

Committee(s):	Date(s):
Port Health and Environmental Services Committee Planning and Transportation Committee Policy and Resources Committee	November 13 2012 TBC TBC
Subject: Enhanced Working Hours for Street works in the City	Public
Report of: Director of Markets and Consumer Protection and Director of Built Environment	For Decision

### Summary

The City has introduced a five point plan of joint actions with the utilities to improve the public perception of street works, to sign them better and to ensure they can be carried out as quickly as possible. Part of this is to allow contractors to work as long as possible, and a map has been issued showing where they can and should work into the evening to minimise the duration of disruption to the highways and traffic flow. This approach will be limited by daylight hours in some cases due to safety considerations. Permits to work have been issued on this basis, and time saved in June and July (prior to the Olympics) was estimated to be 25 days.

This report takes the process to the next step, to see if there are locations where the current daytime restriction on noisy work (the 'quiet hours') can also be relaxed or operated more flexibly. This will mean a balance is being sought to enable street works and highway maintenance to be undertaken without causing unreasonable delay, but also to avoid causing a noise nuisance to City businesses and residents.

The 'quiet hours', between 1000 - 1200 and 1400 - 1600 weekdays are used to provide respite from construction type activity, including streetworks, where there is potential noise nuisance to existing City businesses. These hours have a background in case law and are already exercised flexibly in consultation with local businesses, the utility companies and City's term highways contractor.

Whilst quiet hours protection remains appropriate in most circumstances, greater flexibility in its application through zoning, and more effective planning/neighbour (both commercial and residential) liaison by contractors, will enable extended hours at some locations, and in some limited locations work without 'quiet hours', thereby reducing delays to completion of streetworks. To facilitate this enhanced liaison the term Highways Maintenance Contract with JB Riney includes a requirement that they provide a full time communication officer, based in Guildhall, to drive such consultation exercises.

### **Recommendations**

I recommend that your Committee

- confirms the general principle of 'quiet hours' used in the City within the Code of Practice (Appendix 1) and
- agrees to the further actions proposed at paragraphs 30 to 34
- bring back a further report in 12 months time to review the effect of the more flexible approach to 'quiet hours'

## Main Report

### Background

1. Part 3 of The Control of Pollution Act 1974 (COPA) and Environmental Protection Act 1990 requires Local Authorities to 'inspect their area' and control noise nuisances where they become aware of these. Section 60 of COPA provides powers for the City to require actions by persons responsible for noise from construction activity to alleviate noise nuisance.
2. It is recognised in guidance, Circular 2/76 regarding the 'Implementation of the Control of Pollution Act 1974' that construction activity is intrinsically noisy and a statutory defence against formal action is the use of 'best practicable means' (BPM) to reduce noise to a minimum. One of the main practical elements of BPM for construction noise is the hours when noisy work is permitted to be carried out.
3. In the early 1980s in the City all work on construction sites and highways was stopped for eight hours, between 0900 and 1700, to allow for normal business operation in the City without disturbance. This was modified after a S.60 Notice to control demolition noise was amended in City Magistrates' court in 1984 for a demolition site in Eastcheap. The modification allowed four hours of a notional eight hour working day to the legitimate business of building/construction and four hours to 'existing' City businesses, based on a standard flexitime model with 'quiet hours' in the core times of 1000 - 1200 and 1400 - 1600. These hours were specific to the case so there is no specific legal requirement for the them to be rigidly adhered to other than for reasons of consistency of approach and easy comprehension by all parties of the 'rule' applied in the City of 'quiet hours' between 1000 - 1200 and 1400 - 1600
4. These times were adopted for subsequent notices served on sites, although a restriction between 1000 - 1600 hours was initially used for streetworks as the use of the lunchtime slot caused problems for retail traders. The move towards adopting more consistent quiet hours for both types of operation (construction sites and street works) happened in 1988, when a considerable number of companies were putting in infrastructure for telecommunications cables into City. As this required new installation of networks rather than simply maintenance it was considered inequitable to have hours not aligned with those of construction sites.
5. To protect residents (as opposed to offices) from construction noise start and finish times for the working day are used so as to provide respite in leisure and sleeping hours outside of these times. These are derived from the relevant British Standard 5228, common practice across London local authorities and the City Corporation's own case to Court of Appeal (City of London v Bovis 1990) which set working times of 0800 - 1800 weekdays and 0800-1300 Saturdays only as normal working hours. In predominantly residential locations however, such as the Barbican, the Saturday start times have been adjusted to 0900 - 1400 to give some additional respite at the weekend.
6. The City's Code of Practice (CoP) for Deconstruction and Construction, now in its 6<sup>th</sup> edition, was introduced to codify the City's approach to such works, and whilst confirming the quiet hours it sets out to be very flexible for specific cases

