

EXETER CITY COUNCIL

SCRUTINY COMMITTEE - COMMUNITY 4 SEPTEMBER 2007

REPORT ON THE COUNCIL'S ARRANGEMENTS TO RESPOND TO NOISE COMPLAINTS

1. PURPOSE OF THE REPORT

- 1.1 This report was requested by this committee on 6 June 2006. It informs Members of the main powers available to control statutory noise nuisance, and comments on the level of service requests about noise received by the Council in 2006/07, and the respective outcomes. It also considers whether alterations of the arrangements currently offered are merited.

2. BACKGROUND

- 2.1 The Rogers Review of national enforcement priorities for local authority regulatory services (the subject of a separate report to this committee) highlights noise nuisance as a key local priority for many local authorities. This is because unwanted noise is the biggest source of complaint to local authorities and one in seven people in the UK state that neighbour noise affects their quality of life.
- 2.2 Under the Environmental Protection Act 1990, the Council has a duty to investigate and take appropriate action in respect of statutory noise nuisance. A statutory nuisance is not merely an annoyance but either something that is prejudicial to health, or relates to the use of a property in such a way that it has a significant and detrimental impact on a neighbouring occupier's enjoyment of his property. As is the case with most local authorities, the single type of nuisance most often complained about in Exeter is noise nuisance.
- 2.3 The sources of noise can be varied, from parrots and dogs to shouting and DIY, but the most common noise complained about is amplified music. The officers suitably qualified to determine statutory nuisances are Environmental Health Officers (EHOs). There are a variety of factors that must be taken into account by EHOs when judging whether noise amounts to a statutory noise nuisance, these include:
- **volume** – if someone can distinguish the lyrics of a song being played loudly next door, then it will often be considered intrusive;
 - **noise frequency** – a repetitive bass beat, although relatively low in volume, can penetrate structures such as walls more easily and be particularly intrusive;
 - **time of day** – music played at 1pm will tolerated more so than at 1am, as background noise levels are very much reduced and most people are asleep;
 - **duration** – a very short burst of loud noise may be tolerated (eg 10 minutes of DIY drilling in the early evening) whereas a longer burst may be found to be intrusive (eg 3 hours of drilling);
 - **frequency** – a one-off party may be tolerated, but a regular noise problem every weekend can be intolerable;
 - **intent** – in some case the perpetrator is intentionally wishing to create a nuisance problem in order to cause upset and annoyance.

- 2.4 To assess whether a statutory noise nuisance exists, an EHO would consider the above factors in light of the evidence obtained, the best being an officer witnessing the noise whilst inside the complainant's house. Evidence from other officers (eg Housing Officers and Community Patrollers), the complainants themselves and recording devices such as MATRON (a digital recorder sampling sound through a noise meter) can also be used. However, it is of fundamental importance that the EHO can justify evidence of a statutory nuisance being caused, as service of an Abatement Notice is an enforcement process that can place substantial restrictions on a person, with severe penalties for non-compliance.
- 2.5 There is other legislation relating to noise nuisance, most notably the Noise Act 1996, however, the Environmental Protection Act 1990 remains the substantive piece of legislation for effectively and practicably dealing with statutory noise nuisance.

3. DEALING WITH STATUTORY NOISE NUISANCE

- 3.1 In dealing with statutory nuisance an EHO must consider whether a nuisance exists, is likely to recur or is likely to occur in the future (eg in the case of a rave party). If there is sufficient evidence to confirm one or more of these, then the Council is legally obliged to abate the nuisance or prevent its recurrence or occurrence, by means of an Abatement Notice.
- 3.2 An Abatement Notice can specify that the nuisance must cease forthwith or within a set timescale, and can set measures to abate, prevent and restrict nuisance. The notice is usually served on the person(s) responsible for the nuisance, but may also be served on the occupier or owner of a property. The notice can be appealed against within 21 days. It is a criminal offence to breach an Abatement Notice, with a maximum fine of £5,000 (or £20,000 for businesses) for each breach. The Council may also step in to abate the nuisance (eg this could mean entering a premises by warrant and confiscating a sound system where there have been repeated breaches).
- 3.3 Prosecutions for a breach of an abatement notice are heard in the Magistrates Court, and in any case where noise equipment has been seized, a deprivation order would be sought on a guilty plea or verdict. A deprivation order seeks to retain any confiscated noise equipment, which then becomes the Council's property after 6 months of granting the order.
- 3.4 The current arrangements for dealing with noise nuisance complaints can be divided into 'post-event' complaints and 'active' complaints. Post-event complaints are mainly received during normal office hours via Environmental Health Services; these are recorded on the M3 database and issued to an officer to investigate. This investigation would generate a separate letter to both the alleged noise-maker and the complainant.
- 3.5 The noise-maker would be advised of the complaint and asked to consider whether excessive noise is being caused – the Council's powers in relation to noise nuisance would be explained. In the majority of cases (around 80% in other studies) this letter is sufficient to cause a change of behaviour and a reduction in the noise generated, as is the case with Exeter.
- 3.6 For the complainant, the Council's power would be explained as well as other actions they may wish to independently pursue (complainants may pursue their own action under the Environmental Protection Act 1990). They would normally be asked to keep a log-sheet of any noisy incidents experienced over the next 2-4 weeks, for return. For out of office

hours noise, complainants would also be given the Control Centre telephone number, to contact the Council in the evening, early morning and weekends.

