



Department  
for Transport

# High Speed Rail (London-West Midlands) Act 2017: Guidance on the determination of appeals in relation to noise from construction sites

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**Moving Britain Ahead**

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# 1. Introduction

- 1.1 Paragraph 1 of Schedule 27 to the High Speed Rail (London – West Midlands) Act 2017 (“the Act”) modifies the operation of Sections 60 and 61 of the Control of Pollution Act 1974 (“the CoPA”). The modifications make provision for appeals that are made pursuant to Section 60 (7) and Section 61 (7) of the CoPA to be determined by the Secretary of State or, if the parties agree, by arbitration rather than by a magistrates’ court.
- 1.2 This guidance provides advice on the non-statutory procedure that will be followed when an appeal is determined by the Secretary of State.

## 2. Right of appeal

- 2.1 Sections 60 and 61 of the CoPA provide the main legislative provisions regarding demolition and construction site noise and vibration issues. The Act alters the procedures for appeals pursuant to Section 60 (control of noise on construction sites) and Section 61 (prior consent for work on construction sites) of the CoPA in three specific circumstances:
- The appeal by a person served with a notice by a local authority under Section 60 of the CoPA;
  - The appeal by a person when a local authority fails to give a consent within 28 days from receipt of an application made under Section 61 of the CoPA; and
  - The appeal by a person against the conditions, limits or qualifications attached by a local authority to a consent given under Section 61 of the CoPA.
- 2.2 Under the CoPA, appeals of this nature are made to a magistrates' court. Under the Act, the nominated undertaker (“the appellant”) must appeal, in relation to works carried out in connection with the Act, to the Secretary of State instead.
- 2.3 The Act also makes provision for the appellant and the local authority to refer the appeal to arbitration<sup>1</sup> rather than the Secretary of State, if they agree to that course of action within 7 days of the appellant giving notice of appeal to the Secretary of State.

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<sup>1</sup> Section 64 (Arbitration) of the Act sets out how disputes under the Act (which are to be determined by arbitration) are to be dealt with.

## 3. Determination of appeals

- 3.1 Appeals made under Sections 60 and 61 of the CoPA (as amended by the Act) will be dealt with under a non-statutory procedure.
- 3.2 The Act provides that appeals under the relevant provisions of Sections 60 and 61 of the CoPA will be determined by the "Secretary of State". In this context, the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport are the most appropriate Secretaries of State to determine appeals and will jointly act as "Secretary of State" for the purposes of these appeals.
- 3.3 The Secretary of State is likely to instruct an independent construction noise specialist ("the Specialist") to assist in determining appeals. The Specialist will review the written representations made by the parties, conduct site visits (if necessary), and write a report and make a recommendation to the Secretary of State, who will then determine the appeal.
- 3.4 The normal method of determination for appeals under the CoPA is through a combination of written and oral representations. For the purposes of the Act, the normal procedure for the determination of appeals will be 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.

## 4. Procedure to be followed in the determination of an appeal

### Notice of appeal

- 4.1 If the appellant wishes to appeal a notice served by a local authority (Section 60) or the failure of a local authority to give a consent within 28 days of the receipt of an application (Section 61) or the conditions, limits or qualifications attached to a consent given by a local authority (Section 61), it must notify the Secretary of State within 21 days<sup>2</sup> of the date of the notice or the date by which the decision on the application should have been or was made by the local authority.
- 4.2 Appeals handled through the procedure provided for in this guidance should be initiated by a “Notice of Appeal” sent by the appellant to the Secretary of State and copied to the local authority. The Notice of Appeal should include the following:
- Information relating to the site in question, including its address, its proximity to noise sensitive receptors and other relevant information. A plan should be included that shows these details;
  - The nature of the works being, or to be, carried out for which the notice under Section 60 of the CoPA or the consent being sought under Section 61 of the CoPA applies;
  - In the case of an appeal under subsection (7) of Section 60 of the CoPA, a copy of the notice received by the appellant from the local authority. The appellant should identify the requirement or requirements set out in the notice that are unacceptable, together with the reasons for this;
  - In the case of an appeal under subsection (7)(a) of Section 61 of the CoPA, a copy of the application made to the local authority by the appellant;
  - In the case of an appeal under subsection (7)(b) of Section 61 of the CoPA, a copy of the application made to the local authority by the appellant and a copy of the consent received by the appellant. The appellant should identify which conditions, limits or qualifications are unacceptable together with the reasons for this; and
  - Details of the relevant local authority.

### Start of appeal

- 4.3 In the case of appeals under subsection (7) of Section 60 and subsection (7)(b) of Section 61 of the CoPA, the Secretary of State will instruct the Specialist to make

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<sup>2</sup> As per paragraph 7 of Sections 60 and 61 of the CoPA

arrangements to receive written representations from the parties and proceed with the appeal.