(see Appendix 1). Whilst the principal noise criteria of a project will be covered by the above, modifications to 'quiet hours' are normally made due to local circumstances e.g. emergency work, unnecessary protraction of the work, impact on retail trade, traffic impact and following discussion with all parties.

7. Since the 1980s/1990s, when much of the current policy around working times was developed, the City has experienced increasing demand for streetworks to facilitate the needs of utilities (e.g. the Victorian Water Main Replacement Programme) and the City Corporation's own programme of Street Enhancement. To this can be added the large and growing demand from businesses to improve their telecommunications/IT functionality, all of which ensures the City highways network supports our world class city status.
8. In addition, the Traffic Management Act 2004 placed a Network Management Duty on local authorities to ensure the expeditious movement of traffic on their road networks, placing a focus on the need to minimise the disruption caused by streetworks. The recent high demand for streetworks activity has seen the City process around 5000 applications for streetworks permits per year, and the challenge now is to meet the needs of businesses and utilities whilst keeping traffic moving.
9. One important way of doing this is by lengthening the working day to minimise the overall traffic disruption caused by works. However, there is clear tension between the avoidance of noise nuisance and working longer hours to deliver shorter duration streetworks. This therefore necessitates the development of a clear policy to inform officers' approach to this issue.

### **Scope for Change**

10. There has been an evolution in controls from permitting no work at all in 'quiet hours' periods, which have themselves been reduced, to the current practice whereby only the worst specific noisy works (usually breaking of the street and disc cutting) are stopped. This allows for faster completion of work, as other activities (loading away, site preparation etc.) can be carried out during the 'quiet hours'. This provides consistency with the regime applied to demolition and construction sites. Contractors have up to now largely gone along with this, and organised their work accordingly. Now however, the desire to speed up streetworks, and pressure from City Corporation for contractors to work into the evening, has caused them to say that they could get even more productivity if they were allowed complete freedom to do any works at any time during the working day. There is an inherent balance to be struck between protection of neighbours from noise nuisance, both business and residential, and the potential to reduce congestion by reducing time taken to complete streetworks. However it is considered appropriate that any fundamental change in approach should be reviewed and approved by Members.
11. The constant turnover and improvement in building stock in the City has gradually decreased the severity of impact from noise of street works on buildings, except at main entrances. However, there are still many buildings that do not afford good noise protection and nuisance from such work persists. Controls are therefore needed to avoid any action of mandamus against the City or indeed parallel actions using injunctive civil action, judicial review, local ombudsman or S. 82 Environmental Protection Act 1990 which permits a simple

complaint procedure by individuals/companies direct to magistrates court. In parallel, how the City discharges its Network Management Duty is also subject to scrutiny by Government and the Mayor (through the Local Implementation Plan), with the imposition of an external Traffic Manager and possible judicial review procedures also available.

12. All these controls are of course largely an action of last resort. Complaints received can almost always be addressed to avoid such action, although officers are cognisant of the regulatory framework in decision making.
13. To remove the quiet hours altogether would leave the City at severe risk of the actions set out above, and so this is not the intention. Rather we are seeking a balanced position that seeks to stretch the working day where practicable to drive more efficient and effective working practices. The majority of noise complaints from businesses centre on disruption to those areas of their buildings in which their core business activities are undertaken. Given the costs that can arise through lost business, this can be very significant. Equally businesses complain about the cost to them of traffic congestions when executives and servicing vehicles are delayed in traffic caused by streetworks, so the solution is not a simple one.

