Appendix 9.1 Legislation and Policy

17 November 2022

Legislation

THE CONTROL OF POLLUTION ACT (1974)

1.1. The principal legislation covering demolition and construction noise is the Control of Pollution Act 1974, Part III. Sections 60 and 61 of the Act give the local authority special powers for controlling noise arising from construction and demolition works, regardless of whether a statutory nuisance has been caused or is likely to be caused. Works within the scope of these provisions include repair and maintenance work and road works. These powers may be exercised either before works start or after they have started.

1.2. Section 60 enables a local authority in whose area work is going to be carried out, or is being carried out, to serve a notice of its requirements for the control of site noise on the person who appears to the local authority to be carrying out the works. Such a notice may also be served on others appearing to the local authority to be responsible for, or to have control over, the carrying out of the works.

1.3. This notice can:

- Specify the plant or machinery that is or is not to be used.
- Specify the hours during which the construction work can be carried out.
- Specify the level of noise that can be emitted.
- Provide for any changes of circumstances.

1.4. Section 61 of the Act provides a mechanism for the contractor or developer to take the initiative and approach the local authority to ascertain its noise requirements before construction work starts. If a formal application for 'prior consent' is received by the local authority it is obliged to give a decision within 28 days; failure to do so or the attachment of unnecessary or unreasonable conditions are grounds for appeal by the applicant.

1.5. In cases where the local authority determines that the proposals for minimising the noise of the construction activities are adequate it will issue a consent although this may be subject to conditions limiting certain aspects of the consent such as hours of use, noise levels for particular activities, etc. Provided that the applicant takes all reasonable steps to operate within the terms of the consent, even if the local authority subsequently decides to take proceedings under section 60(8), the applicant should be able to rely on the defence provided in the Act and prove that the alleged contravention amounted to the carrying out of works in accordance with a consent given under section 61.

National Planning Policy

Noise Policy Statement for England (NPSE)

1.6. The NPSE was published on 15th March 2010. It sets out the long-term vision for government noise policy, to promote good health and a good quality of life through the management of noise.

1.7. The policy ensures that noise issues are considered at the right-time during the development of policy and decision making, and not in isolation. It highlights the underlying principles on noise management

already found in existing legislation and guidance. The NPSE should apply to all forms of noise, including environmental noise. It sets out the long-term vision of Government noise policy as follows:

1.8. *"Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development."*

1.9. This long-term vision is supported by the following aims:

1.10. *"Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:*

- *Avoid significant adverse impacts on health and quality of life;*
- *mitigate and minimise adverse impacts on health and quality of life; and*
- *where possible, contribute to the improvement of health and quality of life."*

1.11. To assist in the understanding of the terms "significant adverse" and "adverse", the NPSE acknowledges that there are two concepts being applied to noise impacts, for example, by the World Health Organisation. They are:

- NOEL - No Observed Effect Level - This is the level below which no effect can be detected. In simple terms, below this level, there is no detectable effect on health and quality of life due to the noise; and
- LOAEL - Lowest Observed Adverse Effect Level - This is the level above which adverse effects on health and quality of life can be detected.

1.12. The NPSE introduces a third concept:

- SOAEL - Significant Observed Adverse Effect Level - This is the level above which significant adverse effects on health and quality of life occur.

1.13. However, the NPSE goes on to state that:

"It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available."

National Planning Policy Framework (NPPF)

1.14. Last updated in July 2021, the NPPF sets out the Government's planning policies for England and how these are expected to be applied. The NPPF superseded Planning Policy Guidance Note (PPG) 24: Planning and noise amongst other PPG's and Planning Policy Statements (PPS's). In contrast to PPG 24, reference to noise is scant within the NPPF. Noise is referenced within the document as follows:

1.15. *"174. Planning policies and decisions should contribute to and enhance the natural and local environment by:*

- *[…] e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans;[…]"*

1.16. *"185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living*

conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- *a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life[65];*
- *b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason;[…]"*

1.17. Reference number 65 of the above quotation points to the Explanatory Note to the Noise Policy Statement for England (NPSE).

1.18. The NPPF also includes the following statement:

1.19. *"187. Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."*

1.20. Whilst this paragraph does not explicitly reference noise, being 'overarching' in nature, in previous versions of the NPPF, similar text was included within the noise related paragraphs of the document.

Planning Practice Guidance – Noise (PPG-N) (2019)

1.21. The Government launched the Planning Practice Guidance (PPG) web-based resource in March 2014 and refreshed it in July 2019. The section on noise provides tabulated descriptions of example outcomes of the categories introduced in the NPSE based on the likely average response. It also adds a fourth category termed Unacceptable Adverse Effect (UAE).

