

London Borough of Hammersmith & Fulham

**COMMUNITY SAFETY, ENVIRONMENT AND
RESIDENTS' SERVICES POLICY &
ACCOUNTABILITY COMMITTEE**

28 JUNE 2016



NOISE NUISANCE PREVENTION

Report of the Director for Environmental Health

Open Report

Classification - For Policy & Advisory Review & Comment

Key Decision: No

Wards Affected: All

Accountable Director: Nicholas Austin

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1. EXECUTIVE SUMMARY

- 1.1. This report updates the Committee on the operational service arrangements of the Noise and Nuisance team in tackling anti-social behaviour. In addition it sets out the volume and type of service requests received from residents and the performance of the team for the year April 2015 to March 2016.
- 1.2. The report also seeks the views of the Committee on what the Council's approach should be to the specific aspect of busking and public entertainment that can enhance the vibrancy of the local environment but can also lead to complaint.

2. RECOMMENDATIONS

- 2.1. It is recommended that the Committee notes the content of the report and offers its views on the direction the Council should take with respect to its policy on busking and public entertainment.

3. TACKLING NOISE AND NUISANCE

Reactive Response Service

- 3.1. The Noise & Nuisance team sits within Environmental Health and is staffed by professional officers with qualifications in acoustics and enforcement.
- 3.2. Multiple teams of officers operate 365 days a year, day and night (till 5am Friday to Monday and till 3am Tuesday to Thursday), providing an essential response service to residents suffering noise nuisance from loud music, construction, alarms, refrigeration and mechanical plant, barking dogs etc and other nuisances such as dust and smoke from bonfires.
- 3.3. Covert officers are available to visit residents in their homes and to take action to abate the nuisance there and then. The quicker the officer gets to the resident's home the more likely they are to witness the nuisance (required by law) and remedy the problem. This is achieved either informally by speaking to all parties, or by serving a legal notice setting out requirements to abate the nuisance or by taking enforcement action for a breach of a legal notice: such as confiscation, fixed penalty notice or instigation of criminal proceedings.
- 3.4. There are two primary pieces of legislation that govern the service: Environmental Protection Act (EPA) 1990 and the Control of Pollution Act (COPA) 1974. There is no legal requirement to provide an out of hour's service but the Council has a statutory duty to investigate complaints and like many London boroughs this is achieved through the provision of a response service at times when it is needed.
- 3.5. The service receives between 6,000 and 8,000 requests for help in Hammersmith & Fulham every year. Noise in particular has a significant

impact on people's lives, living in a densely populated borough means that it can happen to anyone.

Shared Service

- 3.6. In April 2014, the Noise & Nuisance Service in Hammersmith & Fulham amalgamated with its neighbour the Royal Borough of Kensington & Chelsea. The sharing of services allowed for the operational hours to residents to be extended with an increase in the numbers of officers available to respond. In turn this enables better case management, a sharing of expertise across the boroughs, and the delivery of financial savings.
- 3.7. In Hammersmith & Fulham the hours were extended at weekends allowing a 9am start (previously midday) and a 7:30am start during the week (previously 8am).
- 3.8. As part of the amalgamation the day to day operational model used by RBKC, whereby Area Senior Officers are given responsibility to proactively manage set areas and Noise & Nuisance Officers designated individual zones, was adopted in Hammersmith & Fulham. In LBHF there are 5 zones based on service demand and the number of available officers.
- 3.9. The move towards designated officers and to a more proactive case handling approach allows the further improvement of the service for residents by enabling better case resolution. In addition, complex cases such as major developments can now be dealt with via a single point of contact and benefit from a level of continuity that was previously unavailable.

Major Developments

- 3.10. Within the Borough there are a number of larger developments such as Earls Court, Tideway Tunnel, Crossrail and HS2 that are more complex and potentially have significant impacts from construction noise and vibration. Dedicated officers are assigned on a day to day basis with the wider team able to respond 7 days a week.
- 3.11. In the case of Earls Court and Tideway Tunnel funding from the developer is available to undertake environmental monitoring. At Earls Court a number of noise and vibration monitors are on site to provide objective data and confirm that the developers are operating to agreed parameters set by Environmental health; this will be a requirement for the Tideway Tunnel too.

Planning process

- 3.12. The team plays a vital legal role in the planning process providing consultative feedback on planning applications principally around the potential impact of noise either from or to the development.
- 3.13. Officers review 'expert' reports from acoustic consultants, architects and engineers. The intention is to design out any negative impact through the implementation of acoustic measures. Over the last five years the unprecedented level of development has placed considerable demand on officer time.
- 3.14. The number of planning applications continues to remain high.

