Joint Report of the Director of Community Services and the Director of Environment and Development Services

Response to the Ombudsman’s report on a corporate approach to noise nuisance

Purpose of report

1. To advise the Executive on the current procedure for dealing with domestic noise nuisance in council housing and to provide options on how the council’s overall approach for responding to domestic noise can be improved.

Background

2. The Local Government Ombudsman has recently reported a verdict of ‘maladministration’ regarding City of York Council’s handling of an anti-social behaviour complaint about domestic noise in council property. Whilst the ombudsman did not disagree with the council’s decision, it was felt that the procedures for communicating between the housing services division of the Directorate of Community Services and the environmental protection unit (EPU) of the Directorate of Environment and Development Services required improvement. Part of the Ombudsman’s recommendation was that the council should review its approach to the way these services work together.

3. The incidents of domestic noise nuisance are the highest category of anti-social behaviour experienced by council tenants. In February 2003 the number of live cases was 123 across the city, this represented over 30% of all cases relating to Council Tenant’s of anti-social behaviour.

4. The annual service monitor showed that of the customers who report nuisance over 75% said they suffered from noise nuisance.

5. The Housing Scrutiny Board looked closely at ‘Tackling Anti Social Behaviour in Council Tenancies’ one of the areas they focused on was noise nuisance. They have made a recommendation that the executive should ask officers to create a more seamless approach for customers. The Scrutiny Board also recognised the need to improve the corporate approach to tackling anti-social behaviour.

Current powers

6. There are two main ways in which domestic noise nuisance can be dealt with:
a) The Environmental Protection Act

Under the Environmental Protection Act 1990 a statutory nuisance will exist where in the opinion of the environmental protection officers (EPOs), the volume of noise emanating from premises, its duration, frequency and the effects of noise would class it as prejudicial to health or a nuisance at another premises. In these circumstances a Section 80 abatement notice can be served on the perpetrator. No offence is committed until a notice is served. Subsequent breach of the terms of the abatement notice may result in a prosecution and fine.

In 2002/03 the Directorate of Environment & Development Services environmental protection unit (EPU) received 823 complaints of noise from domestic premises, 181 of which were from council owned premises. Although the powers within the Environmental Protection Act applies universally, the existing protocol which has been in place for many years is to pass complaints of domestic noise in council property to housing services. The EPU then deal with the vast majority of the private sector complaints by issuing a self help pack. Even in the private sector therefore, the council’s EPU only investigates a very small number of disputes. Consequently only 3 abatement notices relating to domestic noise were served in 2002/03 and no prosecutions have been taken since 1996.

b) Conditions of tenancy

As part of their conditions of tenancy council tenants must ‘show consideration towards their neighbours and the public at large by not causing excessive noise……and must take all reasonable steps to prevent anyone living in or visiting the property from doing so’. Clearly this power only applies to CYC tenants.

In February 2003 estate managers were dealing with 123 live cases of noise nuisance.

The council’s current approach to tackling domestic noise therefore varies dependent on whether the customer lives in the private sector or is a council tenant.

Current procedure in council owned homes

Within housing services the estate manager will investigate noise nuisance. The initial approach may be to suggest mediation. The estate manager will advise customers to maintain a diary sheet and the department provides a printed version. Often noise nuisance is symptomatic of other issues of anti-social behaviour.

Any action taken is through the powers in the tenancy agreement. In some cases where noise nuisance is occurring it is inappropriate to take enforcement action through the tenancy agreement, which may lead to repossession of a home.
As stated in paragraph 6, if EPU receive noise nuisance complaints from council property they refer the case to the relevant estate manager. On occasions the estate manager will request that the digital audio tape (DAT) recording equipment to be installed by EPU to monitor the noise (18 such requests were made in 2002/03). The results of the recording are then analysed by EPU and a report detailing their findings, including recommendations for further work, supplied to housing services. This report will indicate whether or not the noise is likely to constitute a statutory nuisance. The cost of this service is charged to the housing revenue account (in 2002/03 this recharge was £1.8k). No further direct action is then taken by EPU although a senior officer from the EPU sit on the Nuisance Action Group (with officers from housing and community services, the police/Safer York Partnership and others) to discuss the best way forward with individual cases. EPU provide regular training to estate managers so as to help them in dealing with noise enforcement. No recharge is made for this advice.

