



City of Westminster

Environment Policy and Scrutiny Committee

Date:	8 September 2015
Classification:	For General Release
Title:	Draft Code of Construction Practice – Key Issues for Committee’s Consideration
Report of:	Executive Director Policy, Performance and Communications
Cabinet Member Portfolio(s):	Cabinet Member for Built Environment Cabinet Member for Parking and Sustainability Cabinet Member for City Management Cabinet Member for Public Protection
Wards Involved:	All
Policy Context:	The Council’s Code of Construction Practice is instrumental to the successful implementation of the council’s statutory planning, environmental health and highways policies and standards. It is key to managing the construction impacts of development, including basements, and as such contributes to the Heritage strand of City for All.
Financial Summary:	All costs associated with review, development, consultation and adoption of the revised Code of Construction Practice will be met from existing budgets.
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1. Executive Summary

- 1.1 The City Council has a Code of Construction Practice (‘the Code’) which dates from 2008 and sets out minimum standards and procedures for managing and minimising the impacts of construction projects. Currently it is only applied to the largest developments with compliance secured by a planning condition, with monitoring then funded via a s106 legal agreement. Compliance

monitoring is undertaken primarily by officers in the Environmental Inspectorate in the City Management & Communities Department.

- 1.2 Since 2008 much legislation and policy has changed and best practice guidance has been updated. There is, therefore, a need to develop a revised and updated Code that is more attuned to the scale and nature of development in Westminster – particularly smaller to medium sized developments that can often have the most detrimental impacts on local residents' and businesses' amenity and quality of life. In view of this officers have sought to widen the scope of the Code to cover not only large infrastructure type projects (e.g. Crossrail 1), but also other strategic developments ('Level 1', e.g. One Hyde Park) and major developments (large, mixed use developments - 'Level 2') including, specifically, residential basement developments and also applying certain provisions to other smaller development (minor commercial/householder - 'Level 3'). The extension to cover basements aims to proactively address residents' and businesses concerns about the impacts of basement construction on their amenity and quality of life.
- 1.3 The need for planning permission is often the first contact that a developer or builder will have with the council when wishing to carry out works in the City that require planning permission. However, town planning legislation and regulations in themselves provide limited powers to control the construction process and its impacts. The Code offers an appropriate mechanism for doing this through other regulatory powers such as environmental health, highways licensing and flood control.
- 1.4 Widening the application of the Code to encompass many more development sites will impact on the relevant service departments within the council at a time of constrained resources and challenging savings targets. However, by including more sites within the scope of the Code the number of, for example, noise complaints coming in to the Council will be reduced. Going forward it is the intention to move away from a reactive approach to such complaints to a proactive one – whereby amenity issues are dealt with at an earlier stage and best practice is adhered to more rigorously. This requires compliance monitoring and it is proposed that under the new Code this is fully externally funded by the developer.
- 1.5 It is intended that rollout of the new Code to more types of development should be phased; commencing with basements. A new basements planning policy is a City for All priority and is, therefore, being fast-tracked ahead of other City Plan policies. A revised and updated Code of Construction Practice is vital to the successful delivery of the basements policy, offering a mechanism through which the Council is able to monitor disturbance and disruption caused by basements construction sites whilst also shifting the funding of these onto the householder/developer. The basements element of the Code, therefore, needs to be in place by the time the new basements planning policy has material weight for determining planning applications. Currently this is anticipated to be at the end of this year or early next – depending on the numbers and weight of objections received from statutory

consultation. Following this key milestone, the Code would be rolled out to other 'Level 1' and 'Level 2' developments, with some of the principles (though not the same level of charges and monitoring applying to 'Level 3' developments). Having this greater oversight will give the Council a way of assessing the cumulative impacts, and better position us to manage sites' scheduling of noisy works where more than one development is taking place in close proximity. Sites themselves will also be expected to liaise closely with neighbouring developments, and to communicate with the public.

