

OADBY & WIGSTON BOROUGH COUNCIL

Noise Nuisance Investigation Policy

2014

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| TU approval | [Names of TUs (if applicable)] |
| Committee approval | |
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Part 1. Introduction

This policy sets out how the Council responds to service requests related to noise nuisance. The service is delivered by the Community Service area, which also delivers services related to Environmental Health, Council Housing and Community Safety.

The effect of disputes related to noise cannot be underestimated both for the complainant and the subject of the complaint. They often lead to long-standing neighbour disputes which may then even escalate to anti social behaviour complaints involving a significant amount of Police and council officers' time.

Noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. The Council has statutory duties under the Environmental Protection Act 1990 to investigate and abate any statutory nuisance within their district. In addition, the Anti Social Behaviour, Crime and Policing Act 2014 will provide additional powers to deal with noise nuisance complaints.

Part 2. Scope

This Policy relates to noise actionable using the powers available to the local authorities under the Environmental Protection Act 1990 and Anti Social Behaviour, Crime and Policing Act 2014 as it applies to:

- Neighbour noise, which includes noise from inside and outside people's homes; and
- Neighbourhood noise, which includes noise arising from within the community such as industrial and entertainment premises, trade and business premises, construction sites and noise in the street.

This policy does not include either environmental or occupational noise, which are subject to other legislation.

The application of this policy will be applied consistently to all residents of the Borough and those who work and visit the Borough.

When investigating complaints relating to noise, a holistic approach needs to be undertaken in respect of how the noise complaint can be effectively managed, investigated, or otherwise dealt with by all of the Council service areas. One positive tool in this regard is the reporting and reviewing of noise complaints at the Corporate Enforcement team, for example, the determination that a noise is a statutory nuisance in a Council tenancy can be used to support action being taken under the Housing Act as it relates to breaches of tenancy conditions.

Part 3. What is Noise

“Noise is ‘sound which is undesired by the recipient’, it can be any sound which intrudes or disturbs or annoys. Sound is measured in decibels but volume is not the only thing that can affect our response to sound. Unexpected sound, repetitive bass beats, screeches or whines can make noises more annoying.”

Definition by World Health Organisation

The Department for Food and Rural Affairs and the Chartered Institute of Environmental Health (CIEH) have produced a guide on noise titled 'Neighbourhood Noise Policies and Practice for Local Authorities-a Management Guide'. This guidance states that Environmental Noise is the most cited reason for people wanting to move home and for being dissatisfied with their life overall. Research has also shown that in England as many as one in three people are affected by noisy neighbours.

Part 4. Oadby and Wigston Borough

Accommodation Types:

Property types will influence the amount of noise transmission between properties. Older properties will transmit more sound than newer ones due to the build type.

It is also the cases that since many of the existing stock were built; noise making equipment has changed significantly. Most televisions now come with surround sound which increases the amount of base and is in general much louder than inbuilt speakers.

It is also the case that the density of housing can lead to more neighbour noise disputes.

This is particularly the case with flats and these complaints are very difficult to remedy because they are often due to the normal use of the property such as vacuuming and washing machines. Much of the Council stock consists of flats and the Council receives a high number of complaints related to noise issues as part of its Landlord function.

Tenure Types:

Noise nuisance is usually more prevalent in rented properties due to the transient nature of the occupants. Complaints related to council tenancies are also seeing a slight increase as it is in the private rented sector and this increase is expected to continue as people find it more difficult to enter the property market. Both Oadby and Wigston Council's own rented stock and socially rented stock through the Registered Providers (Housing associations) is small with over 95% of the residential accommodation being in owned and occupied.

Part 5. How this Policy Supports the Council Priorities

“Protect the good quality, consistent, value for money front line services provided to residents”

The Environmental Health team will ensure that we are consistent when enforcing legislation in relation to noise nuisance. Our services will remain value for money by targeting our activities where they are most effective.

“Improve the health and well being of our residents”

Living in a noisy environment can severely affect the resident's quality of life and well being. Long standing disputes related to noise can lead to anxiety and long term mental health issues.

“Work with police to create a safer Borough where people feel comfortable and at ease”

Partnership work with the Police and other statutory bodies ensure that criminal acts are tackled and to ensure that the vulnerable in society are supported and feel protected.

