



The Roll of Appointed Persons Workshop

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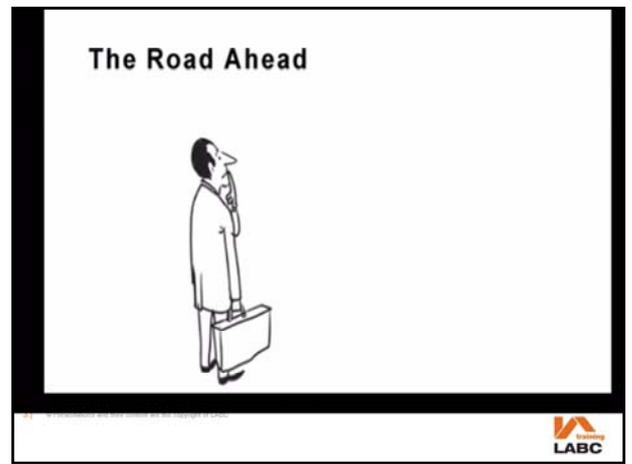




I hope that today is about exploring where we are going, the rights and wrongs of Appointed Persons, and what the aims and objectives are, and even exploring alternatives, and that we are not just here to talk about how to introduce them as a quick fix that hopes to cure all.

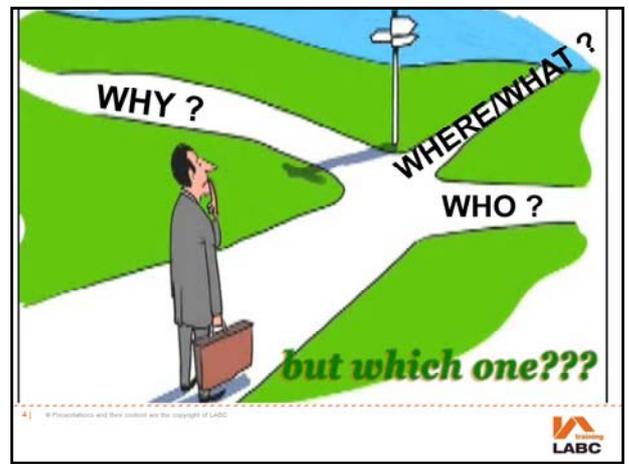
In the current climate of deregulation, reducing red tape and the beauracracic burden, do we have room for another seat at the table and another layer of checking and paper chasing. Will an Appointed Person illuminate failings of the past or will they provide more shadows for the villains' to hide in? Another person to add to the list of those who might be to blame if it goes wrong.

To that end, I don't expect what I have to say to find favour with all of you here today, life would be boring if agreement was so easily reached! but if it prompts those that disagree to debate, strengthen and improve the aims and objectives, then I hope we can all walk away satisfied that we are going in the right direction. We are or should be under no illusion that there are many areas of compliance/performance that can be improved and we must all play a part, but is the road ahead sign posted Appointed Persons or something else?



The Road Ahead – But which one?

We are here to discuss the road ahead, but before setting off, I'd like to revisit some of the questions that have led us to being here today and discuss the best way to reach journeys end.



Why do we think it is necessary?

Where are we trying to get to and What are we trying to achieve?

Who is going to pay for it? – well that will be the developer then!!

Do we really need another player on the field to win the war or will they be a passenger on the gravy train, and end up going the way of HIPS and other similar short lived well intentioned initiatives.



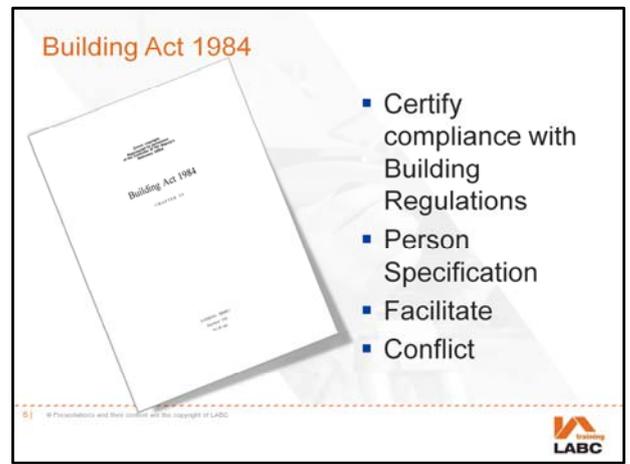
Some issues to consider

Additional cost

Competency – training and experience

Confusion over who has the correct and deciding opinion (AP or BC or Energy Assessor)

Will it really improve compliance/performance or will it be a paper chase. (based on EPC's were those certifying and monitoring do not set foot on site)



What's in the legislation?

