



Architectural Conservancy Ontario – London Region Branch
Grosvenor Lodge
1017 Western Road
London, ON N6G 1G5

Wednesday, September 12, 2018

Members of London City Council:

Re: Reinstatement of Demolition Control By-Law

Dear Councillors:

In a letter addressed August 21, 2018 to Planning and Environment Committee (PEC Meeting, September 10, 2018, Item #4.3) I recommended that Council reinstate London's former Demolition Control By-Law that was repealed in 2010. ACO London is disappointed that PEC did not forward the letter to city staff for further study. I am therefore sending this more complete account of ACO London's findings:

Background

The Ontario *Planning Act* authorizes cities to identify areas where the demolition of residential property may be controlled. Within an identified area, which could be the entire area of the city or any part of it, a permit may be required before an existing residential building can be demolished. Under the permit process, the municipality may require conditions for the demolition, such as requiring the new building to be constructed within a specified time. (Planning Act, section 33)

Under this authority, the London City Council enacted a Demolition Control By-law in 1992 (CP-1313-224) and the entire city was included in the demolition control area. The By-law required the Director of Building Controls to report on a request for residential demolition to the Planning Committee (subsequently renamed the Built and Natural Environment Committee) a Standing Committee of the City Council

On March 8, 2010, the City Council asked that planning staff review the by-law and determine whether it could be amended to allow Civic Administration to act as the approval authority instead of the council under certain circumstances.

In response, city planning staff recommended that the Demolition Control Area By-law be repealed and a new system of demolition permit application be implemented in order to "streamline" the process. (Staff Report dated December 13, 2010, item 18 BNE Committee)

The repeal was passed by Council on December 20, 2010 and was effective immediately. This meant that (non-heritage) residential demolition applications no longer needed council approval under the *Planning Act* but could be issued by staff under the *Building Code Act* and *Building Code Regulations*.



Rationale for the repeal is not justifiable

The stated purpose of the repeal was to “streamline” the demolition application process to remove the requirement of Council approval under the 1992 Demolition Control By-Law.

In reaching this recommendation that the previous Demolition Control By-law should be reinstated, the objections raised in the December 2010 Staff Report were reviewed and evaluated. The staff report identified the following issues [ACO comments italicized in brackets]:

There are a number of concerns respecting the demolition process of residential buildings arising from the By-law:

- Demolition applications for a residential building must go through a different process than non-residential building demolitions.
[There is nothing inherently wrong or inefficient with having a different process for residential buildings. Given the special importance of housing, such a difference is even beneficial.]
- The time required to obtain approval from Council can range from 4 to 8 weeks (in summer); this can cause serious construction delays for builders and developers.
[The same could be said for any discretionary approval. In any event, there are time limits built into the Planning Act to protect developers from undue delay.]
- There is a cost to the City with respect to inspecting and obtaining information, producing pictures, drafting reports, and attending meetings for these applications.
[The same could be said for any discretionary approval. Such reasonable costs associated with any proposal should be captured in the application fee.]
- Under the Planning Act, to refuse a demolition would require sound planning rationale. Additionally, through the Ontario Heritage Act, Council would have to designate the building to stop the demolition. The refusal of a demolition application must be sound, otherwise it may be grounds for reversal from an appeal body.
[Such “sound planning rationale” would still be required. There is nothing inherently burdensome or unusual about the review process that would be in effect for a newly reinstated By-law. Currently, such an appeal would go to the local review authority (LPAT) which has replaced the OMB.]
- The appeal mechanism is different under the Planning Act than the Building Code Act. Planning Act appeals are heard by the Ontario Municipal Board whereas Building Code Act appeals are through the Superior Court of Justice.
[The review process under the Planning Act remains reasonable and accessible.]
- The changes to the Ontario Heritage Act provide the ability to capture any property that is listed or designated. Staff must report on these properties separately for direction from Council. As such, the demolition report and approval under the Demolition Control Area By-law is superseded by this process.
[Reinstating the Demolition Control Area By-law would not detract from the Heritage review process which remains in effect. It would enable the review of a broader set of residential properties where there is now a regulatory gap.]

