

Building Act 1984 Sections 80 - 83

DEMOLITION

DEMOLITION

Demolition is the ultimate solution for consideration when a building is in such condition as to be:

- i of no further use
- ii dangerous
- iii in a ruinous and neglected state

The complete removal of a building renders the site a potential asset for redevelopment or provides amenity open space.

Before any preliminary work for demolition takes place, the relevant legislation which must be observed and followed, includes:

- i The Building Act 1984
- ii Town and Country Planning Act 1990
- iii Planning (Listed Buildings and Conservation Areas) Act 1990
- iv Health & Safety at Work etc Act 1974
- v Management of Health & Safety at Work Regulations 1992
- iv Construction (Design and Management) Regulations 1994

The Building Act 1984 Section 80

Intended Demolition:

Any person who intends to carry out the demolition of a building must inform the local authority in writing. Legally no one can start demolition work unless the local authority has been notified. The notification must specify the building to which it relates, and the work of demolition intended to be carried out, but this is not required to be set out on a special form. A description of the proposed demolition could be incorporated on an accompanying building regulation submission form or building notice.

Failure to recognise an appropriate notice in such circumstances may prevent the local authority from serving a "counter notice". The person notifying the local authority must send a copy of the notification to:

- a) the occupier of any building adjacent to the building to be demolished
- b) any public gas supplier in whose authorised area the demolition is taking place
- c) the public electricity supplier in whose authorised area the building is situated, and
- d) any other person authorised by a licence to supply electricity.



Photo by courtesy of Guthrie Photography Park Circus Place
Glasgow

Demolition may legally commence after the authority has issued a counter notice under Section 81, or if the authority has failed to issue a counter notice within six weeks of the date of service of the notice of intent. Where demolition has commenced without pre-notification to the local authority, an offence will have been committed and this could result in a conviction in the Magistrates Court. However, this does not prevent the authority serving its counter notice and instigating proceedings for a fine.

Exemptions:

Section 80 applies to any demolition of the whole or part of a building except a demolition:

- a) in pursuance of a demolition order made under Part IX of the Housing Act 1985
- b) of an internal part of a building, which is occupied, and which is intended to continue to be occupied
- c) of a building of cubic content not more than 1750 cubic feet, measured externally (approximately 50 cubic metres)
- d) of a greenhouse, conservatory, shed or prefabricated garage even if such structure forms part of a larger building: and

- e) of an agricultural building unless it is near/touching another building that is not itself an agricultural building or a building mentioned in c) and d) above.

Part Demolition

Demolition is often considered to be the complete removal of large structures or a number of linked dwellings. The Act refers to demolition as "whole or part" of a building. By virtue of this reference the demolition of an unbound wall to a dwelling is controlled by the Act.

Section 81

Local Authority Counter Notice:

Upon receiving notification of intended demolition, the local authority may serve notice on the person intending to carry out the demolition. The notice will contain requirements on how the demolition is to be undertaken. Such a notice may be served upon "a person" who:

- i is in receipt of a demolition order or obstructive building order under Part IX of the Housing Act 1985
- ii appears not to be intending to comply with an order made under Section 77 or notice given under Section 79 of the Building Act 1984; and
- iii appears to have begun demolition which is not exempt from control.

Nothing contained in a notice from the local authority will prejudice any application or operation under Section 53(1) of the Health and Safety at Work etc. Act 1974.

Note: Section 80 does not apply to the demolition of a building in pursuance of a demolition order made under Part IX of the Housing Act 1985 but this does not preclude the local authority from giving notice under Section 81 to the person on whom a demolition order has been served under Part IX. This allows the local authority to state how the demolition is to be undertaken.

Interpretation of Terms in Section 81

Relevant Period

The counter notice served by the local authority must be issued within "the relevant period". Where a person proposing demolition has served notice upon the local authority under Section 80, the relevant period is six weeks. In cases where a

demolition order has been served by the Local authority under Part IX, the relevant period is seven days. In both cases, the relevant period may be extended provided there is an agreement between the local authority and the person proposing demolition. In both such cases the agreement must be in writing.

Adjacent Premises

The 'owner' and 'occupier' of adjacent premises must be served with a copy of the counter notice. It is important that this is served on the relevant persons so that those who may be affected are aware of the situation.

Statutory Undertaker

If any services of any statutory undertaker are to be disconnected due to the demolition, then a copy of the counter notice must be presented to the particular statutory undertakers), ie in respect of the disconnection of:

- i gas supply
- ii electricity supply; and
- iii water supply.