- 1.6 Much of the proposed text of the revised Code of Construction builds on the previous 78 page Code of Construction Practice, published in April 2008 (available as a background paper). The Code has been developed in close consultation with relevant officers' from across the council that include the 24-Hour Noise Team, the Environmental Inspectorate (both in City Management & Communities), officers from Development Planning and Building Control (in Growth, Planning & Housing) and Policy & Strategy (in Policy, Performance & Communications). In addition to covering a wider range of developments, the revised Code also addresses cycle safety in and around construction sites, requires resource efficiency, (including energy, carbon emissions and water use) and an expanded section looks to secure greater local employment and skills benefits from construction sites in the City.

BACKGROUND, INCLUDING POLICY CONTEXT

- 2.1 The City of Westminster is a world class centre of investment, employment and entertainment. It also has an established residential community knitted into its dense, historic, urban form. Westminster experiences high levels of development interest, with the number of planning applications submitted constantly around the 12,000 p.a. number. These can range from large, commercially mixed developments in the Central Activities Zone (CAZ), West End and Paddington areas to smaller to medium sized residential developments throughout the City. Because of its built up form, over 90% of housing schemes completed in the city have less than 10 units. Over the past five years the number of large residential basement developments has increased and the construction of these projects has the potential to result in substantial environmental impacts, including causing significant disturbance to local residents and businesses. Thus there is a need for closer control, monitoring and coordination of construction works (including where relevant demolition activities). According to the Noise Attitudes Survey 2008, undertaken for our Noise Strategy, some 36% of residents have been bothered by noise from building and construction, which given Westminster's location is much higher than in other parts of the country. 19% considered this to be the most annoying type of noise (compared to 3% nationally).
- 2.2 The City Council's Code of Construction Practice ('the Code') dates from 2008 and sets out minimum standards and procedures for managing and minimising the impacts of construction projects. Currently it is only applied to the largest developments, with compliance secured by a planning condition, with monitoring then funded via s 106 legal agreement. Monitoring is

undertaken by Environmental Inspectorate officers in the City Management & Communities Department.

- 2.3 Since 2008 much legislation and policy has changed and best practice guidance has been updated. Furthermore, following increasing levels of complaints arising from construction sites, especially related to the amenity impacts of residential basement sites, it was clear that the Code needed to be revised to address these issues to supplement the development of a basements planning policy. With the majority of such complaints being dealt with reactively and unfunded a more fundamental redesign of the Code, including shifting to a full fee charging basis was felt to be necessary. This would also enable appropriate monitoring and oversight of construction impacts. The council's reorganisation on 1st April 2015 provided a timely opportunity to consider changes in the roles and structure of some of the teams tasked with delivering key elements of the Code. This resulted in work on an updated Code changing from a 'refresh' of a document to a wider, more encompassing, document, around redesigned new services.
- 2.4 As part of this update officers have sought to widen the scope of the Code to cover not only large infrastructure type projects (e.g. Crossrail 1), but also other strategic developments ('Level 1') and major developments (large, mixed use developments - 'Level 2') including, specifically, residential basement developments and also applying certain provisions to other smaller development (minor commercial/householder - 'Level 3'). The extension to cover basements aims to proactively address residents' and businesses' concerns about the impacts of basement construction on their amenity and quality of life. A feature of the new Code is that it would apply differently to different scales of development (Level 1, 2 and 3), but with the flexibility for the Council to 'upgrade' a Level 3 site to a Level 2, or a Level 2 to a Level 1, should the site be particularly sensitive.
- 2.5 The need for planning permission is often the first contact that a developer or builder will have with the council when wishing to carry out works in the City that require planning permission. However, town planning legislation and regulations provide limited powers to control the construction process and its impacts by itself. The Code offers an appropriate mechanism for doing this through other regulatory powers such as environmental health, highways licensing and flood control.
- 2.6 The Council has significant evidence of the impacts of basement construction, which supports the introduction of the basements policy, as well as tighter controls and monitoring of such sites through extension of the Code to these smaller sites. The draft of the Basements Policy, which is out to consultation until 9th September, includes specific text in the policy referencing the need for applicants to provide a construction management plan "*to demonstrate adherence to the relevant parts of the Council's Code of Construction Practice*" thereby helping to create a clear link between planning and other relevant processes for controlling construction impacts and ensuring these work together and are followed through.

