

CONTROL OF POLLUTION ACT 1974 - SECTION 61

PRIOR CONSENT FOR WORK ON CONSTRUCTION SITES

To: Stephen Balfour
GRAHAM,
5 Ballygowan Road,
Hillsborough,
Co Down,
BT26 6HX

WHEREAS you have made an application dated **1st April 2019** for prior consent under Section 61(1) of the Control of Pollution Act 1974 in respect of construction work for the Tilbury 2 Port Development at the Marine and Terrestrial Sites, Tilbury 2 (EX RWE Power Station A), Fort Road, Tilbury RM18 8UJ as indicated on the submitted plans at Appendix 1 and as described in Part 3 of the Application comprising:

Aggregate deliveries

- Continuous aggregate deliveries during seven discrete 48 hour periods over 9 months.
- Stockpile management associated with the deliveries

Insofar as these works lie within the boundaries of the Thurrock Borough Council,

CONSENT is **HEREBY GIVEN** by the **THURROCK BOROUGH COUNCIL** (hereinafter referred to as the "Council"), subject to the following conditions:

1. **Normal construction activities**

Normal construction activities shall only be carried out between the hours specified below.

Monday – Friday	08:00 -18:00 hours
Saturday & Sunday	08:00 -16:00 hours

There shall be no working on a Bank Holiday or outside these stated hours except for:

- (a) Enabling Activities (see below)
- (b) Pumps to control water levels which may operate 24 hours per day, 7 days per week as required
- (c) Delivery of abnormal loads as required.

Aggregate Deliveries and stockpile management

Monday – Sunday (excluding Public Holidays)	00:00 -24:00 hours
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For a maximum continuous period of 48 hours on each of the 7 requested occasions.

Enabling Activities

To maximise the work that can take place within the above prescribed normal working hours, enabling activities may take place between:

07:00 – 08:00 and 18:00 – 20:00 Monday – Sunday

The following activities may be undertaken during the start and close down period:

- Arrival and departure of workforce on site
- Deliveries and off loading
- Maintenance and checking of plants and machinery
- Refuelling of plants and machinery
- Start-up of plant and machinery engines
- Site inspections and safety checks prior to commencing work
- Site meetings/ TBT/ Task briefing
- Site clean-up

The start-up and close down will not be considered as an extension of the normal working hours and the activities will be carried out as close to the normal working hours as practically possible.

2. Project Management

If, in the opinion of the site management, in order to comply with Health and Safety legislation (including making works safe), codes of safe working and traffic management, construction works and associated operations from time to time can only be undertaken outside of these hours, then prior approval must be sought from the Environmental Protection Team (telephone: 01375 652096 or email mgency@thurrock.gov.uk) and the approval given in writing/email before works can commence outside the hours stipulated in (1) above.

3. Permitted Maximum Noise Levels.

The noise mitigation measures described in section 7 of the application shall be used in order to minimise the resultant noise level at the façade of the nearest noise sensitive receptors.

The noise immission levels, from the consented construction works, at any residential noise sensitive receptor shall not generally exceed the limits in the Table 1 below. For the avoidance of doubt the periods in the table below are not the permitted hours of work. Periods outside the permitted hours of work as described in (1) above are provided for information in case the Council explicitly agrees to works outside the permitted hours for the reasons described in (2) above.

Where predicted or measured noise levels exceed the limits in the table below for the corresponding time period, noise mitigation commensurate with Best Practicable Means (BPM) shall be put in place so that, wherever possible, the limits are no longer exceeded.

