

ROYAL BOROUGH OF KENSINGTON AND CHELSEA

ENVIRONMENT SELECT COMMITTEE – 16 JANUARY 2024

DIRECTOR OF TRANSPORT AND REGULATORY SERVICES

REGULATION OF CONSTRUCTION SITES

PURPOSE

This report describes oversight of construction work by the Construction Management Team across the borough, the current operation of the construction bond scheme and related documentation. It sets out the main challenges of this work and proposes a number of areas where there is scope to improve the regulation of all construction sites and increase enforcement for non-compliant and poorly-run works.

The committee is asked to consider the contents of the report, to comment on the proposed improvement measures and to suggest areas where further work is considered necessary.

FOR DISCUSSION

1. EXECUTIVE SUMMARY

- 1.1 This report details the existing work of the Construction Management Team in regulating the main construction sites across the borough. It sets out the principle ways in which this is achieved, and explain how the construction bond scheme operates. It reflects on the challenges of this works and details specific problems in relation to the current resources available for enforcement action, the penalties for contractors for non-compliance, and data-sharing between council teams. It sets out a number of areas where improvements are anticipated, and also details additional measures that could be explored to increase enforcement powers in relation to construction.

2. RECOMMENDATION(S)

- 2.1 To consider the attached report and decide whether the Committee wishes to make any comments or recommendations to the Director of Transport and Regulatory Services about the attached report.

3. QUESTIONS TO CONSIDER

- 3.1 The Committee is asked to review the contents of the report and feedback on their overall view of construction regulation in the borough. In particular, the Committee is asked to comment on the following:

- Do the Committee think that the proposed areas for improvement will address any issues of concern that they, or their residents, may have in relation to construction regulation?
- What other measures would the Committee like the Director to consider to improved the regulation of construction?

4. INFORMATION ABOUT THIS REPORT

- 4.1 This report has been brought to the Committee at the request of the Chair who asked for information regarding the regulation of construction sites and the operation of the construction bond scheme.

5. MAIN REPORT

- 5.1 The regulation of construction activity crosses a number of differing enforcement regimes which, traditionally, are overseen by separate service areas: environmental health; planning enforcement; waste management; highways licensing and enforcement; and parking enforcement.
- 5.2 On 1 April 2019 the Council issued a revised Code of Construction Practice (the 'Code' – see [Appendix A](#)). Originally introduced in 2016, the Code brings together advice and guidance, from a range of teams and services, for developers and contractors working in the borough.
- 5.3 It was developed in response to the proliferation of basement extensions and major developments in residential areas of the borough (and the resulting adverse impact), that also saw the introduction of the Council's Basement Policy and associated SPD.
- 5.4 2019 also saw the establishment of the multi-disciplinary Construction Management Team, a small team of six officers from three separate service areas (planning enforcement, environmental health and waste and streetscene enforcement) to oversee the introduction of the Code and manage the construction bond scheme that the Code introduced.
- 5.5 The revised Code introduced a new planning requirement that, at the planning decision stage, all sites is assessed and characterised as falling into one of three categories depending on the potential impact of the construction works on the local area.
- 5.6 Category 1 developments have the highest potential construction impact and Category 3 the lowest. A planning condition is attached to all Category 1 and 2 sites requiring the developer to agree to comply with the requirements and good practice within the Code.

5.7 This is achieved through two documents which must be completed and submitted to the Construction Management Team for approval prior to works starting: a Code checklist (known as the 'Appendix A' checklist) and a Site Construction Management Plan (SCMP). No action is required for sites classed as being in Category 3.

5.8 **Site Construction Management Plans (SCMP)**

5.9 The SCMP is a six-page templated document available on the council's website (see template at [Appendix B](#)). It has not been designed to be an overly onerous or technical document. Its purpose is to ensure that the applicant/developer is aware of (and will comply with) the key elements of the Code of Construction Practice, through which adherence will minimise the impact on neighbouring residents. The SCMP is checked by an officer in the Construction Management Team to ensure it is acceptable.

5.10 The SCMP requires the developer to submit summary information with regard to the development, including:

- Details of neighbour consultation
- The proposed working hours
- Details of liaison with other site managers in the vicinity (if applicable)
- A summary of the programme of works, including outline demolition and construction details
- Plans for site arrangement (including storage areas) and any monitoring equipment
- Noise, vibration and dust mitigation measures
- A statement to confirm sign up to the Considerate Constructors Scheme

5.11 In essence, the SCMP is a 'light-touch' document that requires the developer to draw together the outline details of how the works will be in compliance with the Code. Its main purpose is to demonstrate that the applicant has read and understood the Code and its most important requirements. It is not intended as a document through which enforcement action can be taken for non-compliance, and it is not open to public consultation. The document is now nearly five years old and it is now appropriate that it is reviewed to ensure it remains fit for purpose.

