

Committee(s)	Dated:
Port Health and Environmental Services Planning and Transportation	27 November 2018 20 November 2018
Subject: Consultation on Noisy Saturday Construction Work Activities in the City of London	Public
Report of: Director of Markets and Consumer Protection	For Decision (PHES), (P&T),
Report author: Rachel Pye, Assistant Director Environmental Health and Public Protection	

Summary

This report seeks a decision on the standard noisy construction hours arrangements for Saturday mornings in the City of London.

At the 19 September 2017 Port Health and Environmental Services Committee (PHES) meeting it was decided to publish the latest iteration of the City's Code of Deconstruction and Construction Practice (COP), 8th Edition. It was also decided that the City Corporation would undertake a consultation about Saturday working in relation to noisy construction activities in response to a Barbican Association resolution. A draft questionnaire was agreed at the March 2018 PHES committee.

The consultation and analysis are now complete with 725 responses received. 62% of respondents felt that the existing hours of 0800 to 1300 on Saturday for noisy construction works on Saturdays should continue, 35% did not, and 3% gave no opinion.

The options have been considered and are set out below. It is necessary for Committee Members to comply with the City's public sector equality duty and its duty not to discriminate in performing its public functions. and the interests of those with protected characteristics. The issue of potential negative impacts of construction noise on some people with a protected equality characteristic is acknowledged and mitigating steps have been identified as far as possible.

Recommendation(s)

The Committee is asked to:

1. Note the assessment and evidence set out in Appendices 3-6 and 8.
2. Consider the report on the outcome of public consultation set out in Appendix 2.
3. Having considered 1 and 2 above and read the legal comments of the City Solicitor set out in Appendix 9 and having, both when considering 1 and 2 above

and at all stages throughout, complied with the City's duties set out in this report, including reading and considering the Equality Impact Assessment at Appendix 7 and having due regard to the needs set out in section 149 of the Equality Act 2010

After having done so, the Committee is recommended to decide that no change is made to the standard noisy construction hours arrangements for Saturday mornings in the City of London. However, if Members are minded to change to standard working hours that option d (i) could be considered.

Main Report

Background

1. At the 19 September 2017 Port Health and Environmental Services Committee (PHES) and 3rd October P&T Committee meetings, it was decided to publish the latest iteration of the City's Code of Deconstruction and Construction Practice (COP), 8th edition. The COP had been updated to reflect current best practice, guidance and the inclusion of a schedule of monitoring fees for developers to encourage use of the best environmental options in planning and managing construction and deconstruction. It balances the needs of the business City to undertake construction works with the needs of residents and neighbouring businesses who want impacts to be minimised. It also reflects the priority placed on mitigating the impact of poor air quality and unwanted sound from construction sites on the physical and mental health of residents, workers and visitors.
2. The consultation on the draft 8th edition in 2017 included residents, businesses, and neighbouring boroughs. Comments were supportive of the Code and where critical feedback was received on issues these were about improving guidance, e.g. less intrusive vehicle reversing alarms, requesting a stricter approach and additional resources to help enforce the Code. These suggestions were all included in the draft new 8th edition, Appendix 1 for consideration by the Committee.
3. A letter was received from the Barbican Association to the PHES Committee requesting that the City does not permit noisy work from construction sites in or adjoining residential areas on Saturdays. After discussion at the PHES Committee in September and November 2017 it was agreed that the City would undertake a consultation about Saturday working in relation to Saturday noisy construction activities. The Committee agreed that 'a further evidence based study on Saturday Morning Working and the impact this has on both Barbican residents and those in residential wards, and the effects on developments along with the legal implications would be prepared and undertaken'. The matter would then be presented as a report to your Committee for decision.
4. An officer working party was formed, comprised of the Comptroller and City Solicitor, the Port Health and Public Protection Director and the Chief Planning Officer and Development Director and other relevant officers from their services, to consider the questions to be asked, responses, evidence and any other information received in producing this final report for Members' consideration.