- The time of application is not clearly understood, this is particularly true for heritage type applications. Under the Planning Act, Council has 30 days to render a decision regarding the demolition, under the Heritage Act it is 60 or 90. The timeframe commences when the application is deemed complete, when all the required information is submitted. However, there has been some confusion and conflict regarding the timing of application submissions.
[Any such confusion should be more precisely identified and it can be addressed in a new By-law under the Planning Act.]
- The issuance of a demolition permit under the Planning Act is also problematic as once approval is given, there is little control afforded to the Chief Building Official respecting the demolition of the building. As all residential demolitions obtain approval from Council, there is concern that larger scale residential building demolitions may not be required to comply with Building Code regulations (e.g. demolition control plan by Engineer, field reviews, clearances, etc.).
[Any such concern would be addressed in the new By-law.]
- Where a building is deemed to be unsafe, the Chief Building Official may order the demolition. There have been circumstances where an order has been given to make a building safe and the owner wished to demolish the building to satisfy the order. However, due to the requirements of the By-law, the reporting process needs to be followed. Buildings may have fire or environmental damage but, because they are not an immediate threat, temporary remedial works are undertaken and then funneled through the demolition approval process, leaving buildings exposed and in disrepair for a significant period of time.
[Any such immediate safety concerns would be addressed through an exception written into the By-law.]
<http://council.london.ca/councilarchives/agendas/built%20and%20natural%20environment/bnec%20agendas%202011/2010-12-13%20agenda/item%2018.pdf>

To summarize these responses, the stated concerns do not justify the full repeal of the existing by-law and the removal of the protections afforded to the public under the *Planning Act*.

In addition to the authority under the *Planning Act*, the *Municipal Act* gives municipalities the authority to enact by-laws regulating the demolition of multi-unit residential rental properties, or the conversion of such rental properties to other uses (i.e., residential condos). These by-laws may require that the new building include a sufficient number of replacement units, or could require a contribution to a replacement fund for the development of new affordable housing. Whereas demolition controls under the *Planning Act* were subject to appeal to the OMB (now to the LPAT), there is no such appeal under the *Municipal Act* from a municipal refusal to issue a permit for the demolition or conversion.

Volume of Residential Demolition Applications under the 2010 By-Law

One of the problems with handling residential demolition applications under the *Building Code Act* and *Regulations* is the loss of transparency to the public. Under the *Planning Act*, applications are held open to the public and placed on the public agenda of a standing council committee. Under the *Building Code Act*, the application is considered an administrative matter and the files are not readily accessible to the public.

In the course of its research, ACO attempted to ascertain the volume of the demolition applications since the 2010 repeal. Was the volume of demolition applications under the new policy material? This information was not readily available and city staff indicated it would be necessary to file a records request under MFIPPA to obtain the information. Based on the records obtained through the request, the volume of applications for residential demolitions was as follows:

Year	# of Applications
2011	52
2012	68
2013	68
2014	71
2015	76
2016	65
2017	78

This data confirms that the number of demolition applications was, in fact, material.

Other considerations

In addition to providing an additional level of protection from residential demolitions, such a By-law is also recognized as a mechanism to retain affordable housing, to encourage maintenance of the existing housing stock, and to promote revitalization. (see *Municipal Tools for Affordable Housing* (2011, section 2.25)

<http://www.mah.gov.on.ca/AssetFactory.aspx%3Fdid%3D9270>

Other Ontario municipalities have enacted measures pursuant to Section 33 of the *Planning Act* which could be used as a model. While other cities have delegated certain tasks to staff, they have generally stayed within the *Planning Act* framework. In this regard, London appears to be an outlier. The fact that there was needed to resort to an MFIPPA request to obtain information that was previously openly accessible to the public underscores the need for the greater transparency

Recommendation

London City Council should reinstate the *Demolition Control By-Law* that was repealed in December 2010 with appropriate updates.

Sincerely,

Jennifer Grainger
President, ACO London