
Draft Nuisance Policy 2024 - 2027

Committee considering report:	Joint Public Protection Committee
Date of Committee:	10 June 2024 (Pre-consultation) 07 October (Post consultation)
Chair of Committee:	To be confirmed at the meeting
Date JMB agreed report:	20 May 2024
Report Author:	Suzanne McLaughlin
Forward Plan Ref:	JPPC4451

1. Purpose of the Report

- 1.1 There is a high demand from service users to respond to requests for the Public Protection Partnership to resolve nuisance complaints. The purpose of this draft policy is to set a framework that will help the PPP ensure the continuation of a consistent and transparent approach to both reactive and proactive work on nuisance issues.
- 1.2 The Policy, once adopted, will form part of the suite of key policies that we use to deliver the Service.
- 1.3 To provide an opportunity for the Committee to consider and comment on the draft policy and consultation methodology prior to the service seeking the views of our residents, service users and other stakeholders.

2. Recommendations

The Committee:

- 2.1 Approves the draft Nuisance Policy 2024-2027 as set out in Appendix A for consultation.
- 2.2 That the Service Lead: Public Protection is authorised to proceed with a public consultation for a six week period between the 08 July 2024 and the 19 August 2024.
- 2.3 That any comments on the draft Policy be brought to the 07 October 2024 Joint Public Protection Committee meeting for discussion prior to the Policy being formally adopted.

3. Implications and Impact Assessment

Implication	Commentary
Financial:	<p>There are no financial implications associated with the adoption and implementation of this Policy other than any costs associated with the consultation.</p> <p>However, as with all enforcement activities undertaken by regulatory services legal challenge may result in legal expenses.</p>

	<p>Where the PPP takes legal action or defends legal challenge the PPP will seek to recover its costs through this process.</p>
Human Resource:	<p>There are no specific HR implications associated with this report.</p> <p>The consultation will be undertaken within existing resources and the policy will be delivered within the current staffing structure although competence is managed and delivered through our training and development plan.</p>
Legal:	<p>The relevant legal issues are addressed within the report and draft policy. The statutory nuisance regime is set out in Part III (sections 79-82) of the Environmental Protection Act 1990, as amended by the Clean Neighbourhoods and Environment Act 2005. Construction site noise is dealt with under the Control of Pollution Act 1974. Where specific types of complaints are not dealt with by the PPP, appropriate sign-posting has been set out in the draft policy.</p> <p>The Environmental Protection Act 1990 places a statutory duty on the local authority to inspect its areas from time to time to detect any statutory nuisance.</p> <p>Where a complaint of statutory nuisance is made, the local authority must take reasonably practicable steps to investigate the complaint.</p> <p>The Act specifies what is a statutory nuisance but does not specify what constitutes 'reasonably practicable'. The draft policy specifies what the local authority considers to be a reasonable investigation.</p> <p>The draft policy also takes into consideration the Clean Neighbourhoods and Environment Act, 2005 which extends the statutory nuisance regime.</p> <p>Noise complaints emanating from construction and demolitions sites are dealt with under the Control of Pollution Act, 1974.</p>
Risk Management:	<p>As with all enforcement activities undertaken by regulatory services there is a risk of legal challenge to any action taken or not taken.</p> <p>To ensure that the partnership maintains high standards and to minimise the risk of successful challenge, Officers adhere to standards set out in procedure notes and adhere to a quality management system. Both are the subject of regular updates.</p> <p>One of the key risks in providing an effective service dealing with nuisance is the financial pressure that local government is experiencing. In response, the partnership needs to be as cost effective as possible in managing nuisance issues.</p>