### **Current Position**

14. Following consultation with colleagues in City Planning Advisory Team (CPAT) and Highways, it is considered that, with demonstrable adequate planning by a contractor and suitable liaison with local neighbours (both commercial and residential), works in some parts of the City can both be extended and, in some limited locations, work without standard application of 'quiet hours'. The Environmental Health (EH) Pollution Team and DBE have identified zones on a City map (Appendix 2) in which contractors may be able to extend the normal working day allowing two shifts, and therefore making better use of the 1600-1800 period. This was not used much before last year but we have said that where appropriate we will now only issue permits on a two shift basis and this is forcing a gradual change in the planning of streetworks. This is a position accepted at a meeting between the Lord Mayor and senior managers from the utilities.
15. A pilot project started in April 2012 which allows better use of the extra daylight hours in spring/summer evenings, which is when the potential for two shift working for contractors is available, as there are also health and safety and productivity constraints when working in the dark. Use of this has been limited this year, as many works were stopped altogether because of the 2012 Games, nevertheless 25 days were saved in June and July.
16. Utility companies, their contractors and the City's own term highway maintenance contractor are being encouraged to emulate planning and liaison practices normally undertaken by companies employed in the best demolition and construction of buildings in the City. In the case of the City's term contractor (Riney) there is a contractual obligation to provide a full time consultation/communications manager to focus on precisely this issue.
17. Environmental Management Plans (EMPs) showing clear planning and liaison arrangements with neighbours, both residential and commercial have not

traditionally been routinely supplied by street works contractors. This is partly because it is more difficult to do this on-street, where conditions are less self-contained than on a site, and where containment measures are more difficult to provide. Ensuring adequate planning and liaison arrangements are identified in EMPs by street work contractors, as a precursor to more flexible application of 'quiet hours' controls and application of bespoke solutions to works, will be important.

18. The advent of lane rental introduced on the Transport for London network is forcing firms to both consider working outside of normal day time hours in some locations at the same time as trying to find better methods of sound attenuation, (difficult though these are to implement) in order to allow more efficient use of the time when they are on the road and being charged for this. This should significantly enhance contractors' potential to maximise work periods and reduce unnecessary restrictions. This should also be codified in the next (7<sup>th</sup>) edition of the CoP.

### **Action Taken**

19. A letter notifying contractors of the potential for enhanced working hours in the evening was sent out by Highways on 3 February 2012.
20. Quarterly Meeting are held with Utility companies and their contractors at Guildhall where the facility to use 'extended hours' is promoted.
21. The pilot project started in April 2012 has proved successful to date. The first reports in May by Highways showed eleven sets of works were carried out on traffic sensitive streets where extended working hours were permitted. 45% used the facility to extend hours saving an estimated 40 working days on works. Of the 55% that did not use this facility there was only been one project where extended hours have not been agreed for environmental reasons. In June and July a further 21.75 working days were estimated to be saved but this also coincides with the moratorium for work on traffic sensitive streets due to the Olympics.
22. An information and variation sheet is made available to streetworks contractors, where these are planned in advance, by EH, and also in the future by Highways Inspectors. Completion of this sheet by all parties is the formal route to vary 'quiet hours' or extend working hours for a contractor.
23. An internal protocol for Highways and EH is used when considering such works. This includes; meeting the contractor on site or discussing the location and likely affected parties, the liaison that the contractor will carry out before and during works, the mitigation that the contractor will use to minimise environmental impact of the work and any improvement that additional hours of work will provide to the potential length of the works.

### **Further Actions**

24. The City information sheet on extended working hours provided to contractors is being reviewed by Highways and EH. This will require better information in EMPs from streetworks contractors on planning, liaison and justification of their works to both improve efficiency of street work and reduce the noise impact on both commercial and residential neighbours. We will encourage contractors,

through this planning process, to invest in additional sound mitigation measures where these are feasible as these may both alleviate problems and extend the hours available to work in the knowledge that they will be stopped if the measures are not successful. The liaison arrangements are seen as critical in letting business and residential neighbours know in advance that noisy work is happening, providing a target end date for the work and contact details in case of problems. In addition we will review the map of the City and show any street or portion of street where we consider that all day working can be done, test this in practice and expand these areas where practicable.

