

Planning Committee

2.00pm, Wednesday, 24 April 2024

Responsible Construction

Executive/routine
Wards

Routine
All

1. Recommendations

- 1.1 It is recommended that Planning Committee:
 - 1.1.1 Note the content of this report;
 - 1.1.2 Note the proposed next steps; and
 - 1.1.3 Agree that this Report discharges the remit set by Planning Committee on 15 November 2023.

Paul Lawrence

Executive Director of Place

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Responsible Construction

2. Executive Summary

- 2.1 This report presents the options considered by the Responsible Construction Short Life Working Group which was set up as a result of the decision of Planning Committee on 15 November 2023.

3. Background

- 3.1 The Planning Controls over Construction [report](#) to Planning Committee on 13 September 2023 was provided in response to a request from the Council on 22 June 2023 regarding control and amendments to permissions which would reduce the impact of construction works on nearby residents. This arose from a motion to the Council by Councillor McKenzie. The motion requested that a short life working group be established.
- 3.2 At its meeting of 15 November 2023, Planning Committee agreed to:
- 3.2.1 Appoint the membership of the Responsible Construction Working Group, as detailed in Appendix 1;
 - 3.2.2 Approve the terms of reference of the Working Group, as detailed in Appendix 2;
 - 3.2.3 Instruct the Working Group to consider options to encourage more responsible construction, as referred to in the motion detailed in Appendix 3; and
 - 3.2.4 Request that a report on findings of the work is brought to Committee within two cycles.

4. Main report

- 4.1 The Responsible Construction Working Group met on 1 March 2024 and 11 March 2024 and consisted of Elected Members, representatives from community councils and the Development Forum, and officers from Planning, Transport and Environmental Health.

- 4.2 The Working Group identified a number of key impacts of construction on nearby residents and others. These included: noise; traffic management; occupation of footways and carriageways; prolonged construction; pedestrian routes; out of hours working; dust; debris on roads; overspill parking; poor site management; and street clutter.
- 4.3 The Group also identified a number of contractor and Council service shortcomings which should be addressed. These included: lack of understanding of the impact on residents; lack of information; lack of information sharing; absence of contact details for a site; and poor communications.
- 4.4 In relation to the above, the Group identified and explored a number of powers under existing legislation and regulations. These are summarised in Appendix 4 along with comments on their use and limitations, in particular the use of planning conditions and informatives. The key area for improvement is communication between all parties.
- 4.5 The potential use of the Considerate Constructors Scheme was also discussed (<https://www.ccscheme.org.uk/>). The Scheme is an independently managed, not-for-profit organisation that works side-by-side with the construction industry and the public to raise standards and build trust in construction. It includes a Code of Considerate Practice.

5. Next Steps

- 5.1 As a result of the Working Group discussions and the issues raised, the following are proposed for action by the Council:
- 5.1.1 Work across service areas, in collaboration with local communities, to improve the quality and clarity of information relating to construction sites, in particular the legislative responsibilities of contractors and the Council's expectations in managing impacts on communities;
- 5.1.2 Communicate these requirements and expectations throughout the life of a construction site, from initial planning discussions through to road related permissions and building control (in particular via the Council's website). These would include information packs as part of the decision planning letter, through Notification of Initiation of Development for Major Developments and the grant of Building Warrants. Once formed, the information pack will be reported via a Business Bulletin to Planning Committee; and
- 5.1.3 Promote the registration of construction sites with the Considerate Constructors Scheme and investigate including registration with the scheme as a requirement of relevant Council contracts. Note, the Considerate Constructors Scheme includes a [Construction Map](#) showing registered sites and associated details.

6. Financial impact

- 6.1 There are no direct financial impacts, other than officer time. However, it is expected that cross-service working will improve staff and resource efficiencies.

7. Equality and Poverty Impact

- 7.1 There is expected to be no adverse impacts on equality, human rights or socio-economic disadvantage.
- 7.2 Improvements to the areas around construction sites will improve equalities, and create safe, accessible streets and footways for all users, especially for younger, older and vulnerable people.

8. Climate and Nature Emergency Implications

Environmental Impacts

- 8.1 There is no direct impact on the environment.

9. Risk, policy, compliance, governance and community impact

- 9.1 Improvements to the standards relating to construction sites and better communication of the legislation and regulations will assist the Council in fulfilling its obligations.
- 9.2 These improvements will directly impact local communities.

10. Background reading/external references

- 10.1 As detailed in Appendix 4.

11. Appendices

- 11.1 Appendix 1 – Approved Working Group Membership.
- 11.2 Appendix 2 – Responsible Construction Working Group: Terms of Reference.
- 11.3 Appendix 3 – Approved Motion, 15 September 2023.
- 11.4 Appendix 4 – Responsible Construction Working Group – Legislation / Frameworks.

