FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/BTD/2025/0003**
Property	**:**	**Flat A, 56, Chepstow Villas, London, W11 2QX**
Applicant	**:**	**Integral Building Control Solutions Limited**
Representative	**:**	**Mr Benjamin Whittingham of Counsel instructed by Chadwick Lawerence LLP**
Respondent	**:**	**Royal Borough of Kensington and Chelsea (**Reference No: IN/25/17074)
Representative	**:**	**Mr Douglas Edwards KC of Counsel instructed by the Respondent's Legal Department**
Type of application	**:**	**An application under section 55(1) of the Building Act 1984**
Tribunal members	**:**	**Judge N Hawkes** **Mr S Mason BSc FRICS**
Venue and date of hearing and of reconvene	**:**	**10 Alfred Place, London WC1E 7LR on 31 March 2026, with a reconvene on 30 April 2026**
Date of decision	**:**	**3 June 2026**

DECISION

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Decision of the Tribunal

The Tribunal finds that it does not have jurisdiction to determine this application.

The application

1. The Applicant, Integral Building Control Solutions Limited, seeks to appeal to the Tribunal under section 55(1) of the Building Act 1984 ("the 1984 Act").

2. Section 55 of the 1984 Act includes provision that:

   55.— Appeals.

   (1) A person aggrieved by the local authority's rejection of—

   (a) an initial notice, amendment notice or a public body's notice,

   ...

   may appeal to the appropriate court or tribunal.

   (2) On an appeal under subsection (1) above, the court or tribunal shall—

   (a) if it determines that the notice, report or certificate was properly rejected, confirm the rejection, and

   (b) in any other case, give a direction to the local authority to accept the notice, report or certificate.

3. Accordingly, the Applicant may only appeal to this Tribunal under section 55(1) of the 1984 Act if there was an initial notice in existence which the Respondent, the Royal Borough of Kensington and Chelsea, rejected.

4. On 30 June 2025, the Applicant served a notice on the Respondent which the Applicant contends is a valid initial notice ("the Notice"). The Notice was served in respect of *"full structural refurbishment with rear extension, basement alterations, steelwork, new slab, staircases, partitions, bespoke joinery, flooring and complete electrical and plumbing installations to existing domestic dwelling ... "* at Flat A, Chepstow Villas, London W11 2QX ("the Proposed Work").

5. The Respondent's response to the service of the Notice, as set out in a letter dated 4 July 2025, was that the Proposed Work had commenced before the Notice was "in force" and the Respondent was therefore entitled to take enforcement action and ensure that the building work was compliant with the building regulations.

6. The issues in dispute are:

    (i) whether work which was carried out within five days of the submission of the Notice on 30 June 2025 is notifiable building work; and

    (ii) whether the Notice is invalid and of no effect as an initial notice.

<u>The hearing</u>

7. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 31 March 2026 and the Tribunal reconvened, in the absence of the parties, to carry out its decision making on 30 April 2026.

8. The Applicant was represented at the final hearing by Mr Benjamin Whittington of Counsel. Mr Whittington was accompanied by Mr O'Donoghue and Ms Evans of Chadwick Lawrence LLP.

9. The Respondent was represented at the final hearing by Mr Douglas Edwards KC of Counsel. Mr Edwards KC was accompanied by Ms Bowry of the Respondent's Legal Department, the Respondent's witnesses, and three others who were present as part of their work experience or training.

10. The Tribunal heard oral evidence of fact on behalf of the Respondent from:

    (i) Mr Jose Anon, a District Surveyor employed by the Respondent; and

    (ii) Mr Navid Tafaghodi, an Assistant District Surveyor employed by the Respondent.

11. Permission had not been sought for either Mr Anon or Mr Tafaghodi to give expert evidence.

12. At the commencement of the hearing, it was agreed that the witness statement of Mr Gerard Bergin dated 5 September 2025 would be taken into account by the Tribunal as documentary hearsay evidence.

13. Mr Bergin is employed by the Respondent as a Senior Construction Management Officer and the Tribunal was informed that he was unable to attend the hearing to give oral evidence for health reasons. Mr Bergin exhibited photographs to his witness statements which he took when he inspected the Property on 3 June 2025.

Whether work which was carried out within five days of the submission of the Notice on 30 June 2025 is notifiable building work

The submissions

14. Building work that is carried out in England is regulated by the 1984 Act and related secondary legislation, including the Building (Registered Building Control Approvers) Regulations 2024 ("BR 2024") and the Building Regulations 2010 ("BR 2010").

15. Building regulations apply to "building work" and regulation 3 of the BR 2010 provides:

(1) In these Regulations, "building work" means—

(a) the erection or extension of a building;

(b) the provision or extension of a controlled service or fitting in or in connection with a building;

(c) the material alteration of a building, or a controlled service or fitting, as mentioned in paragraph (2);

(d) work required by regulation 6 (requirements relating to material change of use);

(e) the insertion of insulating material into the cavity wall of a building;

(f) work involving the underpinning of a building;

(g) work required by regulation 22 (requirements relating to a change of energy status);

(h) work required by regulation 23 (requirements relating to thermal elements);

(i) work required by regulation 28 (consequential improvements to energy performance).

