

Committee: Executive
Date: Monday 1 September 2014
Time: 6.30 pm
Venue: Bodicote House, Bodicote, Banbury, OX15 4AA

Membership

Councillor Barry Wood (Chairman)	Councillor G A Reynolds (Vice-Chairman)
Councillor Ken Atack	Councillor Norman Bolster
Councillor John Donaldson	Councillor Michael Gibbard
Councillor Tony Ilott	Councillor Kieron Mallon
Councillor D M Pickford	Councillor Nicholas Turner

AGENDA

1. Apologies for Absence

2. Declarations of Interest

Members are asked to declare any interest and the nature of that interest that they may have in any of the items under consideration at this meeting.

3. Petitions and Requests to Address the Meeting

The Chairman to report on any requests to submit petitions or to address the meeting.

4. Urgent Business

The Chairman to advise whether they have agreed to any item of urgent business being admitted to the agenda.

5. **Minutes** (Pages 1 - 8)

To confirm as a correct record the Minutes of the meeting held on 7 July 2014.

6. **Chairman's Announcements** **6.35pm**

To receive communications from the Chairman.

7. **Air Quality Management Areas for Banbury and Kidlington** (Pages 9 - 14) **6.40pm**

Report of Head of Community Services

Purpose of Report

To declare Air Quality Management Areas in Banbury and Kidlington.

Recommendations

The meeting is recommended:

- 1.1 To declare an Air Quality Management Area in Horsefair/North Bar, Banbury.
- 1.2 To declare an Air Quality Management Area in Bicester Road, Kidlington.
- 1.3 To agree deferring the declaration of an Air Quality Management Area in Kings End/Queens Avenue, Bicester so that additional monitoring and assessment can be carried out following the changes to the road layout.

8. **Joint Draft Cherwell District Council and South Northamptonshire Council Enforcement Policy** (Pages 15 - 32) **6.50pm**

Report of Head of Community Services

Purpose of Report

To seek approval of the joint draft Cherwell and South Northamptonshire Council Noise Enforcement Policy prior to public and stakeholder consultation.

Recommendations

The meeting is recommended:

- 1.1 To approve the joint draft Cherwell and South Northamptonshire Council Enforcement Policy.
- 1.2 To delegate authority to the Head of Community Services to consider responses and, if necessary amend the policy in consultation with the Lead Member for Clean and Green.

9. Joint Draft South Northamptonshire and Cherwell District Council Noise Investigation Policy and Procedure (Pages 33 - 76) 7.00pm

Report of Head of Community Services

Purpose of Report

To seek approval of the joint draft Cherwell and South Northamptonshire Council Noise Investigation Policy prior to public and stakeholder consultation.

Recommendations

The meeting is recommended:

- 1.1 To approve the joint draft Cherwell and South Northamptonshire Council Noise Investigation Policy.
- 1.2 To delegate authority to the Head of Community Services to consider responses and, if necessary amend the policy in consultation with the Lead Member for Public Protection.

10. Exclusion of the Press and Public

The following reports contain exempt information as defined in the following paragraphs of Part 1, Schedule 12A of Local Government Act 1972.

3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Members are reminded that whilst the following items have been marked as exempt, it is for the meeting to decide whether or not to consider them in private or in public. In making the decision, members should balance the interests of individuals or the Council itself in having access to the information. In considering their discretion members should also be mindful of the advice of Council Officers.

No representations have been received from the public requesting that these items be considered in public.

Should Members decide not to make a decision in public, they are recommended to pass the following recommendation:

“That under Section 100A of the Local Government Act 1972, the public and press be excluded from the meeting for the following items of business on the ground that, if the public and press were present, it would be likely that exempt information falling under the provisions of Schedule 12A, Part 1, Paragraph 3 would be disclosed to them, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

11. **Graven Hill** **7.10pm**

****Please note, this report will follow; information unavailable at date of agenda dispatch.****

Exempt Report of Director (Bicester)

12. **Bicester Community Building Construction Progress Update** **7.20pm**

****Please note, this report will follow; information unavailable at date of agenda dispatch.****

Exempt Report of Director (Bicester)

13. **South West Bicester Sports Village Update** **7.30pm**

****Please note, this report will follow; information unavailable at date of agenda dispatch.****

Exempt Report of Head of Community Services

14. **Woodgreen Leisure Centre Redevelopment and Leisure Centre Procurement**
(Pages 77 - 92) **7.40pm**

Exempt Report of Head of Community Services

15. **Report of Bolton Road Multi Storey Car Park Agreement with Vinci Park Services UK Ltd** (Pages 93 - 104) **7.50pm**

Exempt Report of Head of Regeneration and Housing

(Meeting scheduled to close at 8.00pm)

Information about this Agenda

Apologies for Absence

Apologies for absence should be notified to

democracy@cherwellandsouthnorthants.gov.uk or 01295 221589 prior to the start of the meeting.

Declarations of Interest

Members are asked to declare interests at item 2 on the agenda or if arriving after the start of the meeting, at the start of the relevant agenda item.

Local Government and Finance Act 1992 – Budget Setting, Contracts & Supplementary Estimates

Members are reminded that any member who is two months in arrears with Council Tax must declare the fact and may speak but not vote on any decision which involves budget

setting, extending or agreeing contracts or incurring expenditure not provided for in the agreed budget for a given year and could affect calculations on the level of Council Tax.

Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

This agenda constitutes the 5 day notice required by Regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 in terms of the intention to consider an item of business in private.

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Access to Meetings

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named below, giving as much notice as possible before the meeting.

Mobile Phones

Please ensure that any device is switched to silent operation or switched off.

Queries Regarding this Agenda

Please contact Natasha Clark, Democratic and Elections
natasha.clark@cherwellandsouthnorthants.gov.uk, 01295 221589

Sue Smith
Chief Executive

Published on Thursday 21 August 2014

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Agenda Item 5

Cherwell District Council

Executive

Minutes of a meeting of the Executive held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 7 July 2014 at 7.20 pm

Present: Councillor Barry Wood (Chairman), Leader of the Council
Councillor G A Reynolds (Vice-Chairman), Deputy Leader of the Council
Councillor Ken Atack, Lead Member for Financial Management
Councillor Norman Bolster, Lead Member for Estates and the Economy
Councillor John Donaldson, Lead Member for Banbury Brighter Futures
Councillor Michael Gibbard, Lead Member for Planning
Councillor Tony Ilott, Lead Member for Clean and Green
Councillor Kieron Mallon, Lead Member for Performance and Communications
Councillor D M Pickford, Lead Member for Housing
Councillor Nicholas Turner, Lead Member for Joint Working and IT

Also Present: Councillor Sean Woodcock, Leader of the Labour Group

Officers: Sue Smith, Chief Executive
Calvin Bell, Director of Development
Ian Davies, Director of Community and Environment
Martin Henry, Director of Resources / Section 151 Officer
Kevin Lane, Head of Law and Governance / Monitoring Officer
Chris Stratford, Head of Regeneration and Housing
Natasha Clark, Team Leader, Democratic and Elections

21 **Declarations of Interest**

There were no declarations of interest.

22 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

23 **Urgent Business**

There were no items of urgent business.

24 **Minutes**

The minutes of the meeting held on 23 June 2014 were agreed as a correct record and signed by the Chairman.

25 **Chairman's Announcements**

There were no Chairman's announcements.

26 **Community Woodland at South West Bicester**

The Head of Development Management submitted a report which advised of the potential to acquire land south of Vendee Drive at Bicester, and to enable the consideration of the options for the future use of the land. The land was identified in the Submission Cherwell Local Plan as a Green Buffer (ESD15) and as a potential location for community woodland (BIC7). The land was currently owned by Countryside Properties who were developing North of Vendee Drive at Kingsmere (SW Bicester).

Resolved

- (1) That it be agreed that the council seeks to acquire the land South of Vendee Drive as part of the S106 Agreement connected to the planning application for Phase 2 Kingsmere.
- (2) That it be agreed that discussions take place with Chesterton Parish Council and Bicester Town Council over the future use of the land for informal recreational purposes.

Reasons

The potential to control the future of the Green Buffer south of Vendee Drive, through ownership of the land, is attractive and could secure long term the gap between Bicester and Chesterton as undeveloped land and an attractive rural setting.

The land has the potential to be a significant recreational asset for the area and a community woodland would widen the recreational resources for the area. The uncertainty about the availability of the land has to date restricted the progress on developing proposals and seeking funding. Once there is certainty it would be possible to progress proposals with more certainty.

If for any reason the community woodland proposal did not progress the land could continue in agricultural use and this option would minimize risk and costs to the land owner whilst maintaining the land undeveloped.

Other recreational or land uses compatible with keeping the land open could be considered if proposals for the community woodland did not progress but would require time to explore and develop to see if they were viable.

Alternative Options

Option 1: The developer retains ownership of the land. Whilst the land is currently farmed there would be the potential for further planning applications to be made in the future. Whilst the Council is likely to be the planning authority some decisions are made on appeal and therefore this would not provide the level of certainty over future use.

Option 2: Transfer land direct to Chesterton Parish Council. This would necessitate the Parish Council being a party to the S106 agreement and would require them to work to agreed timescales for completion of the agreement and if this was not achieved it would delay the issue of planning permission. A transfer to the Council would not preclude onward transfer to the Parish or a lease arrangement.

27

South West Bicester Sports Village Bi-monthly Progress Update

The Head of Community Services submitted a report which provided a progress report on the Bicester Sports Village project.

Resolved

- (1) That the progress on the construction of Phase 1 (grass pitches, cycle track and landscaping, the initial design work for Phases 2 (Pavilion and Car Park) and Phase 3 (Athletics Facility, 3G Synthetic Pitch, Tennis Courts and Floodlighting) be noted.
- (2) That the next stage of the project undertake a value engineering exercise and the development of a planning application for Phase 2 and 3A be committed to.
- (3) That officers be requested to liaise with Bicester Athletics Club and offer the club a meeting with the Leader, Deputy Leader and officers to update the club on the current situation.

Reasons

Construction of Phase 1 is on target for completion in November 2014 and pitches will be available to play on from September 2015.

The initial design work for Phase 2 has produced an outline cost plan which exceeds the available budget. However, the Design team are currently working on approaches to bring the cost within budget including a value engineering exercise and considering the options/implications of a smaller building. As the detailed design work is completed, building supplier costs are confirmed and planning conditions are known there will be more certainty to the cost plan. Officers will report the outcome of the Design Teams work to the Executive meeting in September.

Uncertainty with guaranteed access onto school sites and the lack of financial support for athletics has led the Project Board to reduce the scope of the planning application to just Phase 2 (pavilion and car parking) and Phase 3A

(synthetic pitch and tennis courts). Phase 3B (athletics facility and multi-use games area) will be progressed when the school site is being planned and access issues have been resolved.

Some funding opportunities for Phase 3A facilities have been identified and will be pursued in the next available funding round.

The current programme for Phases 1 and 2 to be operational from September 2015 is on target however, this could be subject to change if the value engineering exercise is unable to produce the necessary cost reductions and the cost implication of a reduced building need further consideration. Revenue modelling work has been commissioned and will be reported to the next meeting.

Procurement documents are currently being produced to appoint a management contractor in June 2015

Alternative Options

The project has been approved and is progressing in accordance with these approvals. There are no other options being considered at this time other than proposals to remain within the approved funding envelope.

28

Medium Term Financial Strategy

The Director of Resources submitted a report which set out the latest Medium Term Financial Strategy (MTFS) for the council for the 5 year period from 2015/16. It set the scene and is based on current assumptions which will inform the budget setting process for 2015/16 and the longer term decisions of the council.

Resolved

- (1) That the contents of the report and the current MTFS position for the council be noted.