Current Position

5. The working group considered the following points;
 - the consultation process for changing Saturday noisy working,
 - definitions of noisy working,
 - how to approach the issue of exemptions to the restrictions,
 - how the needs of developers could continue to be met, if any new policy were to be implemented,
 - and how the needs of residents could continue to be met if the existing policy remained unchanged.
6. On the scope of the intended consultation, the approach taken was that, whilst the City Corporation has some “residential wards” for electoral purposes (Portsoken, Queenhithe, Aldersgate and Cripplegate), given that residential properties are distributed, albeit with varying degrees of intensity and numbers, throughout the City’s area, consultation should take place throughout the City. Respondents may feel excluded and it be discriminatory if it is suggested that only certain areas, and hence only certain residents, would be consulted about and/or potentially be the subject of, any ban. A question inviting general comments, including alternative options, was used to give respondents the opportunity to raise and discuss this issue of residential areas, among any other issues, if they chose to.
7. As with the 2017 consultation for the COP, views were sought as widely as possible to ensure a continued ‘balanced approach’ to the needs of the business City to undertake construction works, and the needs of residents and neighbouring businesses who need impacts to be minimised.
8. The consultation questionnaire is attached at Appendix 2.
9. Government guidance for consultation best practice is to have consultations open for twelve weeks to ensure adequate time for publicity and for respondents to consider and send their response. The consultation was open for twelve weeks from 7th May and closed on the 7th August 2018.
10. There were 725 responses received to the consultation. Individuals accounted for 78% of all responses and organisations for 21% of all responses. As to individuals, 149 stated they were residents. Of those residents, 116 felt that noisy Saturday working should not continue. As to organisations, there was a large degree of variation to the size of responding organisation and responses were received from small companies to large organisations operating in the City of London. Of those organisations, 86% felt that the existing noisy Saturday working hours should continue, 62% of all respondents felt that noisy Saturday working between 08:00 and 13:00 should continue, 35% did not and 3% gave no opinion. The full public consultation outcomes report is attached at Appendix 2.

11. In parallel with the consultation and analysis, further evidence and data has been sought to include in this report to provide background information to your decision-making including development pipeline, air quality data, environmental monitoring and construction activities observations, complaints data and equalities information and analysis.

Options Considered

12. The detailed analysis of the considered options for the standard hours for noisy Saturday construction works is in Appendix 3.

The considered options with summary analysis are:

a. No Change.

- The overall outcome of the consultation responses gave a clear indication that the majority of respondents overall did not wish to see at change although a majority of resident respondents said they wished Saturday noisy works to cease
- Development pipeline and demand data shows that Saturday morning noisy works are likely to continue to be required to meet the future demands of a growing world class City.
- Most Saturday noisy construction works are necessary to be carried out at that time due to safety, congestion and engineering practicalities.
- Current levels of construction noise complaints on Saturday mornings are low and sites are generally compliant with the Code.
- Concentrations of air pollutants are lower on Saturdays than weekdays.

b. No noisy construction works in standard hours 0800 to 1300 on Saturday

- The majority of consultation respondents overall do not support this option, although a majority of resident respondents supported this option.
- Respondents raised issues in relation to the need for Saturday noisy works to avoid congestion, safety conflicts with pedestrians and length of programme.
- The respondents in favour of this option were residents and the main reason cited was the impact of construction noise on mental and physical health, wellbeing, the ability to rest, and upon children, the elderly, the disabled and those who are pregnant or with young children

- The evidence base in appendices 4, 5, 6 and 8 does not provide data to support this option.
- c. Additional hour of noisy construction works Monday to Friday 18:00 to 19:00
- The majority of respondents of all categories did not support this option.
 - The evidence base did not provide data to support this option.
- d. Partial permissions
- i. Change standard noisy Saturday construction hours City wide to 0900 to 1400
- This option was suggested by a number of consultation respondents
 - The evidence base in Appendices 4, 5, 6 and 8 does not show any disbenefits to this option.
 - This option is often already negotiated informally through liaison as per the COP.
 - This option would be beneficial to residents City wide in providing an hour of quiet time when most would be at home with no real disbenefit to developers as the hour is moved to the afternoon. There may be some disbenefit to the construction workers who would begin their weekend an hour later.
- ii. Not permitting noisy construction works on Saturdays near residential areas
- This option was suggested by the Barbican Association.
 - The City has residential properties distributed within its area at varying degrees of intensity and numbers and hence residential areas are not able to be defined in any workable and/or fair way.
 - This option has the potential to be discriminatory and unfair if some residents benefit whilst others, such as those who reside in areas containing few and/or scattered residences, do not.