Current procedure - domestic properties other than council

All complainants who contact EPU are given verbal advice and a self help pack. The purpose of this is to help the complainant understand what constitutes a statutory nuisance, and the option available to the complainant to undertake private action using Section 82 of the Environmental Protection Act. This contains the same remedy as the Section 80 Act, but allows a private individual to take action rather than the local authority. On occasions complaints are followed up with a site visit and further advice offered and the DAT recorder installed. In some cases a referral is made to the council’s ‘Face to Face’ mediation service.

In a limited number of cases where the EPU feels that the regularity and predictability of the noise is such that it may be relatively easy to establish the existence of a statutory nuisance, or there is some other substantial reason, an officer will visit the complainant in order to attempt to witness the noise, usually on three separate occasions. If a statutory nuisance is not proven, the complaint is closed and the customer informed in writing.

If there is sufficient evidence that the noise could constitute a statutory nuisance warning letters are sent and visits are made in an attempt to resolve the dispute. If this fails a noise abatement notice may be served. A breach of a notice may result in a prosecution and lead to a fine. The cost of this service is funded by the general fund. As stated earlier, only 3 abatement notices were served in 2002/03

Options

Option 1

Retain the existing arrangements, where the estate managers continue to deal with the problem, and are assisted by the EPU with the installation of DAT recording equipment at the housing service’s request, and EPU support is restricted to the provision of subsequent advice.
Option 2

13 To develop a more effective protocol between housing and EPU, the aim being to establish clear, accountable and effective co-ordination and develop a higher level of joint working in dealing with noise nuisance in council property with increased intervention by the EPU. Also to develop an effective protocol within the ‘virtual team’ concept (part of the ‘York Pride’ philosophy), so that the full range of available expertise can be used to assist in the resolution of domestic noise in council properties. An example of a protocol is given at Annex 1.

Option 3

14 DEDS would take the lead responsibility for dealing with all noise nuisance complaints across tenures on the basis that (a) tenure should not determine how the council deals with the complaint, and (b) that the council should investigate all domestic noise complaints. This would require the active intervention in ALL noise complaints, the witnessing of nuisance, and the responsibility for taking enforcement action including legal proceedings and prosecution. To undertake this effectively would require a fundamental change in the way domestic noise nuisance is dealt with, and the formation of a specialist noise enforcement team capable of responding both within, and outside normal working hours.

Analysis

Option 1

15 If this option is chosen it is unlikely to satisfy the Ombudsman or customers.

16 It will mean that the council will not be providing the same service to all tenures in York. Council tenants would continue to pay for any services provided by EPU through the housing revenue account unless a view was taken that the cost of the use of the DAT recorder should be charged to the general fund. The cost to the housing revenue account was approximately £1,800 last year.

17 The use of the powers contained in the Environmental Protection Act 1990 will not be used to tackle noise nuisance in council property.

Option 2

18 If this option is chosen, the housing services and EPOs would be clearer about their roles and there would be a higher level of intervention and assistance by EPOs. The powers contained in the EPA 1990 will be used to tackle noise nuisance in council property, and will provide an additional tool to tackling the significant problem of noise nuisance. These protocols would also integrate with the activities of the ‘virtual teams’, and provide for a wider level of officer support in the resolution of domestic noise.
19 EPU operates an out of hours emergency environmental health service on Friday and Saturday evenings (8pm to 3am) and on Bank Holidays. Although the agreed protocol does not encompass the resolution of domestic noise, in agreed and specific cases the EPOs may be able to attend to witness noise nuisance during these periods.

20 This approach would provide a more co-ordinated approach and if felt to be the minimum to meet the Ombudsman’s requirement for a joined up approach from the two departments. Council tenants would be arguably getting a higher level of service than other classes of tenure/ownership.

21 EPU have identified that there will be resource implications if they are to provide this additional service. These are outlined in the financial implications.

