

Procedure for Statutory Nuisance Investigation and Progression ‘Nuisance Policy’

1. Introduction

Southend-on-Sea City Council (‘The Council’) is committed to protecting the environment, and the health of its residents, from the effects of statutory nuisances (SN). This procedure provides information on how the Council deal both proactively and reactively to complaints of SN. This procedure acts as a guide for those who have made or are considering making a request for this service.

The 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) It is delivered by Regulatory Services and relates to the Council’s duties under legislation including:

- The Environmental Protection Act 1990 (EPA)
- The Control of Pollution Act 1974 (COPA)
- The Licensing Act 2003 (LA)
- The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA)
- The Noise Act 1996 (NA)

The purpose of this procedure is to describe how the Council fulfils its statutory obligations relating to SN and details the responses and investigation process.

2. What is Statutory Nuisance and what are the issues that the Council can assist residents with.

The term ‘statutory nuisance’ (SN) simply means those issues that are listed in legislation as being a nuisance. The list of SNs that the Council have powers to deal with can be found here:

<https://www.legislation.gov.uk/ukpga/1990/43/section/79>

The majority of complaints of statutory nuisance that are referred to the Council includes:

- artificial light
- bonfire smoke
- construction noise
- DIY noise (Do It Yourself work covers the modifying or repairing of a property – which is not part of a construction site)
- dog barking

- dust, steam, and smells from industrial or business premises.
- noise from amplified music (including pa systems)

but can deal with anything else declared by law to be a nuisance. The same general procedures and principles are applied when investigating other types of nuisances.

3. What the Council does not have any power to deal with

There are certain types of nuisances that are either not statutory nuisance, as defined in the Environmental Protection Act 1990, or the Council cannot assist because they do not meet the tests in common law that validates whether something can be a nuisance or not (see section 9).

This includes:

- Anonymous complaints (See Section 12)
- A nuisance that occurs on a MOD or Crown premises e.g., a Court or a prison)
- Aircraft noise
- Road traffic noise
- Sirens from emergency vehicles
- Noise from moving vehicles unless the noise is from loudspeakers or ice cream chimes.
- Children playing indoors during the daytime or early evening.
- Children playing in a playground (school or park).
- Children playing in their gardens.
- Babies crying, unless there is a safeguarding issue, in these cases the appropriate agency would be notified.
- Everyday living sounds caused by poor sound insulation.
- Noise from family members within the same home.
- Cooking smells from your neighbour.
- Smells or noise that occur in the common parts e.g., in the hallways of blocks of flats.
- Cigarette smells from your neighbours, including the smoking or smell of cannabis.
- General comings and goings of neighbours – people need to enter and leave their premises at various times of the day and night, for example shift workers may leave or return to their premises in the early hours of the morning, this is considered reasonable. However, if the complaint concerns unreasonable activities this should be reported to the anti-social behaviour team.

- Hypersensitive complainants – those who are unduly sensitive, more than the ordinary person, as case law does not allow enable us to do so. For example, this may be due to a low tolerance or a pre-existing medical condition.
- General crimes that are dealt with by the police.
- Those with Statutory responsibilities such as Network Rail, Street works, works on the Highways (e.g., gas and water companies). These bodies have a responsibility to take reasonable care, and where the noise is excessive, consideration can be given to the use of COPA (see section 7 and Appendix C).

4. Who should complaints be reported to:

- Statutory nuisance from domestic, trade and industrial premises – Southend City Council through [MySouthend](#). If you have registered on MySouthend you will automatically be provided with a case reference, if you have not registered your case reference will be included in the council's contact with you. Further details on how the case will be progressed will be provided to you.
- Statutory nuisance from business premises – Southend City Council through MySouthend - unless there are subjected to an Environmental Permit issued by the Environment Agency such as waste transfer stations. These should be reported by telephone to 0800 80 70 60 or by email to: incident_communication_service@environment-agency.gov.uk
- Noise from aircraft:
 - Civil aircraft landing and departing London Southend Airport should be reported through the online Webtrak system at <https://webtrak.emsbk.com/sen2>. For assistance with this contact LSA.NoiseManager@southendairport.com
 - Military aircraft can be reported to the Ministry of Defence at SWK-lowflying@mod.gov.uk, telephone: 01780 417558 Monday to Friday, 8:00am to 4:00pm or write to Low Flying Complaints and Enquiries Unit RAF Wittering Peterborough PE8 6HB
 - Helicopters and light aircraft – They are generally exempt from nuisance complaints providing they are abiding by the Rules of the Air Regulations 2015. Unsafe flying or what may be breaches of aviation law should be reported to the Civil Aviation Authority using the online form at: www.caa.co.uk/our-work/make-a-report-or-complaint/report-a-potential-breach-of-aviation-law/. Alternatively, if the source of the aerodrome can be identified complaints should be addressed to that place. If noise is from helicopters on private helipads planning permission is likely to be required if they are being used for more than 28 days per year.

- Fireworks – there are times when fireworks are permitted, however where they are causing a nuisance outside of these times it is not usually possible to link firework noise to a particular individual or premises. Advice on fireworks is contained on the Council's webpages [Fireworks – Noise pollution – Southend-on-Sea City Council](#)
- Noise from electrical substations – Noise from primary or secondary electrical substation or temporary generators should be reported to UK Power Networks at environment@ukpowernetworks.com
- odour from sewage treatment works by email to: SouthendWRCComplaint@anglianwater.co.uk, CustService@anglianwater.co.uk and telephone Customer Services at 0345 791 9155

5. [Nuisance from tenants of Social Housing \(RP's\) i.e., South Essex Homes, Estuary Housing Association, Sanctuary Housing, Guinness Trust, Notting Hill Genesis, etc.](#)

