

Title: Noise Nuisance Investigations (Noise Policy & Six-month review and service area performance in respect of all forms of nuisance)

Lead Officer: Lorna Hudson (Lorna.hudson@warwickdc.gov.uk)

Portfolio Holder: Councillor Judith Falp

Wards of the District directly affected: All

Approvals required	Date	Name
Portfolio Holder	24/03/23	Judith Falp
Finance	NA	-----
Legal Services	NA	-----
Chief Executive	31/03/23	Chris Elliott/Andrew Jones/Dave Barber
Head of Service(s)	27/03/23	Marianne Rolfe
Section 151 Officer	NA	-----
Monitoring Officer	28/03/23	Andrew Jones
Leadership Co-ordination Group	NA	-----
Final decision by this Committee or rec to another Cttee / Council?	No (Information only report)	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	No	
Accessibility Checked?	Yes	

Summary

The purpose of this report is to update members on how the Noise Policy has been taken and provide insight to further developments, as requested by Overview & Scrutiny Committee on 9th August. This report aims to;

- a) Provided an overview of all forms of "Statutory Nuisance" investigated by the team.
- b) Provide members with an update on developments and give an overview of feedback about the Noise Policy, received to date.
- c) Reflect on the implementation of the Noise Policy and service area performance over the past 6 months.
- d) Describe the working arrangements, with the police.

Recommendation(s)

- (1) That the details in this report are noted
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1 Reasons for the Recommendation

1.1 On 9th August, Overview & Scrutiny (O&S) Committee considered and supported (followed by Cabinet approval on 10th August) the implementation of a new Noise Policy. A request was made to Officers to review the implementation of the policy and service area's performance in respect of all forms of nuisance more generally. The rationale for the request was due to the importance of the subject area to residents of the district.

1.2 Members also stated that they would welcome the Council collaborating more closely with the Police, to secure their support in addressing the issue of noise nuisance in the district. An overview of how Environmental Health, Licensing, ASB Team and Housing work alongside the police is included in this report.

1.3 Statutory Nuisance investigated by the Council

The Council must investigate complaints about issues that could be considered as a Statutory Nuisance (SN). As well as noise, other problems that may be a SN are defined under Section 79 of the Environmental Protection Act 1990 (the Act) and include matters such as:

- Smoke
- Fumes or gases (from industry or trade)
- Dust, smell (from industry or trade)
- Accumulations or deposits
- Artificial light
- Insects (from industry or trade)

1.4 Where a complaint of a relevant SN is received, there is a legal duty to take such steps as are "reasonably practicable", to investigate the complaint. The Council has no duty to take legal action unless it is satisfied that a nuisance exists. Whilst every effort is made to investigate a nuisance, there are occasions when Officers do not witness the problem or are unable to gather enough evidence to demonstrate that it exists - for example, if the noise is irregular.

- 1.5 To be determined as a SN, there must be evidence that it is either “prejudicial to health or a nuisance”, both limbs have received significant scrutiny in the Courts. The crucial requirement for taking enforcement action, is having robust evidence that can stand up to scrutiny and that there is a risk to health or there’s a substantial interference with the use and enjoyment of land. Without demonstrable evidence to prove either limb, the Council is unable to pursue with formal legal action. The nuisance must be more than an occasional annoyance to trigger SN action.
- 1.6 As part of the Council’s enforcement procedures, Officers initially engage and attempt to resolve matters informally (for example by mediation, negotiation and offering general support and advice to all concerned, throughout the investigation, and should the need arise for some time after). This informal approach, needs to be balanced against other demands, clearly keeping informal cases open indefinitely is not a good use of Council resources. Please refer to the Noise Policy for more advice on this aspect.
- 1.7 All local authorities in the UK follow a similar approach, as they must abide by the Enforcement Concordat, which was introduced by the government in 1998. The baseline is, that regulators must take a justifiable, proportionate, and fair approach in intervention and enforcement (this approach is also enshrined in general human rights legislation).
- 1.8 Before any action can be taken in the Courts for a SN, the Council must first issue an “Abatement Notice” on the person responsible. The Notice is a final written warning, formally instructing the person responsible to take steps to bring the problem to an end. There is a right of appeal to such a Notice, which is why having robust evidence is vital.
- 1.9 Where a Notice is deemed to have been contravened (the nuisance has not been abated), the Council can only then consider taking the matter to Court and again, must have fresh evidence that proves this is the case.
- 1.10 There is another option for a complaint to be taken direct to the Courts, but this can only be done by the person affected (Section 82 of the Act). This option is open at any time to somebody aggrieved by what they considered to be a SN and is a process that is signposted in situations where the Council is unable to take legal action, for whatever reason.

