

Appendix 1

London Borough of Hammersmith and Fulham

Contractor Guidance Note for Section 61 Applications (Prior Consent)

This guidance note has been developed by Environmental Health Officers within The Environmental Protection team at The London Borough of Hammersmith & Fulham (LBHF) to help developers and contractors on the control of noise and vibration arising from construction activities. Following discussions with officers a draft submission should be made at least six weeks before work is due to commence. This allows for any necessary amendments before the 28 day period of consideration by the Council stated in legislation. Any issues arising from the draft application can then be discussed with officers and agreement reached on any amendments or additions so that when the final version of the application is received the process should be a relatively straightforward one.

Introduction

The purpose of the guidance note is to achieve an approach that is consistent and to ensure that environmental issues meet the requirements of the London Borough of Hammersmith & Fulham (LBHF).

Environmental Health Officers advise that for all cases of large scale development or any other long term development where there may be a requirement to work at night or outside of normal working hours and/or likely to give rise to increased noise levels to local residents and business that contractors are encouraged to seek Section 61 consents under the Control of Pollution Act 1974 (CoPA).

We recommend that if developers or contractors are concerned they contact officers at least 2 months before any works commence to allow for informal discussions about the project. If consent is recommended it will normally specify the method of working, the hours of work, noise predictions and controls to be applied in accordance with 'best practicable means' as defined in Section 72 of Control of Pollution Act 1974

The provisions under Section 61 of CoPA offer advantages both to contractors and to the Council in controlling and mitigating noise and vibration impacts from construction works. It ensures that standards of performance with respect to the control of construction noise and vibration can be agreed in advance of the start of the works, together with the effective management of the work programme.

By obtaining a Section 61 consent and complying with the agreed conditions, a contractor avoids the risk of being served with a Notice under the terms of S60 of the CoPA or Section 80 of the Environmental Protection Act 1990 (EPA), providing that consent conditions are not breached. The consequence of breaching the conditions may lead to prosecution under CoPA.

Council Overall Strategy - Three Stage Process

The securing of a Section 61 consent involves three basic stages, which are the preparatory and draft stages, which are informal, followed by the final stage which is a formal statutory process. The process of obtaining the consent will be the prime responsibility of the principal contractor.

There are significant advantages in preparing and submitting a draft application to LBHF. Firstly, it should mean that when the final consent is issued, there should be “no surprises” with the conditions being imposed being both realistic and attainable. Secondly, by investing the time and effort in negotiating the draft consent with EHOs, it should mean that the conditions will be acceptable and this will reduce the need for formal appeals through the courts, which would impose significant costs and delays.

Prior Planning

It is imperative that the contractor takes full account of noise and vibration issues at an early stage in the planning and design stage of the construction work programme. It should be noted that the Local Authority have a statutory duty to respond within **28 days of receipt** of a Section 61 submission and therefore that time requirement must be included and allowed for in the planning timetable. The London Borough of Hammersmith and Fulham considers the date that the application is received at the Council Offices as the start of the 28 day response period and not the date on which the application was sent. (See contact details at the end of this document)

Best Practicable Means (BPM)

Best practicable refers to Section 72 of the Control of Pollution Act 1974 as those measures which are "reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to financial implication".

A commitment to adopting Best Practicable Means (BPM) is an integral part of any Section 61 application and this must be fully demonstrated as part of the application. The applicant must demonstrate that they are doing everything possible to reduce the level of construction noise and regard must be had to predicted noise levels in determining whether BPM has been employed in practice.

1. Preparatory Stage (Recommended 8 Weeks Prior to Works)

During the preparatory stage, the contractor will be expected to identify, as precisely as possible the nature of the construction activity for which consent is being sought.

Information that is required shall include:

1. Provision of site plans and map of local area.
2. A detailed description of the construction works, including a weekly construction program identifying key phases of work such as excavation, erection of framework etc.
3. Description of working hours. The contractor will need to demonstrate a robust rationale for any works which need to be undertaken outside of the normal working hours, (normal working hours are 0800 to 1800hrs weekdays; 0800 to 1300hrs Saturday and at no time on a Sunday or bank holiday. Where the surroundings are primarily commercial, working outside these hours may be preferred.
4. The type of plant and specification of equipment. Noise levels for proposed plant should, ideally, be taken from the DEFRA "Noise Database for Prediction of Noise on Construction and Open sites" tables or from BS5228.
5. A method statement in which working practices and any assumptions are detailed, In particular, consideration will need to be given to the BPM to be used to mitigate any noise/vibration impacts of the works.
6. Determine noise sensitive receptor locations and anticipated noise monitoring positions (to be agreed with the Environmental Protection Team). A receptor location may be residential or commercial premises.
7. Calculation should be undertaken to determine the predicted noise level (and vibration if applicable) of construction activities at each receptor location. It is recommended that the predictions are calculated by an acoustics specialist. These calculations will identify predicted noise and vibration levels at sensitive receptors in the locality and consideration will be given to the potential for incorporating mitigation measures into the work scheme in accordance with BPM. (see details at the end of this document for Acoustic Consultants)

Draft Stage (Recommended 6 weeks Prior to Works)

The draft application should be submitted by the contractor to the Council for comment. EHOs will then have the opportunity to prepare a set of draft consent conditions relating to the works.

Following receipt and review of the draft application further discussions between the contractor and the Council may then be required to reconcile any differences or to resolve more substantial disputes.

**It is anticipated that the Council will generally respond (within about two weeks, although this is dependent upon the nature and complexity of the construction works as well as resource availability). However it should be noted that the Council is under no legal obligation to respond to draft submissions within any definitive period.*

Final Stage (Strictly 28 Days Prior to Works)

The final stage of the application process is the submission of the Section 61 application. The Council do not have a specific template but it is recommended that the report layout is clear and addresses all essential points.