Regulatory Services may receive a complaint from a RP (Registered Providers of Social Housing) tenant concerning general nuisance from another RP tenant, or from a situation arising from an area in their control (e.g., the common grounds on estates, community areas etc.) The resident will be advised to report the issue directly to the RP in the first instance. This is to give the RP the opportunity to resolve the issue, as they have additional sanctions that they may be able to apply to resolve the complaint. They will have written arrangements for reporting problems of general nuisance, and these include clear response times for addressing these issues. In addition, they also have systems for registering any complaints about service failure. Contact should be made with the relevant Housing Association in the first instance and where they have followed the process and if there has still not been a resolution contact should be made with Regulatory Services. South Essex Homes tenants can contact South Essex Homes via their webpages <https://southessexhomes.co.uk/our-contact-details>

This enables Regulatory Services to focus on those residents (this includes tenants of privately rented properties) who do not have this additional resource, providing a fairer service for all residents across the city when investigating complaints of nuisance. RPs have dedicated teams to deal with tenancy issues and general nuisance and it is appropriate that the RP (in the first instance) should apply their own policies to resolve issues, without drawing unnecessarily on Council resources where they are able to do so. Regulatory Services will progress complaints from RP tenants, where it can be shown that:

- the problem in question has been properly reported to the RP,
- the RP have failed to take the appropriate action and
- the tenant has exhausted the RP complaint process and they still believe the issue is actionable.

At the point where the tenant can demonstrate that they have exhausted the procedure as described above, and where the investigating officer determines that there is an actionable case, the matter will be investigated by Regulatory Services.

The RP as a landlord can be held responsible (by default or sufferance, see section 13) and accountable for the actions and behaviours of their tenants if the landlord has been made aware of the issue. Where this is the case, and the landlord has failed to resolve the matter, the Council will consider enforcement action against the group or individual who has caused the problem, or if appropriate, the RP itself.

The Council is unable to take any action against South Essex Homes where they are found to be responsible, as they do not have the powers to do so. There are complaint procedures available to Residents which are detailed on the South Essex Homes website [Complaints | South Essex Homes](#).

However, as with RP tenants once their processes have been exhausted, or where the person causing the nuisance is not a SEH tenant then the matter can be investigated by Regulatory Services.

Regulatory Services may collaborate on a case-by-case basis when requested to do so by the RPs to assist them in resolving statutory nuisance where able to do so.

6. Proactive approach undertaken by the Council

Where the Council has an opportunity to do so it will try to design out nuisance for development activity, changes to the built environment, essential works, and licenced activities.

- Control of noise from construction sites through use of powers under the Control of Pollution Act 1974 to impose requirements on works by developers and statutory undertakers, such as works on railways sites.
- Consider the environmental impacts from development control applications, and condition through these developments to reduce their impact.
- Act as a statutory consultee to Licensing Act applications, consider the suitability of the application and activities in line with the licensing objectives, and subsequent enforcement of those conditions.

7. Reactive service for the Council's Duty Regarding Statutory Nuisance and the Council's Investigation

The law expects that a reasonable amount of tolerance from neighbours' activities, whether this be noise being caused by others as part of their normal daily activities, some smoke from a bonfire or occasional dog barking.

Activity or behaviour of a neighbour may become unreasonable due (for example) to its duration, the time of day, the frequency that it occurs or if it is not what would normally be expected. It is recommended that those affected talk to the person causing the problem as they may not know that they are causing a nuisance. Where individuals feel unsafe doing this, or if this approach has failed, a complaint can be made to Regulatory Services. Regulatory Services will assess whether the issue complained of amounts to one of the listed nuisances and determine what action can be taken by the Council.

Regulatory Services usually receives over one thousand service requests relating to nuisance every year. This means there are occasions when more service requests are received than can immediately be responded to. Each complaint received (regardless of whether it results in a site visit or not), takes time to record and investigate. 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 so that issues raised are investigated and progressed in an appropriate way.

Under the Environmental Protection Act 1990 (EPA) the Council has a duty to take reasonable steps to investigate complaints of statutory nuisances. It is for each authority to determine what steps they consider to be 'reasonable.' It should be noted that there is no duty placed on the Council to deliver an out of hours service.

Section 60(1) of the Control of Pollution Act 1974 (COPA) gives the Council powers to control the way in which certain works are conducted, namely:

- the erection, construction, alteration, repair or maintenance of buildings, structures, or roads
- breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance, or removal of works
- demolition or dredging work, and
- any work of engineering construction

which for the purposes of this procedure are referred to as Construction.

On receiving a nuisance complaint, the Council aims to discuss the issue with the complainant within 10 working days. This is to make sure there is understanding of whether the issue complained

of is one that can be dealt with by the Council, and to manage expectations with regards to next steps and time periods.

Once the complaint has been reviewed, (e.g., on face value it is actionable), the Council may send a letter to the person being complained about. This will tell them that a complaint has been made, and it will ask them to consider ways to prevent their actions from being a nuisance. **This letter will not reveal who has made the complaint (Section 11).**

If the complaint is about noise, see Appendix 1.

8. The Central Complaint

When a complaint from a resident is received (e.g., about tv noise from a neighbour) that is the 'central complaint.' If a resident alleges an additional issue (e.g., that the neighbour also has a dog that barks incessantly), that complaint will be recorded separately, as the issues are separate, and may require different methods to resolve. Each issue will be considered as a separate 'central complaint,' and each element will be investigated to a conclusion, and progressed or closed accordingly (e.g., that a nuisance is actionable and progressed, or it has not been established and is closed). Consideration may also be given to the impact of the accumulation of different sources of statutory nuisance.

Should a resident have cause to keep making reports about the same issue initially reported, these will be considered as one service request under the central complaint (e.g. if you report loud tv from a neighbour, that is the complaint, and subsequent reports regarding the same matter are not dealt with separately, they are considered as a whole under the central complaint.

9. What is Considered in an Investigation?

The Council has various pieces of legislation available to it to assist in resolving issues. The main pieces of legislation used by the Council are the Environmental Protection Act 1990 (EPA) and the Control of Pollution Act 1974 (COPA).

