



City of Westminster

# Cabinet Member Report

<b>Meeting or Decision Maker:</b>	Cabinet Member for Communities and Regeneration
<b>Date:</b>	8 December 2021
<b>Classification:</b>	General Release
<b>Title:</b>	Adoption of the revised Code of Construction Practice
<b>Wards Affected:</b>	All
<b>City for All/Policy Context:</b>	Implementation of the Code of Construction Practice to support better management of construction impacts is a key City for All priority and is part of the Council's Climate Emergency Action Plan.
<b>Key Decision:</b>	Yes; notice of the decision was published on 02/06/21
<b>Financial Summary:</b>	The Code includes fees for the monitoring and inspections associated with the Code
<b>Report of:</b>	Director of Policy and Projects

## 1. Executive Summary

- 1.1 This report provides a full updated Code of Construction Practice for adoption by Westminster City Council, providing new guidance for developers and constructors to ensure they exceed best practice standards when building in Westminster. The report includes an overview of changes to the Code made as a result of the recent public consultation and discussion with the Communities, Regeneration and Housing Policy and Scrutiny Committee.

## 2. Recommendations

2.2 That the Cabinet Member for Communities and Regeneration resolves:

i. to consider the responses to the Code of Construction Practice (summarised at section 5 below and in full at Appendix 1) and endorse the officers' comments thereon and the resulting changes proposed to the Code.

ii. to approve the adoption of the Code of Construction Practice (Appendix 2 to this report) by condition to new applications for basements, and other major development (Level 1 and Level 2 schemes) from 1<sup>st</sup> January 2022.

iii. to adopt the requirements of the Code of Construction Practice to major developments (Level 1 and Level 2 schemes) granted after 1<sup>st</sup> September 2016, from the 1<sup>st</sup> April 2022 onwards.

iv. to delegate to the Director of Policy and Projects, power to make minor modifications to the Code of Construction Practice and its associated guidance notes and templates, subject to consultation with the Cabinet Member.

### **3. Reasons for Decision**

3.1 The Code of Construction Practice is a key document working to minimise and mitigate the impacts of construction and new development on amenity across the borough. The revised Code provides a tool for the council to manage the impacts of construction and development across the borough.

3.2 The application of the Code is referenced in the City Plan 2019-40 (Policy 33 Local Environmental Impacts), and the Code aligns closely with the Council's forthcoming Environment Supplementary Planning Document.

3.3 The adopted Code and associated guidance and templates for applicants will be published on the Council's website ahead of the adoption date of 1<sup>st</sup> January 2022. This will help applications currently in development to adhere to the new Code's requirements. In addition, the requirements of the Code will be applied from 1<sup>st</sup> April 2022 to major developments already granted planning permission, allowing them time to adapt existing processes and procedures to the requirements of the new Code.

3.4 The Code supports all pillars of City for All, in particular the council's aims for a Cleaner and Greener city, where adoption of a revised Code of Construction Practice is listed as a key commitment within our City of All Vision and Strategy 2021/22.

## **4. Background, including Policy Context**

### **The current Code of Construction Practice**

- 4.1 Westminster's current Code of Construction Practice ('CoCP' or 'the Code') was adopted and published in 2016. The CoCP covers the full range of impacts that construction and development work has on the local environment and communities. It sets out what the Council expects from developers and those involved in construction activities across the City. The expectation is that all construction sites meet the requirements or best practice set out in the Code, reducing disruption for those who live, work and visit our City.
- 4.2 The CoCP is intended to help developers, architects, engineers and construction professionals to plan, cost and manage the environmental issues which frequently arise in the industry, and sets out standards and procedures for managing, minimising and coordinating the impact of construction projects. It also informs residents and other affected parties about how the Council manages and minimises environmental impacts from demolition and construction activities.
- 4.3 The CoCP process is initiated through planning conditions. The Council's Town Planning department impose a condition on relevant planning applications so that no development shall commence until the Council's Environment and City Management directorate sign off on the outputs required by the CoCP: this is usually either a Site Environmental Management Plan (SEMP) or Construction Management Plan (CMP), which set out how developers will mitigate and minimise the impact of their development on the borough.
- 4.4 The 2016 Code of Construction Practice was adopted on 16<sup>th</sup> July 2016 by Cabinet Member decision (appended as a background paper to this report).

### **Revising the Code of Construction Practice**

- 4.5 When published in 2016, the Code was considered to be a best practice document. With the adoption of the new City Plan 2019-40 and the subsequent development of a number of Supplementary Planning Documents, including the forthcoming Environment SPD, it is now considered an appropriate time to revise and update the CoCP.
- 4.6 Adoption of a revised Code of Construction Practice is listed as a key commitment for the Cleaner and Greener pillar of the council's City for All Vision and Strategy 2021/22.

4.7 The revised Code includes new requirements for developers, aligns closely with wider council planning policy, and also ensures that external best practice is included throughout the document. New guidance notes and templates for developers have also been produced to ensure the Code's processes are as efficient as possible (see Appendix 3 for new pro forma templates).

