

# Housing & Community Safety Scrutiny Sub-Committee

Monday 17 October 2016

7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

## Membership

Councillor Tom Flynn (Chair)  
Councillor Ben Johnson (Vice-Chair)  
Councillor Samantha Jury-Dada  
Councillor Karl Eastham  
Councillor Vijay Luthra  
Councillor Damian O'Brien  
Councillor Martin Seaton  
Cris Claridge  
John Nosworthy  
Michael Orey

## Reserves

Councillor Radha Burgess  
Councillor James Coldwell  
Councillor Catherine Dale  
Councillor Lucas Green  
Councillor David Hubber

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**Contact** Fitzroy Williams on 020 7525 7102 or email: [Fitzroy.williams@southwark.gov.uk](mailto:Fitzroy.williams@southwark.gov.uk)

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Members of the committee are summoned to attend this meeting

**Eleanor Kelly**

Chief Executive

Date: 14 October 2016



Item No.

Title

## **Housing & Community Safety Scrutiny Sub-Committee**

Monday 17 October 2016

7.00 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

### **Order of Business**

Item No.

Title

Page No.

**4. PRESENTATION ON THE NOISE SERVICE**

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Officer to present to the sub-committee.

Date: 14 October 2016

<b>Report title:</b>	Briefing paper - Noise and anti social behaviour
<b>Ward(s) or groups affected:</b>	All Wards
<b>From:</b>	David Littleton Head of Regulatory Services
<b>To:</b>	Housing Overview and Scrutiny Committee
<b>Date</b>	17 <sup>th</sup> October 2016

1. The following paper sets out the Service Southwark offers to tackle Noise and Anti Social Behaviour and the legislative framework that these services are delivered within.

### **Background Situation**

2. The Southwark noise service was established in 1997 as part of a noise and air quality team to meet the council's statutory obligations to deal with noise nuisance.
3. The work of the Noise and Nuisance Team contributes towards the achievement of the fairer future vision set out in the Council Plan by cracking down on noise associated anti-social behaviour.
4. The administration set out a clear commitment to have "zero-tolerance on noisy neighbours."
5. Up until 2015 services that delivered a response to noise and antisocial behaviour sat within different business units. To meet the challenge set the Noise, Anti Social Behaviour and Environmental Protection Teams were brought within 1 service to create a seamless service with a shared data base.
6. The noise team recruited 4 assistant noise and nuisance officers in 2015 which meant the team was able to offer the service for more hours per week and have more teams available to respond to noise calls.
7. The zero tolerance to noise nuisance and enhance noise service went live in 2016.

### **Current Situation**

8. Southwark's Noise, Environmental Protection and Anti Social Behaviour Teams all sit within one service unit. This means Southwark's response to domestic, commercial and industrial noise, anti social behaviour and construction site noise are dealt with, within a multi-disciplinary service dedicated to a zero tolerance to noise nuisance.

9. The Noise & Nuisance Team provide a responsive service from 7.00am Monday through to 2.30am the following morning on Tuesday, Wednesday and Thursday and 7.00am Friday morning through to 2.30am on the following Tuesday.
10. During the day and at night Monday to Thursday there is one team operating. At weekends, when the service is busier, there are two teams operating.
11. In June, July & August we have three teams working across the borough at weekends to deal with increased demand. It aims to respond to 90% of calls with one hour of receipt,
12. To tackle noise from licensed premises as well as related anti-social behaviour issues the Council & Police operate a Night Time Economy Team undertaking programmed inspections from 18.00 – 04.00hrs on Friday and Saturday nights.
13. The Noise & Nuisance Team primarily deal with the following types of noise.
  - Amplified music
  - Domestic noise
  - Noise from building sites
  - Commercial noise
  - Licensed premises (bars, pubs, clubs, etc.)

The Environmental Protection Team deal with the following type of noise.

- Complex noise
  - Industrial noise
  - Construction site noise
  - Commercial plant noise
14. However, in order for the any officer to take enforcement action the noise must be categorised as a 'statutory' nuisance by the investigating officers.

**How noise nuisance complaints are dealt with.**

15. Frequent and excessive noise has been demonstrated to have an impact on health. Local authorities have allocated this responsibility to Environmental Health Officers (EHOs) or qualified Acousticians holding degree level qualifications. Government guidance states that such officers must hold professional noise focused qualifications.
16. Council officers are legally required to be in the complainant's property to decide if the noise complained of is a statutory nuisance or not.
17. The legal test for noise nuisance is an objective one. The noise must be a combination of either frequent, intense or of excessive duration.
18. When the Noise & Nuisance team attend a complaint the potential outcomes are (a) it is a nuisance, a warning letter or abatement notice is served (b) it is not a nuisance and there is no recourse in nuisance law (c) the complainant can take their own action through the magistrates' court. All complainants

have these options explained to them. This is a zero tolerance approach to noise within the legal framework for noise nuisance.

