

Planning Committee

2.00pm, Wednesday, 13 September 2023

Planning Controls over Construction

Executive/routine
Wards

All

1. Recommendations

- 1.1 It is recommended that Committee notes that:
 - 1.1.1 Planning controls over construction are limited but that the Council does exercise some control to ensure adverse impacts of construction are mitigated in relation to noise and on the road network; and
 - 1.1.2 The information provided with planning decision notices is reviewed to better signpost developers to expectations around good working practices in relation to neighbours.

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Planning Controls over Construction

2. Executive Summary

- 2.1 This report responds to a request from the Council on 22 June 2023 in respect of control and amendments to permissions which would reduce the impact of construction works on nearby residents.

3. Background

- 3.1 Planning has only limited controls over how construction should be carried out. Planning permission is required for the carrying out of any development of land and can be granted with or without conditions. Conditions should be imposed on a grant of planning permission to enable development proposals to proceed where it would otherwise be necessary to refuse planning permission. Planning conditions need to meet the Scottish Government's six tests of being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 3.2 Imposing conditions which limit how building works are carried out can be very difficult to enforce effectively and could increase overall construction time. The Council can control adverse impacts of noise under other legislation and it has control over the extent to which roads are occupied. Due to this other legislation, conditions to control construction may not be relevant to planning and should therefore not be imposed.
- 3.3 On 22 June 2023, the Council [agreed](#) an adjusted motion by Councillor McKenzie on Haymarket Square Construction. One of the actions agreed was that Planning Committee would receive a report in one cycle to consider any actions of additional controls or amendments to permissions which would reduce the impact of construction work to nearby residents for all new developments, to establish a more neighbour-friendly pattern of working for major construction and active sites.

4. Main report

- 4.1 Most large construction sites are likely to have an impact on those living nearby, due to noise and disruption to the road network. Developers and contractors will

normally wish to build as quickly as possible. Working hours are normally weekday daytimes and Saturday mornings (unless operations require late or Sunday working e.g. installation of large cranes that require road closures).

- 4.2 However, contractors sometimes seek to extend their hours if they are falling behind schedule.
- 4.3 The Council has authority to restrict the hours of operation of construction sites under the Control of Pollution Act 1974 ('the 1974 Act') which is enforced by Environmental Health. There are no automatic time restrictions are placed upon construction sites in Edinburgh, as it is recognised that restrictions are likely to extend the time period for the works or mean that during the restricted hours the works are more intensive and possibly noisy.
- 4.4 When Environmental Health receives complaints from affected residents, officers can intervene and seek resolution. Normally the first approach would be informal and would usually include discussions with the contractor, leading to an agreement about working hours. Should works be required to be undertaken outwith daytime hours (e.g. for safety or significant traffic management reasons, when no other solution is possible) Environmental Health will consider such timing on a case by case basis, in order to minimise the impact on residents. This could include consideration of evening working, followed by Sunday working, and nighttime working only where no other option is possible.
- 4.5 If no informal solution can be found, Environmental Health may serve a notice on the contractor under the Act to restrict noisy work activities to between 7am and 7pm, Monday to Saturday so that all noise is inaudible at the site boundary outwith those hours. These hours are taken from the Code of Practice that was released shortly after the introduction of the Act. This restriction allows quiet work activities to continue beyond these hours. Restrictions on noisy construction work are a balance between providing suitable protection to residents and not making it unreasonably difficult for contractors to carry out legitimate and, in many cases, essential activities.
- 4.6 Planning Permission is granted for development and can be granted conditionally or unconditionally.
- 4.7 As set out in the Scottish Government's *Planning Circular 4/1998: the use of conditions in planning permissions*, conditions should only be imposed where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 4.8 In relation to enforceability, some planning authorities have imposed conditions to require Construction Management Plans. These are however very difficult to enforce. Where there are possible breaches of planning control reported to the Council, it could require considerable officer time to investigate.
- 4.9 In relation to relevance to planning, it is important to consider whether there is other legislation that can be used to achieve the outcome desired. Because as outlined

above, the Council can take action under other legislation, conditions to control construction noise may not be relevant to planning.

- 4.10 Noise can also occur from vehicles on roads surrounding sites. It has been found that sometimes vehicles can be parked with their engines idling while awaiting building sites to open up. The noise and air pollution associated with this is not a relevant matter relevant to planning and idling can be controlled under other legislation (the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003).
- 4.11 In relation to disruption to the road network, to achieve good urban design, buildings are often located on the heel of the footway. In tight urban sites there can be very little room to carry out construction works, and it is necessary to provide welfare facilities for operatives as well as, on larger sites, site offices. These are important for health and safety. So that they are near enough to the construction sites, often contractors will seek permits to use road space to do this. Permits are also needed for scaffolding over footways and carriageways. Contractors are encouraged to engage with Transport officers early so that such installations can be carefully planned. These aspects are controlled under roads legislation and therefore not considered relevant to planning.
- 4.12 Many large contractors are part of the Considerate Contractors Scheme. It has a code of considerate practice which includes headings of: respect for the community, care for the environment and value their workforce. As part of this, there are expectations around how contractors will engage with communities and allow complaints and comments to be addressed.
- 4.13 Once a planning permission is granted, the Council cannot reasonably revisit the permission to impose additional conditions for matters in relation to construction.
- 4.14 While it is not recommended that the Council starts imposing planning conditions on construction, planning can have a role in signposting developers to expected good practice including advising on expectations around construction operation hours in relation to noise, the need for early engagement with Transport officers and the potential for contractors to be part of the Considerate Contractors Scheme. The Planning service will work with colleagues to prepare information that can be provided with planning permission decision notices to set this out and will use its pre application process to advise of these matters.

5. Next Steps

- 5.1 The planning service will review the potential to provide advice on expectations around construction as set out above.

6. Financial impact

- 6.1 There are no financial impacts arising from this report.

7. Equality and Poverty Impact

- 7.1 There are no impacts on equality, human rights or socio-economic disadvantage arising from this report.

8. Climate and Nature Emergency Implications

- 8.1 There are no impacts on climate change and the nature emergency arising from this report.
- 8.2 There are environmental impacts from construction. It is the developer's duty to manage these in accordance with the environmental legislation.

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

- 9.1 Improved signposting to developers at planning decision notice stage should help mitigated impacts of large construction on communities.
- 9.2 The risk of imposing conditions on planning permissions which are not practicably enforceable is to unduly raise public expectation of what can be achieved. Planning conditions that do not meet the government's requirements may also be successfully appealed.
- 9.3 There is the risk that applying conditions to limit construction hours could result in an increase in the overall duration of construction. The disruptive effects of construction could therefore be inadvertently prolonged for neighbouring residents.

10. Background reading/external references

- 10.1 Planning: [Circular 4/1998](#) the use of conditions in planning permissions

11. Appendices

11. None.