4.8 The newly updated Code strengthens the Council's requirements for developer compliance in a number of areas. As well as updating the Code to reflect changes in best practice since it was first published in 2016, there are many brand-new requirements that go beyond current accepted best practice. While not an exhaustive list of updates, some of the new requirements for developers include:

- Community liaison – stronger requirements for large scale developments to provide ongoing information and communications channels to the local community and local stakeholders, through regular email newsletters and dedicated project websites. Major developments are also required to work with other 'overlapping' developments to reduce potential cumulative impacts.
- Sensitive receptors – the council is now able to 'upgrade' projects to require stronger mitigation from developers in areas where there are higher than average incidences of public health concerns such as asthma and chronic obstructive pulmonary disease (COPD). The council also reserves the right to 'upgrade' projects based on their proximity to sites such as schools/nurseries, care homes and other healthcare uses.
- Noise – the CoCP updates and strengthens previous wording around noisy working and hours of working, and embeds a number of new best practice guidance published since the 2016 version of the Code.
- Dust / air pollution – the new CoCP goes beyond requirements made by the GLA or by any other London borough in our standards for emissions from construction equipment (Non Road Mobile Machinery, often abbreviated to NRMM), and in the 'trigger levels' we require for monitoring dust emissions on site. These standards have been developed in conjunction with the GLA and are an example of the new Code's best practice status.
- Live hoardings – the CoCP includes a strengthened requirement for major developments to use green hoardings where practicable.
- The remit of the code has been broadened in response to the consultation and applies now to major refurbishments which have a similar impact to a new development (demolition and construction) as this will be more common in the future due to the climate change agenda.

- A possibility for a pre-construction agreement has been introduced in the CoCP, so that the developer can request advice prior to the development being permitted.
  - The requirement for submitting employment and skill plans has been taken out of the CoCP as it was difficult to agree them within the set timeframe. These are now secured via s106 agreements.
- 4.9 With regards enforcement, when the developer's submitted Construction Management Plan or Site Environmental Management Plan is agreed with the Council, the developer in signing Appendix A to the CoCP creates a legally enforceable relationship between the signatory and Westminster City Council. If the developer was to operate outside the agreed process and no statute is in place to enforce then the contractor would be operating in breach of the contract.

### **Public consultation**

- 4.10 A public consultation for the draft revised code was conducted between 24 June and 28 July 2021, although submissions received after this date were also accepted for one week after.
- 4.11 28 responses were received and accepted as part of the consultation. 13 responses were from residents, nine from local groups (including resident groups, amenity societies, and pressure groups), one industry respondent, one Westminster Councillor, two Government organisations (the Environment Agency and Natural England), and two responses were anonymous.
- 4.12 The consultation survey asked a number of open-ended questions requesting feedback to various elements of the revised Code. In addition there was one question at the end of the survey that asked respondents whether overall they supported or objected to the policies and procedures set out in the Code. One respondent did not support the Code, considering that the policies within in were not strong enough.
- 4.13 Following feedback provided by respondents, a number of changes were made to the Code to strengthen various elements, and to increase the clarity and accessibility of the document.
- 4.14 The full consultation report, with details of the consultation responses and the council's corresponding comments, plus a change log highlighting where amendments to the Code were made as a result of consultee feedback, can be found attached as a background paper to this Report. This consultation report

will be published alongside the Code of Construction Practice on the council's website following adoption of the Code. A number of other guidance documents and templates for applicants will also be published on the Council's website ahead of the 1<sup>st</sup> January 2022 adoption date to allow applications already in development some lead in time to meet the new Code's requirements.

### **Scrutiny Committee**

- 4.15 Following changes made as a result of the public consultation, the Code was brought to the Communities, Regeneration and Housing Policy and Scrutiny Committee on 14<sup>th</sup> October 2021 as part of a wider substantive item on Air Quality.
- 4.16 The Committee was supportive of the council's work on air quality, including the draft CoCP. There were no objections to the changes made to the Code heard at the Committee. As a result, no substantive changes to the Code were made following this meeting.

## **5. Financial Implications**

- 5.1 The main financial implications relate to the collection of fees under the Code as set out in Appendix D of the Code. By signing up to the CoCP, developers will have agreed to a service of monitoring and inspections during the construction phase to address potential issues arising with neighbours. This service will be paid for by the developer, recharged on an hourly rate basis to cover the costs of the service provision. There are therefore implications related to fees and service provision for the Council.
- 5.2 The CoCP and the proposed calculation of fees payable are set out in Appendix D of the Code. These are set on a cost recovery basis and include an estimated 'range' associated with the different 'Levels' of the Code. This varies according to the number of monitoring visits required, and fees have been broken down on an hourly basis to show how they are calculated. The Council will be recovering the cost of the service through the fee charging mechanism.

