

Proceedings of the Institute of Acoustics

CONTRACTORS AND PRIOR CONSENT UNDER THE CONTROL OF POLLUTION ACT 1974

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1. INTRODUCTION

Work on for the Jubilee Line Extension Project (JLEP) commenced in 1993 and are expected to finish in 1998. At the time of writing this paper, it is the largest civil engineering project in Europe. The proximity of many of the worksites to occupied residential and commercial premises including some of the most prestigious buildings in the country, for example the Houses of Parliament, led to concerns being expressed from many different quarters from the outset regarding the effects which noise and vibration may have on people living and working near to the sites. In complex, high profile projects such as the JLEP this is understandable and it places the actions of not only London Underground but also the local authorities under close scrutiny.

To address this, a contractual requirement placed on the contractors building the line to apply for consent under section 61 of the Control of Pollution Act from the local authority. Each contractor had to make the application in sufficient time to allow the local authority time to consider and grant the application and for any appeal against the terms of the consent should this be necessary. By adopting a procedure which required all works on site to be carried out under consent ensured that contractors would have to be aware of the noise implications from their works from the tendering process onwards. There is also the advantage to the client that so long as the terms of the section 61 consent are complied with, the works will not be subject to delays occasioned by unanticipated action by the local authority.

2. APPLICATIONS

A contractual obligation cannot be placed on contractors was to obtain a section 61 consent from the local authority before commencing any works on site. This was pointed out as being outside the sphere of an applicant's influence. A contractor can make an application for consent, but the granting of such consent is only within the authority of the council to whom the application is made, or a magistrate's court if it is granted as a result of an appeal. Later contracts let by the project modified the wording to allow for this situation.

Contractors were encouraged to meet representatives of the local authority before making an application, as it was felt that this would help to clarify the form in which the council would

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wish to receive the consent and simplify the process. There were nine main contractors for the civil engineering contracts. These firms, either as single entities or as joint ventures, made applications to six London Boroughs and the City of Westminster through which the 12 kilometres of the JLE pass. It is not therefore surprising in view of the limited experience that some councils and contractors have of this section of the Act that both the applications and the form in which consents were received were found to differ enormously. This was despite discussions between the local authorities involved during the planning and parliamentary stages of the project.

Some councils preferred to grant an umbrella consent for the full four years of the project for all the work sites within their boundaries. Continuation of the consent was dependant on satisfactory information being provided to their officers as details of the works evolved and precise plant and engineering techniques became apparent. Failure to deliver these essential details would be a breach of the consent and would allow a section 60 notice to be served.

Other councils preferred to adopt a phase by phase approach for individual work sites. In the early stages of the project this meant that for each discrete activity, for example site establishment and clearance, demolition and piling, a unique application would be required. The application would contain all the relevant information including plant layout and details, together with calculations of predicted noise levels at sensitive facades based on plant sound pressure or sound power levels. For individual complex work sites where several activities were being carried out simultaneously, there could be as many as four or five consents in operation at any one time. Consent could also be restricted to three months or less if the duration of the activity was shorter than this period. It was also necessary to renew some consents when individual activities overran their planned duration.

This process was amended by one council during the first two years of works commencing due in part to the huge amount of administration time involved in issuing consents for more than ten work sites. The result was individual consents for each work site renewable after six months.

Councils which granted their consent for longer periods did not feel that they had less control over noise arising from site activities by adopting this stance. Before and throughout the works, meetings between the contractor, client and council took place on a monthly basis. This allowed the council to raise any issues they had regarding the conduct of works and for the contractor to provide the information required to the officers to allow the consent to continue.

From the contractor's point of view, the extended consent is naturally seen as preferable. As the JLEP contract stipulated that no works should take place without a section 61 consent in place, there were never any periods when works would have to stop through the absence of

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local authorities input. To date in the first three years of the project, no long term consent has been withdrawn.