19. Whether the noise issue is a statutory nuisance or not, noise officers will in most cases speak to those causing the noise asking for the noise to be reduced. A particularly issue for residents has been where a noise problem has been reported, noise officers arrive on site but because of the lateness of the hours residents do not want them in their home. The old approach was that the officers could do nothing further as they could not make the necessary assessment. In response to residents' concerns officers will, when access to the complainant's dwelling is not offered, find the noise source and try and negotiate a reduction. If this is not successful although action under the Environmental Protection Act is not possible the matter will be referred to SASBU for follow up action.
20. Noise levels are measured in decibels and noise monitors can be used to measure the noise level. However, the law does not set a noise limit as noise nuisance has to be assessed in the context in which it is occurring. So noise equipment cannot be used to determine if a nuisance exists. However, noise equipment can be used to determine if a case should be prioritised or indeed if pro-active visits should be made and noise readings can strengthen a legal case.
21. A number of complaints result in visits by the noise team where the problem has ceased by the time the officers arrive on site. These 'difficult to prove' cases can result in concern from residents and time wasted by officers.
22. Southwark has recently purchased the Noise App in order to assist officers to prioritise cases and identify actionable noise nuisance. This will also help avoid visits that result in no nuisance being witnessed.
23. The Noise App is issued to residents under the direction of the Noise Team. Any information captured by the App is sent to a cloud based data base in real time which the officers can access. Where a pattern or problem develops the team can either deploy resources reactively or proactively to witness the problem or write to the perpetrator to inform them that the Council is aware that a problem exists and the situation is being monitored. This in itself may secure compliance.
24. The Noise Team has also purchased noise recording equipment. The noise team are able to place this in a residents home. When noise occurs the resident is able to activate the equipment and record the occurrence. The equipment is left on site for a week and then analysed. We have to ensure compliance with RiPA. If the evidence indicates that there is a problem we can use this to tackle perpetrators. Either requesting compliance or using powers under the Act

#### **Legal definition of noise nuisance**

25. Making a decision that a complaint amounts to a statutory nuisance means that a number of factors need to be weighed up.
26. There must be a material interference with the enjoyment and use of the complainant's property, the noise must therefore be considerable.

27. The noise must substantially affect the enjoyment of comfortable living, such as loss of sleep, interfering with conversation or watching television. However, there would have to be consideration of the time the noise occurs, the intensity of the noise, its character and its duration.
28. Isolated acts, unless extreme, would not be considered to be a nuisance, for example 'one- off' parties, the problem must normally be continuous or frequent.
29. Any assessment of whether a particular problem amounts to a statutory nuisance is made from the perspective of an ordinary reasonable person.
30. The noise team must exclude any personal circumstances or sensitivities of the complainant from its considerations when assessing nuisance.
  - a. Factors such as unusual shift patterns, medical conditions or other sensitivities of the complainant cannot be taken into account when assessing whether a particular problem is causing a statutory nuisance.
  - b. Whether best practicable means have been used to control noise emanating from commercial, industrial, or business premises.
  - c. Some of the common complaints the noise team receive, but cannot deal with under the provisions of the Environmental Protection Act 1990: household noise, for example, shutting doors, walking up and down stairs, children playing, flushing toilets, footsteps where laminated floors have been installed, and so on.
  - d. It is a person's basic right to use and enjoy their property but there is no right to tranquillity or silence.
31. The local authority must take an objective view of the situation, and not be over influenced by the persuasiveness of either the noise producers or their victims. The noise team issue notices in all cases where a statutory nuisance is witnessed.

### **Southwark's Anti Social Behaviour Team**

32. Southwark Anti Social Behaviour unit is a multi agency team responsible for taking enforcement action across the Borough to deal with anti-social behaviour (ASB). The team work on an area basis with a dedicated officer responsible for all ASB across a specific geographical area. SASBU work with the most serious cases of ASB but have a crucial role in assisting and supporting residents' officers in managing lower level ASB.
33. Anti Social Behaviour is a broad term used to describe the day to day incidents of crime, nuisance and disorder that can cause severe distress to individuals and whole communities. Behaviours range from littering, vandalism to public drunkenness and harassment to abuse and using noise to intentionally distress. The ASB team work very closely with the Police, the Noise Team and the neighbourhood wardens.

### **Anti Social Behaviour Legal Framework**

34. In October 2014 the Anti Social Behaviour Crime and Policing Act was enacted. This legislation completely over hauled the whole system of dealing

with ASB. The changes focused on simplifying the legal framework to enable professional officers to get to the root of neighbourhood problems more quickly and cost effectively. The reforms were also designed to put victims at the heart of any response to complaints of ASB. The following details the powers within the Act that can relate to noise issues and noise associated with ASB.