Certify

Schedule 1 to the Building Act 1984, Paragraph 4A (inserted by the Sustainable and Secure Buildings Act 2004) Provides that Building Regulations may provide for a person of a prescribed class or description to give a certificate to the effect that a requirement of Building Regulations is satisfied. (e.g. EPC's) The regulations may also limit powers or duties of a local authority or approved inspector where certificates are given. – *Hopefully appointed persons will not be providing certificates of compliance – or will they??*

Person Specification

Schedule 1 to the Building Act 1984, Paragraph 4B (inserted by the Sustainable and Secure Buildings Act 2004) refers specifically to Appointed Persons. Again the regulations may prescribe requirements for such a person and the type of work that may relate to such an appointment. The person may also appoint himself! Obviously in such circumstances he/she must fit the person specification.

Facilitate

The purpose of such a person is to “facilitate compliance with the requirements of Building Regulations” in relation to the type of work specified. – *Facilitate!! – Rather more worryingly for Building Control – regulation goes on to provide that other persons may be required to comply with directions given by the AP.*

Conflict

So the AP will need a qualification and understanding equal to say the BCB or Energy Assessor or Tradesmen on site. This could lead to conflict and confusion between Building Control, Appointed Persons and the Developer, over:-

who is certifying what and to whom! –

who is to resolve disagreements between an AP and other professionals,

who is responsible for the final certificate.

All the time the developer is paying the bill.

The Consultation



- The appointed person will be employed by those carrying out the building work AND will have powers to require compliance!?! –

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Now let's look at the 2012 consultation.

The appointed person will be employed by those carrying out the building work AND will have powers to require compliance!?! –

Now, in this day and age of competition – isn't Building Control 'employed' to require compliance? That isn't how it is 'sold' – it is sold as a service, but nevertheless the object s to ensure compliance with Building Regulations and 'employment' of a Building Control Body is mandatory.

Will this create conflict with Approved Inspectors, who's powers of compliance are those of advice, in the event of a developer failing or refusing to comply, the work has to be reverted to a local authority for enforcement action.



The consultation recognises that there will be costs associated with employing an AP and that these can only be justified where the benefits outweigh the cost – as a result making Appointed Persons mandatory cannot be justified.

Building Control is a business and therefore you ***should*** get what you pay for. Even responsible developers that value the Building Control Service have a budget to work to and want as much as possible for as little cost as possible, some of course are willing to pay extra for good Building Control input and advice. So the Building Control Service is 'tailored' to suit the customer with a view to winning the work.

Forthcoming changes to remove most of the statutory notifications and replace them with a 'service plan' or agreed schedule of inspections is just catching up with what has been happening in practice for some time. Notification of certain stages of the work never has been applicable to the Approved Inspector and local authorities have been applying the same model.

Risk Assessed Out

So if inspection at a particular stage (say, wallplate – pre-plaster - every cavity closing) can be 'risk assessed' out, there is a cost saving that can be factored in to 'winning the Building Control work'. Yet here we are expecting the developer to volunteer to pay extra to demonstrate compliance with Building Regulations.

So are we saying that inspections ARE necessary at certain stages and should not be risk assessed out, but because they are we need an AP to cover the cracks?

The consultation suggests that by employing an AP, non-compliance issues could be identified earlier and therefore there would be a cost saving in putting it right –

Many of the non-compliance issues identified in recent studies relating to part L are unlikely to be discovered unless site work is meticulously supervised during construction, or failure is so severe that it warrants investigations of the type being undertaken in research projects such as thermal imaging or in-situ whole element measurement of U-values.

