



HOW

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Essential reading for commercial property professionals who need to be in the know

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Demolition and Planning Permission

A recent landmark Court of Appeal ruling has significantly affected the level of planning control exerted over the demolition of buildings. The appeal, brought by SAVE Britain's Heritage in relation to the demolition of the Mitchell's Brewery site in Lancaster, has concluded that demolition works which are likely to have significant effects on the environment would require planning permission and an Environmental Impact Assessment (EIA).

The Town and Country Planning (Demolition - Description of Buildings) Direction 1995 provided that the demolition of listed buildings, buildings in conservation areas, scheduled monuments or any building (other than a dwelling house or a building adjoining a dwelling house) was **not** development and so did **not need planning permission**. The Court found that these parts of the Direction were unlawful and that demolition of buildings within these categories could require planning permission (in addition to any listed building or conservation area consent) as they represent a 'project' as defined in the European EIA Directive.

The initial implication of this is that developers wishing to demolish a building independent of a redevelopment project will now need to obtain the Local Authority's prior approval of the method of demolition, as per the existing requirements for demolishing a dwelling. If the proposed demolition activities are deemed acceptable and do not fall within the remit of the UK EIA Regulations, then Permitted Development rights to demolish (conferred by the General Permitted Development Order) will still apply.

There are greater implications for demolition projects which fall within the development thresholds set out in the EIA Regulations – such as urban development projects on sites of greater than 0.5 hectares or where a building is of significant heritage value. In these circumstances, a developer seeking to demolish buildings must now request a Screening Opinion on the need for EIA from the Local Planning Authority and Permitted Development rights to demolish will only apply **if** a screening opinion or direction has been issued confirming that EIA is not required.

Where a Local Authority determines that a proposed demolition project is likely to have significant effects on the environment, Permitted Development rights are withdrawn and the developer would have to carry out an EIA and apply for planning permission. This is likely to be of particular significance for developers who would otherwise prefer to clear a site prior to submitting a planning application to reduce the risk of an EIA being required for the development of the site.

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For redevelopment projects, any demolition works should now be included within the description of the development on the planning application forms and any environmental effects adequately assessed. There is no change to the requirements for redevelopment projects that require EIA, as Permitted Development rights are automatically withdrawn in such cases and any demolition must therefore form part of the planning application.

When considered alongside the 2010 ruling against Northumberland County Council¹, which has increased the level of evidence required by Local Planning Authorities when determining the need for EIA, this latest ruling has the potential to further increase the burden on those wishing to demolish existing buildings. Heritage studies confirming that buildings are of low historical value and ecological surveys confirming that protected species are not using buildings are likely to be of increasing importance in demonstrating that an EIA should not be required and that demolition should be permitted without the need for planning permission.

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¹ The Queen (on the application of Cooperative Group Ltd) v Northumberland County Council [2010] EWHC 373.