

**Case Name:** *Clin v Walter Lilly & Co. Ltd* [2021] EWCA Civ 136 (08 February 2021)

**Full case:** [Click Here](#)

**Commentary:**

This was a case heard by the Court of Appeal, on appeal from the Technology and Construction Court. It forms part of this week's update because, as Carr LJ explains, it raises a question of planning law in the context of a contractual construction dispute between the Appellant property owner and the Respondent contractor. The appeal was dismissed.

Specifically, the issue for consideration was the correct approach to be taken in determining when works are to be treated as amounting to 'demolition' for the purpose of s. 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("PLBCA") ("s. 74"), thus requiring conservation area consent ("CAC"). It is worth noting that s.74 has since been repealed and replaced with a requirement for planning permission for 'relevant demolition' in a conservation area.

The dispute arose as a result of delays to works being carried out to the Appellant's property. The Appellant owned two adjoining houses and sought to combine the two; this was to involve the removal of the entire interior and parts of the front and rear elevations of both properties which were to be rebuilt as a single dwelling. Planning permission was obtained but the Appellant's team did not, at least initially, apply for CAC.

Works were commenced pursuant to the construction contract for demolition, refurbishment and reconstruction. However, they were suspended following intervention from the Local Planning Authority which stated that a CAC was required. The works recommenced following grant of the requisite CAC but the parties were in dispute as to who was responsible, contractually, for the one year's delay in progressing the works. The issue as to whether or not CAC was lawfully required was key to establishing this. The High Court concluded that CAC was required and hence the Appellant had breached the implied contractual obligation to obtain any consents required for the Respondent to carry out the works.

The Appellant contended that the judge was incorrect to conclude that CAC was required for the works on the following salient grounds for the purposes of this summary: firstly, the judge ought to have considered whether the demolition involved a significant and/or substantial impact on the "character and appearance" of the conservation area (as per the general duty relating to the exercise of planning functions in respect of conservation areas, set out in s.72 PLBCA ("s72)) and, secondly, the judge erred in law in concluding that retention of a box (i.e. the party walls with adjoining properties, together with most of the front elevation and a large part of the rear elevation) did not preclude a conclusion that there was demolition for the purpose of s. 74.

It was held that, in considering whether or not there has been 'demolition' for the purposes of s.74, it is not necessary to pay special attention to the impact of the demolition on the "character and appearance" of the conservation area. S.72 does not require a planning

authority, when determining whether or not CAC is required (as opposed to whether or not CAC should be granted), to carry out a qualitative exercise by reference to considerations of character and appearance of the conservation area. This was reinforced by the principles identified by the House of Lords in *Shimizu (UK) Limited v Westminster City Council* ("Shimizu") (in the context of listed building consent). Shimizu confirmed that whether or not demolition of a building is involved is a question of fact and degree to be assessed on a quantitative basis, i.e. by reference to the extent of the demolition, and this test applied to the conservation area regime just as it did to the listed building regime.

As regards the second ground, it was held that there was no proper basis for interfering with the High Court's finding that the works amounted to demolition of the building for the purpose of s.74. The legal tests had been correctly applied; in sum, for there to be 'demolition' of a building, per Shimizu, it is not necessary for every single part of a building to be pulled down. In each case, it is a matter of fact and degree but works which go beyond alteration, involving the substantial removal of the whole of the building, or which amount to removing so much of the original building as to clear a site for redevelopment can amount to demolition. Put simply, the judge was entitled to conclude that so much of the building was being demolished and the (relevant) site being cleared for redevelopment that the works amounted to demolition.

The appeal was dismissed accordingly. The case is a useful exposition of the meaning of 'demolition'.

*Case summary prepared by Victoria McKeegan*