



THE ENVIRONMENT AND PLANNING LAW ASSOCIATION  
OF NORTHERN IRELAND

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### **RESPONSE TO THE DEPARTMENT OF ENVIRONMENT'S CONSULTATION ON PLANNING AND DEMOLITION CONTROL**

This consultation response is provided on behalf of the Environmental and Planning Law Association of Northern Ireland (EPLANI), a registered charity that aims to promote understanding of environment and planning law in Northern Ireland. Its membership comprises of planning and environmental professionals in the private and public sectors along with students and members of the public with an interest in planning and environmental matters.

EPLANI welcomes the Department of the Environment's Consultation Document on proposed changes to the Departmental Direction on Demolition and the proposed amendments to the Planning (General Development) Order (NI) 1993 which proposes new permitted development rights for the demolition of buildings. Currently demolition of buildings other than Listed Buildings, and unlisted buildings in Conservation Areas and Areas of Townscape Character does not require planning permission because it is defined as lying outside the 'meaning of development' in the Departments' current Direction on Development (2009). The proposed new Direction on Development will take account of the outcome of the English Court of Appeal decision (*Save Britain's Heritage 2011*) which concluded that demolition can be a 'project' under Art 1.2 of the EIA Directive. If that 'project' requires an Environmental Impact Assessment, then it cannot be 'permitted development'. Therefore, by means of equivalent, the Northern Ireland Direction 2009 is incorrect in excluding certain categories of demolition from the meaning of development.

We comment below on the details contained within the Discussion Document – Annex A (draft Departmental Direction on Development), and Annex B (draft Indicative Permitted Development Rights). Should the Department require further information or clarification, EPLANI would be pleased to assist further.

**Andrew Ryan**

**EPLANI Chair**

The proposed new Direction (Annex A of the consultation paper) will only exclude from the meaning of development relatively minor demolition operations such as (a) a small building of less than 115 m<sup>3</sup>, measured externally, or (b) the whole or part of a gate, fence, wall or means of enclosure. This is different in the case of Areas of Townscape Character (ATC's) or Areas of Village Character (AVC's) where the 'meaning of development' relates only to gates, walls fences and other means of enclosure which are less than 2m high or less than 1m high where adjacent to a road or public open space. Therefore this would theoretically require planning permission to be granted for those demolition works outside the exceptions. However, a proposed amendment to the GDO (Annex B of the consultation paper) is intended to grant permitted development rights to a large proportion of the demolition which is brought within the meaning of development by the proposed Direction in order to comply with the Save Britain's Heritage ruling.

Should it be the case that the ATC/AVC structures are excluded and should demolition consent be required for these also given their potentially sensitive nature?

Development that is within an ATC/AVC which is required under the Housing Order 1981 Article 35 and 63 or is included within a Vesting Order under Articles 48 or 87 will be permitted development. There is an argument against such works falling within permitted development and exempt from control as these types of developments can affect substantial areas for long periods of time.

Any major demolition works which would trigger the requirement for an Environmental Impact Assessment (EIA) would be excluded from permitted development rights. This would require a formal scoping process with the Department and thoroughness due to potential Judicial Review risks.

The proposed new Direction does not exclude the demolition of listed buildings, scheduled monuments or unlisted buildings in Conservation Areas from the meaning of development and there is no General Development Order permitted development rights so these works would require planning permission as well as the associated consents under other regimes, even if no EIA is triggered.

The consultation paper does not refer to demolition under an Enforcement Notice which it is presumed is covered by permitted development except where EIA is required, which would then also require planning permission. Equally, the consultation paper does not refer to ATC/AVC demolition under an Enforcement Notice and if this is granted permitted development, similar to the demolition addressed under the Housing Order. Clarification is sought in this respect.

#### General observations:

The proposed changes are responsive to development of case law but the issue of demolition will have greater complexity. Therefore there are responsibilities for developers to address a number of scenarios:

- Obtain the necessary consents to demolish a listed building or building within a conservation area or scheduled monument;
- Include the proposed demolition in the description of development for a new scheme on a site;
- Screen the need for an EIA for a proposed demolition where the demolition itself might constitute an urban development project under the EIA Directive and obtain a determination from the Department;
- Submit an EIA with a planning application for the proposed demolition if this is deemed necessary by the Department;
- Obtain planning permission for the demolition of buildings within ATC/AVC unless the demolition is for the structures specifically excluded from permitted development rights in the proposed GDO as amended.

It is therefore important to ensure that a revised Guidance Note is compiled as soon as possible such the proposed changes proceed to implementation.



A suggestion may be to extinguish the Direction of Demolition and allow demolition to fall within the meaning of development in terms of the Planning Order. Then the exceptions for small buildings, gates, walls etc and for Housing Order situations and minor developments within ATCs could be covered by the General Development Order.

**EPLANI**

**16 April 2012**