This route does not rely on the serving of an Abatement Notice or Council involvement, and is meant to be a simpler legal process, under the direct control of the person affected and can be undertaken with or without the assistance of lawyers. Section 82 allows a magistrate to ultimately consider if there needs to be an Order made against the person responsible or if they should be convicted.

- 1.11 For a more detailed overview of the legislation please refer to the O&S Report, considered on 9th August/10 August and the Noise Policy (on-line).
- 1.12 **Update on developments and feedback about the Noise Policy, received to date**
Table 1 – Comments received between 9 August 2022 to 16 March 2023, please refer to Appendix 1

- 1.13 A general Officer meeting was held on 12 January 2023, with the aim of reviewing the first few months and discuss what has worked well, what not so well and prioritise and plan for future development of the Noise Policy.
- 1.14 Due to the individual and diverse nature of the comments, it was agreed at the meeting in January, for optimum focus that three officer working groups should be set up and all to feed into the future development of the Noise Policy and associated working processes.

1. Environmental Health, ASB & Private Sector Housing – Noise & Nuisance Review Group, to cover HMOs and students (link meeting to be undertaken with other agencies and partners – for example the University of Warwick).

- a. Officer meeting took place on 15th February. Discussions regarding the working practices for Private Sector Housing and Environmental Protection, the focus was primarily on case management and the development of a Memorandum of Understanding (MOU) between teams.

A series of reviews are currently underway (for example cross referencing with planning permissions). This group will also feed developments and updates residents groups, such as SoLAR. The aim is to have a draft MOU ready for approval by the two relevant Head of Service, by early summer.

- b. Two meetings have been held, one on 20th January and another 14th February, with the University of Warwick. These meetings have included topics wider than noise, however the handling of cases and complaints between organisations has also been a key feature and will be the focus of future meetings.

2. Council Landlord Operations Noise & Nuisance Review Group, TOR to be agreed but will cover operational processes in house.

- a. A considerable amount of work was undertaken across departments in the development of the Noise Policy and MOUs were drawn up and agreed and are already included within the Policy. Desktop reviews are underway. However, progression has been delayed due to pressures on the Housing Team arising from Fire Safety work. Once this vitally important workstream is no longer pulling on resource, this Officer working group will pick up traction again.

3. General Officer working Noise & Nuisance Group, first meeting took place held on 12 January 2023 and direction agreed as stated above.

- a. This group is scheduled to meet again early Autumn. This is to allow a full 12 months of data and will include a full review of recommendations for policy updates, received up to that point.

1.15 The Noise Policy – 6 months on

- 1.16 One of the main driving forces behind the introduction of the Noise Policy and the digital review, was to analyse how customers interact with us, review the noise investigation process (which had remained unchanged for years and been developed predominantly in an unscripted manner). We also wanted to modernise and improve on consistency of the investigative approach, review

operational procedures, especially considering lessons learned and trials put in place during the pandemic (for example the introduction of the NoiseApp) and increase the use of technology in general to enhance the overall customer experience, (whilst not forgetting about our customers that don't or can't use technology), and increase overall understanding of what can be done by who, how and why we request the help we do, from those affected.