Burning Materials

If structures or materials are to be burned on site and the building in question is, or forms part of, a 'special premises' defined under the Health and Safety at Work etc. Act 1974, a copy of the counter notice must be presented to the Health and Safety Executive and the Fire Authority. In other cases a copy of the counter notice must be forwarded to the fire authority.

Owner:

Means the person for the time being receiving the rack rent of the premises whether on his own account or as agent or trustee for another person, who would so receive it if those premises were let at rack rent: Building Act, Section 126.

Rack Rent:

Rack rent in relation to property, means a rent that is not less than two-thirds of the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and deducting from it the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the property in a state to command such rent.

Occupier:

The term 'occupier' is not defined in the Building Act. A 'occupier' has been held to be the person exercising physical control and possession of the premises and the power of permitting or prohibiting the entry of other persons: see *Hartwell -v- Grayson, Rollo and Clover Docks Ltd* (1947) K.B.901: and *Wheat -v- Lacon & Co. Ltd* (1966) A.C.552. The term was further considered by the House of Lords in *Southern Water Authority -v- Nature Conservancy Council* (1992) 1

W I.R.775. involving the carrying out of works by the water authority to a ditch on a Site of Special Scientific Interest within Section 28 of the Wildlife and Countryside Act 1981. It was an offence to carry out such works unless notice had been given to the council by the owner or occupier. The water authority, which had been fined for failing to give notice, did not own the land and argued that it was not the occupier. It was held that the conviction should be quashed as simply carrying out works on the land did not make the water authority the 'occupier' of the land. The meaning of the term had to be derived from the statutory context in which it was used and in this case it did not include persons who had no connection with the land until starting work on it.

Counter Notice Content

A counter notice served under Section 81 of the Building Act may require all or any of the following works:

- a) to shore up any building adjacent to the building to which the notice relates
- b) to weatherproof any surfaces of an adjacent building that are exposed by the demolition.
- c) to repair and make good any damage to an adjacent building caused by the demolition or by the negligent act or omission of any person engaged in it
- d) to remove material or rubbish resulting from the demolition and clearance of the site
- e) to disconnect and seal, at such points as the local authority may reasonably require, any sewer or drain in or under the building
- f) to remove any such sewer or drain, and seal any sewer or drain with which the sewer or drain to be removed is connected
- g) to make good to the satisfaction of the local authority the surface of the ground disturbed by anything done under paragraphs e) or f) above
- h) to make arrangements with the relevant statutory undertakers for the disconnection of the supply of gas, electricity and water to the building
- i) to make such arrangements with regard to the burning of structures or materials on the site as may be reasonably required
- j) to take such steps relating to the conditions subject to which the demolition is to be undertaken, and the condition in which the site is to be left on completion of the demolition, as the local authority may consider reasonably necessary for the protection of the public and the preservation of public amenity.

Note: In item j) the local authority can

control the method of demolition, dampening down of dust and the prohibition of the disposal of materials by fire. But there may be some allowance for burning in smoke controlled areas where infested timber needs to be disposed of.

When a counter notice is served, it limits the extent to which a person may be required to carry out work on land outside the demolition site. In particular this refers to items c), e) and f) which may be incorporated in the counter notice. No person can undertake any of these descriptive works unless he has a right to undertake the work. The person who is undertaking the demolition or the local authority (in default) may break open any street to carry out the works to either disconnect and seal any drain or remove any sewer or drain. This is subject to Section 101 of the Building Act where there is a right granted to break open a street to any person empowered by Section 82 of the Act to deal with a sewer or drain.

The Building Act does not give authority to any person to interfere with apparatus belonging to a statutory undertaker. If any unauthorised person interferes with such apparatus, it could result in criminal proceedings.

Procedures

Content of Notice:

Section 99 of the Building Act states how the counter notice is to be prepared. It must indicate both the nature of the works and the time within which the works are to be carried out. The counter notice should not be ambiguous nor uncertain and should tell the recipient what has to be done in specific terms.

See *Miltar-Mead -v- Minister of Housing and Local Government* (1963) 2 Q B 196.

Appeal Against Notice:

Under Section 102 of the Building Act an appeal can be made against the counter notice requiring works. Section 83 of the Building Act introduces additional grounds such as costs for shoring, weatherproofing of exposed surfaces and the contribution as to payment of such costs.

Town and Country Planning Act 1990

The position regarding demolition as development was clarified by amendments made to Section 55 of the Town and Country Planning Act 1990 by Section 13 of the Planning and Compensation Act 1991 which came into effect on 27 July 1992. Demolition

of a building is now within the definition of a building operation unless excluded by a direction given by the Secretary of State. A direction given in the Department of the Environment Circular 16/92, Welsh Office 33/92, entitled 'Planning Controls over Demolition' excludes three categories of building:

- i listed buildings, buildings in conservation areas and scheduled monuments which are all subject to control under other legislation
- ii a building less than 50 cubic metres (measured externally)
- iii a building which is not used as a dwelling house or adjoining a building used as a dwelling house.

