



CROSSRAIL: NON-STATUTORY GUIDELINES FOR THE DETERMINATION OF APPEALS IN RELATION TO NOISE FROM CONSTRUCTION SITES

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INTRODUCTION

1. Section 20 to the Crossrail Act (2008) (“the Act”) modifies the operation of sections 60 and 61 of the Control of Pollution Act 1974 (“COPA”). The modifications make provisions that that appeals made pursuant to Section 60 (7) and Section 61 (7) of COPA shall, according to Section 20 of the Act, be determined by the Secretary of State or, if the parties’ agree, by arbitration rather than by a magistrate’s court. This guidance provides advice on the non-statutory handling arrangements for such appeals.

APPEAL UNDER THE CROSSRAIL ACT (2008)

RIGHT OF APPEAL

2. Sections 60 & 61 of the Control of Pollution Act 1974 (“COPA”) provide the main legislation regarding demolition and construction site noise & vibration issues. The Act alters the procedures for appeal pursuant to Section 60 and Section 61 of COPA in three specific circumstances:
 - The appeal by a person served with a notice under Section 60 of COPA;
 - The appeal by a person when the local authority fails to give consent in the prescribed timescale to an application made under Section 61 of COPA; and
 - The appeal by a person against the conditions, limits or qualifications applied to a consent given under Section 61 of COPA.
3. Under COPA, such appeals are made to a magistrates’ court. Under the authority pursuant to Section 20 of the Act, the nominated undertaker must make these appeals to the Secretary of State in relation to works carried out in connection with the Act.
4. The Act does make provision for the nominated undertaker (“the appellant”) and the local authority agreeing that the appeal should be referred to arbitration rather than being heard by the Secretary of State. The nominated undertaker and the local authority must determine this course of action within 7 days of the original appeal being made.
5. The guidance in this document concerns the process when the appeal is to be determined by the Secretary of State.
6. Unlike Crossrail planning appeals, appeals made under Sections 60 and 61 of COPA (as amended by Section 20 of the Act) will be dealt with under a non-statutory procedure.

DETERMINATION OF AN APPEAL

7. The Act provides that appeals under the relevant provisions of sections 60 and 61 of COPA shall be determined by the “Secretary of State”. Pollution control is the policy portfolio of the Department for Environment, Food and Rural Affairs. In the context of COPA, references to the “Secretary of State” are generally considered for working purposes as references to the Secretary of State for the Environment, Food and Rural Affairs. In the context of these appeals made pursuant to the Act, therefore, the Secretary of State for Environment, Food and Rural Affairs is determined to be the most appropriate Secretary of State to determine appeals and shall act as Secretary of State for the purposes of these appeals.
8. The Secretary of State is likely to delegate an appointed person to assist in determining an appeal (e.g. an Inspector of the Planning Inspectorate for England and Wales)¹. The Planning Inspector shall review the submissions and make a recommendation to the Secretary of State who will then determine the appeal.
9. The normal method of determination for appeals under COPA is through a combination of written representations and oral hearings. For the purposes of the Act the normal procedure will be by written representations. In exceptional circumstances, the Secretary of State may decide that it would be appropriate for the appeal to be heard by oral representations. This guidance relates to the procedure for written representations only. To aid understanding of the arrangements, a summary table of the main steps and likely timings is attached at **Annex A**.

PROCEDURE TO BE FOLLOWED IN THE DETERMINATION OF AN APPEAL

NOTICE OF APPEAL

10. Appeal cases handled through the proceedings provided for in this guidance should be initiated by a letter of notification sent to the Secretary of State for Environment, Food and Rural Affairs from the nominated undertaker, copied to the relevant local authority. That letter (‘notice of appeal’) should include the following:
 - Information relating to the site, including its address, its proximity to noise sensitive receptors and other relevant information. A plan should be included that shows these details;

¹ For the remainder of the guidance it is assumed that a Planning Inspector is appointed by the Secretary of State as indicated

- The nature of the works being, or to be, carried out for which the notice under Section 60 of COPA or the consent being sought under Section 61 of COPA applies;
- In the case of an appeal under Section 60 (7) of COPA, a copy of the notice received by the nominated undertaker from the local authority, and the reasons why the nominated undertaker feels that the notice is not acceptable;
- In the case of an appeal under Section 61 (7)(a) of COPA, a copy of the application made to the local authority by the nominate undertaker;
- In the case of an appeal under Section 61 (7) (b) of COPA, a copy of the application made to the local authority by the nominate undertaker and a copy of the consent received by the nominated undertaker. The nominated undertaker should identify which conditions, limits or qualifications are unacceptable together with the main reasons; and
- Details about the relevant local authority.

START OF AN APPEAL

11. In the case of appeals under Section 60 (7) and Section 61 (7) (b) of COPA the Secretary of State will instruct the Planning Inspectorate to commence making arrangements to receive written representations and proceed with the appeal. In the case of an appeal under Section 61 (7) (a) of COPA, the Secretary of State will contact the local authority to understand the reasons for their failure to have granted consent within the required timescale. If the Secretary of State believes that consent will be granted without conditions, limits or qualifications, the local authority will be requested to provide a date when that consent is given and the Secretary of State will inform the nominated undertaker. If the Secretary of State believes that the consent will be granted with conditions, limits or qualifications, the Planning Inspectorate will be instructed to make arrangements to receive written representations and proceed with the appeal.
12. On instructing the Planning Inspectorate, the Secretary of State will liaise with the Planning Inspectorate to agree the dates when the various stages of the process are to be completed, including the date when the Secretary of State will receive the report and recommendation from the Planning Inspectorate on the decision to be made.
13. On receiving instructions from the Secretary of State, the Planning Inspectorate will appoint an Inspector to consider the appeal and inform, in writing, the nominated undertaker, the local authority and the Secretary of State of this appointment. The Planning Inspector will inform the nominated undertaker and the local authority of these dates.