### **The Community Trigger**

35. The purpose of the Community Trigger is to give victims the ability to demand action, starting with a complete review of their case who have been subject to ASB including noise associated with ASB. It is incumbent on agencies to take a joined up, problem solving approach to find a solution.
36. Victims can activate the Community Trigger if their case meets the locally defined threshold which must be no higher than three complaints of anti-social behaviour (including noise) in a six month period. This is the threshold that has been adopted by Mayors Office for Policing and Crime. (MOPAC.)

### **The Community Remedy**

37. Restorative justice and informal interventions can play a significant role in tackling ASB, noise and low level crime, providing an effective way of resolving problems. Acceptable Behaviour Contracts and Mediation are currently used by Southwark ASB Unit (SASBU) and Housing Services as a means of resolving ASB without recourse to more punitive enforcement.

### **The Civil Injunction**

38. Under the 2014 Act, Anti Social Behaviour Orders and Injunctions under the Housing Act 1996 were replaced with a new civil injunction which can be applied to deal with anti-social individuals.
39. The Injunction Order, if made by the court is both a protective and a preventive measure which does not incur penalties for the respondent unless it is breached. A court may grant an injunction against anyone who is 10 years of age or older. SASBU have used injunctions to deal with very aggressive and threatening individuals, this can include hate-crime issues. Eight injunctions have been secured since April 2016.

### **The Dispersal Power**

40. The dispersal power is a flexible power which police can use in a range of situations to disperse anti-social individuals and provide immediate short term respite.
41. The Dispersal Order must be approved by a police officer of at least the rank of inspector and can be authorised for a period of up to 48hrs. This power is for use in public places and includes places to which the public has access by virtue of express or implied permission e.g. a shopping centre. Police in Southwark use this power extensively, examples include around the Elephant and Castle, in parks and on various estates experiencing youth disorder. This particularly supports the work of the Night Time Economy Team and tackling disturbance at night.

### **The Community Protection Notice**

42. The Community Protection Notice or CPN is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. A CPN can be issued if an officer is satisfied, on reasonable grounds, that the conduct of an individual, business or organisation:
- is having a detrimental effect on the quality of life of those in the locality
  - is persistent or continuing in nature
  - Is unreasonable
43. The legislation is quite specific that a written formal warning must be issued before a full CPN can be issued. The warning must make clear to the individual that they must stop the ASB or they will be issued with a CPN. A CPN can be issued against any person over the aged of 16 or a legal body including a business. In the case of a small business it could be to the shop owner, whereas in the case of a major supermarket it could be the store manager. A CPN may be handed directly to an individual or posted to them. In circumstances where the owner or occupier cannot be determined the issuing officer can post the CPN on the premises where it is considered as served.
44. Failure to comply with a CPN is an offence and is prosecuted in the Magistrates Court.
45. The Council's Environmental Enforcement Team and Noise & Nuisance Officers are delegated to serve CPNS. Although CPN formal warnings have been issued, to date, no CPN notices have been issued. The Police Joint Enforcement Team working with the Council have issued a number of CPNS to deal with aggressive beggars in and around Camberwell and have found these to be a useful tool particularly when issue resolution can be accompanied with offers of other support and intervention.

### **Closure Powers**

46. The Closure power is a fast and flexible power that can be used to protect communities by quickly closing premises that are causing nuisance or disorder. This new power consolidates the Crack House Closure Order and the Premises Closure Order.
47. The Power comes in two stages the Closure Notice and the Closure Order.
48. Southwark use these notices to deal with the most rowdy and troublesome venues.
49. Theses tend to be premises have been taken over by crack users or are involved in other drug or alcohol abuse. The Council work very closely with the police in applying for such orders. This year five closure orders have been issued and executed.

### **New Mandatory Ground for Possession**



50. Prevention and intervention should be at the heart of all approaches to dealing with ASB. However, in the exceptional cases where it is necessary for Councils to seek possession of Council Tenancies the existing process is often very lengthy and expensive and can prolong the suffering for victims and witnesses in the community. The purpose of the new absolute ground for possession is to speed up the possession process in cases where ASB or criminality has already been proven by another court.
51. The court must grant possession (subject to any human rights defence, including proportionality) provided the landlord has followed the correct procedure and at least one of the following conditions is met:
- The tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence.
  - The tenant, a member of the tenant's household or a visitor has been found by a court to have breached a Civil Injunction.
  - The tenant, a member of the tenant's household or a visitor has been convicted of breaching a CBO.
  - The tenant's property has been subject to a closure order for ASB; or
  - The tenant, a member of the tenant's property or a visitor has been convicted of breaching a noise abatement notice.
52. The Council have used this new provision on three occasions. Two in respect of dwellings involved in drug supply and one in respect of a very anti-social household causing havoc in the Community where a Closure Order had to be secured.
53. Where the mandatory grounds are not met the Council can still apply for Possession on defined discretionary grounds.
54. In such cases it is incumbent upon the Court to consider all evidence and any defence put forward and consider the reasonableness and proportionality of granting the order. Possession is a difficult and expensive process and can be very demanding and distressing for victims and witnesses. Last year 6 households were evicted from Council premises.