“Work smarter to deliver the efficiency savings required to meet the continuing budget cuts”

The holistic approach to enforcement actions by streamlining the Councils approach of the Corporate Enforcement team and effective use of the Corporate Enforcement and Prosecution Policy will drive efficiencies.

Part 6. Promoting Tolerance and Respect

The Community Safety Partnership promotes tolerance and respect in relation to noise. Its aim is to encourage people to think about their behaviour and how it may affect their neighbours and communities, and to be tolerant if neighbours occasionally cause an annoyance.

It is the case that a noise that once was annoying can become unbearable as people become sensitised to it. By promoting tolerance the Council will attempt to prevent short term annoying situations escalating out of control leading to anxiety and long-term ill health.

By promoting respect the Council is looking to encourage people to think about their neighbours when they are carrying out noisy activities. This may mean curtailing their behaviour such as times when they carry out DIY so that the annoyance to their neighbour is kept to a minimum.

Domestic noise represents the biggest proportion of noise nuisance complaints. These are usually related to Do it Yourself (DIY) music or television noise with barking dogs representing another significant area of work.

Part 7. Promoting Self Service

The Council will encourage residents who are concerned about noise from a neighbour to use our web site. The web site will give information about what is likely to be a statutory nuisance so that they only report the matter if it is potentially actionable.

The web site will also have information about how to contact the neighbours themselves and template letters will be available to download and amend for use.

Part 8. Legislation

The powers for the Council to take action for noise nuisance are contained in three main pieces of legislation.

The Environmental Protection Act 1990 (EPA)

The principal legal control over neighbourhood noise is based on the concept of 'nuisance',

contained in Part III of the [Environmental Protection Act 1990](#). The Act makes it a statutory duty for Local authorities to deal with noise from premises such as homes, pubs, and factories, and from machinery, equipment and vehicles in the street.

For noise to be a statutory nuisance it has to be;

“an **unreasonable** and **significant** emission of noise that causes significant and unreasonable interference with the use and enjoyment of your premises’. The noise cannot be a mere annoyance”

Unreasonable

Decisions are based on what noise an ordinary person would make in their home. It is reasonable to expect a family with children to generate more noise than someone whose children have left home and were looking forward to a quiet life.

It is the case that most ordinary people at some time want to improve their home and noise will be generated while this is done. However there is an expectation it will be done at reasonable times of the day.

Significant

The legislation states that the noise needs to be more than a mere annoyance to be a statutory nuisance.

The Council will take the following into account:

- Loudness - to establish how loud the noise is in the complainant's home. It should not be loud enough to interfere with the enjoyment of an ordinary person. For example if the TV needs to be turned up to be able to hear it over the neighbours noise
- Locality of the nuisance - It is expected that noise levels will be higher in an urban environment close to an industrial estate for example than in a rural area
- Frequency- A one off party is unlikely to be a nuisance. This is particularly the case at during festive and special celebratory times
- Duration - Noise that lasts for a short duration is not likely to be a statutory nuisance
- Time- that the nuisance occurs. Loud noise is more likely to be a nuisance if it happens after 11pm or before 6am

Guidance and case law determine that we cannot take action for some types of noise including;

- Noise from moving vehicles
- Everyday domestic noise
- DIY noise at reasonable times of the day
- Shouting and screaming
- Short-lived one-off events
- Children playing
- Vacuuming
- Traffic Noise

The Clean Neighbourhood and Environment Act 2005

- The Clean Neighbourhoods and Environment Act deals with many of the problems affecting the quality of our local environment - which forms part of a mixture of anti-social behaviour, vandalism, disorder and levels of crime.
- The Act provides local authorities, Parish and Community Councils and the Environment Agency with more effective powers and tools to tackle poor

environmental quality and anti-social behaviour. In particular the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs.

The Anti Social Behaviour, Crime and Policing Act 2014

- This legislation is due to come into force by the end of 2014. This legislation gives greater powers to deal with nuisance behaviour including that associated with noise.

