



Get Sectioned.....

Demolition and Construction

With the current trend in the development industry for large penalty clauses and consequential liabilities for Contractors (or Developers) any extension to programme length is becoming increasingly costly. For example, a reduction in the Contractors permitted working hours, due to environmental noise & vibration related restrictions imposed by the Local Authority in the form of a Control of Pollution Act (COPA) Section 60 Notice, can be particularly onerous. However, with appropriate pre-planning the Contractor (or Developer) can avoid the risk of such related costly extensions altogether. It is the aim of this Information Bulletin, therefore, to provide our Clients with an understanding of the procedures to overcome these noise & vibration control risks, delays and costs.

Control of Pollution Act : 1974 (COPA)

Sections 60 & 61 of this Act provide the main legislation regarding demolition and construction site noise & vibration issues.

Section 60 Notices may be issued by the Local Authority to impose specific conditions on the Contractor throughout the site demolition or construction process.

Section 61 Agreements may only be awarded prior to the start of works on-site. Either Section 60 or 61 may include conditions regarding one or more of the following:-

- Working Hours
- Noise Limits (at site boundaries or other noise sensitive locations)
- Working Practices (site equipment, methodology etc.)
- Noise Mitigation Measures

A Section 61 Agreement once awarded cannot be superseded by a Section 60 Notice provided the agreed conditions are maintained on-site.

Unfortunately, any Section 60 Notice specifying one particular set of conditions may, due to the nature of the Act, be easily superseded at any time by a more stringent Notice changing the previous conditions.

Q *What is the difference between a COPA Section 60 Notice & a Section 61 Agreement ?*

The differences between a COPA Section 60 Notice and a Section 61 Agreement are subtle but very important. A Section 61 Agreement must be gained prior to the start of on-site works. It also requires more preparatory input from the Contractor (or Developer) in conjunction with his Acoustic Consultant and the Local Authority. The Section 61 Agreement provides the Contractor (or Developer) with a legally binding level of protection against potentially numerous restrictive Section 60 Notices. For this reason a Section 61 Agreement can, where noise and vibration is likely to be an issue, be vastly preferable to a Section 60 Approach.

Q *What's so bad about a Section 60 Notice ?*

A Local Authority can issue a COPA Section 60 Notice instructing the Contractor to operate the site in a particular way to minimise nuisance to neighbouring properties. The Notice may include the specifying/changing of site working hours, boundary noise limits, plant or equipment selections or site working methods.



These conditions may be imposed at any time without consultation with the Contractor or Developer. Also, any Section 60 Notice can be readily superseded by further more stringent conditions if the Local Authority receive subsequent complaints.

Q What are the benefits of having a COPA Section 61 Agreement ?

Immediately the Section 61 Agreement is in place, prior to on-site working, the Local Authority has effectively guaranteed its acceptance of the proposed working hours, method statement etc.. It therefore becomes impossible for the Local Authority to change the conditions imposed upon the Contractor under the Agreement provided the specified criteria are met!

However, negotiations between Contractor and Local Authority, leading to a Section 61 Agreement can be fraught with pitfalls, as many Local Authorities currently prefer to persuade the Contractor to use the COPA Section 60 approach.

Q Why must a Section 61 Agreement be made in advance ?

The Local Authority and Contractor (or Developer) are basically both setting out in advance a "Contract" for the noise and vibration control of demolition and/or construction works. The Local Authority then agree that, if the works are carried out in accordance with the Agreement, the Contractor would not be subject to any Section 60 Notices. The Contractor (or Developer) therefore agrees to undertake all works in

accordance with "Best Practicable Means" and abide by all the restrictions through the demolition/ construction works on-site. Once a Contractor (or Developer) has applied for a Section 61 Agreement the Local Authority has a legal obligation to inform the applicant of its decision within 28 days of receipt of the application. If not the applicant has a right of Appeal to the Local Magistrates Court.

Q What are "Best Practicable Means" ?

The Local Authority will often specify that "Best Practicable Means" be used on-site. This is basically an acceptance from the Local Authority that all demolition and/or construction works will result in some degree of noise and vibration. There are, however, certain working methods and plant items which will result in a lower level of noise and/or vibration impact on the neighbouring areas.

It is the responsibility of the Contractor, where such conditions are imposed, to use "Best Practicable Means" to ensure the proposed procedure is, within reasonable cost limits, the quietest viable option.

Q What other conditions could the Local Authority impose ?

There are two other probable conditions not already discussed that the Local Authority may wish to impose.

Firstly, they may specify that continuous Noise and Vibration Monitoring be undertaken at stipulated locations around the site for the duration of the project.

This will enable the Contractor to demonstrate that local residents are not subjected to excessive levels of noise, or vibration levels likely to result in damage to neighbouring properties. The Noise and/or Vibration Monitoring data also provides an excellent method of assessing any changes in the noise climate throughout the duration of the project. Furthermore, the data is easily comparable with the previously prevailing noise levels which existed (and should have been measured) during the earlier phases of the works.

The second extra condition may be to specify regular liaison meetings between the Local Authority, Local Residents and the Contractor. During such meetings the residents can be kept up to date with the project and can be forewarned of any future operations likely to result in high noise or vibration levels. Such meetings therefore prepare the residents in advance for such events, reducing the likelihood of any adverse comments.

Q What to do if a Section 60 is imposed ?

If a COPA Section 60 Notice is served on the Contractor, imposing restrictions on noise limits/working hours, a formal Appeal may be lodged in the Magistrates Court within 21 days of the Notice being served. It may be possible to persuade the Local Authority to alter the Notice. The main downfall of Section 60's from the Contractors point of view is, however, that the Local Authority always has the option to supersede a previous Notice. Any new Notice may well enforce further reduced working hours or noise limits, thereby restricting the Contractor and throwing the programme into increased jeopardy.

The moral of the story is that all Contractors (or Developers) should negotiate an appropriate COPA Section 61 Agreement with the Local Authority prior to commencing any work on-site. However if a Contractor does receive a COPA Section 60 Notice or an EPA Section 80 Noise Abatement Notice, they should immediately seek professional advice!

Hann Tucker Associates, the leading independent acoustic consultancy in the UK, can provide the necessary professional advice and assistance in negotiating a workable and acceptable COPA Section 61 Agreement. We can also provide a comprehensive Noise & Vibration Monitoring service on-site. By using the specialist knowledge and expertise Hann Tucker Associates has gained over almost 30 years of practical and cost effective consulting, unacceptable Local Authority Section 60 Notices can be avoided.



Hann Tucker Associates
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