25. To improve formal communication further on operational matters, following the 2012 Games, weekly meetings are being held between Highways, EH and the City's Contract representative with a remit to:
  - a. review the City GIS map to see if any further streets can be added to the green areas where extended work is normally considered to be acceptable,
  - b. identify any locations where daytime 'quiet hours' are unnecessary,
  - c. consider current works and any issues arising from them,
  - d. prepare for forthcoming planned works.
26. Training of Highways staff will be organised with the enhanced information planning requirements as soon as this has been ratified at the above meeting to ensure consistency between Highways and EH.
27. A meeting between Riney (the new term contractor for the City), EH and Highways has taken place to ensure good communication and work to best practice standards (the information note above being considered) and further meetings are to be arranged to review progress and ensure this is carried out.
28. A new post of Streetworks Communications Officer has been created since the beginning of the year, initially for eighteen months. The post was created in the Highways Team to help improve communication between the Utility companies, City stakeholders and the City Corporation. Promotion of extended working by ensuring effective communication between all parties carrying out, affected by or regulating streetworks forms part of post holder's role. This role is in addition to the dedicated Communications Manager post in Riney.
29. An information note on 'quiet hours' application in the City has been raised with Transport for London (TfL). A discussion on the implications of this, along with the implementation of lane rental in the City, has been discussed at an initial meeting with TfL held on October 2. Further fortnightly meetings have been agreed with TfL to ensure a satisfactorily robust working procedure is put in place and is subsequently operating sufficiently well to meet the needs of both parties. TfL have undertaken to ensure that both their term contractor and TfL's own permitting team contact EH and Highways regularly with information needed in advance of planned works allowing the input of City requirements into the planning of their operations, as far as is practicable.

## **Proposals**

30. The EH Pollution team apply flexibly the need for quiet hours or other BPM when considering proposals, including liaison arrangements, proposed in EMP's from contractors.
31. In conjunction with Highways, CPAT and any other interested parties the Pollution Team reviews the impact of the pilot use of extended hours in the City and brings back a further report on this subject in 12 months time.
32. The zone map of the City be further refined in the light of experience on the pilot to clarify areas where extended work can normally be applied.
33. The City CoP is updated in the light of the trial extension and modification of working hours so that the City can clearly and consistently apply its own policy in this area.
34. It be recognised that there will always be a balance to be found between quiet periods and expeditious working. Local consultation will drive that process and may occasionally result in decisions being taken that fall outside the standard policy on quiet working.

## **Corporate & Strategic Implications**

35. The enhancement of working hours fits with one of the City Corporation's three aims of the Corporate Plan 2012 – 2016 in that it seeks to evolve a service 'to provide modern, efficient and high quality local services and policing within the Square Mile for workers, residents and visitors with a view to delivering sustainable outcomes'. It also meets one of the five key policy priorities KPP2 in that it seeks to 'maintain the quality of our services whilst (reducing our expenditure and) improving our efficiency'.

## **Implications**

36. Whilst there is an environmental risk in attempting to extend working hours in suitable locations in the City this is being done based on Officer's local knowledge of where problems do arise and where extended working hours may be acceptable. Existing informal and legislative controls can be applied to swiftly alleviate any problems that do arise. The work undertaken in carrying out this work is expected to remain within the existing budgets of both Markets and Consumer Protection Department and DBE.

## **Conclusion**

37. In order to balance better the risks of traffic congestion and disruption caused by streetworks against the environmental impact on neighbours (principally noise nuisance) The City Corporation should, through improved consultation, seek to maximise the flexibility for streetwork contractors to use additional hours of the day. This will be guided by existing 'quiet hours' periods, but varied to increase available working hours where there is sufficient planning and liaison to mitigate potential problems and where there is clear justification of the benefit of enhanced hours being used.

**Background Papers:**

None

**Appendices**

Appendix 1 Code of Practice for Deconstruction and Construction 6<sup>th</sup> edition

Appendix 2 Zoned map of traffic v noise sensitive streets

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