

North Tyneside Council Planning Committee Date: 9 June 2020

**Title: Discretionary
approach to enforcement
on construction working
hours**

Report from : Planning Manager & Head of Law & Governance

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1. Purpose:

The purpose of this report is to make arrangements to agree the circumstances where planning enforcement action would not be progressed so as to enable the temporary extension of working hours on construction sites pursuant to a recent Written Ministerial Statement.

2. Recommendation(s):

The Committee is recommended to:

- a) Authorise the Head of Environment, Housing and Leisure, in consultation with the Chair and/or Deputy Chair of the Planning Committee, to agree to suspend enforcement activities relating to site working hours on a temporary basis to allow extended working periods on construction sites across the Borough on a case by case basis; and
- b) Authorise the Head of Environment, Housing and Leisure to put in place relevant procedures to implement the above recommendation and set out, for each site where there has been a request to extend working hours, the basis on which extended hours are agreed.

3. Information:

In accordance with the Council's Constitution, decisions on planning applications are made by the Planning Committee and through delegation to officers. Planning legislation allows conditions to be attached to any grant of permission and it is common practice to impose conditions which relate to, among other matters, the control of construction activities. With the exception of household extensions, planning permission is generally granted subject to a condition which restricts construction working hours from 8am-6pm Monday -Friday; from 8am-2pm Saturday and no working on Sundays and Bank Holidays.

As part of its response to supporting businesses, a Written Ministerial Statement was published on 13 May 2020 which indicates that Local Planning Authorities (LPAs) are expected 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. This is to enable construction site

working arrangements to be modified to facilitate safe working and social distancing and help reduce pressure on public transport.

In so doing, the advice goes on to state that where there are modest or short-term changes to construction working hours LPAs should use their discretion to not enforce against a breach of working hours. The temporary arrangements should not extend beyond 13 May 2021.

As set out above it is general practice to impose a condition restricting working hours. Where complaints are received, non-compliance with this condition would be investigated and, in line with national planning enforcement policy, where harm was identified as a result of any breach, formal enforcement action would be progressed by the Head of Law and Governance in consultation with the Chair and Deputy Chair of Planning Committee (pursuant to officer delegation LG49).

Whilst this condition would remain in place, the effect of the relaxation of working hours as proposed by the Secretary of State, would be that LPAs would be expected to use discretion in the use of its available enforcement powers.

Developers wishing to seek agreement to extended working hours are required to apply to the LPA and the LPA is encouraged to respond within 10 days. In most cases there would be no requirement for a formal application but where there are longer term or significant changes proposed to working hours, the published advice is that LPA can request a formal planning application (to vary the originally imposed condition) and such decisions would be processed in the usual way and subject to public consultation.

The Ministerial Statement recognises that extending working hours could result in unreasonable impacts – such as impact on neighbouring uses which are sensitive to noise, noise, dust or vibration, where this cannot be overcome through other mitigation, or where impacts on densely populated areas would be unreasonable. However the LPA would only be able to reject proposals where there are very compelling reasons.

To ensure that consideration is given to the ongoing protection of local amenity it is proposed to encourage developers wishing to extend working hours to provide information on the following matters which will be taken into account in considering their requests:

- An explanation of the need to extend the hours;
- A site plan to show distances to houses and other sensitive uses such as care homes;
- A commitment to carry out any noisy works during "normal hours";
- An explanation of proposed activities considered for the extended hours. Piling, external grinding, concrete laying involving use of vibrators, excavators, screening or crushing plant, bull dozing etc. and other similar operations giving rise to intensive noise would not be supported;
- If noise sensitive premises are within 100 metres of the construction works, a Noise Management Plan in accordance with BS 5228 Noise and vibration control on construction and open sites will be sought giving the following:
 - Proposed details of noise activities and associated noise levels expected from such activities based on number of equipment represented as one hour Leq at nearest residential premises for proposed extension of hours;
 - Current background noise levels at nearest noise sensitive premises;
 - Mitigation measures proposed;
 - Identifying that specific noisier activities will be restricted to normal operating times;

- Delivery times may need to be considered separately if the operator storage yard is close to housing. Extension of deliveries to later periods may be considered favourably if between 8.00 am and 8.00 pm. Greater disturbance arises from early morning deliveries;
- Confirmation that the works would be fully compliant with the “Considerate Constructors Scheme”, which would include details of points of contact for queries from local residents.

It is noted that there has been no relaxation of legislation relating to the activities controlled under S60 of the Control of Pollution Act 1974 which enables the Authority to, among other matters, control noise on construction sites.

Following consultation with the Chair of the Planning Committee, whilst recognising the arrangements to temporarily extend construction working hours would largely be dealt with informally, given the potential sensitivity of such changes it would be appropriate to maintain a clear record of the informal advice issued and to have a clearly agreed position, on a site by site basis, as to the circumstances in which a discretionary appropriate to the enforcement of working hours will be taken.

Where developers failed to adhere to the agreed, informal arrangements, the Authority would maintain the ability to enforce against the original condition which would remain extant, having regard to national enforcement policy. Alternatively the Authority could still take appropriate action under other relevant legislation.

4. Reason for Recommendation

The Committee are recommended to agree the recommendation set out in Section 2 of this report to enable to Council to comply with the Written Ministerial Statement of 13 May 2020 in relation to adopting a discretionary approach to planning enforcement action in relation to extended construction working hours on a site by site basis.

5. Background Documents

The following documents have been used in the compilation of this report:

- [North Tyneside Council Constitution](#)
- [Written Ministerial Statement of 13 May 2020](#)
- [Related Government Guidance on the WMS](#)