### **Community (Multi Agency Risk Assessment Conference) MARAC**

55. Many cases referred to SASBU and the noise team are very complex and involve individuals with vulnerabilities particularly mental health problems. SASBU chair a Community MARAC attended by health professionals where information is shared and a risk management plan developed to manage escalation. Over 40 cases have been referred to the MARAC.

### **Environmental Protection Team (EPT)**

56. The EPT main function with regard to noise is to tackle noise issues relating to construction sites, commercial and industrial processes. These noise issues are complex and require a high level of skill and experience to deal with.
57. Noise from construction sites, commercial and industrial processes are mainly dealt with under the Control of Pollution Act 1974 and require the local

authority to consider whether the person/company responsible has employed best practicable means (BPM) of mitigating the impact of the noise. The legislation accepts that despite all reasonable efforts the noise produced may still cause considerable disturbance. An example might be maintenance to infra-structure such as roads that can only be done at night to avoid considerable congestion in the day, or in the case of rail for health and safety reasons permitting works at night that can only be undertaken once the electricity supply has been turned off to the lines.

58. The team scrutinise all of these processes and ensure BPM is employed. If it is not, or works are being undertaken without Council prior consent then enforcement, or other punitive actions can be taken.

### **Mediation**

58. The Service has on several occasions engaged the services of Southwark Mediation to try and resolve long standing disputes. Such cases have involved noise issue that the Noise and SASBU have not been able to confirm that a nuisance exists, but strongly believe that an understanding between the parties can be met. To date this strategy has resulted in 4 long standing issues being resolved.

### **Professional Witnesses**

59. The Housing and Modernisation have commissioned a profession witness service. This service is only available for Council Tenants. A member of the service is deployed in a resident's home, if necessary for long periods of time to witness hard to prove cases. This has been used successfully on 2 occasions to prove acts deliberate loud banging which resulted in possession proceedings.

### **Performance**

60. The Noise & Nuisance Team adopted a zero tolerance approach to Noise Nuisance in January 2016.

### **Noise & Nuisance Team performance over the past 4 years**

<b>NOISE</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17 year to date</b>
<b>% noise service requests responded to in 3 days</b>	<b>95%</b>	<b>94%</b>	<b>94%</b>	<b>91%</b>
<b>% noise rapid response requests in 60 mins</b>	<b>84%</b>	<b>84%</b>	<b>84%</b>	<b>82%</b>
<b>Noise calls - 3 day response</b>	<b>1823</b>	<b>2833</b>	<b>2308</b>	<b>1224</b>

Noise calls - rapid response (60 mins)	<b>6907</b>	<b>8035</b>	<b>8020</b>	<b>4933</b>
Visits	<b>2360</b>	<b>2333</b>	<b>2049</b>	<b>1121</b>
Abatement notices on domestic premises & for alarms	<b>41</b>	<b>57</b>	<b>95</b>	<b>155</b>
Abatement notices on all commercial premises & sites	<b>13</b>	<b>24</b>	<b>41</b>	<b>15</b>
Prosecutions	<b>3</b>	<b>8</b>	<b>3</b>	<b>4</b>
Control of Pollution Act notices	<b>133</b>	<b>135</b>	<b>140</b>	<b>72</b>

61. The table demonstrates that the zero tolerance approach to noise nuisance has resulted in a significant increase in the number of noise notices served. The increase is 3 fold on the same period last year.

62. The table also demonstrates that there has been a 20% increase in demand on the same period last year.

### **SASBU Performance over the past 18 months**

Actions	2015/16	2016/17 year to date
Number of ASB cases	1,527	665
Community Triggers	6	none
Injunctions	9	4
Possession Notices	20	14
Evictions	7	1 plus one pending
Closure Orders	17	6
Criminal Behaviour Orders	26	16

**HOUSING & COMMUNITY SAFETY SCRUTINY SUB-COMMITTEE****MUNICIPAL YEAR 2016-17****AGENDA DISTRIBUTION LIST (OPEN)****NOTE:** Original held by Scrutiny Team; all amendments/queries to Fitzroy Williams Tel: 020 7525 7102

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Councillor Radha Burgess			
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