

**Manchester City Council
Report for Information**

Report to: Neighbourhoods and Environment Scrutiny Committee – 13
January 2021

Subject: Monitoring and Compliance – Construction Sites

Report of: The Strategic Director (Neighbourhoods),
The Director of Planning, Building Control and Licensing
The Head of Compliance, Enforcement and Community Safety

Summary

The report provides information requested by Members on:

- Known active construction sites across the authority;
- The city's start and end times for construction works to be undertaken and the rationale for those times;
- How many neighbouring local authorities and other core cities have the same permitted construction times as Manchester; and
- Information on the monitoring of construction sites and the approach taken to enforcement, including examples of types of breaches identified and how these were addressed.

This follows a report in February 2020 which looked at the use of and enforcement of planning conditions where impacts of construction was also raised.

Recommendations

The Committee is asked to note and comment on the report.

Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city

The Planning System assists in mitigating impacts of climate change through the statutory framework. Planning conditions and control of construction impacts are important in ensuring development is carried out in accordance with planning policy and environmental protection legislation which includes addressing climate change to deliver sustainable economic growth.
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Manchester Strategy outcomes	Summary of how this report aligns to the OMS
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Planning supports economic growth in its wider context through enabling new development, creating jobs across all sectors. On specific proposals local labour benefit agreements are sought which also includes opportunities for training.
A highly skilled city: world class and home grown talent sustaining the city's economic success	
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	
A liveable and low carbon city: a destination of choice to live, visit, work	Planning assists in mitigating the impacts of development and provide maintained and improved infrastructure that aims to connect the city to ensure that the city is a destination of choice to live and a place where people will want to visit and work. Through new development, Planning aims to engage communities and engender pride in the city.
A connected city: world class infrastructure and connectivity to drive growth	

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Report to Neighbourhood Scrutiny – February 2020

1.0 Introduction

- 1.1 At its meeting in February 2020, members considered a report which provided information relating to a number of planning related matters principally around the use and enforcement of planning conditions. That same report included information on how planning works with the Highway Authority on issues relating to construction management and our social providers through their development activity.
- 1.2 Members have now asked for a report which focuses on construction sites in the city. Specifically:
 - Known active construction sites across the authority;
 - The city's start and end times for construction work to be undertaken and the rationale for those times;
 - How many neighbouring local authorities and other core cities have the same permitted construction times as Manchester; and
 - Information on the monitoring of construction sites and the approach taken to enforcement, including examples of types of breaches identified and how these were addressed.
- 1.3 This it is understood is in the context of concerns being raised by residents about adverse impacts from the construction phase of development.

2.0 Background

- 2.1 Development is key to the city's growth and residential agenda and moving forward this will be an essential part of economic recovery post Covid. There are inevitably temporary consequences of this in terms of impacts on local communities from construction but the objective as always is to ensure that these are minimised.
- 2.2 The report to Committee in February set out how services working together have been attempting to deal with such impacts and some of the challenges being faced.
- 2.3 Following that report and in response to Covid-19, the Government introduced a range of measures in the planning system to allow authorities to continue to provide both statutory and non-statutory functions and to assist others at this challenging time. One such measure has been to allow more flexible working hours on construction sites which will support social distancing requirements and to allow varied start and finish times. Ultimately this is to support house building and the economy.
- 2.4 On 13 May 2020, the government published a written ministerial statement on planning and construction working hours. This statement expects local planning authorities to approve requests to extend construction working hours temporarily to ensure safe working in line with social distancing guidelines until 9pm, Monday to Saturday, unless there are very compelling reasons against this.