Reasons

The above represents the start of the budget process and consideration of the future financial environment and the decisions which will need to be taken by the council. At present, the Executive is asked to note the current position but this will be subject to further reports as the budget strategy and preparation of the budget continues.

In order to address the scale of the deficit set out in this report it is likely that there will need to be a fundamental change to the Council's budget strategy and this work will and change in strategy will feed into the detailed budget process for 2015-16.

Alternative Options

Not to consider the current position. This is not recommended as it is important that medium term financial decisions are considered at the earliest opportunity to ensure the council's finances are resilient and robust.

29 **Oxfordshire Growth Board - Terms of Reference and Appointment of Member**

The Head of Law and Governance submitted a report which sought approval of the Terms of Reference of, and the delegation of appropriate executive functions to, the Oxfordshire Growth Board, and appointment of an Executive Member to represent the Council on the Board.

In response to a query from Councillor Woodcock, Leader of the Labour Group, regarding how the Board would be scrutinised, the Chairman suggested that the Overview and Scrutiny Committee be requested to consider adding the Oxfordshire Growth Board and South East Midlands Local Enterprise Partnership (SEMPLEP) to their work programme. He would be happy to attend a future meeting of the Overview and Scrutiny Committee with lead officers.

Resolved

- (1) That the Terms of Reference of the Oxfordshire Growth Board (annex to the minutes as set out in the Minute Book) be approved.
- (2) That the Council's executive functions in respect of matters within the Terms of Reference to the Oxfordshire Growth Board pursuant to Sections 101(5) and 102 of the Local Government Act 1972, Section 9 EB of the Local Government Act 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012 be delegated.
- (3) That the Leader of the Council be appointed to represent the Council on the Board and the Deputy Leader be appointed as substitute.
- (4) That the Overview and Scrutiny Committee be requested to consider adding the Oxfordshire Growth Board and South East Midlands Local Enterprise Partnership (SEMPLEP) to their work programme.

Reasons

As part of the Oxford and Oxfordshire City Deal bid the constituent bidding parties have agreed to establish the Oxfordshire Growth Board as a joint executive committee of the constituent local authorities.

In order to ensure that Cherwell District Council plays its appropriate part it is necessary for the recommendations to be approved.

The Growth Board terms of reference set out that decisions made by the Committee shall be subject to the scrutiny arrangements of each constituent authority.

Alternative Options

Option 1: To approve the recommendations.

Option 2: Not to agree the proposed Terms of Reference of the Board at Appendix 1 but suggest amendments. This is not recommended because the draft Terms of Reference have been collectively agreed by the groups mentioned in paragraph 5.2 above. All constituent local authorities are going through a process of approving the Terms of Reference as set out.

Option 3: Not to delegate the appropriate executive functions, nor appoint a member to the Board. This is rejected because the Board is being established with the support and endorsement of all of the constituent bidding parties to the Oxford and Oxfordshire City Deal bid which included Cherwell District Council.

30 **Exclusion of the Press and Public**

Resolved

That under Section 100A of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the ground that, if the public and press were present, it would be likely that exempt information falling under the provisions of Schedule 12A, Part 1, Paragraphs 3 and 5 would be disclosed to them, and that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

31 **Development Agreement Objectives Castle Quay Phase Two Redevelopment**

The Head of Regeneration and Housing submitted an exempt report relating to development agreement objectives for the Castle Quay Phase Two redevelopment.

Resolved

- (1) As set out in the exempt minutes.
- (2) As set out in the exempt minutes.
- (3) As set out in the exempt minutes.
- (4) As set out in the exempt minutes.
- (5) As set out in the exempt minutes.

Reasons

As set out in the exempt minutes.

Alternative Options

As set out in the exempt minutes.

32 **Woodgreen Leisure Centre Redevelopment and Leisure Centre Procurement**

Item withdrawn from agenda

33 **Land Acquisition**

The Head of Regeneration and Housing submitted an exempt report relating to land acquisition.

Resolved

- (1) As set out in the exempt minutes
- (2) As set out in the exempt minutes
- (3) As set out in the exempt minutes
- (4) As set out in the exempt minutes

Reasons

As set out in the exempt minutes

Alternative Options

As set out in the exempt minutes

34 **Finance Management System Tender**

The Interim Head of Finance and Procurement submitted an exempt report which sought approval of the strategy for the procurement of a three-way Financial Management System.

Resolved

- (1) That the progress to date in the procurement of a three-way financial management system for Cherwell District Council (CDC), South Northamptonshire Council (SNC) and Stratford-on-Avon District Council (SDC) be noted and the continuation of the process pursuant to the Joint CDC/SNC Contract Procedure Rules be authorised.
- (2) That authority to award the contract be delegated to the Joint Procurement Steering Group in consultation with the Lead Member for Financial Management subject to approved funding streams being in place to meet the costs at each of the three authorities.

Reasons

As set out in the exempt minutes.

Alternative Options

As set out in the exempt minutes.

The meeting ended at 8.40 pm

Chairman:

Date:

Cherwell District Council

Executive

1 September 2014

Air Quality Management Areas for Banbury and Kidlington
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Report of Head of Community Services

This report is public

Purpose of report

To declare Air Quality Management Areas in Banbury and Kidlington.

1.0 Recommendations

The meeting is recommended:

- 1.1 To declare an Air Quality Management Area in Horsefair/North Bar, Banbury.
- 1.2 To declare an Air Quality Management Area in Bicester Road, Kidlington.
- 1.3 To agree deferring the declaration of an Air Quality Management Area in Kings End/Queens Avenue, Bicester so that additional monitoring and assessment can be carried out following the changes to the road layout.

2.0 Introduction

- 2.1 Part IV of the Environment Act 1995 established the legislative framework for local air quality management. Under the Act the Council has a statutory duty to review and assess air quality in the district against national air quality objectives and co-ordinate actions to improve air quality where exceedances are identified.
- 2.2 DEFRA oversees the Council's role and monitors progress by requiring local authorities to undertake a review and assessment on a three year cycle. This is a two stepped approach. Step 1 requires an Updating and Screening Assessment Report (USA) to be completed in the first year. The purpose of the USA is to look at the current and likely future air quality in the district and to assess if an air quality objective is, or is likely to be exceeded. If the USA identifies a risk that an air quality objective will be exceeded the local authority is required to proceed to Step 2, a Detailed Assessment to formally identify the need to declare an air quality management area. Review and Assessment Progress Reports are completed in the interim years to ensure continuity.

- 2.3 Local authorities have a duty to declare any area where an air quality objective is unlikely to be, or is not being met as an Air Quality Management Area (AQMA).

3.0 Report Details

- 3.1 Previous rounds of the review and assessment process have identified nitrogen dioxide from road transport sources as the pollutant of concern in Cherwell. These review and assessment reports can be found on the local air quality management page of the Councils website; www.cherwell-dc.gov.uk/airquality.
- 3.2 The 2009 USA report identified that air quality objectives for nitrogen dioxide may be exceeded at Hennef Way and Horsefair/North Bar in Banbury, Kings End/Queens Avenue in Bicester, and Bicester Road in Kidlington.
- 3.3 A Detailed Assessment was completed for Hennef Way, Banbury and an AQMA declared in January 2011 because the annual and hourly mean air quality objectives for nitrogen dioxide were exceeded.
- 3.4 Detailed Assessments for Horsefair/North Bar in Banbury, Kings End/Queens Avenue in Bicester, and Bicester Road in Kidlington were completed in April 2013 and exceedances of the annual mean air quality objective for nitrogen dioxide were confirmed for these areas.
- 3.5 The findings and conclusions of the Detailed Assessment reports have been confirmed by Defra.
- 3.6 Once an AQMA has been declared the Council is required to develop an Air Quality Action Plan (AQAP) outlining the measures required to improve air quality in that area. As road transport sources are the cause of the problem the AQAP will be developed in consultation with the Highways Agency and Oxfordshire County Council.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Due to exceedances of the annual mean air quality objective for nitrogen dioxide it is recommended that AQMA's are declared for:
- (i) Horsefair/North Bar in Banbury as outlined in Figure 1 in Appendix 1.
 - (ii) Bicester Road in Kidlington as outlined in Figure 2 in Appendix 1.
- 4.2 Due to significant changes to the road layout in Bicester during 2013 it is recommended that the declaration of an AQMA in the Kings End/Queens Avenue area of Bicester be deferred until additional monitoring and assessment has been undertaken, so that the impact of these changes on air quality can be assessed. This course of action has been agreed with Defra.

5.0 Consultation

Defra

Defra has been consulted on the Detailed Assessment reports and they are in agreement with the findings and conclusions. Defra have also agreed that the declaration of an AQMA in the Kings End/Queens Avenue area of Bicester should be deferred until additional monitoring and assessment of air quality, as a result of the recent road changes, has been undertaken.

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: An alternative option would be to not declare the areas as AQMA's. However, if an air quality objective is not being met then the Council is required to declare that area as an AQMA and so for this reason this is not an alternative option.

7.0 Implications

Financial and Resource Implications

7.1 There are no financial implications arising directly from this report. The continuing review and assessment of air quality will be met within existing budgets.

Comments checked by:

Tim Madden, Interim Head of Finance and Procurement, 0300 0030106, tim.madden@cherwellandsouthnorthants.gov.uk

Legal Implications

7.2 There is a statutory requirement to review and assess air quality and if an air quality objective is not being met to declare an Air Quality Management Area.

Comments checked by:

Nigel Bell, Team Leader Planning & Litigation, 01295 221687, nigel.bell@cherwell-dc.gov.uk

Risk

7.3 There is an increase in risk to health to prolonged exposure to elevated levels of nitrogen dioxide. This risk is being managed through the service risk register and will be escalated if necessary to the corporate register.

Comments checked by:

Louise Tustian, Acting Corporate Performance Manager, 01295 221786, Louise.tustian2@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: Yes

Wards Affected

Banbury Grimsbury and Castle Ward
Banbury Easington Ward
Yarnton, Gosford and Water Eaton Ward
Bicester Town and Bicester West

Links to Corporate Plan and Policy Framework

Fulfilling the statutory regulatory functions of the council, supporting the protection of human health and wellbeing from poor air quality, and protecting the natural environment, this links to the following strategic priorities:

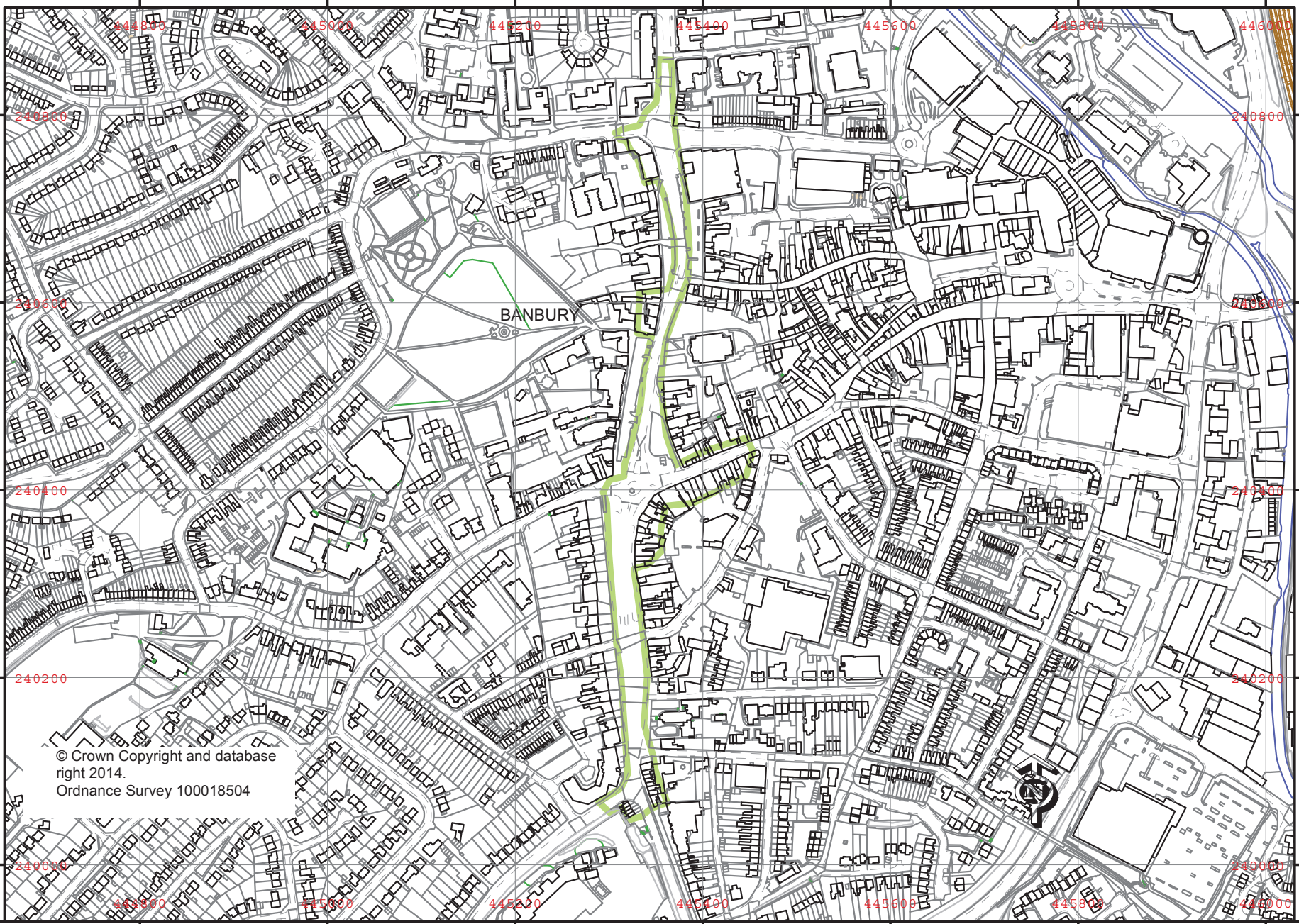
- Safe, green, clean
- A district of opportunity
- Thriving communities
- Sound budget and customer focused council

Lead Councillor

Councillor George Reynolds, Deputy Leader

Document Information

Appendix No	Title
Appendix 1	AQMA Maps
Background Papers	
None	
Report Author	Chris Rothwell Head of Community Services
Contact Information	0300 003 0104 chris.rothwell@cherwellandsouthnorthants.gov.uk

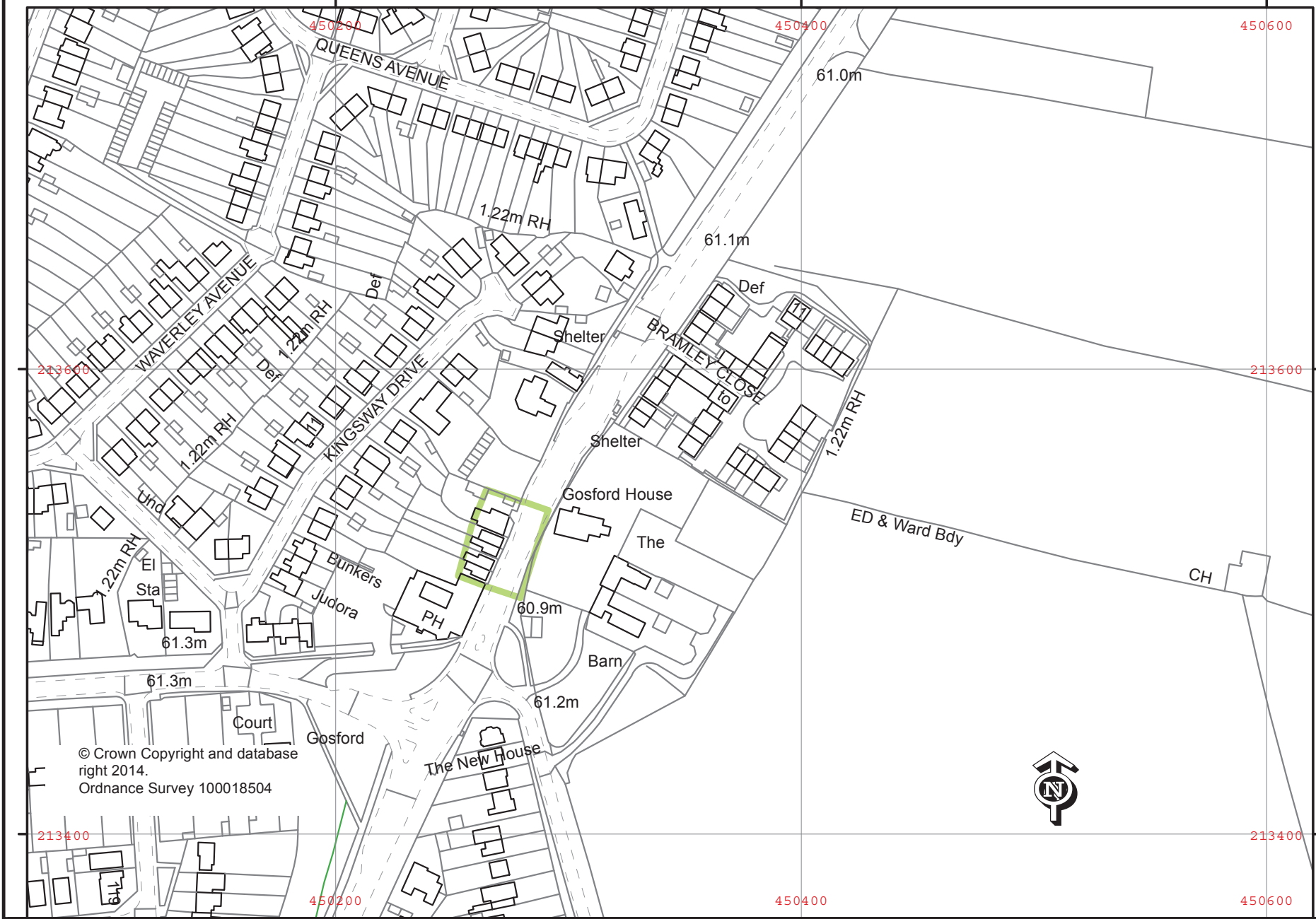


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Ordnance Survey 100018504



Cherwell District Council
Bodicote House, Bodicote
Banbury, OX15 4AA
Tel: 01295 252535

Appendix 1
Figure 1
Horsefair/North Bar, Banbury Air Quality Management Area



Cherwell District Council
Bodicote House, Bodicote
Banbury, OX15 4AA
Tel: 01295 252535

Appendix 1
Figure 2
Bicester Road, Kidlington Air Quality Management Area

Cherwell District Council

Executive

1 September 2014

Joint Draft Cherwell District Council and South Northamptonshire Council Enforcement Policy
--

Report of Head of Community Services

This report is public

Purpose of report

To seek approval of the joint draft Cherwell and South Northamptonshire Council Noise Enforcement Policy prior to public and stakeholder consultation.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the joint draft Cherwell and South Northamptonshire Council Enforcement Policy.
- 1.2 To delegate authority to the Head of Community Services to consider responses and, if necessary amend the policy in consultation with the Lead Member for Clean and Green.

2.0 Introduction

- 2.1 The Regulators Code¹ came into effect in April 2014. Local authorities and other regulators must have regard to the Code in developing principles and policies.
- 2.2 The Regulators' Code aims to improve the way regulation is delivered at the front line. It sets out a clear framework for transparent and accountable regulatory delivery and establishes clear principles for how local authorities should interact with those they are regulating.
- 2.3 The Code is underpinned by the statutory principles of good regulation, which provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed. Notably there is an explicit requirement to consider the impact of regulatory activities on economic growth.

3.0 Report Details

- 3.1 One of the key requirements of the Code is to publish a set of clear service standards including clear information on our enforcement policy and response to non – compliance. Appendix 1 sets out a draft enforcement policy which will fulfil the requirements of the Code.
- 3.2 Some of our regulatory services are required to have specific policies because this is required by central agencies e.g. food safety and health and safety. These have been listed in Appendix B. All of the policies will have to comply with the Regulators Code. Services will have to review specific policies to ensure compliance. Where necessary the overarching policy allows specification of individual specific policies by cross reference.
- 3.3 The Regulatory Code recommends that local authorities consult with those that they regulate. If the committee agrees to approve the recommendations a period of consultation will commence as described at 5 below.

4.0 Conclusion and Reasons for Recommendations

- 4. Local authorities must comply with the requirements of the Regulators Code. One of the requirements is a requirement to publish information about our enforcement policy and our response to non-compliance.
- 4.3 If the policy is approved and implemented the local authority will meet that requirement of the Code and will demonstrate a transparent approach to our regulatory activities.

5.0 Consultation

The Code requires local authorities to have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.

This policy will need to be subject to a period of consultation to comply with the code. Consultation will take place for a period of 12 weeks if the draft policy is approved by members.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: The committee can approve the recommendations above

Option 2: The committee can reject the recommendations but the absence of an up to date policy could place the local authority at risk of legal challenge and lead to inconsistency in our approach to regulation.

Implications

Financial and Resource Implications

7.1 There are no financial implications arising directly from this report.

Comments checked by: Nicola Jackson, Corporate Finance Manager, 01295 221731, nicola.jackson@cherwellandsouthnorthants.gov.uk

Legal Implications

7.2 The policy has been drafted in consultation with our legal service. The absence of a policy may subject us to risk of legal challenge

Comments checked by: Chris Mace, Solicitor, 01327 322125, christopher.mace@cherwellandsouthnorthants.gov.uk

Equality and Diversity

7.3 The policy has been drafted in consultation with the local authority Equality and Diversity lead. An equality impact assessment has been carried out against this joint policy whereby no negative impacts have been identified.

Comments checked by: Caroline French, Corporate Policy Officer, 01295 221586, caroline.french@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: no

Community Impact Threshold Met: yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

The enforcement policy is relevant to a wide range of regulatory activities and therefore links to all of our strategic priorities:

- Safe, green, clean
- Sound budget and customer focused council
- Thriving Communities
- A District of Opportunity

Lead Councillor

Councillor Tony Ilott, Lead Member for Clean and Green

Document Information

Appendix No	Title
Appendix 1	Joint Draft Cherwell District Council and South Northamptonshire Council Enforcement Policy
Background Papers	
None	
Report Author	Jackie Fitzsimons Interim Public Protection and Environmental Health Manager
Contact Information	01327 322283 Jackie.fitzsimons@cherwellandsouthnorthants.gov.uk



**South
Northamptonshire
Council**

Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

CHERWELL DISTRICT COUNCIL & SOUTH NORTHAMPTONSHIRE COUNCIL

ENFORCEMENT POLICY

Enforcement Policy

Date of Issue: (date)

Date approved: (date)

Introduction: The Council's Statement

This policy sets out the Council's approach to enforcement.

The policy sets out what businesses and others who are regulated by the Council can expect from enforcement officers. The Council aims to comply with the principles of the Regulators Code which was published in July 2013.

The Council will use a consistent and proportionate approach to enforcement that is targeted and contributes to achieving the Council's priorities and policy aims and meets the needs of the community.

Enforcement means the actions and activities that the Council's officers carry out as regulators. This includes advisory visits and assisting with compliance as well as formal enforcement action. The Council is committed to equitable enforcement practice, promoting proportionate, consistent and targeted regulatory activity.