## **6. Legal Implications**

- 6.1 The Council's Code of Construction Practice is a fee-based monitoring service. 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.

- 6.2 The power to charge under the Localism Act 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 already legally obliged to provide, or for which it already has a discretionary power to charge under an alternative piece of existing legislation. Any charges made under the Localism Act are also limited to the amount required to recover the cost of providing the service in question.
- 6.3 There are existing statutory powers to charge fees in respect of a number of the services to be provided under the Code; accordingly, these will not be covered by the charges made under s1 of the Localism Act 2011.
- 6.4 The fee-based mechanism in order to manage the construction impacts of development is in compliance with the Localism Act 2011.

## **7. Carbon Impact**

- 7.1 The Code of Construction Practice will support the council's wider Climate Emergency work through its aims to minimise and reduce the environmental impact of development on the City. For example, the Code has specific chapters on reducing the impact of construction and new development on air pollution, transport and the public highways, flood risk and urban ecology. Up to 50% of a building's emissions over its lifetime can be attributed to embodied emissions (e.g. those arising from construction, demolition and disposal). There are clear co-benefits between reducing these environmental impacts of development and meeting the goals of our Climate Emergency Action Plan to support the city in becoming net carbon zero by 2040.
- 7.2 The Code supports and aligns closely with the City Plan 2019-40 and the forthcoming Environment Supplementary Planning Document.

## **8. Consultation**

- 8.1 Please see the consultation report appended to this report as a background paper.

## **9. Equalities**

- 9.1 Under the Equalities Act 2010 the Council has a "public sector equality duty". This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act:

- o to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and
  - o to foster good relations between persons who share a relevant protected characteristic and those who do not share it.
- 9.2 The Council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "having due regard" to the need to promote equality of opportunity involves in particular having regard to:
- o the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic;
  - o take steps to meet the needs of persons sharing a protected characteristic that are connected with it;
  - o take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and
  - o encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.
- 9.3 The courts have held that "due regard" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.
- 9.4 An Equalities Impact Assessment screening has been undertaken for the revised Code of Construction Practice, which has found positive benefits associated with the Code.

**If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:**

Adam Webber, Principal Policy Officer (Air Quality), Policy and Projects; [awebber@westminster.gov.uk](mailto:awebber@westminster.gov.uk)

Gavin McIntosh, Senior Practitioner, Environmental Sciences; [gmcintosh1@westminster.gov.uk](mailto:gmcintosh1@westminster.gov.uk)

## **APPENDICES**

- Public Consultation report for the 2021 public consultation on the draft Code of Construction Practice
- Westminster City Council Code of Construction Practice (final draft)

## **BACKGROUND PAPERS:**

- 2016 Cabinet Member Report for original adoption of the Code of Construction Practice

*NB: For individual Cabinet Member reports only*

For completion by the **Cabinet Member** for Communities and Regeneration

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
NAME: \_\_\_\_\_

State nature of interest if any

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*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled *Adoption of the revised Code of Construction Practice* and reject any alternative options which are referred to but not recommended.

Signed .....

Cabinet Member for Communities and Regeneration

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

### Other Implications

#### 1. Resources Implications

This service will be paid for by the developer, recharged on an hourly rate basis to cover the costs of the service provision. The Council will be recovering the cost of the service through the fee charging mechanism.

#### 2. Business Plan Implications

Delivery of the Code of Construction Practice to support better management of construction impacts is a key City for All priority and is part of the Council's Climate Emergency Action Plan.

#### 3. Risk Management Implications

There are no implications identified.

#### 4. Health and Wellbeing Impact Assessment including Health and Safety Implications

The Code of Construction Practice covers matters relating to health and safety, as well as factors which affect health and wellbeing, including noise and pollution. Accordingly the Code is expected to have a positive impact on these matters through its provisions relating to security, hoardings, lighting which are of relevance to crime and disorder.

#### 5. Crime and Disorder Implications

The Code is expected to have a positive impact on these matters through its provisions relating to security, hoardings, lighting which are of relevance to crime and disorder.

#### 6. Impact on the Environment

The Code of Construction Practice has a positive impact on the environment, particularly in respect of community engagement, noise and vibration, dust and air pollution and the management of traffic. Additionally, it has a beneficial impact on the cumulative impacts arising, through the oversight it gives the council, and from this, the ability to require better coordination of impacts on

neighbouring sites.

## **7. Staffing Implications**

The management of the Code will be sufficiently resourced by staff from Environment and City Management.

## **8. Human Rights Implications**

There are no implications identified.

## **9. Energy Measure Implications**

Relevant implications identified in Section 7 of the main body of this report.

## **10. Communications Implications**

The requirement for developers to use the Code has been established since its original introduction in 2016, and is clearly communicated to applicants throughout the planning application process and on the council's website.

## **11. Counter Terrorism and Security Implications**

There are no substantive implications identified. Chapter 3 ('General Site Operations') of the revised CoCP contains details related to general security and emergency planning / response requirements for sites.