

Decision Maker: PUBLIC PROTECTION AND SAFETY PORTFOLIO HOLDER

FOR PRE-DECISION BY THE PUBLIC PROTECTION AND
SAFETY POLICY DEVELOPMENT AND SCRUTINY
COMMITTEE

Date: Tuesday 21 November 2017

Decision Type: Non-Urgent Non-Executive Non-Key

Title: GUIDANCE FOR CONSTRUCTION SITES CONTROLLED
UNDER THE CONTROL OF POLLUTION ACT

Contact Officer: Dr Hedley Pugh, Chartered Environmental Health Officer
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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: All

1. **Reason for report**

The current Bromley guidance for construction sites, having been issued over a decade ago, requires updating to take account of both legislative changes and technological improvements. A revised guidance for consideration is attached.

2. **RECOMMENDATION(S)**

2.1 The Portfolio Holder is recommended to review and agree on the proposal to adopt the revised local guidance for construction sites controlled under the Control of Pollution Act 1974.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The adoption of the new guidance would not impact on vulnerable adults and children
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment:
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Financial

1. Cost of proposal: Within existing resources
 2. Ongoing costs: Recurring Cost: N/a
 3. Budget head/performance centre: Environmental Protection
 4. Total current budget for this head: £143,790
 5. Source of funding: Existing controllable revenue budget 2017/18
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Personnel

1. Number of staff (current and additional): Work will be undertaken under existing staff arrangements
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents in the Borough
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 Over the last decade Greater London has seen an unprecedented level of construction including a number of significant projects in Bromley, with particular reference to the Bromley Town Centre. Many of these are in close proximity to neighbouring properties sensitive to both noise and vibration.
- 3.2 It will come as no surprise to Members that the adverse impact of the scale, volume and duration of construction works in the Borough continues to be a significant source of complaints to the Council.
- 3.3 Complaints relate not just to the type and level of noise but the perceived unrelenting nature of development where construction is routinely occurring in a parallel and consecutive fashion.

CURRENT POSITION

- 3.4 Contrary to resident expectations Planning permission cannot be refused on the basis of the impact of the construction. Instead, the Council has to rely on using its various powers to reduce the impact of the construction process in individual applications for development. This includes using the control measures powers under the Control of Pollution Act 1974.
- 3.5 For information, for the purposes of the Act, "Noise" is defined as including vibration. Officers regularly use the power to serve construction sites with Notices under section (60) of the Act (or the contractor can apply under section (61), specifying the steps to minimise disturbance in terms of both noise and vibration).
- 3.6 The Act also requires the Council to have regard to the relevant provisions of any code of practice issued under the Act. For Bromley a local code of practice titled 'Control of pollution and noise from demolition and construction sites - code of practice' remains in force.
- 3.7 The existing code has served well and has not prohibited construction but on the contrary, provided a level playing field for developers where there is a clearly defined expectation that the best site management and technical methods of construction is employed consistently for all development sites.

ISSUES

- 3.8 The current code, having been issued over a decade ago, requires updating to take account of both legislative changes and improvements in construction technology. A revised code is attached.
- 3.9 To ensure consistency with neighbouring Authorities the revised code was produced in collaboration with members of the South London Cluster Group for use by all.
- 3.10 The revised code sets out various criteria including:
- A requirement to adhere to the code;
 - Re enforcement of the permitted hours of noisy works: 8am – 6pm Monday – Friday, Saturday 8am – 1pm, no noisy works on Sunday and Bank Holidays or days of public mourning;
 - Communication requirements with surrounding residents before and throughout the life of the development;
 - Location of noisy equipment and mitigation;

- Drainage requirements following demolition;
- Site access:
- Supply change management;
- Monitoring requirements.

4. POLICY IMPLICATIONS

- 4.1 The proposal to adopt the revised local guidance for construction sites contributes to the Council priority of being an excellent Council.
- 4.2 The Council may be at risk of damaging its reputation if it fails to mitigate adequately the impact of construction activities on its residents.

5. FINANCIAL IMPLICATIONS

- 5.1 The design and print costs of the Code of Practice were covered by a GLA grant to one of the Cluster Group Authorities. There are no additional revenue costs entailed with the adoption and future application of the Code of Practice.

6. LEGAL IMPLICATIONS

- 6.1 The legal implications are explained in the report at the relevant points.

Part III of the Control of Pollution Act 1974 (CoPA) provides a statutory code for controlling construction site noise. "Noise" is defined as including vibration for these purposes. The Act sets out the relevant considerations that the Council needs to take into account and specifically under Section 60(4), the Council has to have regard to:

- the relevant provisions of any code of practice issued under this part of the CoPA;
- the need for ensuring that the best practicable means are employed to minimise noise;
- before specifying any particular methods or plant or machinery, to the desirability in the interests of any recipients of the notice of specifying other methods or plant or machinery which would be substantially as effective in minimising noise and more acceptable to them; and
- the need to protect any persons in the locality in which the premises in question are situated from the effects of noise.

- 6.2 The Council serves construction sites with notices under section 60 of the CoPA (or the contractor can apply under section (61)), which specifies steps to minimise disturbance including:

- Hours of work;
- Methods of work;
- Plant to be used and its noise emissions;
- Estimates of noise to be produced;

- Likely duration of each phase; and
- steps to mitigate disturbance.

6.3 For work that is audible at the boundary the Council normally expects contractors in Bromley to work between the hours of:

- 8am - 6.00pm, Monday to Friday
- 8am - 1pm, Saturday

6.4 Work which is audible beyond the site boundary is not usually permitted on Sundays, public holidays or days of public mourning (some exclusions apply such as emergency works and those being undertaken by statutory undertakers).

6.5 A Section 60 notice can be enforced by way of a prosecution (maximum fine £5,000 per offence) and, if necessary, by injunction. These provisions can be used even though a legal “nuisance” has not been caused.

Non-Applicable Sections:	Procurement Impact on vulnerable adults and children Personnel implications
Background Documents: (Access via Contact Officer)	