(2) An alteration is material for the purposes of these Regulations if the work, or any part of it, would at any stage result-

(a) in a building or controlled service or fitting not complying with a relevant requirement where previously it did; or

(b) in a building or controlled service or fitting which before the work commenced did not comply with a relevant requirement, being more unsatisfactory in relation to such a requirement.

16. It is the Respondent's case that the work which was carried out within five days of the submission of the Notice on 30 June 2025 included the removal of walls at basement level, the removal of ceilings back to and exposing floor joists, and the removal of render and plaster wall coverings back to brickwork, and that this is a *"material alteration"*.

17. The Applicant's case is that the work which was undertaken was preparatory and that it consisted of removing superficial elements so that they might then be replaced. The Applicant contends that simply removing an element is not a material alteration, and so the work which was undertaken was not notifiable.

18. The Applicant states that regulation 4(1) BR 2010 provides the context in which Regulation 3 must be read and establishes that the standards for building work to meet are those set out in Schedule 1 BR 2010.

19. Regulation 4(4) BR 2010 includes provision (the Applicant's emphasis supplied) that *"building work shall be carried out so that, <u>after it is completed</u> — (a) any building which is extended or to which a material alteration is made … complies with the applicable requirements in Schedule 1 or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out."*

20. The Applicant submits that what matters for the purposes of the building regulation regime is that, upon completion, work is compliant and that this is the context in which the concept of material alteration is defined in Regulation 3 BR 2010.

21. The Applicant contends that "work" is the act of replacing what has been removed in preparation for the building project, or the addition to the structure or fabric of the building in line with the description of the project. It is not so broadly defined as to include anything which might be removed. Its meaning does not correspond with the everyday meaning; it is a term of art.

22. The Applicant states that the Respondent is incorrect to assert that "work" includes the removal of an element. When read alongside

Regulation 4, “the work” referred to in Regulation 3 BR 2010 can only be a reference to the progression of the project to which the initial notice relates, not the preparatory steps taken in order to begin progressing the project.

23. Regulation 4(1) is clear that the completed work must comply with building regulations. If work is so broadly defined as to include removing elements, then upon completion of the act of removal of a given element, the relevant part of the building’s fabric or structure must be compliant with building regulations. It is impossible for a given part of a building’s fabric to comply with building regulations if it is no longer there, which suggests that work can only include the performance of some act which, upon completion, is capable of meeting the requirements found in Schedule 1 BR 2010.

24. In support of this contention, the Applicant referred the Tribunal to Schedule 4 BR 2010 which sets out work which is automatically exempted from requiring building regulation approval. The Applicant states that all of these types of work are works of replacement or addition, the implication being that acts of removal (even if done to then replace a given element) do not engage the building regulations and so do not need to be specifically exempted from a requirement for the work to be supervised by either the local authority or a registered building control approver.

25. The Applicant also referred the Tribunal to the *Circular letter: changes to the building control process* issued by the Department for Levelling Up, Housing and Communities on 28th March 2024. This circular states: *“The regulations do not prescribe what constitutes starting work, but we expect starting work to consist of the undertaking of any element of permanent notifiable building work as described in the applicant’s application or initial notice.”*

26. The Applicant submits that the reference to permanent work emphasises that notifiable work is work of addition or replacement as described in the initial notice, not in the preparatory work necessary before that work of addition can begin. The Applicant states that the suggestion that the regulations do not provide a definition of starting work also undercuts the Respondent’s interpretation of Regulation 3 BR 2010. That is because the Respondent asserts that the removal of an element prior to its replacement under the project is work and, if that were the case, the regulations would then provide a definition for starting work because action of that type would amount to starting work.

27. The Respondent’s submissions are as follows. There is no case law which defines *“building work”* or *“material alteration”* under the Building Regulations. However, a House of Commons Library Research Briefing paper of 8 July 2024 entitled *'Building Regulations and Safety'*

described *"material alteration"* at para. 1.1 as *"undertaking work that will affect the structure, fire safety or access of a building"*.

28. Regulation 3 provides that an alteration is material if *"at any stage"* of the building works the alteration would result in the building complying with a relevant requirement or being more unsatisfactory. The House of Commons Library Research paper noted that the *"Building regulations apply at the time when building work is taking place, that is, when a new building is constructed or when certain changes are made to an existing building"*.

29. The Respondent contends that it follows that *"building work"* and *"material alteration"*, as those terms are used in regulation 3 of the BR 2010, comprise the totality of the works and not just the completed works. *"Building work"* comprises the whole process or operation and, as a matter of statutory construction, would include the physical works taken to remove the fabric of an existing building as a precursor to new elements of constriction. Thus, if during the course of those works a *"material alteration"* occurs, even though a further alteration may be intended to follow before the works are completed, this would amount to a *"building work"*. The Respondent argues that the use of the term *"at any stage"* within regulation 3(2) makes that clear.

