



Letter to all Chief Planning Officers

Our ref :

Date: 18 April 2011

Dear Colleague,

PLANNING CONTROL OVER DEMOLITION

I am writing to clarify the implications of the Court of Appeal judgment given on 25 March 2011 in the case of *Save Britain's Heritage v the Secretary of the State for Communities & Local Government* [2011] EWCA Civ 334. The case involved a brewery in Lancaster and the application of the Town and Country Planning (Demolition - Description of Buildings) Direction 1995 (the Direction) which is contained in the joint Welsh Office (31/95) and Department of the Environment (10/95) Circular "Planning Controls over Demolition". An appeal by the respondent is, we understand, unlikely.

The Court of Appeal judgment quashed paragraphs 2(1)(a)-(d) of the Direction. This means that the demolition of a listed building, a building in a conservation area, a building which is a scheduled monument, a building that is not a dwelling house or adjoining a dwelling house is now 'development'. This brings the demolition of such structures into line with the treatment of residential buildings generally.

Permitted development rights apply to such development under part 31 of schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the Order). An application to the local planning authority (LPA) may be needed for a determination as to whether the prior approval of the authority will be required for the method of demolition and any proposed restoration of the site (in line with the conditions to part 31 of schedule 2 to the Order).

In addition, the Court of Appeal judgment followed the decision of the CJEU in the case *Commission v Ireland* (C-50/09) which concluded that demolition works come within the scope of the EIA Directive (85/337/EC). This means that when demolition works are likely to have significant effects on the environment the LPA must issue a screening opinion. In accordance with article 3 of the Order, permitted development rights do not apply to such demolition works unless the LPA adopt a screening opinion that the development is not EIA development under the Town and Country Planning

(Environmental Impact Assessment) (England and Wales) Regulations 1999 (the Regulations).

What does this mean for a local planning authority?

You will have to consider applications for determination of whether prior approval is required for this expanded range of demolition projects. You should also consider whether the demolition project is likely to have significant effects on the environment and requires a screening opinion to be issued as such projects can be EIA development under the Regulations. An example is provided by the of the Court of Appeal judgment which indicates that demolition can be EIA development under schedule 2 paragraph 10(b) (urban development projects) to the Regulations.

What does this mean for a developer?

If you intend to demolish a building falling within one of these descriptions as a separate project, you may need to apply to the LPA for a determination as to whether the prior approval of the authority will be required for the method of demolition and any proposed restoration of the site. This will be in addition to any other consent required for demolition (e.g. for listed buildings).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rosemary Thomas', written in a cursive style.

Rosemary Thomas

**Chief Planner/Deputy Director
Department for Environment, Sustainability and Housing**