



Briefing Note

Ding it Doon:

A guide to the policy and legislative processes of demolition

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Working to Promote and Improve Scotland's Built Environment

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by the Scottish Civic Trust

Introduction

This briefing note seeks to clarify the policy position of the demolition of buildings. It will address both the planning and building warrant processes, and cover all buildings and structures, whether listed or not. Its purpose is not to comment on the suitability of demolition or otherwise, but to merely inform on the regulatory issues surrounding demolition *per se*.

All efforts have been made to ensure accuracy. However, any person who is thinking about the demolition of any type of building is advised to contact their local planning authority directly. The same applies to those who might be concerned about the demolition of a property in their neighbourhood.

Finally, it should be noted that the information contained within this briefing note applies to Scotland only. Although the processes and legal position with regard to demolition are similar across the UK, there are differences that need to be considered from each respective home country.

In a nutshell

The vast majority of buildings will not require planning permission for demolition, although any property used as a house will require *Prior Approval* from the relevant planning authority if proposed for demolition.

All proposals to demolish, or part demolish, listed buildings will require *Listed Building Consent*. The same applies with any Scheduled Ancient Monument, which will require *Scheduled Monument Consent*.

In a Conservation Area, *Conservation Area Consent* is required for the demolition of buildings, structures and other elements such as gates and enclosures. This also applies to part demolition.

In all instances, a *Building Warrant for demolition* from the relevant building control authority will be required. The only exception is when a *Dangerous Building Notice* under the Building (Scotland) Act has been served on a particular property.

Planning Legislation

Planning legislation covering the demolition of a building or structure is complex and not entirely straightforward.

Only in 3 specific instances does demolition require consent. If a building or structure is "listed" (ie included on the *List of Buildings of Architectural or Historic Interest*) or affects the curtilage of a listed building, the demolition of all or part of it requires Listed Building Consent. If a building or structure that is not listed but is located within a Conservation Area, its demolition would require Conservation Area Consent. If a structure is a Scheduled Ancient Monument, Scheduled Monument Consent is required. Otherwise, planning permission is not required for demolition, other than

in the situations described below. However, this does not mean that you can demolish a building without informing the relevant local planning authority.

Demolition and Development

Overall, planning legislation and corresponding case law has made it clear that demolition is not considered “development” under the provisions of the Planning Acts, and therefore does not require a specific planning consent.

There have been specific issues that have resulted, most notably the case in the House of Lords in 1997 (*Shimizu (UK) v Westminster City Council* 1A11 ER 481) where a judgement was issued that works involving the partial demolition of a listed building should no longer be regarded as “demolition” but as an “alteration”. This had a number of legal implications for controls over the demolition of listed buildings as well as for unlisted buildings in conservation areas. The *Planning Etc (Scotland) Act 2006* has now rectified this by including under the provisions of Conservation Areas Consent (see later) that “demolition includes partial demolition (and any analogous expression)”.

The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001 (a stop gap measure prepared in response to Shimizu before the new planning Act addressed the issue legislatively) also covers the whole or any part of any gate, fence wall or other means of enclosure in this regard, meaning that consent is required to demolish any of these in a Conservation Area.

Demolition and unlisted buildings

The Town and Country Planning (General Permitted Development) (Scotland) Order effectively grants planning permission for the demolition of certain types or classes of buildings. In particular instances, this is subject to making an application to the Planning Authority for a determination as to whether a prior approval will be required for the method of demolition proposed and any restoration of the site once demolition has occurred. This process, called an *Application for Prior Approval*, is required if it is proposed to demolish any of the following types of buildings or structures:

- A dwelling house;
- A building containing one or more flatted residential units;
- A building having a mutual wall with, or main door adjoining the main wall of a dwelling house or building containing flats.

A dwelling house is a building that is in residential use, or if vacant, was last used as a place of residence, even if its original or earlier use was for something different. This also applies to flatted accommodation, terraces and semi-detached units. An *Application for Prior Approval* is not required under the General Permitted Development Order for any other types of uses – ie, it only applies to residential property or properties adjoining residential properties. If a residential unit is ancillary to another type of use (for example, a caretaker’s flat in a warehouse), this building would not be considered as a dwelling house for the purposes of the Order, making its demolition permitted development.

Thus, a stone byre would not require an *Application for Prior Approval* if it was last used for agricultural purposes, but it would if it had been converted to a dwelling house or houses and this was its last use. Also, if the byre were still used as part of an agricultural unit but shared a wall with the main farmhouse, an *Application for Prior Approval* would be required. The same would apply to an office or warehouse if it shares a party wall with a house or tenement building with flats.

It should be noted that *Applications for Prior Approval* for demolition are very rare and should be advertised on a Council's planning register. The demolition of residential properties is usually tied into a planning application for redevelopment in most instances, making prior approval applications unnecessary in these cases.

The main issues for clarification under the prior approval process are the methodology of demolition, and the proposed use/condition of land after demolition has taken place. Whilst a planning authority might seek information on the applicant's intentions for the site following demolition, this would not influence a decision under the prior approval procedure *per se*.

Demolition, Listed Buildings and Listed Building Consent

As noted above, a listed building is a building designed as having special architectural or historic interest, and thereby included by Scottish Ministers on the List of Buildings of Architectural or Historic Interest. Listed buildings are subject to control under the provisions of the *Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997*. Applications for the demolition of a listed building, in whole or in part, requires Listed Building Consent (LBC). Government policy states that no listed building should be demolished without very careful consideration, and needs to be assessed against its structural condition and other factors (such as evidence of marketing for a suitable restoring purchaser).

Listing

Listing is a process of articulating the importance of a building or structure based on its architectural or historic merit. The List is prepared by Historic Scotland on behalf of Scottish Ministers. Powers to list derive from the *Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997*.