The EPA gives the Council the power to investigate complaints of statutory nuisance and requires the Council to act if the Council is satisfied that a statutory nuisance exists (or is likely to occur or recur). However, as the EPA does not define what constitutes a nuisance, the definition that is found in common law is used. In general terms nuisance can be defined as:

'An unreasonable and significant emission of noise (or other matter listed as a nuisance) that arises from one property and that causes significant and inherently unreasonable interference with the use and enjoyment of your premises.'

For something to be considered a nuisance in law, it needs to be much more than just being able to hear a noise, see smoke, see a light or hear the occasional dog barking. All of these may be

annoying or irritating it must also be something that affects 'the ordinary person.' The case officer will investigate and determine whether the complaint reaches that threshold.

When the Council investigates, it undertakes a balancing act that weighs up the rights to complain, against the neighbour's rights to undertake the activity that is being complained about. This takes various factors into account including "common law" which have been developed in the courts over many years including:

- Location - where the nuisance is experienced. For example, a complaint about noise (from a premises or piece of machinery), where it can be heard in the street but is not at an unreasonable level in the home, is very unlikely to be an actionable nuisance. Consideration will also be given to how areas of the property are used and the impact this has on the reasonable enjoyment of the property.
- Character of the neighbourhood – where noise complained of is commensurate is with the area. For example, cockerels crowing in rural areas may be usual and more acceptable than a cockerel crowing in the garden in a city centre.
- Frequency - continuous or repetitive incidents compared to isolated incidents. One-off issues are unlikely to be considered a nuisance and it would be difficult to obtain any evidence to support statutory nuisance. This may apply to party's and occasional bonfires.
- Time the nuisance occurs. The threshold for noise tolerance decreases at night so this is a more sensitive time. For example, noisy construction and DIY and using domestic appliances at night is likely to be actionable.
- Undue Sensitivity – if you complain about an issue because you have a particular sensitivity to it (e.g., where a shift worker needs to sleep in the day. There may be an unusual sensitivity to high frequencies or vibration, or an illness that affects tolerance levels. These complaints are not lawfully actionable unless the officer is satisfied that the nuisance would have affected an 'ordinary person.'
- Convention – important for considering what a reasonable person would find objectionable. What is widespread and conventional e.g., lawnmower used in the daytime, a dog barking briefly, noise from children playing in a playground, are not deemed to be inherently unreasonable. Banging and drilling whilst doing DIY at night or loud amplified music occurring at night is inherently unreasonable.
- Importance: The importance of an activity in respect of the community is a key consideration. For example, major road improvements that will improve the air quality and noise environment for many may cause some disturbance to a few persons – this is a balance that should be considered. However, there is a point when even a socially beneficial activity

creates such an effect that it becomes unacceptable and hence a nuisance (Dennis v Ministry of Defence 2003). This needs to be considered together with whether the impact of the nuisance could be avoided, and the principle of best practicable means applied.

If there is evidence of statutory nuisance (for noise as detailed in Appendix 1 from the Noise App or diary/log sheets) and the evidence indicates that a nuisance is or likely to occur, the case officer will make a judgement about the next stage of the investigation. The officer may decide that a visit to conduct an assessment from within the property is required to support this evidence. If officers are unable to conduct an assessment, it is unlikely that any action can be taken.

An officer will usually visit when assessing breaches of abatement Notices (Section 13), as the burden of proof at this stage rises from the civil test (balance of probability) to the criminal test, that of 'beyond reasonable doubt'.

The quality of the evidence provided by recordings submitted using The Noise App (see Appendix 1) may be sufficient for the officer to serve an Abatement Notice (Section 13).

Licensed Premises

Nuisance from pubs and clubs will initially be investigated by officers from the Regulatory Services Licensing Team. Licensed premises have a general obligation to prevent public nuisance under the Licensing Act 2003 and may also have specific conditions on their premises licence relating to the complaint raised.

Officers from the Licensing team will try to resolve the matter using the investigation procedure above. Where the complaint cannot be resolved the complaint will be passed, or investigated jointly, with officers in the Regulatory Services Environmental Health team.

Where evidence of a breach of Licensing Conditions is found, this represents an offence under the Licensing Act 2003, and will be dealt with by the Licensing Team, contact should still be made via:

- Email to licact2003@southend.gov.uk
- MySouthend, the online form on the website www.southend.gov.uk
- Or in writing to:

The Licensing Authority
Regulatory Services
Southend-on-Sea City Council
Victoria Avenue
Southend
Essex SS2 6ER

Planning Conditions

Sometimes problems arise due to planning conditions not being complied with. For example, there may be conditions associated with the operation of plant or equipment or regulating the hours of an activity or construction project.

Where Regulatory Services find this the matter will be referred to, or investigated in parallel, with the Planning Enforcement Team. This will often control the behaviour or operation that is leading to the problem and therefore resolve the matter without the need for further investigation or enforcement.

10. When the Responsive and Reactive Services are available

The Council operates a responsive weekday service for the investigation of SN which have already been assessed by the team (as triaged by the Noise App or diary sheets for noise) Monday to Friday 9am-5pm excluding public holidays. The responsive service is only available by calling the call centre on 01702 215005 during the above hours.

Where an officer intervention is required and you are invited to make a request to our responsive weekday service, the investigating officer will conduct a review of your complaint and will aim to respond to you via telephone within 2 hours of the complaint being received, where it is an ongoing complaint.

The review will involve conducting background checks on our systems which will assist in deciding as to what level of response is appropriate.

You can also contact Regulatory Services by:

- By email to environmentalhealth@southend.gov.uk
- Via My Southend the online form on the website www.southend.gov.uk
- In writing to:

Regulatory Services
Southend-on-Sea City Council
Victoria Avenue
Southend
Essex SS2 6ER

Contacting the team via these routes will not result in the complaint or service request being dealt with on a reactive basis, where contact is via these routes the response will be ten working days.

11. Confidentiality

All complaints are dealt with in confidence, however, there may be occasions when the Council will be required to release information to third parties, especially when legal proceedings are being taken. If the Council need to do this, an opportunity to decline details being released will be given. If this is declined, the Council will explain any impact that this may have on legal proceedings.

