

DEMOLITION – THE NEED FOR PLANNING PERMISSION TO KNOCK DOWN BUILDINGS

ANOTHER EUROPEAN INTERVENTION

AND IS THAT SITE YOU WANT TO BUY WORTH AS MUCH WITH IT'S CURRENT PLANNING PERMISSION PROVIDES?

The Town and Country Planning (Demolition – Description of Buildings)

Direction of 1995 provided that demolition of:-

- (a) a listed building
- (b) any building in a Conservation Area
- (c) any Scheduled Monument
- (d) any building other than a dwellinghouse or a building adjoining a dwellinghouse
- (e) any building with an externally measured size of less than 50 cubic meters and
- (f) the whole or part of any gate fence wall or other means of enclosure

could be demolished without the need to obtain a Planning Permission.

It was also the case that the Secretary of State in the case of Bensham, had decided that the exception to (e) above “ a dwellinghouse or a building adjoining a dwellinghouse” which had the benefit of permitted development rights fell outside of the EU Environmental Impact Assessment (EIA) Directive and so also did not require planning permission for demolition.

The position has fundamentally change by reason of the recent Court of Appeal decision **R (SAVE Britains Heritage) –v-- Secretary of State for the Communities and Local Government 2011**, which held that the demolition of a brewery in Lancaster could amount to a “project” under Article 1.2 of the EIA Directive or a “scheme” and/or as “other interventions in the natural surroundings and landscape” and as such require an EIA and planning permission

The Court went further and declared that the provisions of (a)-(d) above were unsatisfactory , could not be given any effect and in concluding that they were incompatible with the EIA Directive - **unlawful!**

PRACTICAL CONSEQUENCES

1. Planning permission may well be required for demolition. Clients intending to make planning applications which involve demolition will need to consider whether the impact of the demolition proposals themselves, as well as any redevelopment proposals will require an EIA
2. Many planning applications involving demolition will now need to be screened by Planning Authorities to determine whether an EIA is required – and a failure to screen will render a permission vulnerable to third party challenge/ Judicial review

3. Existing planning permissions in respect of which no material start has been made will need to be examined to consider whether they are potentially liable to third party challenge, as it is unlikely that any exiting permissions in relation to development that requires demolition will have an EIA dedicated to the issue of demolition
4. Renewing planning applications will require an EIA for any element of demolition works caught by the EIA Directive
5. Future applications will need to consider an EIA for demolition

There is now a danger that proposed applications, existing permissions, renewals and future applications could all fail if the effect of demolition offends the EIA Directive.

The potential problem for clients considering redevelopment opportunities is obvious!

**David Ferraby
Head of Planning Law at DF Legal LLP
June 2011**