5.12 Enforcement powers are already available to deal with the majority of issues within the SCMP and Code, and it is therefore unnecessary to duplicate these powers by using the planning enforcement system to enforce the SCMP.

5.13 This contrasts with Construction Traffic Management Plans (CTMPs), which are designed to be a document through which enforcement (via the planning regime) is possible. CTMPs are approved by the Transport Planning Team and are available for scrutiny on the council's website. They are the only practical mechanism through which construction-related vehicle movements can be regulated; the council's template is a 19-page document covering 34 aspects/questions and goes into considerable detail. This allows enforcement action to be considered where non-compliance is found, which is through the planning enforcement regime.

5.14 **Construction Bond Scheme**

5.15 The main purpose of the construction bond scheme is to allow a scheme of site inspection and monitoring to be carried out for all Category 1 and 2 sites, to check compliance with the main aspects of the Code.

5.16 The process is relatively straightforward:

- The SCMP and Appendix A checklist are checked and approved.
- The developer/applicant pays the relevant bond fee: Category 1 - £17,500 (non-domestic); £8,500 domestic; Category 2 - £5,000.
- An initial site inspection is carried out once the construction bond has been paid, where the site is assessed against a 17-point checklist that covers general site management, and compliance with working hours, temporary structures and highways licensing, parking suspensions and CTMP requirements, and neighbour liaison. A fee (currently £275.40) is charged for the processing of the application, and this also covers the cost of initial site inspection.
- This checklist produces a score for each site against which the frequency of chargeable site monitoring visits will be carried out by the team:

Score	Inspection frequency
1-5	Weekly
6-10	Fortnightly
11-15	Monthly
16-20	3-monthly
21-25	6-monthly

- During subsequent inspections, the same checklist of key issues is covered. Following the inspection, the score is revised – sites that have improved will have their score increased with a consequent reduction in subsequent inspection frequency. Conversely, a decrease in score will result in an increase in inspection frequency.

- Where particular issues are found that, at sites not subject to the construction bond, could result in enforcement action, often a warning will be given to rectify the issue (e.g. to renew an expired skip licence), and follow-up revisit within 7-days to check compliance. Enforcement action (such as issuing of a Fixed Penalty Notice) will be considered if there is a continuing contravention, and the frequency of chargeable site visits will also be increased.
- Where a Fixed Penalty Notice is issued, the visit will be 'downgraded' to a non-chargeable inspection as our fee structure is only applicable to the administrative costs of processing bond scheme application documents and monitoring compliance; we cannot levy enforcement costs.

5.17 The developer notifies the Team at the completion of works, and a final inspection visit is carried out to ensure works have been carried out in accordance with the planning permission. The bond fee, less the administrative fee and chargeable visits accrued, is then returned to the developer. There is therefore a financial incentive to comply with the Code and reduce the frequency of visits by officers.

5.18 **Enforcement and the cost of compliance to developers**

5.19 The construction bond scheme, as set out above, is not itself an enforcement tool – it is a pro-active regime of site monitoring that incorporates a financial incentive for contractors to comply with the Code.

5.20 Enforcement action is carried out through existing primary legislation for each area:

- **Working outside the permitted hours for noisy work – Control of Pollution Act 1974**
Enforcement options available: formal caution, prosecution (unlimited fine)
- **Dust nuisance – Environmental Protection Act 1990**
Enforcement options available: formal caution, prosecution (unlimited fine)
- **Highways obstructions and offences; skips, scaffolding and hoarding licences – Highways Act 1980**
Enforcement options available: Fixed Penalty Notice (£100, reduced to £50 if paid within 14-days), prosecution.
- **Control of builders' waste - Environmental Protection Act 1990**
Enforcement options available: Fixed Penalty Notice (£400), prosecution
- **Vehicle movements/CTMP – Town and Country Planning Act 1990**
Enforcement options available: Issuing of a Temporary Stop Notice and Breach of Condition Notice; prosecution if contraventions continue.