The Council will never disclose personal information to those being complained about, or another third party without consent, unless required to by law. It is possible however that the person causing the alleged nuisance might guess where the report has come from. In these circumstances the Council should be advised of any concerns around the risk to the person making the complaint and other associated people. This will help the Council to collaborate with individuals to mitigate any risk factors if possible. Where there are safeguarding issues identified, or a matter of immediate concern referrals may be made to the Police or the Council's Access team. Disclosure of personal information to investigating partners such as the other council departments, Police and Environment Agency when investigating a crime which is permissible in law and may help resolve the matter. These other agencies will treat personal information with the same confidentiality.

12. The Role of the complainant

Anyone who lives or works in the city can send in details of a complaint to the Council. However, before the Council take action there must be sufficient evidence at each stage of an investigation to support decisions. This will require the person who has made the complaint to assist with the provision of evidence. When assessing noise this can be in real time (via The Noise App), written record sheets or other means as required. Officers may need to visit individual's homes to assess the nuisance and to install professional recording equipment when necessary- The Council does not usually assess noise nuisance from the street, because the assessment is the impact from within the complainant's property.

The following details are necessary with all contact:

- Name, address, and phone number (and if available email) of the complainant so that the Council can update progress. (See section 11 on confidentiality). The Council is unable to deal with complaints without these details.
- The exact address (or site) the noise (or other nuisance) is coming from and the type of nuisance (for example, obtrusive light, loud music, barking dogs).
- When the nuisance happens and how long it goes on.
- The way the nuisance affects the complainant (for example, prevents sleep).

- Where, when and in what circumstances the nuisance is experienced (for example, in the lounge over the sound of the TV).
- Any action taken to try to deal with the problem for example, talking to the person causing the problem).

It often takes time for the Council to gather and assess all the evidence needed. To prevent delays in the progress of a case, or the case being closed because there has been insufficient evidence provided, instructions given should be followed.

As part of the investigation, a set of diary/log sheets may be sent to the complainant to record when the nuisance is occurring. These diary / log sheets will usually need to be completed for a period of 21 days. This information helps to understand the impact of the nuisance on individuals, particularly where the nature of the alleged nuisance is more difficult to capture to show the true extent of the nuisance.

It is also important that instances of alleged nuisance continue to be reported, and individuals engage in using diary sheets, the Noise App or Noise Recorders, as requested by the investigating officer. This is necessary to demonstrate the frequency and the nature of what being experienced.

In most instances, a noise nuisance should be readily recordable by the Noise App, however, there may be occasions when an officer will determine that a visit is necessary to progress the matter in the first instance, to provide early engagement and prevention. In addition, there are those nuisances (e.g., accumulations, light or vibration) that cannot be captured by The Noise App or are not practicable to record on diary sheets. These will also require an officer to visit to assess the situation.

13. Enforcement Outcomes

If an officer establishes that a statutory nuisance exists, the officer will serve an Abatement Notice. There are no strict timelines because there are variables that can impact on the decision making.

Notices

Nuisance law is criminal law, and offenders (if found guilty) could be fined at Magistrates Court and have any potential noise making equipment taken away from them permanently.

Before the Council can take formal action (e.g., serve an Abatement Notice), the Council must gather enough evidence to prove 'on the balance of probabilities' (the civil test) that there is a nuisance, and that the steps we have taken to stop the noise are reasonable. This evidence may include the following:

- Noise App recordings
- Diary sheets

- Noise recordings
- Officer observations and statements

An Abatement Notice, in the first instance, is usually served on 'the person responsible' for the statutory nuisance, and this responsibility can arise by:

- Act – is straightforward as this is a deliberate action,
- Default- is the failure to perform a reasonable duty.
- Sufferance -is where either permission is granted leading to a nuisance, or a nuisance is allowed to continue where the occupier or owner had or should have had knowledge of its' existence.

An Abatement Notice can require the nuisance to be stopped immediately (for example where there is amplified music). It can also specify after a determined period of time, where significant works would be required and if it is considered that it would be unreasonable stop the source of the nuisance immediately (for example, machinery repairs or replacement). This would be balanced this against how the nuisance is affecting to complainant.

Where the nuisance is from noise, and the Council is confident that it can be resolved immediately without recurring the Council can defer the notice for a period of seven days. If the nuisance continues after that time the notice will be served (Appendix 1).

The person who is affected by the nuisance will be advised when a notice is served and the timescales that have been given for compliance and invited to contact Regulatory Services if the nuisance carries on.

Where an abatement notice is served, there is a legal right to appeal the notice at Magistrates Court, and it will be for the Council to defend that appeal.

Breaches of a Notice

If the nuisance persists once an Abatement Notice has been served the council, at its discretion, can perform whatever steps it deems appropriate to abate it. This may involve seizing the source of the noise and/or criminal prosecution under the Environmental Protection Act 1990.

Where there is a breach and a considerable period of time has elapsed since the notice was served, the Council may consider it appropriate to witness the nuisance again and serve another abatement notice.

The level of evidence to prove that the Abatement Notice has been breached changes from the civil test to the criminal test - that is 'beyond reasonable doubt.' Officers will rely on evidence that

they have gathered first hand to demonstrate that there is a nuisance and are categorically able to identify the source as they may be challenged in Court and will need to defend this position.

If the evidential threshold has been met the officer will consider the most appropriate action to take which can include

- Seeking a Warrant of Entry from Magistrates to enter the premises and seize the equipment that has / is causing the nuisance. In the case of noise, this means to generate the noise as well as ancillary items such as app-based devices.

Seizing equipment provides a quick response, however the Council can only keep seized equipment for 28 days, after which time the owner can collect them on payment of a fee. However, if an application has been made to the courts for a prosecution the items may be kept as evidence until this has been decided at Magistrates Courts.