The Council will respond to the application within **28 days** with a grant or a refusal of consent. If the Council does not respond within the allotted 28 day period then the application is open to the appeals process discussed below as being non-determined.

For the non-determination of applications, or where the inclusion of specific conditions needs to be challenged, the appeal must be lodged by the contractor with the Magistrate's Court within a period of 21 days subsequent to the expiry of the initial 28 day period. Grounds for appeal are that:-

- Any condition imposed is not justified
- There has been some informality, defect or error in connection with the consent
- The requirements of any condition are unreasonable in character or extent
- The specified time periods within which any conditions are to be complied with are not reasonably sufficient

The Magistrates` Court is empowered to vary the consent, quash any condition or dismiss the appeal.

Implementing the Consent (If Granted)

Advance notification to local residents and occupants

It is essential that the applicant notifies the local residents/occupants about the proposed works on site as early as possible. This notification shall include information on the type of work to be carried out, the reasons behind it, its likely duration, hours of work and the characteristics of any potential noise together with helpline details and the complaints procedure

Compliance monitoring

A programme of noise, and if necessary vibration monitoring is required to demonstrate compliance with the Section 61 consent and to identify any problems. The monitoring regime must be agreed in advance with the Council as part of the consent application. The applicant is responsible for ensuring that all contractors and sub-contractors comply with the terms and conditions of Section 61 consents. Environmental Health officers may require additional monitoring if complaints are received.

Modifying the consent

Once construction works are underway there may be a need to adapt to changes in circumstance. A dispensation or a variation to the Section 61 Consent may be required. However in all cases reasonable and sufficient justification for the changes must be provided.

Dispensations

A dispensation will cover all **material changes** to agreed working methods as set out in the programme of the Section 61 application, including persistent or substantial over-runs. Examples might include extensions to working hours, use of different items of major plant or equipment or substantial changes to working methods. Applications for dispensations must be made to the Local Authority at least **14 days** in advance of any revised working practice.

The following essential information shall be included in the application for dispensation.

- Specific details of the works
- Reasons why the works cannot be undertaken within the terms of the original S61 consent
- Proposed hours of working
- Predicted noise and vibration levels at specified receptor positions
- Steps intended to be taken to mitigate the noise/vibration impacts of these works, i.e. a description of the proposed BPM controls
- How residents likely to be affected by the works will be advised
- Contact numbers for the person(s) in control of the operation

If the details of the revised working are acceptable to the Council a dispensation shall be issued which has the effect of varying the terms of the original Section 61 consent as these relate to the specific works activities in question. The dispensation may include its own discrete conditions and may prescribe a finite time period. The dispensation certificate must be retained for records.

Variations

Variations will cover **minor changes**, i.e. non-material, in working methods, e.g. substitution of individual items of plant and sporadic over-runs (e.g. to accommodate discrete concrete pouring operations etc). Under such

circumstances, it is envisaged that these minor changes will not affect the predicted noise levels as submitted with the original S61 consent application. Owing to the nature of the changes which often will preclude much opportunity for prior notice, it is not appropriate or practicable to submit the same level of detail associated with an application for a dispensation as outlined above.

Notification to local residents/occupants

Where time periods make this practicable, all applications to the relevant Local Authority for a dispensation or a variation should include a statement advising how and when affected parties will be notified of the changes to the works programme. Environmental Protection should be sent a copy prior to or at the time such notifications are issued to the residents/occupants. There should be a pro-forma letter/notice available on site for very short notice incidents so that a letter drop can be made to the affected residences. A telephone helpline should also be made available throughout the duration of the works and publicised to local residents.

The Application

An electronic copy followed by a paper copy of the application (draft and formal) should be submitted as a report and sent to;

(Paper Copy)

Environmental Protection
Environmental Health Services Group
London Borough of Hammersmith & Fulham & Royal Borough of Kensington & Chelsea
6th Floor
Town Hall Extension
King Street
London
W6 9JU

Electronic Copy

environmentalprotection@lbhf.gov.uk

Queries can also be sent to environmentalprotection@lbhf.gov.uk

Tel: **020 8753 3376**

The report must clearly address the following:

1. Name and address of contractor carrying out works, including details of any sub contractors.
2. Address and location of proposed works. This should include site plans showing layout of site facilities and local street maps showing which premises are likely to be affected by the construction work.
3. Details of construction work including a week by week construction program. Method statements for each stage of construction and details of what plant will be operating together and likely duration of their use.
4. Propose working hours including any night or weekend working. This should also include a break down of the likely duration of each phase of the construction work.
5. List of all plant and equipment and sound power levels. Determination of Sound Power Levels for each piece of plant/equipment to be used on site.
6. Proposed steps to minimise noise and vibration (Best Practicable means)
7. Calculation of Predicted Noise and if necessary vibration levels at the receptor locations for all phases of the construction program

8. Proposed steps to minimise noise and vibration (Best Practicable Means)
9. Details of monitoring to demonstrate compliance with the requirements of the s61 consent.
10. Details of which local residents/premises will be notified of the works.

Assistance in making an application, in particular the noise predictions and monitoring can be obtained from

The Institute of Acoustics,

77A St Peter's Street, St Albans, Hertfordshire, AL1 3BN, UK

Tel: +44(0) 1727 848195

Email: ioa@ioa.org.uk,

Web www.ioa.org.uk

And

The Association of Noise Consultants

105 St Peter's Street, St Albans, Hertfordshire, AL1 3EJ, UK

Tel: +44(0) 1727 896092

www.association-of-noise-consultants.co.uk