

City of London Code of Practice for Deconstruction and Construction 2017
Briefing Paper: Permitted hours for noisy works in the City

Introduction

In response to the City's formal Consultation on the Code of Practice for Deconstruction and Construction (COP), Members of The Port Health and Environmental Services Committee (PHES) received an email (1235/18 June) from the Barbican Association containing a resolution which states that "This Association resolves that the City of London should not permit noisy work from construction sites in or adjoining residential areas on Saturdays."

Aim

The aim of this paper is to provide background information to aid decision making and assist the Committee in considering the Barbican Association's resolution.

COP consultation

- PHES considered a report on January 24 2017 to consult upon the next iteration of the COP.
- The consultation was open for 3 months, closed on July 14 and ensuring all stakeholders had a chance to respond to the City.
- The City received 37 responses from residents, internal City Departments and construction related companies, totalling 170 individual comments.
- 13 individual comments were received from residents of the Barbican requesting the consideration of a ban on construction on Saturdays and 9 individual comments were received from the construction industry and City Officers supporting the existing arrangements.

Background and Current Working Arrangements

The current permitted hours for noisy work are from British Standards and national restrictions on site working hours. These are stipulated in the seventh edition of the COP approved by the PH&ES Committee in 2013 and are:-

- 0800-1800 hours (Monday to Friday)
- 0800-1300 hours (Saturday), by agreement 0900-1400 around Barbican/Golden Lane Estates
- Quiet hours (non-pneumatic) Monday to Friday 1000-1200 and 1400 to 1600; these are applicable to most city sites.
- No noisy working on Sunday, Bank or Public Holidays (except where agreed by the City Corporation)

A planning condition is usually imposed for major developments requiring a 'Scheme of Protective Works' from construction and demolition sites. This Scheme is required to be developed in accordance with the requirements and recommendations of the Code including the control on hours set out above.

The Royal Borough of Kensington and Chelsea (RBKC) and City of Westminster are the only two authorities in London and nationally that have recently introduced their own, similar, Codes of Practice for construction activity which restricts noisy Saturday working in residential areas. This has been done in response to specific residents' concerns with residential neighbours' basement extensions, hence the application of the restriction only to residential areas **Legal advice**

An opinion was sought from the Comptroller and City Solicitor on the Barbican Association proposal from the perspective of both the Planning and Environmental Health regimes:

“Control of Pollution Act 1974

It would not be possible to justify imposing a complete prohibition on Saturday working as sought by the Barbican Association. The major difficulties are:-

1. The area of the Barbican is not considered to be exclusively residential and is treated as being mixed residential/business;
2. The decrease in ambient background noise at weekends is no longer significant due to the increase in vehicular and pedestrian activity in the City during these times. Therefore, the “oasis of calm” no longer exists in the City at weekends;
3. The presence of the Arts Centre and associated entertainment provided at the Barbican Centre counts against the argument that the Barbican Estate is a quiet place at weekends. It also contradicts the assertion that the Barbican is a residential area;
4. The majority of local authorities in England permit Saturday working between the hours of 0800 – 1300. Whilst Westminster C.C. has now sought to restrict Saturday working in residential areas its reasoning for doing so is based on completely different area characteristics e.g. areas which are almost solely residential than that which the City would have to consider being a mixed residential / business area.

Consequently, the Comptroller is of the view that to attempt to impose a prohibition on Saturday working by way of the use of S.60 Control of Pollution Act 1974 notices would not be possible to justify and would most likely result in successful appeals which attract costs consequences.”

“The Planning Regime

Planning conditions must meet six tests to be valid. In the context of the application of the COP this applies as follows (the ‘tests’ are underlined for ease of reference).

Each development must be considered on its own merits and the imposition of a planning condition requiring compliance with the Code of Construction Practice via a “Scheme of Protective Works” depends on whether it is justified in the particular circumstances of the proposed development.

If there’s a definite need for it (e.g. to mitigate adverse noise impact of the particular development) and the condition is no wider in scope than is necessary to achieve the planning objective, then it is likely to satisfy the test of necessity.

A condition which relates to planning objectives and is within the scope of the permission would need to meet the test of relevance to planning.

A condition which is justified by the nature or impact of the development will be meeting the test of relevance to the development permitted.

A condition must also be enforceable (i.e. it must be possible to detect and remedy a breach); it must be precise (i.e. make clear what must be done to comply with it), and reasonable in all other respects (i.e. must not place unjustifiable and disproportionate burdens on the developer.)

A condition requiring compliance with the COP via a “Scheme of Works” justified in the specific circumstances of the case to protect residents from harm is therefore likely to meet the six tests. However, such a condition tied to the City’s current COP won’t prevent noisy works on Saturday mornings in residential areas unless the COP is amended to that effect, which would require justification by way of an evidence base for making the change following public consultation, plus Member approval.

Were the City Corporation to consider there are grounds, backed by a full evidence base, for the proposal for changing the current regime along the lines suggested by the Barbican Residents, such a substantial change would necessitate a further consultation to allow developers and anyone else affected to have their views taken into account.”

Discussion

The City of London already requires construction companies to consider residents and other occupiers when scheduling Saturday morning works and take into account their wish for less noisy works to take place. These considerations are also balanced with other issues that must be taken into account such as safety of pedestrians and cyclists, congestion, access, air quality, workforce and overall programme.

The current arrangements deliver a compromise whereby activities such as scaffolding, crane erection and dismantling and road resurfacing, can be managed on a weekend (by agreement with the Environmental Health Officer) because the consequences of undertaking them on a weekday are disproportionate.

In the vicinity of the Barbican, although standard hours in the City’s COP are applied, site by site assessments of works are also made. For example, the lack of traffic in places such as Moor Lane and Silk St does allow an opportunity to undertake some streetworks on weekdays. However, it is not possible on streets such as London Wall

and Aldersgate Street, so work on Saturday mornings in these roads is still a necessity.

The mixed commercial and residential demographic in the City of London, is protected by the terms of the City's COP, and is normally exposed to a total of thirty five noisy working hours per week, excluding weekday 'quiet hours' and including Saturdays working.. This compares with Westminster or RBKC who do not apply quiet hours and, excluding Saturdays, a total number of fifty noisy working hours per week are experienced by residents. City residents are currently experience fifteen less noisy hours per week than neighbours under the Westminster or RBKC COP regimes.

Conclusion

The COP seeks to set out simply and clearly what constitutes acceptable site practice within the City. It balances the needs of the Business City (particularly construction sites) to undertake construction works, with the expectations of residents and neighbouring businesses who wish for impacts to be minimised.

The advice from the Comptroller is that to impose a prohibition on Saturday working would not be possible to justify and would likely result in successful appeals and subsequent costs.

If it were intended to alter the Saturday working hours significantly, as proposed by the Barbican Association, another formal public Consultation would be necessary.