The Town and Country Planning General Development Order 1988 (S.I. No. 1813) has been amended by the Town and Country Planning General Development (Amendment) (No. 3) Order 1992 to grant permission for the demolition of all buildings not excluded from control by virtue of the direction. However, in certain specified circumstances the permission may not be exercised before the developer has applied to the local planning authority for a determination of whether the prior approval of the authority is required to the method of the proposed demolition and any proposed restoration of the site.

A determination is not required where:

- i demolition is urgently necessary in the interests of health or safety and written justification is given to the authority as 'soon as practicable', or
- ii the demolition is in connection with redevelopment for which planning permission has been given, or
- iii demolition is required or permitted under any other legislation.

If the authority wishes to prevent the demolition from taking place it may issue what is termed an Article 4 direction which would have to be confirmed within six months by the Secretary of State.

The unlawful demolition of a building may be subject to enforcement proceedings under Part VII of the Town and Country Planning Act 1990 and the enforcement notice may require the construction of a replacement building which is as similar as possible to the demolished building.

Listed Buildings : Conservation Areas

The Planning (Listed Buildings and Conservation Areas) Act 1990, Sections 7 and 8 state that no person is permitted to demolish a listed building without obtaining authorisation from the local planning authority or the Secretary of State.

Section 74 of this Act states that where a building is situated in a Conservation Area and not listed, that building cannot be demolished without the consent of the planning authority or the Secretary of State.

Demolition is also referred to in Circular 8/87 issued by the Department of the Environment under the title of *Historic Buildings and Conservation Areas: Policy and Procedures*. This Circular only refers to England and not to Wales.

Construction (Design and Management) Regulations 1994

These Regulations made under the Health & Safety at Work etc Act 1974, came into force on 31 March 1995 and apply generally to construction work. Demolition is specifically included within the meaning of construction work

and is applicable irrespective of the number of people employed on the site or the length of time the work will take. Duties are imposed on:

The Client to appoint a competent planning supervisor and principal contractor for each project

The Planning Supervisor

- a) to ensure that designers comply with their duties
- b) to prepare a health and safety plan before a contractor is appointed
- c) to notify the Health and Safety Executive of notifiable work in which he is acting as supervisor
- d) to give advice to the client and the contractor

The Designer to ensure that the client is aware of his duties under the regulations and to design accordingly

The Principal Contractor to ensure that all persons carrying out work, do so in accordance with the health and safety plan

Depending on the circumstances, a local authority could be involved in demolition work as client, designer, contractor and possibly planning supervisor.

Failure to comply with the requirements of these regulations constitutes a criminal offence.

The Health and Safety Executive has prepared guidance in 'Managing construction for health and safety; Construction (Design and Management) Regulations, 1994 -Approved Code of Practice', obtainable from HSE Books, P O Box 1999, Sudbury, Suffolk, CO10 6FS. Lists of free and priced HSE publications are also available from the above address.

CASE LAW

i Bond -v- Nottingham Corporation (1940) (CH 429). An owner proposing to demolish a building, or a local authority in default in pursuance of a demolition or clearance order, must have regard to any easement of support enjoyed by an adjoining owner.

ii *Phipps -v- Pears* (1965) (1 QB 76). Where an authority demolishes property they assume the responsibility of any owner who demolishes his

property (except that claims for damage, other than that arising from negligence, may fall to be dealt with under Section 106 of the Building Act rather than by action). It would seem. In this connection, that if an authority were to demolish property in a block they are under no obligation by statute or case law to weatherproof the exposed wall.

iii *R. -v- Stroud District Council*. Ex part Michael Goodenough, Julian Usborne and Stephen Tomlin (Queen's Bench Division, Donaldson. L.J. Wolf Woolf J. June 3. 1980). Deterioration of six listed buildings. Local authority complained under Section 58 of the Public Health Act 1936 *i*) order made requiring the owners either to make the buildings safe or to demolish them - members of the Stroud High Street Action Group applied for an order of mandamus directing the local authority to prevent the demolition of the houses until demolition was authorised under Section 55 (2) Town and Country Planning Act 1971 *ii*) Divisional Court held refusing the order that it was impossible to say that the local authority should have made use either of its powers under Section 101 or 115 Town and Country Planning Act 1971 *iii*) but that the authority had not considered all its relevant powers and should now do so immediately.

i Building Act 1984: Section 77

ii Planning (Listed Buildings and Conservation Areas) Act 1990: Sections 7, 8 and 9.

iii Planning (Listed Buildings and Conservation Areas) Act 1990: Sections 48 or 54.

