Although it is far from a new issue, we have seen a significant increase in the use of notices under Section 60 of the Control of Pollution Act 1974 (COPA) by local authorities in relation to noise and vibration from construction sites and a greater readiness by local authorities to enforce breaches of such notices.

This enforcement option exists in addition to the use of abatement notices under the statutory nuisance regime under the Environmental Protection Act 1990 (the EPA).

Local authorities use the Section 60 Notice procedure to place restrictions on the permitted working hours on construction sites which can have a fundamental impact on the programming and costs of works. Failure to comply with either a Section 60 Notice under COPA or an abatement notice for statutory nuisance under the EPA can lead to prosecution in the Magistrates’ Court and a £5,000 fine on conviction (£20,000 in the case of statutory nuisance from business premises). Significantly, company directors and officers can be personally liable for breach of a Section 60 Notice where it can be shown that the offence has been committed with their consent, connivance or due to neglect on their part.

Given the practical impacts of local authorities’ power to control noise and vibration, it is important for developers and contractors to be aware of the circumstances in which formal action can be taken, so that measures are included in construction plans at an early stage to mitigate such impacts.

This briefing summarises:
- the powers afforded to local authorities under COPA and the EPA in relation to construction sites;
- the circumstances in which a Section 60 Notice under COPA or an abatement notice under the EPA may be served;
- how applications for prior consent for works can be made under Section 61 of COPA;
- what to do if your company is prosecuted and defences available; and
- practical steps companies can take to reduce noise and vibration.

Background
Local authorities often have strict noise and vibration policies for development in their areas to minimise disruption to and complaints from local residents and businesses. It is usual for a planning permission for works to specify permitted working hours (e.g. between 8am and 6pm Monday-Friday) and acceptable levels of noise and vibration. The easiest way to avoid encountering difficulties with the relevant local authority is to adhere carefully to these. If you are employing a sub-contractor to carry out any works, ensure that obligations as to adherence to these noise and vibration policies and planning conditions are included in the sub-contract.

In the event that noise or vibration from a site becomes problematic:
- COPA gives local authorities power to serve a notice under Section 60 of the act (a Section 60 Notice) specifying exactly how works should be carried out; and
- the statutory nuisance regime under the EPA allows local authorities to serve an abatement notice.

In our experience, local authorities are more likely to use their powers under COPA than the statutory nuisance regime under the EPA to control noise and vibration on construction sites.

Notices under Section 60 of COPA
A Section 60 Notice can specify the plant to be used, the hours during which the works should be carried out and the level of noise which may be emitted. When a Section 60 Notice has been served, failure to adhere to it is a criminal offence.

Section 61 Consent
It is possible to apply for prior consent for noisy works under Section 61 of COPA. The existence of a Section 61 prior consent will act as a formal defence on appeal of a Section 60 Notice if one is later served by a local authority.

Service of Section 60 Notices
A Section 60 Notice can be served on the person carrying out the works and/or the person in control of them. Being served with a Section 60 Notice does not mean that the person on whom it is served is being prosecuted, but breaching the terms of the notice is an offence.
Control of noise and vibration on construction sites

Appealing a Section 60 Notice
If you receive a Section 60 Notice, you have 21 days to appeal it. Grounds for appeal include where you believe the terms of the notice or time given to comply are unreasonable, if you think the local authority has not taken into account all of the provisions of COPA, or has unreasonably refused to accept your proposals for alternative compliance, or you think that the notice has been served on the wrong person.

Appealing a Section 60 Notice will suspend its operation until the appeal has been heard, save where the noise or vibration to which it relates could be damaging to health or is likely to be of such a short duration that suspending the notice would render it of no practical effect. Similarly, where the cost of complying with a notice before the appeal is not disproportionate to any public benefit derived from compliance, a notice will not be suspended.

Prosecution for breach of a Section 60 Notice
It is an offence to breach any requirements of a Section 60 Notice without “reasonable excuse” and if a local authority believes that this is the case, it will be entitled to prosecute in the Magistrates’ Court.

What amounts to a reasonable excuse will vary from case to case. Generally, having insufficient funds to adhere to the terms of a Section 60 Notice, or personal hardship, will not amount to a reasonable excuse. The court may think that a reasonable excuse exists where a Section 60 Notice has been contravened because of an emergency or in circumstances beyond the control of the person on whom it was served.

If you are concerned that you are at risk of breaching a Section 60 Notice, most local authorities will be willing to meet to discuss the matter and/or you can apply for “out of hours” temporary consents where you know certain works need to be completed in a short period. Meeting with the local authority is also your opportunity to show how you are employing the “best practicable means” to minimise noise.

