

**WILTSHIRE COUNCIL**

**TROWBRIDGE AREA BOARD**

**14 MARCH 2013**

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**ENVIRONMENTAL HEALTH – OUT OF HOURS NOISE COMPLAINTS**

**Purpose of the Report**

To update the Area Board on a particular complaint of noise

To inform the Area Board of current arrangements for dealing with noise complaints outside of normal hours

**1. Background**

- 1.1 On 28 December 2012 a private event was held in a garden in Paxcroft Mead. This event caused widespread annoyance to residents in the vicinity. Following police intervention the event ended before midnight.
- 1.2 Some residents were frustrated that, although they were able to report the incident at the time to the Council's call centre, there was no provision for an officer to visit at the time.
- 1.3 In accordance with normal procedures, the incident had been forwarded to the Public Protection Service for follow up.
- 1.4 Following the matter being raised by Councillor Oldrieve it was recognised that this complaint should be further investigated. Accordingly, following liaison with the police, statements were provided by officers who attended. These statements corroborate the views of local residents that this was an exceptionally noisy event, albeit in the event of relatively short duration. On balance, it was concluded that this did amount to a statutory nuisance. A further verbal update will be provided at the meeting.

**2 Outline of the incident**

- 2.1 It is understood that the event consisted of a marquee erected in a small back garden. A DJ and sound system were operating in the garden from about 1900 hrs. Some neighbours made requests for the sound levels to be moderated but were rebuffed. Calls to the out of hours service were logged but not passed through to the on call officer.
- 2.2 Following complaints to the Police from several neighbours regarding loud noise and people spilling into the street, Police Community Support Officers

attended at about 22.45 hours, and then Police Officers at about 2300 hrs for possible breach of the peace. It is understood that the officers did receive a hostile reception but were able to defuse the situation and prevent a breach of the peace. The event appears to have broken up soon after the police intervention.

- 2.3 It should be noted that the police considered they were dealing with a public order issue, rather than a noise nuisance issue. As such, no assistance from Public Protection was sought.
- 2.4 The details of the complaints were passed through to the Public Protection Team on the next working day.

### **3. Statutory noise nuisance and investigation**

- 3.1. Under the Environmental Protection Act 1990, the Authority is under a duty:

*“where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.”*

What steps are “reasonable” depends on the particular circumstances of the complaint, but in addition, it is for the authority to determine what resources it wishes to devote to this area of work.

- 3.2. There are a number of different issues that can be dealt with as “statutory nuisances”, for example, noise, odours, accumulations, light trespass.
- 3.3. The meaning of the phrase “Statutory Nuisance” is not defined in statute but it is commonly accepted to mean “an unlawful interference with the use and enjoyment of land”. In other words, the interference being complained of must cause such interference as to render an otherwise lawful act unlawful.
- 3.4. There is a significant amount of case law which gives more guidance on this concept. The case law makes it clear that whilst a single event can cause so severe a disturbance as to amount to a statutory nuisance, in most cases there will be an element of an ongoing activity. Consequently, resources are concentrated on addressing ongoing or repetitive incidents rather than on single events.
- 3.5. The Environmental Protection team receives over 1800 noise complaints each year of which over 500 are in the West area. Each one receives a response, even if only by use of telephone call or standard letter, but it is not practicable to investigate each one in detail, particularly as a significant proportion relate to events that are not repeated, or occur perhaps no more often than once or twice a year.
- 3.6. The effect on human health of interference with sleep, or interference with normal activities, by repeated incidents of excessive noise should not be under-estimated. By contrast, a single noisy event such as a one off birthday party may cause legitimate annoyance to neighbours at the time, but if the

event is not repeated the long-term effects are unlikely to be significant. For that reason, the Public Protection procedures for addressing noise issues are aimed at focusing resources at the minority who persist in regularly inflicting noise on their neighbours.

3.7. During 2012, 11 Noise Abatement Notices were served following investigations in the west area alone. On two occasions following persistent breach of those notices the team seized “noise making equipment” and prosecuted the individuals concerned. On both occasions the Magistrates subsequently permanently deprived the offenders of some or all of the equipment seized as well as imposing fines.

#### **4. Liaison with Police**

4.1. The primary responsibility for the investigation of statutory nuisance rests with the local authority and there are no formal arrangements for the police to investigate such complaints. Such investigations are not “core business” for the police. Nevertheless, there are incidents which cross over into areas of public safety or maintenance of the peace where the police may decide to intervene.

4.2. In any case where a police officer witnesses levels of noise which he or she considers to be unacceptable, the public protection team will use that evidence to support the authorities’ investigation. On occasions Abatement Notices have been served on the evidence of police officers alone.

4.3. The Police may request the attendance of a Public Protection Officer outside of normal hours.

#### **5. Out of Hours service**

5.1. There is no statutory duty to provide an out of normal hours service for environmental health issues, but a number of authorities provide some level of service. The level of service varies both as to what areas of work are covered and to the level of response. An increasing number of councils are withdrawing this service altogether due to financial constraints.

Some inner city authorities provide a fully manned response service, particularly for noise issues, either for part of the week or just for weekends. Rural authorities often respond only to certain specific emergencies.

5.2. Since the formation of Wiltshire Council, a consistent out of hours service has been brought into effect covering the whole of the County. The service is only intended to respond to defined emergencies and a small number of ongoing investigations. It is not intended to provide a response to one-off events.

5.3. This service is provided seven days a week up until midnight by an officer covering the north and west of the County, with another covering the south and east. As far as noise issues are concerned currently complaints to the

service would only be passed to the officer on call at the time if:

- It relates to a malfunctioning intruder alarm
- Assistance has been requested by police or another Council service
- The case is subject to ongoing investigations and the complainant has been told to call the service.

5.4. It should be stressed that a significant amount of work does take place outside of normal hours by planned visits. It is rare for a week to pass without one or more officers working out of normal hours. In addition, ongoing investigations where noise occurs irregularly are investigated by the use of calibrated recording equipment operated by the complainants.

5.5. Considerations of officer safety are important as they are working alone in potentially hostile situations. Control measures in place include

- An automatic lone worker monitoring system
- Training in dynamic risk assessments
- Works instructions to investigate but not normally to intervene.
- Works instructions to withdraw if, at any time, the officer considers their personal safety to be compromised.

5.6. Decisions based on careful consideration of the evidence can then be taken after the event with the primary purpose of preventing a repetition.

## **6. Review of the Out of Hours Service**

6.1. As part of ongoing considerations of resources, the Cabinet Member for the Public Health and Public Protection is reviewing the provision of services outside of normal hours. In addition, there is a corporate review of all out of hours services in process.

## **7. Recommendations**

7.1. It is recommended that the Area Board note the report.

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