- 3.7 Out of hours noise complaints are responded to by Community Patrollers up until midnight for every night of the week. Their role is to assess the problem and intervene if necessary to try to get an abatement or reduction in the noise on the night. Because of the nature of this type of work, Community Patrollers will operate in pairs to safeguard their health and safety. The Community patrollers also have to respond to a variety of other customer requests that are not necessarily noise related, (eg low level anti-social behaviour from gangs of youths), and therefore it can be problematical in responding swiftly to service requests during busy periods such as Friday and Saturday nights.

4. COLLECTING EVIDENCE TO SUPPORT ENFORCEMENT ACTION

Noise log-sheets

- 4.1 The use of log-sheets to record noisy incidents is a standard practice with most local authority investigations. They can provide a useful record, enabling any patterns of noise emissions to be identified, and helping to establish the regularity and duration of the noise. This information can assist in resolving a problem, (eg linking episodes of loud music when parents are absent), but can also be used as a diary of events in any subsequent legal action.
- 4.2 Complainants are asked to return completed log-sheets after a four week time period. If the form is not returned after a 4 week period a further letter is sent confirming the case will be closed if the complainant does not contact the Council. Approximately a third of cases (273) are not progressed further due to the fact that the log-sheet is not returned. In these circumstances the cases are closed, but re-opened should the problem recur in future.

Programmed visits

- 4.3 Programmed visits outside of office hours based upon information from completed log-sheets, are made by officers from the Environmental Protection unit (Environmental Health Services). In 2006/07, 15 programmed visits were made in respect of seven separate noise cases. From these visits, Abatement Notices were served in respect of two cases (domestic premises), two were found not to be statutory nuisances, one was resolved through a licensing review, and the remaining two are ongoing (both involving commercial premises). The action in respect of the two domestic cases was also supported by recordings using the MATRON system.

MATRON systems

- 4.4 There are three MATRON systems in use, being set up by officers in complainants' homes to coincide with noisy periods indicated by their log-sheets. The equipment consists of a digital tape recorder that captures sound fed through a sound level meter and external microphone mounted on a tripod. The usual period that a MATRON is left is a week, but can be tailored to suit circumstances. It is generally used as a screening tool to identify cases that would merit further investigation, which might include programmed out of hours visits.
- 4.5 The limitation in the use of this equipment to capture noise episodes in domestic situations, is that there are waiting lists currently leading to a limited monitoring time period (usually a week) before the system is needed elsewhere. As the system relies on the

customer activating the recorder when loud noise is being emitted from a neighbouring property, it is not uncommon for one or more of those ingredients to be missing in a short time period, particularly when dealing with sporadic domestic noise (eg the noise-maker is away or quiet that particular week, or the customer is out when noise occurs). In general, MATRON systems are more productive when dealing with regular emissions of noise from industrial, commercial and entertainment premises, or when left for longer time periods in domestic situations.

- 4.6 The MATRON systems were installed 75 times in 2006/07 at 51 properties, recording noise from 49 domestic and commercial sources. Recordings were used to support serving an Abatement Notice on three cases in conjunction with programmed visits, log-sheets and Community Patrollers' evidence, and on one case used together with log-sheets but without officers witnessing the noise. All of these were domestic noise cases. For 39 cases, there was insufficient noise recorded to justify any action, and four of the cases are currently ongoing.

5. NOISE COMPLAINTS – INPUTS AND OUTCOMES

Magnitude of noise service requests and outcomes

- 5.1 For 2006 (January – December) the number of out of hours noise service requests received by the Council's out of hours Control Centre was 1865, an increase of 397 (21%) from 2005, of which 228 were received after 11pm and before 7am the next morning. However, in October 2006 the system of recording noise complaints was changed, which meant for example that noisy groups of youths, or youths playing football near a dwelling, were no longer recorded as noise incidents. From October 2006, all calls logged by the Control Centre were recorded on the Environmental Health M3 database, giving a far more reliable picture of noise incidents from that date.
- 5.2 For 2006/07 the total number of noise requests received by Environmental Health Services as a whole numbered 2147, compared to 2083 and 1368 for 2005/06 and 2004/05 respectively, showing an increase each year, (although the latter numbers include noise from groups of youths, etc. for the whole year). This figure can be broken down as follows:

Noise Service Requests 2006/07	April - Sept	Oct - March
Office hour calls	251	189
Out of hours calls (5pm – 8am)	1321	386
Total	2147	

- 5.3 At the end of September 2007, there will be a full year of robust data relating to noise complaints, permitting a more detailed analysis and profiling over the four seasons (Summer being the busiest period).
- 5.4 Unwanted noise is also the management issue most frequently complained about to Housing Services, with 162 chronic cases and 159 intermittent cases for the period 1 October 2006 to 30 June 2007.

