



MINISTRY OF DEFENCE

INFORMATION NOTE

Subject: Demolition – Change To Planning Requirements

Number: 09/11

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Who Should Read this: All DIO Offices, Partnering Organisations, Prime Contractors,
PPP/PFI Project Managers & TLBs

When it takes effect: Immediately

When it is due to expire: When rescinded

Estate Management

Document Aim:

To provide information on the legislative background to demolition and highlight key changes to the planning requirements for demolition which have come into effect due to a recent Court Judgement. The Note is to draw attention to the fact many demolition proposals in England and Wales will now require the prior approval of the Local Planning Authority (LPA) and certain proposals may also require a formal planning permission and Environmental Impact Assessment (EIA) calling for more resources both in terms of time and funding. This Information Note supersedes IN07/11.

Background

1. Before the recent Court 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.
2. 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

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

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.

3. 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.

4. 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

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

6. 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.

7. The key effects of the above are therefore:

- Proposals for the demolition of 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.

Application on the Defence Estate

8. The Crown has no specific exemption or specific PDRs in relation to demolition and the MOD is therefore bound to adhere to the requirements set out above.

9. The Process at Annex A provides an overview of the steps which should be followed when considering demolition proposals in England and Wales. If the proposals affect a listed building, conservation area or scheduled monument then the LPA should be contacted as Listed Building Consent, Conservation Area Consent or Scheduled Monument Consent may be required.

10. If it is proposed to demolish any building with a volume greater than 50 cubic metres or a structure other than a gate, fence, wall or other means of enclosure then ***an application must now***

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

be made to the relevant LPA for determination as to whether the prior approval of the Authority is required as to the method of demolition and any proposed restoration of the site. This should not be regarded as an application for permission to demolish the building concerned but instead, as an application for approval of the *method* of demolition. **The LPA has an initial 28 days to respond and inform the applicant whether or not prior approval is required. If prior approval is required the LPA has an 8 week period, from the date the application is received to consider it and issue its determination. This could impact on project timescales.** Further details on what is required as part of this application can be found within Part 31 of the GPDO or alternatively advice can be obtained from the DIO Town Planning team (contact details are provided at the end of this note). Whilst the aforementioned information and the process set out in this note constitutes the formal approach to take, in practice there currently appears to be a lack of consistency between LPAs. For the avoidance of doubt, it is therefore wise to contact the relevant LPA before submitting any application.

11. When contacting the LPA in relation to prior approval it will now also be necessary to commence discussions as to whether officials consider that there are likely to be environmental impacts associated with the proposals sufficient to trigger a requirement for EIA. It should be noted that projects requiring EIA do not benefit from PDRs and therefore **if it is deemed that an EIA is required then planning permission will also need to be obtained.** Where EIA is required, there will be resource implications both in terms of funding required for the planning application / environmental statement and in terms of project timescales. Planning applications for developments requiring EIA usually take a number of months to prepare and around 16 weeks to determine. In practice, cases where demolition activities trigger an EIA are likely to be rare.

Relevance to the Devolved Administrations

12. Whilst the recent Court ruling related to a site in England, it is likely to have impacts across the whole of the UK.

13. The Demolition Direction is applicable to both England and Wales and therefore the implications of the judgement are directly applicable to proposals in both territories.

14. Until recently, there were significant similarities in Scotland between the Demolition Direction in England and Wales and the *Town and Country Planning (Demolition Which Is Not Development) (Scotland) Direction 1995*. Following the Court judgement the latter was revoked triggering the need for demolition proposals having to adhere to the prior approval process set out in the existing PDRs for demolition⁴. This process is very similar to that for England and Wales as set out in Paragraph 10 above.

15. However, new Scottish legislation⁵ came into force at the end of November 2011. For non-residential buildings, the prior approval process is not now generally required to be followed except for buildings affected by listed buildings status or those adjoining a residential property. These changes are in many ways a return to how the process was carried out in Scotland prior to the Court judgement. However, demolition proposals may still trigger EIA so screening opinions will still be required and proposals for demolition will require planning permission if they attract the need for EIA.

16. In Northern Ireland (NI), the *Planning (Northern Ireland) Order 1991, Planning (Demolition – Description of Buildings) Direction 2009* has some similarities to the Demolition Direction in Britain. Proposals for demolition of Listed Buildings, Buildings in Conservation Areas and Areas of Townscape or Village Character are subject to demolition control. The implications of the recent ruling may also apply to demolition in Northern Ireland and therefore it is advisable to contact the NI Planning Service for further information.

⁴ Part 23 of the Town & Country Planning (General Permitted Development)(Scotland) Order 1994

⁵ The Town & Country Planning (General Permitted Development)(Scotland) Amendment Order 2011

Further Guidance

17. This Note provides outline guidance only. However, it is advisable to contact a member of the Town Planning team for more detailed guidance should this be required in specific cases.

18. It should be noted that as well as considering the issues highlighted within this note when developing proposals for demolition at a particular site that it is also wise to consider potential future redevelopment proposals for the site. In many cases it is more effective to argue the case for re-provision of floor-space whilst the building to be demolished is still standing rather than having to argue and provide justification for new development on a vacant site in the future.

Monitoring

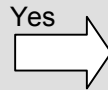
19. The changes highlighted within this Information Note remain comparatively recent and there currently appears a lack of consistency between the Local Planning Authorities in the way these are being implemented. The DIO Town Planning team would welcome feedback on specific cases so an eye can be kept on the impact the changes are having on project timescales and costs.

DIO Town Planning Team

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Process to follow for Demolition Proposals in England and Wales

Is the structure to be demolished a gate, fence, wall or other means of enclosure, or a building with a volume less than or equal to 50 cubic metres?



Proposals are not considered to be development and therefore can go ahead without the need for prior approval



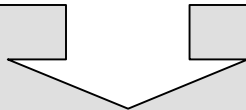
Contact should be made with the relevant LPA to:

- (i) Submit an application for the determination as to whether prior approval is required as to the proposed method of demolition and restoration of the site; and
- (ii) Discuss the potential for environmental impacts which could trigger requirement for EIA

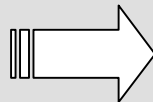
IN ALL CASES

Proposals affecting listed buildings, conservation areas or scheduled monuments *may* still require other forms of consent and in such cases the relevant LPA should be contacted.

Within 28 days starting on the day the LPA received the application either:

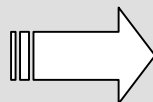


The LPA deems that proposals can go forward without the need for prior approval; OR



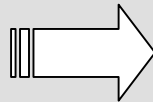
The building can be demolished

The LPA deems that proposals do not require EIA but requires prior approval; OR



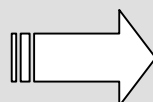
The LPA has 8 weeks from the date of receipt of the application to issue its determination

The LPA considers that EIA is required due to environmental impacts of the demolition; OR



Apply for planning permission supported by environmental statement

The LPA does not notify the applicant of their decision within the 28 day period



Building can be demolished