Community Protection Notices

- These Notices give Local Authorities greater powers to deal with noise nuisance complaints and has a lower threshold than a statutory nuisance.
- Community Protection Notices can be used to deal with a noise disturbance, particularly if it is demonstrated to be occurring in conjunction with other anti social behaviour. These Notices can be served on businesses and individuals.
- The Environmental Health team will only use these Notices where there is wider anti social behaviour involved, to retain the higher threshold of nuisance.
- The legislation allows Officers to serve a Fixed Penalty Notice for breaches of a Community Protection Notice. It is a criminal offence if a person does not comply, with a sanction of a fine (or fixed penalty notice).

Community Triggers

- Victims will be able to use the Community Trigger to demand action, starting with a review of their case. Agencies including Councils, the Police, local health teams and registered providers of social housing will have a duty to undertake a case review when someone requests one and the case meets a locally defined threshold.
- District Councils need to develop their own Community Trigger in consultation with relevant bodies. The Community Safety Partnership will develop the trigger to promote consistency across the borough. Once this has been developed it will need to be adopted by this Council and will therefore be subject to a further report.
- The Environmental Health team will ensure it complies with the provisions of this Policy and ensure its service shares its information within the limits of data protection legislation.

Part 9. Council Roles and Responsibilities

Local Authorities have a range of roles involving responsibility for noise control these include:

- The investigation and abatement of statutory nuisances;
- Land use planning
- Entertainment licensing
- Building control, and
- Residential Landlord.

The Environmental Protection Act 1990 places a statutory duty on the Council to regularly inspect for statutory nuisances. It also has a duty to investigate complaints related to noise and to serve an Abatement Notice if the noise amounts to a statutory nuisance.

The Anti Social Behaviour Act 2003 removed the need for local authorities to adopt powers contained in the Noise Act 1996 to deal with the night time noise. Under this legislation the Secretary of State sets permitted levels of background noise which requires sophisticated noise monitoring equipment which has to be calibrated by an accredited laboratory. It is the case that to date the service has been able to deal with night time noise

disturbances using statutory nuisance legislation.

The Council have the Corporate Enforcement and Prosecution Policy now in place led by the corporate enforcement team and Council solicitor who will monitor the trends and give consideration if such sophisticated equipment is needed and may consider use of this legalisation should a need arise.

The Council also has discretionary powers under the Anti Social Behaviour, Crime and Policing Act 2014 to deal with noise nuisance. There is no duty to take action under this legislation and is at the discretion of each local authority if they wish to use these new powers.

Part 10. Our Role as Consultee

As a statutory consultee for planning and licensing applications, the Environmental Health team can contribute to minimising the adverse effects of noise.

Development Control

It is an important function of the Environmental Health team to contribute to a Local Authority's land use planning functions by providing professional and technical support and expert advice on noise.

National Planning Policy Framework requires planning authorities to consider noise as part of its consideration of promoting sustainable development

Licensed premises under the Licensing Act 2003

Environmental Health are a statutory responsible authority under the Licensing Act 2003. This Act regulates the sale and supply of alcohol, late night refreshment and regulated entertainment. All of which, if not carried out responsibly, can cause noise nuisance.

The prevention of public nuisance is one of four licensing objectives under that Act and applications for licences are considered by the Environmental Health team to assess whether the objective of the prevention of public nuisance will be undermined by the grant of an application.

Where there are concerns that the grant of a licence will undermine the objective the environmental health team will submit written representations to the Licensing Authority. If it is considered that the imposition of conditions on a licence will achieve the aim preventing nuisance occurring the team will suggest appropriate and reasonable conditions and seek agreement to those conditions with the applicant. If necessary, a public hearing will be held before a Licensing Committee to determine whether an application should be granted. .

The Environmental Health team can also apply to the Licensing Authority to review a licence that has been granted where the activities of that licensed premises are undermining the licensing objectives.

The inclusion of environmental health team as a statutory responsible authority allows the team to be proactive in preventing nuisance from licensed premises. The powers under the Licensing Act 2003 are in addition to the other legislative powers available to the team outlined in Part 9 of this Policy.

Further information about licensed premises can be found in the Councils Statement of Licensing Policy.

Other licensed premises

Many other commercial premises, such as scrap metal dealers and waste transfer stations, require a permit to be able to operate. These permits often contain conditions related to noise. In these cases the authority that issued the permit for example the Environment Agency or the Council will investigate complaints related to noise in the first instance. The Council does have corporate enforcement policies for this specific area, namely, the Licensing of Scrap Metal Dealers Policy under the Scrap Metal Dealers Act 2013.