Noise returns to CIEH

- 5.5 The Chartered Institute of Environmental Health (CIEH) coordinates an annual return of noise nuisance cases from each local authority in England and Wales. Noise is presented in 17 designated types (eg music, dog barking, and vehicle) and seven different noise

sources. Since October 2006, all noise complaints have been recorded in line with these source types, which excludes low level anti-social behaviour complaints such as groups of children playing football near housing. Returns from this Council have been formulated from the M3 database and indicate a year on year increase, illustrated below. The figure for 2006/7 also includes a complete set of data from the Control Centre which the others do not.

Noise complaint cases - annual returns to CIEH	
2006/07	853
2005/06	520
2004/05	412
2003/04	353

Time profile of calls

- 5.6 The vast majority of ‘active calls’, when there is noise happening at the time, are received out of office hours by the Control Centre, whereas during the day-time, people are often reporting noisy incidents that have occurred. Therefore a profile of the active calls gives the best indication of when people are suffering from noise at night and weekends. Currently these profiles can only be given from October 2006, (which unfortunately misses the busy Summer period). However, they show that noise calls increase markedly from 9pm, peaking between 10 pm and midnight, and reduce markedly from 1am. Appendix I shows the hourly profile for the last three quarters (October 2006 – June 2007), reinforcing this late night peak when 42% (262) of calls are made.
- 5.7 The current arrangements for reactively responding to late night noise are not wholly matched to this peak, because of the fact that the Community Patrollers’ shift ends at midnight, effectively leaving the last half hour from 11:30 pm for them to return to base and update records. However, the Control Centre is able to continue taking and recording details of noisy incidents and offer advice to customers.

Profile of noise types

- 5.8 Appendix II shows Exeter’s profile of noise types and sources for 2006/07; it can be seen that amplified music and parties constitute the largest portion of complaints (408 complaints, or 48%), with domestic premises being the major source, (612, or 72%).

Outcomes

- 5.9 The outcomes to the 835 cases reported to CIEH were broken down as follows:

Outcome	Number
Ongoing - still under investigation	2
Ceased and not likely to recur	94
Not pursued by complainant	273
Referred to other agencies (RSL & Housing)	165
Resolved informally	312
Abatement notice served	7
Total	853

- 5.10 Of the 853 cases, 679 (80%) were resolved following the initial intervention by the Council. The number of statutory noise nuisances identified in 2006/07 was four, with seven Abatement Notices being served in response (this includes multiple notices being

served on two student let properties with joint occupiers). Although this number may appear low, the strength of the evidence gathered meant that none of these notices were appealed against, and the noise was successfully abated. Consequently, there were no breaches of these notices and therefore no need for prosecutions.

6. INTERPRETATION AND CONCLUSIONS FROM OUTCOMES

6.1 A number of key conclusions can be drawn from this data, as follows:

- The numbers of noise complaints being received show a year on year increase, which indicates that noise remains an issue of concern for Exeter's citizens, and that the Council can justifiably consider noise nuisance as a local enforcement priority in line with the Rogers Review.
- The current service arrangements are not best suited to deal with peaks of noisy episodes occurring late at night, both in terms of interventions and evidence gathering.
- The current arrangements are not best suited to uncovering and identifying cases of statutory noise nuisance.
- The threshold of evidence currently sought before an Abatement Notice is served may be set at a higher level than is necessary to counter appeals, and may be acting as an impediment to enforcement action.
- There may be potential to use log-sheets, MATRON recordings and planned visits more productively.
- In response to out of hours calls, there may be potential to improve the use of evidence gathered from Community Patrol's reactive visits and translate these into more productive enforcement outcomes.

7. PROPOSAL

7.1 To address the issues identified in the report the following service improvements are proposed:

- That improvements are made to the collection and use of evidence gathered by Community Patrol to enhance the identification of, and enforcement against statutory noise nuisance (to be implemented by October 2007).
- A joint review between Environmental Health Services and Housing Services takes place to strengthen procedures for dealing with noise nuisance affecting council tenants (to be implemented by December 2007).
- The collection of evidence from log-sheets, MATRON recordings and planned visits is reviewed together with the threshold of evidence for serving Abatement Notices, and any necessary changes made (to be implemented by November 2007).
- That potential incremental enhancements to late night coverage by Community Patrol in response to peaks in service demand, is explored with the Patrollers and Control Centre staff (to be progressed by November 2007).
- A more detailed review of arrangements for responding to noise nuisance is carried out by March 2008, to include benchmarking with comparator councils and a customer satisfaction survey.
- As part of this review, to identify a series of further incremental enhancements, prioritised on a best value basis, for further consideration.

8. RECOMMENDED that

- 1) Scrutiny Committee Community support the actions proposed in section 7 of this report.

HEAD OF ENVIRONMENTAL HEALTH SERVICES

S:PA/LP/ Committee/907SCC11
23.8.07

COMMUNITY & ENVIRONMENT DIRECTORATE

**Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:**

National enforcement priorities for local authority regulatory services – Peter Rogers 2007