**Option 3**

22 This has the advantage that there would be a consistency in the approach to domestic noise nuisance.

23 If all cases of noise were to be investigated by the EPU there would be equity of service throughout York, but the level of resource needed to provide a satisfactory level of response such that noise can be witnessed, and appropriate action taken, is such that there are significant additional costs over and above those set out in option 1. It would mean a shift in the way domestic noise nuisance is dealt with presently.

24 Irrespective of the level of action needed to resolve the noise nuisances, as previously stated, noise may be a symptom of a wider problem. In some instances in council properties an integrated approach may still be necessary, which uses the tools available through enforcement of tenancy conditions.

**Financial implications**

**Option 1**

25 This cost can be met from within existing resources. However if the cost of the use of the DAT recorder in council homes were to be met from the general fund DEDS would have to make a saving elsewhere.

**Option 2**

26 EPU has insufficient resources to investigate existing domestic noise cases. The additional work required to provide an enhanced level of service to council tenants would require the employment of an additional environmental protection officer (Scale 4-6). The costs, assuming appointment on 1st October 2003, (including equipment, training, travelling and on costs) would be:

- 2003/04 £15K
- 2004/05 £23K
- 2005/06 £23K
The cost of this option could not be met from existing budgets in the general fund or the housing revenue account. If the cost was to be met from the general fund, savings in DEDS existing budget would be needed, or a supplementary approval would be required. If the costs were to be met from the housing revenue account, a saving would be necessary. The housing revenue account is under severe financial pressure and it would be difficult to find funds from within that source. As council tenants also pay council tax it would be inappropriate to ‘pay twice’ for a service in comparison with owner occupiers.

These costs assume the existing level of complaint and do not include any ‘out of hours’ provision, nor any additional costs which may be incurred from any action of officers within the ‘virtual teams’.

Option 3

27 If the EPU where to investigate all noise nuisances cases it would be a fundamental change in the way domestic noise nuisance is currently dealt with. It would require a specialist noise enforcement team of six officers to be set up, with a rota so that the service could operate out of normal hours. It is estimated that the cost of such a service, based on existing complaint levels, is likely to be £130k in 2003/04 rising to £232k per annum by 2005/06. A breakdown of the estimated costs is given in annex 2.

Funding

28 Both Options 2 and 3 would require additional funding being made available from the General Fund. The only source of recurring funding of this nature is the General Contingency. These funds are under severe pressure. Of the amount of £1.260m set aside for the 2003/4 financial year, nearly £800k of this is already committed (i.e. has received or is awaiting Member approval). It was also highlighted at the time of setting the Budget that Social Services may need to call on additional funding of a further £565k later this year to fund placements for Learning and Physically disabled clients and deal with discretionary charging. If Social Services’ need is to the level of £565k, the Contingency will be overspent by close to £90k. There is, therefore, little if no scope to use this to fund additional ongoing expenditure.

Legal implications

28 The evidence gathering and investigation of noise complaints by the council should be uniform in terms of the standards applied and response to complaints, regardless of whether the complainants or perpetrators are council tenants or private occupiers. In each case of noise nuisance, the solution needs to be tailored to resolve the problem.

Recommendation

29 The Executive is asked to consider the 3 options.

Option 1 will not satisfy the Ombudsman.
30 If Option 2 is chosen, it is suggested that a joint protocol between housing services and EPU be drawn up, which also integrates with the ‘virtual team’, members may wish to receive a further report on this protocol, together with more robust financial implications, or approve the option, subject to approval jointly by the Executive Members for Housing and for Environment and Sustainability.

31 If Option 3 is chosen, members may wish to receive a further report on the scope of the newly formed noise enforcement team, or approve the option, subject to approval jointly by the Executive Members for Housing and for Environment and Sustainability.

