

Corporate Policy and Strategy Committee

10.00am, Tuesday, 3 November 2015

Encouraging Live Music in Edinburgh: Update – referral from the Culture and Sport Committee

Item number	7.9
Report number	
Wards	All

Executive summary

The Culture and Sport Committee on 20 October 2015 considered the attached report by the Deputy Chief Executive providing a summary of the progress made by the Music is Audible Working Group.

The report has been referred to the Corporate Policy and Strategy Committee for information.

Links

Coalition pledges	See attached report
Council outcomes	See attached report
Single Outcome Agreement	See attached report
Appendices	See attached report

Encouraging Live Music in Edinburgh: Update

Terms of referral

- 1.1 On 16 December 2014, the Culture and Sport Committee established the Music is Audible (MIA) Working Group. The Group consisted of elected members, officers and representatives from the sector to examine the best way to balance the interests of residents and live music venues within the limits of the legislation.
- 1.2 On 20 October 2015, the Culture and Sport Committee considered a report by the Deputy Chief Executive providing an update on the progress of the Music is Audible Working Group and an update on the work of the Live Music Matters Working Group.
- 1.3 Details were also given on the current Council process for resolution of noise complaints about licensed premises and the results of a census of live music activity in the city undertaken by the University of Edinburgh
- 1.4 The Culture and Sport Committee agreed:
 - 1.4.1 To note that the Music is Audible Working Group had begun consulting the Licensing Board and Forum on the Working Group's proposed changes to current licensing policy, and accompanying guidance for venues and Licensing Standards Officers, with the intention that the results inform the Council's Cultural Policy review and the formal review of licensing policy anticipated in 2016 which would include consultation with the public.
 - 1.4.2 To note that the remaining recommendations made in an independent report by the Music Venue Trust, commissioned by the Music is Audible Working Group, would be assessed and taken forward as appropriate by Council officers and representatives of the Music is Audible working group, and that an action plan would be presented to Committee in Spring 2016.
 - 1.4.3 To note the substantial economic contribution made by live music to Edinburgh, as established by a census of live music undertaken by the University of Edinburgh on 6 June 2015.
 - 1.4.4 To note that the census provided a point of reference for monitoring the success of the Council's live music project.

- 1.4.5 To note that the Edinburgh Licensing Board required to publish its new Statement of Licensing Policy by 30 November 2016 and the Scottish Government was currently agreeing arrangements for commencement of parts of the Air Weapons and Licensing (Scotland) Act 2015.
- 1.4.6 To note that actions arising from this project would be included in the cultural policy work to be reported to Committee in November 2015 and that a further update would be provided in spring.
- 1.4.7 To refer the report by the Deputy Chief Executive to the Corporate Policy and Strategy Committee for information.

For Decision/Action

2.1 The Corporate Policy and Strategy Committee is asked to note the report.

Background reading / external references

[Minute of the Culture and Sport Committee - 16 December 2014- Encouraging Live Music in Edinburgh: Update](#)

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Links

Coalition pledges	See attached report
Council outcomes	See attached report
Single Outcome Agreement	See attached report
Appendices	Appendix 1 – Report by the Deputy Chief Executive

Culture and Sport Committee

10.00am, Tuesday, 20 October 2015

Encouraging Live Music in Edinburgh: Update

Item number	7.2
Report number	
Executive	
Wards	All

Executive summary

This report provides an update on topics considered so far by the Live Music Matters Working Group and brief details of the Council's current process to resolve noise complaints about licensed premises through mediation. The report also summarises progress made by the Music is Audible (MIA) Working Group. The MIA Group commissioned independent research from the Music Venue Trust to assess approaches to addressing legislative restrictions and provide recommendations specific to Edinburgh. The MIA working group will consider these recommendations and use them as appropriate to enhance the action plan it will recommend in the next update to this Committee next spring.

A census of live music activity in the city on 6 June, which fed into the MIA group's work, and was carried out independently by the University of Edinburgh, is summarised. Amongst other highlights, the report notes that Edinburgh audiences attend more live music than the Scottish average, and that the total estimated spend at live music events in Edinburgh is £40m per year. Lastly, the report notes key milestones which will inform Council work to encourage live music in the city, such as the review of licensing policy in 2016.

