

Outline Proposal for charging for environmental protection services related to construction and de-construction activities.

February 2017

Introduction.

In answer to a Question by Alderman Anstee to the Chairman of the Planning and Transportation Committee, at Court of Common Council on 8 December 2016, the Chairman undertook that the City officers would investigate whether and how funding for greater on-site regulation of noise emanating from development sites might be achieved. The full question and answer is included in Appendix 1.

The current policy in dealing with developers is to become involved at an early stage of the planning process to give advice on environmental requirements, especially about noise control. Other than in known 'hot spots', monitoring of sites is currently done with a 'light touch' to avoid complaints by the industry of heavy-handed over-regulation and formal enforcement action is normally only taken after a number of substantiated complaints have been made against a contractor. There are upwards of 475 complaints related to construction and demolition noise per year across the City.

Whilst most developers within the City abide by the guidelines set out in the City's Noise Strategy and the Code of Construction and Deconstruction, especially around 'quiet hours', there is evidence that some residential areas of the City, especially the Barbican area where the residents consider that more could be done to minimise the degree of noise pollution. It has been proposed by the Alderman that the City should take an even more strongly pro-active stance with developers and have more active monitoring of individual sites.

Aim.

This paper sets out an outline proposal intended to instigate discussions on the services and activities that would require funding and the feasibility and mechanisms that may be available.

Assumptions.

The level of service has been devised as an estimate, benchmarked with current practice in neighbouring local authorities. This could be adjusted if more or less is considered appropriate.

The costs set out are based on worst case estimates of time spent on services. The charges show hourly rates for different elements. The actual charge would be based on costs incurred. Where sums paid on account are not spent they would be repaid to applicants.

Development Pipeline

An analysis of schemes based on the commencement date for construction works has been carried out between 2011 and 2022 as this are the criteria that trigger commencement of the relevant S106 payments.

Commencements in the last 5 years have been at a high level. This is unlikely to be sustained in the near future. Thus when comparing data relating to Commencements in the period 2011/12 to 2015/16 (118 large and medium size office schemes) with that of schemes projected to commence 2017/18 to 2021/22 (28 large and medium size schemes) there is a large reduction in scale.

The data set for both housing and non-housing schemes are included in appendix 2.

Workforce Requirement

Based on the projected Development Pipeline, Appendix 3 gives an analysis of the estimated staff workload/cost for the three different scales of development. In a nutshell these are: *(Appendix 3 has been removed from this document and is Appendix 3 to the Noise report)*

- Category 1 – Major development: £54k for the first year and £47k for each subsequent year.
- Category 2 – Medium scale development: £31k for the first year and £26k for each subsequent year.
- Category 3 – Minor development. On average, £5k per year.

To undertake the level of proactive work requested it is estimated it would require an additional three Environmental Health Officers.

Potential mechanisms to achieve the required level of funding

There are three current mechanisms for charging via the planning process and one further future potential.

a. Section 106 agreement. Planning Obligations are used to mitigate the impact of unacceptable development in order to make it acceptable in planning terms. The National Planning Policy Framework (NPPF) paragraph 204 sets out three statutory tests for the use of planning obligations.

“A planning Obligation may only constitute a reason for granting planning permission for the development if the obligation is –
Necessary to make the development acceptable in planning terms;
Directly related to the development; and
Fairly and reasonably related in scale and kind to the development”

b. Community Infrastructure Levy (CIL). The City has a schedule of charges contained with the CIL charging schedule 2014 in attached link. Office developments currently have a CIL rate of £75 per square metre.

<https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/planning-policy/Documents/city-of-london-cil-charging-schedule-2014.pdf>

Planning condition. The City currently controls the environmental impact of development by the use of conditions i.e. construction logistics plans, noise and dust conditions. Previous advice has been that where matters can be dealt with by condition they should be rather than in the section 106 agreement.

The proposal would be to impose a condition on the planning application to restrict development until the developer has signed up to the Code of Construction Practice which could include an annex detailing fees which would then be a legally binding agreement.

c. Planning Performance Agreements. A paper was presented to the Planning and Transportation Committee on the 24th May 2016 introducing the concept of Planning Performance Agreements (PPA).

PPAs could be a means of enabling development management to assist in offsetting its costs in providing its non-statutory functions whilst ensuring that the standard of service is maintained and enhanced at less cost to the Corporation and in line with the cost cutting review. PPAs are a collaborative process between the Local Planning Authority (LPA) and the Developer.

Further detail here -

<http://democracy.cityoflondon.gov.uk/documents/s64731/Introduction%20of%20Planning%20Performance%20Agreements%20v2.pdf>

From an analysis of options to fund the additional staff subsequent to discussion with Department of Built Environment Development Control, Comptrollers and City Solicitor's and the City Planning Advisory Team., it appears that the most effective way of achieving an additional revenue stream to provide funding the additional would be by using planning conditions.

Risks

There are risks associated with this model that will require further investigation.

- The approach is in some conflict with the current Better Regulation Agenda and the current light touch approach that the Pollution Control Team utilises to mitigate the effects of the environmental impacts of construction and demolition and may be resisted by developers and contractors. This risk would be mitigated by the supportive role the officers would take to enable construction professionals to plan, cost and manage the environmental issues

that frequently arise in the industry and potentially enable extended hours working.

