

Title of meeting: Cabinet Member for Environment and Community Safety Portfolio Decision Meeting

Date of meeting 11 November 2015

Subject: Noise Enforcement Policy 2015

Report by: Director of Regulatory Services, Community Safety and Troubled Families

Wards affected: All

Key decision: No

1. Purpose of report

- 1.1 The Environmental Protection Act 1990 is the principal legislation for dealing with the majority of noise related issues. The introduction of the Anti-Social Behaviour, Crime and Policing Act 2014 (ASBC&P Act) does however provide new powers that may be useful in combating noise in the street and other public areas where there is a strong element of noise related anti-social behaviour.
- 1.2 Environmental health investigate all complaints received by PCC in relation to noise nuisance and have consequently devised comprehensive service management procedures guiding officers in the investigation of multiple types of noise nuisance, including domestic, industrial, entertainment and machinery sources. Few of these, however, are of assistance in dealing with noise outside the boundary of a premises.
- 1.3 The purpose of this report is therefore to seek approval for changes to Portsmouth City Council's (PCC) Noise Enforcement Policy 2011 following the adoption of the ASBC&P Act to assist particularly with noise occurring in public areas but also occasionally in conjunction with existing noise enforcement powers.

2 Recommendation

- 2.1 **That the cabinet member for environment & community safety:**
- a) **Adopts the Portsmouth City Council 2015 neighbourhood noise enforcement policy as attached as Appendix 1 to this report;**
 - b) **Approves the guidance note attached as Appendix 2 which sets out how the ASBC&P Act might be used in relation to noise;**
 - c) **Acknowledges both the content of the statistical report, attached as Appendix 3 which provides details of activities of the pollution control team specifically in relation to noise enforcement.**

3 Statement of purpose

- 3.1 PCC is committed to improving the health and wellbeing of our residents and the quality of their surroundings. In terms of noise impact there is no right to absolute peace and quiet and people should be tolerant of occasional disturbance from noise. Environmental Health aim to effectively investigate serious or persistently unacceptable levels of noise and thereby maintain a quality of peaceful life through the prevention and abatement of statutory nuisance and noise related anti-social behaviour.

4 Noise and public health

- 4.1 Noise is recognised as a factor impacting on people's health in the Public Health Outcomes Framework (PHOF) February 2015. This sets out a vision for public health in England, with desired outcomes and indicators to aid understanding of how well public health is being improved and protected. The PHOF includes a noise indicator as a 'wider determinant of health'.

5. Background - investigation of statutory nuisance

- 5.1 Over 2,400 complaints are received by PCC each year in respect of noise issues affecting residents or businesses in Portsmouth. Of these around 80% relate to domestic noise. Statistics are not currently kept in relation to noise in the street, common areas or public spaces however the numbers are expected to be relatively low.
- 5.2 Noise often affects only one person or household, but over a period of time may result in much greater disturbance. It is therefore necessary to intervene early. In an attempt to do so, generally within 3 days of receipt of a complaint, we write to, or visit, those accused of creating the noise.
- 5.3 In the vast majority of situations this contact is sufficient to resolve the problem and no further contact from the complainant is received. Where noise recurs after the date of registration, we ask complainants of domestic noise to notify us that our contact with the person responsible for the noise has failed to resolve the problem.
- 5.4 Where we receive notification that the problem has recurred, the complaint then becomes active and passed to a designated officer for investigation. The service provides details of how further incidents of unreasonable noise should be reported and details of our investigation processes, which include details of our out-of-hours noise investigation service. Complainants are expected to assist in the investigation of recurring noise problems and reactively contact officers when noise is occurring and/or permit and operate the installation of noise monitoring equipment.
- 5.5 Complaints relating to non-domestic properties are dealt with slightly differently as upon contact complainants are provided with details of our out of hour's service immediately.

6. Changes to service delivery

- 6.1 Following delegation of authority to officers within Environmental Health, the ASBP&C Act would be appropriately used by them to investigate and take enforcement action relating to noise related activities.
- 6.2 Such actions may include the use of civil injunctions, criminal behaviour orders, community protection notices and closure notices.

7. Potential use of new powers to tackle noise problems

7.1 The aforementioned summary of procedures set out in section 5 is unlikely to apply to the investigation of noise in public spaces. New procedures have therefore been devised in compliance with the legislative requirements of the ASBP&C Act to appropriately tackle such problems. The summary of the new powers and overriding operational resolutions are set out below.