- 5.21 A difficulty faced is that the FPN levels for Highways Act offences have remained at the same level since they became available to London local authorities in 2004: £100 (reduced to £50 if paid within 14-days). This contrasts with the cost of suspending parking bays (current daily fee per space: 1 to 5 days £66; 6 to 42 days £99; 43 or more days £132), and for skip permits (£135) and plant/materials licences (£312).
- 5.22 For example, contractors may choose to place a skip in a parking bay and secure the correct skip permit for 3-months. However, experience has found that while an initial 1-month parking bay suspension will be obtained, this will not be renewed on its expiry; the skip will continue to be placed in the bay for a further two-months without an additional suspension being secured. Unless identified and challenged, this leads to a substantial loss of income (£6,663) to the borough and further pressure on residents' parking spaces.
- 5.23 Recovery of parking suspension fees that have been avoided is a challenging area. The team has been relatively successful in securing back-dated payments for a number of sites where this has been discovered, and compliance at construction bond sites is good. At smaller sites, not monitored by the team, there is however an issue of fee avoidance for the financial reasons set out above.
- 5.24 Additionally, the fees for construction related licenses and permits are scheduled to increase by 114% (other than skip permits, where a 5.9% increase has been agreed) on 1 April, and parking suspensions by 9.1%. There is a risk that the avoidance of parking and highways licensing fees will increase because of the disparity between the cost of these charges and the level of the Fixed Penalty Notices that can be issued.
- 5.25 For offences, such placing a skip in a residents' bay without suspending the bay and obtaining a skip permit, there is little financial incentive to regularise arrangements. As an example, from 1 April the total cost of placing a skip in a parking bay for a month will be £3,336 (£3,193 parking suspension fee + £143 skip permit), which exceeds the theoretical total (£3,100) of FPN fines that could be issued under the Highways Act for the same period for an unlicensed skip placed on the highway.
- 5.26 In London, the fine levels for Fixed Penalty Notices (and Penalty Charge Notices), including the Highways Act offence set out above, are agreed and set by the London Councils' Transport and Environment Committee. This is a statutory committee that acts as the "joint committee" required by the London Local Authorities Act 2004.
- 5.27 The committee comprises one representative from every London local authority, usually the Environment or Transport Portfolio holder, as well as a representative of TfL. It alone has the powers to set penalty levels for the

offences where the joint committee is required by law to set penalty levels. Before it sets a penalty level, the committee undertakes public consultation, inviting views from boroughs, members of the public and relevant stakeholders depending on the offence.

- 5.28 In June 2015 the London Environment Directors Network indicated it saw no need for increased penalty levels and, in March 2018 (the last time levels were reviewed), it was the London Councils' policy not to increase any penalty levels at the time. A copy of the current FPN and PCN levels, set by London Councils, is appended at [Appendix C](#).
- 5.29 It should be noted that some authorities use the alternative option of the Penalty Charge Notice regime for enforcing Highways Act offences; London Councils have set the fine level at £200 (as opposed to the £100 FPN level) for the same offence.
- 5.30 If a borough wishes penalty levels to be reviewed, London Councils require relevant evidence to be submitted by an authority (supported by their Environment Director/Head of Service, or equivalent) so that an increase in penalty levels can be considered. There is also a process for providing an FPN or PCN enforcement option for existing legislation (and setting the fine level) where this is not already provided for – a copy of the process for this is appended at [Appendix D](#).
- 5.31 A Fixed Penalty Notice is a conditional offer – the recipient can accept guilt, pay the fixed penalty, and close the matter; or reject the fixed penalty notice and be summoned to court. There is no formal route of appeal. Evidence used to issue a FPN must be sufficient to stand up in court, if the FPN is unpaid or contested.
- 5.32 A Penalty Charge Notice is enforcement regime for decriminalised offences and means that a person issued with a PCN can first make representations against the penalty to the local authority and, secondly, appeal a rejection of those representations to an independent adjudicator. This service is known as London Tribunals. Failure to pay a PCN can be pursued by the local authority through the County Court. A borough must opt to either use the FPN or the PCN route – it is not possible to use both.
- 5.33 The use of the Penalty Charge Notice regime, while increasing the level fine for Highways Act offences, would create a substantial internal workload in the administration and recovery of fines. This is due to the fact that it is a civil offence and requires significant resources to ensure payment and recovery of unpaid debts.

6. FUTURE IMPROVEMENTS

- 6.1 There are a number of areas where improvement on the overall regulation of construction sites across the borough is envisaged:
- 6.2 **Increased joint-working with the newly-established Street Enforcement Team (SET)**
- 6.3 Following the merger of the Waste and Streetscene Enforcement and Street Wardens teams, there is an opportunity to re-invigorate the monitoring and scrutiny of all construction sites (not solely construction bond and CTMP-controlled sites) across the borough. The small size of the Construction Management Team and its focus on programmed, pro-active monitoring visits to construction-bond and CTMP-regulated sites limits the capacity to oversee the many other smaller sites across the borough.
- 6.4 The new SET is made up of around 30 officers, some of whom have previous construction-related enforcement experience in their roles within the former Waste and Streetscene Enforcement Team. While some construction enforcement has continued with these teams, this has been generally limited to reactive and complaint-based work.
- 6.5 A programme of training of SET officers on the most frequent construction-related issues is under discussion, and in particular those related to highways obstruction and unauthorised use of parking bays. This should substantially increase the level of scrutiny and enforcement (by way of FPNs) of all construction sites across the borough. A joint-working initiative can also be explored to further increase officers' confidence in dealing with construction-related issues.
- 6.6 However, greater efficiencies and more effective enforcement can be achieved by sharing information from the CMT, parking suspensions and highways licensing teams, rather than through general patrols and reactive complaint work. A data-driven pro-active scheme of construction monitoring of the many construction sites not monitored by the CMT, can be achieved through access to existing data sources.
- 6.7 By way of example, lists of skip permits, hoarding licences and construction-related parking suspensions within wards can be provided to ensure they are checked for compliance with requirements (e.g. overnight lighting), and that bays are suspended, and that appropriate permissions are renewed as required.
- 6.8 **Transfer of the CMT to a new IT database and further IT integration between teams**