Practical steps to minimise noise
There are a number of practical steps you can take to reduce noise and vibration at a site to reduce the risk of being served with a Section 60 Notice, to mitigate noise once a Section 60 Notice has been served or to comply with a Section 61 consent.

For example:
- servicing vehicles and machinery regularly;
- fitting noise-reducing devices such as silencers;
- carrying out regular noise assessments;
- when replacing equipment, purchasing quieter alternatives;
- minimising the use of vehicle reversing alarms;
- turning off engines when they are not in use;
- checking that brakes are properly adjusted;
- using vehicle horns only in the case of emergency; and
- considering using solid panelled fencing around a site to reduce noise.

You should also ensure that you monitor background noise in residential areas (preferably before works begin) and at regular intervals during the works contract ensuring that you keep a record of data you collect. Records should include the date, time and location of readings together with the name of the person carrying out the readings (who should hold a noise competency certificate) and a description of activities being undertaken at the time.

Taking a collaborative approach with residents, businesses and local authorities
Contacting local residents and businesses before you start work will help to iron out potential problems from the outset. Consider holding “meet the builder” sessions for residents and businesses to ask questions and air concerns. If there are communal areas on site which are publicly accessible, consider displaying updates as to what you are doing to keep noise to a minimum, as well as giving project contact details. Circulating regular newsletters regarding progress and information as to any noisier works can be helpful. Developing a complaints procedure for recording and responding to residents is also advisable. Make sure there are strict procedures and protocols at the site which are documented to all employees, including induction training for any new employees.

Ensure that you record in writing any measures you take. At all times consider what documentary evidence you have which shows the local authority (or court) that you have taken a logical approach to works, a considerate approach to residents and that you are using the best practicable means to minimise noise and vibration.

Take a proactive approach and apply for prior consent under Section 61 of COPA where works are likely to exceed a local authority’s noise/vibration policy. Having prior consent in this way will act as a defence to a Section 60 Notice upon prosecution for breach.

Provisions in Contractor and Sub-Contractor Contracts
On the majority of construction sites, there will be contractors and sub-contractors. From experience, it will be essential for developers to ensure that all contracts require a review of the “best practicable means” used to minimise noise and vibration, to minimise disturbance to neighbours and to adhere to local authority policy, planning conditions and the terms of either any Section 60 Notice or Section 61 consent obtained. In addition, contracts should provide for contractors to follow instructions issued in response to pressure from regulators to change working procedures, to follow best practices and to keep this under constant review.

Statutory nuisance under the EPA
As well as having power under COPA, local authorities are under a general duty under the EPA to inspect their areas from time to time to detect any statutory nuisances, including noise and vibration from construction sites.

Local authorities have a specific duty to serve an abatement notice under the EPA where a statutory nuisance exists or is likely to occur. An abatement notice will specify any works required to restrict the statutory nuisance and the time for compliance.
Again, you have 21 days within which to appeal an abatement notice on similar grounds as for a Section 60 Notice under COPA (see above). Significantly, the use of “best practicable means” will be a defence.

Breach of an abatement notice without “reasonable excuse” is a criminal offence and will lead to prosecution in the Magistrates’ Court punishable by a fine of up to £20,000 (in the case of business premises).

It should be noted however that local authorities are entitled to serve an abatement notice under the EPA in addition to a Section 60 Notice. Compliance with a Section 61 Notice under COPA will be a defence to prosecution for breach of a noise abatement notice under the EPA if proceedings are brought by a local authority but not if brought by an individual.

Under the EPA statutory nuisance regime, local authorities have the option of taking other appropriate steps to persuade the person to abate or restrict the recurrence of statutory noise. In our experience, this is where local authorities will employ the Section 60 Notice procedure under COPA.

Where can Pinsent Masons help?
At the outset of any works, careful thought should be given as to how noise and vibration can be kept under control. Based on our experience in relation to numerous construction projects, including contractual protection provisions, we can help you consider the best approach so as to avoid the receipt of a Section 60 Notice under COPA and/or an abatement notice under the EPA. Should you enter into discussions with a local authority about issues on your construction sites, we can help you minimise the chance of notices being served by focusing on identifying the “best practicable means” that have been adopted, or by obtaining Section 61 consent under COPA. In addition, we can help you if your company receives either a Section 60 Notice under COPA or an abatement notice under the EPA. This includes advising on how best to manage the process if you ultimately face a prosecution for breaching the terms of either of these notices, including minimising the fine or reducing it to a caution.

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