Appendix 1 - Approved Working Group Membership

Members-

Five representatives, comprising one representative from each of the following Political Groups and the Independent Member who moved the original motion to Council of 22 June 2023-

- Conservative Group – Councillor Mowat
- Green Group – Councillor Booth
- Labour Group – Councillor Pogson
- Liberal Democrat Group – Councillor Flannery
- Scottish National Party Group – Councillor Mattos-Coelho
- Independent Member – Councillor Mackenzie

Council Officers-

In addition, officers who represent relevant service areas were included (Planning, Transport and Environmental Health) within the membership as summarised below-

Planning-

- Matthew Simpson – Senior Transport Officer
- David Givan – Chief Planning Officer
- Paul Devaney – Planning Team Manager
- Jay Skinner – Service & Policy Advisor

Transport-

- Andy Edwards – Transport Manager

Environmental Health-

- Claire Devlin – Environmental Health Officer

Community Councils/Groups-

Representatives from the community were invited to take part as summarised below-

- Queensferry and District Community Council - Diane Job
- New Town and Broughton Community Council – Stephen Hajducki & Richard Price
- Leith Central Community Council – Pierre Forissier
- Edinburgh Association of Community Councils – Ken Roberston
- Dalry Colonies Residents Association – Barbie Lyon

Representatives from the Development Industry-

Representatives from the development industry were invited to take part as summarised below-

- AMA Developments – Ali Ashfar
- Scottish Property Federation - David Melhuish

Appendix 2 – Responsible Construction Working Group: Terms of Reference

Introduction: The Working Group will consider options to encourage more responsible construction and review ways in which to mitigate potential impacts associated with construction on the amenity of those within communities in Edinburgh.

Remit: The working group will consider how work relevant to controls over the impact of construction on local communities, can support the production of a report to be presented to Planning Committee summarising key outcomes to meet the Motion aims. Where there are outcomes relevant to other Committees these will be reported to accordingly. Officers will link to Council service areas as appropriate to ensure a coordinated cross Council approach is maintained throughout.

Timescale: The group will be established in early 2024 to progress the work with a report summarising findings and recommendations to be presented within to Planning Committee for April 2024.

Meeting Arrangements: The group will select a chair at its first meeting. The working group will meet frequently in line with key milestones in the strategy development process, until the completion of a report within three cycles by April 2024 with findings for consideration by Planning Committee. The Group may invite additional Officers and external Stakeholders as required.

Appendix 3 Approved motion - 13 September 2023

- 1) To note that planning controls over construction were limited but the Council did exercise some control to ensure adverse impacts of construction were mitigated in relation to noise and on the road network.
- 2) To note the information provided with planning decision notices was reviewed to better signpost developers to expectations around good working practices in relation to neighbours.
- 3) To agree that in addition to 5.1 of the report by the Executive Director of Place that Officers would explore the possibility of improving the information held on the Council website so that residents could better understand what controls the Council did have and who to contact if they had concerns.
- 4) To agree to establish a short-life working group, consisting of representatives from communities affected by construction, representatives of developers and/or the construction industry, one representative per party group and the mover of the original motion, and relevant council officers, to consider options to encourage more responsible construction, and to report back to committee within three cycles.
- 5) To engage with members on advice and expectations around construction that will be sent to developers.
- 6) To discuss with colleagues in environmental health restricting the hours of construction sites.
- 7) To liaise with members on constituent feedback regarding issues that surrounded construction sites.

Appendix 4 - Responsible Construction Working Group - Legislation / Frameworks

Legislation / other framework	Purpose / How it is used	Status	Comments
Planning			
Section 41 of Town and Country Planning (Scotland) Act 1997 (the 1997 Act)	Allows conditions to be imposed when planning permission is granted.	Legislation	Limited use in respect of controlling construction as planning conditions must not be used to duplicate other regimes.
Section 75 of the 1997 Act	Allows planning obligations (often known as legal agreements) to be formed. These can restrict or regulate the development or use of land.	Legislation	In cases where a planning obligation is considered essential, it must have a relevant planning purpose and must always be related and proportionate in scale and kind to the development.
Section 75D of the 1997 Act	Allows good neighbour agreements to be formed where a person with agreement of a community body enters into an obligation governing operations or activities relating to the development or use of land.	Legislation	As set out in Circular 3/2012, "A GNA should not be viewed as an alternative to a planning obligation. A planning authority should not seek to make it a requirement for the grant of planning permission that a GNA be put in place."
Planning Circular 4/1998: the use of conditions in planning permissions	Provides additional guidance on the six policy tests which must be met in order to include adequate planning conditions on decision notices.	Circular	Circular is a form of guidance only which expands on the applicable legislation.
Planning Circular 3/2012: planning obligations and good neighbour agreements	Provides additional guidance on the scope for use of and implementation of Good Neighbour Agreements (GNA).	Circular	Circular is a form of guidance only which expands on the applicable legislation.