- 6.9 Preliminary work is ongoing at moving Environmental Health Services (which includes the CMT) to a new IT database, from the existing Acolaid system that is now over 20-years old. A potential move to the Netcall system, already being used by the SET, is being explored and a final decision is expected shortly.
- 6.10 Initial demonstrations of the system, its capabilities and ability to link to other systems, show that significant increases in efficiency and productivity in both the back-office and on-street processes, are likely. This would enable officers to use more of their time in the borough, monitoring construction, as opposed to the significant office-based pre/post inspection tasks (e.g. data entry, legal notice drafting, construction bond administration) that are currently necessary.
- 6.11 The CMT has ongoing discussions with colleagues in parking suspensions, network management and highways licensing, to increase data sharing. One of the blockages between existing systems and the sharing of data is the fact that the CMTs work is primary property-based and linked to a specific address that is a construction site, whereas much of the work of other teams is street-based with no unique address. There is therefore no common ‘thread’ between the teams – such as a Unique Property Reference Number (UPRN) – that enables the accurate and automated sharing of data.
- 6.12 With further integration and data-sharing, it should be possible for all building control, planning, construction management/noise, parking suspensions and highways licensing data to be viewable between teams. This could enable much greater scrutiny on construction activity and ensure that all relevant council requirements (discharge of all planning conditions prior to commencement of works, suspension of parking bays where required, appropriate highways licenses in place, compliance with CTMPs) can be checked pro-actively and efficiently, rather than following a complaint or checks by officers in the field. It will also reduce avoidance of parking suspension and highways licensing fees.
- 6.13 **A review of the Code of Construction Practice, and associated construction bond scheme documents (SCMP)**
- 6.14 The Code of Construction Practice and SCMP are now nearly five years old. A review of these documents could be conducted to determine whether the require updating to meet the current status of best practice within the construction industry and the particular challenges within the borough.
- 6.15 **Approaching London Councils for increased fine levels for Highways Act Fixed Penalties Notices**
- 6.16 It is 20 years since London Councils set the FPN level for the relevant Highways Act offences. They were last reviewed in 2015 when it was determined that no increase was required at that time. London Councils could be approached to review the fine levels with a proposal that they are increased to the same level (£200) as PCNs for the same offence.

6.17 **Enabling the use of Fixed Penalty Notices for Control of Pollution Act offences**

6.18 Currently, where a contractor commits an offence by carrying out noisy works outside of the borough's permitted hours (and where they have previously been served with a S60 notice formalising these hours), the enforcement options available are either a formal caution, or prosecution. Approaching London Councils with a proposal to permit the use of Fixed Penalty Notices for breaches of a S60 notice should be considered, with a proposed fine level of £400.

7. **TIMESCALE FOR CONSIDERATION**

7.1 There are no deadlines for any decisions in relation to this report.

8. **FURTHER INFORMATION**

8.1 The following documents are appended to this report:

- **Appendix A: Code of Construction Practice**

The Code covers the full range of impacts that construction work has on the local environment and residents. It sets out what the Council expects from developers and those involved in construction activities in the borough. The expectation is that all construction sites in the borough meet the requirements or best practice set out in the Code, reducing disruption for residents.

- **Appendix B: Site Construction Management Plan (SCMP)**

The SCMP is a six-page templated document that must be completed and submitted in order to discharge the Code of Construction Practice planning condition. Its purpose is to ensure that the applicant/developer is aware of (and will comply with) the key elements of the Code of Construction Practice. The SCMP is checked by an officer in the Construction Management Team to ensure it is acceptable.

- **Appendix C: Table of Fixed Penalty Notice (FPN) and Penalty Charge Notice (PCN) levels for environmental and highways offences set for London by London Councils Transport and Environment Committee**

This table sets out the current fine levels for environmental and highways offences for London local authorities. This shows the levels of fine for many of the construction-related highways offences dealt with by the Construction Management Team.

- **Appendix D: Process for setting an FPN or PCN for legislation in London relating to transport or environment or requiring the level to be set by London Councils Transport and Environment Committee**

A flow diagram for this process is contained within this appendix.

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Background Papers used in the preparation of this report:

None

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