- If a Notice has been breached without 'reasonable excuse,' or without a 'statutory defence,' and the Council considers that it is in the public interest, the Council's legal department would be instructed to proceed to the prosecution stage. The Environmental and Regulatory Enforcement Policy 2021 provides additional information on this. <https://democracy.southend.gov.uk/documents/s42571/17%20-%20Appendix%20-%20Corporate%20Enforcement%20Policy.doc.pdf> . Formal proceedings take a considerable amount of time because the Council is dependent on the availability of Court time.
- The Council seize the equipment and take a prosecution, where there is a conviction, an application may be made by the Council to the Courts to retain and destroy any equipment that has been seized. This is done by applying for a Forfeiture Order.

Those convicted of offences under the EPA may face an unlimited fine. In addition, where anti-social behaviour is either evidenced or substantiated / found by the Council they may apply for a Criminal Behaviour Order at the point of conviction to manage ongoing behaviour.

Those affected by the nuisance will be advised of the action that the Council intends to take.

14. Mediation

Mediation between parties is available at all stages during an investigation. The opportunity to try an informal resolution to a problem can be delivered through the services of Essex Restorative Justice. This service is free of charge.

Restorative processes use communication between people who have been harmed, and have caused harm, to allow them to work towards positive outcomes in a safe environment. The service is impartial and will work to achieve a positive way forward for everyone involved. As well as being

very experienced with working with criminal behaviour, the Restorative Justice service also work with anti-social behaviour and can arrange meetings involving entire communities where issues are affecting them.

The way that they operate is that trained facilitators contact everyone involved and talk to them about the impact of what is happening or has happened. They will ensure that a restorative or mediation approach is appropriate and safe and will work with those involved to find a suitable way forward. This is often a face-to-face meeting, but there are alternative solutions should they be deemed more appropriate.

They will undertake an initial risk assessment before the case is allocated to a volunteer facilitator. Facilitators meet with each party to explain the Restorative Justice process and to seek agreement to participate. A secondary risk assessment is also undertaken. An appropriate way forward (direct or indirect communication) is decided and agreed by parties and communication is facilitated.

Contact is via a referral form <https://restorativeessex.co.uk/make-a-referral/> or by emailing: restorativejustice@essex.police.uk or by calling 01245 291 621 during office hours.

During the time mediation is taking place between the parties involved, no enforcement action will be progressed. However, should mediation break down or not be completed then investigation of the case, as necessary, could be reopened.

15 When to contact the Police.

All criminal behaviour should be reported to the police including drug dealing, hate crime, threats of violence, harassment and intimidation and noise from possible domestic abuse. In an emergency or if someone is at imminent risk call 999. You can also report incidents online, on the non-emergency 101 number or contact Essex Police <https://www.essex.police.uk/ro/report/ocr/af/how-to-report-a-crime/>

As with the enforcement of any legislation, officers will always consider which powers best suit the situation and ensure it is a proportionate use to match the behaviour, and as with SN, the principles within the Environment and Regulatory Enforcement Policy will be followed in case progression and enforcement outcomes.

16. Vulnerable groups

The Council work closely with specialist agencies to gain support for vulnerable victims and perpetrators. The Council also make sure officers are clear about how they should deal with perpetrators who are classed as vulnerable. Examples include someone with mental health problems, a physical disability or a drug or alcohol dependency. Procedures will ensure that:

- Officers deal effectively with these types of cases and the offender's vulnerability does not stop them from resolving statutory nuisance complaints.
- Support may be requested from various agencies such as Social Services, Community Mental Health teams and Community Alcohol team at the beginning of the complaint.
- Officers will identify key workers supporting vulnerable perpetrators to resolve complaints.
- Officers have regard to the requirements of the Equalities Act 2010 and the Mental Capacity Act 2005 in respect of considering action against vulnerable perpetrators.

17. When does the Council Consider the Complaint to have been Investigated and Suspend the Responsive Service?

The law states that a local authority shall take such steps as are reasonably practicable to investigate. Therefore, it is not feasible for officers to conduct an unlimited number of visits, or to progress investigations indefinitely when considering the factors in (Section 9) statutory nuisance:

- has not been determined by the Noise App, and/or
- has not been determined by the noise recorder, and/or
- has not been determined by an officer during a visit.
- mediation has been declined.

When the evidence presented or witnessed does not support the existence or likely occurrence/recurrence of a statutory nuisance, it undermines a case. This is because all matters are disclosable should the case progress to Magistrates Court. The resources required also affects the service provision to other residents. As such, the reactive service for noise nuisance will usually be suspended for a minimum of 6 months if / where a central complaint:

- has received 10 or more Noise App submissions within a 3-week period where no nuisance has been substantiated, and/or
- has had a noise recorder in situ that did not substantiate nuisance, and/or
- has received 10 or more service requests in a 3-week period, and no nuisance established, and/or
- where there has been no engagement from the complainant within the three-week period, and/or
- the instructions provided by the officer have not been followed and/or
- has received 3 or more visits (including cancelled/refused visits by the resident) in a 3-week period and/or
- the officer has determined that it is not a statutory nuisance.

At the point where 1 or more of the above triggers has been met, then the central complaint as initially reported will be considered investigated and closed at that point, and:

- the proactive element of the service will be suspended for a minimum of 6 months, and
- residents will be advised that they have available to them Section 82 of the EPA (Section 18) so that they can consider taking their own action should they wish to do so.

The same approach, as highlighted for noise, will apply for those nuisances (for example, vibration, smoke, accumulation, light) where a physical visit is necessary in the first instance, whereby the reactive service for statutory nuisance will be withdrawn if or where a central complaint has:

- received 10 or more service requests in a 3-week period, and no nuisance established, and/or
- there has been no engagement from the complainant, and / or
- the instructions provided by the officer have not been followed and or
- has received 3 or more visits (including cancelled/refused visits by the resident) in a 3-week period and / or
- the officer has determined that it is not a statutory nuisance.

At the point where 1 or more of the above triggers has been met, then the central complaint as initially reported will be considered investigated and closed at that point, and:

- the proactive element of the service will be suspended for a minimum of 6 months, and
- residents will be advised that they have available to them Section 82 of the EPA (Section 18) so that they can consider taking their own action should they wish to do so.

