

# BRIEFING



Changes to the Law on Demolition

14 April 2011

1. Until very recently planning permission was not required for demolition by reason of the Demolition Direction 1995 which excluded the demolition of most descriptions of building from the definition of 'development' in Section 55 of the TCPA 1990. All that was required was for the developer to give prior notice to the Council of demolition pursuant to Section 80 of the Building Act 1984.
2. The law on demolition of buildings has recently changed following the Court of Appeal case *Save Britain's Heritage v SSCLG* [2011]EWCA Civ 334. The case concluded that the demolition of certain descriptions of building should not be excluded from the meaning of "development" in Section 55 of the TCPA 1990. It held that paragraphs 2(1)(a) to (d) which relate to:-
  - listed buildings;
  - buildings in a conservation area;
  - scheduled monuments
  - any building other than a dwelling house or a building adjoining a dwelling houseare unlawful and should be deleted from the Demolition Direction 1995. In addition it held that separate schemes for the demolition of buildings that may have likely significant effects on the environment fall within the scope of the EIA Directive and therefore the EIA Regulations 1999.
3. The decision has immediate consequences for planning control over demolition. On 31 March 2011 CLG's Chief Planning Officer wrote to all local authorities to provide interim advice on the effect of the case on demolition proposals.
4. The position is now that demolition of buildings is considered to be development under Section 55 of the TCPA 1990. However it is considered such demolition still benefits from permitted development rights under Article 31 of Schedule 2 to the GPDO 1995 i.e. it has deemed planning permission subject to conditions.
5. This means that (as is still the case for demolition of dwelling houses) developers should now apply to the local planning authority before commencing demolition for a determination as to whether prior approval of the authority is required for the method of

demolition and any proposed restoration of the site.

6. Demolition cannot take place until either the authority confirms:-
  - a) that prior approval is not required; or
  - b) its approval is given; or
  - c) 28 days has expired following the date on which the authority received the application and the authority has failed to respond.
7. In light of the decision in Save Britain's Heritage that demolition could fall within the scope of the EIA Directive and the guidance from the Government's Chief Planner it is also recommended that in cases where demolition may have likely significant effects on the environment developers request a screening opinion as to whether an ES is required in relation to demolition.
8. In the event that the authority considers that an ES is required then the proposed demolition will not benefit from permitted development rights and it will be necessary to submit a planning application, accompanied by an ES, for the demolition of the buildings. This brings with it the risk that permission may be refused and may cause further delay and costs in relation to the application process and greater exposure to business rates.

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