7.2 Civil Injunctions

7.2.1 Injunctions may be used to prevent individuals from engaging in noise related anti-social behaviour. It is envisaged that the use of injunctions will usually be a last resort used in situations where other noise specific legislation is unavailable or has failed to provide a permanent remedy. Injunctions could be used as a fast and effective protection for victims and communities, so there may be circumstances where injunctions may be appropriate to prevent serious noise problems from escalating.

7.3 Criminal Behaviour Order

7.3.1 Criminal behaviour orders (CBO) may be used when a perpetrator is convicted of a criminal offence and where there is evidence beyond reasonable doubt that the offender has engaged in noisy behaviour that caused or was likely to cause harassment, alarm or distress and the court considers that making the order will help in preventing such behaviour.

7.3.2 As contravention of an abatement notice served under the provisions of the EPA1990 is a criminal offence it is possible to seek a CBO on a conviction obtained under our specific noise related powers.

7.4 Community Protection Notice

7.4.1 Community protection notices (CPN) are intended to deal with repeated or on-going conduct which negatively affects the quality of life of the community. The test for anti-social behaviour under this part of the Act is that officers have to be satisfied on reasonable grounds that the noisy conduct of the individual or business is having a detrimental effect on the quality of life of those in the locality and must effect the community at large. Where proven, where the governing procedural issues have been implemented, a CPN could be issued in relation to noisy behaviour.

7.4.2 There is a principle of law that a specific power e.g. statutory nuisance under EPA1990 should be used in preference to a general one. Therefore prior to the

service of a CPN consideration should first be given to the use of statutory nuisance and other legislation such as The Noise Act 1996, Control of Pollution Act 1974 and Clean Air Act 1993.

7.5 Closure Notices

7.5.1 Section 76 of ASBC&P Act gives powers to enable closure of premises associated with noise nuisance for up to 48 hours by issuing of a Closure Notice (CN) and for up to 3 months by obtaining a Closure Order from the Courts.

7.5.2 To issue a CN officers must be satisfied on reasonable grounds:

- That the use of a particular premises has resulted or is likely to result in noise nuisance to members of the public; or
- There has been or is likely soon to be disorder near those premises associated with the use of those premises and that the notice is necessary to prevent the noise nuisance from occurring, recurring or occurring;
- Authorised officers of the Council can issue CN for a period of 24hours, whilst the Chief Executive Officer or a designated officer for the Chief Executive Officer can issue Closure notices for a period of up to 48 hours in relation to noise emissions.

7.6 Absolute ground for possession

7.6.1 Although not a power likely to be used unilaterally by Environmental Health, working in partnership, landlords have powers to seek mandatory possession within a 4 week notice period once a tenant or a member of their household or a person visiting the property has been convicted for a breaching noise abatement notice or a CBO.

8 Equality impact assessment

8.1 An EIA has previously been completed for the current noise enforcement policy operated by PCC. The amended policy further improves the noise enforcement and regulation service currently received by Portsmouth residents.

9 Legal implications

9.1 Statutory nuisance is defined by the provisions of the EPA1990 Section 79(1) which states that it is the duty of every local authority to take such steps as are reasonably practicable to investigate and detect statutory nuisance.

9.2 The EPA does not specify how this duty should be implemented. In 2011 the Council amended the 2009 Noise Enforcement Policy and approved the current manner in which complaints of statutory noise nuisance are investigated. This report merely seeks an amendment to that existing policy to take account of the new powers provided under the ASBP&C Act and enhance the ability of officers to tackle noise problems.

9.3 There is no statutory requirement to adopt or use the powers provided by the ASBP&C Act.

10 Director of Finance's comments

- 10.1 The activities proposed within the Noise Enforcement Policy 2015 and summarised in this report, will be funded from the existing portfolio budgets, as approved by Full Council.

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 Signed by: Rachael Dalby - Director of Regulatory Services, Community Safety and Troubled Families

Appendix 1: Portsmouth City Council 2015 neighbourhood noise enforcement policy.

Appendix 2: Anti-Social Behaviour Criminal & Police Act 2014 guidance for use within environmental health in relation to noise.

Appendix 3: Activities of the pollution control team in relation to noise enforcement

Background list of documents: The following list of documents discloses facts or matters, which have relied upon to a material extent by the author in preparing this report:

Title of Document	Location
NIL	NIL

The recommendations set out above in 2.1 above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for the Environment and Community Safety on 2nd October 2015

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 Signed by: Councillor Robert New, Cabinet Member for Environment and Community Safety