

NOTICE OF MOTION – CLLR L LYONS – CONSTRUCTION SITE NOISE LIMITS

Executive Summary

At its meeting on 11 February 2021, the Council referred a Notice of Motion submitted by Councillor Lyons, which dealt with the limitation on noise from construction sites, to the Executive. The Executive considered the Motion at its meeting on 25 March 2021 and recommended to Council that the Motion be not supported. At Council on 8 April 2021, it was resolved that the Motion be deferred to enable it to be considered by the Overview and Scrutiny Committee at its meeting on 7 June and the Executive at its meeting on 17 June 2021 with a view to the matter being brought back to Council in July 2021. The 8 April 2021 Council minutes are set out below:

“Councillor Lyons had submitted a motion to Council on 11 February 2021 which had been considered by the Executive in March 2021. The motion dealt with the limitation on noise from construction sites and had not been supported by the Executive. Councillor Davis, Portfolio Holder, introduced the recommendation of the Executive which had recommended that the motion, as set out below, should not be supported.

“In accordance with the Control of Pollution Act (Noise) 1974, construction sites operating in Woking must currently limit site noise to the hours of 08:00 and 18:00 Monday to Friday, 08:00 and 13:00 on Saturday and not at all on Sunday, with no noise permitted to be audible from the site boundary outside of those hours.

- (i) These times are to be confirmed as a matter of Council policy, and any review of, or amendments to, these times must be determined by the Council.
- (ii) Any permission to vary from these times may only be granted to an applicant with the permission of the Planning Committee.
- (iii) Any such permission by the Planning Committee will only be granted in exceptional circumstances, and for a limited and specified period.
- (iv) Permission to vary these times on a single occasion, for a maximum period of one day, may be granted by relevant Officers under delegated powers. Subsequent applications, or applications for longer than one day, must be considered by the Planning Committee.
- (v) On all such instances of permission to vary from these times being granted, residents likely to be affected will be notified by post.
- (vi) Works deemed to be an emergency will continue to be exempt from these restrictions.”

Councillor Lyons spoke in support of the Motion, outlining the key objectives of the proposals to create a fair, transparent and open process which would take into account the views of Councillors and residents. Councillor Ashall suggested that further investigations should be undertaken on the implications of the proposals within the Motion before a decision could be reached to ensure the Members were fully aware of the current arrangements in place and the impact the changes proposed would have.

In view of the discussion, the Director of Legal and Democratic Services, Peter Bryant, suggested that the matter should be deferred to enable it to be considered by the Overview and Scrutiny Committee at its meeting on 7 June and the Executive at its meeting on 17 June 2021 with a view to the matter being brought back to Council in July 2021. The proposal would allow Officers to consult with Councillor Lyons and Group Leaders with a view to identifying whether a proposed

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change to existing arrangements could be achieved without increasing the level of bureaucracy involved.

Councillor Lyons welcomed the proposed approach and supported the proposal.

RESOLVED

That consideration of the Motion be deferred to enable Officers and Members to investigate further possible changes to the existing arrangements to deal with the concerns over the impact of construction site noise and the control of hours of operation, through the Overview and Scrutiny Committee and the Executive.”

Recommendations

The Executive is requested to:

RECOMMEND TO COUNCIL That

measures as proposed within the report are adopted.

Reasons for Decision

Reason: To consolidate existing arrangements.

The item(s) above will need to be dealt with by way of a recommendation to Council.

Background Papers: Notice of Motion.