So I find it hard to see the incentive to employ an AP on this basis. Even research projects where the contractor has agreed to be monitored during construction have failed to achieve some expectations, so what hope is there for an ad-hock voluntary system.

Then we have the suggestion in the consultation that by having an AP on board could result in even lower building control charges – lower charges means even less inspection. *Robbing Peter to pay Paul – I'm not sure what are we achieving?*



Or put another way – What are we trying to achieve?

Expectations

Well – it is very evident that expectations differ and that is without the compliance vs performance and THE GAP! Whether compliance delivers the expected performance or not is not for me to debate here. We are looking at compliance with Building Regulations and the tools available to provide evidence “BUT NOT CONCLUSIVE EVIDENCE” that this has been achieved.

Specialist Knowledge

Building Control already relies on specialist knowledge in many areas of construction. Structure, sound testing, complex heating and ventilation systems, Air leakage, lighting, electrics and of course EPC’s, to name a few.

Where a BCB is reliant on specialist knowledge there will be a corresponding assurance of competency given by qualification, accreditation by a certification body and/or a regular monitoring process to maintain a level of competency. And, we have self certification bodies better known as competent person schemes.

Building Control, is already expected to draw together the combined efforts of a collection of specialists before a job can be considered complete. I live in the real world and know that this often does not happen for a variety of reasons. I’d like to see what we have working properly before we add another layer, because if what we have was working and funded correctly, we might not need that other layer.

Competency

One of the questions being asked today is what level of competency should be expected from Appointed Persons – I have to doubt that they will be able to match existing provisions – *So, why not use what we have got? – direct the additional cost of an AP towards increased use of existing service expertise - instead of looking to use that expertise at minimum cost with the consequent minimum service.*

How that would be achieved without a mandatory level of service could prove a challenge.

Back to Cost



- Checks and balances
- More supervision
- Failure to build as designed
- Is there an alternative?

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Now does it all come down to cost? Probably, So – how do we make it possible to direct this additional cost to areas that will benefit the finished product?

Checks and Balances

We must assume that at the design stage all checks and balances are in order, and our AP is to provide a site function. So setting aside the prospect that a developer can appoint him/herself, unless the AP has been involved in the design process, there will be a need for them to acquaint themselves with all the relevant requirements. All the things that other persons, such as – the designer, quantity surveyor, Structural Engineer, M & E specialist, SAP/SBEM assessor, site agent and Building Control have already considered.

More Supervision

So are we saying that some or all of this group are missing something and that they need another level of checking.

Failure to build as designed

– or are we saying that the construction does not reflect what one or more of this group has designed – in which case surely the best person to check the practical construction would be the one that designed it or dare I say – the **body that has been ‘employed to require compliance’** – i.e. Building Control – but it comes back to paying the appropriate body an appropriate amount to carry out those checks.

Is there an alternative

Now I believe that one of the main drivers for considering AP’s is that of energy performance or failure to achieve expected performance levels and that to demonstrate a theoretical performance level, the construction techniques require specific skills and understanding. What an energy assessor may use for calculation purposes is not being translated into the actual construction. Top of the list is accredited construction details followed by material substitution.

Research into the ‘Performance Gap’ does indeed identify problems in these areas and therefore clearly the ‘paper chase’ currently required to satisfy the Energy Assessor monitoring process, is not working.

Will an AP help – well it might, but if the energy assessor was required to see for himself that the input criteria into the calculations had been transferred to practical construction, or the monitoring process was improved - Would that be a better option? After all the energy assessor is certifying the energy performance of the building, but he is not required to set foot on the site, at least not for new domestic work.

Conclusion



- Do we need to achieve better performance/compliance ?
- Are appointed persons necessary to achieve that better performance/compliance ?

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Rather than debate what qualifications and powers are appropriate for an Appointed Person, perhaps we should start by analysing what they are expected to achieve, and then look at if or how that can be provided from within existing professionals involved in the process and those already qualified to do specific jobs.

Do we need to achieve better performance/compliance – Yes

Are appointed persons necessary to achieve better performance/compliance – NO!

If only????



Thank you for listening

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