Links

Coalition pledges	P24, P31
Council outcomes	CO8, CO20, CO26
Single Outcome Agreement	SO1, SO3

Encouraging Live Music in Edinburgh: Update

Recommendations

- 1.1 Note that the Music is Audible Working Group has begun consulting the Licensing Board and Forum on the Working Group's proposed changes to current licensing policy, and accompanying guidance for venues and Licensing Standards Officers, with the intention that the results should inform the Council's Cultural Policy review and the formal review of licensing policy anticipated in 2016, which will include consultation with the public;
- 1.2 Note that the remaining recommendations made in an independent report by the Music Venue Trust, commissioned by the MIA Working Group, will be assessed and taken forward as appropriate by Council officers and representatives of the MIA working group, and an action plan will be presented to Committee in spring 2016;
- 1.3 Note the substantial economic contribution made by live music to Edinburgh, as established by a census of live music undertaken by the University of Edinburgh on 6 June 2015;
- 1.4 Note that this census provides a point of reference for monitoring the success of the Council's live music project;
- 1.5 Note that the Edinburgh Licensing Board requires to publish its new Statement of Licensing Policy by 30 November 2016 and the Scottish Government is currently agreeing arrangements for commencement of parts of the Air Weapons and Licensing (Scotland) Act 2015;
- 1.6 Note that actions arising from this project will be included in the cultural policy work which will be reported to Committee in November 2015, and a further update will be provided in spring; and
- 1.7 Refer this report to the Corporate Policy and Strategy Committee for information.

Background

- 2.1 At the meeting of [16 December 2014](#), Committee approved the formation of the short-life Music is Audible working group, chaired by the Vice Convener of Culture and Sport.

- 2.2 This group has councillor, officer and sector representatives, and a remit to examine the most effective ways of balancing live music with the interests of local residents, within the limits of relevant legislation. Membership is attached at appendix 1.
- 2.3 This group has now met four times. These meetings have been proactive and successful in scoping the reach of recommended action for change as described in this report, based on an analysis of current challenges, existing available research and the commissioning of new research on current activity and international comparators.
- 2.4 An MIA sub-group was also formed to look at specific areas of work in detail. This group has met three times to progress an approach to developing specific advice for music venues and training opportunities.
- 2.5 In addition to the Music is Audible Working group and sub-group, a sister group called Live Music Matters was established, also with councillor, officer and sector representation chaired by the General Manager of the Usher Hall. This group grew from the findings of the open forum held in the Usher Hall on 17 November 2014, reported to Committee on [16 December 2014](#), and has a wider remit examining issues which do not relate to noise legislation. Membership of this group is also listed in appendix 1.
- 2.6 This group has met once so far, as it was agreed that the work of the Music is Audible Group is a critical area of action that requires urgent resolution. However, it was felt that alongside this work, as time permitted, this group could: stay actively involved in the wider cultural community's strategic work, through the Desire Lines steering group; potentially create a written resource to celebrate the history of Edinburgh's music sector successes; consider new audience development, marketing and promotion campaigns; and further develop future open forum events.

Main report

- 3.1 As previously reported, Edinburgh's current licensing rules require amplified music to be wholly inaudible from neighbouring properties. All complaints from members of the public about a breach of the noise condition (when they claim that amplified music or vocals are audible within their homes), are referred to the Licensing Standards Officers (LSOs) for investigation. A small number of these relate to live music.
- 3.2 While ultimately seeking compliance with this and all other licensing conditions, the LSOs approach is to resolve matters through mediation. In the last 18 months only three Compliance Notices have been issued, and no requests were made to the Licensing Board to review a Premises License. It is worth noting that the LSOs have no powers themselves to instruct music performances to end

or to prohibit the provision of live music in venues. Any unresolved issue requires to be referred to the Board by way of a license review request.

- 3.3 Whatever the outcome of any consideration to amend the current inaudibility condition, LSOs will continue to advise and assist music venues, jointly seeking practical solutions to noise issues.
- 3.4 The Music is Audible Working Group has been meeting to confirm whether this inaudibility approach is unique, and assess its impact and suitability, as the sector has reported that current rules are not conducive to a flourishing live music and cultural scene.
- 3.5 In doing this the MIA group has tested the group's initial findings and recommendations for changes to legislation through informal consultation with the Licensing Forum and Community Councils; scoped the wider context and enhanced initial findings through commissioning the Music Venue Trust to conduct further research; and engaged with the University of Edinburgh in setting a benchmark through a census of current live music activity in the city.

Music is Audible Working Group recommendations

- 3.6 The MIA working group has assessed a range of options including: mediation processes; acoustic analysis of sites; measurements of background noise; planning processes; timings in programming; terminology used in associated documents; training opportunities; sound systems and meters; and a comprehensive assessment of the processes used by other Scottish local authorities.
- 3.7 Following this work, the group has now begun a process of consulting informally with Council officers, the Licensing Forum and community councils, to test the possibility of enhancing the wording of Edinburgh's current licensing policy as follows:

Existing wording:

'The Board will always consider the imposition of a condition requiring amplified music from those premises to be inaudible in residential property'.

Proposed new wording:

Amplified music... '... shall not be an audible nuisance in neighbouring residential premises'.