Supporting these principles does not detract from our core purpose to protect the vulnerable, the environment and to meet any other objective laid down in law. The Council will talk to, and work openly and constructively with those it regulates so that it can build relationships based on trust and understanding.

The Council fully supports the Government's commitment to reduce regulatory burdens and support compliant business growth. This will give businesses greater confidence to invest and grow locally, regionally and internationally.

The Council expects most businesses to comply with the law, and will therefore aim to help businesses to achieve that objective. The Council will however take firm action against those that flout the law or act irresponsibly. In this way the Council aims to ensure a safe and fair trading environment for compliant businesses.

The Council will consult businesses and other interested parties on the development of clear standards, which set out levels of service and performance that residents, businesses, and visitors to the district, can expect to receive. Each year details of the Council's performance will be published on the Council's website.

General Principles

1 How did the Council develop this policy?

1.1 Before publishing this policy, the Council consulted with businesses, their associations and forums, the NEP, and local Councillors. As well as consulting with the Council's community this policy was approved on (date) by (committee) and issued on (date).

1.2 The Council is committed to good enforcement practice. In addition some of its service areas are required by law to follow the Regulators Code principles.

1.3 There are other laws which the Council has to abide by to ensure that it respects human rights, equality and so that it does not discriminate against individuals or organisations.

1.4 Appendix A provides more detail on the laws that have influenced development of this policy.

2 What is this policy for?

2.1 This policy communicates the Council's policy in respect of its approach to dealing with non-compliance to:

- a) those affected by its activities; and
- b) officers of the Council

2.2 The Council's officers will be suitably qualified and authorised to carry out regulatory activities and to administer proportionate and effective remedies. Where work is undertaken outside of normal office hours the principles of this policy will still be observed.

3 When does this policy apply?

3.1 This policy is an overarching policy which shows how the Council is committed to the fundamental principles of good enforcement. It applies to all of the Council's regulatory services.

3.2 For some of the Council's services there are more detailed policies which relate to specific laws, service standards and procedures that it has to follow. These provide businesses and the community with more detail on the services that the Council provides, and are listed in Appendix B.

4 Our approach to dealing with non-compliance

4.1 When the Council identifies a breach of the law the action it will take will depend on the gravity and nature of the offence, and the urgency with which it needs dealing with. In some cases the Council will respond with informal action and officers may offer advice, information and guidance to help secure compliance.

4.2 Should the Council's advice and assistance be rejected the Council will have to use more formal action, such as the service of a legal notice or prosecution for a specific offence. If formal enforcement action is necessary it will be appropriate and will depend on the seriousness of the breach. Any enforcement action that the Council might take is detailed in Appendix C.

4.3 The Council will take particular care to work with small businesses, community and voluntary groups and individual residents so that they can meet their legal obligations.

4.4 Officers will clearly explain:

- what the non compliance item or activity is
- the advice being given
- the actions required or decisions taken and
- the reasons why these were taken

4.5 Subject to paragraph 4.6 below, officers will provide an opportunity for dialogue with business and others about the advice, requirements and decisions to ensure that they are proportionate and consistent.

4.6 In cases where:

- there is a serious breach and immediate enforcement action is required
- the offering of dialogue would defeat the purpose of the enforcement action, paragraph 4.5 will not apply

4.7 Officers will communicate clearly and confirm formal action in writing. All communication will be clear, consistent and timely. The difference between legal requirements and advice and guidance will be clear. Email may be used.

4.8 All officers will be authorised to exercise statutory functions on behalf of the Council. Officers will carry a card with them that can be produced on request to confirm their authority to carry out inspections, investigations and to enter premises. Full details of how officers are authorised are contained within the Councils Constitution in the Scheme of Delegation. The Scheme of Delegation is published on each Council's website at:

http://www.southnorthants.gov.uk/Part_10_Responsibility_for_Functions_October_2013.pdf and at:

<http://modgov.cherwell.gov.uk/documents/s19280/CDC%20Council%20211013%20-%20Revised%20Officer%20Delegations.pdf?txtonly=1> and .

Details of the person(s) managing investigations/making decisions are covered in the constitution.

4.9 The majority of enforcement functions will be the responsibility of the Council's officers, but there may be occasions where there is a shared enforcement role, or the Council may need to transfer the case details to another enforcement body for their further action. This will be clearly communicated to the business or other offender.

4.10 In cases where there is a breach of the law connected with premises or activities which the Council controls or is affiliated with, this enforcement policy will apply. Where the Council is unable to take action because the law does not allow it to, the matter will be considered by an independent officer and a clear and transparent course of action taken to ensure that compliance is secured.

4.11 Officers will carry out enforcement in a fair and considered manner and the Council will make sure it treats everyone equally regardless of disability, race, age, sex, sexuality or religion. Information about the Councils' equality and diversity policy can be found at:

<http://www.southnorthants.gov.uk/1492.htm> and at <http://www.cherwell.gov.uk/index.cfm?articleid=1413>

An Equality Impact Assessment of this policy has been carried out.

4.12 Enforcement notices will be placed on the Council's public register if they relate to matters of public concern, or the Council is required by law to do so.

4.13 The Council reserves the right to publish details about other enforcement action that it has taken, e.g. a prosecution, if the Council believes it is in the public interest, or will act as a deterrent to others.

5 How does the Council decide what action it will take?

5.1 The action that the Council chooses to take depends upon the particular circumstances and the approach of the business or regulated person to dealing with the breach.

5.2 The Council is committed to taking firm action against those that deliberately or persistently choose not to comply with the law.

5.3 The Council is committed to creating an environment where businesses and others who ask for advice about non-compliance, or where they show a willingness to resolve the non-compliance, can be confident that this will not trigger enforcement action.

6 What factors influence the Council's response to a breach?

6.1 The Council will choose proportionate approaches based on relevant factors including for example, regularity and/or seriousness of the offence(s), and the business size and capacity.

6.2 Where the Council is considering its response to a breach for a business in a Primary Authority partnership it will have regard to the advice and support of the primary authority. Details of primary authority partnerships can be found here: <https://www.gov.uk/government/organisations/better-regulation-delivery-office>

6.3 Where the Council has provided advice or guidance to a business or others it may check that non-compliance has been rectified. In cases where the breach has not been rectified the Council will reconsider its approach to enforcement taking into account the reasons that the business or others give for the failure to comply.

6.4 The Council may take more formal action if the business or other has not shown any willingness to comply. A clear explanation of any decision will be given to the business or other.

6.5 On occasions details of a breach may be referred to another regulator. A clear explanation of any decision will be given to the business or other.

7 Responding to complaints about non compliance

When responding to complaints the Council will:

- include details of any risk scheme used to determine whether individual complaints require investigation.
- give advice regarding how different departments may become involved in a breach i.e. a non compliance with a licence for breach of noise condition may also be reviewed by ASB team or statutory notices issued, etc.

8 How do we carry out our investigations?

8.1 All investigations will be carried out in line with one or more of the following pieces of legislation:

- 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

and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council.

8.2 These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants. Any amendments to the relevant Acts since publication of this policy will be taken into account and adhered to.

8.3 Authorised officers will comply with the legislation under which they are acting and with any associated guidance or codes of practice.

8.4 Any offence of Obstruction will be dealt with in accordance with the law that the officer is acting under.

8.5 Cases will be reviewed regularly and complainants, offenders and witnesses will be regularly informed and updated on the progress of the investigation.

9 Decisions on enforcement action

9.1 The actions that can be taken by the Council are set down in law and include:

- a) Compliance advice, guidance and support;
- b) Voluntary undertakings;
- c) Statutory (legal) notices;
- d) Financial penalties;
- e) Injunctive actions/enforcement orders etc;
- f) Simple cautions;
- g) Prosecution; and
- h) Refusal/suspension/revocation of licences

A detailed explanation of the types of action listed can be found in Appendix C

9.2 Factors which the Council may consider when making a decision with regard for Macrory Principles include:

- a) aiming to change the behaviour of the offender;
- b) aiming to eliminate any financial gain or benefit from non-compliance;
- c) being responsive and considering what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- d) being proportionate to the nature of the offence and the harm caused;
- e) aiming to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) aiming to deter future non-compliance.

9.3 The Council will consider the effect of risk on all parties involved at every stage of the decision making process when it decides to take enforcement action.

9.4 Where available the Council will use decision making models. For example, for health and safety enforcement it will use the HSE's Enforcement Management Model for

enforcement under the Licensing Act 2003 it will consider the guidance issued under Section 182, and so on.

9.5 Where necessary the Council will consult with other organisations before taking action. In accordance with the law the Council will notify the Primary Authority of any proposed enforcement action.

9.6 Any decision taken on enforcement action will be monitored and reviewed.

9.7 Where the Council takes enforcement action it will provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved to the business or others.

10 Review of this policy

10.1 The Council will keep this policy under review taking into account changes in legislation or guidance.

10.2 Before the Council changes the policy it will consider the impact on business and engage with business representatives. The Council has a consultation strategy to ensure that it engages with businesses, the community and others when developing policies and service standards

11 Comments, Complaints & Appeals

The Council has a policy for comments and complaints about its services and conduct of its officers. This is published on the relevant Council's website at <http://www.southnorthants.gov.uk/Servicepage353.htm> and at <http://www.cherwell.gov.uk/index.cfm?articleid=3985&contactid=9558#email>

11.2 Those regulated may challenge or complain about a regulator's enforcement decision, or about a failure to comply with the regulatory code.

11.3 All complaints and challenges will be considered impartially, objectively and transparently.

11.4 Where a legal right of appeal exists against enforcement action taken the offender will be given clear simple guidance in writing on how and where they can appeal against the decision.

Appendix A: Legislation, guidance and codes that influenced the preparation of the Enforcement Policy

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function¹. For local authorities, the specified functions include those carried out by environmental health and licensing services.

The Council will exercise its regulatory activities in a way which is:

- **Accountable** – the Council's activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- **Consistent**: to ensure that similar issues are dealt with in an equitable way, making full use of guidance produced by Government and other agencies.
- **Fair**: to ensure a fair and even-handed approach.
- **Proportional**: to consider whether proposed action is proportionate considering all relevant factors, including the severity of the offence, likely outcome and costs of proceedings.
- **Transparent**: to ensure enforcement action to be taken by the Council is easily understood. Clear distinctions will be made between legal requirements and recommendations about good practice which are not compulsory.
- **Objective**: to ensure that decisions are not influenced by the ethnic origin, gender, religious or political beliefs, or sexual preferences or mental or physical ability of the offender, complainant or witness.

Where any rights contained within the Human Rights Act 1998 may be affected, officers should consider whether the action is both necessary and proportionate, and ensure that the provisions of the Act are taken into consideration where applicable.

B. Regulators' Code

The Council has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances the Council may conclude that a provision in the Code is either not relevant or is outweighed by another provision. The Council will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

The Council is a public authority for the purposes of the Human Rights Act 1998. The Council therefore applies the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

Where there is a need for the Council to share enforcement information with other agencies, it will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied; commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

a. Evidential Test - is there enough evidence against the defendant?

When deciding whether there is enough evidence to prosecute, the Council will consider what evidence can be used in court and is reliable. The Council must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

b. Public Interest Test - is it in the public interest for the case to be brought to court?

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that the Council will take into account are detailed under the enforcement options available to us in Appendix C.