The service will also be suspended if the officer has determined that the complaints made are vexatious in nature or where there has been unacceptable behaviour aimed at the investigating officer.

Once the responsive service has been suspended, any subsequent service requests received for the central complaint will be recorded on the management information system. The person complaining will be reminded of their option to take their own action (Section 18).

Every 6 months, a case review will take place for cases where the Responsive Service has been suspended, **and** where the resident wants to reopen the case again. The case review will need to determine whether there have been material changes to the circumstances of the central case as initially reported. In instances where the evidence supports a material change, the central complaint will be reopened. The investigation process will start afresh, and the ongoing case management process will still be applied. It is expected that additional evidence be provided before another letter

to the person alleged to be causing a nuisance is sent. If the evidence does not demonstrate that a material change in the central complaint has occurred, the complaint will be deemed as investigated and the central complaint will be closed again.

18. How Individuals Can Take their own Action

The EPA recognises that there may be occasions, despite all efforts, the Council will not be able to establish statutory nuisance, or the views of the investigating officer will be different to the complainants. In these instances, individuals can take their own action for nuisance via the Magistrates' Court under Section 82 of the Environmental Protection Act 1990.

Follow this link for details <https://www.legislation.gov.uk/ukpga/1990/43/section/82> . There is also guidance on how to do this on the Council's webpages <https://www.southend.gov.uk/downloads/download/136/noise-pollution>

19. General Myths around Construction and DIY Noise, General Noise and Bonfire Nuisances

There are myths that exist and include:

- **There is a decibel limit for noise** – there is no limit, and the assessment is made by a competent officer making a judgement based on the common law tests. However, the Council does sometimes monitor noise levels from plant and machinery and compare them against criteria in British Standards that provide indicative noise levels for the protection of public health.
- **Noise only becomes a nuisance between 11:00PM and 7AM** – noise can be a nuisance at any time of the day or night.
- **There should not be any noise heard from my neighbours** – audibility of a noise does not equate to a nuisance, the noise must be inherently unreasonable, and materially affect the occupant/s of the property.
- **If there is smoke from a bonfire, it must be a nuisance** – the presence of smoke does not equate to a nuisance, the smoke must be inherently unreasonable, and materially affect the use of the property. Information is provided on bonfires, both when writing to the concern and on the Council's website <https://www.southend.gov.uk/pollution-0/air-pollution>
- **Anything can be burnt on a bonfire** – it is illegal to burn controlled waste on a bonfire and action can be taken when anything is burned that is likely to give rise to odour and dark smoke.
- **Construction sites cannot be open before 8AM or past 6PM** – construction sites can operate beyond these hours if the work they undertake is not audible beyond their premises

boundary. There is no legislation that permit hours of construction works but best practice and case law indicates acceptable hours, and where a nuisance is likely to be caused if they are exceeded. Where enforcement action is taken times can be stipulated and can be controlled through planning conditions in some instances.

- **DIY can be done at any time** – DIY, depending on the time undertaken and the activities being carried out, can equate to a nuisance. Common sense and relationship with neighbours will largely dictate when DIY is reasonable and will be reflected in any decision the council makes over enforcement action.
- **The neighbours were told there was going to be a party so the music does not need to be turned down** – even if neighbours have been told that there is going to be a party it does not mean that statutory nuisance cannot be caused, and neighbours may still complain.
- **Nuisance has to affect more than one household to be actionable** – this is not the case, only one person needs to be affected by an unreasonable situation.

Appendix 1 - Noise Complaints

The Noise App

Where individuals are asked to submit recordings via the Noise App, which is a smart phone-based App, it can be used to report noise nuisance directly to the Council. The Noise App is especially useful if the noise occurs outside of office hours, is intermittent or occurs at a time when demand is high. Access to the Noise App will be provided once a request has been received and the complaint discussed with the officer. Noise App recordings will not be accepted until this has been done, or where the case has been previously closed until a review has been undertaken.

The Noise App is designed to demonstrate how individuals are being affected quickly and easily. It helps the officer to manage reports of noise nuisance, and to monitor noise remotely, allowing the Council to triage complaints that are received. It is important that instructions on how to use the Noise App are followed correctly, as failure to do so will delay the progression of the case or lead to no action being taken due to lack of evidence.

If the officer considers that the recordings do not demonstrate noise at an actionable nuisance level, the central complaint (Section 8) will be considered investigated and closed.

If the officer considers that the recordings do demonstrate noise at an actionable nuisance level, the Council has a statutory duty to serve a Notice on the person responsible for the noise. In some instances, where the officer feels it is appropriate, they may determine that a visit is necessary prior to serving a Notice, or they may defer the service of a Notice for a period of 7 days, in all instances the decisions will be based on the officer's opinion.

Deferral of a Notice is not an automatic right, and the relevant legislation that supports this option can be found here: www.legislation.gov.uk/ukpga/1990/43/section/80 (sections 2A to 2E) . Note the deferral of a notice can only be made where noise emitted from a premises is assessed as a nuisance.

The evidence from the Noise App and completed noise diaries are important. The Council may submit this information to support the case in Court. When a recording is submitted it is deemed that this is a true reflection of what is being experienced, so it is essential that individuals provide honest and accurate information. If an officer determines that the evidence is inaccurate, has been exaggerated or tampered with, no further action will be taken. Consideration may be given where complaints are considered as vexatious, and the service will be withdrawn (Section 17). If the case goes to court, and a Magistrates determines that the evidence has been exaggerated etc, they may not rule in the complainant's favour, and future action may be jeopardised.

Diary/Log Sheets

If the complainant does not have access to a smart phone, or the complaint is not noise related, the Council will send a set of diary/log sheets for individuals to complete to help to establish the frequency and times that the nuisance is being experienced. Diary / Log sheets will need to be filled in for a period of 21 days, providing detailed information as to how individuals are being affected, to provide adequate information to assess the alleged nuisance. Where the nature of the alleged nuisance is more difficult to capture to show the true extent of the nuisance, individuals may be asked to complete diary sheets alongside the Noise App recording submitted. The case officer will make it clear if this is required.

