidated but is also not in force the work must be 'unauthorised'. Whatever ones view as to the issue of status of the Initial Notice it must be accepted by any right thinking professional that to be engaged in any unauthorised work serves no-one especially our clients any good. It is with this in mind and it is to this 'grey area' that we issue this policy as official Building Control Alliance policy and guidance to both Building Control Bodies.

We note further that in the case of appeal against refusal to accept an initial Notice and Plans Certificate (Butler and Young vs. Bedford) the judge gave a view on this issue. Note references to Building Regulations are in relation to those that were in force at the time i.e, The Building Regulations 2000. Regulation 20 from 2000 is now Regulation 19 in the 2010 version and Regulation 15 is now Regulation 16.

35. Before finally deciding on the issue, I should just note as Mr Bhoose asked me to, the general requirement which is that works which are subject to the Building Act 1984 should not be commenced unless either notice has been given to the local authority in accordance with the provisions of Part I of the Act, if the local authority is to be the supervising body, or the matter has been made the subject of an initial notice, if the private sector is to be employed.

36. In either case the local authority will have been notified and will have been required to give its approval to either the commencement of the works or to the initial notice. If that is not done, the works are not lawfully commenced. That is made clear from, in particular, regulation 15 of the Building Regulations which provides:

"(1) A person who proposes to carry out building work shall not commence that work unless-

"(a) he has given the local authority notice that he intends to commence work; and

"(b) at least two days have elapsed since the end of the day on which he gave the notice."

Then, in the same regulations, in Part VI it is provided by regulation 20 that regulation 15 and some other regulations shall not apply in respect of any work specified in an initial notice which is in force.

It is, as I say, common ground that, in those circumstances, this work was unlawfully commenced.

We therefore put forward that in the interests of all concerned that work should not be started until written (including e-mail) confirmation of the acceptance of the Initial Notice being in force is given or the 5 day period has expired without notification of acceptance and therefore acceptance by default exists.

It is entirely right for the LA to take commencement within this period as unauthorised work and subject to enforcement and therefore it should be every Approved Inspectors duty to advise clients that work commenced before formal written acceptance is received (or default acceptance happens) is unacceptable.

It should be strongly noted at this point that the Building Control Alliance is NOT suggesting that any Local Authority should purposefully hold back acceptance until the very end of the 5 day period if they are able to issue acceptance sooner NOR that they should adopt a policy of checking the site of every Initial Notice where they do not have such a policy in relation to the validity of Full Plans applications.

The panel have also discussed the matter of whether Initial Notices can be served for parts of the same project yet to be carried out after work has started on other parts.

It is again a commonly debated matter that having started on foundations before an Initial notice is served (or now within the 5 day period) that an Initial Notice can be served for the remainder of the work excluding the foundations.

The panel feel that this cannot be right for the purposes of clarity of responsibility and for the Local Authority to properly deal with the issue of the unauthorised part of the works.

The Building Control Alliance policy therefore is that if works commence on a particular building before either an Initial Notice is deposited or becomes "in force" then another Initial Notice will not be acceptable for the remainder of the inseparable works on the same building shell. It is perfectly acceptable for the developer to adopt a shell and fitout approach to the project (even if they were not originally intending to do so) whereby control of the envelope is continued by the Local Authority under the regularisation approach but then the remainder of the fitout works is carried out under an Initial Notice.

In such a case the Approved Inspector and the Local Authority should work in close co-operation in matters such as access, fire, energy conservation etc which have elements for consideration in both shell and fitout phases. This is no different to an 'intentional' shell and fitout project and as described in the Approved Documents to Part L.

It should be noted that this approach does not mean that one house started on a residential development invalidates the entire development as it applies to separate buildings only and it does not prevent 'parcelled' projects being subject to further Initial Notices where one element has started (examples would be; "Kitchen extension and Loft Conversion", "Internal alterations to Ground, First and Third Floors" etc).