- 3.8 It is suggested that this proposed wording would create a better environment for musicians, promoters and residents in the city and that an updated appendix to this policy would provide clearer guidance for Licensing Standards Officers (LSOs) when they assess whether noise created by music is indeed a nuisance.

- 3.9 The suggested guidance for this approach has been taken from the Scottish Government's [guidance](#) which was issued to accompany the statutory nuisance provisions of the Public Health etc (Scotland) Act 2008, Part 9 of which amends the Environmental Protection Act 1990. Section 3 of this guidance states 'There are 8 key issues to consider when evaluating whether a nuisance exists' and goes on to provide definitions of these issues, which are listed as impact, locality, time, frequency, duration, convention, importance and avoidability. The full definition of the 8 key issues is included in the Music Venues Trust report attached at appendix 2.
- 3.10 By using these issues to consider nuisance it may prove easier for LSOs to judge whether, for example, noise is conventional at specific times of the year such as during the festivals in August or at Hogmanay, or whether it has an importance to the city such as the Tattoo. Conversely this would also allow LSOs to be clearer with venues on why noise is an issue, for example if it was occurring in the early hours of the morning in a consistent and repetitive way. It is the intent of the group to ensure that complaints can still be made, but that there is a fairer way to assess why they might be upheld. The findings of this initial consultation will be reported to Committee as part of the next update on encouraging live music in Edinburgh.

The Music Venue Trust

- 3.11 The Music Venue Trust is a charity which seeks to safeguard the future of the UK's network of grassroots music venues. It provides specialist consultancy with experience of working in other cities where tensions around live music exist, including chairing the Mayor of London's Music Venues Taskforce.
- 3.12 MVT has supported the MIA's research by providing information on complementary approaches to the noise challenge, including alternatives to measuring sound, timings, training opportunities and a new approach to responsibilities. MVT's key recommendations are:
- 3.12.1 That the Council considers the balance between the contribution of music venues to the cultural and economic life of Edinburgh and the needs of residents and includes this in its cultural policy review and development;
 - 3.12.2 That the Council changes the terminology used in documentation to create a more balanced approach in working with residents and venues. For example, the Council could use new terms to indicate that a resident and a venue are both 'clients' in a mediation process required to settle a complaint, rather than a 'complainee' or subject of a complaint and a 'complainant';
 - 3.12.3 That the MIA working group considers implementing an awareness raising campaign within the Council (for members and officers) of the impact of complaints on the city's wider cultural and economic environment;

- 3.12.4 That the Council encourages residents to talk to the venue about their concerns as a first step;
 - 3.12.5 That the MIA working group creates a resource which would provide all music venues with guidance on their options in the event of a noise complaint;
 - 3.12.6 That the Council considers the local conditions in detail that could be linked to the Agent of Change principle, (see definition below), and considers consulting the Scottish Government on the legal process required for legislative change, to enable Edinburgh to be the first city in Scotland to adopt this approach;
 - 3.12.7 That the Council considers enhancing practice around licensing, for example by creating a checklist for residents making complaints to assist in mediation and resolution of problems;
 - 3.12.8 That the Council identifies a key person to act as a music champion to liaise between Council officers and the music community going forward.
- 3.13 The Agent of Change principle is defined by the Music Venue Trust as follows: “the person or business responsible for the change is responsible for managing the impact of the change. This means that an apartment block to be built near an established live music venue would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs. A resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there’s going to be some music noise, and a music venue that buys a new PA would be expected to carry out tests to make sure its noise emissions don’t increase.”
- 3.14 The full MVT report can be found at appendix 2. The MIA working group will consider these recommendations and use them as appropriate to enhance the action plan it will recommend in the next update to this Committee next spring.

University of Edinburgh Music Census

- 3.15 The MIA group also supported research, carried out independently by the University of Edinburgh, to gauge the scale of music activity in the city with a view to benchmarking this data nationally in the future.
- 3.16 Provisional headline findings from the live music census carried out in Edinburgh on Saturday 6 June 2015 are given below.

Edinburgh audiences

- 3.16.1 Edinburgh audiences attend more live music than the Scottish average (13% attending annually five times or more, as opposed to the Scottish average of 6%);
- 3.16.2 Audience members are typically aged 38, in full time employment, and living in the city;
- 3.16.3 On the date of the census 11,500 people attended live music, leading to a conservative estimate (balanced against other available statistical information) of an annual attendance of 2.7 million people;

- 3.16.5 They are most likely to regularly go to rock music (61%), but also enjoy folk (37%) and modern jazz (34%); and
- 3.16.6 The average audience member prefers to see live music in music venues (44%) but attends live music most often in pubs (76%) followed by music venues (67%) and concert halls (58%).