The state of repair is not a relevant consideration against the test of special interest. It only becomes a factor when the building's condition has devalued the particular architectural or historic interest to the degree that it can no longer be regarded as special. The term "building" is defined broadly in the legislation and can include (for example) walls, fountains, sundials, ha-has, statues, bridges, bandstands and telephone boxes.

A listed building will be ascribed a category. These are:

Category A

Buildings of national or international importance, either architectural or historic, or fine little-altered examples of some particular period, style or building type. (Approximately 8% of the total).

Category B

Buildings of regional or more than local importance, or major examples of some particular period, style or building type which may have been altered. (Approximately 51% of the total).

Category C(S)

Buildings of local importance, lesser examples of any period, style, or building type, as originally constructed or moderately altered; and simple traditional buildings which group well with others in categories A and B. (Approximately 41% of the total)

In considering any application affecting a listed building (including its demolition), a planning authority "is required to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses" (sections 14(2) and 59(10) of the *Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997*). In practice, the demolition of a listed building will

require verifiable evidence that it is not capable of retention and reuse, by the owner or any other party. This does not mean that the demolition of a listed building will never be permitted; only that the tests for permitting it are rigorous and place the interests of the building first.

There is an issue with regard to the part demolition of a listed building and the distinction of whether it is demolition or an alteration *per se* (as per Shimizu noted above). However, as both require Listed Building Consent and are subjected to the same statutory provisions, this distinction is, in practical terms, not important.

It should be noted that the demolition of a listed building without Listed Building Consent is a criminal offence under the *Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997* and carries with it the potential, upon successful prosecution, of a fine of up to £20,000 and/or imprisonment of up to 6 months.

Scottish Historic Environment Policy

The Scottish Historic Environment Policy (SHEP) sets out the Government's policies on the historic environment. It covers a range of issues, including listed building consent.

Where the application for LBC proposes the demolition of a listed building, applicants will be expected to provide evidence to show that:

- a. the building is not of special interest; or
- b. the building is incapable of repair; or
- c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
- d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

Conservation Area Consent

The demolition of an unlisted building requires permission from the relevant planning authority. This is known as Conservation Area Consent (CAC). Government Policy guidance on CAC makes it clear that there is a general presumption in favour of retaining buildings that make a positive contribution to the character or appearance of the conservation area.

Partial demolition of an unlisted building and other structures (such as gates, fences and other enclosures) is now considered to be development, by virtue of *The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001* and section 55 of the new planning Act. As such, Conservation Area Consent is required. To determine if CAC is required, it is best to contact the local planning authority for advice.

In many cases, CAC will not be granted unless there is a scheme for a replacement building(s) that has a valid planning consent. Some local authorities might require evidence of a contract to erect the replacement before granting CAC. This is to ensure that the site is redeveloped as soon as possible with minimal impact to the local amenity as the result of an undeveloped gap site.

Scheduled Monument Consent

If the building or structure considered for demolition is a monument designated under the *Ancient Monuments and Archaeological Areas Act 1979* (known as a "Scheduled Ancient Monument" or SAM), Scheduled

Monument Consent (SMC) is required from Scottish Ministers via Historic Scotland. Scheduled monument consent is separate from the statutory planning process. It may run in parallel in cases where planning permission is also required, and such cases are normally dealt with most effectively if applications for planning permission and scheduled monument consent are prepared at the same time.

There is a general presumption in favour of preservation of a scheduled ancient monument *in situ*, meaning that demolition is not considered an appropriate action in the vast majority of instances. The demolition of SAM without Scheduled Monument Consent is a criminal act.

Building Warrants and the Building Control system

The building control system assesses technical issues of building construction. Its purpose is not to consider the desirability of building works (that is what the planning system does) but to ensure that buildings and structures are built in a manner that is fit for purpose.

An application for a building warrant under the *Building (Scotland) Act* is required for any demolition works, either to the whole of, or part of, any building. The purpose of a Building Warrant, unlike planning permission, is to determine safe practices for demolition.

Typical information required to obtain a building warrant for demolition includes:

- the size and position of the building you want to demolish and its relationship to buildings nearby (on a 1:500 scale plan);
- the boundaries with land being used by different people and the distance to that land;
- appropriate details to show the construction of the building to be demolished, for example,
- section details through the building showing the materials and methods of construction;
- A statement showing how you plan to demolish the building including appropriate details to show that the work involved will meet the requirements of building regulations 10, 13 to 15; and
- the period of time in which the demolition work must be completed.

When is a Building Warrant not needed?

There are very few occasions when a warrant for demolition is not required. This usually covers instances where a building becomes dangerous and structurally unsound, or when there is a very clear health and safety issue that must be addressed.

For example, a building might be served with a Dangerous Building Notice under s.29 of the Building (Scotland) Act. A DBN can only be served by a Building Control Officer of the relevant local authority, but they might act on evidence of structural condition provided by a third party, such as a structural engineer or architect employed by the owner. A building or structure served with a DBN can be demolished without a warrant.

Under s.91 of the Housing (Scotland) Act, it is possible to designate buildings under a Housing Action Area for Demolition. In this instance, a warrant is unnecessary.

Summary

The briefing note aims to inform and clarify the various statutory processes covering the demolition of buildings and structures in Scotland.

Buildings and structures that are listed, scheduled or located in a conservation area will require permission from the local planning authority (or Historic Scotland in the case of scheduled ancient monuments).

The demolition of houses and buildings last used as houses requires an Application of Prior Approval to be submitted to the local planning authority.

Other than that, all other buildings and structures can be demolished under the terms of “permitted development”.

However, in all cases of demolition, a building warrant for demolition will be required.

Finally, before embarking on any demolition activity, it is always best to consult with the planning and building control departments in the local authority.



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