2.7 The oversight that the Council will have of construction sites will also facilitate a more coordinated response where there are likely cumulative impacts of more than one development taking place in close proximity. This is a particular concern of some residents in some parts of the City. In addition, the Code requires all sites to better liaise, co-ordinate and engage early with neighbours; prior to the submission of a planning application and throughout the construction process. For Level 1 and Level 2 schemes specific community relations personnel should be employed, whose focus will be on engaging with occupiers of nearby properties to provide information and a first-stage response to resolve issues of concern. They should also provide regular communication on project progress, advise on key site contacts, anticipated disruptions, as well as measures intended to mitigate these. A comprehensive emergency plan should be devised for each phase of the work. Level 1 schemes (and in some cases Level 2 schemes) will also hold regular community meetings to allow the community to raise concerns, with all sites providing a telephone hotline and prominently displayed contact board.

2.8 **Policy Framework**

As part of the Basements Policy Revision, the opportunity has also been taken to make other necessary supporting changes to policies including Policy S29 (Health, Safety and Well-being), which has been amended as follows:

“The development of major infrastructure projects and where appropriate, other projects with significant local impacts will need to mitigate, avoid or remedy environmental and local impacts, both in construction and operation”.

2.9 Other relevant adopted City Plan policies include Policy S31 (Air quality) which requires a reduction of air pollution; and Policy S32 (Noise) which seeks to reduce noise pollution and its impacts and protect Noise Sensitive Receptors (e.g. schools) from noise. There will be further changes to these strategic policies and other new detailed policies are being brought forward as part of the work on the City Plan dealing with construction impact management and construction waste.

2.10 The London Plan is part of the Development Plan for Westminster and Policies 5.3 (Sustainable Design and Construction) which states that *“Development proposals should demonstrate that sustainable design standards are integral to the proposal, including its construction...”*; and 7.14 (Improving Air Quality) which states: *“...Development proposals should: ... promote sustainable design and construction to reduce emissions from the demolition and construction of buildings following the best practice guidance in the GLA and London Councils.”* are also relevant.

2.11 Westminster’s Noise Strategy includes an objective to reduce noise ‘incidents’ in the city, with a proactive and coordinated response to noise problems. It included a specific action to continue requiring “adherence to the Westminster Code of Construction Practice for major development schemes”. The Council’s Air Quality Action Plan includes an objective to reduce emissions from construction sites and refers to the use of the Code of Construction

Practice and the GLA's guidance on 'The Control of Dust and Emissions from Construction and Demolition' to achieve it. Westminster's Cycling Strategy contains an action for the Council to "update its Code of Construction Practice to include cycle safety considerations".

3. Key Matters for the Committee's Consideration

Extending the Code to a wider number of developments

- 3.1 The key element of the revised Code of Construction Practice and central to the proposed Basement Policy approach in particular, is the rollout to many more sites, including all strategic and major developments and basements to enable monitoring and oversight and, to a lesser extent, other smaller types of development. These would be expected to comply with certain elements of the Code but would not, for example, be expected to hold community liaison meetings or submit a full Site Environmental Management Plan for monitoring.

Q1. Does the Committee agree that extending the monitoring and charging regime to basements and to other types of developments is the right approach?