30. The Respondent referred the Tribunal to the Government's 'Manual to the Building Regulations: A Code of Practice for Use in England' dated 20 July 2020 which describes *"building work"* as generally including *"building new buildings, making buildings bigger, altering buildings and changing what they are used for (...) Renovation of 'thermal elements' is also building work. This includes roofs or external walls"*. It further notes at Al9 that *"Building control bodies commonly ask for building control approval for structural works, such as chimney breast removal or structural alterations."*

31. In response to the Applicant's reliance upon regulation 4 BR 2010 to argue that the assessment of whether there has been a *"material alteration"* can only occur after the building work has been completed, the Respondent states:

a) Regulations 3 and 4 concern separate matters. Regulation 4(3) ensures that the building complies with the minimum standards once it has been completed. On the other hand, regulation 3 governs the building works themselves, and defines a *"material alteration"* as work that *"at any stage"* would result in the building no longer being compliant with relevant requirements.

b) There is no reason to depart from Parliament's clear use of ordinary language in Regulation 3. If the Applicant's interpretation was correct, the inclusion of the statutory language which defines an alteration as material if *"at any stage"* it would render the building less compliant,

would serve no purpose at all. Had Parliament intended that an alteration would only be assessed as material at the end or the "notional" end, Parliament would not have included the phrase *"at any stage"*.

c) Further, the Applicant's interpretation suggests that the Building Regulations are not concerned with whether the works themselves are carried out in a safe manner, but rather all that matters is the end result. The risk inherent in such an approach is referred to by Mr Nafaghodi at paragraph 14 of his Witness Statement. He notes in this case that the internal wall of the building may have, over its life, become load bearing, and that it would have been best practice for an engineer to assess the wall prior to its removal. Regulation 3 envisages that such work should be notifiable, as it carries inherent risks.

32. The Respondent submits that it is also clear from the language used at Regulation 3(1)(e) *"the insertion of insulating material into the cavity wall of a building"*; and at Regulation 3(1)(1)(f) *"work involving the underpinning of a building"* that it is necessary to look at the ongoing process and the operation as a whole rather than simply the end result.

33. As regards a reference in *Integral Building Control Solutions Ltd v London Borough of Brent* LON/00AE/BTD/2025/0002 to "preparatory works", the Respondent states that nowhere in the relevant building regulations is a distinction made between "preparatory works" and "notifiable works". Instead, the only question that the Tribunal must answer is whether the works have left the building in a less compliant state than before. The Respondent submits that answer, in the present case, is plainly yes.

34. As regards the oral evidence of Mr Anon, District Surveyor, and Mr Tafaghodi, Assistant District Surveyor, the Respondent submits that deference should be given to the knowledge and experience of these local authority officers and that considerable weight should be placed upon the professional judgment reached by these officers (including their opinion evidence), notwithstanding that they were not giving evidence as expert witnesses.

The Tribunal's determinations

35. The Tribunal accepts the Respondent's submissions concerning the construction of BR 2010. In particular, the Tribunal finds that there is no justification for departing from Parliament's express use of ordinary language in Regulation 3. Had Parliament intended that an alteration would only be assessed as material at the end or the "notional" end of the work, Parliament would not have included the phrase "at any stage" in Regulation 3. The meaning of these words is clear and unambiguous, and the Applicant has failed to adequately explain the purpose of the

inclusion of this phrase in Regulation 3 on the Applicant's interpretation of BR 2010.

36. It is noted that, on the Applicant's interpretation, it would be possible for substantial work to be carried out over a significant period of time wholly unsupervised. For example, the gutting of a building could be carried out over months, or even years, until simply the façade remained, without any degree of supervision at all. In our judgement, Regulation 3 envisages that such work would be notifiable.

37. The Tribunal does not accept that that deference should be given to the knowledge and experience of Mr Anon and Mr Tafaghodi, or that considerable weight should be placed upon the professional judgment reached by these officers on the facts and circumstances of this particular case, notwithstanding that they were not giving evidence as expert witnesses.

38. Rule 19(1) of Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") provides:

(1) It is the duty of an expert to help the Tribunal on matters within the expert's expertise and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

39. If permission had been granted for these local authority officers to give expert evidence, they would have been directed to prepare written reports complying with rule 19(5) of the 2013 Rules, which provides:

(5) A written report of an expert must—
(a) contain a statement that the expert understands the duty in paragraph (1) and has complied with it;
(b) contain the words "I believe that the facts stated in this report are true and that the opinions expressed are correct";
(c) be addressed to the Tribunal;
(d) include details of the expert's qualifications and relevant experience;
(e) contain a summary of the instructions the expert has received for the making of the report; and
(f) be signed by the expert.