- 4.4 In the case of an appeal where a local authority has failed to give a consent within 28 days of the receipt of an application (subsection (7)(a) of Section 61 of the CoPA), the Secretary of State will contact the local authority to understand the reasons for this. If the Secretary of State believes that consent will be granted without conditions, limits or qualifications, the Secretary of State will request the local authority to provide a date for the start of the consent and the Secretary of State will inform the appellant of this date.
- 4.5 If the Secretary of State believes that consent is likely to be granted with conditions, limits or qualifications and is provided with information on the nature of the conditions, limits or qualifications by the local authority, the Secretary of State will discuss this with the appellant. If the appellant indicates that the proposed conditions, limits or qualifications will be acceptable, the Secretary of State will request the local authority to provide a date for the start of the consent and the Secretary of State will inform the appellant of this date. If the appellant indicates that the conditions will not be acceptable, the Secretary of State will instruct the Specialist to make arrangements to receive written representations from the parties and proceed with the appeal.
- 4.6 The Secretary of State and the Specialist will agree a timetable for the completion of the various stages of the appeal determination process, including the date on which the Secretary of State will receive the Specialist's report. The Department for Transport will inform the appellant and the local authority of the timetable agreed.

## Written representations

- 4.7 The local authority will submit written representations to the Specialist by the date agreed by the Secretary of State and the Specialist and which has been communicated to the parties. The local authority will copy its written representations to the appellant and the Secretary of State. The written representations will set out the local authority's response to the issues raised by the appellant in the Notice of Appeal and the reasons that the local authority has served the Section 60 notice or imposed the conditions, limits or qualifications on the consent sought by the appellant under Section 61 of the CoPA, as appropriate.
- 4.8 The appellant will submit written representations to the local authority's written representations to the Specialist by the date agreed by the Secretary of State and the Specialist and which has been communicated to the parties. The appellant will copy its written representations to the local authority and the Secretary of State. The written representations will include relevant details that demonstrate why the Section 60 notice or imposed conditions, limits or qualifications are not acceptable. The written representations may include further information covering, but not limited to:
  - The location of the site and the proximity of noise sensitive locations accompanied by a plan or plans, as appropriate;
  - The nature of the works being, or to be, carried out for which the notice under Section 60 of the CoPA or the consent being sought under Section 61 of the CoPA applies. This should include details of the type of operations involved along with an indication of the type of plant and machinery to be used;



- The alternative methods and processes that have been investigated by the appellant that could be used to overcome the conditions, limits or qualifications that have been attached to the consent by the local authority;
- An alternative construction methodology and/or noise management regime that the appellant is prepared to follow in order to address the local authority's concerns; and
- Any other details that are felt by the appellant to be relevant.

## Consideration of written representations and site visits

- 4.9 If, in making its written representations, the appellant offers an alternative construction methodology and/or noise management regime which is acceptable to the local authority, and thereby both parties reach an alternative agreement, the appellant should advise the Specialist and the Secretary of State accordingly and the appeal will be treated as withdrawn.
- 4.10 If the parties do not reach an alternative agreement, the Specialist will proceed with the consideration of the appeal.
- 4.11 During the consideration of the appeal, it is likely that the Specialist will visit the site that is the subject of the appeal. Where the Specialist can adequately view the site from public land, an unaccompanied site visit will be arranged.
- 4.12 Where the site cannot adequately be viewed from public land, an accompanied site visit will need to be arranged. In many cases the land is likely to be under the control of the appellant, and therefore it will be in the interests of the appellant to arrange access as soon as possible. It will be the responsibility of the appellant to inform all parties of the site visit arrangements in writing once they are confirmed. It is expected that both the appellant and the local authority will be represented at accompanied site visits. During accompanied site visits, the merits (or otherwise) of the appeal cannot be discussed with, or in front of, the Specialist.
- 4.13 Where access to private land needs to be arranged (whether this be the appeal site or other land), the appellant will give notice to the landowner(s) of the date and time of the proposed site visit and obtain the landowner's consent. If possible a coordinated approach is encouraged so that the appeal site and other related sites can be visited around the same time (rather than on separate days). If the relevant landowners do not grant access in a timely manner, the Specialist will proceed with the consideration of the appeal using the information provided by the appellant and local authority.
- 4.14 During the consideration of the appeal, the Specialist may seek clarification from the appellant or the local authority on aspects of their written representations. Any such communication shall be in writing and will be copied to the appellant, the local authority and the Secretary of State, as appropriate.
- 4.15 Once the Specialist has considered the written representations received, he or she will prepare a report for the Secretary of State, which sets out the parties' key arguments, analysis of those arguments, and includes a recommendation for the Secretary of State. In making the recommendation, the Specialist will have regard to the provisions of Section 60 (4) of the CoPA.

## Determination of the appeal by the Secretary of State

- 4.16 The Secretary of State will consider the contents of the report and make a decision as follows:
- a) The Secretary of State will accept the recommendation entirely;
  - b) The Secretary of State will accept the recommendation but may add conditions, limits or qualifications; or
  - c) The Secretary of State will reject the recommendation and refer it back to the Specialist for further consideration.
- 4.17 The appellant and the local authority will be informed of the Secretary of State's decision by the Department for Transport and, in the case of the decision being of the type described in paragraph 4.16 (a) and 4.16 (b), will be provided with a copy of the report prepared by the Specialist.
- 4.18 In the case of the decision being of the type described in paragraph 4.16 (c), the Secretary of State will inform the Specialist of the reasons for his decision and agree a timetable for the further consideration of the appeal with the Specialist. The Department for Transport will inform the appellant and the local authority of the timetable agreed.
- 4.19 The decision of the Secretary of State is final.