Charging

- 3.2 It is intended that adherence to the Code, will need to be secured as part of the planning permission, which includes necessary changes to the City Plan in order to ensure that an appropriate policy hook exists to enable this.
- 3.3 It is considered that only by charging for the Code and associated monitoring will it be possible to provide the kind of monitoring and site specific advice envisaged. The charge is expected to cover the costs associated with the expanded Code. The Service is reviewing the modelling of resource implications which would inform the setting of the fees (on a cost recovery basis). There should also be a reduction in complaints which could lead to a reduction in officer hours, with resultant financial savings, however the Noise Team is a 24/7 service that needs to be staffed to ensure necessary cover is in place during day and night, so this saving may be limited. It is central to the success of the new Code of Construction Practice to ensure that this service is cost neutral to the Council. Section 1 of the Localism Act provides local authorities with a "general power of competence" which allows it to "do anything that individuals generally may do". This effectively allows authorities to act in their own financial interest and, *inter alia*, to raise money by charging for discretionary services.
- 3.4 The power to charge under the above section is, however, subject to several constraints, which are set out in s3 of the Act. In particular, a local authority may not charge for services which it is legally obliged to provide or for which there is already a statutory power to charge under another piece of existing legislation. Any charges made are also limited to the amount required to recover the cost of providing the service in question. The proposed charges developed for basement developments, have been arrived at taking into account these constraints, and are currently being consulted on alongside the

Basements Revision to the City Plan (and appended at Appendix 2). The Committee should note that charges associated with other types of applications are still being calculated.

Q2. Does Committee support the principle of charging as part of the extended Code?

Considerate Constructors Scheme (CCS)

- 3.5 In terms of encouraging considerate sites, the Code requires applicants of Level 1 and 2 schemes to obtain certification under the national Considerate Constructors Scheme (CCS), which is a free to join, highly regarded scheme. Westminster was one of the first local authorities to adopt its own Considerate Contractors scheme in 1989, which focused on public perceptions, safety, communications to the public and the environment around a site. It pre-dated the national scheme by some time and in fact was one of the first of such schemes to be set up, with other councils and the national scheme following suit and building on Westminster's work in this area. However, it required resourcing and was criticised for having few enforcement powers; relying on publicity to encourage better practices. Over time the national scheme grew and became more widely known, eventually overtaking the Council's own scheme. The Westminster scheme ceased operating in 2008.

Q3. Does committee agree that continuing to link with the national CCS is appropriate, rather than seeking to re-introduce a Westminster-only scheme?

Working hours

- 3.6 There is some debate around the working hours that should be permitted and in particular for basements. Typical construction sites are allowed to operate 0800-1800 weekdays and 0800-1300 Saturdays. The issue of weekend working, and excavation, particularly regarding basements is one that tends to elicit a high number of responses. Limiting hours of basement work on Saturdays may be legally questionable where there is a neighbouring site that is permitted to undertake noisy works. Committee's view is sought on whether to introduce flexible wording that could overcome this, such as "in locations where it may impact on residents, Basement development working hours may be limited to 0800-1800 weekdays only". It should be noted, however, that this could result in a longer programme period overall, and would not be helpful where other noisy works are taking place on neighbouring sites and may, therefore, merit flexibility where planned noisy works will be taking place from a non-basement site anyway.

Q4. What would committee's view be on proposing such text to deal with this point in a flexible way?

Local Employment

- 3.7 As Westminster has some significant areas of deprivation, worklessness and social exclusion, a further City for All priority is to reduce numbers of long term unemployed by approximately one-third. Key to this commitment will be a requirement for 'Level 1' (strategic) schemes to submit an employment and skills plan as part of its Site Environmental Monitoring Plan (SEMP) demonstrating how it will use its best endeavours to ensure a minimum of 10% of the total workforce (both from contractor and sub-contractor workforces) is comprised of local people.
- 3.8 To support this outcome, Westminster would facilitate local workforce recruitment via the Westminster Construction Group (members include developers and landowners such as Land Securities and Sir Robert McAlpine). The objective of the WCG is to connect residents looking for opportunities with the demand across the City from developers and their supply chains. The Council also work with neighbouring boroughs through Central London Forward and Cross River Partnership on a wide range of cross borough projects including Working Capital and our advocacy work on devolution. Officers are currently mapping service provision in the City and will work with City West Homes and others to promote schemes to residents looking for work, building on excellent relationships with CWH established through their involvement with Westminster Works. There is also liaison undertaken with 6th forms and secondary schools across the City through the work led by One Education Business Partnership. The focus is on employability and work based learning and in helping schools build relationships with local businesses. This way we can ensure that key priority groups – i.e. the long-term unemployed, parents or young people for example are connected to the training and job opportunities coming through the development. This would be monitored quarterly and at year end.

