

The Case

An Approved Inspector submitted a part Final Certificate to a local authority on 9 December 2017 together with an amendment Initial Notice. The part Final Certificate was rejected on the grounds that there was no valid Initial Notice submitted by the Approved Inspector for the ongoing works. The amended Initial notice was not accepted on the basis that no valid Initial Notice had been received by the Local Authority.

The Approved Inspector subsequently contended they had submitted an Initial Notice for the same project as that outlined in the above part Final Certificate in December 2015 and due to not receiving any confirmation of receipt or acceptance considered it had been approved.

It would appear that another Approved Inspector had submitted an Initial Notice to the local authority for the same works, earlier on 5 June 2015, which had been accepted as valid. Work subsequently commenced on site on 24 September 2016 and has been ongoing since that time.

In February 2018 the Approved Inspector responsible for submitting the first initial notice in June 2015 submitted correspondence to the local authority to cancel this notice on the grounds that "their client informs them the works are no longer going to proceed". Subsequently, the first Approved Inspector withdrew this Initial Notice on the basis they no longer had any involvement with the works.

The local authority has now proceeded to treat the works in contravention of Building Regulation legislation and suggested the applicant should submit a Regularisation application in order to rectify the situation.

The second Approved Inspector has now requested that the local authority to enter into a mediation process as they consider their Initial Notice submitted on 26 February 2018 and their part Final Certificate dated 9 December 2017 should not have been rejected

Decision

The mediation panel took the view that the local authorities actions regarding the rejection of the Part Final Certificate and refusal to accept a subsequently submitted Initial Notice were correct when referring to the submitted information from both the Approved Inspector and Local Authority in support of this case.

Decision Background

The panel debated the issues and considered that there were questions arising in this case in respect of communication by both parties.

In considering this case it was noted that both parties requested panel members to mediate on only the following issues:

- Rejection (on the 12 December 2017) of Initial Notice dated 23 December 2015 – *in fact the Initial Notice was reportedly never received and therefore no rejection was issued by the local authority.*
- Rejection (on the 12 December 2017) of Amendment Notice and Part Final Certificate dated 9 December 2017 – *The Local Authority really had no alternative to reject both the Amendment and Part Final Certificate as with the latter, under para 3 of schedule 4 of the AI regs “no initial notice was in force with respect to the work described in the certificate at the time the certificate was given”.*
- Rejection (on the 27 February 2018) of Initial Notice dated 26 February 2018 – *The local authority actions were correct as work had already commenced on site and no valid Initial Notice was in force at that time.*

Therefore, the panel consider the local authority were correct in their subsequent actions as set out the above bullet points.

However, the real issue with regard to this case revolves around the submission of the Initial Notice way back in December 2015 and it is considered both parties are at fault here:

Firstly, if the local authority automatically sent out a confirmation email, as soon as possible following the receipt of all Initial Notices (as required under para 6.1 of the Initial Notice protocol) the approved inspector would have known their Initial Notice had not been received. Secondly, the approved inspector should have contacted the local authority if they had not heard within 48 hours of submission of the IN to establish receipt. Both of the above actions should be included within the procedures of both the approved Inspector and local authority, if they are not already, in order to avoid a repeat of this situation.

The panel would like to remind the local authority that in accordance with Schedule 2 of the Approved Inspector Regulations 2010, regarding earlier notices, the local authority can accept an Initial Notice providing *“the notice is accompanied by an undertaking by the approved inspector who gave an earlier notice to the effect that the approved inspector will cancel that notice as soon as the initial notice under consideration is accepted”*. Within the local authority submission, they state that even if the Initial Notice from the second approved inspector had been received it would have been rejected as an earlier notice had been received. However, it should be pointed out that would not be the case if the above undertaking had been provided at that time.

I would also remind the local authority of Paragraph 6.4 of the Initial Notice Protocol which states *“If grounds for rejection exist,” the Local Authority will, if reasonably practicable, discuss any errors or omissions with the Approved Inspector, by telephone, fax or email to allow for additional information to be provided within the prescribed period.”* It would appear that in this instance there had been a breakdown in communications from both parties involved.

This situation could quite easily have been avoided had both parties complied fully with requirements contained within the Approved Inspector Regulations 2010 and Initial Notice Protocol.

Finally, the panel consider, in view of the lack of a valid Initial Notice, the only option available is for the local authority to treat the works in contravention of Building Control legislation with the submission of a regularisation application to rectify the current situation.