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. The Council will comply with the requirements of the Act when it is considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

Appendix B: Service Specific Policies

Anti-fraud & Corruption Strategy
Anti-social Behaviour Policy & Procedures
Caravan Site Licensing Policy
Environmental Crimes Policy
Food Safety Enforcement Policy
Gambling Act 2005 Statement of Licensing Policy
Hackney Carriage & Private Hire Licensing Policy
Health & Safety Enforcement Policy
House in Multiple Occupation (HMO) Policy
HMO Standards
Housing Health and Safety Rating Scheme Policy
Housing (Private Sector) Policy
Housing Renewal Policy
Licensing Act 2003 Statement of Licensing Policy
Money Laundering Avoidance Policy
Noise Investigation Procedure
Noise Policy
Planning Policy
Prosecution Policy
Recovery of Costs Policy
Sex Establishment Policy & Conditions
Street Trading Policy & Conditions

Appendix C: Enforcement Actions available to the Council in Respect of Criminal and Civil breaches

A. Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, that authority will provide compliance advice and support. The Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action such as a simple caution or prosecution is taken, the Council recognises that in certain circumstances, in order to prevent further breaches, there is likely to be an ongoing need for compliance advice and support.

B. Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches, the Council has powers to issue statutory notices. These include:

- Stop Notices;
- Planning Notices (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321033.pdf)
- Prohibition Notices;
- Emergency Prohibition Notices;
- Improvement Notices.

Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Financial penalties

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings (if convicted this will result in a criminal record), or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances the Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, the Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

F. Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution may be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and have regard to the following public interest criteria:

- the public benefit;
- likelihood that the offence will be repeated or continue;
- whether, although not serious in itself, the offence is widespread in the area where it was committed;
- whether alternative formal action could be taken other than prosecution;
- the explanation offered/ mitigating circumstances.

A successful prosecution will result in a criminal record. The court may impose a fine or a community penalty and in respect of particularly serious breaches, a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or from working in certain areas and/or industries. In many cases, costs will also be awarded.

H. Refusal/suspension/revocation of licences

The Council issues a number of licences and permits. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to action being taken in relation to the licence/licence holder. This action can vary from adding/amending licence conditions to reviewing the licence; and from suspension to revocation of the licence.

In the event of a licence being refused, suspended or revoked, there is in most cases a right of appeal (details of which are notified to the licensee at the time of the relevant action being taken).

When considering future licence applications, the Council may take previous breaches and enforcement action into account.

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Cherwell District Council

Executive

1 September 2014

<p>Joint Draft South Northamptonshire and Cherwell District Council Noise Investigation Policy & Procedure</p>

Report of Head of Community Services

This report is public

Purpose of report

To seek approval of the joint draft Cherwell and South Northamptonshire Council Noise Investigation Policy prior to public and stakeholder consultation.

1.0 Recommendations

The meeting is recommended:

- 1.1 To approve the joint draft Cherwell and South Northamptonshire Council Noise Investigation Policy.
- 1.2 To delegate authority to the Head of Community Services to consider responses and, if necessary amend the policy in consultation with the Lead Member for Public Protection.

2.0 Introduction

- 2.1 South Northamptonshire Council and Cherwell District Council together receive over 1000 service requests about noise every year. In order to manage service requests in a fair, proportionate and consistent manner it is recommended¹ that local authorities have a transparent noise policy and procedures in place.
- 2.2 Both councils have previously had policies in place but these were in need of review and needed to be aligned with the principles set out in the new statutory Regulators Code².

- 2.3 The policy and procedure in Appendix 1 and 2 set out the Council's approach to service requests in future.
- 2.4 The Regulatory Code recommends that local authorities consult with those that they regulate. If the committee agrees to approve the recommendations a period of consultation will commence as described at 5 below.

3.0 Report Details

- 3.1 It is recommended by the Department for Environment Food and Rural Affairs (DEFRA) that local authorities should put in place a hierarchy of noise service documents to show how they deal with neighbourhood noise. The policy is therefore divided into a high level policy and a more detailed operational procedure.
- 3.2 The Policy and procedure sets out the Council's aims and provides detail on when and how it will investigate noise complaints. This includes how the Council will prioritise and progress cases and what it can and cannot investigate.
- 3.3 Both councils are committed to channel shift (moving customer contact onto web based and self-service media) and at the same time to maximise use of our resources. The procedure therefore includes a checklist, for our website which will assist users to self-help by providing guidance on whether the local authority can help with their complaint.
- 3.4 In accordance with the Regulatory Code the Council plan to publish service standards to show how quickly it will respond and deal with complaints.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Policy and procedure pulls together existing good practice from both councils and provides clear guidance and assistance for complainants, those subject to regulation, partners and officers.
- 4.2 By approving the draft policy and agreeing to consultation amendments by subsequent delegation to the Head of Community Services, South Northamptonshire and Cherwell District Council can show that they are following DEFRA guidance and can provide a transparent policy on our approach to noise complaints.
- 4.3 It also shows that the Council is complying with the Regulators Code and means that the Council has a robust policy in place should it be subject to legal challenge.

5.0 Consultation

Consultation will take place for a period of 12 weeks if members approve the draft policy.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: The committee can approve the recommendations above

Option 2: The committee can reject the recommendations but the absence of an up to date complaint policy could place the local authority at risk of legal challenge.

The absence of a comprehensive policy reduces the Council's opportunity to provide clear guidance to potential complainants which promotes self-help and reduces the burden on Council resources.

7.0 Implications

Financial and Resource Implications

- 7.1 None as existing resources will be used to deliver the policy. However approval of the policy will assist us to target our resources more efficiently.

Comments checked by:

Nicola Jackson, Corporate Finance Manager, 01295 221731

Nicola.Jackson@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 The absence of a policy may subject us to risk of legal challenge

Comments checked by:

Nigel Bell Team Leader – Planning & Litigation

Tel: 01295 221687 nigel.bell@cherwell-dc.gov.uk

- 7.3 **Risk**

No issues identified

Comments checked by:

Louise Tustian , Acting Corporate Performance Manager

Tel: 01295 221786 Louise.tustian2@cherwellandsouthnorthants.gov.uk

- 7.4 **Equality and Diversity**

No issues identified

Comments checked by:

Caroline French, Corporate Policy Officer

Tel: 01295 221586 caroline.french@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: no

Community Impact Threshold Met: yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

The policy links to the following strategic priorities:

- Safe, green, clean
- Sound budget and customer focused council

Lead Councillor

Councillor George Reynolds, Deputy Leader

Document Information

Appendix No	Title
Appendix 1	Statement of Noise Policy
Appendix 2	Noise Procedure
Background Papers	
None	
Report Author	Jackie Fitzsimons Interim Public Protection and Environmental Health Manager
Contact Information	01327 322283 Jackie.fitzsimons@cherwellandsouthnorthants.gov.uk



SOUTH NORTHAMPTONSHIRE AND CHERWELL DISTRICT COUNCIL NOISE POLICY

WHAT DO WE WANT TO ACHIEVE?

We want to ensure the best quality of life of our residents and others through the management of neighbourhood, neighbour and environmental noise in our district

We will:

- Inspect our area from time to time for nuisance.

Our duties under the Environmental Protection Act 1990 require us, from time to time, to inspect our district for nuisances, including those caused by noise. In addition to responding to complaints we will deal with any situations we discover during the course of our normal duties and from time to time we will carry out proactive targeted activities to address specific issues in the noise field.

- Investigate complaints about noise

We will take reasonable steps to investigate complaints we receive alleging nuisance from noise using the most appropriate techniques to gather evidence sufficient to make a judgement as to whether a statutory nuisance exists.

- Use available evidence to assess the needs of our residents

We will use readily available sources of intelligence and information to form a picture of the issues affecting the residents of our area taking account of the type of problems reported to or observed by our officers to plan our response.

- Provide the right resource to meet the need

Based on the information gained to assess our resident's needs we will aim to structure our service delivery in the most effective ways to the benefit of our residents.

- Ensure our staff are competent, trained and authorised to carry out their work

The Council has a corporate training and development plan to meet those training needs which are relevant to delivery of its services. The Councils

have a published constitution and scheme of delegation which shows how officers are authorised to take decisions on behalf of the Council. All officers are authorised to carry out their duties according to their competency and training.

- Work with other organisations to ensure that we provide the best customer service

We will work in partnership with organisations wherever possible to ensure the best customer service. Where appropriate, but not exhaustively, this will include working with the Police, Licencees, and the Community Safety Partnership. We will work with tenant organisations and with social landlords and housing associations to ensure that tenant obligations are met

- Comply with human rights and equalities law

This Policy and all associated enforcement decisions will take account of the provisions of the Human Rights Act 1998. We will also have regard to the Council's Equality Policy, which sets out how we will ensure that everyone within our district can have fair and equal access to our services.

- Work to prevent noise wherever possible through advice, planning, licensing and other routes

We will work to minimise the impact of noise in our districts by:

Responding to and where applicable providing advice through planning and licensing consultations

Providing advice to our communities on our website and through newsletters and other media

Provide advice to our customers including residents and businesses

- Deliver this policy through clear procedures and service standards

We will treat everyone as an individual and assess every complaint on its merits following the procedures and service standards outlined in the Council's Noise Investigation Procedure to ensure a fair, impartial and consistent approach in all cases.

We will explain those matters that we can and cannot deal with at the outset so that expectations are not unrealistically raised.

We will ensure that a record of all communications are accurately logged on our data base and updated in a timely manner as the investigation progresses.

- Keep our customers informed at every stage of their complaint

We will keep our customers informed at key stages of the investigation about the action being taken and why.

- Wherever possible follow national enforcement policy and guidance

This Policy sets out the general principles and approach we will follow when enforcing legislation which we are responsible for. It will be used in conjunction with all relevant statutory Codes of Practice and guidance issued by Central Government Departments such as the Department of Environment Food and Rural Affairs (DEFRA), the Department of Communities and Local Government (DCLG), and the Better Regulation Delivery Office (BRDO) among others.

- Ensure that our customers have a way to complain if they are unhappy with our service

Whilst we will always endeavour to provide the best possible level of service it is acknowledged that occasions may arise where a customer is dissatisfied with the service provided. We have a Council Complaints Policy so that customers have a mechanism to feedback on their experience.

For South Northamptonshire Council

Our policy can be accessed online using the following address

<http://www.southnorthants.gov.uk/4860.htm>

Information regarding the Council's Complaints policy can be obtained by contacting Customer Services on 01327 322322,

customerservices@southnorthants.gov.uk

For Cherwell District Council :

Our policy can be accessed online using the following address

<http://www.cherwell.gov.uk/index.cfm?articleid=1512>

Information regarding the Council's Complaints policy can be obtained by

Customer Services on 01295 227001, customer.service@cherwell-dc.gov.uk

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South Northamptonshire and Cherwell District Council Noise Investigation Procedure

1. Introduction

1.1 We aim to deal with all noise problems fairly, impartially, consistently and in accordance with government laws and regulations. We have published our procedure so that you know what to expect from us, and also understand what is required of you if you decide to report a noise problem to us.

1.2 The Council recognises that the public has a right to expect a consistent approach to the investigation of noise complaints. The advice given here outlines the Council's standard procedure for dealing with noise investigations. The provisions of the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 have been considered in the development of these procedures.

1.3 Noise is often defined as 'unwanted sound'. What constitutes 'noise' is a very personal matter; one person's favourite music might well be another person's unwanted sound. We usually become involved in noise matters when a complaint is received. We then have a duty to investigate and have to decide if any action is possible.

1.4 We try to approach enforcement in a graduated way. Very often an informal approach is sufficient to resolve matters and no further action is necessary by the Council, but we have legal powers to take formal action if necessary. In most cases formal action can only be taken when we have established that the noise is a nuisance as stated in law. This is described as a "statutory nuisance". Appendix 1 lists the current noise legislation and provides a brief summary of how a statutory nuisance is established.

1.5 We have produced a brief checklist which can be found in appendix 2. The checklist refers back to this procedure and is a useful tool to help you decide quickly whether to complain and whether it is likely that we can help you with your complaint.