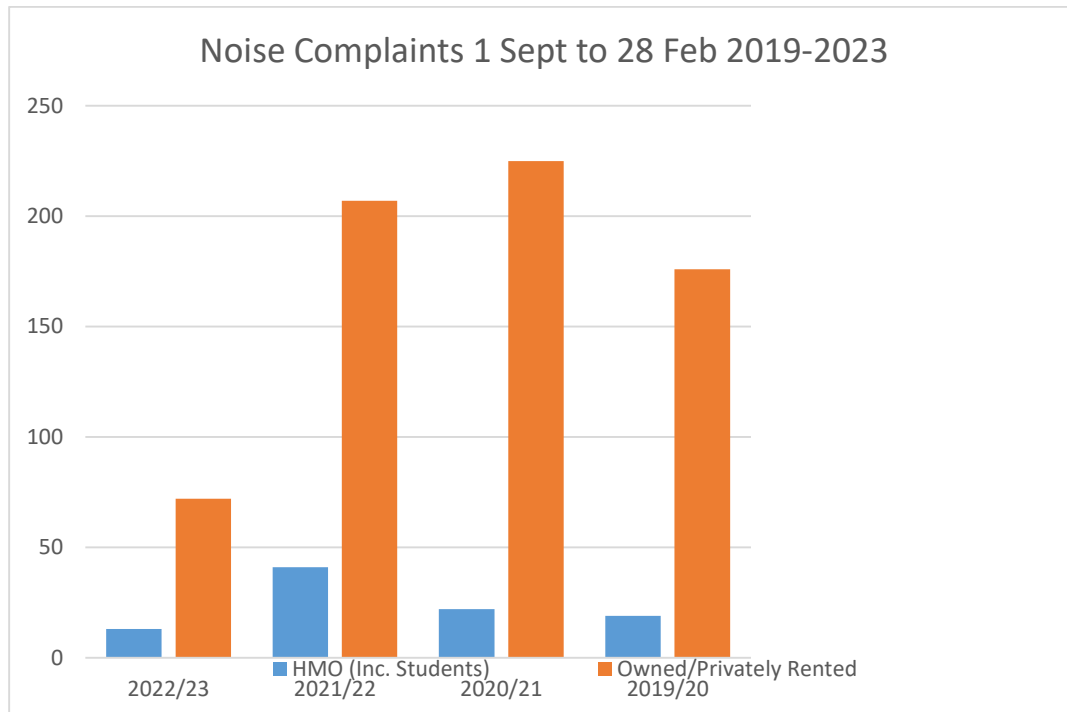
- 1.17 SN can be a very complicated and sometimes technical subject area, with its foundations firmly rooted in legal process and case law. The policy is not legally binding, and important to understand, it isn't meant to cover every possible scenario as there are possibly hundreds if not thousands of different sources of noise but is pitched to try and address those situations that are the most common. There will also always be exceptions and grey areas, which is why each complaint must be assessed on its own merits and on a case-by-case basis.
- 1.18 The Council now has a document, accessible by all service users, members, and Officers alike. It's a point of reference and provides guidance on the operational processes, it covers the levels of required customer engagement and what can be expected in terms of service delivery.
- 1.19 At the time of writing, the Noise Policy has been in place for 6 full months (September-February). The Systems Support team have analysed the Environmental Health Database to provide members with an overview of service demand and have highlighted in the following tables the trend of complaints and complaint types over the past year and then drilled down to look at the last six months when compared to previous years.
- 1.20 Please note some previous years comparisons are likely to have been influenced by the pandemic. Therefore, the following data is to be used as a snapshot only.

1.21 Table 2 – Total SN type complaints received from September 2022 to February 2023



1.22 Over the past six months, the team received 353 requests for service on SN related matters. The most common type of SN request was related to noise, 185 cases raised. This equates to over half of all reported nuisance complaints. The team also deal with many other matters, for example pollution issues and integrated pollution prevention regimes, formal consultations (planning, licensing & HS2), drainage complaints, private water supplies, and air quality matters, to name some.

1.23 Table 2 Domestic Noise Complaints investigated by Environmental Health (EH) from 1st September to 28th February (22/23 (term of the Noise Policy), 21/22, 20/21, 19/20



1.24 The data establishes there has been a significant drop in the overall domestic related complaints received by EH, compared to the same timeframe over previous years.

1.25 Contributing factors.

- a) Prior to 22/23, the EH team received direct, noise complaints about Council tenanted properties. Investigations proceeded in tandem (with Housing Officers). This process regularly resulted in confusion, frustration, and more complaints about process, from our housing tenants. Council Officers were also duplicating similar evidence gathering techniques. In practise, both teams were doing almost the same work and tenants were having to supply two teams with the same information but on two lots of forms.

Under the revised process, noise complaints about housing tenants are initially investigated by the Housing Team, if a Housing Officer considers the matter may reach a SN trigger, they are then able to refer the case to EH for assessment. This initial assessment being a review with the Housing Officer of any evidence gathered by them up to that point, and rather than requesting the tenant to contact EH and them having to start again from scratch with any evidence gathering, EH advise the Housing Officer, and if

the evidence supports the need for further investigation (or intervention) by EH for a SN, the team then engage with both the tenant and the Housing Officer thereafter and from that stage.