	<p>As set out in the year end performance report included on this agenda one of the most critical risks identified in the Service Risk Register is the failure to retain or recruit business critical and suitably trained staff which would result in the Service being unable to fulfil our statutory obligations. Nationally there is a shortage of suitably qualified staff.</p> <p>This risk is being managed through the carefully executed workforce strategy which seeks to ensure that staff have the necessary competencies in place to undertake the enforcement activity associated with nuisance.</p>			
Property:	There are no property implications associated with this report.			
Policy:	<p>The policy has been drafted to take into account the Bracknell Forest Borough Council (BFBC) 2023 to 2027 Council Plan and the West Berkshire Council 2023 to 2027 Council Strategy.</p> <p>It also takes into account a number of the PPP's key plans and strategies as set out in Section 2 of the draft document. The draft policy accords with the PPP's vision to protect and support residents and legitimate businesses through the successful use of information and intelligence, delivering safe and healthy neighbourhoods.</p>			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		x		<p>In reviewing the draft policy, we did not identify any detriment to any protected group as a result of implementing it. Each service request or service complaint is assessed individually and dealt with in accordance with relevant procedures and legislation.</p> <p>Should any equality issues be raised during the consultation period that will be considered as part of the adoption process.</p>
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		x		See above

Environmental Impact:	x		<p>Where the statutory nuisance relates to smoke nuisance, the aim of the action is to regulate smoke from premises which are prejudicial to health or a nuisance.</p> <p>Planning conditions are applied to control noise, dust and smoke nuisance in some instances.</p>
Health Impact:	x		<p>The draft Policy is designed to improve our residents' quality of life, which enables people to live well by resolving matters which impact detrimentally on the wider determinants of health.</p>
ICT or Digital Services Impact:		x	<p>The PPP website includes a lot of information and self help guides and leaflets to assist and inform residents and businesses about what constitutes a statutory nuisance, options for informal resolution and what to do if this does not work.</p> <p>The consultation will be included on both the West Berkshire Council and Bracknell Forest Consultation hubs.</p>
PPP Priorities :			<p>The draft policy will impact on the following PPP Priorities:</p> <ol style="list-style-type: none"> 1. Environmental Protection 2. Health and Safety Enforcement 3. Impact of Nuisance on Residents and Communities 4. Improved Air Quality
Data Impact:			<p>All data obtained in dealing with Service Requests and complaints and the consultation is and will be dealt with in accordance with the PPP - Privacy Notice</p> <p>Where personal data is being processed or shared, the Service will ensure that the necessary data protection requirements are in place, such as a Data Protection Impact Assessment, Privacy Notice, Information Sharing Agreement (where relevant) and the Register of Processing Activity (ROPA) is updated as necessary.</p>

Consultation and Engagement:	<p>A six week consultation will be undertaken in accordance with the West Berkshire Council Consultation Policy.</p> <p>The Consultation will be included on the West Berkshire and Bracknell Forest consultation hubs.</p>
Other Options Considered:	<p>Not to consult on the adoption of the Nuisance Policy.</p> <p>Not to adopt a Policy on how the Service manages nuisance. This may lead to more complaints against the service, where there is no understanding of the partner councils' duty and procedures with respect to nuisance investigation.</p>

4. Background

- 4.1 The Public Protection Partnership (PPP) is a shared service delivering Environmental Health, Licensing and Trading Standards functions on behalf of two authorities, Bracknell Forest Council (BFC) and West Berkshire Council (WBC). It also delivers a range of commissioned services to other organisations including Wokingham Borough Council.
- 4.2 Dealing with nuisance is a core function of the PPP. The purpose of this new policy is to set a framework for PPP staff to ensure the continuation of a consistent and up to date best practice approach to both reactive and proactive work on nuisance issues. It will also set a framework for our interaction with residents on nuisance matters.
- 4.3 The Public Protection Partnership is responsible for investigating statutory nuisance on behalf of the two partner authorities. The Environmental Protection Act 1990 (The Act) sets out in legislation what constitutes statutory nuisance.
- 4.4 The Act provides specific powers for the local authorities to use to tackle nuisance and places a duty on the local authority in respect of these matters to:
- Inspect its area from time to time to detect any statutory nuisance which ought to be dealt with through this legislation; and
 - Where a complaint of a statutory nuisance is made by a person living within this area, to take such steps as are reasonably practicable to investigate the complaint; and
 - Where a local authority is satisfied that a statutory nuisance exists or is likely to occur or recur, requires that the local authority serve a notice to abate the nuisance.
- 4.5 The Act also makes provision for a resident to take private action through a magistrates' court. In addition, residents have a recourse in common law. Section 79 of the Act outlines the different types of nuisance which can be dealt with as statutory nuisance.
- 4.6 There is a high demand from service users to respond to requests for the Public Protection Partnership to resolve nuisance complaints. The types of nuisances the PPP deals with most frequently are:

- Domestic Noise (e.g. barking dogs, music, car and house alarms) (around 650 service requests in 2023/24)
- Commercial Noise (e.g. noise from public houses or larger events and noise from refrigeration and extraction units at food premises) and dust, steam, grit, and odour from industrial, trade or business premises (around 330 service requests in 2023/24)
- Artificial Light (from for example security lights and floodlit sports pitches).
- Smoke from bonfires (around 175 service requests in 2023/24).

4.7 The draft policy identifies areas where the PPP has powers to investigate, and when another agency has powers, it signposts complainants to that agency. The draft policy also seeks to clarify that some household noises are also not considered to be a statutory nuisance and cannot be investigated e.g. slamming doors and the sound of footsteps.

4.8 The draft document describes preventative action that is taken by the PPP, often in conjunction with partner organisations including the police and fire service and colleagues in emergency planning, public health, highways, and planning teams. Prevention of nuisance could be enacted for example through licensing and planning conditions or through the work undertaken by the Safety Advisory Group.

4.9 The Service aims to support service users to resolve nuisance issues informally outside of the enforcement process and provides guidance on how to approach neighbours who might not be aware of the impact of their actions. The draft policy also highlights alternative resolution methods including referrals to an external mediation service where both parties agree to undertaking the informal approach.

4.10 The draft policy sets out the legal framework and a high level generic approach to dealing with nuisance. The detailed approach to be taken in respect of specific categories of nuisance is included in the procedure notes and quality management systems which are used, and reviewed, by the Service. It also articulates what the complainant / resident is required to do to support and evidence their complaint.

4.11 The draft Policy and the processes within it have been developed in line with the principles of enforcement referred to in the Inter Authority Agreement that forms the basis of the partnership.

5. Consultation

5.1 Both partner authorities are committed to making open and transparent decisions which are evidence-based, taking into account the views and experiences of residents, service users and other stakeholders.

5.2 It is therefore proposed that the draft policy be subjected to a six-week consultation process. The consultation to be run from the 08 July 2024 to the 19 August 2024.

5.3 The consultation document will be posted on the West Berkshire and Bracknell Forest Council consultation portals. The consultation will be promoted through a press release and social media posts.

5.4 All comments received as part of the consultation will be presented to the October 2024 Joint Public Protection Committee for a discussion prior to the adoption of the policy with or without modification.

6. Concluding Observations

- 6.1 Living with nuisance has a severe impact on quality of life and in some cases health and wellbeing. The service has not previously set out its approach in one policy document that's sets expectations for all parties.
- 6.2 The draft policy has also been developed in order to maintain the profile of this important area of work and link it to our high level priorities of protecting, promoting and improving the health and environment of the area and all its people through education, guidance and enforcement.
- 6.3 We believe that carrying out these functions in a fair, consistent, independent and practical manner will help to promote a thriving local economy by balancing a range of risks that may affect our individual and collective living space.

7. Appendices

Appendix A – Draft Nuisance Policy 2024-2027

8. Background Papers:

8.1 None

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Overview and Scrutiny Management Committee or associated Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

Wards affected: All Wards or State Specific Wards

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