

Meeting: Cabinet
Date: 18 September 2023
Classification: Part 1
Key Decision: Yes
Title of Report: Statutory Nuisance Investigation and Progression Policy

Executive Director: Alan Richards
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Executive Councillor: John Lamb

1. Executive Summary

- 1.1 There is a high demand from service users to respond to requests for the council to resolve nuisance complaints. The policy provides transparency to those using the service by detailing how the Council responds to its duty to investigate statutory nuisance complaints. It sets out:
- The issues that the council can assist with.
 - How the council proactively reduces statutory nuisance complaints.
 - What is expected from service users to assist with an investigation.
 - Prioritises the service to maximise the support across Southend.
 - Provides for support where additional needs are identified.
 - Defines what it considers to be a reasonable investigation.
- 1.2 The policy was reviewed at the Public Protection Working Party. It has been amended in line with the cross-party recommendations of that Working Party to include and further explain how the service operates.

2. Recommendations

It is recommended that Cabinet:

- 2.1 Agree the document the Procedure for Statutory Nuisance Investigation and Progression the 'Nuisance Policy'.
- 2.2 Recommend to Full Council the adoption of the Procedure for Statutory Nuisance Investigation and Progression 'Nuisance Policy' attached as Appendix 1.
- 2.3 Agree that the Executive Director of Environment and Place, together with the Portfolio Holder for Regulatory Services, approve any minor changes required to the Policy arising from changes in legislation and identified priorities for the Council.

3 Background

- 3.1 The Council is responsible for investigating statutory nuisance. The Environmental Protection Act 1990 (The Act) sets out in legislation what constitutes statutory nuisance. The Act provides specific powers for the Council to use to tackle nuisance and places a duty on the local authority in respect of these matters to:
- Inspect it's 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 stop the nuisance.
- 3.2 It is for each authority to determine what steps they consider to be 'reasonable'. The Policy sets out what constitutes a reasonable investigation. It details the point at which the Council will suspend its activities, where it will recommend mediation and / or the use of Section 82 of the 'The Act' for individuals to take their own action.
- 3.3 This approach is required to enable all residents and businesses to have appropriate access to this service. The procedure sets out how the resources of the team will be used fairly and effectively. This is to ensure that issues raised are investigated and progressed in an appropriate way.
- 3.4 The Policy sets out where the team has powers to investigate, and when another agency has powers, it signposts complainants to that agency.
- 3.5 The process for the investigation is set out, and details what the complainant is required to do to support and evidence their complaint.
- 3.6 To provide transparency by detailing what must be taken into consideration when assessing nuisance.
- 3.7 It should be noted that there is no duty placed on the Council to deliver an out of hours service. The policy allows for an intelligence led approach, tailoring the out of hours investigations which are undertaken.
- 3.8 South Essex Homes (SEH) managed properties and Registered Social Landlords (RSL's) have their own processes and procedures in place to investigate complaints. These processes should be followed before the local authority involvement as:
- the Council is unable to serve a notice on itself, so cannot investigate SEH properties where SEH is responsible for nuisance.
 - the Council expects the RSL's to have greater autonomy to manage their properties. They will accept complaints regarding nuisance from RSL tenants once the RSL's processes have been exhausted.
- 3.9 The Council takes a proactive approach with respect to designing out nuisance for development activity, changes to the built environment, essential works and licenced activities. The Policy details this approach.
- 3.10 The proposed procedure and the processes within this document have been developed in line with the principles of enforcement referred to in the Environment and Regulatory Enforcement Policy 2021 (ERP 2021)

4 Reasons for Decisions

4.1 The policy provides a framework which is transparent and is compliant with the Regulators Code. It empowers communities and residents to proactively support and engage in the process through defining their role. It has been developed through the working party and has benefitted from member engagement and input.

5 Other Options

5.1 The local authority could choose to investigate all complaints raised by RSL tenants in the first instance. This would be a less efficient use of resources as the RSL's have a greater control over their tenants and this would divert resource to an area which is already supported and reduce the resource available across other unsupported groups.

5.2 Not to adopt a policy on how it manages nuisance. This may lead to more complaints against the service, where there is no understanding of the council's duty and procedures with respect to nuisance investigation.

6 Financial Implications

6.1 There are no significant impacts associated with this policy. However, as with all enforcement activities undertaken by regulatory services legal challenge may result in legal expenses. Where the council takes legal action or defends legal challenge the council will seek to recover its costs through this process.

6.2 The policy will continue to be delivered within the current financial budget and has been reviewed by our financial lead.

7 Legal Implications

7.1 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. Where a complaint of statutory nuisance is made, the local authority must take reasonably practicable steps to investigate the complaint.

7.2 The Act specifies what is a statutory nuisance but does not specify what constitutes reasonably practicable. This policy specifies what the local authority considers to be a reasonable investigation.

8 Policy Context

8.1 This policy contributes to a city with a good quality of life, which enables people to live well and care well through resolving matters which impact detrimentally on the wider determinants of health.

9 Carbon Impact

9.1 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. However, the application of this legislation does not apply to the following:

- Smoke emitted from a chimney of a private dwelling within a smoke control area (there are no smoke control areas in Southend).
- dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land,
- smoke emitted from a railway locomotive steam engine, or
- dark smoke emitted otherwise than as mentioned above from industrial or trade premises.

9.2 Planning conditions are applied to control noise, dust and smoke nuisance in some instances

9.3 There are no other environmental or sustainable implications. The Head of Climate has reviewed this report.

10 Equalities

10.1 An equalities assessment has been completed and did not identify any detriment to and protected group on implementing this policy.

11 Consultation

11.1 A consultation ran from 9 May 2023 and 27 June 2023 the results of which are detailed in **Appendix 2** together with responses to comments raised. The overall consensus from those responding was that they supported what was identified in the policy document and what the Council was trying to achieve.

12 Appendices

12.1 **Appendix 1**: Statutory Nuisance Investigation and Progression Policy

12.2 **Appendix 2**: Consultation results