- b) An additional reduction in figures was expected, when compared with the old process. Under the old process approximately 2/3rds of complainants did not reply to the Council after first contact and after the initial requests for signed paper-based declarations. Customers knowing upfront what is required, means rather than Officers spending hours on wasted letter writing, the team can now prioritise its resources towards the more pressing cases.
- c) Whilst overall complaints to EH about students/HMOs have dropped. There was a peak in 2021/22. Officers believe this peak was likely to be attributed to the lifting of covid restrictions and consequential, "high spirits" of being back on campus. Linked with this is potentially a drop in the tolerance levels of those impacted. Having had months of low noise levels during lockdown, the reverting back to "business as usual" may have also contributed to more complaints than normal. This potential phenomenon has been experienced and reported by other Councils and referred to at relevant partnership meetings. A similar peak is also reflected in the figures supplied by the Private Sector Housing team, and complaints and/or enquires in relation to HMOs and students, responded to by the Student Housing Enforcement Officer (the figures below are full calendar years).

2018 – 62
 2019 – 76
 2020 – 33
 2021 – 95
 2022 – 173

There is also a greater awareness of the WDC dedicated Student Housing Enforcement Officer, from a public perspective. Resident groups in particular have consequently increased their use of this resource more over time.

1.26 Table 3 Average number of days taken to investigate a noise nuisance complaint (Extrapolated from KPI SCLE7)

Average number of days taken to investigate (complete) a noise nuisance complaint (Sept to Feb)				
Month	2019/20	2020/21	2021/2022	2022-28.02.23
September	40	51	79	73
October	43	61	48	66
November	53	53	52	57
December	55	48	58	20
January	46	73	71	41
February	44	64	59	68

- 1.27 The target for investigation completion is currently set at 73 days, this figure is the combined average of days that it took to investigate a noise complaint in the previous years before the setting of this KPI. How this KPI is reported is due

to be reviewed for 23/24, for example by use of a Box Plot to show a visual representation of the median and quartiles of the data set.

1.28 At the heart of good policy is the promotion of effective relationships between the Council and its service users. This policy has helped to encourage greater understanding of the process and basic considerations. It has removed some time wasted procedures and modernised how we interact with our customers. This has helped to develop understanding and respect on all sides, with members of the public and with our partners. Whilst the first six months and the data are very encouraging, we will continue to review and develop our processes and look for ways of building on these achievements to make the overall service even better in the future.

1.29 Google Analytics

1.30 The website, before the review was crammed full of words, finding the most relevant information to help with your situation was hard to find or understand. Feedback from our test users was also very negative.

1.31 The revised website is much more user friendly, visually more appealing and is much clearer, with links for further advice and/or resources (for example template letters to send to noisy neighbours, if required). The reporting form also now leads customers down a decision path, depending on the individual issues they are facing, this aims to advise them further with advice and signposting.

1.32 Table 4 Google Analytics

New web pages 08/22 - 12/22

Page	Page views
Noise complaints	1285
Tips to resolve a noise issue	155
Letter template	567
Nuisance diary - Download	268
Warwick District Council nuisance diary - editable PDF - Download	69
Warwick District Council nuisance diary - Microsoft Word - Download	36
Total page views	2380

Old web pages 08/21 - 12/21

Page	Page views
Noise or neighbour nuisance	1065
The Noise App	286
Noise recording sheet	151

Total page views	1502
New Reporting form 08/22 - 12/22	
Form visits	329
Form completions	96
Old form 08/21 - 12/21	
Form - Report and noise nuisance visits	2379
Form - Report and noise nuisance completions	324
Noise App – New users	
New Users (Noise App) September – December 2021:	138
New Users (Noise App) September – December 2022:	62

1.33 The figures show:

- More people are visiting the web pages:
 - Total page views before: 1502
 - Total page views after: 2380
- More people are visiting the diary download page:
 - Before: 151
 - After: 373
- Fewer people are visiting the reporting form (by a large margin):
 - Visits before: 2379
 - Visits after: 329
- Fewer people are filling in the reporting form
 - Before: 324
 - After: 96

1.34 The higher number of page hits and fewer number of form completions suggest people are now using the information found on the pages to resolve their issue rather than using the form in the first instance. From a statistics perspective, it is early days however it looks as though we achieved what we set out to do at the start of the transformation project.

1.35 Working arrangements, with the Police.

1.36 Members stated that they would welcome the Council collaborating more closely with the local Police to secure their support in addressing the issue of noise nuisance in the district.

1.37 There are several partnership working groups in operation where issues regarding noise can be raised and actions plans discussed. Linked most closely with EH and the wider SCLE service area, these include (but are not limited to) Partnership Problem Solving meetings (lead by the Community Safety team and the Multi Agency Licensing Enforcement Meetings (MALEM) (led by the Licensing team). There are also Case Management Meetings (CMM). CMM is the multi-agency meeting where they discuss cases that have been identified by

the Risk Assessment (RA) as high risk/vulnerable. Most of these cases are neighbour disputes and noise is often part of the complaint. Officers that attend this meeting include EH, Police, Registered Social Landlords and Victim Support.

