



SCOTTISH EXECUTIVE

Development Department

The Chief Executive
Local authorities

Our ref: PGB 3/20

Copy to: The Director of Planning

22 January 2001

**This Circular supersedes Circular 15/1995
This Circular amends Circular 2/1995 (Annex B)**

Dear Sir or Madam

**THE TOWN AND COUNTRY PLANNING (DEMOLITION WHICH IS NOT DEVELOPMENT)
(SCOTLAND) DIRECTION 2001**

DEMOLITION OF WALLS, GATES, FENCES AND OTHER MEANS OF ENCLOSURE IN
CONSERVATION AREAS

Introduction

1. This Circular re-introduces a requirement that, for the purposes of the Town and Country Planning (Scotland) Act 1997, the demolition of the whole or any part of any gate, fence, wall or other means of enclosure in a conservation area shall be classed as development. The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 1995 is revoked and replaced with the Direction at Annex, which has a revised paragraph 1(1)(f). The Direction shall have effect from the date of this Circular.

Background

Shimizu (UK) v Westminster City Council

2. In 1997 the House of Lords issued a judgement, in the case of *Shimizu (UK) v Westminster City Council (1997 1A11 ER 481)*, which means that works involving partial demolition of a listed building should no longer be regarded as "demolition" but as an "alteration". This judgement had legal and practical implications for controls over demolition of listed buildings, as well as for unlisted buildings and structures in conservation areas. In the light of these implications, a consultation paper was issued by the Department in April last year setting out options for addressing them.

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

3. The unanimous conclusion from the consultation was that the definition of a listed building in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 should be changed so that partial demolition of an unlisted building in a conservation area can be controlled by way of the requirement to apply for conservation area consent. The necessary changes to primary legislation will be made as soon as a legislative opportunity arises.

Demolition of Gates, Fences etc in Conservation Areas

4. As explained in the consultation paper, an indirect consequence of the Shimizu decision is that conservation area consent is no longer required for the partial demolition of buildings which would include unlisted gates, fences, walls or other means of enclosure in conservation areas. By virtue of The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 1995 referred to above, such works did not constitute development and so were not subject to planning control. The reason for disapplying development in respect of such works was the fact that before the Shimizu decision they would have been subject to the requirement to obtain conservation area consent. It is recognised, however, that these features can be important to the character and appearance of conservation areas and should be subject to some control so that they can be protected as part of a comprehensive management strategy for the conservation and improvement of conservation areas.

Implications of Change

5. Including the partial demolition of unlisted gates, fences, walls or other means of enclosures in conservation areas within the meaning of development in the Town and Country Planning (Scotland) Act 1997 means that the planning controls now apply to the partial demolition of such features. However, class 7 of part 2 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 operates so that permitted development rights will be available in many cases involving the alteration of such forms of enclosure. If a local authority wishes to remove permitted development rights in this class so that planning permission is required, an Article 4 Direction will need to be submitted to the Scottish Ministers for approval supported by a statement of an authority's reasons for making a Direction. National Planning Policy Guideline 18: *Planning and the Historic Environment* contains policy guidelines on what this should include. The Scottish Ministers also expect proposals for conservation areas and Article 4 Directions to be promoted through Local Plans. However, where there is shown to be an urgent need to remove permitted development rights to close the loophole created by the Shimizu judgement, evidence of advertisement and publication of the proposals along with consideration given to responses received will form an important part of the supporting statement.

Total or Substantial Destruction

6. An indirect implication of the Shimizu judgement is therefore that greater importance is now given to the definition of demolition. Interpretation of legislation is ultimately a matter for the Courts. However, it is reasonable to conclude that, as a result of Shimizu, conservation area consent is only required for works involving the total or substantial destruction of a gate, fence, wall or other means of enclosure in a conservation area, carried out on such a scale as to amount to 'demolition' and not just demolition in part.

Further Copies and Enquiries

7. Enquiries about the contents of this Circular should be addressed to Mr John O'Brien, Planning Division, Area 2-H47, Victoria Quay, Edinburgh, EH6 6QQ (Telephone 0131 244 7061; e-mail: john.o'brien@scotland.gov.uk). Further copies and a list of current planning circulars can be obtained from either Mr Tony Cruickshank (Telephone 0131 244 7066) or from the Scottish Executive website at: www.scotland.gov.uk/planning.

Yours faithfully

Ms MAUREEN MCGINN

THE TOWN AND COUNTRY PLANNING (DEMOLITION WHICH IS NOT DEVELOPMENT) (SCOTLAND) DIRECTION 2001

The Scottish Ministers, in exercise of the powers conferred on them by section 26(2)(g) of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them on that behalf, hereby give the following Direction:

1.- (1) The demolition of the following descriptions of building shall not be taken, for the purposes of the Town and Country Planning (Scotland) Act 1997, to involve the development of land:

- (a) subject to paragraph (2), any building other than-
 - (i) a dwellinghouse;
 - (ii) a building containing one or more flatted dwellinghouses; or
 - (iii) a building having a mutual wall with, or having a main wall adjoining the main wall of, a dwellinghouse or a building containing one or more flatted dwellinghouses;
- (b) any building which is a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- (c) any building in a conservation area within the meaning of section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
- (d) any building which is a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;
- (e) any building the cubic content of which, measured externally, does not exceed 50 cubic metres;
- (f) the whole or any part of any gate, fence wall or other means of enclosure, except in a conservation area.

(2) A building is not to be regarded as a dwellinghouse or as containing a flatted dwellinghouse for the purposes of sub-paragraph (1)(a) above if the use of that building, or part of that building, as a dwellinghouse is ancillary to any non-residential use of that building or other buildings on the same site.

2 In this direction:

- (a) “building” does not include part of a building, except for the purposes of paragraph 1(1)(f) and (2) above;
- (b) each house in a pair of semi-detached houses, and every house in a row of terrace houses (whether or not, in either case, the house is in residential use), is to be regarded as a building;
- (c) “flatted dwellinghouse” means a separate and self-contained set of premises whether or not on the same floor, constructed or adapted for use for the purpose of a dwelling, and forming part of a building from some other part of which it is divided horizontally;

(d) “site” means the whole area of land within a single unit of occupation.

3. The Town and Country Planning (Demolition which is not Development) (Scotland) Direction 1995 is hereby revoked.

4. This Direction may be cited as the Town and Country Planning (Demolition which is not Development) (Scotland) Direction 2001.

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