2. How do I complain about noise?

2.1 A complaint or a request for advice can be made by all common forms of communication including:

- on our website;
- telephone;
- letter;
- email; and
- direct complaint at the council office or to an elected member.

(see Appendix 3 for contact details)

3. What information do I need to provide?

3.1 You will be asked to give full details of the problem. In the first instance you will always be encouraged to approach the person making the noise, since some complaints can often be settled amicably between the parties without local authority involvement. An informal approach by you is not only courtesy, but also the first step in resolving any differences. We recognise that this is not always possible and if you feel unable to adopt this course of action no pressure to do so will be placed upon you. Further guidance on direct negotiation with a neighbour can be found in Appendix 8.

3.2 Details of the person making the complaint are always treated confidentially and therefore anonymous complaints will not be acted upon. We also need to establish who the noise is affecting and how it is affecting them and this is not possible with an anonymous complaint. However anonymous complaints will be recorded and may be used as intelligence in some circumstances.

3.3 Before we start an investigation we consider the following:

- the Council must be satisfied that the noise is affecting a specific person or persons;
- The rights of the person being complained about must also be protected ensuring that the complaint made is not malicious.
- Complaints via a third party will not be acted upon until the originator of the complaint has been contacted to confirm the details.

3.4 While efforts will be made to maintain the anonymity of the complaint, this is not fail-safe, i.e. noise makers can sometimes work out who has complained and a complainants name and address may have to be revealed if legal action is taken. If you have any concerns about this issue please feel free to telephone us where we can discuss this issue with you.

3.5 In order to deal with noise, we will at some point have to make contact with the person or persons who are making the noise, whether this is informally at the onset of a case or by taking formal action if a nuisance is shown to exist. Complainants should bear this in mind, and must understand that if for whatever reason they do not want us to contact the subject of the complaint; we will not be able to do anything in practice to help them.

3.6 In order to investigate the complaint it may be necessary to share information on noise complaints with the police, departments in the Council, and other authorities/agencies such as social landlords. By agreeing to our investigation we will also be confirming that you agree to us sharing information. This is in accordance with our agreements with them and other arrangements under the Data Protection Act.

3.7 If you live in a housing association owned property, please get in touch with your housing office in the first instance as they may be able to solve the problem or act on your behalf to request an investigation through their own complaint investigation policy and procedure.

4. Investigating a complaint

4.1 When we receive a complaint the initial details will be added onto our computer database. This will tell us whether there have been any similar complaints made for the same property in the past. Our records are kept for 7 years in line with our document retention policy. After this time the records are deleted.

4.2 Your complaint will be assigned to a named officer who has overall responsibility and who will be accountable for supervising and progressing the investigation of a complaint to resolution. The Council will have regard to the [Regulators Code](#) and the Council's Enforcement Policy.

5. What we can not investigate

5.1 Certain complaints cannot be dealt with by the Environmental Health Department and will not be progressed, these include:

- Anonymous complaints; (see page 2)
- Complaints where access to the complainant's premises to witness noise and assess nuisance is necessary and is not allowed by the complainant;
- Ordinary use of residential properties – Case law states that noise from the ordinary use of residential premises cannot be considered a nuisance, we are therefore unable to investigate reasonable behaviour including but not exclusively; babies crying, children playing, occasional dog barking;
- If your complaint is in relation to anti-social behaviour such as shouting, arguments, swearing, verbal abuse, the Council has a dedicated Anti-Social Behaviour Team. For South Northamptonshire Council they may be contacted on 01327 302519; and in the Cherwell District Council area you can make a complaint to the Council's Anti Social Behaviour Team on 01295 221007;
- We cannot take into account any special sensitivities of a complainant such as ill health or a night worker trying to sleep during the day;

- Other agencies are responsible for the following types of noise:
 - Noise complaints from moving vehicles on the highway e.g. revving engines and car stereos – complaints of this nature can only be acted upon by the Police who should be contacted at the time of the incident;
 - Noise from aircraft in flight- complaints of this nature can only be dealt with by the Civil Aviation Authority. Please telephone the Civil Aviation Authority on 020 7453 6525; Noise from low flying or noisy military aircraft can be reported to the Ministry of Defence, Complaints and Enquiries, Unit Directorate of Air Staff Level 5, Zone H Main Building, Whitehall, London SW1A 2HB. Further information is obtainable at www.gov.uk/low-flying-in-your-area or telephone 0845 6007580.

In the Cherwell District Council Area information about noise from gliding activity at the former RAF Bicester can be found at www.windrushers.org.uk/noise_restrictions.htm or telephone 01869 252493. London Oxford Airport at Langford Lane Kidlington operates a noise amelioration policy. Details of the policy and how to complain can be found at www.oxfordairport.co.uk/home/consultation_committee.htm Or telephone 01865 290664

- Noise from engineering operations on the railway track. In such cases telephone Network Rail on 08457 11 41 41. Further information can be obtained at www.networkrail.co.uk/aspx/1030.aspx?cd=1
- Noise from rolling stock, station sites and car parks contact your local train operator:

In the Cherwell District Council the local train operator is Chiltern Railways: www.chilternrailways.co.uk/help or telephone 08456 005165

In South Northamptonshire Council the local train operator is London Midland: www.londonmidland.com/contact-us/contact-us/ or telephone 0844 8110133

6. The investigation

6.1 Once we receive a complaint we need to investigate the information that you have provided. This is to enable us to decide on the best a course of action which includes:

1. No action and the case closed
2. Informal action
3. Formal action such as serving an abatement notice
4. Prosecution

6.2 There are three stages to investigate your complaint which are interviewing the complainant, gathering the evidence; and assessing the evidence.

6.3 Interviewing the complainant

This is the first opportunity for you and the case officer to have a full exchange of information. It is essential for the case officer to obtain and record key information at the earliest stage; as this information will be used to decide the most appropriate strategy to adopt for gathering any additional evidence needed to properly assess your complaint. The case officer may deal with your complaint initially by having an informal discussion with the person causing the problem, or a more formal investigation may be carried out.

6.4 The following information is required for your complaint to be investigated:

- Your details; including your name, address and contact details; and
- Where the noise is coming from (exact details including house/flat name or number or site description); and
- Name of the occupier at the address, and/or person responsible for the noise (if known); and
- Nature and details of the problem and its history including how it affects you.

6.5 If you require assistance because of literacy, language, or other difficulties we will offer support to assist you to make your complaint. This includes translation support if necessary, to obtain adequate information.

6.6 The Council deals with thousands of different service requests every year. We have a set of service standards which is our commitment to responding and dealing with complaints.

6.7 We will aim to

- respond to your service request within 2 working days
- investigate your complaint within 8 weeks.

Although we will try to meet our service standards there maybe occasions when we will not be able to comply and may have to reprioritise your complaint because of other demands. Your case officer will advise you if this is necessary and will explain why.

6.8 The case officer will provide you with information on how the investigation will proceed, what you can expect from the service and what you will need to do to enable us to fully investigate your complaint. You will be informed of the name and contact details of the case officer as the case officer will be responsible for your complaint until completion.

6.9 Gathering and Assessing Evidence

Before we can decide on any action we will need to gather evidence to establish whether there is a problem which we can help you with. Usually this will consist of information and evidence necessary to decide what action we may or may not be able to take. This may include:

- information obtained through interviewing you;
- diary sheets completed by you (see Appendix 4 for further information on diary sheets);
- using recording equipment (see Appendix 5 for further information on recording equipment);
- planned monitoring visits;
- visits to respond to a noise incident from a daytime duty officer;

- visits made by an out of hours officer (see appendix 6 for further information on out of hours officer visits;
- a formal statement from you to accompany recordings and diary sheets;
- statements from officers who have visited you and/or perpetrator;
- statements from other persons or professional witnesses;
- transcripts of formal interviews under caution with the perpetrator (person causing the noise); and
- reports containing the outcome of any noise monitoring exercise;

6.10 The case officer will confirm a monitoring programme based on the information provided. The case officer will also inform the results of their analysis and the reasons for their decision about whether or not further action can be taken. The case officer may need to review the progress of the investigation after an initial period and implement alternative strategies to gather evidence.

7. Case decision

7.1 Once the case officer has gathered the evidence a decision on your complaint will be made. This will be either:

7.2 No further action

If we are unable to gather evidence and there remains insufficient evidence for the Environmental Protection Team to act formally no further action will be taken and, the case officer will close the case. We will write to you confirming what we have done and, the reasons why the matter is not actionable formally by the Council. We will outline any informal action taken and provide you with advice on how you may pursue the matter as a private action under Section 82 of the Environmental Protection Act 1990 (guidance provided in Appendix 7).

7.3 The Council will not involve itself in private action between parties and cannot act for either side.

7.4 Formal Action

Once the investigation has been completed, if satisfied of the existence of a statutory nuisance (see Appendix 1 regarding further information on statutory nuisance) or that a statutory nuisance is likely to occur or recur, the Council has a duty to serve an abatement notice on the person responsible for causing the nuisance.

7.5 The exact requirements of a notice will vary depending on the circumstances, but in general terms may include:

- what the nuisance is; and
- a schedule of works that need to be carried out or a sufficiently detailed description of the nuisance so that the recipient could reasonably be expected to decide for themselves what they should do to comply; and
- a timescale for compliance; and
- whether the notice will be suspended on appeal; and
- how to appeal.

7.6 If we are serving an Abatement Notice on a business we will allow a period of time for the business to discuss alternative means of compliance with us.

7.7 You will be advised of the outcome of any action in writing, and what to do if the problem still persists.

7.8 A reasonable time will be given to comply with the terms of the notice. Failure to comply with a Noise Abatement Notice(s) is a criminal offence.

7.9 Further Complaint & Prosecution

Once we have served the abatement notice and there is reason to believe that it has not been complied with the Council will undertake further monitoring and investigations and will then make a decision on how to proceed. If a Notice is not complied with, there are a number of enforcement options which include:

- Prosecution; and/or

- Works in default (this includes the seizure of all noise making equipment, such as televisions, radios, computers and media devices); and/or
- Injunction in the High Court; or
- No enforcement action.

7.10 If we decide that prosecution is the most appropriate course of action, or the subject of the complaint decides to appeal against a notice, you may be asked to provide formal witness statements and may even be required to appear in court. We would also give statements where requested to other agencies such as social housing associations where they may wish to take action to seek possession of a property on the grounds that the nuisance is a breach of a tenancy agreement.

7.11 We would consult you before taking this course of action and would respect your decision if you feel that you cannot contribute in this way. This may mean however that we will be unable to pursue the case.

7.12 It should be noted that court proceedings can introduce delays which can be significant, for example up to and beyond 12 months depending on the complexity of the case.

7.13 The noise will be monitored and if a statutory nuisance still exists this may result in the person who received the Abatement Notice being prosecuted in the Magistrates Court. If convicted, a fine of up to £20,000 in the case of a company, or up to £5,000 in the case of a private individual, can be imposed. Offenders can be fined up to 10% of the maximum fine per day for any further offences.

7.14 In some circumstances, it may be decided that further action is not justified or practical even if a nuisance is shown to continue. Prosecution and any legal proceedings are very serious options and we carefully consider taking such action having due regard to the Council's own and national guidance on enforcement and prosecution. If there is a principle in law it does not follow that all offences will result in prosecution.

7.15 If we decide not to pursue a case we will fully explain our reasons in writing to you.

7.16 At any stage you also will have the option to take your own action. We will give you information about section 82 of the Environmental Protection Act 1990. This enables any "aggrieved" person to take action through the Magistrates Court in respect of noise nuisance (see Appendix 7).

8. Closure of case

8.1 On closure of a complaint a customer satisfaction survey may be sent to you. This is your opportunity to comment on the quality of the service provided and provides us with valuable feedback to establish what we are doing well at and what we need to improve on.