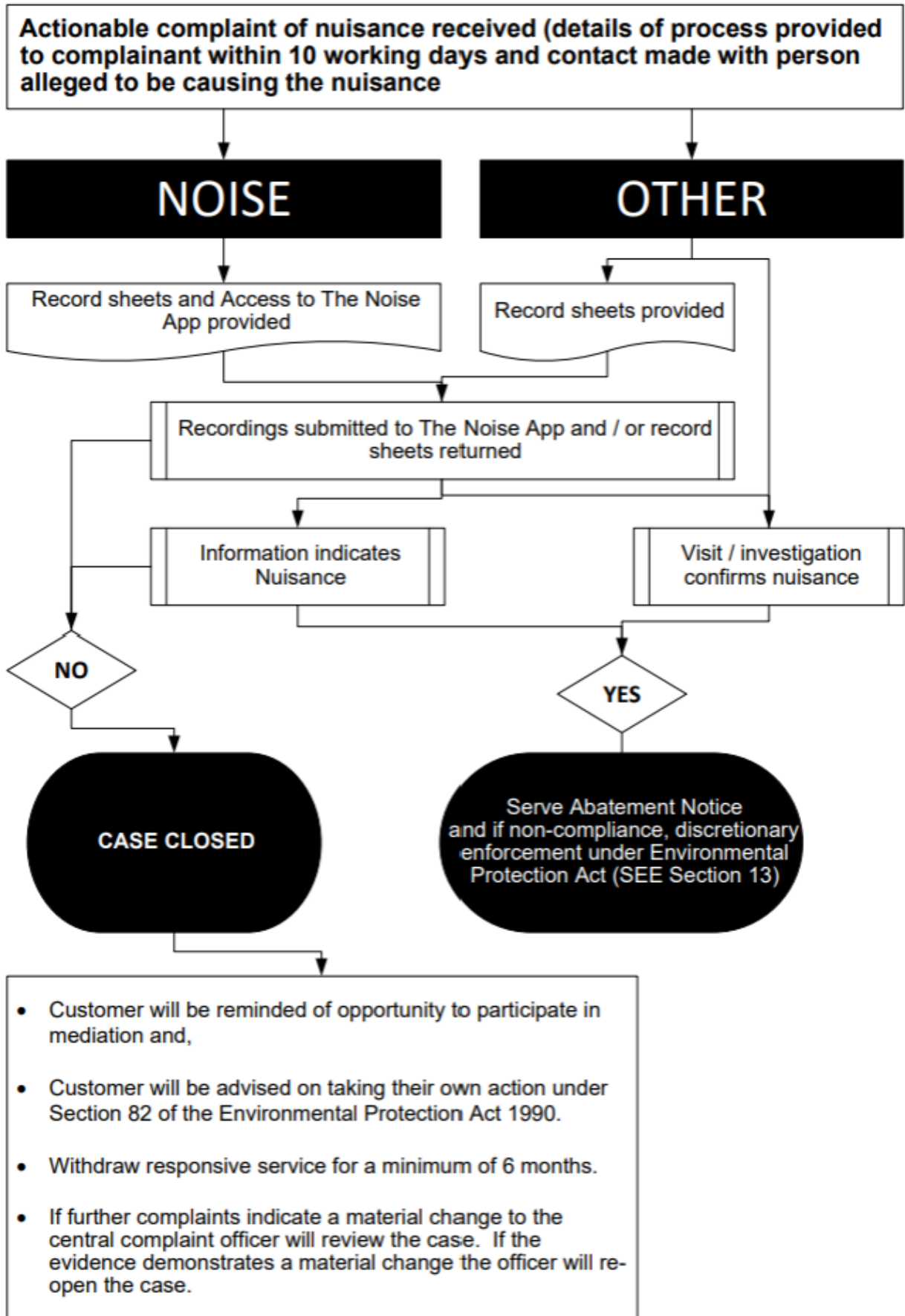
Noise Recorders

After the initial assessment has been completed, if the alleged nuisance happens during office hours, and an officer is available, a visit will be undertaken to assess the nuisance. In certain circumstances where the Noise App would not provide evidence (e.g., vibration cases) the Council may arrange a visit for regular nuisances that arise out of office hours, and depending on the circumstances, a locked recording device may be left at the premises for a period of monitoring. The device will need to be activated as and when the noise happens.

There is high demand for noise recorders, and there is a waiting list for installation; once installed, the device will be left in situ for a minimum of 1 week, and an officer will review the recordings once it is collected. Again, as with the Noise App and diary sheets, if the officer considers that the recordings do not demonstrate noise at an actionable nuisance level, the central complaint (Section 8) will be considered investigated and closed.

If the officer considers that the recordings do demonstrate noise at an actionable nuisance level, an Abatement Notice will be served (Section 13).

Appendix B – Flow Chart for Investigation of Nuisance



Appendix C Construction Sites using COPA.

Duty of Contractors and Developers at Construction Sites

Construction, demolition, engineering works, shopfitting etc activities will generally give rise to temporary excessive noise. However, developers and contractors must ensure that they are using the Best Practicable Means (BPM) to carry out the works. BPM is a term that interpreted as Section 72 of the Control of Pollution Act 1974 as:

1. In that expression “practicable” means reasonably practicable having regard among other things to locals and circumstances, to the current state of technical knowledge and to the financial implications.
2. The means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures.
3. The test of best practicable means is to apply only as far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers only so far as compatible with the duties imposed on them in their capacity of statutory undertakers.
4. The test is to apply only as far as it is compatible with safety and safe working conditions, and with the demands of any emergency or unforeseeable circumstances.
5. Subject to the preceding provisions of this section, regard shall be had, in construing references to “best practicable means,” to any relevant provision of a code of practice approved under the preceding section.