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Date Published: 9 June 2021

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1.0 Introduction

- 1.1 Following submission by Councillor Lyons of the Notice of Motion regarding Construction Site Noise Limits and subsequent discussion and debate it was agreed that the matter would be first considered by the Overview and Scrutiny Committee before being considered once more by the Council's Executive.
- 1.2 Meetings between Council officers have concluded that the existing process is sound with the appropriate legislation being referenced and further involvement of the planning system as proposed cannot practically realise any further protection.
- 1.3 With the existing process it has been shown repeatedly that even in the busy and developing town centre area existing protections are effective in minimising disruption and inconvenience to all.
- 1.4 Individual enquiries are dealt with thoroughly and where several complaints are received any related construction is investigated promptly to revise working arrangements as required.
- 1.5 Through the discussions there are certain measures which can be introduced to increase the transparency and awareness of existing arrangements to monitor construction works both during standard hours and out of hours.

2.0 Existing Process

- 2.1 The Control of Pollution Act 1974, enforced by the Council's Environmental Health Service (EH), gives provision to serve a notice on a construction site, imposing requirements on the way works are carried out, including the times that noisy operations are permitted.
- 2.2 The usual times quoted are not specified within the legislation, so are guidance only, but they are normally used by Local Authorities. (08:00 – 18:00 Mon to Friday, 08:00 – 13:00 Sat and not at all on Sundays / Bank Holidays). Where complaints are received from residents that noisy works are causing disturbance outside of these hours, this is investigated by EH. Where evidence supports that a developer is working outside of usual guidance times, a notice (commonly known as a section 60 notice) is considered which limits noisy operating times. This does not restrict all operating, but primarily noisy works outside of the times quoted.
- 2.3 A developer may also apply for prior consent, under section 61 of the Control of Pollution Act 1974, requesting permission in advance to carry out noisy works outside of the normal times. All applications are considered taking into account; any complaints already received, reasons for the request, such as safety due to access of public, mobilising cranes when roads are quieter, catching up with delayed works due to weather etc, and any 'best practical means' measures they intend to put in place. Where a prior consent request asks for noisy works outside hours for a long duration we might allow a shorter period so that we can review reports of disturbances within a short space of time and amend or not renew the concurrent notice depending on any complaints received. Part of the requirements of the developer is to notify nearby residents and businesses of hours and intended works. This is normally by letter drop or notices within flats.
- 2.4 A prior consent notice outlines the permitted hours of work, the areas of site where that work can take place (if a large site) and any conditions of those hours which may include mitigation measures such as; no use of certain machinery and equipment before and/or beyond a certain time, requiring the most acoustic efficient model of equipment / machinery, acoustic housing, public consultation measures and how the site can be contacted out of hours.

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- 2.5 For each application justification of out of hours noisy working is required from the developer. Depending on the application details, size of site, number of complaints and predicted potential disturbance to nearby residents and businesses, at the very least discussions will be held by an officer with the developer to ensure that noisy working is absolutely necessary out of usual hours, however, this extends to Senior Managers, Councillors and/or Surrey County Council colleagues, as necessary. Once an application is received the Council has 28 days to respond.
- 2.6 Developers have a right to appeal, at Magistrates Court, any notice they are served under the Control of Pollution Act 1974. If we fail to determine in the 28 days, or attach unreasonable conditions to a request by a developer, that they consider reasonable, we will need to be able to defend that decision in court.
- 2.7 In the last 12 months EH have issued 4 section 60 notices and 13 prior consent section 61 notices.
- 2.8 We have received 105 complaints from residents relating to noisy construction sites in the last 12 months.
- 2.9 Discussions have been undertaken with colleagues in Planning Services as to whether the wider use of planning conditions attached to planning permissions could assist in addressing this matter. However, they advise that planning conditions must comply with five tests including the tests of “necessity” and “relevance to planning.” As the planning system is concerned with land use planning, it should not seek to replicate or duplicate controls available under other legislation. As construction site noise is a transient issue and is primarily regulated under the Control of Pollution Act 1974, planning conditions would not meet the tests of necessity or relevance to planning and would consequently be *ultra vires* (i.e. beyond the Local Planning Authority’s powers). Furthermore, “pre-commencement” conditions (i.e. those which require developers to submit information for the agreement of the Local Planning Authority prior to the commencement of a development) must also now be agreed by the developer prior to their attaching to a planning decision.
- 2.10 Notwithstanding this, the attaching of conditions to planning permissions would be likely to give concerned residents unrealistic expectations of the ability of the Planning Enforcement team to take swift action in the event of problem. The Planning Enforcement regime is discretionary and generally its procedures are far slower than those of other regulatory services. For example, the statutory minimum compliance period for a Planning Breach of Condition Notice is 28 days, whereas Notices served under the Control of Pollution Act 1974 can require instant cessation of works. This route would also require the enforcement process to be managed by Planning Enforcement officers whose area of expertise is the investigation of breaches of land use planning control, rather than disturbance and noise nuisance issues.