9. Complaints About Our Service

9.1 We deal with many hundreds of complaints about nuisances each year and very occasionally, even with the best will, things can go wrong and customers may feel we may not have kept them adequately informed or that we have made a mistake. In such cases the Council has procedures for investigating formal complaints about the service.

9.2 If you wish to complain about the service that you have received please contact your case officer in the first instance. Further details about the Council's complaint procedures can be found on our website.

10. Persistent complainants

10.1 In a minority of cases people pursue their complaints in a way that is unreasonable and may also be considered as harassment of the person they are complaining about. They may behave unacceptably, or be unreasonably persistent in their contacts and submission of information. This can impede the investigation of their complaint (or complaints by others) and can have significant resource issues for

the Council. These actions can occur either while their complaint is being investigated, or once the Council has concluded the complaint investigation.

10.2 The Council has developed a proportionate approach when responding to unreasonable complaint behaviour and this is set out in the Protocol for the management of prolific and/or unreasonably persistent complainants:

[South Northamptonshire Council Persistent Complainants Policy](#)

[Cherwell District Council Persistent Complaints Policy](#)

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APPENDIX 1

Current noise legislation

Like many environmental controls, those concerned with noise have grown over the years in a piece-meal way which is difficult for the layman to access. To help address that problem, below is a brief summary of the principal current controls applying in England and Wales.

The Environmental Protection Act 1990 provides the principal controls over so-called “statutory nuisances”, including noise nuisances, whether arising from industrial, leisure or domestic activities. By virtue of the **Noise and Statutory Nuisance Act 1993**, it also applies to nuisances arising from vehicles (eg. from car alarms but not traffic noise), machinery and other equipment such as loudspeakers, in the street. Under the 1990 Act, local authorities have a duty to inspect their areas from time-to-time to detect nuisances and, when satisfied that one exists or is likely to occur or recur, to serve an Abatement Notice on the person responsible. The failure to comply with an Abatement Notice is a criminal offence. Local authorities have a power of entry to private premises, power to seize noise-making equipment and powers to carry out works in default of Notices. Businesses have the defence of causing a statutory nuisance of “best practicable means”,

The legal definition of what constitutes a **statutory nuisance** is complex and based on many years of case law. We need to consider the following key factors when investigating a noise nuisance:

- There must be a material interference with the enjoyment and use of the complainant’s property. The noise must therefore be considerable.
- The noise must substantially affect the enjoyment of comfortable living, such as loss of sleep, interfering with conversation or watching television. However there would have to be consideration of the time and frequency the noise occurs, the intensity of the noise, its character and its duration.

- Temporary or occasional incidents causing little actual or potential harm, would not be considered to be a nuisance, for example 'one-off' parties. The problem must normally be continuous or frequent.
- Trivial, harassing or repetitious (vexatious) complaints will not be taken into account.
- Any assessment of whether a particular problem amounts to a statutory nuisance has to be made from the perspective of an 'ordinary reasonable person'. This means that the council must exclude any personal circumstances or sensitivities of the complainant from our considerations when assessing nuisance.
- Factors such as unusual shift patterns, medical conditions or other sensitivities of the complainant cannot be taken into account when we decide whether a particular problem is causing a statutory nuisance.

It is a person's basic right to use and enjoy their property. However, there is no right to tranquillity or silence.

The Control of Pollution Act 1974 contains powers for local authorities to deal with noise and vibration from construction and demolition sites. It also contains powers concerning the use of loudspeakers in the street (which have been used successfully in connection with loud car stereos), together with powers for the Secretary of State to approve Codes of Practice for the minimisation of noise. Codes currently exist for audible intruder alarms, ice cream chimes, model aircraft and construction noise and these may be used in evidence in legal proceedings.

Such codes, although having statutory recognition, do not have the force of law, and infringements do not constitute an offence in themselves. However non compliance will usually be taken into account in any proceedings for a nuisance.

The Licensing Act 2003 provides a comprehensive framework for the licensing by local authorities of a variety of premises and events. Licenses may be subject to conditions, including noise control.

The Anti-social Behaviour Act 2003 strengthens the Housing Act 1996 to facilitate the regaining of possession from tenants of social landlords responsible for anti-social behaviour. It also introduces a power of local authorities, acting through their Chief Executive or Environmental Health Officer, summarily to close licensed premises which cause a public nuisance by reason of noise.

The Clean Neighbourhoods and Environment Act 2005 provides new powers to deal with noise from intruder alarms and extends the powers for dealing with night-time noise in the Noise Act 1996. It also contains a discretionary provision allowing local authorities to defer the serving of an abatement notice for up to seven days once satisfied that a statutory nuisance relating to noise from premises exists, provided that other steps are taken (such as mediation or use of the Noise Act 1996) to abate the nuisance. If the nuisance continues after seven days, an abatement notice must be served.

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APPENDIX 2

QUICK CHECKLIST – CAN WE HELP YOU?

The following checklist has been provided for you to quickly decide whether to complain and whether the local authority can help you.

If you can answer yes to the following there is a good chance that we will be able to help you.

If you cannot answer yes we may not be able to help you. The relevant page in the procedure is referenced against each question to assist you.

If you are unsure about any of the questions you can still contact an officer to discuss your concerns.

Are you happy to provide your full details ?	If NO please refer to page 2 (3.2)
Can you provide full details about the noise nuisance that you are experiencing?	If NO please refer to page 2 and 6.
Can you confirm that your complaint is NOT about: Noise from aircraft / railway / moving vehicles i.e. car stereos or revving engines?	If NO please refer to page 5 for organisations that can help you with these types of complaints.
Are you happy for us to contact the person you are complaining about?	If NO please refer to page 3.
Do you understand that despite our best efforts those complained about can sometimes work out who has complained?	If NO please refer to page 3.
Do you understand that sometimes we will not be able to take action?	If NO please refer to page 9, 10 and 11.
On rare occasions we need to take legal action to deal with a complaint. Are you prepared to give evidence in court if necessary?	If NO please refer to page 9 and 10

APPENDIX 3

Council contact details

	Cherwell District Council	South Northamptonshire Council
Website	www.cherwell.gov.uk	www.southnorthants.gov.uk
Contact us web page	Contact us web page (click on above link)	Contact us web page (click on above link)
Email	customer.service@cherwell-dc.gov.uk	customerservice@southnorthants.gov.uk
Telephone	01295 227001	01327 322322
Main address	Bodicote House. Bodicote, Banbury, Oxfordshire, OX15 4AA	Springfields, Towcester Northamptonshire NN12 6AE

APPENDIX 4

Diary Sheets

If diary sheets are sent out we ask that they are completed and returned within a 21 day period. There are occasions when this period may be shortened or lengthened.

Complainants are advised that the more information they provide on the diary sheet the more useful they are likely to be. You will need to record dates, times, duration, type of noise and how it affects the use of your property. Please appreciate that the diary sheets may be used as evidence in the Magistrates Court if the investigation leads to prosecution and you should therefore be mindful of what is written as offensive material or inappropriate comments could jeopardise the case.

Diary sheets can indicate the severity and frequency of the noise and can help determine the best method of trying to witness the nuisance or that it is unlikely that the council will be able to establish statutory nuisance.

If the complainant does not return the diary sheet completed by the date on the diary sheet and in the absence of further complaints the case will be closed. This is clearly worded within the letter accompanying the diary sheet and as such there is no further follow up from the case officer.

There will always be occasions where, for good reasons, a complainant cannot keep a log of the noise. If this is the case, we can make arrangements for an officer to discuss the matter with the complainant to find the best way to get the information we need to decide on whether a further investigation is warranted.

Assessment of diary sheets

When a diary sheet is returned, the case officer will assess the contents and use their professional judgement and experience to decide whether further investigation is warranted.

The key considerations are;

- location
- time
- duration
- frequency
- importance and value to the community of an activity
- the difficulty in avoiding the external effects of an activity

On some occasions complainants return log sheets that include information on an address or addresses other than that originally complained of. The information will be noted but we would not normally act on this unless we have an ongoing investigation with the said property/s. In this situation, the complainant will be advised to log a new complaint and the complaints procedure for that property is likely to start from the beginning.

The completed sheets are kept on file until the investigation is complete and a decision has been made as to whether formal action can be taken or not. If there is insufficient evidence to pursue formal action, the sheets will be returned to the complainant with a covering letter confirming this and a copy retained on the file. If it is decided there is sufficient evidence to pursue formal action, the original sheets will be retained. In the event of an appeal against a notice or prosecution, the diary sheets and time plots should be exhibited in a section 9 (Criminal Justice Act 1967) statement taken from the complainant by the case/ lead officer.

Nuisance Diary Sheets

Criminal Justices Act 1967 s9 Magistrates Court Act s102 Magistrates Court Rules 1981 s70

Name:

Premises where the nuisance is originating:

Address:

This statement (consisting of ____ pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is rendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the _____ day of _____

Signature:

Name of person recording details	Date	Time Start	Time Finish	Room affected	Nature of nuisance eg: music, DIY etc	Describe how you were disturbed

Please complete until

and return within three days

Case Reference:

Signature:

APPENDIX 5

Recording equipment

Most investigations for domestic noise will be made using digital recording equipment installed inside the complainant's property. The equipment constantly records the noise level expressed in terms of decibels (dB) which can be shown on a graph. It will also be used to obtain samples of any noise that can be played back as an audio file. Usually it will be set so that the complainant triggers audio recording as and when they think that noise is at an unacceptable level for them. In some circumstances, automatic triggers or constant audio recording may be employed but this would chiefly be where the complainant has some disability or infirmity that limits their ability to activate recordings themselves.

The use of such equipment and techniques is not considered surveillance because the noise has been inflicted by the perpetrator who has probably forfeited any claim to privacy. Our equipment is not used or designed to capture sounds not discernible by the unaided human ear and will not be used for monitoring exercises where there is a danger this could result. Careful consideration will be given to protection individuals from collateral intrusion before sound recording equipment is deployed.

The equipment will be used only to record noise that would ordinarily be heard in the complainant's property. It will not be purposely used to obtain personal and/or private information on the persons who are subject of the complaint such as the content of conversations. However, if those persons are talking or making other noise loud enough for the average person to hear in another property, then the equipment will pick that up. We would not disseminate any information obtained in this way unless we have lawful authority to do so.

Officers will routinely take steps to avoid drawing attention to what they are doing so that it does not affect the chances of capturing a demonstrative sample of the noise being complained of. They will make special arrangements where necessary if the complainant has particular concerns about this.

Officers may have to return to check equipment and download data during a monitoring period. They will advise and make appropriate arrangements if this is necessary.

In most cases, we would install monitoring equipment on a maximum of two separate periods. Each period would usually be between one and two weeks and include at least one weekend. In our experience, if we cannot obtain any evidence of significant noise over two monitoring periods, then it is highly unlikely that a nuisance as defined by the law will exist.

It is important to note that equipment is normally located inside a dwelling in a habitable room that is being affected such as a main bedroom or living room. Access to a power connection will be required for the continual duration of the equipment's installation until collected by the case officer.

The complainant's co-operation will be required to trigger the recording equipment as and when the noise nuisance is occurring. This will involve pressing a button when the noise nuisance occurs. Officers will issue advice and guidance when the equipment is installed. It is also important that any advice or instruction given by the Officer is adhered to so that any evidence collected is not jeopardised or corrupted.

Please be aware that if the evidence is used by the Council in any formal action then we would require a witness statement from the person operating the equipment to authenticate the evidence.

There is usually a waiting list for the allocation of recording equipment, and officers will prioritise within the resources available, based on the evidence already collected. Officers will install noise recording equipment at the noise sensitive property as quickly as possible.