Part 11. Sites Subject to a Control of Pollution Act Notice

The Environmental Health team is legally required to serve an Abatement Notice where a statutory nuisance exists.

There are occasions when it is decided to serve a statutory notice under the Control of Pollution Act 1974 (as amended). This does not preclude taking action for a statutory nuisance but any decision to prosecute must be approved by the Secretary of State.

Part 12. Intruder and Vehicle Alarms

Noise from intruder alarms can be a great source of annoyance since they can ring persistently and are commonly fitted on domestic properties and vehicles. Alarms are also fitted to vehicles to warn pedestrians when reversing and these can be a nuisance late at night or early in the morning particularly during early morning deliveries.

Alarms that repeatedly sound, or sound for excessive periods of time are likely to be a statutory nuisance and the Council will serve an Abatement Notice. If the alarm is sounding continuously then the Council will consider the use of the Clean Neighbourhoods and Environment Act 2005 which allows immediate action to be taken.

The Council has the power to adopt provisions for the designation of an area within which occupiers of any premises that are fitted with an audible intruder alarm, to nominate a key-holder and notify the Council of their contact details. The Environmental Health team does not receive sufficient service requests related to intruder alarms to warrant using this provision.

Part 13. Promotion and Raising Awareness

Many people are completely unaware of the effect of noise they produce have on their neighbours. Businesses similarly may not be aware of the level of noise produced from their premises e.g. late at night when the premises are closed.

There are people who are aware but have no regard for the effects of their noise. Effective noise control relies on everyone being aware of their effects and their responsibilities in relation to noise. Awareness promotion initiatives will form part of the service with the aim of reducing complaints relating to noise nuisance.

Noise Action Week is an annual initiative coordinated by Environmental Protection UK (formerly NSCA); the aim is to raise awareness of the problems caused by neighbour noise and the solutions available to tackle the problem. It also provides an opportunity for local

authorities, housing providers, mediation services and all those involved in neighbour noise management to raise awareness of services available and promote practical solutions. The Council's Corporate Enforcement team will use this event as an opportunity to publicise noise issues and the raise awareness.

The Council will also publicise any enforcement activity undertaken to raise awareness of the problems of noise nuisance through the Council's website, and the proactive work of the Corporate Enforcement team.

Part 14. Working in Partnership

Partnerships are an invaluable tool when tackling noise nuisance and a multi agency approach allows issues to be addressed more effectively. The Environmental Health team are part of the Community Service and to address noise nuisance particularly where the nuisance allegation is part of wider anti social behaviour than other service areas will also have contributed to proceed with any prosecution through the Corporate Enforcement team.

Part 15. Performance Monitoring and Reporting

Managers regularly monitor service requests to ensure that each case is dealt with promptly, consistently, professionally and in accordance with this policy.

Assessing noise nuisance is a subjective judgement and the outcome of which usually results in one of the party changing how they use their home or alter their behaviour and the Council will support both parties who want to engage in working towards a positive outcome and restore harmony in neighbourhoods.

Part 16. General Policy When Investigating Noise Nuisance

It is often the case that complaints related to noise nuisance lead to long term neighbour disputes resulting in substantial interventions by different agencies. The way the initial investigation is handled has a significant impact on the outcome.

These are difficult investigations and the decisions made by officers are supported by the Corporate Enforcement team whose remit is to ensure that any decisions made can be defended in Court and is in line with the Corporate Enforcement and Prosecution Policy.

The Environmental Health team will remain independent during the investigation of allegations of noise and will deal with them in a sensitive way. The Council will encourage complainants to contact the neighbour themselves to reduce the probability of protracted neighbour disputes. However, the Council does recognise that this is not always possible.

Where service requests relate to a wider anti social behaviour we will liaise with the Community team responsible for Community Safety to provide a co-ordinated approach. Consideration will be given to the use of Community Protection Notices (as proposed in the Anti Social Behaviour, Crime and Policing Act 2014) where the noise nuisance is part of wider anti social behaviour.

Where it is suspected one of the parties may not have the mental capacity to be making informed decision related to their action we will liaise with the Community team who work

closely with the Leicestershire Supporting Families, Social Services to find the best course of action. These cases will be dealt with sensitively so that any action the Council does take will not exacerbate an existing mental health illness.