3.0 Conclusions

- 3.1 Environmental Health and Planning, as a result of the Notice of Motion, have fully reviewed the processes involved in controlling noise from construction sites outside of usual permitted hours. As well as reference to legal powers under the Control of Pollution Act 1974, and examining the possibility of utilising the planning process, we have also reviewed our complaint history and considered health effects of recent and current prior consent notices and conditions on our residents.
- 3.2 We have also reviewed how Local Authorities across Surrey determine applications for prior consent, and can confirm this is done under the Control of Pollution Act 1974 by Environmental Health Services as described.

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- 3.3 It is proposed that the existing process is fit for purpose. The Council is protecting the health and well-being of residents, whilst supporting local economic development, and in doing so is following legal procedure and delivering service in line with other Surrey Borough's.
- 3.4 It is accepted that there will be occasions when residents are disturbed by noisy working at construction sites outside of normal hours of operation. It is proposed that we make publicly available a copy of prior consent notices issued on our website so that residents can more easily see what noisy works have been permitted, the mitigating measures and conditions in place. This will also show a contact name and telephone number for the site itself so that residents may make contact out of hours if necessary.
- 3.5 The Deputy Development Manager has undertaken to reiterate to Case Officers dealing with planning applications that the existing standard Informative (which reminds developers of the provisions of the Control of Pollution Act in respect of noise audible at the site boundary) be attached to all Planning Permission notices. He will also investigate whether the Informative can be reviewed to encourage developers to register with the Considerate Constructors Scheme (or similar) which construction companies voluntarily register with and agree to abide by a Code of Considerate Practice which is designed to encourage best practice beyond statutory requirements.

4.0 Additional measures

- 4.1 Moving forward it is recommended that the following measures are agreed to ensure arrangements are as effective as possible:
- Council website – Prior Consent Notices issued to be published on the Council website.
 - Where a Prior Consent Notice has been submitted requesting noisy construction works outside of usual permitted hours, Ward Councillors are informed of the decision made and relevant conditions issued.
 - Planning – The standard Informative reminding developers of the Control of Pollution Act 1974 in respect of noise audible at the site boundary is to be reviewed and Case Officers reminded to attach to all Planning Permission Notices.
 - Considerate Constructors Scheme – The standard planning Informative is to be reviewed and include encouragement of developers to register with this scheme (or an equivalent).

5.0 Corporate Strategy

- 5.1 The additional measures arising from this report will support delivery of the corporate plan objectives for sustainable development and a strong economy whilst increasing transparency for residents.

6.0 Implications

Finance and Risk

- 6.1 There are no financial implications arising from this report.
- 6.2 There are no risk management issues arising from this report.

Equalities and Human Resources

- 6.3 No human resource or training and development issues are arising from this paper.

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Legal

6.4 There are no legal implications arising from this report.

7.0 Engagement and Consultation

7.1 The Council's Portfolio Holder, Councillor Lyons, and professional planning and environmental health bodies have been engaged in the preparation of this report.

7.2 The Overview and Scrutiny Committee considered the Motion at its meeting on 7 June 2021. The views of the Committee will be reported to the Executive on 17 June 2021.

REPORT ENDS