

Building Control Alliance

Mediation Case

Rejection of Final Certificate by a local authority for works covered by an Initial Notice



The Case

An approved inspector submitted an Initial Notice on 8 October 2015 for works involving the fit-out of a light industrial unit for use as a trade counter for the sale of tools and equipment which was duly accepted by the local authority. The premises were occupied during October 2015 and were open to the public soon after. On 12 April 2016 the approved inspector issued a Final Certificate for the work some 7 months after the occupation of the building. The Final Certificate was rejected by the local authority on the grounds that the premises in question had been occupied for more than 4 weeks and therefore had lapsed.

A new Initial Notice was submitted by the approved inspector on 9 May 2016 and was deemed to have been accepted by the local authority.

Immediately following the submission of the second Initial Notice an extension of time request was submitted which was subsequently rejected on the grounds that:

1. Insufficient information on the reasons why an extension of time is requested.
2. No details on the length of time requested.
3. No confirmation of your client's agreement for an extension of time.

On 1 June 2016 a Final Certificate was issued and was subsequently rejected by the Local Authority once again on the grounds that the premises had been occupied for 4 weeks (the rejection letter actually states 8 weeks).

At this point the approved inspector decided to approach the BCA to mediate in this case.

Since the submission of the mediation application the local authority consulted their legal service and due to the second Final Certificate not containing the offer of grounds for appeal the local authority they spoke to the approved inspector and suggested that a new Final Certificate be submitted. This has subsequently been submitted and accepted by the local authority there by resolving the original complaint.

The local authority has contested that they have followed the requirements within the Building (Approved Inspectors) Regulations 2010 and Welsh Office Circular WGC 009/2015 with the exception of stating the formal grounds on appeal on the rejection of the Final Certificate letter dated 7 June 2016.

Decision

The mediation panel took the view that the local authority had followed the correct procedure set out in the Building (Approved Inspectors) Regulations 2010 although it admitted that the rejection of the Final Certificate should have set out the formal grounds for appeal.

Decision Background

The panel debated the issue and were in agreement that:

- That the approved inspector should have issued a final certificate within 4 weeks of the premises opening and not wait 5 months before doing so. This undoubtedly did not help the process.
- The panel noted that extensions of time are a mechanism whereby a project can be managed in the event of early occupation and if such a project is well “managed” then there is no technical reason to refuse an extension of time even some months after occupation. The approved inspector should have been aware of the occupation of the premises and requested an extension of time at an earlier date.
- The panel considered that the second Initial Notice should not have been submitted as the whole of the work had been carried out, as evidenced by the Final Certificate submitted, and therefore beyond the 4 weeks allowed. Panel members considered that the second Initial Notice should have been returned although this appears to be not strictly in accordance with the advice in the Welsh Office Circular WGC 009/2015.
- In answer to the specific question on the circular panel members suggested that a subsequent Initial notice can be issued where there is still work to be carried out and not just on a lapse of time for a Final Certificate on work that had already been completed.
- Whilst panel members had considered that the local authority had followed the correct process and was not a fault consideration should have been given to major issues created for the building owner by not allowing a final certificate to be issued.

Best Practice Guidance

This case has prompted the panel to give a view as to best practice in this area.

It has been suggested that the Building Control Alliance should assist in this process to hopefully avoid similar issues being raised in the future by the setting up of a working group to look at inconsistencies in the interpretation of current legislation around the issue of Final and Part Final Certificates. In addition, it is felt that the recently issued circular WGC 009/2015 has not exactly helped provided the clarification needed and if fact has added further confusion.

The Building Control Alliance hope to shortly issue a Policy Note for all building control bodies clarifying the issues around the submission and processing of such certificates.