40. The witness statements of fact prepared by Mr Anon and Mr Tafaghodi do not comply with rule 19(5) which contains important safeguards which apply when experts give opinion evidence. Further, if the Applicant had been aware in advance of the hearing that the Respondent would seek to rely upon the knowledge, experience, opinions and

professional judgement of Mr Anon and Mr Tafaghodi, the Applicant would have sought permission to reply upon expert evidence.

41. However, the Tribunal found both Mr Anon and Mr Tafaghodi to be careful and considered witnesses and we accept their evidence of fact on the balance of probabilities. We have also carefully considered the photographs which were taken by Mr Bergin.

42. On the basis of this evidence, the Tribunal finds as a fact on the balance of probabilities that that the work which was carried out within five days of the submission of the Notice included the removal of an internal wall at basement level, and the removal of the entirety of a ceiling so as to expose a structural steel beam and timber floor joists.

43. It is not in dispute that the Notice was lodged on 30 June 2025 and that the Respondent's site visit took place on 3 June 2025, three days later. The Tribunal also finds that it is more likely than not that the Applicant had had the intention to carry out this work when the Notice was lodged on 30 June 2025, given the nature and extent of the substantial work that was carried out within the following three days and the planning which is likely to have been required.

44. The Tribunal is not satisfied on the balance of probabilities, on the limited information available, that the timber stud wall which was removed was load bearing.

45. Applying our general knowledge and expertise as an expert Tribunal to the BR 2010, the Tribunal finds that the removal of the internal wall was a material alteration because it resulted in either the building not complying with a relevant requirement where previously it did, or (if before the Proposed Work commenced the building did not comply with a relevant requirement) in the building being more unsatisfactory in relation to such a requirement.

46. The relevant requirements are B1 and B3(1) of Schedule 1, paragraph 1 to the BR 2010:

B1. The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safely and effectively used at all material times.

B3. —(1) The building shall be designed and constructed so that, in the event of fire, its stability will be maintained for a reasonable period.

47. The removal of the internal wall is likely to have removed an appropriate means of escape in the case of fire or to have made an inappropriate

means of escape more unsatisfactory by removing the barrier between what were previously enclosed spaces. The loss of this wall is also likely to have significantly increased the speed at which a fire would spread so that the stability of the building would no longer be maintained for a reasonable period, or so that the position would be more unsatisfactory if the building did not comply with requirement B3(1) before this work was undertaken.

48. Applying our general knowledge and expertise as an expert Tribunal to the BR 2010, we find that the removal of the ceiling so as to expose the timber floor joists was also a material alteration because it resulted either the building not complying with a relevant requirement where previously it did, or (if before the Proposed Work commenced the building did not comply with a relevant requirement) in the building being more unsatisfactory in relation to such a requirement. The relevant requirement is B3(1) of Schedule 1, paragraph 1 to the RB 2010.

49. The removal of the entirety of the ceiling is likely to have significantly increased the speed at which a fire would spread so that the stability of the building would no longer be maintained for a reasonable period, or so that the position would be more unsatisfactory if the building did not comply with requirement B3 before this work was undertaken.

Whether the Notice is invalid and of no effect as an initial notice

<u>The submissions</u>

50. The Applicants states that, in brief, the relevant facts can be distilled as follows:

a) The Notice was lodged on 30th June 2025 using the appropriate form.

b) The site was visited on 3rd July 2025 and works were noted to have begun.

c) The Respondent wrote to the Appellant on 4th July 2025 to indicate: *"the Council is empowered to take enforcement action in relation to the unauthorised work and to take steps to regularise the position to ensure that the building work is compliant with the building regulations."*

d) At no stage was a Rejection Notice provided using the prescribed form, Form 7 of Schedule 1 of BR 2024.

e) The Respondent wrote to the Applicant on 14 July 2025 to confirm there had been no rejection of the Notice as it was believed to have been invalid due to the start of work before its acceptance.

51. The Applicant states that the following legal principles apply to cases of this type:

a) In all but a single exceptional situation, an initial notice must be rejected (i) using Form 7 (the rejection notice), (ii) within 5 working days of it being lodged, and (iii) for a prescribed ground of rejection found in Schedule 1 in BR 2024, or else any purported rejection will be improper and the initial notice will come into effect by operation of the conclusive deeming provision in s47(3) of the 1984 Act. Any of these failings by the Respondent would sustain a successful appeal.

b) A single exception to the above rule is if the Notice is invalid ab initio under the *Butler & Young Ltd* principle (see below) though the applicability of that principle to the index case is disputed.

52. Section 47 of the 1984 Act includes provision that:

(1) If—

(a) a notice in the prescribed form relating to work that is not higher-risk building work (called an "initial notice") is given jointly to a local authority by a person intending to carry out the work and a person who is a registered building control approver in relation to that work,

(b) the initial notice is accompanied by such plans of the work as may be prescribed, and

(d) the initial notice is accepted by the local authority,

then, so long as the initial notice continues in force, the registered building control approver by whom the notice was given shall undertake such functions as may be prescribed with respect to the inspection of plans of the work to which the notice relates, the supervision of that work and the giving and receiving of certificates and other notices.