Information provided to the local authority differs depending on the time of submission. If full term consent is being sought, the contractor may only have the engineering design to work from. It is likely however that the conduct of many of the operations will be known as these will be dictated by the unique circumstances of the site. For example ground conditions will determine what methods of piling can be used. At this stage however exact plant to be used for activities which may be taking place in two or three years time will be unlikely to be known. Fuller details would be available to contractors applying closer to the time of the works. The form which the applications for consent take are inevitably dictated by content. Long term consents contain as full a picture of the overall works as can be provided at this early point.

All applications will need to contain details of the strategies to be adopted to ensure that the terms of any consent which is granted are not contravened. To this end details of any shielding, restriction on hours of working and noise monitoring regime to be undertaken by the applicant will need to be provided. This is seen as being required by section 61(3)(b). A local authority can stipulate alterations but the experience on this project has been that unless there is an appeal these details will be dealt with at the monthly meetings should a need arise.

On balance a long term consent is seen as preferable for all sides.

The standard of appellations made by the contractors depended on their previous experience and resources. It was noticeable that those firms with environmental engineering sections were most the adept in the early stages.

Before any consents were issued by any of the councils, the JLEP had proposed a series of facade noise and vibration levels for noise sensitive buildings as part of a noise and vibration policy. The levels proposed can be found in Table 1.

Table 1 : Facade Levels for Noise Sensitive Properties Proposed in the JLE Noise and Vibration Policy

Time period	without sound insulatic	with sound insulation
07.00 - 19.00	75	85
19.00 - 22.00	65	75
22.00 - 07.00	55	65

All values in dB(A)

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Most of the local authorities accepted these levels and they formed part of the consents when issued. The day time period was not acceptable to the councils and 08.00 - 18.00 was adopted.

3. DISPENSATIONS

There were instances when for a number of reasons it was necessary for a contractor to apply for a dispensation from the terms of the consent. The most common reasons to date are as follows;

1. Works cannot be carried out during normal working hours due to restrictions placed on the contractor by the police for highways works and Railtrack for railway works.
2. The works themselves are of such a nature that that to carry them out over more than one working day would cause engineering problems. For example, large concrete pours taking longer than 10 hours.
3. Works where engineering solutions were not available to restrict noise levels.
4. To reduce the impact of noise from certain activities on business uses by carrying out works at night.
5. Due to unforeseen circumstances or emergency reasons, works needed to continue beyond normal hours to reach a safe point at which to stop.

To date on one contract eighty dispensations have been issued.

There have been very few cases these closely defined relaxations of the terms of the original consent have not been made. Clearly in the case of 3. and 5. the council will need to make a judgement based on information available at the time, and officers are aware that some contractors may seek to use this method to lengthen the working day without good engineering reasons. The terms of the dispensation were closely monitored by the client. Under the Act the client too is open to prosecution if 'knowingly permitting the works to be carried out in contravention of the conditions of the consent'. Works have been stopped when dispensations have been breached.

There is no procedure laid down for the applications for or the granting of dispensations and it is not included in the Act. Applications were however made formally either on a form drafted by the client or by letter. For examples 1, 2, 4 and some of 3 above, there will be knowledge some time beforehand that a dispensation is required. Contractors were in general required to

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give at least 14 days for officers to consider the application. In example 4, this is clearly not possible.

The dispensation procedure as applied in the JLEP worked well. It gave the contractors the assurance that the council would look at a reasonable request sympathetically. The dispensation procedure as applied on this project worked well and few have been refused. The prime reasons for such refusals included not allowing sufficient time for the council to consider the request and that the dispensation had been sought to cover poor planning on behalf of the contractor.

3. APPEALS

To date there have been two appeals by contractors against the consents on the project. The first was regarding the working day period allowed for the excavation and muck away section of a station box construction. the contractor argued that vehicles needed to be on site and carting away spoil from 07.00. The local authority monitored the operation as a test one morning and concluded that although the works were on a busy arterial route into London, noise levels from loaders and trucks were unacceptable before 08.00. the magistrate agreed with the council and the appeal was denied.

