

Item No.	Classification: Open	Date: January 2022	Decision Taker: Housing and Community Engagement Scrutiny Commission
Report title:		Noise and Nuisance Service in Southwark	
Ward(s) or groups affected:		Borough-wide	
From:		Head of Regulatory Services	

RECOMMENDATION(S)

1. The Housing and Community Engagement Scrutiny Commission is asked to note the contents of this report. The report outlines the functions of the Noise and Nuisance Service. It explains what we can and cannot do, the Council's enforcements powers, the level of service provided and standards we work to.

BACKGROUND

2. The Noise and Nuisance Service (N&N) service sits within Regulatory Services under the Noise and Neighbourhood Service. The service is made up of 16 officers, 13 of whom work on a shift rota. These officers provide a comprehensive witnessing and intervention service, 364 days per year, except Christmas Day.
3. The main function of the service is to deliver the Council's statutory functions in relation to Noise and Nuisance. We receive over 10,000 requests for service each year. The main work of the team is the control of noise from both domestic homes and commercial businesses, although we also deal with other nuisances. The most frequent complaints we receive are about neighbour noise such as loud music and parties, construction noise including DIY, burglar alarms and car alarms.
4. To ensure the best outcomes for residents the N&N service works closely with a number of services across the Council including the Anti-social Behaviour Unit, Environmental Protection Service and Southwark's Housing Management Service

WHAT N&N CAN DEAL WITH

5. The Service takes action against where the noise or nuisance is or likely to constitute a Statutory Nuisance. This is 'an unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it'. It is more than a mere annoyance and will have a significant impact on the health and wellbeing of anyone affected.
6. The Environmental Protection Act lists nuisances to which abatement (reduction) procedures apply. Please refer to Appendix 1. A trained and

qualified officer decides whether a particular complaint meets the definition of a statutory nuisance. Individual sensitivities cannot be taken into account and officers must assess how the nuisance would affect the average person.

7. The types of noise which we can deal with and take action on include loud amplified music, construction or demolition noise, intruder alarms and car alarms, barking dogs and noisy DIY. It should be noted that there is no maximum noise level set in law. We can also deal with other problems which may also cause a nuisance including light intrusion, odours and fumes from commercial properties, smoke noise from commercial venues and events, dust or noise from some works or equipment in the street.
8. We have no power to deal with aircraft noise, noisy children, rowdy behaviour in public places, traffic or train noise and odour from domestic properties.

SERVICE PROVIDED

9. The Noise and Nuisance operating times are as follows:

Friday to Tuesday : 7am to 2.30 am*
Tuesday to Thursday: 7am to 2.30 am*
*Calls received after 2:30am will be responded to by officers, but in most cases a visit will not be possible for operational reasons.

10. An officer will aim to visit (if a visit is required) within 60 minutes of the initial call. Our target is to meet this standard on 80 per cent of all calls. We are less likely to achieve this target during busy periods such as at weekends and during the summer months.
11. Officers review the information to decide whether we have enough evidence to take legal action, such as the service of an abatement notice.
12. Many problems are resolved in a matter of hours but some take considerably longer. If the problem is complex or difficult to resolve there will be an interim case review to ensure sufficient progress is being made, within two months of the initial complaint. A full case review will be held after three months to determine what action can be taken or whether there is nothing further that can be done.

Table below shows the number of service requests received and service standards met over the past five years.

Noise and Nuisance Service	2122-2021	2021 - 2020	2019 - 2020	2018-2019	2017 - 2018
% noise service requests responded to in 3 days	96%	95%	90%	90%	91%

Noise calls - 3 day response	2883	7151	3146	2621	2773
Noise calls - rapid response	8360	5121	7307	7790	7994
% noise rapid response requests in 60 mins	72%	82%	76%	72%	76%
Total calls	11243	12272	10453	10411	10767