- 2.5 In July 2020, the Planning and Business Act 2020 passed the provisions of the written ministerial statement into law by introducing a new temporary fast track deemed consent route to enable urgent changes to construction working hours to support safe construction working in line with the government's latest social distancing guidance on construction and other outdoor work. This response is to meet the needs for many construction sites to implement changes to working practices, including staggered starts and finishes, requiring different hours of operation to those which are currently permitted for the site through planning conditions.
- 2.6 The fast track deemed consent route allows developers to apply to local planning authorities (LPAs) to vary existing conditions, or the details submitted under a condition, that limit construction site working hours. Local authorities have only 14 calendar days to consider such applications.
- 2.7 Such a consent if granted by the LPA temporarily amends planning restrictions on construction working hours until 1 April 2021, unless either another earlier date has been requested by the applicant or is decided upon by the local planning authority (with the agreement of the applicant). Where we are considering a different end date to that in the application, an agreement should be reached prior to the 14-day determination deadline.
- 2.8 If an application is not determined within 14 days (excluding public holidays), the revised working hours are deemed to have been consented to and construction can take place in accordance with these new hours.
- 2.9 The clear guidance is that we should not refuse applications to extend working hours until 9pm, Monday to Saturday without very compelling reasons. Initially the only example that was given on what was deemed 'exceptional circumstances' related to potential impacts on hospitals and care homes. The changes through the Planning and Business Act now provides for some consideration to be given to sites and places of worship, broadcasting or recording studios, theatres and cinemas; in respect to residential areas this now includes where the request for changing hours is likely to have a significant impact on health (having regard to the Environmental Protection Act 1990 and Control of Pollution Act 1974)
- 2.10 The guidance remains vague but we believe this has allowed for some interpretation. This has enabled officers to create a process which allows the Council to excerpt as much influence/control/understanding of what noise will be made and making the developer also understand and take on board sensitivities. What is sought is sympathetic site management which should set out to mitigate local impacts.
- 2.11 In addition to information around the date the revised construction working hours, applicants should provide a short justification on why extended hours are necessary to enable safe working practices on site; a list of the primary construction activities, expected to take place during the extended working hours, including plant and equipment to be used; a proportionate assessment

(where relevant) of the likely impact of noise upon sensitive uses near to the site and details of their mitigation plan.

- 2.12 Applicants are also encouraged to provide details of mitigation plans setting out how they propose to liaise with neighbours and manage and mitigate any effects on local residents or businesses from working additional hours. These should be proportionate to the nature of the site and the number of people potentially adversely affected. Such a plan could include limiting noisy works to within usual working hours or agreeing to undertake quieter activities in the morning and evening or agreeing alternative parking provisions. Although it is not practical to proactively monitor every site, if issues arise these will be responded to swiftly and may then be subject to monitoring. The Planning and Out of Hours Teams work together to deal with complaints and to decide who is best placed to lead on specific matters.
- 2.13 In discussion with applicants we are clear that it is important to acknowledge that people are spending more time, including working, from their home and it is, therefore necessary to balance their reasonable expectations for the acoustic environment in their home and their protection from demonstrable harm against the desire to ensure that necessary construction work can continue to support the economy.
- 2.14 As part of these discussions with applicants the majority are aware of the need to formalise a process of community engagement which is usually enshrined in a community engagement plan. This sets out how any changes to working practises will be shared, points of contact for any queries or complaints, liaison with residents, complaint resolution and general communications in relation to on-going work.
- 2.15 The Ministerial statement and subsequent guidance are key considerations in determining an application under this new route.
- 2.16 For clarity the new application route only applies where planning permission has been granted for the development of land, subject to a condition restricting site working hours, or a condition requiring the submission of a construction management plan (which limits working hours) and up to 1st April 2021.
- 2.17 There are occasions where construction is not subject to a planning condition. In the report to Committee in February we set out the challenges for the planning system in managing the construction phase of development. This is especially so as conditions cannot be imposed to control matters that are not material considerations including, for example, impacts that are controlled by other legislation. Members may recall that broadly speaking, construction impacts are not material considerations, though there are some matters that can be controlled through planning. For instance, pollution or noise caused by the construction work is not a material consideration, because it is considered that there is adequate legislation in the form of the various laws on control of pollution to deal with this.

- 2.18 Planning may therefore ask for a Construction Management Plan but many elements included would have to be controlled and enforced by other parties and legislation.
- 2.19 It remains that notwithstanding the new temporary provisions, it is largely the Control of Pollution Act 1974 and the Environmental Protection Act 1990 which are relevant if noise or other nuisances from building works are considered to be causing material interference with the use or enjoyment of neighbouring properties.

