

**Planning Controls
and Demolition
Update
- New Case Law**

DLP BRIEFING NOTE 50

Prepared by
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April 2011

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Planning Controls and Demolition Update – New Case Law

A Court of Appeal Judgement delivered on the 25th March 2011 in the case of ***SAVE Britain's Heritage v Secretary of State for Communities & Local Government*** has immediate and important consequences for planning control over demolition.

Following the Ruling on the heritage body's judicial review of proposals for the demolition of the former Mitchell's Brewery site in Lancaster, demolition of **listed buildings (all buildings), buildings (non listed) in a conservation area, a building which is also a scheduled ancient monument, or a building that is not a dwelling house or adjoining a dwelling house** is now deemed to be 'development' in the meaning of the Act.

As a consequence, owners and developers are advised to apply to the local planning authority for confirmation as to whether prior approval is required for demolition works being carried out. Further, **planning applications or EIA Screening Requests which involve demolition works must include "demolition of existing building(s)" within their description of development.**

The Government's Chief Planner, Steve Quartermain, has written to all local authority Heads of Planning confirming that the judgement has in effect quashed part of the Town and Country Planning (Demolition – Description of Buildings) Direction 1995, as explained in DoE Circular 10/95. The result is that **the demolition of a building is now a project capable of triggering the requirement for environmental impact assessment (EIA)**, as demolition is now considered a 'project' for the purposes of **Council Directive 85/337/EC**.

Where buildings are to be demolished, in the absence of an associated redevelopment scheme, then developers should make an application for that demolition. Importantly, if the site is greater than 0.5 hectares then the standard **EIA Screening exercise should be undertaken as a matter of course.**

Where only partial demolition is proposed, the situation is less clear. The House of Lords judgement in ***Shimizu (UK) Ltd v Westminster CC (1996)*** found that demolition means "raising to the ground or substantially razing to the ground" – anything falling short of that is considered an alteration. The Shimizu case was concerned with the need for Conservation Area Consent however, and may not necessarily be directly applicable when considering whether or not an application for planning permission might be required in the light of the recent **SAVE** judgement.

The decision has clearly introduced additional complexity in respect of previously-developed land and, particularly in the case of partial demolition, has resulted in a degree of uncertainty.

If you would like more information on the judgement, or require specific advice from DLP Planning Ltd on how the judgement will affect your scheme, please contact your local DLP office.

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