ENFORCEMENT POWERS

13. The Noise and Nuisance team mainly uses sections of the acts below to assist its residents:
 - Environmental Protection Act 1990, section 79 and 80
 - Control of Pollution Act 1974 section 60 and 61
14. We have powers to serve an abatement notice under the Environmental Protection Act 1990. We will only do this if we believe a statutory nuisance has taken place or is likely to take place. This notice may require them to stop the activity causing the nuisance and can include specific actions to reduce the problem. In some instances we can seize equipment. If they breach the abatement notice, they could be prosecuted and get a fine of up to £5,000.
15. Large parts of Southwark have been undergoing redevelopment for many years. The Control of Pollution Act 1974 enables us to serve a notice on a person (this includes a company) who is carrying out, or who are planning to carry out, works of construction, demolition, road-works, railway maintenance in order to control the noise from those operations. The council provides a detailed guidance to undertaking works in the borough, Southwark's Technical Guidance for Demolition and Construction, which provides developers a principal means for the assessment of Best Practicable Means (BPM) of compliance.

IMPACT OF COVID CONDITIONS

16. During the initial period of Covid a limited service was provided as assessments could not be made within a person's premises to witness Statutory Nuisance. Complaints to the service increased during this period. Anecdotal evidence suggest that this is likely due to lockdown conditions, an increase in people working from home and increase in DIY projects.
17. The service adapted to new ways of working and used powers under the Crime and Policing Act 2014 to address high risk issues with anti-social behaviour, where assessments could be carried out from the street. Where appropriate a Community Protection Notice was issued and, if a breach was witnessed, fixed penalty notices were made.

18. A significant proportion of nuisances, some noise, light intrusion, smells and odours could not be dealt with as they required internal assessments. In these instances high risk cases were identified and officers tried to deal with them informally.
19. In November 2021 the N&N service returned to making assessments within a premises and dealing with matters by Statutory Nuisance.

VALUE FOR MONEY

20. In 2020 the Chartered Institute of Environmental Health conducted a Noise Survey of which twelve London Authorities responded: Barnet, Camden, Enfield, Hammersmith and Fulham, Harrow, Sutton, Tower Hamlets, Waltham Forest and Southwark. The data showed Southwark’s N&N service provided good value for money.

The table below illustrates this

London Performance	Southwark’s Performance
189 complaints received for every 10,000 people.	332 complaints received for every 10,000 people (75% more than the London average)
466 notices were served	182 Notices (over 40% of the notices served in London)
9 noise-related prosecutions	3 noise related prosecutions (33% of London total)
0.3 FTE professionals to deal with noise complaints per 10,000 population	0.38 FTE to deal with noise complaints per 10,000 residents.”
Complaints per 1 FTE in London were 671	1 FTE deals with 870 complaints

NEXT STEPS

21. The past two years have been challenging for the service and also identified opportunities for better working and engagement with residents. We have seen an increase complaints and unlicensed music events. This trend is likely to continue in the foreseeable future.
22. The Head of Service is keen to build on the good work and practices in the service. To ensure sound continuity of service and business assurance, a review of the service will take place in 2022-23 to identify further challenges to service delivery, opportunities and priorities.

APPENDIX 1 LIST OF STATUTORY NUISANCES

Part Three of the 1990 Environmental Protection Act has a list of nuisances to which abatement (reduction) procedures apply. These include the nine listed below:

1. any premises in such a state as to be harmful to health or a nuisance (see section 79(1)(a)). (for a speedier procedure to deal with defective premises, see BA 1984 see section 76, FC18)
2. smoke coming from premises that is harmful to health or an nuisance; but this does not apply to: premises occupied by the Crown for military or Ministry of Defence purposes
 - a. smoke coming from the chimney of a house within a smoke control area
 - b. dark smoke from the chimney of a building or of a furnace attached to a building or installed on any land
 - c. smoke from a railway locomotive steam engine
 - d. dark smoke from any industrial or trade premises (see section 79(1)(b), (2) and (3))
3. fumes or gases coming from private dwellings that is harmful to health or a nuisance (see section 79(1)(c) and (4))
4. any dust, steam (other than from a railway locomotive engine), smell or other effluvia (odorous fumes given off by waste) arising on industrial, trade or business premises that is harmful to health or a nuisance (see section 79(1)(d) and (5))
5. any accumulation or deposit which is harmful to health or a nuisance (see section 79(1)(f))
6. any animal kept a place or manner which is harmful to health or a nuisance (see section 79(1)(f))
7. noise (except that from aircraft other than model aircraft) coming from premises that is harmful to health or a nuisance; but this does not apply to Crown premises used for military or Ministry of Defence purposes (see section 79(1)(ga), (2) and (6) as amended)
8. noise that is harmful to health or a nuisance and comes from or caused by a vehicle, machinery or equipment in a street (other than noise made by traffic, by an military force or by political demonstration or a demonstration supporting or opposing a cause or campaign) (see section 79(1)(ga) and (6A)) - a number of issues need to be taken into account when judging whether a noise amounts to an actionable nuisance; they are listed below but nearly always need to be taken in combination:
 - a. the time of the day - night-time noise that is likely to disturb sleep is much more likely to be actionable than daytime noise
 - b. the duration of the noise - unpredictable sporadic noise has a greater capacity to create nuisance (subject of course to other factors listed here)
 - c. the frequency of the noise – tonal content of noise e.g. a whine can significantly increase the capacity of a noise to create a nuisance
 - d. whereabouts the noise is heard – noise (from a premises) audible in the street but not in a house is very unlikely to be an actionable nuisance (even if the noise is heard within a dwelling, if it only affects a bathroom

- e. or kitchen (not otherwise used as a living room), then action is unlikely
- e. defendant's motives – even an otherwise innocent act could be an actionable nuisance if it is done with malice although this can be very difficult to determine
- f. the character of the neighbourhood – where the background noise level is low for example in an entirely residential area, the threshold at which sound can be heard will be lower and noise is more likely to be at an actionable level
- g. continuous or repetitive incidents compared to isolated incidents and the time the nuisance occurs
- h. unusual sensitivity – 'The Eggshell Skull Rule': if a plaintiff is particularly sensitive to a particular type of noise, it is not actionable unless one can show that the noise would have affected a 'reasonable' person's enjoyment of their property

any other matter declared by any act to be statutory nuisance (see section 79(1)(h) and these include:

1. any well, tank, cistern or water butt used for the supply of water for domestic purposes which is so placed, constructed or kept in a way that makes the water liable to contamination and harmful to health (PHA 1936 section 141)
2. any pond, pool, ditch, gutter or watercourse which is so foul or in such a state that it is harmful to health or a nuisance (PHA 1936 section 259(1)(a))
3. any part of a watercourse, which is not ordinarily navigated by vessels used to carry goods by water, which is so choked or silted up that it obstructs or prevents the proper flow of water and as a result causes a nuisance or creates conditions which are harmful to health (PHA 1936 section. 259(1)(b))
4. a tent, van, shed or similar structure used for human habitation
5.
 - 5.1. which is in such a state, or so overcrowded, as to be harmful to the health of the people living in it, or
 - 5.2. the use of which, because of the absence of proper sanitary accommodation, or otherwise, can create whether on the site or on other land, a nuisance or to conditions which are harmful to health (PHA 1936 section 268(2))
6. a shaft or outlet of an abandoned or disused mine where:
 - 6.1. it is not properly secured in order to prevent people accidentally entering the outlet; or
 - 6.2. because it is accessibility from a road or public place it constitutes a danger to the public (M and QA 1954 section. 151)
7. a quarry that does not have an efficient and properly maintained barrier designed and built to prevent people from accidentally falling into it and because it is accessible from a road or public place, amounts to a danger to the public (M and QA 1954 section 151)

In carrying out the statutory nuisance procedures, Local Authorities can not deal with the radioactive state of any substance, article or premises. These matters come under the Radioactive Substances Act 1993 (RSA 1993 section 40).

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Title of document(s) NONE	Title of department / unit Address	Name Phone number

APPENDICES

No.	Title
Appendix 1	List of Statutory Nuisances

AUDIT TRAIL

Lead Officer	Anju Sidhu	
Report Author	Anju Sidhu	
Version	1	
Dated	25 01 2022	
Key Decision?	Not applicable	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes/No	Yes/No
Strategic Director of Finance and Governance	Yes/No	Yes/No
List other officers here	N/A	
Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional Team / Scrutiny Team		