Competence of Officers

Officers need to be competent to take action related to statutory noise nuisance due to the financial and reputation risks to the Council of making the wrong decision. The service develops a training plan for each officer and any gaps the requirements are met. This is further strengthened with the support of the Council solicitor who has the overarching responsibility to Corporate Enforcement Team.

Anonymous Complaints

The Council will not be able to take formal action in relation to anonymous noise complaints. However there may be occasions where there is a justifiable reason for a complainant not wanting to give their details. In these cases we will try and deal with the issue informally.

Informal Stage

In accordance with the Corporate Enforcement and Prosecution Policy (CEPP) the Council will try and resolve any complaints related to noise nuisance informally. However, the Council Officers will not normally contact the neighbour unless we have some indication that there could be a statutory nuisance. This is to prevent an escalation of the problem and causing distress to the subject of the complaint if the allegation is unsubstantiated.

If the subject of the complaint is a tenant of a social landlord then the housing team under the terms and conditions of their tenancy agreement will use their procedures for dealing with noise nuisance informally. If so the case will be referred to the housing team for the initial investigation.

From discussions with the complainant, Officers will make an initial assessment of whether the noise is likely to be a statutory nuisance. Officers will be honest and open with complainants and will advise them if the noise is unlikely to be a statutory nuisance as early in the investigation as possible.

In the first instance we will encourage the complainant to discuss the problem with their neighbour. It is widely recognised that complaints can lead to retaliatory action and ongoing 'tit for tat' complaints to the Council. The way these complaints are dealt with at the initial stages can have a significant impact on how successfully and sustainable they are resolved.

Council Officers will assist complainants to deal with the matter themselves by giving advice and providing template letters for them to send to their neighbour if they do not feel able to approach them in person.

If the complainant feels that they cannot approach the neighbour themselves and the noise could be a statutory nuisance we will ask them to keep a diary detailing;

- The date and time the noise is occurring,
- How loud the noise is,
- How the noise interferes with their enjoyment of their home.

The diary sheets will be reviewed after two weeks and if it is determined that the noise is not a statutory nuisance the Council will advise the complainant offering any support through mediation or reconciliation before the case is formally closed.

The exception to using diary sheets would be if more than one complainant from different households makes a complaint about the same noise and it is likely that the noise is a

statutory nuisance. In these cases noise monitoring equipment will be installed in the first instance.

Complainants are advised that they will be required to give a statement of facts related to the diary sheets, which may be used in court proceedings; should the complainant refuse to sign these diary sheets then consideration will be given to any other potential options with a view to closing the investigation in consultation with the Corporate Enforcement Team.

If the diary sheets show a statutory nuisance might exist then noise-monitoring equipment will be installed into the complainant's home. This decision will not be taken lightly since it is acknowledged that it is an intrusion into the neighbour's private life and can cause distress.

To comply with human rights and Regulatory Investigatory Powers Act 2000 the subject of the complaint will be notified that a complaint has been made and that the Council may use noise monitoring equipment to record and monitor the noise from their premises.

In accordance with the guidelines provided by the Office of Surveillance Commissioners (OSC) and the Home Office the alleged perpetrator will not be given any further details as to whether the Council will deploy noise monitoring equipment or the dates and times that such equipment is deployed.

Where it is not appropriate to install noise-monitoring equipment, an officer will carry out monitoring visits at times when the noise is likely to be occurring.

Although Oadby and Wigston Borough Council does not operate a 24 hour call out service for noise, however, pre-arranged appointments can be made for out of hours monitoring providing the case meets the set criteria based on a high level of confidence that the noise will be witnessed and gives a show of support to the complainant.

The Council does have an out of hours call taking facility where messages can be taken and passed to officers during office hours will help those residents who have not experienced noise previously.

In accordance with the legislation we will not canvass neighbours for supporting evidence but will take into account multiple complaints about the same noise.

If, after three separate targeted visits and or two weeks continuous noise monitoring the Officers has not been able to witness any noise that could constitute a statutory nuisance the case will be closed in consultation with the Corporate Enforcement team and both parties will be informed.

Such cases will not be reopened unless the circumstances change significantly. Complainants will be advised that they can take their own action in the Magistrates' Court under Section 82 of the Environmental Protection Act 1990 and advice will be made available on our website to assist with this course of action.