Licensing

- 3.15. The team is the legal 'Responsible Authority' for licensing pubs, clubs and other premises in relation to noise and public nuisance. All applications including Temporary Event Notices (TEN) are reviewed by officers and conditions applied as appropriate.
- 3.16. Conditions are imposed to proactively design out and/or mitigate the potential negative impact on residents of entertainment and include physical measures such as noise limits and management requirements.
- 3.17. In recent years the team has seen an increased demand in the number of applications; especially TENS that require officer feedback and attendance at Committee.
- 3.18. The team meets with key stakeholders including the Police on a routine basis to proactively discuss solutions for problem premises, and premises that may pose potential future problems, to safeguard the public.

Call Volumes

- 3.19. Call volumes are steady throughout the week but notably increase over the course of the weekend. During this period additional teams of officers are fielded with up to four teams (eight officers) working across both boroughs on a Saturday night/Sunday morning.
- 3.20. Table 1, reports on a number of performance measures for the year April 2015 to March 2016 comparing them against the same period for the previous year.
- 3.21. The number of calls received during the day has increased by 14% in the last year. Analysis of the nuisance type shows that this is in part due to an increase in complaints regarding noise from construction sites which continues to rise year on year. This increase is reflected in the large number of planning applications over the last few years.
- 3.22. The majority of construction complaints are about noisy works outside the generally permitted hours. The extension of the service operational hours in 2014 during the day at weekend's means that more calls are being received and responded to earlier.
- 3.23. In response to this particular issue the number of legal notices (S60s) that have been served by officers on developers/contractors to control the impact has also increased markedly. In addition, the technical specifications on the legal notices are now more detailed in terms of defining 'best practicable means' around quieter construction methods. At some larger sites quiet periods during high impact works (e.g. concrete breaking) have been introduced during the day and weekend to further protect residents and nearby businesses.
- 3.24. The number of calls received at night is higher (28%) this year compared to last. It is too early to establish if this is a continuing trend or whether it is an anomaly. There is a 32% increase in complaints about music which is typically the most common complaint at night.

- 3.25. In response the number of legal notices (S80s) has also increased. The legal notice place requirements on the occupier to stop the nuisance.

Call volumes by hour

- 3.26. Table 2 displays the hourly demand for the service throughout the course of the night by month for the year April 2015 to March 2016.
- 3.27. The 'night shift' is notionally set at 19:30 to 05:00. Demand for the service builds up over the course of the evening peaking around midnight and then dropping off at a uniform rate till when the service closes. The data after 05:00 is not accurate as no calls are taken after this hour until the service commences again at 7:30.
- 3.28. Additional teams work at weekends over the course of the summer but as can be seen from Table 2 there is a consistent number of complaints regardless of the month.

Performance

- 3.29. The performance of the team can be judged by a number of parameters including an understanding of response times versus service demand.
- 3.30. There is a performance measure that gives an indication of how long it takes to respond: average time to visit during the night (target <1 hour). Performance can be affected by call volumes, case duration, traffic and geography (proximity to where officer is located at time of call). Call response times on average remain well within target (see Table 1).
- 3.31. In addition, many other parameters are recorded including the number of legal notices served and other enforcement actions taken. The majority of cases (90%) are resolved informally through speaking to all parties at the time of occurrence.
- 3.32. It is important to note that the shared arrangement with Kensington & Chelsea has allowed both Boroughs to benefit from officer resources being flexibly and pragmatically deployed between Boroughs to adapt to fluctuations in demand.

Table 1

Descriptor	April 2015 to March 2016	April 2014 to March 2015	% Variance
No. of 'Noise on Now' calls 07:30 to 19:30	2,543	2,229	+14.1
No. of 'Noise on Now' calls 19:30 to 05:00	4,163	3,257	+27.8
No. of service requests not requiring immediate response	2,082	2,190	-26.4
Average visit response time Night: 19:30 to 05:00 (target <1 hours)	Achieved	Achieved	
% of construction complaints	15.5	13.6	+13.9
% of licensed Premises complaints	2.5	2.5	0
% of domestic music complaints	39.1	29.5	+32.5
% of domestic other complaints	16.5	15.1	+9.3
% of other type of complaints	26.4	39.2	-32.7
No. of S80 notices served	102	89	+14.6
No. of S60 notices served	484	481	+0.62
No of planning apps consulted/conditioned	1,540	1,637	-5.9
No of Licensing applications consulted/conditioned	477	634	-24.8