(2) A local authority to whom an initial notice is given—

(a) may not reject the notice except on prescribed grounds, and

(b) shall reject the notice if any of the prescribed grounds exists,

and, in a case where the work to which an initial notice relates is work of such a description that, if an application for building control approval in respect of it had been made to the local authority, the authority could, under any enactment, have imposed requirements as a condition of granting the application, the local authority may impose the like requirements as a condition of accepting the initial notice.

(3) Unless, within the prescribed period, the local authority to whom an initial notice is given gives notice of rejection, specifying the ground or grounds in question, to each of the persons by whom the initial notice was given, the authority is conclusively presumed to have accepted the initial notice and to have done so without imposing any such requirements as are referred to in subsection (2) above.

53. The construction of section 47 of the 1984 Act was considered by the High Court in *Butler & Young Ltd v Bedford Borough Council* [2003] EWHC 1289 Admin *("Butler & Young")* on an appeal by way of case stated following the dismissal by a Magistrates' Court of an appeal under section 55(1) of the 1984 Act.

54. In *Butler & Young,* a notice which the appellant sought to rely upon as an initial notice was lodged with the respondent local authority after the relevant work had substantially commenced. The appeal was dismissed on the basis that the "initial notice" had never been valid at all and therefore the respondent was entitled to regard it as invalid without needing to reject it under section 47(1) of the 1984 Act.

55. The Applicant states that, in order for the Notice to be invalid *ab initio* (from inception) the Tribunal must be satisfied:

a) There is a prohibition against starting work prior to the acceptance of the Notice.

b) The work started was of a type which was prohibited.

56. The Tribunal has found that the work which took place was notifiable building work so it now falls to be considered whether, on the facts of this case, the Notice was a valid initial notice.

57. Section 47(1) of the 1984 Act provides that an initial notice is a notice representing an intention to start building work. Collins J relied on that essential component, the future intention to begin work, in holding that because work started prior to the lodging of the "initial notice", the appeal of *Butler & Young Ltd* had to be refused. The Applicant confirms that there is no dispute on this point; the defining characteristic of an initial notice is that it represents a future intention to start work.

58. The Applicant states that the matter in issue, in the present case, is whether this principle can properly be stretched to cover an entirely different situation, one where the Notice was lodged with that future intention to start work but where work then started prior to the Notice being accepted.

59. The Applicant states that nowhere in the 1984 Act or in BR 2024 is there a prohibition on starting work prior to the acceptance of an initial notice. The closest situation to a general prohibition on starting work is found in Regulation 16(1)(b) BR 2010, which prohibits starting work in the first 2 days following the giving of a notice engaging the local authority as supervisor of the works under Regulation 13.

60. A similar reference to a 2 day cooling off period exists when a registered building control approver is engaged to supervise works; it is found in Regulation 15(1) BR 2024. However, it merely requires the builder to give 2 days' notice to the registered building control approver before starting work. This process makes no mention of any such notice also being given to the local authority, which the Applicant states underlines the local authority's marginal relevance to events once an initial notice is lodged.

61. Further, neither of these provisions require any response from the local authority before work can begin. The Applicant states that the absence of any mention of needing to wait for the acceptance of an initial notice, or to not being able to give a notice under regulation 15 BR 2024 until after acceptance of the initial notice, is a clear indication that work can properly begin before acceptance of an initial notice.

62. The Applicant relies upon the observation of Collins J at [5] of *Butler & Young* when considering an identical, earlier iteration of the grounds for rejection which now appear in Schedule 2 of BR 2024, that starting work prior to acceptance of an initial is not a ground for rejection: *"Indeed, they had no grounds for rejecting it because it did not fall foul of any of the prescribed matters."* As section 47(2) of the 1984 Act makes plain, rejection of an initial notice may only be done in reliance of a prescribed ground. Collins J's observation is still a good one: none of the prescribed grounds in Schedule 2 of BR 2024 cover beginning work prior to actual or deemed acceptance of the initial notice. If work was not intended to be allowed to begin before acceptance of an initial notice, there would be a ground of rejection in Schedule 2 BR to establish that.

63. The Applicant contends that the Respondent's position elides the registered building control approver's assumption of authority to supervise the works with the lawfulness of beginning the works when there is no justification for confusing these two distinct questions. By considering the effect of the lodging of an initial notice on a local authority's powers, it can be seen that the two questions are distinct. Once an initial notice is lodged, the powers available to a local authority

are reduced. This indicates a diminished role for the local authority once an initial notice is lodged.

64. Whilst a registered building control approver will not have assumed absolute authority to supervise works prior to the acceptance of the initial notice, the mere act of lodging an initial notice is sufficient to displace aspects of a local authority's standing to exercise its enforcement role in accordance with section 91 of the 1984 Act.