1.38 When the police were consulted in relation to any feedback regarding the implementation of the new Noise Policy, the Police did not have any direct policy matters to raise but responded to the request by members for the Council to collaborate more closely with the local Police to secure their support in addressing the issue of noise nuisance in the District – and advised all reports are assessed using Threat Harm and Risk (THRIVE) where all factors are considered. This assessment will determine if a resource is deployed and what priority it is given. From a licencing perspective and reports of noise from licenced premises, first port of call is Environmental Health, then Council licencing, supported by police if required. Joint visits, words of advice or licence review if appropriate.

2 Alternative Options

2.1 Not Applicable for this report

3 Legal Implications

3.1 Not Applicable for this report

4 Financial

4.1 Should the Council not follow its enforcement procedures or make poor decisions in relation to its enforcement activities, there would be a financial risk associated with attempting to pursue with figuratively or what may be considered by the courts as, overzealous enforcement action.

5 Business Strategy

5.1 This report is not a part of a decision but the subject matter impacts on several Business Strategy areas as follows.

5.2 Health, Homes, Communities,

- Improved health for all
- Impressive cultural and sports activities
- Cohesive and active communities

5.3 Infrastructure, Enterprise, Employment,

- Dynamic and diverse local economy
- Vibrant town centres
- Improved performance/ productivity of local economy
- Increased employment and income levels

5.4 Effective Staff,

- All staff are properly trained
- All staff have the appropriate tools
- All staff are engaged, empowered, and supported
- The right people are in the right job with the right skills and right behaviours

5.5 Maintain or Improve Services

- Focusing on our customers' needs
- Continuously improve our processes
- Increase the digital provision of services

5.6 Firm Financial Footing over the Longer Term.

- Better return/use of our assets
- Seek best value for money

6 Environmental/Climate Change Implications

6.1 Not applicable

7 Analysis of the effects on Equality

7.1 A review on equality is due to take place as part of the longer-term proposals.

8 Data Protection

8.1 Investigations are subject to controls on how evidence is gathered and used and give a range of protection to members of the public and potential defendants. Our investigations are carried out in accordance with the following legislation. They will also be carried out in accordance with any associated guidance or codes of practice, including:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

We will comply with the requirements of the legislation under which we are acting and any associated guidance or codes of practice.

9 Health and Wellbeing

9.1 This is a summary report only; however, this is a vital service and one that aims to protect the health and wellbeing of the public. Noise is a fact of life and there is always going to be an element of give and take, however unwanted noise and especially that which reaches the bar of SN is "an underestimated threat that can cause a number of short and long-term health problems, such as sleep disturbance, cardiovascular effects, poorer work and school performance, hearing impairment, etc". (WHO 2010).

10 Risk Assessment

10.1 The most significant risk is inappropriate use of resources. We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and dynamic risk assessment inform all aspects of our approach to regulatory or enforcement activity, including (where relevant):

- Data collection and other information requirements
- Inspections
- Advice and support strategies
- Enforcement activity and sanctions

Where appropriate and relevant to the non-compliance, we will use the appropriate government risk assessment scheme to inform any intervention.

When determining risk, we will consider:

- Compliance history and potential future risks
- The existence of effective management systems
- Evidence of recognised external accreditation
- Management competence and willingness to comply
- Use of complaints/investigation filters.

We will also use intelligence to direct investigation-based projects, targeting activities or businesses or individuals where there are known issues. However, complaints may also trigger a visit if that is the most appropriate response.

11 Consultation

- 11.1 The report has been considered by the SCLE Programme Advisory Board on 17 January. Discussions were held and further advice with regards to firework and traffic noise, which is regulated in the main, by other agencies.
- 11.2 Clarification also provided that further partnership work with students and the University will be undertaken by the Environmental Health, ASB & Private Sector Housing – Noise & Nuisance Review Group.

12 Background papers:

Overview and Scrutiny Committee Report held on Tuesday 9 August 2022 in the Town Hall, Royal Leamington Spa at 6.00 pm.

Supporting documents:

The Noise Policy agreed at the above and by Cabinet on 10 August - [Noise Policy - Download - Warwick District Council \(warwickdc.gov.uk\)](#)

[Web pages](#)

Page
Noise complaints
Tips to resolve a noise issue
Letter template
Nuisance diary - Download
Warwick District Council nuisance diary - editable PDF - Download
Warwick District Council nuisance diary - Microsoft Word - Download