4. PROPOSAL AND ISSUES

Busking and street entertainment

- 4.1. The Council is currently considering what its policy on busking and street entertainment should be within the Borough. The Council wishes to strike the right balance of promoting a vibrant street culture whilst protecting residents from nuisance and illegal activities.
- 4.2. Street entertainment is viewed as an important part of the musical and cultural vibrancy of the borough, providing a means for new talent to be discovered, while adding character to the area. This in turn supports the creative and cultural industries.
- 4.3. The practice of Busking and Street Entertaining in a public space is not against the law. However these activities can become a component part of other offences, such as noise nuisance, illegal street-trading and obstructing the highway etc.
- 4.4. The Council can take enforcement action under the Environmental Protection Act 1990 and the Control of Pollution Act 1974 for noise nuisance but this requires a high burden of proof and is labour and resource intensive.
- 4.5. Under the Anti-Social Crime and Policing Act 2014 the Council can issue Community Protection Notices on individuals, which if breached are enforceable through the service of a Fixed Penalty Notice or the instigation of criminal proceedings
- 4.6. In addition, the Council can introduce a Public Spaces Protection Orders (PSPO's) to control anti-social behaviour in certain areas again through the service of a Fixed Penalty Notice or the instigation of criminal proceedings
- 4.7. In the year April 2015 to March 2016 the Noise & Nuisance team received just over 100 complaints about busking/street performers. The majority of these were located outside Shepherd's Bush station with just over 10 received in Hammersmith Broadway and a smaller number in Fulham Broadway.
- 4.8. Reports from Community Safety Unit and CCTV for the period 5th April the 2016 to May 5th 2016 in Hammersmith Broadway report 14 occurrences of noisy busking. The Operations Manager from Hammersmith London recently met with a representative from Guide Dogs for the Blind in March 2016 following complaints that the buskers in operation outside the Swan PH were obstructing the footway and also making it difficult for those with sensory impairments to hear the traffic signals at the pedestrian crossing.
- 4.9. Recently, the Council had cause to introduce a Public Spaces Protection Order outside Shepherds Bush underground station in response to escalating complaints from local residents and users of the station about excessive amplified noise from busking. The action was deemed necessary in this specific situation owing to the excessive negative impact and is not the norm.

5. OPTIONS AND ANALYSIS OF OPTIONS

- 5.1. There are a number of options available to the Council to control such activities. Some local authorities such as London Borough of Camden have a licensing regime, whilst others such as Cambridgeshire, Oxford and Bath have produced buskers' code of practice that all entertainers need to sign up to. The Greater London Authority has also created the BuskinLondon Team who have produced a code of practice specific to London to which local authorities can sign up.

Option 1 Local Policy on Street Entertainment

- 5.2. The introduction of an Hammersmith & Fulham street entertainment policy would set out the Council's approach to street entertainment and busking across the Borough providing clarity for residents, businesses and entertainers alike.
- 5.3. The policy would recognise the importance of ensuring a vibrant street culture whilst seeking to protect residents and businesses from any negative impacts. The policy would seek to be light touch whilst providing clear guidance on the expected code of conduct to ensure street entertainment is undertaken safely and without causing noise nuisance.
- 5.4. A policy on its own would be voluntary; however, this does not prevent the Council taking enforcement action on a case by case approach where a nuisance is being created

Option 2 Licensing

- 5.5. Part V of the London Local Authorities Act 2000 provides optional powers for London Councils to adopt to licence busking. Licensing does not prevent any type of busking but can introduce regulatory requirements where it is considered necessary to control potential negative impacts such as noise.
- 5.6. Regulatory conditions can be set where, for example, the entertainment includes music or the use of amplifiers, or where there is a potential safety risk. Conditions can be imposed such as time restrictions and location.
- 5.7. A charge would be levied for the licence and there would be a cost to the Council for administering the process.
- 5.8. Where busking is performed without a licence or not in compliance with the conditions the option would be available to the Council to undertake enforcement.
- 5.9. Any licensing regime would need to sit alongside a Council policy i.e. Option 1 plus Option 2

Option 3 BuskinLondon – London Mayor's Busking Scheme

- 5.10. The Mayor of London has introduced a London wide code for street performance that any London Council can sign up to. The policy has been created in conjunction with street performers, the Mayor of London, the Police and London Councils have already been consulted. The policy aims to strike the right balance between the vibrancy of London and protecting residents and businesses from any negative impacts.