Legislation / other framework	Purpose / How it is used	Status	Comments
Section 27A - Town and Country Planning (Scotland) Act 1997	Notification of initiation of development - a person must give notice to planning authority of start date.	Legislation	

Legislation / other framework	Purpose / How it is used	Status	Comments
Section 27C - Town and Country Planning (Scotland) Act 1997	Display Notices while development being carried out for major and developments.	Legislation	Notice to be displayed in a prominent place, readily visible to the public and printed on durable material. Information to include: address/location, name and address of developer, date permission granted, planning reference, description, planning authority contact details
Section 13 - The Building (Scotland) Regulations 2004	Provision of protective works - requirement to provide hoardings, barriers or fences, associated footpaths, and requirements for removal	Legislation	
Section 14 - The Building (Scotland) Regulations 2004	Requirement to regularly clear and keep free of debris neighbouring footpaths.	Legislation	Onus is on person carrying out works and to be the satisfaction of the local authority

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Legislation / other framework	Purpose / How it is used	Status	Comments
Roads			
Section 56 of the Roads (Scotland) Act 1984	<p>Allows reasonable conditions to be imposed when a permit is granted. No works shall be executed in, or excavation made under, a public road except with the Roads Authority's consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent.</p>	<p>Legislation</p>	
Section 58 of the Roads (Scotland) Act 1984	<p>Allows reasonable conditions to be imposed when a permit is granted. It is an offence to deposit building materials on and/or erect staging or scaffolding on or over part of any road, without the permission of the Roads Authority.</p>	<p>Legislation</p>	

Legislation / other framework	Purpose / How it is used	Status	Comments
Section 85 of the Roads (Scotland) Act 1984	Allows reasonable conditions to be imposed when a permit is granted. Permission is required from the Roads Authority to place a skip on the adopted road network.	Legislation	
Section 21 (2) of the Roads (Scotland) Act 1984	Requires Road Construction Consent (RCC) applicants to notify owners of land or property abutting the new road.	Legislation	For developments that are constructing new roads and footways.
Section 21 (3) of the Roads (Scotland) Act 1984	Allows reasonable conditions to be imposed on Road Construction Consents (RCC).	Legislation	For developments that are constructing new roads and footways.
Section 22 of the Roads (Scotland) Act 1984	Provides offences in relation to the construction of new roads.	Legislation	
Section 109 of the New Roads and Street Works act 1991	Allows reasonable conditions to be imposed when a permit is granted to allow an applicant to place apparatus in or on the adopted road. For example, connecting to a public utility. This is <u>not</u> for statutory undertakers (public utilities) as they need to be compliant with other legislation.	Legislation	
New Roads and Street Works Act 1991 : Part IV	Provides Roads Authorities and Undertakers (public utilities) the governance to undertake work on the adopted network.	Legislation	

Legislation / other framework	Purpose / How it is used	Status	Comments
Safety at Street Works and Road Works - A Code of Practise	Provides the minimal traffic management requirements when setting up works on the adopted network.	Legislation	
Scottish Road Works Register	Provides information on Public Utility work on the adopted road network.	Information	
The City of Edinburgh Council - Roadworks and road closures	Provides information on roadworks and how to report a problem with a pavement or road.	Information and reporting	
The City of Edinburgh Council - Report incorrectly parked vehicles	Provides information on parking and how to report incorrectly parked vehicles.	Information and reporting	
Contractors			
Considerate Constructors Scheme	Organisations, contractors, and suppliers who register with the Scheme are committing to observe and implement the Code. It focuses on three key sections: respecting the community, caring for the environment, and valuing the workforce — essential and key areas required to effectively raise standards within the industry and build trust with the public.	Voluntary	Voluntary scheme so it is not possible for the Council to enforce its use - however the measures within it are good practice.

Legislation / other framework	Purpose / How it is used	Status	Comments
The Construction (Design and Management) Regulations 2015	Regulations for managing the health, safety and welfare of construction projects. Applies to all building and construction work and includes new build, demolition, refurbishment, extensions, conversions, repair and maintenance. CDM aims to improve health and safety in the industry	Regulation	Identifies the Principal Contractor as being responsible for all contractors and subcontractors. See also Health and Safety Executive link below
Construction Phase Plan	Required for every construction project under Regulation 12 of the Construction (Design and Management) Regulations 2015	Regulation	Must set out health and safety arrangements and site rules
Health and Safety Executive	Ditto	Ditto	Notification to HSE required for projects lasting longer than 500 person days or 30 working days (with more than 20 people working at the same time)
Construction Management Plan	A tool for communicating the scope, aims and workings of a construction project	Voluntary	Required by Condition in England
Environmental			
Section 60 of the Control of Pollution Act 1974	Sets out Enforcement controls for Local Authorities in relation to noise from construction	Legislation	Formal Enforcement is service of Statutory Notice, and report to Procurator Fiscal if breached.
BS 5228 (1975)	Established reasonable hours for noise from sites as 7am-7pm, Monday to Saturday; and noise limits at 75dB LAeq (12 hours)	Guidance	Hours often not applicable when e.g. public safety / traffic management issues (e.g. roadworks on major roads or junctions, work near tram or train lines).