

# Building Control Alliance

## Policy Note 1

### Commencement of Work

April 2010



#### 1 Background

The case of Bedford vs Butler and Young decided that that an Initial Notice could not be validly given if the work to which that Initial Notice related had been substantially commenced. That ruling has been accepted by all parties and is based on the fact that an Initial Notice has to be submitted jointly by the Approved Inspector and the person who “intends to carry out the work”. If the work has commenced then “intention” has passed.

There are further issues to be investigated in regard to ‘late’ initial notices either by general guidance from BCA, formal arbitration or by reference to the courts including for instance, the validity of Initial Notices for parts of the building work and the matter of Local Authority discretion.

This report however aims to concentrate on a question raised within and after the “Bedford” case and that is the definition of “substantially commenced”.

#### 2 Status of agreement

The BCA is a joint initiative between all of the organisations representing Building Control organisations and practitioners.

The CLG has welcomed the BCA intent to give a view on this matter and has stated that it will give credence to a jointly agreed stance.

It is recognised that the area will remain ‘grey’ in many people’s minds and that individuals may well be convinced that a different view is valid. It is suggested that given the joint nature of this point of view and the CLG backing that it will be accepted as a ‘learned view’ and adopted by all relevant parties.

It is the duty and responsibility of the Local Authority to apply statute in a fair and impartial manner especially in view of the implications of financial benefit to themselves. In any area of doubt the Local Authority should respect the wishes of the owner/developer with regard to their right to choice of building control service and should not frustrate that right in their application of the statute. The same flexibility of approach should be adopted in regard to the resolution of difficulties arising from late submission of Initial Notices as would be shown in the case of late Full Plans. Equally the Approved Inspector should be honest and open with their client about the legal status of the projects that have started before submission of the Initial Notice and if the work falls into



the category of 'commenced' suggested in this report should not seek to complain about the actions of the Council on grounds of interpretation.

### **3 Existing references**

It is common now for amendments to the Building Regulations to contain transitional provisions relating to their implementation. These have recently concentrated on whether the work has received "full unconditional approval" or has "commenced on site".

The changes to Part M in 2004 contained the following guidance:

#### **3.1 Start of work**

- Excavation for strip or trench foundations or for pad footings;
- Digging out and preparation of ground for raft foundations;
- Vibroflotation (stone columns) piling, boring for piles or pile driving.

#### **3.2 Not start of work**

- Removal of vegetation
- Removal of topsoil
- Removal or treatment of contaminated soil
- Excavation of trial holes
- Dynamic compaction
- General site servicing works (e.g. roadways and drainage)

The rationale behind the above definitions is interesting. It is that the former operations could attract Building Regulation related action if carried out in isolation whereas the latter would not, although information as to the results of these operations would be of interest at the relevant time to the building control body dealing with a proposed building on the site.

The pertinent question seems to be as to whether the actual works carried out at any particular stage are controlled works in themselves? If they happen in isolation would they attract a need for a Building Control 'application'? In the case of all of the bullet points in the "not start of work" category the answer is "no".

Hence the CLG inclusion of these works in the 'not commenced' category.

The bullet points above are useful for new buildings on currently vacant sites but are of no help for works on sites with demolition needed or for alterations to existing buildings. We can however extend the rationale to work on existing buildings and Section 5 below seeks to offer advice on this basis.

#### **4 Inclusion of work in description given in initial notice does not change law**

“Bedford” referred to work as described in the IN being the work which must be judged as being commenced or not. It should not be a problem to agree that this part of the argument is flawed as merely because something is mentioned in the Initial Notice, especially if included in the interests of clarification, it does not become “Building Work” as defined in Building Regulation 3.

It is suggested that “Building Work” in regulation 3 is the existing and clear definition of what work is and isn’t controlled under Building Regulations.

#### **5 Internal works**

There are particular difficulties being faced in defining work start in the case of internal works. A common operation is a shop fit out. It has been variously argued that commencement can take the form of the contractor turning up on site through to the first positive building work being carried out e.g. erection of partitions or laying of drainage.

Most agree that contractors turning up on site is not a controllable activity and it is unreasonable to classify that as “commencement” under the Building Regulations. A reinforcement of this view is the fact that enforcement action could not be taken for failure to notify the Local Authority of commencement in regard to this ‘stage’ of work.

There is a strong view that first positive building work i.e. “commencement” under Building Regulations can be a later stage than general contractual “commencement” of the project in some circumstances especially in the case of stripping out/preparatory work.

It would also seem to be a credible view that although stripping out is often not regarded as “commencement”, some stripping out of certain features in certain situations certainly could be classified as controllable operations.

Referring again to the CLG stance we can apply the same logic.

If we ask the question; is it controlled work to strip out a sprinkler system in a unit in an occupied, smoke control engineered shopping centre? Would that action in itself be controlled under Building Regulations? The answer is yes, action could obviously be taken under Building Regulations as an unauthorised “material alteration” and therefore it would be classed as controllable work.

Take the same operation in a single storey high street building where the sprinkler system was not a building regulation requirement. This clearly could not be classified as controllable work as no action could be taken if it were carried out alone. This is therefore not controllable work.

There is a further debate about how we would know whether this particular sprinkler was a requirement of Building Regulations due to poor records but that is for another paper. In this paper we merely suggest that in areas of doubt consultation needs to be taken between the AI and the LA.

It is suggested therefore that the stripping out of fire safety facilities in units whose fire performance could affect others within the same building or complex should be considered commencement unless proved non controllable by reference to specific records. In reality it would be thought that it is easier to ensure submission of an IN than to research this issue thoroughly before physical (rather than controllable) project commencement.

In regards to structural alterations, work must be regarded as started if any structural element is removed but removal of non structural elements (door architraves etc) attached to a structural element are not controlled work. Removal of a non structural wall would be controllable in instances where the wall contributes to fire safety of the building e.g. around a protected shaft or providing a protected route to alternative means of escape.

In the case of removal of Sound or Thermal insulating materials or thermal elements the judgement as to whether removal of these individual elements constitutes "commencement" needs to be considered.

Sound insulation if it has external implications would probably attract 'enforcement', removal of thermal insulation in an unoccupied building would not however in an occupied building it obviously would.

So where the work operation affects (or could affect) others within the building or attached buildings the situation can be classified as controllable or (equally pertinent) possibly controllable and therefore the situation is clear.

What about totally internal issues?

It is suggested that in these cases stripping out is less of a problem. For instance, removing a staircase in an unoccupied building would generally be difficult to classify as a controlled operation, whereas laying the drainage for a new toilet, would.

There are of course other legislative regimes where control of occupation of unsatisfactory buildings can be exercised such as the Fire Safety Order and Environmental Health legislation.

## **6. Conclusion**

Start of work should be regarded as the point at which the project requires building control input and without such would be a case for enforcement.

In order to avoid doubt the Initial Notice should be submitted before any stripping out of fire safety related fittings in any building and other controlled fittings in an occupied building.