The second appeal was on the grounds of best practicable means. The engineering design for the construction of a coffer dam was by using conventional pile driving. The site was very close to residential properties and although the noise predictions for the original methodology were just less than the 75 dB(A) for the working day the council argued that by using hydraulically driven piles noise levels would be reduced considerably. The magistrate again agreed with the council and the piling was carried out with the 'silent' rig.

4. CONTRACTORS RESPONSE TO CONSENT PROCEDURE

The view expressed by the contractors questioned on the project a consent is often made as a matter of course for any major civil engineering project in an urban area irrespective of whether or not it is a requirement of the client. They find it is useful as they only have to deal with the local authority instead of a variety of residential and business groups. The local authority will always be informed of their works even in cases where consent is not sought.

One French contractor stated that although they had not encountered the consent procedure before, they could appreciate its benefits. As a direct result of their experiences on the JLEP, they had submitted a request for consent for a tunnelling job they were undertaking in South Wales.

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5. LOCAL AUTHORITY RESPONSE TO CONSENT PROCEDURE

To gauge the response of councils to the consent process twenty two London local authorities were contacted and questioned about their experience and attitudes to section 61. The results of this survey can be found in Table 2.

Table 2 : London Local Authority Experience of Control Of Pollution Act Consent Procedure

Never or rarely have used consent procedure	16
Occasionally use consent procedure	4
Often use or encourage consent procedure	2

From conversations with officers responsible for control of construction site noise, those councils which had previous experience of issuing consents were more likely to regard them as a useful procedure. As can be seen however, in London there is still a large number of local authorities who have had little or no hands-on dealings with them.

A number of officers said that they preferred to rely on the service of a section 60 notice whereby the council sets the noise levels, working hours and any other conditions. These authorities said that they would include exactly the same conditions on a section 60 notice as they would in a section 61 consent but felt that by adopting the former approach they would not seem as permitting higher noise levels to be emitted from the site than would otherwise be the case. Others said that although they had not been involved in the procedure before, this was about to change due to major infrastructure projects such as the Channel Tunnel Rail Link, Thameslink 2000, Kingston Bridge widening scheme and the South London Tramlink. For these schemes there is evidence that the councils affected by each scheme are talking to each other to agree a uniform manner in the setting of consent conditions. It will be interesting to see if the same divergence of approach as was found at the JLE will occur on these projects as different councils adopt protocols which best suit their individual localities.

Two councils actively canvassed contractors embarking on major long term projects with in their boundaries to submit applications for consent. These two boroughs contain substantial areas of dockland redevelopment which have seen perhaps the greatest number of large civil engineering projects undertaken in the capital over the past fifteen years. Although one argument for not encouraging the section 61 procedure encountered in other boroughs was the increased council resources its use would entail, this has not been found to be a stumbling block in these areas of high building activity.

Most authorities said that they had or would use the consent process for large , long term infrastructure projects. Apart for the JLEP, the works which have been carried out under the

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consent process in London include the Canary Wharf development, the Thames Water ring main, several large retail schemes and the Wapping relief road. These are all long term projects where many local businesses and residents and businesses would be affected.

6. CONCLUSIONS

In much the same way that contractors have addressed safety issues on construction sites, there is a realisation that environmental issues including noise and vibration will also need to be considered carefully from the planning stage until the works are completed.

The use of the prior consent procedure has been available for more than twenty years, but in this time it has not seen very little use. Evidence from the capital at least shows that this appears to be changing with large infrastructure projects in particular being undertaken with only consents in place at the insistence of the client or through the encouragement of a few local authorities. Contractors too are seeing this as a useful method of agreeing conditions of working before commencing on site which will allow for better planning and good relations with the local authority. The use of this procedure can be expected to increase in the coming years.