Table 1. Airborne noise LIMIT levels

Day	Time	Averaging Period, T	Noise LIMIT Level ^[1] dB L _{Aeq,T}
Mondays to Fridays	0700 - 0800	1 hour	70
	0800 - 1800	10 hours	75
	1800 - 1900	1 hour	70
	1900 - 2200	1 hour	65
Saturdays	0700 - 0800	1 hour	70
	0800 - 1300	5 hours	75
	1300 - 1400	1 hour	70
	1400 - 2200	1 hour	65
Sundays	0700 - 2200	1 hour	65
Any day	2200 - 0700	1 hour	55

Note: [1] L_{Aeq,T} shall be as defined in BS 5288

It is unlikely that the proposed works could give rise to complaints related to vibration by residents. If complaints are received the Council will investigate and decide what action is appropriate on a case-by-case basis with reference to the vertical Vibration Dose Value (VDV - as defined in BS 6472) and the corresponding probability of adverse comment for nuisance. Alternatively the estimated VDV (eVDV) may be derived from measurements of the peak particle velocity.

If residents become concerned about damage to their property, reference will be made to BS 7385 - Evaluation and measurement for vibrations in buildings Part 2, Guide to damage levels from groundborne vibration. Vibrations levels measured in accordance with BS 7385 Part 1, shall be at least an order of magnitude below the "cosmetic damage" threshold with respect to the peak particle velocity for residential premises.

4. Details of any site activities that cannot comply with (1) or (3) above shall be submitted to the Council in advance by e-mail, using the variation notice attached. Use this form to confirm your application for a minor variation to the works that featured in your application for a Section 61 consent and for which consent has been issued by the Thurrock Council. This also includes *minor* additional activities that were not included in the original application and do not materially affect any predicted noise levels.
5. The plant and equipment listed in Section 6 of the application shall be used to carry out the works outlined in sections 3 and 4 of the application. The applicant may substitute an alternative item or use additional items of plant or equipment and will use BPM to ensure that the effective sound power level is equivalent, similar or lower than that stated in the application.
6. Where it becomes apparent that pre-planned construction works, not covered by dispensation from this consent, are going to run after the consented hours, the applicant shall notify the Environmental Protection Team of this Council on the following telephone number: (01375) 652096 and confirm this using the overrun notification proforma attached, which is to be emailed to [mgentry@thurrock.gov.uk](mailto:mgency@thurrock.gov.uk) of the Environmental Protection Team of the Council.
7. Best Practicable Means (BPM) as defined in Section 72 of the Control of Pollution Act 1974 shall be employed at all times to reduce noise (including vibration) to a minimum, with reference to the general principles contained in British Standard BS 5228-:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites'. The steps taken to minimise noise and vibration as detailed in section 7 of the application shall be adhered to at all times.

8. The applicant shall carry out noise and/or vibration monitoring if requested by the Council. Appropriate noise monitoring may be requested where complaints are received by the council and verified by the Environmental Protection Team. Significant deviation from any predicted noise levels contained in the application will be considered when assessing whether BPM are being employed. The results of any such monitoring will be made available, at the site office, to any Authorised Officer from the Council as soon as reasonably practicable.
 9. An emergency contact name and telephone number available on a 24 hours basis shall be notified to the undersigned prior to the commencement of operations and shall be on display in the vicinity of the working area or at the site entrance and on the project website (if one is available).
 10. The date of commencement of each of the 7 above consented 48 hour periods shall be notified to the undersigned by email prior to any activity commencing on site.
 11. Occupiers who may be significantly affected by noise from the works shall be notified of the nature of the works, a contact name, telephone number (including that to be used outside normal working hours), and address to which any enquiries should be directed. Such notification shall take place, where possible, 2 weeks but, in any event, at least a week prior to the works commencing. The Council shall be consulted on the wording of any notification, and the proposed distribution list. A copy of the final notification, together with its distribution list, shall be sent to the undersigned at the time of distribution.
 12. This consent will remain valid until **31st April 2020** or until the works to which it relates are completed whichever is the sooner.
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THIS CONSENT