3.0 Process

- 3.1 In May, the Planning service established a new process for handling requests under the new temporary provisions that enabled contractors to request temporary changes to construction hours. As part of the request, the following information was requested:
- The relevant planning permission for the development and the new hours that were being requested;
 - Details of the reasons for the request;
 - Planned work during any amended working hours; and
 - If possible, details of any mitigation such as communication strategies with local residents.
- 3.2 These requests were then notified to the Citywide Environmental Protection team and to local Members seeking their views. Where the existing construction hours were directly controlled by a planning condition, this was also set out in the notification. This process was continued when the fast track deemed consent route was introduced.
- 3.3 To date, there have been 32 requests for temporary amendments to construction hours received under these provisions. Of these, 2 were withdrawn before a decision was reached. The remaining 30 have been approved, with 1 obtaining deemed consent as a result of a decision not being issued within the 14-day time period. As part of the process local members are notified of the request and comments received assist the decision making process.
- 3.4 The majority of the above submissions were subject to negotiation in order to ensure that the proposed work to be carried out within the extended hours was acceptable and appropriate within the context usually involving quiet working processes. Communication strategies were also requested when not provided.
- 3.5 Even if a condition of planning permission for construction hours does not specify the hours to be worked, if such hours are then stipulated within a construction management plan then they may still be subject to the requirement of a request for the temporary amendment.

4.0 Known active construction sites across the authority

4.1 There is no requirement as part of the planning process to notify the Council when construction may commence on a development; typically, when planning permission is granted, commencement must be begin within 3 years of that approval, subject to the discharge of other relevant conditions.

4.2 However, we are aware of 112 construction sites across the City where officers are presently working with the developers, this is either as the result of a complaint about noise or some form of pollution, or if they have requested prior consent for later noisy working. The sites are broken down as follows:

City Centre - 74

South - 8

Central - 16

North - 14

4.3 Of these construction sites 4 have now been completed.

5.0 The city's start and end times for noisy construction works to be undertaken and the rationale for those times.

5.1 Current guidance for start and end times across the City applies for noisy construction work. This guidance sits outside of planning and is city wide advice applied by the Council through environmental protection.

Monday - Fri 07:30 - 18:00

Saturday 08:30 -14:00

Sunday and Bank Holidays - No noisy construction

5.2 Consent to carry out noisy work outside of these times can be applied for, this is often for essential works or works that cannot be carried out safely during peak times.

5.3 The guidelines around noisy construction hours are intended to balance the need to provide contractors with a reasonable timeframe to carry out works and the need to protect residents from unreasonable disturbance from works which, by their nature, will be noisy.

5.4 Where the guidelines are not adhered to or significant noise problems exist the Council can serve a notice using the Control of Pollution Act 1974 to formalise working hours and practices. Each construction site will have different characteristics and the formal notice allows controls to be tailored to the needs of a specific area and what is reasonable/ feasible to ask the contractor to do.

Planning Conditions

5.5 If as part of the planning permission a construction management plan (CMP) has been provided as a requirement under a condition, this can be enforced

under the Town and Country Planning Act 1990. For example, a failure to follow the CMP would amount to a breach of the respective condition of the original planning permission; this could include construction vehicles using an entrance to a site that did not form part of the agreed plan.

- 5.6 Construction management plans will generally set out times for intended noisy working practices and typically these are in line with our published guidelines as a City; where they are not, this will be discussed with the developer at the submission stage. A construction management plan which has been agreed with different hours for noisy working would not exempt the development from the published working times for the City as whole, as these are controlled by a separate legislative process as set out above. However, as previously mentioned, there is a separate consent process whereby noisy work can be carried out outside of those published hours and a developer would need to pursue this ahead of any such work being undertaken.
- 5.7 If there is a breach of a condition on a planning permission, i.e. a part of the construction management plan, the test is not simply to identify the nature of the breach but the harm caused as a result. If the controls that would remedy the breach are relating to noise and pollution, the most appropriate powers are those contained in the Control of Pollution Act 1974 or the Environmental Protection Act 1990.
- 5.8 It is always the case that any report of a breach of planning control will be subject to negotiations with the developer in order to resolve any given issue. The majority of cases are resolved through discussions and on-going monitoring.
- 5.9 A breach of condition notice under the Town and Country Planning Act 1990 is effective for as long as there is a breach; failure to resolve the breach within 28 days of the notice being served is a criminal offence and can lead to prosecution and fines of up to £2500. Where a breach is resolved in that period as a result of a breach of condition notice, that notice is not effective on any subsequent breach of that condition and a new notice would need to be issued on each instance.

A breach of condition notice has a statutory compliance period of 28 days, this can be longer, but it cannot be shorter; no offence is committed until this period has elapsed and only then if the steps required by the notice have not been taken or the activity required by it to cease has not ceased. It is not an offence to breach a condition in the first instance or to continue to breach a condition in the 28 day compliance period set out in the notice.

- 5.10 Section 7 provides some examples of how concerns regarding construction sites have been dealt with.

