

Business and Planning Bill 2020

Draft Guidance: construction site hours deemed consent¹

Comments from the Institute of Acoustics (IOA), the Association of Noise Consultants (ANC), and the Chartered Institute of Environmental Health (CIEH)

Background

When the Ministerial Written Statement was published on 13th May, announcing the Government's intention to allow a temporary extension to the hours of construction site working, the IOA, ANC and CIEH came together to provide some guidance on the noise management issues that contractors and regulators would need to consider.

That guidance was virtually complete when the Business and Planning Bill was published on 25th June 2020, along with the draft guidance on construction hours deemed consent.

Consequently, the three bodies have instead reviewed that draft guidance and have compiled the following comments in the form of the text below. In addition, suggested drafting changes have been made on the attached version of the draft Guidance, with, where appropriate, comments made to explain the proposed amendments. The aim of these comments is to enable the consequential noise management issues that would arise from this proposal to be as effectively managed as possible.

Comments

The IOA, ANC and CIEH recognise the importance of the proposed measure in enabling construction sites to work safely and yet maintain an appropriate level of productivity. As the draft guidance recognises, however, it is essential that the potential adverse noise impact arising from extending the permissible working hours is properly understood by those involved.

The focus of the proposals concern extending the permitted working hours for construction sites that are controlled by planning conditions. However, the working hours of construction sites are not all controlled in this way. Instead they may be regulated via Section 60 or 61 of the Control of Pollution Act 1974. There are processes available to enable the permitted working hours under those regimes to be extended, but they are different from those set out in the draft guidance. On the basis that we presume that the Government is keen to address all construction sites (except for householder development), it is suggested that the following text be added to the guidance:

¹ The draft guidance can be found here: <https://www.gov.uk/government/publications/construction-working-hours-draft-guidance/draft-guidance-construction-site-hours-deemed-consent>

What should be done if the permitted hours of work are controlled by Section 60 or 61 of the Control of Pollution Act 1974

If hours of working are controlled by either of these methods, it could be a criminal offence if extended hours are implemented without first seeking permission. A Section 61 prior consent typically include provisions for changes in circumstances, most often formal procedures for applying for variations or dispensations. Such procedures should be used to seek an extension of working hours.

If a local authority has served a Section 60 notice on a site, this may be an indication of existing or anticipated noise impact issues and again it is essential that the contractor liaises with the local authority before simply extending the working hours.

Proposed Working Hours

- There is ambiguity regarding whether or not there is a presumption against extending working hours into Sundays and Public Holidays. From a noise management perspective, there is merit in advising that, as a rule, there should be no extension of work to Sundays or Public Holidays.
- Typically, construction sites finish working at 1.00pm on Saturdays. Therefore, extending working hours on a Saturday to 9.00pm would represent an 8-hour extension of working hours, compared with 2 - 3 hour extensions on weekdays. Given the adverse effects of noise can be mitigated by respite, there is a case for advising that, as a rule, contractors should seek to extend the hours worked on a Saturday to, say, 6.00pm, subject to there being no significant adverse noise impact.

Information to be provided by the Contractor

- This is the key part of the guidance and some additional elements have been added at the relevant point in the attached document to optimise the outcome.
- As the extent of adverse noise impacts depends on local context, applicants should be mindful of exactly who they have located nearby and might be adversely affected by the extended hours. In this case, particular issues may arise with
 - Families with young children who would be going to bed in the early evening;
 - Any households containing people with caring responsibilities (not just children);
 - Older people who may have been and still are increasingly isolated;
 - People with pre-existing long-term health conditions and/or those recovering from illness (e.g. Covid-19), and
 - People with other vulnerabilities.

It is acknowledged that some of these issues have been mentioned under question 7, but it is felt important for the guidance to set them out specifically.

Permitted Response time for Local Planning Authorities

As written, there is ambiguity over the time available to a local authority to make a decision. It has been concluded that the intent is for the period to be 10 working days. That is effectively no more than 14 calendar days except when there is a public holiday.

The draft guidance also mentions the need for agreement between the local authority and the developer if a shorter extension of working hours is given. However, the guidance does not clarify how such a negotiation should proceed and what impact this would have on the 10 working day determination time or the deemed consent which would occur once that deadline has passed. It is recommended that applicants be required to respond promptly to local authority proposals to avoid the deadline being reached without agreement and authorities refusing the application because of awaiting further information.

Statutory Nuisance

The IOA/ANC/CIEH understand the purpose of the 'deemed consent' outcome. Whilst authorities will endeavour to give each application due consideration within the required timescale, it may not always be possible to do so (see below). Applicants and contractors must be clearly reminded that even if deemed consent is secured, the relevant statutory nuisance provisions will still apply.

It is noted that this point is made under Question 6 (What will a local planning authority need to consider when assessing application for temporary extended working hours). However, it is important for the applicant to be fully aware of this situation and this point would bear repeating in Question 4, emphasising that it is in the Applicant's interest to consider fully the potential noise impact issues.

Local Authority Resources

Much additional work has fallen on to local authorities as a result of the pandemic. Many authority staff who would normally attend to noise related issues have been diverted on to COVID-19 tasks.

Consequently, the IOA/ANC/CIEH have significant concerns about the available resources within local authorities to be able to assess properly applications from applicants and contractors within the stated 10 working day timeframe. The impact of extended working hours for construction sites will primarily be related to additional potential noise impact. Consequently, the burden of reviewing the application will fall to Environmental Health Practitioners (EHPs) within LAs.

As mentioned above, EHPs have been and are involved in a range of activities, related to the lockdown and COVID 19, including contact tracing work, and support and enforcement around business re-opening. They will soon need to begin working through a long backlog of investigations, which were not possible to progress during lockdown.

For these reasons, the IOA/ANC/CIEH are concerned about the lack of capacity within these teams to provide the appropriate input and expertise on these applications. That means that it is likely that many applications will be approved under the deemed consent process. Therefore, it is essential that applicants carefully consider the potential impacts themselves,

clearly address any particular issues and demonstrate how they will be effectively managed. The applicants must remain aware that any complaints occurring about noise during the extended working hours could result in intervention by EHPs under the available enforcement provisions of the Control of Pollution Act 1974 and the Environmental Protection Act 1990.

About the IOA, ANC and CIEH

The Institute of Acoustics is the professional body for those working in the field of acoustics, sound, noise and vibration. It comprises around 3000 members who work in consultancy, industry (including contractors), academia, local and national government.

The Association of Noise Consultants is the trade body for businesses who provide noise consultancy services and comprises over 100 member organisations.

The Chartered Institute of Environmental Health is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action, people's health can be improved.

The Institute of Acoustics

The Association of Noise Consultants

The Chartered Institute of Environmental Health

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