65. Section 48(3) of the 1984 Act provides that certain enforcement powers ordinarily within the province of the local authority's role are suspended. One such power is to require the removal of work under section 36 of the 1984 Act where an application has not been made for building control approval (see section 35(2)(a) of the 1984 Act). Section 48(2) of the 1984 Act provides that the lodging of an initial notice is to be treated as the making of an application for building control approval.

66. The Applicant states that this is reflective of the inevitability that a valid initial notice will ultimately be accepted within no more than 5 working days. At the point where a valid initial notice is lodged, all parties know it will ultimately come to take effect because the grounds for rejection are exhaustive and do not require any subjective analysis. The grounds for rejection are either met, or they are not.

67. Pending acceptance of an initial notice, the local authority retains the power to give a compliance notice under section 36B of the 1984 Act or a stop notice under section 35C BA, but this power is lost once the initial notice is accepted (see section 35D(4)(b) of the 1984 Act) after the 5 working day deeming provision expires, if it is not lost earlier by the giving of actual acceptance.

68. The Applicant contends that, in industry parlance, work carried out before an initial notice is lodged is potentially "at risk" rather than unlawful. The Applicant states that regulation 18 BR 2010 sheds light on this principle. That regulation contains the power to regularise work begun otherwise than under the cover of an initial notice or an application for building control. It is often incorrectly described as unlawful work. Instead, it deals with "unauthorised work."

69. Regularisation is possible only in respect of "unauthorised work," which is defined in Regulation 18(8)(a) BA 2010 as (the Applicant's emphasis supplied): *"building work, other than work in relation to which an initial notice, an amendment notice, a public body's notice or a regulator's notice has effect, which is done without — (i) a building notice <u>being given</u> to the local authority; (ii) an application for building control approval with full plans of the work <u>being given</u> to the local authority;* ***or*** *(iii) a notice of intention to start work <u>being given</u> to the local authority in accordance with Reg 16(1) when a building notice or*

an application for building control approval with full plans has been given."

70. Regularisation is not available once an initial notice has been "given" to the local authority. There is no requirement the initial notice is accepted; it need only be lodged. The Applicant states that, once the initial notice was lodged on 30 June 2025, any and all work undertaken from that point until acceptance of the initial notice could not have been unauthorised and so could not have been regularised. The Applicant contends that, in the email of 4 July 2025, the Respondent, in response to a problem that did not exist, proposed a remedy that was not available. That is because work can properly begin before acceptance of an initial notice.

71. The Applicant contends that the non-availability of this important local authority power undercuts the Respondent's assertion that work cannot lawfully start before acceptance of the initial notice. If such work were truly improper, the local authority would have available a power to make it good. There is no need for such a power because a valid initial notice (an initial notice lodged prior to starting work) will inevitably be accepted, one way or another, so long as the grounds for rejection do not apply, a position which is known to all parties immediately upon it being lodged.

72. Even if there were a power to regularise work begun before acceptance of an initial notice, such a power would not persist past the initial notice taking effect by operation of the conclusive deeming provision in section 47(3) of the 1984 Act. That is because regulation 18 of the BR 2010 is plain that the power only exists in respect of work *"other than work in relation to which an initial notice ... has effect."* Accordingly, if regularisation were available to a local authority in respect of work undertaken before acceptance of the initial notice, at the end of the 5th working day from lodging the initial notice, the initial notice would take effect and any "at risk" work would then be incorporated into the project which the registered building control approver assumed authority to supervise.

73. The Applicant contends that, applied to the facts of this case, the failure to provide a rejection notice by 4 July 2025 meant that the Respondent was conclusively deemed to have accepted the initial notice by the end of that day.

74. The Applicant states that there are instances set out in the building regulation regime where work can entirely properly precede any formality at all. For example, Regulation 12 of the BR 2010 provides that there is no need to provide a notice of an intention to carry out building work (using the local authority as supervisor) under Regulation 13 of the BR 2010 if, per Regulation 12(8) of the BR 2010, there is an intention to

undertake emergency repairs and it is not practicable to give notice before beginning work.

75. There is no assessment of whether the work undertaken actually constituted an emergency repair. This only serves to establish that the act of engaging a body to supervise works, whether the local authority or a registered building control approver, is not an application but a giving of notice setting out what is intended to happen. The Applicant submits that nothing about the process is comparable to making a request for permission.

76. As regards general policy considerations, the Applicant states that it cannot be assumed that because the registered building control approver has not assumed the authority to supervise works prior to acceptance of the initial notice that work completed in that time will escape appropriate scrutiny. The Applicant contends that the following factors all serve to explain why there is no need for a general prohibition on the starting of work before the acceptance of an initial notice.

a) The initial notice process requires selecting and engaging a registered building control approver, who will, in agreeing to accept the work, schedule inspections and discuss the nature of evidence of compliance he will need to obtain. This process starts when the registered building control approver commits to the work, namely when he lodges the initial notice. The registered building control approver's eyes are not closed to work completed before the initial notice is accepted because he is retained from the very beginning. His insurance cover runs from his engagement, not from the acceptance of an initial notice.