The exception to this would be where it is the intention to cause distress to neighbours by subjecting them to noise nuisance. In these cases there can be a deliberate attempt to avoid Council Officers witnessing the nuisance and it may need further investigation and the Corporate Enforcement team will form an agreed action plan with all parties concerned.

Once an Officer is satisfied that noise amounting to and that nuisance exists, a further 7 days is given to resolve the issue informally by mediation if necessary.

If after that time the nuisance continues then the Council must serve an Abatement Notice at which point it becomes a criminal offence if without reasonable excuse the nuisance is not abated.

The Council will assist the subject to comply with the Abatement Notice by giving advice

including;

- Where to place the speakers and televisions to reduce the impact on neighbours
- Set maximum volumes
- Referring to other agencies for appliances that can assist with the hard of hearing
- Recommending times of the day to carry out DIY activities
- Closing windows when playing music
- Advice on dog behaviour

Formal Stage

Enforcement in Commercial Premises

Some types of businesses need a permit, license or planning permission to operate. These can have conditions attached which stipulate how noise is controlled. It is expected that any noise complaints issue will be dealt with by enforcing the conditions in the first instance. If it is not resolved through this enforcement then we will look at the issue to determine if it is a statutory nuisance.

General Enforcement

Once there is sufficient evidence to show that the Abatement Notice has been breached the Corporate Enforcement Team will consider whether to take prosecution proceedings immediately, for example if the duration of the noise is particularly excessive and it is loud.

However, in most circumstances a warning letter will be sent in the first instance. Factors taken into account when making this decision are contained in the published Corporate Enforcement Policy.

In most cases if the Abatement Notice has not been breached within 6 months of service it will be deemed to have been complied with and new evidence of a nuisance will need to be obtained before another Notice is served.

The Seizure of Equipment

The Environment Protection Act 1990 allows Officer to seize noise making equipment following the service of an Abatement Notice. A Warrant would need to be obtained if entry has been refused. This power will be used where the neighbour has refused to engage with us to discuss the noise and this action is the only way to abate the nuisance.

Defence of Best Practical Means

It is a defence in court proceedings relating to noise arising in the course of a trade or business to prove that the best practicable means have been used to try and prevent or counteract the effect of the noise. This defence recognises that there can be technical and other limitations as far as industry is concerned.

Part 17. Noise Nuisance in Social Housing

The statutory nuisance legislation makes no distinction between different tenure types and as such the Council has a duty to investigate these complaints from all social landlord tenants including the Council housing tenants.

However, both these social landlords and the Council's housing team have their own procedures to deal with this type of anti social behaviour through the enforcement of tenancy conditions. It is therefore, practical for these landlords to deal with the complaint during the informal stage. If this approach does not resolve the issue then the matter will be referred to the Environmental Health team who will undertake the formal investigation.

Any appropriate actions will be considered by the Corporate Enforcement team and under the Corporate Enforcement and Prosecution Policy as if it is found that a statutory nuisance exists and the Abatement Notice is not complied with the landlord will have better grounds for seeking possession should that be the most appropriate course of action.

Powers for social landlords to deal with nuisance and anti social behaviour has been extended in the Anti-social Behaviour, Crime and Policing Act 2014 and the Council's Corporate Enforcement team will take any actions the Act allows into account.

Part 18. Consistency

The Council solicitor in consultations with all service area managers will periodically review any on going statutory nuisance cases to ensure that decisions are broadly consistent across the Council enforcement practices.

Part 19. Equalities Impact

It is the case that if the person complained of does not read English they will not be able to understand any written correspondence. This could lead to a court appearance and potential conviction without them knowing the severity of the issue.

To mitigate against this we will ensure that appropriate language support is sought through the support and networks of the Corporate Enforcement team.

It is also the case that in some cases noise nuisance complaints relate to individuals with mental health disabilities. We will work with any care/support workers to ensure that people in these circumstances get the help they need either as the complainant or the subject of the complaint to get a fair and equitable service from us.

Part 20. Data Protection

Details of all complainants are kept in strict confidence unless otherwise agreed. However, the Council has a data sharing protocol with the police and careful considerations to request for details will be considered by the Corporate Enforcement team's solicitor and guidelines provided by the information sharing protocols.