- 5.11. The policy is voluntary and monitored and enforced by the BuskinLondon team. The team is made of buskers and events professionals who will help build a strong busking community and resolve any problems before they get serious. They provide information and advice to buskers. They also collect feedback and hold regular performer meetings where issues can be raised and questions answered.
- 5.12. The team will resolve any problems through a 3 step process. Residents and businesses can contact the team directly which sits outside the Council. In the most serious of cases the team will consider issuing a Community Protection Notice (CPN), which if breached could result in a fixed penalty notice, a court summons and seizure of any equipment.
- 5.13. The policy is London wide and therefore benefits from a uniform approach. The responsibility for monitoring and enforcing sits with the BuskinLondon team. There is an annual cost to the Council for adopting this approach.
- 5.14. Where a specific problem remains the Council can take its own enforcement action through the enforcement of CPN.
- 5.15. **Option 4 – Do Nothing**
- 5.16. There is currently no consistent approach to street entertainment in terms of either encouraging it as part of an overall cultural vibrancy strategy or controlling it within the Borough.
- 5.17. The existing approach does not provide clarity to residents, businesses or performers of what the Council expects.
- 5.18. Doing nothing will continue to leave a vacuum open to interpretation.

6. CONSULTATION

- 6.1. The Council will be required to consult on the adoption of a policy and/or licensing scheme.

7. EQUALITY IMPLICATIONS

- 7.1. An Equalities Impact Assessment would be taken as part of any consultation and adoption of a policy and/or licensing scheme.

8. LEGAL IMPLICATIONS

- 8.1. Under the Antisocial Behaviour, Policing & Crime Act 2014 the police and local authorities can issue a Community Protection Notice (CPN) if they are satisfied on reasonable grounds that the conduct of a business, organisation or individual:

- is having a detrimental effect on the quality of life of those in the locality; and
- is persistent or continuing nature; and
- is unreasonable

- 8.2. CPN's are designed to deal with short or medium-term issues

- 8.3. A CPN can include any or all of the following:

- A requirement to stop doing specified things;
 - A requirement to do specified things;
 - A requirement to take reasonable steps to achieve specified results.
- 8.4. Before a CPN can be issued a written warning must first be issued informing the individual that they will be served with a CPN if they do not desist from their behaviour. Should they fail to remedy their behaviour a CPN can be issued. Breach of the notice is a criminal offence and can result in a fixed penalty notice (of no more than £100) being issued which would discharge any liability to conviction.
- 8.5. Failure to pay the fixed penalty notice will result in prosecution proceedings being instigated. Should the individual be found guilty of an offence they are liable on summary conviction to a fine not exceeding level 4 on the standard scale for individuals or £20,000 for businesses.
- 8.6. Issuing a CPN does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990.
- Anyone issued with a CPN has the opportunity to appeal it
- 8.7. A Public Space Protection Order (PSPO) can be made by a local authority if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
- have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
 - is, or is likely to be, persistent or continuing in nature;
 - is, or is likely to be, unreasonable; and
 - justifies the restrictions imposed.
- 8.8. The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect and the local authority may wish to make an initial PSPO for 12 months and then review the decision.
- 8.9. At any point before expiry, the council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring.
- 8.10. It is an offence for a person, without reasonable excuse, to do anything that is prohibited by a PSPO (other than consume alcohol), or fail to comply with a requirement to which the person is subject under a PSPO.
- 8.11. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 8.12. Before making a PSPO, the council **must** consult with the local police.

Implications verified/completed by: (Joyce Golder, Principal Solicitor, Legal Services, 020 7361 2181

9. FINANCIAL IMPLICATIONS

- 9.1. The consultation and roll out of any policy and/or licensing scheme would require an initial one off resourcing cost of around £5,000, which would include officer time and publicity.
- 9.2. *The costs, if the first two options are adopted, would be met from existing budgets. The additional costs arising from option 3 would form the basis of a growth bid and would be covered as part of the Medium Term Financial Strategy process.*
- 9.3. Implications verified/completed by: Gary Hannaway, Head of Finance, 020 8753 6071

10. IMPLICATIONS FOR BUSINESS

- 10.1. The views of the impact on business of any busking/street entertainment policy will be considered as part of any future consultation.

11. RISK MANAGEMENT

- 11.1. Noise can be defined as any unwanted sound. Whilst some noise is inevitable, exposure to noise can have detrimental effects on human health, amenity, productivity and the natural environment. Some people may find the noise of city life exciting, whilst others find it intrusive and adversely affecting their quality of life. This fact was recognised in the “Noise Policy Statement for England” (2010). A key challenge in managing the noise environment from an economic perspective is to balance the costs of noise with the costs of controlling noise.
- 9.4. Implications verified by: Michael Sloniowski, Shared Services Risk Manager, telephone 020 8753 2587.

12. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
	Not applicable		