b) The registered building control approver can specify the type of work that can be done before acceptance of the initial notice so that anything requiring inspection can be seen live after the acceptance of the initial notice, or can be seen via photographs taken at the time it is completed, even if the time of completion is before the initial notice is accepted.

c) There is a natural limit to the extent of work that can practically be undertaken in the 5 days prior to acceptance of the initial notice. The overwhelming majority will be preparatory work of no significance to the building control regime, meaning the risk is minimal.

d) There is no requirement to supervise the removal of an element of a building where that element is to be replaced. A registered building control approver will not be concerned with removal of slates or partition walls because his function is to certify compliance with the building regulations at the point of completion.

e) A registered building control approver, on assuming authority to supervise works, is entitled to require the opening up or uncovering of

completed works to the extent he deems appropriate to assess compliance, so nothing done before acceptance of an initial notice will escape his inspection if he deems it appropriate to inspect it.

f) The building control regime does not provide an absolute guarantee of compliance, but instead provides an indication of compliance based on proportionate sampling of works at such intervals as might be determined by the nature of the risk of non-compliance. As such, a registered building control approver will never observe every step of building work and he will be entitled to have regard to the notice the builder must give him, upon completion of the works, certifying his belief the works are compliant.

g) The deeming provision under section 48(4) of the 1984 Act would work to treat the initial notice as conclusively accepted, even if it were unlawful to start work before the acceptance of the initial notice, in situations where the local authority either did not know work had started or were not concerned it had started prior to acceptance of the initial notice. Accordingly, the starting of work prior to acceptance cannot be an overriding concern.

77. The Applicant states that the function of a local authority, when considering whether to accept an initial notice, is extremely limited. The grounds for rejection in Schedule 2 BR 2024 simply require checking an initial notice against existing records or noting whether it contains what it is required to contain.

78. Deciding whether to accept or reject an initial notice is not a restricted function or activity. Section 46 of the 1984 Act provides that a level of expertise is required in the exercise of certain functions and activities. Regulation 3 of the Building (Restricted Activities and Functions) (England) Regulations 2023 clearly omits to make reference to considering an initial notice, meaning that this step can be (and, in practice, regularly is) performed by an administrative assistant. Assessing for compliance with building regulations is a restricted activity, however, which again suggests no such consideration arises in the deeming period.

79. The Respondent's submissions are as follows. The purpose of section 47 of the 1984 Act, including the giving of an initial notice and the opportunity for a local authority not to accept that notice, is to ensure that, before building work begins, a proper supervisory process is in place. It follows as a matter of plain logic that the process of ensuring that the proper supervisory process is in place must be completed before the building work begins.

80. It is for this reason that section 47(4)(a) provides that an initial notice "comes into force" when accepted by a local authority. "Acceptance" of an initial notice occurs when a local authority expressly accepts an initial

notice (under section 47(1)) or where the "prescribed period" (i.e. 5 days from the giving of the initial notice) expires without the notice being rejected (section 47(3) of the 1984 Act). As such, it would be illogical and inconsistent with the statutory regime for building work to be permitted lawfully to begin before an initial notice is "in force" and thus before the end of the period that allows a local authority to intervene in respect of the proposed supervisory regime. Where works commence before the initial notice is in force, then the notice is invalid.

81. In support this interpretation, the Respondent states that, firstly, section 47 refers to future intended work - *"notice (...) is given to a local authority by a person intending to carry out the work"*.

82. Secondly, the wording of section 47 makes clear that starting work is provisional on the local authority accepting the initial notice, either expressly or through the deeming provision, after which the initial notice will enter into force - *"if a notice (.. .) is given (.. .) and the initial notice is accepted by the local authority, then, so long as the initial notice continues in force, the [registered building control approver] by whom the notice was given shall undertake such functions (.. .)"* The use of the words *"if"* and *"then"* denotes a sequence of events to be followed after which works may lawfully start.

83. Thirdly, regulation 6 of BR 2024 states that the only grounds on which a local authority can reject an initial notice are those prescribed in Schedule 2. The period within which a local authority may give notice of rejection of an initial notice is five working days beginning with the day on which the notice is given. As submitted, above, for works to be permitted to commence before the end of the period in which a local authority may reject an initial notice is illogical and inconsistent with the opportunity given for a local authority to reject it within a period of five days following service.

84. Fourthly, the structure of the 1984 Act and in particular the BR 2024 demonstrate that an initial notice must be "in force" before building work begins which is to be supervised by a registered building control approver. For example, section 52 of the 1984 Act sets out certain matters which lead to the cancellation of an initial notice by a registered building control approver. These include where the registered building control approver "is of the opinion that any of the work is being carried out so that they are unable adequately to carry out their functions with respect to it" (s.52(1))(c)) or where the registered building control approver "is of the opinion that there is a contravention of any provision of building regulations with respect to any of that work ...." (s.52(1)(d)).

