

PLANNING ADVICE NOTE

DEMOLITION OF BUILDINGS

If you intend to demolish a property, you will now likely require planning permission. Whilst the Town and Country Planning (Demolition - Description of Buildings) Direction 1995 allowed for demolition of non-residential buildings not benefitting from planning permission to do so, a High Court judgment has changed this.

Before the Court of Appeal judgement, the 1995 Demolition Direction¹ ('the Direction') set out that the demolition of many buildings was excluded from the definition of development and therefore did not require planning permission. However, demolition affecting a listed building, building within a conservation area or a scheduled monument could still require consent under separate legislation.

As a result of the Direction, only demolition of a dwelling house or a building adjoining a dwelling house previously constituted development. However, permitted development rights (PDRs) exist² where planning permission is deemed to be granted for demolition without the need to make a formal planning application. Before exercising PDR, conditions need to be met, including:

- Before demolishing any building, the developer should apply to the local planning authority (LPA) for a determination as to whether the prior approval of the authority will be required as to the method of demolition and any proposed restoration of the site; and
- Where demolition is urgently required in the interests of safety or health, the developer should provide to the LPA, as soon as reasonably practical, a written justification for the demolition.

The PDRs do not apply where:

- The building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands; and
- It is practicable to secure safety or health by works of repair or works for affording temporary support.

Where demolition is required as part of wider redevelopment proposals which are the subject of a planning permission, the prior approval process will not be required where the demolition was either explicitly referred to in the description of the development, or was wholly implicit within the planning application submitted.

Recent Changes

A recent judgement³ in the Court of Appeal has significantly changed the position set out above.

¹ Town & Country Planning (Demolition – Description of Buildings) Direction 1995 (Appendix A of Circular 10/95 (Dept. of the Environment)/31/95 (Welsh Office))

² Part 31 of the Town & Country Planning (General Permitted Development) Order 1995

³ *R(Save) v Secretary of State for Communities & Local Government* – 25 March 2011

The Court ruled as follows:

- That the demolition of buildings and other structures is capable of constituting a project falling within Annex II for the EIA Directive; and
- As a result, parts of the Demolition Direction are unlawful and should not be given effect.

The key effects of the above are therefore:

- Proposals for the demolition of **all buildings greater than 50 cubic metres** will now need to be considered in line with the requirements of Part 31 of the General Permitted Development Order 1995 (GPDO); and
- Proposals for demolition may require EIA and in such cases should therefore require planning permission.

Demolition works also come within the scope of the Environmental Impact Assessment Directive. Where demolition works are likely to have significant effects on the environment the Planning Service must issue a screening opinion on whether an environmental impact assessment is required.

You are advised to liaise with the Development Control team prior to commencing demolition on any building, as you may be required to obtain prior approval to the demolition from the Council.

Such prior approval may not be required where demolition is:

- Urgently necessary in the interests of health or safety, on a condition that the developer gives a written justification of the demolition to the local planning authority as soon as reasonably practicable;
- Taking place on land for which planning permission for redevelopment has been granted or deemed to be granted;
- Required as a result of a demolition order, made under Part IX of the Housing Act 1985, or in a clearance area declared under Section 289 of the same Act;
- Required as a result of an enforcement notice issued under Part VII of the Town and Country Planning Act 1990;
- Required as a result of an order requiring the removal of the building made under Section 102 of the Town and Country Planning Act 1990;
- Required by virtue of a planning agreement or obligation made under Section 106 of the Town and Country Planning Act 1990; or
- Required or permitted under any other legislation.

These permitted development rights do not affect, and are not affected by, any requirement to notify intended demolition of a building to the Council's Building Control Department under Section 80 of the Building Act 1984.

Furthermore, you should contact the Council's Environmental Health Team regarding the hours of demolition and minimising dust or vibration to neighbouring properties as the Council has legal powers under the Environmental Protection Act 1990 to serve notices to limit operations where any such problems arise.