

## Demolition requires planning permission

If you have any queries on the issues raised or would like a further explanation, please contact a member of our Commercial Property Team

### What has happened?

Following a recent Court of Appeal decision in *R (Save Britain's Heritage) v Secretary of State for Communities and Local Government* [2011] most demolition works are now likely to require planning permission and may also require an Environmental Impact Assessment ("EIA") to ascertain any likely significant effects that the project will have on the environment.

### The background

It was not necessary to obtain planning permission for most demolition works because the Town and Country Planning (Demolition – Description of Buildings) Direction 1995 ("the Demolition Direction") specifically excluded the total demolition of certain categories of buildings from the definition of development, including "any building other than a dwelling house or a building adjoining a dwelling house". However the Court of Appeal has now declared that various provisions of the Demolition Direction are unlawful, which means that various of the categories of demolition which were exempted from the need for planning permission now require planning permission in addition to any other consent.

In addition the Court of Appeal considered that the demolition of buildings is capable of being a "project" falling within the European Union's Environmental Impact Assessment Directive (the EIA Directive), and therefore might require an EIA to ascertain any likely significant effects that the project will have on the environment.



### What this means

The judgment has far reaching consequences for developers. From 25 March 2011 demolition should be approached in the same way as other projects and planning permission will be needed in most cases and consideration will need to be given as to whether an EIA is also required. It is hoped that the Department for Communities and Local Government will issue new guidance to help clarify the position. In the meantime developers and planning authorities will have to change the way they look at the environmental effects of projects that involve demolition of existing buildings to see whether they might be covered by the EIA Directive. In particular:-

1. Demolition works should not be started without considering afresh whether planning permission is needed.
2. A planning application which involves the demolition of an existing building should not be made without considering whether an EIA is needed to look at the environmental impact of the demolition.
3. An existing planning permission might clearly authorise demolition as part of the development, and an EIA might have been produced as part of the planning process, but it is now vulnerable to challenge unless the EIA considered the impact of the demolition separately from the impact of the construction.