85. That these important powers only become exercisable after an initial notice "is in force" supports (and can only be consistent with) it being a requirement that building works may only lawfully begin after an initial notice is in force and not before. Were the position to be otherwise, the

building work may be undertaken unsatisfactorily but the registered building control approver would not have powers to intervene by cancelling an initial notice.

86. The Respondent referred the Tribunal to the observations of Collins J at [40] and [43] of *Butler & Young*.

87. In *Integral Building Control Solutions Ltd v London Borough of Brent*, the First-tier Tribunal was not satisfied that notifiable work requiring an initial notice had taken place. The Tribunal also accepted that where works started four days after the serving of an "initial notice" the notice was not invalid from the start. The Respondent submits that the Tribunal's comments concerning the legal position of building work undertaken before an initial notice is in force are obiter and incorrect. From the decision, it appears that the Tribunal was not told about important points concerning construction, including concerning the wider statutory regime.

88. In summary, the Respondent submits that unless the local authority expressly accepts an "initial notice", work cannot lawfully start before the five day period has expired and that the Tribunal in *Brent* should have found that the commencement of works before the expiry of the five-day notice period rendered the purported initial notice invalid.

The Tribunal's determinations

89. The Tribunal has already found as a fact (i) that the Notice was lodged on 30 June 2025 with the intention of carrying out notifiable building work during the following three days and (ii) that notifiable building work was undertaken between 30 June 2025 and 3 July 2025.

90. The Tribunal finds that in these circumstances the Notice was, from the outset, not a valid initial notice. Accordingly, no initial notice was given to the Respondent which required rejection and the Respondent has at all times had all the powers which any local authority has when notifiable building work is carried out without an initial notice having been lodged. In the absence of an initial notice, no enforcement powers are suspended.

91. By section 58 of the 1984 Act, initial notice is defined as having the meaning given by section 47(1). There is nothing which expressly deals with a situation in which notifiable work is undertaken before there has been any express or deemed acceptance of a notice. In our judgement, the reasoning of Collins J in *Butler & Young* is equally applicable when a notice is served with the intention of carrying out notifiable building work within the following five days, which is then carried out.

92. The scheme of the 1984 Act permits either a local authority or a private approved inspector control over building works. If a builder decides not to use a private approved inspector, then the local authority will automatically be responsible for supervising the works and making sure that they are in accordance with building regulations and proper practice. Collins J stated at [7] and [43] of *Butler & Young*:

All this, of course, is concerned with safety: the safety of the public and to ensure that no buildings are erected which are dangerous or which interfere with the rights of others. For example, if drainage is affected, that may obviously interfere with adjoining land owners. But, as I say, the control is through the local authority, unless the individual builder chooses to use the approved inspector route.

...

It is a requirement, and one would expect this requirement to exist, that work is not commenced until the responsible body has had the opportunity of considering whether it can comply with the building regulations and whether what is proposed does contain any matters which ought to be dealt with in advance ... If work can be commenced unlawfully and then, as it were, rendered retrospectively lawful by the simple expedient of serving an initial notice which can only be rejected on specified grounds, then a degree of control in the public interest may well be lost.

93. Until the local authority has carried out its checks, it is unclear whether the proposed building control approver named in the notice is a responsible body which will ultimately be able to supervise the proposed work.

94. The grounds for rejecting an initial notice under Schedule 2 of BR 2024 include that the person who signed the notice as an approver is not an approver on the date the notice is rejected or their registration does not include all the work described in the notice; that the person specified in the notice as the registered building inspector who gave advice in relation to that notice was not a registered building inspector on the date the notice was submitted, or was a registered building inspector on that date but their registration did not include all the work described in the notice; and certain inadequacies in the information provided.

95. It would be inconsistent with the statutory scheme for a builder to be able to carry out notifiable building work without affording the local authority the period of up to five working days in which to consider these (and other) important matters which are relevant to public safety.

96. Further, under section 47(1) of the 1984 Act, the registered building approver's role and responsibilities arise only once an initial notice is in

force. There would be a significant lacuna in the statutory scheme if notifiable work could be carried out when their responsibilities, powers and duties were not engaged at all. A degree of control in the public interest would be lost. It is consistent with structure and purpose of the legislation that notifiable building work may only begin when notice is in force.

97. The Tribunal accepts the Respondent's submission that it follows from the wording of section 47 that starting work is provisional on the local authority accepting the initial notice, either expressly or through the deeming provision, after which the initial notice will enter into force - *"if a notice (.. .) is given (.. .) and the initial notice is accepted by the local authority, then, so long as the initial notice continues in force, the [registered building control approver] by whom the notice was given shall undertake such functions (.. .)"* The use of the words *"if"* and *"then"* denotes a sequence of events to be followed after which works may lawfully start.

98. As stated above, the Applicant may only appeal to this Tribunal under section 55(1) of the 1984 Act if there was an initial notice in existence which the local authority rejected. Having found that, from the outset, the Notice was not an initial notice, the Tribunal has no jurisdiction to determine this appeal.

Name: Judge N Hawkes **Date:** 3 June 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).