

## The Planning Inspectorate

# PINS NOTE 08/2011r3

To: All Inspectors

Date of Issue: 08 April 2011

Currency: review at 6 months after issue

Last updated: 13 October 2011 – New Paragraph 5, advising that the requirement to consider EIA for demolition projects does not affect LB or CA appeals made under the Planning (Listed Buildings and Conservation Areas) Act 1990.

## Demolition

### Background

1. Following a recent Court of Appeal judgement<sup>1</sup>, DCLG's Chief Planner has issued a letter to Chief Planning Officers to explain some of the consequences for planning control over development. A similar letter to Chief Planning Officers in Wales has been issued by Chief Planner/Deputy Director of the Department for Environment, Sustainability and Housing which identifies a subtle change of emphasis on the EIA screening role for LPAs.
2. The judgement by the Court of Appeal has quashed paragraphs 2(1)(a) to (d) of the Town and Country Planning (Demolition – Description of Buildings) Direction 1995<sup>2</sup>. Demolition of a listed building, a building in a conservation area, a building which is a scheduled monument or a building that is not a dwellinghouse or adjoining a dwellinghouse is now 'development'. Permitted development rights for such development apply, under part 31 of Schedule 2 to the GPDO 1995, but an application to the LPA is needed to check whether it requires prior approval of the method of demolition.
3. In Conservation Area, Listed Building or Scheduled Monument consent appeals involving the demolition of a building the appellant may claim that since permitted development rights apply to such demolition consent is not needed. However, the effect of the judgement does not remove the need to obtain the relevant consent because the requirement to do so is set out in separate regimes - the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Ancient Monuments and Archaeological Areas Act 1979 - which do not depend on whether demolition constitutes development. Such appeals should therefore be decided on their merits.

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<sup>1</sup> SAVE Britain's Heritage v SSCLG (C1/2010/1124)

<sup>2</sup> Contained with Circular 10/95 – Planning Controls over Demolition

4. In the same judgement, the Court of Appeal followed a recent decision of the Court of Justice of the European Union<sup>3</sup>, which concluded that demolition works come within the scope of the EIA Directive. Demolition works that are likely to have significant effects on the environment must be subject to screening to determine whether environmental impact assessment is required. Demolition projects are capable of being an urban development project within schedule 2 10(b) to the Town and Country Planning (Environmental Impact Assessment) Regulations 1999. Therefore, development is only permitted under part 31 of Schedule 2 to the GPDO 1995 when it has been determined, by a screening decision, that the development is not EIA development.
5. The requirement to consider whether EIA is required for demolition projects does not extend to Conservation Area or Listed Building appeals involving demolition. As these appeals are made under the Planning (Listed Buildings and Conservation Areas) Act 1990, they are excluded from the scope of the EIA Regulations.

## Action

6. Inspectors should note the content of the Chief Planner letters. The letters may well have a bearing on some current cases and the parties' views may need to be sought. Inspectors are advised to speak with their SGL/AD if they are uncertain how to proceed.
7. This note will be updated to reflect any subsequent advice issued by DCLG and WAG.
8. Please contact XXXX if you have any queries on this Note.

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Director of Quality, Planning Strategy and Plans

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<sup>3</sup> Commission v Ireland (C-50/09)