6.0 How many neighbouring local authorities and other core cities have the same permitted construction times as Manchester?

6.1 The below are the times other GM and Core City Authorities publish as their guidance for noisy working.

Guideline hours for noisy construction by local Authority

Local Authority	Timings Mon – Fri	Saturdays	Sunday / Bank Hol.	Comments
GMCA				
Manchester	7:30- 18:00	8:30 -14:00	No	Hours provided on line
Trafford	8:00 - 18:00	8:00 -13:00	No	
Bolton	8:00 - 18:00	8:00 - 13:00	No	Not advertised online
Salford	Can be site specific, although typically acceptable hours will apply to sites with no specifically set hours.			No standard hours advertised online. New development will have hours set by recommendations from EP in Environmental management plan.
Bury	8:00 - 18:00	9:00 - 14:00	No	
Tameside	8:00 - 18:00	9:00 - 13:00	No	Not advertised online
Rochdale	8:00 - 18:00	9:00 - 14:00	No	
Wigan				Not advertised online
Stockport	7:30 - 18:00	8:00 - 12:30	No	
<u>Core Cities</u>				
Belfast	7:00 - 19:00	8:00 - 13:00	No	
Bristol	8:00 - 18:00	8:00 - 13:00	No	
Birmingham	8:00 - 18:00	8:00 - 13:00	No	
Cardiff	8:00 - 18:00	8:00 - 13:00	No	
Glasgow	8:00 - 19:00	8:00 - 13:00	No	
Liverpool	8:00 - 18:00	8:00 - 13:00	No	
Wirral	8:00 - 18:00	8:00 - 13:00	No	
Leeds	8:00 - 18:00	8:00 - 13:00	No	
Newcastle	8:00 - 18:00	8:00 - 13:00	No	
Sheffield	8:00 - 18:00	8:00 - 13:00	No	
Nottingham	8:00 - 18:00	8:00 - 13:00	No	
<u>Inner London Authorities</u>				
Camden	8:00 - 18:00	8:00 - 13:00	No	
Greenwich	8:00 - 18:00	8:00 - 13:00	No	
Hackney	8:00 - 18:00	8:00 - 13:00	No	

Hammersmith and Fulham	8:00 - 18:00	8:00 - 13:00	No	
Islington	8:00 - 18:00	8:00 - 13:00	No	
Kensington and Chelsea	8:00 - 18:00	No	No	
Lambeth	8:00 - 18:00	8:00 - 13:00	No	
Lewisham	8:00 - 18:00	8:00 - 13:00	No	
Southwark	8:00 - 18:00	9:00 - 14:00	No	
Tower hamlets	8:00 - 18:00	8:00 - 13:00	No	
Wandsworth	8:00 - 18:00	8:00 - 13:00	No	
Westminster	8:00 - 18:00	8:00 - 13:00	No	

6.2 Since the Ministerial statement and the new fast track provisions, all local authorities must have regard to government guidance if a developer needs to seek a change to a planning condition on construction hours. This is the key material consideration and unless there are compelling reasons to justify otherwise we are told to allow 9.00pm extended hours (or 24 hours in some instances).

7.0 Information on the monitoring of construction sites and the approach taken to enforcement, including examples of types of breaches identified and how these were addressed

Licensing and Out of Hours Team

7.1 The process for assessing noisy working complaints on construction sites is as follows:

- A noise complaint is received.
- Checks are made that this is a commercial construction site.
- Checks are made if there is any prior consent in place to carry out noisy work outside the guideline hours.
- A site visit is undertaken and a letter providing guidance or a warning letter is issued, if initial case review confirms out of hours work is taking place.
- On witnessing any out of hours working the next stage is service of a COPA Notice, if warning letter/guidance has already been provided.
- If the notice is breached the officer assesses whether to take legal action or issues final warning depending on evidence available.

7.2 Proactive monitoring is carried out on sites where issues have been identified, if they are in sensitive locations, or if they have been granted increased working hours. This enables the team to ensure that the site is following the guidelines, without the onus being on residents to report further issues.

7.3 In 2019/2020 440 complaints of noisy work from construction sites were received, including repeats. This resulted in 318 site visits taking place at 128 construction sites, either to speak to the site contractor or to monitor the work being carried out. The majority of sites respond positively to the initial visit and

do not need further intervention. 26 notices were served, all of which were complied with.