Contact Details

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For further information please contact the author of the report

Background papers

Findings of the Ombudsman enquiry.
Environmental Protection Act 1990
### Terms of the Protocol between Housing Services and Environmental Services

<table>
<thead>
<tr>
<th>Housing Services</th>
<th>Environmental Protection Unit</th>
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<tbody>
<tr>
<td>1. Assess all cases of reported noise nuisance in council properties. Report all cases involving private property to EPU</td>
<td>1. Inform housing services of any noise complaints made against or involving tenants, discuss and agree action</td>
</tr>
<tr>
<td>2. Send standard letter to complainant enclosing advice booklet and monitoring form (copy to EPU)</td>
<td></td>
</tr>
<tr>
<td>3. Send standard letter to subject(s) of complaint</td>
<td></td>
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<tr>
<td>4. Where initial letter does not resolve problem consider options for appropriate action</td>
<td></td>
</tr>
<tr>
<td>5. As appropriate, liaise with EPU to discuss monitoring forms and decide whether DAT monitoring equipment is required</td>
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<tr>
<td>6. Order DAT equipment</td>
<td>7. Arrange installation and monitoring equipment as request by housing services</td>
</tr>
<tr>
<td>8. Advise housing services of the results of the DAT recording, including whether or not the noise recorded is a statutory nuisance or under what circumstances it might become a nuisance and giving recommendations as to the most appropriate form of action to resolve the complaints.</td>
<td></td>
</tr>
<tr>
<td>9. Discuss report and agree appropriate action with EPU and the area ‘virtual team’</td>
<td>9. Discuss report and agree appropriate action (as above) with housing services and the area ‘virtual team’</td>
</tr>
<tr>
<td>10. Initiate agreed legal action to enforce the tenancy agreement</td>
<td>10. Initiate agreed legal action in cases where a statutory nuisance exists a notice has been served and it has been breached</td>
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<td>11. Monitor Outcome</td>
<td></td>
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<tr>
<td>12. Inform EPU of outcome</td>
<td>12. Inform housing services of progress throughout the investigation and outcome of any enforcement action</td>
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</tbody>
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*Appropriate legal action will be agreed in a meeting between housing services, EPU and legal services. EPU legal action will only be possible to abate a statutory nuisance. If this is not possible that action will be to eliminate nuisance by the tenancy termination or by power of arrest. In some instances the simultaneous use of housing and environmental legislation may be appropriate.*
Annex 2 - Costs of providing a seven day noise enforcement service

<table>
<thead>
<tr>
<th></th>
<th>1st October 2003 to 31st March 2004</th>
<th>2004/05</th>
<th>2005/06</th>
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<tbody>
<tr>
<td><strong>Staffing</strong>&lt;br&gt;(additional 6 FTE at Scale 6) *</td>
<td>£85K</td>
<td>£155K</td>
<td>£160K</td>
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<tr>
<td><strong>Unsocial hours payments</strong></td>
<td>£7K</td>
<td>£14K</td>
<td>£16K</td>
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<tr>
<td><strong>Transport</strong>&lt;br&gt;(a pool van)</td>
<td>£3K</td>
<td>£5K</td>
<td>£6K</td>
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<tr>
<td><strong>Set up costs</strong>&lt;br&gt;(computer, technical equipment, protective clothing etc)</td>
<td>£12K</td>
<td>£2K</td>
<td>£3K</td>
</tr>
<tr>
<td><strong>Training</strong>&lt;br&gt;(Diploma in Acoustics &amp; Noise Control + PACE etc)</td>
<td>£10K</td>
<td>£10K</td>
<td>£5K</td>
</tr>
<tr>
<td><strong>Legal fees &amp; costs</strong></td>
<td>£10K</td>
<td>£30K</td>
<td>£35K</td>
</tr>
<tr>
<td><strong>Administrative costs</strong>&lt;br&gt;(including communications)</td>
<td>£5K</td>
<td>£13K</td>
<td>£14K</td>
</tr>
<tr>
<td><strong>Publicity</strong></td>
<td>£3K</td>
<td>£2k</td>
<td>£1k</td>
</tr>
<tr>
<td><strong>Saving</strong>&lt;br&gt;(scrap existing out of hours service)</td>
<td>(£5K)</td>
<td>(£9K)</td>
<td>(£9K)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£130K</td>
<td>£222K</td>
<td>£231K</td>
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* Service based on a minimum of two officers on duty (necessary to corroborate offences and take formal enforcement action) to provide a response from 10am to 3am (seven days per week). There will be two shifts per day (10.00 to 18.30 and 18.00 to 03.00). One FTE from existing team would be transferred to the service, making 7 officers in total which will necessary to staff a suitable rota.