Equalities Implications

13. The City when carrying out its functions must comply with the Public Sector Equality Duty enacted in section 149 of the Equality Act 2010. This means that

Members must pay due regard to the matters set out in section 149. This is a personal duty of Members and is set out and explained to Members in Appendix 9, which Members should read. In order to assist Members to pay due regard to these matters, an Equalities Impact Analysis (EIA) has been completed and it is attached as Appendix 7. Notwithstanding the summary in the following paragraphs, all Members should read and carefully consider that assessment. In addition in particular reference to disability the City has a duty under section 29 of the Equality Act not to do anything that constitutes discrimination (or victimisation or harassment) in the exercise of a public function, and a duty to make reasonable adjustments. The EIA is also important material in this regard.

14. The EIA has identified potential negative impacts of Saturday noisy working on certain protected groups including in particular the elderly, disabled, those who are pregnant or with young children. This is acknowledged, and mitigating steps are suggested as far as reasonably practicable. The strategy for measures to mitigate negative impacts includes incorporating some suggestions made as part of the public consultation, such as improving the City's enforcement of permitted noisy working hours.
15. The existing COP recognises that each construction project undertaken will have different impacts on different people and will need to be assessed at the start and throughout to establish those impacts and minimise them as far as is reasonably possible.

Key Policies and Proposals

16. It is proposed that Members take into account all the information provided and, subject to comments received at your meeting, that no change is made to the standard noisy working hours in the City of London. However, if Members are minded to change standard noisy working hours that option d (i) could be considered.
17. Options b, c and d (ii) are not recommended taking into account the relevant matters detailed in the appendices and in this report.
18. Members of PHES and P&T Committees approved the 8th edition COP in 2017. The COP contains measures to mitigate the effects of noisy construction works on Saturday mornings and throughout the week. Those measures have not yet been realised as the implementation is underway. The implementation of the proposed monitoring levy detailed in paragraph 19 below begin in earnest on commencement of schemes mid 2019.
19. The Code introduced for the first time several new measures in sections 2, 3 and Appendix L available in Appendix 1 of this report that will help mitigate adverse construction impacts more effectively;
 - A schedule of monitoring costs contributed to by the developer to ensure better long-term environmental management and this will enable a more proactive approach to monitoring and enforcement of any breaches by a new team of City Officers. The levy is based in the 'polluter pays' principle with an annual fee paid to the City, the amount dependent on the size of the

site. The fees' will fund officer posts whose role will be active on-site monitoring of compliance with the City's COP and the enforcement of any breaches.

- A stronger approach to air quality impacts from Non-Road Mobile Machinery through registration of all plant on a London database which is audited on site to ensure site equipment meets the best available emissions standards.
- Specific noise reduction technologies such as the requirement for broadband sound reversing alarms.

20. Implementation of these measures is underway and the benefits to residents of these changes will begin to be realised in 2019 as the first payments of the levy are made and a more rigorous approach to environmental monitoring and enforcement of construction will then be able to be financed and taken.

21. Further consideration is to be given to how best to ensure residents are enabled to be better aware of the opportunities available to them for liaison and consultation in relation to noise concerns they may have about specific existing and proposed developments within the City of London set out in the COP and the Planning regime with respect to Schemes of Protective Works and the specific steps that can be taken in this regard.

Legal Implications

22. The legal framework and relevant case law considered is set out in Appendix 9. There are potential equalities implications associated with the recommended option of 'no change' or the alternative option of changing noisy working hours to 0900 to 1400 on Saturdays but provided Members comply with their equality duties as explained in Appendix 9 and Appendix 7 no further legal implications arise.