- 7.4 Of the sites granted extended hours as a response to Covid there have been two enquiries (separate sites). In both instances residents were asking why they have been granted extended hours. There have been no reports received about sites operating outside of their extended hours.

Examples of recent cases where notices have been served relating to noisy working practices

X1 The Plaza, Great Ancoats and Beswick

Following initial complaints about the X1 The Plaza site, investigations were made into the site, where officers proactively monitored the site, but did not witness noisy working taking place outside of the guideline hours. Further investigation led to site engagement and identification of noisy working on a Sunday.

A notice was served under the Control of Pollution Act (COPA) on 22nd June 2020, formalising the guideline hours. Officers then received allegations of a breach of this notice, although this was not witnessed. A final warning letter was issued detailing the consequence of breaching a COPA notice which is still active on the site. There have been no further reported breaches.

M4nchester Two Ltd - Bengal Street, Ancoats and Beswick

Following complaints regarding noisy working a warning letter was issued to the site manager. A number of proactive site visits were carried out which resulted in officers witnessing noisy working outside of the guideline hours. A notice was served under the Control of Pollution Act (COPA) on 22 June 2020, formalising the guideline hours. There have been no further reported breaches.

Binns Place, M4 6DE, Piccadilly

Following complaints received of noisy working a site visit was carried out and the site manager was warned if further issues then a notice would be served. Further reports received of noisy working outside the guideline hours 6 weeks after the site visit. A notice was served under the Control of Pollution Act (COPA) on 7 October 2020 formalising the guideline hours. No further issues were reported.

Planning Compliance Team

- 7.5 Undertaking the Planning Compliance function must be done in an open, fair, equitable and consistent manner. Every complaint is considered on its individual merits and an assessment made as to whether it expedient to take enforcement action in the particular circumstances.

7.6 Formal planning action can only be taken where there is a “breach of planning control”, which for the purposes of the Town and Country Planning Act 1990 (as amended) this is defined as:

- Carrying out development without the required planning permission; or
- Failing to comply with any condition of limitation subject to which planning permission has been granted.
- Enforcement action is then defined as:
 - The issue of an Enforcement Notice; or
 - The service of a Breach of Condition Notice.

7.7 Throughout the process, Officers will continually try and secure a satisfactory conclusion by negotiation rather than resort to legal action. This is a key principal of the Planning Compliance Process. For example, complaints relating to wheel washing, construction vehicle parking and routing of construction vehicles are often resolved without any need for formal action.

Examples of cases resolved without the need for any formal Planning Compliance action

Land on Dalbeattie Street South of Parkmount Road, Harpurhey

Planning permission included a requirement by way of a condition for a Construction Management Plan; this included information relating to the washing of contractors' vehicles on site and that roads to be checked regularly with sweeping of the highway taking place to clear any debris. Complaints were received of debris on the highway. Following visits by Planning Compliance Officers, the developers took steps to action the concerns and measures were put in place to resolve matters.

Didsbury High School, M20 2ED, Didsbury West

Commencement of development without any tree protection measures in place; also, allegation that trees that were marked for retention on the landscaping scheme had been felled to facilitate construction. Following site visits by Planning Compliance Officers, there was no evidence of unauthorised tree felling and all tree protection measures were put in place within a week of the visit taking place.

Grove Village PFI, Ardwick

Complaints were received relating to construction vehicles leaving trails of mud on the road. A site meeting was arranged with the site manager and developer in order to resolve the issue and further wheel washing and street cleaning measures were agreed and implemented.

This list is not exhaustive, but these are typical examples relating to the early construction phase of developments which are then resolved without the need for any more formal action. When formal action is pursued in relation to planning conditions, this more often relates to issues that are not related to the

impacts of construction and are pre-occupation, i.e. delivering landscaping, parking layout and refuse storage arrangements to name a few.

- 7.8 Complaints can be made to either team as noted in 2.12 above who will then work together to respond to concerns. Although issues are usually resolved without the need for formal action, this remains an option.

8.0 Conclusion

- 8.1 Construction is a necessary part of the development process; it is acknowledged, however, that there have been areas of the city that have experienced higher concentrations of individual construction sites. Either individually or collectively these have had the potential to cause impacts to residents; it is also recognised that extended working hours have and will increase concerns.
- 8.2 There are processes that exist to deal with the most harmful impacts of construction, as set out in this report. The objective is not to stop construction, but to try to resolve issues to allow this to continue whilst safeguarding amenity where possible.