- A. RELATES ONLY TO THE INFORMATION GIVEN IN YOUR APPLICATION, TOGETHER WITH ANY ADDITIONAL INFORMATION PROVIDED IN WRITING WHICH FORMS PART OF THIS CONSENT, AND
- B. MUST BE NOTIFIED TOGETHER WITH ANY CONDITION SPECIFIED ABOVE BY THE APPLICANT TO ANY OTHER APPROPRIATE PERSON CARRYING OUT ANY SUCH WORK ON THE SITE, AND
- C. IS GIVEN IN RELATION TO THE PROVISIONS OF SECTION 61 OF THE CONTROL OF POLLUTION ACT 1974. IT MUST NOT BE TAKEN TO REPLACE ANY RESPONSIBILITIES YOU MAY HAVE UNDER THE WORKPLACE HEALTH & SAFETY LEGISLATION, OR ANY OTHER LEGISLATIVE REQUIREMENTS.

If you knowingly carry out or permit to be carried out works in contravention of any conditions attached to this consent you will be guilty of an offence under Part III of the Control of Pollution Act 1974. On summary conviction will be liable to a fine not exceeding Level 5 on the Standard Scale of fines* together in any case with further fines not exceeding £50 for each day on which offence continues after conviction.

This consent is authorised by

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Mark Gentry
Environmental Health Officer
(The Officer appointed for this purpose)

Thurrock Borough Council
Environmental Protection Team
Planning, Transportation & Public
Protection Place Directorate
Civic Offices, New Road
Grays, Essex
RM17 6SL

Dated **9th April 2019**

*Currently £5,000 (subject to alteration by Order)

NOTES

The Local Authority draws attention to:

- Section 61(5)(b) of the Control of Pollution Act 1974 and may vary this consent due to any changes in circumstances.
- Section 61(9) of the Control of Pollution Act 1974 – That his consent does not of itself constitute any ground of defence against any proceedings instituted under section 82 of the Environmental Protection Act 1990.
- Section 61 of the Control of Pollution Act 1974 may be viewed on line here: <https://www.legislation.gov.uk/ukpga/1974/40/section/61>
- Any predicted noise levels in the application, to which regard will be had in assessing whether BPM are being employed.

SCHEDULE 1

Dispensations

Where the proposed works have to be changed from the original programme as given in the application to require operations outside the terms of this Consent, the Applicant shall apply to the Council in writing for a Dispensation at least 14 days in advance of the proposed operation submitting the following:

- Details of the operation in question
- Reasons why the operation cannot be carried out within the terms of the Consent
- Proposed working hours
- Predicted noise and vibration levels at relevant locations
- Proposed steps taken to reduce noise and/or vibration to a minimum

Where the working method and proposed mitigation is deemed to be acceptable to the Council, a Dispensation varying the terms of this Consent will be issued in respect of the proposed activities. The Dispensation may be issued subject to specific conditions and may be time limited subject to review. Occupiers of nearby residential or other noise sensitive properties who are likely to be affected shall be informed as soon as reasonably practicable by the Applicant about this and, where appropriate, the likely duration of the works.

Variations

Experience has shown that minor variations in the works featured in the consent application are found to be necessary as work progresses, for a variety of reasons. Where the rescheduling of works is of a critical nature (such as a key activity likely to delay other key activities) the Applicant can apply to the Council for a Variation. This procedure has also been used for minor additional activities that were not included in the original application and do not materially affect the predicted noise levels. In these circumstances, it is not necessary for the Applicant to provide the details commensurate with an application for a dispensation. A form has been devised allowing the Applicant to confirm by email relevant details to the Council. The application is to be received by the Council where practicable 7 days, but at least 2 working days, ahead of the start of the works for which the application is made. If the Council approves the application, the document will be countersigned and emailed back to the Applicant with conditions, if appropriate. Occupiers of nearby residential or other noise sensitive properties who are likely to be significantly affected shall be informed as soon as reasonably practicable by the Applicant about this and, where appropriate, the likely duration of the works.