1.22. The PPG-N describes sound that is not noticeable to be at levels below the NOEL. It describes exposures that are noticeable but not to the extent there is a perceived change in quality of life as below the LOAEL and need no mitigation. With reference to the definition of noise in the NPSE, such emissions are 'sound; and not 'noise'. On this basis, the audibility of sound from a development is not, in itself, a criterion to judge noise effects that is commensurate with national planning policy.

1.23. The PPG-N suggests that noise exposures above the LOAEL cause small changes in behaviour. Examples of noise exposures above the LOAEL provided in the PPG-N is having to turn up the volume on the television; needing to speak more loudly to be heard; where there is no alternative ventilation, closing windows for some time because of the noise; or, a potential for some reported sleep disturbance. In line with the NPPF and NPSE, the PPG-N states that consideration needs to be given to mitigating and minimising effects above the LOAEL but taking account of the economic and social benefits being derived from the activity causing the noise.

1.24. The PPG-N suggests that noise exposures above the SOAEL cause material changes in behaviour. Examples of noise exposures above the SOAEL cause material changes in behaviour. Examples of noise exposures above the SOAEL provided in the PPG-N are, where there is no alternative ventilation, keeping windows closed for most of the time or avoiding certain activities during periods when the noise present; and/or there is a potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. In line with the NPPF and NPSE, the PPG-N states that effects above the SOAEL should be avoided and that whilst the economic and social benefits being derived from the activity causing the noise must be taken into account, such exposures are undesirable.

1.25. The PPG-N introduces a category of effects termed Unacceptable Adverse Effect (UAE). At this level outcomes are described as *"extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress."* This could include medically definable harm and the PPG-N states that UAEs should be prevented.

1.26. The noise exposure hierarchy table is duplicated below in Table 1.

Table 1 - Noise Exposure Hierarchy Based on the Likely Average Response

Response	Examples of outcomes	Increasing Effect Level	Action
Not present	No effect	No Observed Effect	No specific measures required
Present and not intrusive	Noise can be heard, but does not cause any change in behaviour or attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.	No Observed Adverse Effect	No specific measures required
Lowest Observed Adverse Effect Level			
Present and intrusive	Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level			
Present and disruptive	The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid

Present and very disruptive	Extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory.	Unacceptable Adverse Effect	Prevent

Local Planning Policy

Manchester City Council's Core Strategy 2012-2027

1.27. Manchester City Council's (MCC) Core Strategy Development Plan Document 2012-2027 (the Core Strategy) was adopted in July 2012 and is the key document in the Manchester Local Development Framework and it sets out the long term strategic policies for Manchester's future development and will form the framework that planning applications will be assessed against.

1.28. Pertinent to this development, and with regards to noise and vibration, is Policy DM1 Development Management, which states the following: "*All development should have regard to the following specific issues for which more detailed guidance may be given within a supplementary planning document:*

- *Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise."*

Citywide Development Control Policies -26 Development and Noise

1.29. The Core Strategy replaces significant elements of MCC's Unitary Development Plan (UDP); however, UDP policies DC26.1 – DC26.6 have been saved and are relevent to noise and vibration. These are summarised as follows:

- DC26.1 - The Council intends to use the development control process to reduce the impact of noise on people living and working in, or visiting, the City.
- DC26.2 - New noise-sensitive developments (including large-scale changes of use of existing land or buildings), such as housing, schools, hospitals or similar activities, will be permitted subject to their not being in locations which would expose them to high noise levels from existing uses or operations, unless the effects of the noise can realistically be reduced. In giving effect to this policy, the Council will take account both of noise exposure at the time of receiving a planning application and of any increase that may reasonably be expected in the foreseeable future.
- DC26.3 - Developments likely to result in unacceptably high levels of noises will not be permitted:
    - a) in residential areas;
    - b) near schools, hospitals, nursing homes and similar institutions; and
    - c) near open land used frequently for recreational purposes.
- DC26.4 - Where the Council believes that an existing noise source might result in an adverse impact upon a proposed new development, or where a new proposal might generate potentially unacceptable levels of noise, it will in either case require the applicant to provide an assessment of the likely impact and of the measures he proposes to deal satisfactorily with it.
- DC26.5 - The Council will control noise levels by requiring, where necessary, high levels of noise insulation in new development as well as noise barriers where this is appropriate.

- DC26.6 - Exceptions to the general policy will be considered on their merits. The Council accept, as an example, that the occasional use of outdoor facilities such as sports stadia for concerts can be acceptable in certain circumstances. Any such proposal will be considered in the light of consultation with local residents and others, and the practicability of appropriate conditions on any approval.