

Building Control Alliance

Mediation Case 02/2016

Work Starting Within 5 Day Period - Rejection

The Case

This case involves a project where an Initial Notice was submitted before work started but the work then started before the Initial Notice came into force. The Local Authority then rejected (according to the AI) the Initial Notice and required the owner to follow the Local Authority route.

The AI has applied for mediation unilaterally on the basis that the Initial Notice is valid as when it was submitted the work had not started and as “work starting” is not one of the prescribed grounds for rejection the rejection is invalid.

At this point we must refer to a previous case where this point was discussed and the BCA has issued a policy note which states our position on this matter.

Our stated policy is that whether the IN is valid or otherwise in this situation is indeed a grey area. Some argue that the Initial Notice is a ‘moment in time’ process and others state that the process is a five day validation/approval process. The Judge in the Bedford vs Butler and Young case intimated that he had sympathy with the latter thoughts although this was not fully debated enough to give a firm view.

BCA has previously discussed this and agreed that this is a question that can only be properly decided by the Courts.

What is not in doubt however is the fact that work starting within the 5 day period is ‘unauthorised’ as the requirement for “intention to build” notification to the Local Authority is not at that time suspended – that only happens when the IN becomes “in force” - and the work is proceeding without such notification.

Our policy states that a responsible Approved Inspector would be expected to advise their potential client that such actions are not permissible in statute and either encourage their client to stay within the law by either waiting for the Initial Notice to become ‘in force’ or accepting instructions from the Local Authority.

Decision

The BCA sees no reason to change its previous stance on this matter.

The relevant BCA Policy Note is attached.