

Minutes of the meeting of the **SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE** held at the Council Offices, Whitfield on Wednesday, 6 June 2018 at 6.00 pm.

Present:

Chairman: Councillor L A Keen

Councillors: T A Bond
P I Carter
R J Frost
P J Hawkins
P D Jull
M J Ovenden

Officers: Environmental Protection Manager
Democratic Services Manager
Democratic Services Officer

1 APOLOGIES

There were no apologies for absence received from Members.

2 APPOINTMENT OF SUBSTITUTE MEMBERS

There were no substitute Members appointed.

3 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

4 MINUTES

The Minutes of the meetings held on 25 April 2018 and 15 May 2018 were deferred to the next meeting of the Committee.

5 PUBLIC SPEAKING

The Democratic Services Manager advised that no members of the public had registered to speak on items on the agenda to which the public speaking protocol applied.

6 DECISIONS OF THE CABINET RELATING TO RECOMMENDATIONS FROM THE SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE

It was noted that at the meeting of Cabinet held on 4 June 2018 answers were provided (CAB 5) to the Scrutiny (Community and Regeneration) Committee's recommendations made at its meetings held on 25 April (Minute No 114) and 25 May 2018 (Minute No 120).

7 ISSUES REFERRED TO THE COMMITTEE BY COUNCIL, CABINET, SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE OR ANOTHER COMMITTEE

There were no items for consideration.

8 ITEMS CALLED-IN FOR SCRUTINY OR PLACED ON THE AGENDA BY A MEMBER OF THE COMMITTEE, ANY INDIVIDUAL NON-EXECUTIVE MEMBERS OR PUBLIC PETITION

There were no items for consideration.

9 NOTICE OF FORTHCOMING KEY DECISIONS

The Democratic Services Manager presented the Notice of Forthcoming Key Decisions to the Committee for its consideration.

RESOLVED: That the Notice of Forthcoming Key Decisions be noted.

10 SCRUTINY WORK PROGRAMME

The Democratic Services Manager presented the Scrutiny Work Programme to the Committee for its consideration.

Members requested that the following items be added to the work programme:

- East Kent Housing be asked to attend a meeting of the Committee in September to provide an update in respect of tenant representation arrangements.
- That local health service providers (EKHUFT and South Kent Coast CCG) be asked to attend a meeting of the Committee to discuss local health care arrangements.

RESOLVED: That the Work Programme be noted subject to the addition of East Kent Housing and scrutiny of local health care arrangements to the work programme.

11 NOISE NUISANCE

The committee welcomed the Environmental Protection Manager to answer the questions it had set on the issue of Noise Nuisance; written answers were provided at the meeting and any supplementary questions during the meeting were answered.

Q1. When does noise become a nuisance?

The main piece of legislation that dealt with noise nuisance was the Environmental Protection Act 1990. Section 79(g) and 79(ga) of the Act stated

the following matters constitute "statutory nuisances" for the purposes of the Part, that is to say –

noise emitted from premises so as to be prejudicial to health or a nuisance

noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

Prejudicial to health meant injurious, or likely to cause injury, to health.

The act did not define statutory nuisance. However it had often been as a material interference with a person's use or enjoyment of their land or property.

There was no specific level when noise was considered to be a statutory nuisance as a certain level of noise may have been a nuisance in a rural hamlet but not so in a busy urban area. This was stated in a very old piece of case law when the judge observed that

“what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey”

Several factors were therefore taken into account when deciding if noise was a statutory nuisance, e.g.

- Reasonableness
- Loudness
- Duration
- Frequency
- Nature and locality of area
- Time of day
- Avoidability
- Malicious behaviour

Q2. Where can the guidance on what constitutes a noise nuisance be found? Is there a difference for noise in the daytime and noise at night?

There were many websites giving guidance. Some examples being:

- <https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints>
- https://www.noisenet.org/Noise_Enviro_stat3.htm
- <https://www.environmentalaw.org.uk/rte.asp?id=76>

Day and night were considered differently as touched upon above. Noise at a certain level may not be a problem at 2pm in the afternoon but could cause severe disturbance at 2am.

The Environmental Protection Manager agreed to send the case law that was used most regularly when considering complaints to Councillor P Jull as requested.

Q3. How do you complain about noise disturbances at night?

Complaints could be reported online or by phone. A case file was then opened and diary sheets sent out. If the noise occurred regularly at night access could be given to the Council's out of hours (OOH) noise service which operated on Fridays and Saturdays between 8pm and 3am. The service also operated at the same time on a Sunday if the following Monday was a public holiday. Callers with a reference number could access the service. Alternatively if 3 independent calls were made about the same noise source the matter would be passed to the noise officer. Officers may also carry out proactive OOH visits in liaison with complainants.

Officers were only available during the OOH times as had been previously mentioned. Any complainants phoning outside of those hours would be asked to complete diaries. If a trend in the times of the disturbances could be established officers would respond proactively and plan visits at those times, if necessary. Members were advised that there was no requirement on any local authority to provide an OOH service. Officers provided the service on an overtime basis rather than it being with officer's contracts.

Members reported having received complaints from some residents who had access to the OOH service. They had reported the telephone line appeared to go quiet and would leave them thinking they had been cut off. The Environmental Protection Manager was aware this had previously been a problem and believed it had been rectified. He would enquire with EKServices who were responsible for the telephones and provide an update to Members.

Q4. Is recreational noise treated differently from industrial noise?

In general, no. Officers would take all of the factors outlined in Q1 into account in deciding if it was likely that the noise could be considered a statutory nuisance. A one-off domestic party would be treated differently than regular noise from licensed premises. However if noise was made on an industrial trade or business premises there was a defence that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

The Control of Pollution Act allowed officers to limit industrial noise hours.

Q5. Are domestic noise complaints about neighbours treated differently from non-domestic noise – i.e. events, business, etc.? Is the legislation different?

See answer to Q4. If there were persistent noise problems from licensed premises then officers could call for a review of the licence.

Both would be treated equally.

Q6. Can people complain about pre-existing noises? E.g. from a public house, school or factory that has operated?

Yes.

Q7. Do the noise regulations apply to bird scarer guns, particularly when deployed next to residential areas?

Yes.

Members were advised that the National Farmers Union (NFU) had its own code of practice, and although not set in law, officers would consider whether the correct guidance had been followed and whether it was deemed reasonable.

Q8. Do moped riders who ride through towns with altered manifolds constitute a noise nuisance?

Potentially, as the Act did refer to noise from vehicles, machinery, and equipment on the street. However it was likely that such bikes were not road legal so officers would work with Kent Police in these cases.

Councillor L Keen had attended a seminar provided by the Community Safety Unit and had discussed the issue of nuisance motorbikes. Members were encouraged to advise residents to report noise nuisances from motorbikes to the Police (101) in addition to the Community Safety Unit.

Q9. How many times over the last year or so has sound equipment been seized because of noise complaints – for domestic and business premises?

None.

Noise equipment could be seized from both domestic and commercial premises although this is was a last resort.

Q10. Does noise constitute a reason for re-banding of a property's Council Tax due to loss of amenity?

The Valuation Office Agency had the capacity to re-band properties when certain circumstances changed. This may be if there had been a material reduction in the value of a property on the basis that there had been a change in the physical state of the dwellings locality (e.g. the opening of a motorway).

The Committee thanked the Environmental Protection Manager for attending the meeting.

The meeting ended at 7.07 pm.