- The income is directly linked to the number of developments being permitted and then that permission being implemented. As events such as Brexit negotiations unfold these may have a large impact on the rate of development and developers' appetite for additional charges. The workforce employed to undertake these duties would be employed on fixed term contracts to mitigate any risks associated with needing a flexible workforce to meet the expansion and potential contraction in the construction sector.
- It should be acknowledged that there is an existing structure of personnel on development sites who have responsibility for compliance and liaison with the City and other stakeholders. This usually includes a site manager, environmental manager and a contracted specialist environmental consultant responsible for the collection and analysis of data. The role of this regulatory service must be complementary and distinct from these to enable impartiality and robust enforcement when required.

Recommendation

From an analysis of options to fund additional staff and subsequent to discussions between Markets and Consumer Protection, Department of Built Environment Development Control, Comptrollers and City Solicitor's and the City Planning Advisory Team, it appears that the most effective way of achieving an additional revenue stream would be using planning conditions. It is therefore recommended that

1. The consultation on the draft Code of Practice for Deconstruction and Construction (8th edition) include the proposal to levy these charges
2. The consultation result and the suggested changes to the Code of Practice are brought back to the relevant Committees (Port Health and Environmental Services and Planning and Transportation) for agreement incorporating Members views.

Conclusions

There is pressure from elected Members for the Environmental Health (Pollution Control) department to be more pro-active in monitoring and controlling Noise Pollution from development sites.

Analysis of the projected development pipeline and the amount of additional work required for more pro-active noise management with development sites indicates that an additional 3 Environmental Health Officers would be required.

A more stringent enforcement regime could be considered by the industry to be excessive and could conflict with the Government's Better Regulation policy of reducing regulation and enforcement. It would require a positive change of current Policy by elected Members.

**Question to the Chairman of the Planning & Transportation Committee from
Alderman Anstee – Court of Common Council, 8 December 2016**

“The City is experiencing a very substantial redevelopment programme resulting in a large number of construction sites. Whilst this is a very welcome indication of developer investment and occupier commitment to the City and thereby its ability to meet growing demand for floor space it can lead to construction noise and disturbance which is detrimental to other City occupiers and residents in particular. Would it be possible for the City to require Developers to secure a levy or provide an undertaking that they will fund on-site specialist staff, to liaise with the pollution control team and provide an immediate contact for the local community, able to prevent and stop instances of unacceptable behaviour occurring?”

My Lord Mayor, my thanks to the Alderman for giving me notice of his question.

The redevelopment of the City of course attracts complaints about noise, and in the last financial year there were 469 concerning construction or demolition activity. This is despite considerable discussion to allow 1151 variations to agreed hours of work, as well as the examination of some 1726 licensing, planning and construction works applications to try and minimise potential noise disturbance. A 24 hour / 364 days service is provided to investigate complaints and the target response time is one hour, but we are usually able to respond to complaints within 30 minutes.

The City produces a Code of Practice for Construction and Deconstruction which is currently being reviewed for its 8th edition. This sets out clearly the expectations and standards for developers and their contractors to minimise the impact of noisy works on business and residential neighbours. Overall, this works well, and the City Corporation’s Pollution Control Team endeavours to secure a balance between enabling developments to occur and preventing disturbance to other properties in the vicinity.

However, the way sites are operated can vary with changes in management, time and financial pressures, and this can lead to complaints about inappropriate working practices. Whilst sites are monitored closely, we very much support the principle that those creating noise pay, especially where there are resource limitations due to budget cuts, so the Alderman's proposal is both timely and welcome.

Public infrastructure projects in the City, such as Thames Tideway Tunnel and Bank Station, have previously funded posts in the Pollution Control team to enable their schemes to focus on better outcomes, with fewer delays. The Alderman's proposal could be helpful to developers, as well businesses and residents which could be disturbed by noise from construction sites. At a time when there are financial pressures, independent, fully accountable staff could provide useful support to the Pollution Control team.

An investigation will be undertaken to determine how this could be best delivered in relation to the scale of project, either through the planning process through the imposition of conditions linked to a code of practice or undertakings set out in a S106 agreement or linked to the Considerate Contractors Scheme.

I am confident that we can find a way forward which is effective for sites, as well as protecting the City's environment and minimising disturbance to residents and businesses for the duration of demolition and construction until practical completion.

My Lord Mayor.

APPENDIX 2

Schemes based on the date of the commencement of construction works

<u>Development</u>	<u>Size of Scheme</u>	<u>Commenced period 2011/12/ to 2015/16</u>		<u>Projected to Commence 2017/18 to 2021/22</u>	
<u>Housing Development (units)</u>		<u>Number of Units</u>	<u>Number of Schemes</u>	<u>Number of Units</u>	<u>Number of Schemes</u>
Large Scale Major	>= 200	226	1	506	1
Medium Scale Major	>= 10 and <200	887	15	140	2
Minor	<10	264	57	31	9
Total		1,377	73	677	12
	For detail of schemes See Tab	Housing Commenced		Housing Proposed	
<u>For Non-Housing Uses (Floor space)</u>		<u>Floor space</u>	<u>Number of Schemes</u>	<u>Floor space</u>	<u>Number of Schemes</u>
Large Scale Major	>=10,000	1,515,716	42	660,303	16
Medium Scale Major	>= 1,000 and < 10,000	288,949	76	52,625	11
Minor	<1,000	71,516	313	881	1
Total		1,876,181	431	713,809	28
	For detail of schemes See Tab	Non Housing Commenced		Non Housing Proposed	

Note of caution: for Minor schemes it is difficult to predict future as they tend to be developed immediately on permission. Large scale projections fine, for Medium > 25,000 floor space fine but schemes below 25,000 tend to be quickly developed.

Floor space in Gross Internal Area (GIA) Square Metres