Financial Implications

23. There are no resource implications arising from the recommended option of 'no change'. If Members are minded to approve the option of changing noisy working hours to 0900 to 1400 on Saturdays, the costs for implementation will be met from existing budgets within the Port Health and Public Protection Service.

Corporate and Strategic Implications

24. Corporate Plan 2018-2023: the recommended option and secondary option, if combined with the mitigation steps referred to above, meet all three aims of 'contributing to a flourishing society', specifically that 'people enjoy good health and wellbeing', as well as elements of 'supporting a thriving economy' and 'shaping outstanding environments'.

Consultees

25. The proposal has undergone full internal and external consultation and the leaflet and questionnaire were made available online for stakeholder comment during a

3-month period. The consultation was promoted widely on the City's social media platforms, articles were placed in publications such as the City Resident magazine. The consultation was emailed directly to all residents' groups and associations, City of London Members, City Officers, City Property Association Members, City Developers, all Considerate Contractor Scheme construction, demolition and street works contractors. In addition, the consultation was the subject of discussion at Highways Co-ordination meetings and meetings with Barbican Association representatives. The results of this have been considered and the Public Consultation Outcomes Report is attached as Appendix 2.

Conclusion

26. The City Corporation has undertaken a consultation, gathered the available evidence base, and undertaken a detailed analysis with respect to the matter of the standard hours for Saturday working in relation to noisy construction activities.
27. The consultation responses showed a strong overall level of support for retaining the current arrangements for standard Saturday noisy construction hours citing safety, length of overall programme, ability to deliver developments on time and meet demand and development costs. However, concerns were also raised, including by a majority of resident respondents, about how the current arrangements adversely affect physical and mental health, wellbeing and the ability to rest.
28. The available data gathered provided in general supports the retention of the existing arrangements.
29. Due regard has been paid to the needs set out in the City's statutory public sector equality duties and the interests of those with protected characteristics when compiling this report and recommendations. The issue of negative impacts of construction noise on some people with a protected characteristic, particularly the elderly, children, the disabled, and those who are pregnant or with young children is acknowledged and is mitigated as far as reasonably practicable.
30. The negative impacts of noisy construction work on residents in the City of London on Saturday mornings are acknowledged and in 2017 the City Corporation produced a refreshed and updated Code of Practice for Construction and Deconstruction to mitigate these impacts by ensuring the use of the best environmental options in planning and managing construction and deconstruction, whilst ensuring the City can continue to function as a modern world class business centre.
31. Implementation of the measures set out in paragraph 19 is underway and the benefits to residents of these changes will begin to be realised in 2019 as the first payments of the levy are made and a more rigorous approach to environmental monitoring and enforcement of construction will then be able to be financed and taken.
32. Further consideration is to be given to how best to ensure residents are enabled to be better aware of the opportunities available to them for liaison and consultation in relation to noise concerns they may have about specific existing and proposed

developments within the City of London and the specific steps that can be taken in this regard.

33. In conclusion, the evaluation has had due regard to the City's statutory duties including: the rights of statutory undertakers to install and maintain their networks, the rights of infrastructure schemes held in Acts and Orders, the ability to apply for prior consents for construction works, the public sector equalities duty and the interests of those with protected characteristics.
34. Taking all the available information into account this report recommends that no change is made to the standard noisy construction hours arrangements for Saturday mornings in the City of London.

Background Papers

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

Appendices

Appendix 1 - Code of Practice for Deconstruction and Construction Sites 2017

Appendix 2 - Public Consultation Outcomes Report

Appendix 3 - Discussion and Analysis of Options Considered

Appendix 4 - Summary construction noise complaint data.

Appendix 5 - Summary observational analysis of construction sites 2018.

Appendix 6 - Air quality data for 2017.

Appendix 7 - Summary Equalities Impact Analysis

Appendix 8 - City Development Tracker and Pipeline map

Appendix 9 - Legal Framework

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Appendix 1

Code of Practice for Deconstruction and Construction Sites Eighth Edition 2017
available at:

<https://www.cityoflondon.gov.uk/business/environmental-health/environmental-protection/Documents/Code-of-practice-for-deconstruction-and-construction.pdf>