The Council’s Powers Regarding Noise from Construction Sites

The law expects that a reasonable amount of tolerance from residents and businesses towards noise from construction sites in as much as what would normally be expected. Whilst there is no duty under the Control of Pollution Act 1974 under section 60 the Council may use powers to impose requirement on any of the above works that are going to be or are being carried out on any premises. The Council uses this proactive and reactive approach by serving notices under section 60:

- a. Prior to or at the commencement of certain specified works
- b. When a noise issue is established, or it becomes apparent to the council that the manner in which the works are being conducted are likely to lead to one on any works.

Notice Imposing requirements.

Before or at the commencement of certain specified works

Proactively Regulatory Services serves section 60 notices on all new developments of a certain scale prior to or at commencement requiring setting out how it will operate. The types of projects covered are:

- Major development with 10 or more homes or 1,000sq m or more floorspace
- use of full-size piling rigs
- partial and full demolition and re-construction of a property
- basement excavation or extension
- internal commercial refurbishments
- domestic and commercial extensions
- loft conversions

This policy will be advertised on the Council's website and an informative which notifies applicants of this will be placed on any planning permission granted. Where applicants use the Council's Building Control Services, details of the COPA Notice will be placed on the Building Control validation letters as an Informative.

Sites may also become apparent through officer visits.

The Notice served under section 60 can:

- (a) specify the plant or machinery which is, or is not, to be used.
- (b) specify the hours during which the works may be carried out.
- (c) specify the level of noise which may be emitted from the premises in question or at any specified point on those premises or which may be so emitted during specified hours; and
- (d) provide for any change of circumstances.

[Nuisance from construction works.](#)

When we establish that noise nuisance exists or is likely to be caused as a result of any construction, the Council will serve a Notice under section 60 with requirements as stated above.

Prior Consent for Works

Under section 61 of the Control of Pollution Act developers and contractors can apply for a Prior Consent for Works. This is an agreement between the applicant and Southend-On-Sea City Council over how a project will be operated that provides protection from enforcement provided the terms of the consent are complied with. This is a voluntary process, but Regulatory Services encourages applications for works that are likely to cause a disturbance such as unavoidable works through the night or piling operations.

Application Process

To obtain a consent, the applicant must provide details of how noise will be minimised for the duration of the project. Applications can be made directly to officers via the generic inbox environmentalhealth@southend.gov.uk .

The Council will expect detailed technical data to accompany this from acoustic professionals. The Council will also expect significant engagement with those residents and businesses that are likely to be exposed to the noise at an early stage.

The council has 28 days to consider applications to grant, grant with added conditions or refuse. The applicant may appeal on any decision within 21 days of the Council's decision.

To grant an application, the Council must have confidence that there are sufficient management and mitigation measures proposed so that when the works are carried out it will not have to serve a Notice Imposing Requirements under section 60. Therefore, the granting of a Prior Consent will give immunity from enforcement provided the works are done in accordance with that consent.

Once granted the applicant must make all persons working on the project covered by the Prior Consent aware of the terms of the consent. Any person who knowingly breaches a prior consent or permits a breach of it will be guilty of an offence under the Control of Pollution Act 1974.

When imposing conditions on Notices under section 60 or Prior Consents under section 61 the Council must have regard to the following:

- (a) the relevant provisions of any code of practice issued under this Part of this Act.
- (b) the need for ensuring that the best practicable means are employed to minimise noise.
- (c) before specifying any particular methods or plant or machinery the applicants' proposals will be considered, against the Council specifying other methods or plant or machinery which would be substantially as effective in minimising noise.
- (d) the need to protect any persons in the locality in which the premises in question are situated from the effects of noise.
- (5) A notice under this section shall be served on the person who appears to the local authority to be carrying out, or going to carry out, the works. It may also be served on other persons appearing to the local authority to be responsible for, or to have control over, the carrying out of the works.
- (6) A notice under this section may specify the time limit which the notice is to be complied with. It may require the execution of works, and the taking of such other steps, as may be necessary for reducing the impact of noise nuisance.

These factors will be assessed when any enforcement action is considered (Section 13).

Dispensations

Dispensations apply to material changes (i.e., those predicted to result in increased noise effects) to working methods. This may be a revision to working hours, work duration, persistent overrun, or major changes to the proposed construction methodology, for example, changes to major items of plant. There is no formal provision for dispensations in the Control of Pollution Act 1974 (except by making a new Section 61 application), but local authorities have facilitated procedures for them to be pragmatic.

Dispensations are required by the Council to be notified at least 14 days in advance of applying the proposed modified methods and copied to the Council by e-mail environmentalhealth@southend.gov.uk . Where rescheduling relates to work of a critical nature (such as key activities likely to delay other key activities) applications will be made where practicable at least 48 hours in advance and at least 7 days in advance if the work is expected to last for a period of 5 days or more. A dispensation will be sought by means of an application setting out the revised construction programme or method and the relevant noise calculation made by submitting a completed application for dispensation. Regard will be also made to any noise insulation/temporary housing issues as a result of the revised works in accordance with specific Noise and Vibration Mitigation schemes/policies.

Variations

Variations apply to minor changes to a Section 61 consent which will not change the overall predicted impacts of the works, for example a change to the timing of an activity within agreed hours and working period, or minor changes to working methodologies. Variations will be applied for by email where practicable 7 days but at least 48 hours in advance of applying the modified methods. Applications can be made to environmentalhealth@southend.gov.uk

Overruns

There are likely to be circumstances where overruns to planned working hours will occur either for reasons of health and safety or engineering practicalities. Should an overrun occur, the Council will be informed by phone with a reason for the occurrence followed by confirmation by email to environmentalhealth@southend.gov.uk . Examples of the type of work envisaged would include where pouring concrete takes longer than planned due to equipment failure.

Emergency works

In the case of work required in response to an emergency or which if not completed would be unsafe or harmful to the permanent works, the local authority will be informed as soon as reasonably practicable of the reasons for, and likely duration of, the works.

Where construction noise is or is likely to be a problem

If the activity at a site becomes unreasonable due to (for example) its duration, the time of day, the frequency that it occurs or if it is not what would normally be expected it is recommended that individuals try talking to the contractor or developer. Normally there will be site contact details on developers' boards or vehicles outside the site.