

Change in Planning Law - Demolition is now development

In writing an article on changes to rules governing demolition in the Scottish planning system, it is very difficult to resist the temptation to rely on puns about ripping things out and starting again. When considering the question "*is planning permission required for development?*", one cannot help but wonder whether a neater, clearer statement of the requirement for planning permission might have been achieved had we been starting with a clean slate, so to speak. Rather, we have to consider several sets of regulations, like peeling back layers of old wallpaper, to uncover the answer.

The Town and Country Planning (Demolition which is not Development) (Scotland) Revocation Direction 2011 has revoked its predecessor from 2001. The revocation of the 2001 Direction means that the demolition of any building will be development for the purposes of the Town and Country Planning (Scotland) Act 1997. Demolition will therefore be subject to the relevant planning and, if appropriate, environmental impact assessment requirements.

Is planning permission needed?

Yes, unless the development benefits from permitted development rights ("PDR"). PDR means development permitted by a development order.

When do permitted development rights apply?

The demolition of buildings benefits from PDR, unless they fall within an excluded class of works. PDR expressly do not apply if the building has been rendered unsafe or uninhabitable by the action or inaction of the owner. In effect, a landowner cannot avoid the need to obtain planning permission for demolition of a building where it has simply been allowed to fall into disrepair. Nor do PDR apply if it would be practicable to secure safety or health by repair works or works for supporting the building. Where a building is not capable of being rescued, then there should be some justification for the demolition; presumably reflecting the public policy position that there should be some attempt to preserve our existing towns and buildings.

PDR are also expressly excluded where the development falls within Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, or where the development is listed in Schedule 2 to the EIA Regulations and exceeds the relevant thresholds, or falls within a sensitive area, and where no negative screening opinion or direction has been issued.

That is, of course, not the end of the story. PDR rights can also be revoked by way of an Article 4 Direction in relation to a particular class of works in a particular area. The requirement to obtain Conversation Area Consent or Listed Buildings Consent should also be considered.

Having jumped through each of these hoops, PDR only apply if various conditions have also been satisfied. In some cases, prior notification to the planning authority will be required to determine whether the planning authority's approval is needed before demolition can take place.

A simplified regime?

The planning system in Scotland has recently undergone a period of radical change. The intention of the Scottish Government has been to make the planning system more efficient and easier to use. The scope of PDR has also been subject to consultation, with the intention that the range of developments for which planning permission is needed is reduced, easing the burden on stretched local planning authorities and allowing them more time to dedicate resources to larger development proposals. The extent to which increased use of the prior approval process in relation to demolition will be in keeping with the objects of reform remains to be seen.

What do the changes mean for developers?

The headline news is that the revocation of the 2001 Order means that demolition is now development. Permitted development rights remain unaltered. But check the small print - planning permission will be required in a number of cases.

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