

**Relevant Legislation**

- Control of Pollution Act 1974 (COPA)

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

**What is a Section 60 Notice?**

A Section 60 is an abatement notice that is served by the Local Authority to the person responsible for the noise requiring specific controls to be put into place to minimise noise and vibration. It is often also called a Section 60 Prohibition Notice.

**What is a Section 61 Notice?**

A Section 61 is a formal agreement between the contractor and the Local Authority. This agreement has to be applied for before work commences and allows the contractor and Local Authority to agree, for example noise levels and hours of work and protects the contractor from Local Authority Action under Section 60. It is often also called as a Section 61 Consent Notice.

**A COPA Section 60 Notice** may be issued by Local Authority instructing the Contractor to operate the site in a particular way to minimise nuisance to neighbouring properties, before any complaint has been received and even before any noise has been made. Some Local Authorities may have a policy of issuing notices on all new construction and demolition projects in their area to maintain tight controls on contractors.

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 Also, any Section 60 Notice can be readily superseded by further more stringent conditions, which a Local Authority may tend to do should they receive complaints and partitions from neighbours which they believe to be reasonable.

Obviously restrictions on working hours or noise limits may have a serious effect on the construction programme; causing delays, additional expense and result in liquidated damages being applied.

**Action to be taken if a Section 60 Notice is imposed:**

A formal Appeal may be lodged in the Magistrates Court within 21 days of the Notice being served, and it may be possible to persuade the Local Authority to alter the Notice.

However a sensible and least contentious option is to call the Environmental Health Pollution Prevention Officer, and arrange a meeting to discuss the project, type of construction, construction methods and plant involved, planned vehicle movements for deliveries and cart away etc, with the proposed programme. It may possibly be agreed that a short intensive

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period of construction, with longer working hours may be deemed to be less of a nuisance, than a prolonged project.

It is essential to:

- Keep your environmental health officer informed of your work's progress, the dates and times of any particularly disruptive activities and the contact details of a named person.
- Encourage your local environmental health officer to contact you with any public complaints that arise. This will give you the opportunity to address those complaints before formal action is taken against you.
- Give the EHO the site managers and EMs mobile phone numbers, so should a complaint arise from the public he can make immediate contact with the site to find out the situation and discuss the problem. All without having to resort to a visit or letters, etc.
- Keep everyone updated as to what to expect, copy the EHO in on the monthly or 14 nightly newsletter.
- Give notice of when there are likely to be noisy operations being carried out.

### **Section 61 Agreements**

Section 61 Agreements may only be applied for **prior to the commencement of the works**. The advantage of this type of agreement is that once the consent has been given, provided the terms are adhered to, the Local Authority cannot take action against the contractor or impose a section 60 Notice.

- However a Section 61 Notice requires more input from the Contractor (or Developer), and will may require the assistance of an Acoustic Consultant to prepare an application to the Local Authority.
- It may be costly to apply for and also monitor.
- A 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 preferable to a Section 60 Approach.

Your local authority must give consent if it considers that your proposals are reasonable.

Your consent must contain details of:

- the work you want to undertake
- the location of your work
- your proposed working hours
- the method of work
- the steps you will take to minimise noise

Once a Section 61 Agreement has been submitted, the Local Authority has a legal obligation to make its decision and inform the applicant within 28 days. If the Local Authority fails to do so there is a right of Appeal to the Local Magistrates Court.

However, negotiations between Contractor and Local Authority, leading to a Section 61 Agreement can be time consuming and fraught with pitfalls. Many Local Authorities prefer to persuade the Contractor to use the COPA Section 60 approach as it leaves them with more control.

Instead of obtaining a formal consent, you could ask the local council what they would consider to be reasonable. If you plan these requirements into your works, you are less likely to be issued with a prohibition notice.

If you do not undertake your works in the way that the consent describes, your local council can issue you with a prohibition notice.

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***“Best Practicable Means”***

The Local Authority will often specify that *“Best Practicable Means”* be used on-site. This makes it the Contractor’s responsibility to ensure the proposed procedure is, within reasonable cost limits, the quietest viable option.

The Control of Noise (Code of Practice for Construction and Open Sites) Order 2002, with British Standard BS5228 2009 Code of Practice (Parts 1, 2 and 4) for noise and vibration control on construction and open sites; provides accepted recommendations and guidance that should be followed.

**Other conditions a Local Authority may impose:**

Two other probable conditions not already discussed that the Local Authority may wish to impose are:

1. 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.
2. They may 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.

**Consequences of failing to comply with a Notice:**

Failure to comply with a prohibition notice, may lead to receiving a caution, and failing to heed this you are likely to face a prosecution and fines. You can appeal the notice to the Magistrates Court in England, Wales and Northern Ireland or the Sheriff Court in Scotland.

**Essential references**

BS5228-1&2:2009 Code of practice for noise and vibration control on construction and open sites

<http://www.environment-agency.gov.uk/netregs/businesses/construction/62371.aspx>