Officers will need to undertake the task of analysing the results of noise recordings after the equipment has been removed from the premises. This could take the form of simply listening to the recording and noting the recorded levels, types of noise and so on, or may involve a more detailed computer analysis.

The time involved in this stage of the investigation can vary, depending on the complexity of the complaint. It is necessary on occasions to analyse a significant amount of data, both audio and statistical, especially in the more complex cases.

Once this has been completed, the investigating officer will report to the Environmental Protection Team Leader and they will decide whether there is sufficient evidence to satisfy them that a nuisance exists or is likely to exist having regard to the criteria set out above, or whether a breach of a notice has occurred.

During the course of our investigation if we pick up any information that may be important to another authority then we have a duty to pass this information on.

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APPENDIX 6

South Northamptonshire Council out of hours officer service

The Environmental Protection Team recognises that many of the complaints it receives concerning nuisances are at times outside normal office hours. It further recognises that in many cases such incidents occur irregularly and thus make it difficult to plan monitoring visits. In order to witness such occurrences the Council offers an out of hours call out service.

The Environmental Protection Team operates an out of hours service between the following hours:

- From 16.45 hours on Fridays until 08.45 hours on the next working day.
- From 17.15 hours on Mondays to Thursdays until 08.45 hours the next following day.
- Public and Bank Holidays, and Statutory days determined by the Council from 08.45 hours to 08.45 hours the next working day.

Type of complaints dealt with

The out of hours service can be used by anyone affected by a nuisance where:

- 1. The complaint is of an on-going nature and informal approaches made on your behalf by the Environmental Protection Team have failed to resolve the matter**

Your complaint details will be added to an active complaint list and you will be provided with the Council's out of hours telephone number. When contacting the out of hours service please have your contact details ready including your telephone number and your reference number. Once you have telephoned the service you will be contacted by the duty officer who will then discuss the complaint with you and advise you on whether a visit will be made or not.

The duty officer will only visit you in connection with this specific complaint. If you have an additional complaint that is not on the active complaint list please see point 2 below.

Your complaint details will be removed from the active complaint list once your complaint has been closed.

2. The nuisance occurs on a frequent but irregular basis, predominantly outside office hours.

If you are contacting the Council for the first time regarding your complaint, or if you have an ongoing complaint in the informal stage of an investigation, then your call will be logged and passed to an officer the next working day for action.

If two or more complaints are received about the same source then the duty officer will be contacted. The duty officer will then contact you to discuss the complaint with you and advise you on whether a visit will be made or not

How the service operates

Upon determining that a visit is required the duty officer will advise you of the estimated time of arrival. Should the disturbance cease prior to the arrival of the duty officer you should contact the out of hours service advising them of this. When the duty officer arrives, an assessment will be made of the situation and notes will be taken regarding the incident. The duty officer may also ask that you provide a signed witness statement.

The duty officer will not necessarily take any enforcement action at the time of the visit. The duty officer may decide that the best course of action is to report the incident to the Environmental Protection Team the next working day. If so, the

Environmental Protection Team will determine the appropriate course of action and you will be contacted and advised of the decision.

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APPENDIX 6

Cherwell District Council Out of hours officer service

The Anti Social Behaviour Team provide a limited out of hours service to facilitate the investigation of complaints and the collection of evidence of alleged breaches of formal notices at times of day when the Council Offices are closed.

Hours of operation

The service operates on three days a week, Thursdays, Fridays and Saturdays between the hours of 18:00 and 03:00.

Rules of engagement

The standby officer will respond to complaints from customers who have been previously advised that they have access to the Council's out of hours service. At the officers discretion the service will also respond to complaints of significant nuisance that have originated from Thames Valley Police. Typically these cases will involve multiple complaints to both organisations and would result in serious disorder or public nuisance if not addressed at the time.

Calls from members of the public or the police are received by the Council's out of hours call taking service. They in turn check that the case is one that requires a response and will then contact the duty standby officer. On receiving the case details the duty standby officer may either contact the caller for more information or attend directly depending on the nature of the case, the purpose of responding to the call and a dynamic risk assessment.

Unless pre planning has taken place the officers role in attending is strictly to secure evidence that demonstrates the existence of a statutory nuisance or other offence or to witness an alleged breach of a previously serviced formal notice.

Customer contact

Customers who have been given access to the out of hours service will be advised of their status and the correct telephone number to call by their case officer. Where the case relates to the investigation of an alleged noise nuisance the complaint will normally remain 'open' to the standby service for 8 weeks.

The customer will be advised by the case officer when the standby service is no longer available to them.

If the case involves a previously served formal notice it will remain 'open' to the standby service for 12 months from the date of service of the notice.

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APPENDIX 7

TAKING ACTION IN THE MAGISTRATES COURT YOURSELF	
<p>If noise from a neighbour is materially interfering with your use of your property, you have been unsuccessful in resolving the problem informally and, for whatever reason, the Council has been unable to help or you do not want to involve them, you may be able to take action in the Magistrates Court yourself under section 82 of the Environmental Protection Act 1990. Here is how:</p>	
<p>Getting started</p>	<p>You must advise the noise maker in writing of your intention to go to Court, giving at least three days notice – the Court will ask if you have done this.</p> <p>Magistrates' Court deal with these actions and can be contacted directly.</p> <p>Go in person to the Court before 10:00 Monday to Friday. Ask the uniformed attendant for the Clerks Office where you should ask for the Court Officer dealing with that days 'applications'</p> <p>You should take legal advice as to the strength of your case first as, should you lose the case, you may have to meet the Defence legal costs.</p>
<p>Court Details</p>	<p>For South Northamptonshire Council the Magistrates Court address is: Regents Pavilion, Summerhouse Road, Moulton Park, Northampton NN3 6BJ. Telephone number: 01604 497000</p> <p>For Cherwell District Council the Magistrates Court address is: Banbury Magistrates Court The Court House, Warwick Road Banbury Oxfordshire OX16 2AW Telephone number 01865 448020</p>
<p>Making an application</p>	<p>A small fee is payable in order to pursue the matter. You will need to prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Have your diaries copied to give to the Clerk.</p> <p>When, later, it comes to actually applying for a summons, the Magistrate will ask you questions. Even after starting these</p>

	<p>proceedings, you should continue to keep a diary of the disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.</p>
What next	<p>The Court serves the summons by recorded delivery or by personal service and will advise you of a date to return to court, usually about six weeks later. You must return to court on this day. Check the lists of cases posted up inside or ask for help to find which Court room you should attend.</p> <p>If the accused admits causing the nuisance, the Court will hear the case on that day. You will normally be asked to make a statement in support of your claim.</p> <p>If the accused fails to attend and makes no plea by post, the case will usually be adjourned.</p> <p>If the Court is satisfied that the accused was served with the summons, it may, in some cases (although these are generally rare), decide to hear the case in their absence.</p> <p>If the accused attends but denies causing the nuisance, the Court may hear the case or adjourn to another date, depending on the time available.</p>
When you return to court	<p>You do not need to be represented in Court by a lawyer. If you are however, you will have to pay as Legal Aid is not available for these actions.</p> <p>Prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries copied to give to the Court. The Magistrate will ask you questions, so may the accused, and you will have the opportunity of asking him/her questions on their evidence.</p>
Likely outcomes	<p>If the Court is satisfied that you have proved beyond all reasonable doubt that a nuisance exists or is likely to recur, they will make an Abatement Order requiring the accused to cease the noise and/or prohibit its recurrence. The Court may also impose a fine of up to £5,000, although smaller sums are more</p>

	<p>usual.</p> <p>You may, in addition, ask for reasonable costs e.g. for lost earnings, to be paid for bringing your case to Court. Any claim must be made at the hearing and any award is at the discretion of the Magistrate. A copy of the Abatement Order served on the accused will be given to you for your information.</p>
Paying the costs	<p>If you are unsuccessful, you may be ordered to pay the defendant's costs. The costs awarded may include any reasonable costs in defending the case, including legal costs</p>
If you are successful but the problem continues	<p>Return to the same Court (before 10:00) as soon as possible and apply for a "summons for failure to comply with the court order". There is no need to notify your intention to the person causing the noise.</p> <p>You will be able to start a prosecution for breach of the Abatement Order from which further financial penalties are likely to be imposed if the accused is found guilty.</p>
Further assistance	<p>If you require assistance on court proceedings, the Clerk of the Court may advise you in person on a weekday afternoon, usually after the courts have finished proceedings.</p> <p>Alternatively, it may be possible to take civil proceedings, i.e. in the County Court, for a 'private nuisance'. Again, take legal advice first.</p>

APPENDIX 8

DIRECT NEGOTIATION WITH A NEIGHBOUR	
Be prepared	<ul style="list-style-type: none"> • There are several ways to make it more likely that you and whoever you are in dispute with can sort things out – and some that will definitely make matters worse. • This section sets out some ‘do’s and don’ts’ that you may find it helpful to read through and think about before speaking or writing to the other person.
Think about what you want to say	<ul style="list-style-type: none"> • Be clear in your mind about: <ul style="list-style-type: none"> what the problem is; how it affects you; what you want. • Talk to someone who is not involved, who can help to work these out. You may wish to consult a local Law Centre, Citizens Advice Bureau or a solicitor; and decide whether it would be better to talk face to face or to write a letter. • If you decide to talk face-to-face, you may find it helpful to write down what you want to say to help you order your thoughts and make sure you cover all the points you want to make.
If your dispute is with a neighbour	<ul style="list-style-type: none"> • Talk to them face-to-face. This is much better than pushing notes through the door or banging on the wall; • Try to choose a good time to make the first approach, when neither you nor your neighbour are busy; and • Arrange a suitable time and place, free as far as possible from distractions, so that you can talk about the problem properly.
Speaking face to face	<ul style="list-style-type: none"> • Be calm and friendly. Say you are glad you have got together to sort things out; • Tell your neighbour what the problem is, how you feel and how it affects you. Express how you feel but without blaming your neighbour. This will help you get your message across.

	<p>For example, <i>“When I hear your TV after 11.30 p.m. I can’t get to sleep and I get angry”</i> is much better than <i>“You’re very inconsiderate with your loud TV, keeping me awake all night”</i>;</p> <p>and</p> <ul style="list-style-type: none"> • Listen to what your neighbour has to say in return: they have a point of view, even if you don’t agree with it. By listening as well as talking, you help to build a good atmosphere. Problems are often solved when people feel they have been listened to.
<p>Trying to solve the problem</p>	<ul style="list-style-type: none"> • Look for common ground. Even agreeing to differ is a start; • Make sure that you bring all the issues into the open. Work on the easier issues first; • Separate the problem from the person. Approach this as if you and your neighbour are getting together to solve a common problem. Two heads are better than one: be open to your neighbour’s suggestion; • Try to find a co-operative solution in which both you and your neighbour participate; • Look at all the options before picking the best one for you both; and • If you are unable to talk things through amicably with your neighbour, you may wish to try a community mediation service.
<p>When you reach agreement</p>	<ul style="list-style-type: none"> • Make sure you know who has agreed to do what, and by when. It may be a good idea to write this down, and both sign it and keep a copy. • Agree a date to check how your agreement is working out • Agree how you will let each other know about any future problems.
<p>Don’t</p>	<ul style="list-style-type: none"> • Interrupt, shout or verbally abuse • Assume others have the same values as you do • Assume people are doing things just to annoy you • Imagine your neighbours know what is really bothering you if

	<p>you have never told them</p> <ul style="list-style-type: none">• Retaliate: it will make things worse and put you in the wrong• Argue about exactly who did what – concentrate on what you want to happen in the future• Bring up things which have nothing to do with the present problem• Agree to solutions you think are unfair, just for a quiet life.
<p>These tips assume there is no threatening behaviour or danger of physical violence. If there is, you should go to the police.</p>	

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