Notification of an Overrun

It is accepted that overruns may occur from time to time. These are looked upon sympathetically by the Council where they are for sound engineering or health and safety reasons. A form has been devised allowing the contractor to confirm by email relevant details of an overrun to the local authority. The Council countersigns the document confirming its receipt and emails it back to the Applicant. It should be noted that, unlike the dispensation and variation procedures, this is not an approval process. If the Council subsequently determines that the overrun was not for sound engineering or health and safety reasons and could have been avoided, the matter will be taken up with the Applicant as being a potential breach of this Consent.

INFORMATION CONCERNING APPEALS

The *Control of Noise (Appeals) Regulations 1975* provide as follows:

Appeals under *Section 61(7)* of the *Control of Pollution Act 1974*

1. The provisions of this regulation shall only apply to an appeal brought by any person under sub-section (7) of Section 61 (prior consent for works on a construction site) in relation to a conditional consent given by the Local Authority under that Section or in relation to an Authority's refusal or failure to give a consent within the period specified in sub-section (6) of that Section (see Note below).
2. In this regulation "conditional consent" means a consent given by the Local Authority under Section 61 in respect of which the Local Authority have attached any condition or imposed any limitation or qualification in pursuance of Section 61(5)(a), (b) or (c); and "conditions" includes any limitation or qualification so imposed.
3. The grounds on which a person to whom a Local Authority give a conditional consent may appeal under the said sub-section (7) may include any of the following grounds which are appropriate in the circumstances of the particular case :-
 - (a) that any condition attached or imposed in relation to the consent (hereinafter referred to as "a relevant condition") is not justified by the terms of Section 61;
 - (b) that there has been some informality, defect or error in, or in connection with, the consent;
 - (c) that the requirements of any relevant condition are unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or where more than one time is specified, any of the times, within which the requirements of any relevant condition are to be complied with is not reasonably sufficient for the purpose.
4. If and so far as an appeal is based upon the ground of some informality, defect or error in, or in connection with, the consent, the magistrates' court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.
5. Where the appeal relates to a conditional consent given by a Local Authority, on the hearing of the appeal, the magistrates' court may -
 - (a) vary the consent or any relevant condition in the favour of the appellant in such a manner as it thinks fit, or
 - (b) quash any relevant condition, or
 - (c) dismiss the appeal;and a consent or condition which is varied under sub-paragraph (a) above shall be final and shall otherwise have effect, as so varied, as if it had been given, attached or imposed in that form by the Local Authority.

NOTE

Any appeal must be lodged with the magistrates' court within 21 days of the date of this consent.

NOTIFICATION OF OVERRUN

For GRAHAM

Contractor Section 61 Reference:	
Local Authority Section 61 Consent Reference:	Tilbury 2 Port – 48h Aggregate & Stockpiles 01/MG
Date:	
Overrun Reference:	

Brief Description of Overrun (including Reason)

Location of works:	
Date and period of overrun:	
Details justifying need to work outside normal working hours:	
Equipment to be used:	
Person in charge of out of hours works:	
Direct site contact telephone number for person in charge:	

	For GRAHAM	Noted by Thurrock Borough Council
Name:		
Signature:		
Date:		

Distribution:

APPLICATION FOR VARIATION TO SECTION 61 CONSENT

For GRAHAM

Contractor Section 61 Reference:	
Local Authority Section 61 Consent Reference:	Tilbury 2 Port – 48h Aggregate & Stockpiles 01/MG
Date:	
Variation Reference:	

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	For GRAHAM	Approved by Thurrock Council
Name:		
Signature:		
Date:		

Distribution:

Notes

Use this form to confirm your application for a minor variation to the works that featured in your application for a Section 61 consent, for which consent has been issued by the Thurrock Council. This includes minor additional activities that were not included in the original application and do not materially affect the predicted noise levels.

Do not use this form for other matters that were not included in your application for a Section 61 consent and are not covered in the consent that has been granted. For these matters please use the standard Section 61 dispensation form

Approved, Subject to the Following Conditions