Q5. Does committee agree that setting a 10% target, in line with the targets set in the Council's s106 SPD is appropriate, with the support of the Council in signposting appropriate candidates towards employment opportunities?

Cycle safety

- 3.9 The following provisions are included in the Code.

Safety equipment for all HGVs over 3.5 tonnes in the fleet and used in the construction consisting of:

- side guards (unless it can be demonstrated that this prevents the vehicle performing the function for which it was built)
- a close proximity warning system
- a Class VI mirror (front mounted wide view mirror that helps view the blindspot situated at the front of the driver's cab)
- prominent signage on the rear of the vehicle to warn against cyclists passing on the inside.

Additionally the Code *encourages* the use of vehicles with a lower cab and expanded side windows to give a better view of the road.

Diver Licence checks are expected to take place for all fleet drivers before commencing work on the contract, with regular rechecks, and drivers charged with informing their employer within 5 days of any penalty points.

Driver training for fleet drivers - A number of courses including Safer Urban Driving (SUD), Safe and Fuel Efficient Driving (SAFED), to be completed within the first 60 days of the contract date.

Fleet Operator Recognition Scheme (FORS) membership at bronze level. (90 days allowed to obtain this if operator does not already have it)

Convex mirrors near construction sites.

Cycle Safety campaigns to be organised by contractors close to construction sites to help cyclists become more aware of the risks of cycling next to lorries.

Q6. Are members satisfied that these points go far enough or is there more that we could be requesting?

4. Consultation

- 4.1 The consultation process thus far has been internal to the council. However, public consultation on the Code will be undertaken to enable the public engagement necessary to inform the final version of the Code and ensure that the Council develops an effective approach to this issue.
- 4.2 It is suggested that the Policy and Scrutiny Committee is given the opportunity to comment on the revised Code following consultation but before it is finalised.

5. Health and Wellbeing Implications

- 5.1 The extension of the Code of Construction Practice as set out in this report and in the manner described is expected to reduce noise disturbance, improve air quality and generally make construction sites safer for those who work on them and those who live or work close by.

6. Financial Implications

- 6.1 There are no direct financial implications associated with this report, as the next stage of consultation will be undertaken from within existing budgets, although the wider rollout of the Code of Construction Practice is expected to result in a reduction of Council spend arising from the shift from reactive spend on monitoring and responding to construction related issues, to a planned proactive, charged for service.

7. Legal Implication

- 7.1 The “general power of competence” under Section 1 of the Localism Act 2011 provides local authorities with the power to “do anything that individuals generally may do”. This effectively allows authorities to act in their own financial interest and, inter alia, to raise money by charging for discretionary services.
- 7.2 The power to charge under the above section is however subject to several constraints, which are set out in s3 of the Act. In particular a local authority may not charge for services which it is legally obliged to provide, or for which there is already a statutory power to charge under another piece of existing legislation. Any charges made are also limited to the amount required to recover the cost of providing the service in question.
- 7.3 There are existing statutory powers to charge fees in respect of a number of the services to be provided under the Code and as such these will not be covered by the charges made under S1 of the Localism Act 2011

8. Risks and Mitigations

- 8.1 No risks have been identified from this report.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Nina Miles, Principal Policy Officer
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BACKGROUND PAPERS

- 1. Code of Construction Practice, 2008**