Trade Associations

The National Federation of Demolition Contractors is an employers' organisation that exists not only to promote its members but also to ensure the highest standards of safety and good working practices are used by them in the best interests of both the client and the public.

The Federation may be contacted at Resurgam House, 1A New Road, The Causeway, Staines, Middlesex, TW18 3DH; Tel No: 01784 456799; Fax No: 01784 461118.

The Institute of Demolition Engineers: The Secretary, Staddlestones, Fletchwood Lane, Totton, Southampton, Hampshire SO40 7DZ

This information note has been prepared by the Institute of Building Control as a guide to local authority staff, building contractors and owners who may be involved in works of demolition. The Institute accepts no responsibility for actions taken resulting from this information note and strongly recommends that appropriate professional advice is sought by those undertaking works of demolition.

The assistance of Vale of Glamorgan Borough Council in producing this Technical Note is acknowledged.

**THE BUILDING ACT
1984
SECTION 80 – 83**

EXEMPT FROM CONTROL B4
SEC 80 (1)

PROPOSED DEMOLITION

NOTICE SERVED ON
LOCAL AUTHORITY

Notice must specify:
i The building for demolition
ii The works of demolition
BA SEC (80) (2)

Copy of notice to:
i Occupier of adjacent
buildings
ii Gas and electricity supplier.
BA Sec 80 (3) (a) (b) (c)

Consider applying for planning
permission TCP Act 1990 Sec
55

CONSIDERATION BY
LOCAL AUTHORITY

Consider
i Listed Building
ii Conservation Area

COUNTER NOTICE
PREPARED

Consider Building Act Sections
92/93/94/99

POSSIBLE APPEAL BA SEC.
102

APPEAL CONSIDERED BY
MAGISTRATES COURT

COUNTER NOTICE SERVED
WITHIN RELEVANT PERIOD

Copy to:
Owner and Occupier of
adjoining buildings

Consider
i Health and Safety Executive
ii Fire Services

UNAUTHORISED LIABLE TO
FINE £2500 LEVEL 4
STANDARD SCALE

COMMENCEMENT OF
DEMOLITION

Sale of materials
BA Section 100

DEMOLITION IN DEFAULT

CONTROL OF WORK

RELEVANT LEGISLATION - INFORMATION

Construction (Working Places) Regulations 1966
Health and Safety at Work etc Act 1974

**Section 1-8 General duties of employers and
persons in control of premises.**

Section 53(1) General Interpretation of Part 1.

**Management of Health & Safety at Work
Regulations 1992**

**Construction (Design & Management)
Regulations 1994**

**Ancient Monuments and Archaeological Areas
Act 1979**

**Section 2 Control of Works Affecting Scheduled
Monuments**

Highways Act 1980

- Section 168 Building operations affecting public safety
- 169 Control of scaffolding on highways
- 172 Hoardings to be set up during building etc
- 173 Hoardings to be securely erected
- 174 Precautions to be taken by persons executing works in streets

Building Act 1984

- Section 77 Dangerous building
- 79 Ruinous and dilapidated buildings and neglected sites
- 80 Notice to local authority of intended demolition
- 81 Local authority's power to serve notice about demolition
- 82 Notices under section 81
- 83 Appeal against notice under section 81
- 91 Duties of local authorities
- 92 Forms of documents
- 93 Authorisation of documents
- 94 Service of documents
- 95 Power to enter premises
- 96 Supplementary provisions as to entry requiring works
- 100 Sale of materials
- 101 Breaking open of streets
- 102 Appeal against notice requiring works

Housing Act 1985

Part IX Slum clearance - Demolition or closing of unfit premises beyond repair of reasonable cost.

Town and Country Planning Act 1990

Section 55 Meaning of development and new development
Circular
Planning controls over demolition
Department of Environment 16/92 Welsh Office 33/92

Planning (Listed Buildings and Conservation Areas) Act 1990

- Section 7 Restriction of works affecting listed buildings
- 8 Authorisation of works: listed building consent
- 9 Offences
- 74 Control of demolition in conservation areas
- 75 Cases in which section 74 does not apply

British Standards

BS 6187:1982 Code of Practice for Demolition
BS 5607:1988 Safe Use of Explosives in Construction
Health and Safety at Work Booklet
6E Safety in Construction Work: Demolition

**SEE BUILDING
CONTROL PUBLICATION
LIST FOR SECTION 80
NOTICE**