Income and spend

- 3.16.7 Edinburgh music fans spend on average £93 on live music each month (including tickets, food/drink and transport);
- 3.16.8 At £15 per gig, £170,000 was estimated to have been spent on live music on the night of the census (£90,000 on ticket sales alone);
- 3.16.9 The total average annual spend on live music, by a typical music fan is £1,120.
- 3.16.10 A conservative estimate, balanced against other statistical information, of total spend at live music events is £40million per year (including tickets, food/drink and transport); and
- 3.16.11 The average monthly spend on recorded music (CDs, records and music downloads) is £147.

Edinburgh Music Venues

- 3.16.12 At any given time there are approximately 267 venues in the city actively offering live music, 94 of which feature music on a minimum of two nights per week;
- 3.16.13 Almost half of these are pubs and bars (46% of the 267);
- 3.16.14 Based on the census research, and an analysis of listings (not including festivals), 23,300 live music events are estimated to take place each year in Edinburgh; and
- 3.16.15 From venues visited on the night, it was estimated that over 335 non-musician staff were working and, assuming minimum wage, a further conservative estimate was made that venue and production staff are paid at least £2.6 million per year, at venues alone, when live music is on.

Musicians and DJs

- 3.16.16 The typical live music performer in the city has an average age of 40, is most likely male (73%) and has been active within the music industry for 17 years, playing an average of five gigs per month of which 61% are paid;
- 3.16.17 Based on the census data, it is estimated that musicians and DJs in Edinburgh were paid £14,150 on the night of the census (an average of £92 per gig); and

- 3.16.18 Music forms the main source of income for 44% of respondents and for those who do not earn the majority of their income from music it forms an average of 12% of respondents' total income.
- 3.17 In relation to complaints in the last 12 months the census also concluded that 42% of venues reported experiencing issues related to noise. Just under half (44%) of musicians also reported that their gigs have been affected by noise restrictions. However, data supplied by the Council indicated that from 1 April 2014 to 30 June 2015 only 64 complaints related to noise were received linked to 18 venues in total, with none of these complaints reaching the stage of being addressed by the Licensing Board. Alongside further information detailed in the MVT and University of Edinburgh findings, research therefore indicates that there is a high level of self-policing taking place amongst venue operators. In the qualitative data gathered, there is an indication that venues are being naturally protective of their licenses and sensitive to the potential of any involvement of Council officers or Police, therefore acting in advance of any official processes.
- 3.18 In summary the University's independent census report concludes that although Edinburgh's music scene is vibrant, particularly in relation to its population base and size, and its residents are keen supporters of a dedicated community of musicians throughout the year, there is scope to improve live music provision. The report's three recommendations focus on the inaudibility clause, the agent of change principle and the inclusion of live music within the Council's review of its Cultural Policy and whatever new policy or plan is adopted. The full report can be accessed from 19 October 2015 at <http://livemusicexchange.org>.

Key Milestones

- 3.19 The Edinburgh Licensing Board requires to publish its new Statement of Licensing Policy by 30 November 2016. The Board is therefore required to consult in its preparation of policy, and in line with previous practice, would be expected to consult widely over a period of several months inviting representations including trade, members of the public, police and the NHS. The consultation period has not yet been agreed, but it is likely that the Board will consider the issue early in 2016.
- 3.20 The Scottish Government is currently agreeing arrangements for commencement of parts of the Air Weapons and Licensing (Scotland) Act 2015. Part of the Act will affect the timescales by which Boards publish policy statements, but no precise details are yet available. An update on these key milestones will be provided to Committee in due course.

Measures of success

- 4.1 Constructive engagement with sector representatives.
- 4.2 Refreshed strategic priorities related to the music sector.
- 4.3 Effective co-production delivery between Council and third party cultural services.

Financial impact

- 5.1 The cost of the MIA Working Group recommendations proposed in this report can be contained within relevant divisional revenue budgets.

Risk, policy, compliance and governance impact

- 6.1 There are no risk, compliance or governance impacts arising from this report's recommendations.

Equalities impact

- 7.1 The MIA working group has examined ways to foster better relations between the live music sector and communities living near venues. The issues examined by this group (and by the Live Music Matters working group) relate to human rights articles on freedom of expression and private and family life.

Sustainability impact

- 8.1 If successful, this collaborative work with the music sector will help to sustain Edinburgh's cultural vibrancy

Consultation and engagement

- 9.1 All of the work described in this report is about engagement with the live music sector, and with other communities of interest, exemplar cities, and stakeholders.

Background reading/external references

Culture and Sport Committee Tuesday, 17th December 2013 [Music Sector Review](#)

Culture and Sport Policy Development and Review Sub-Committee, Wednesday, 25 June 2014 [Encouraging Live Music in Edinburgh](#)

Culture and Sport Committee Tuesday, 16 December 2014 [Encouraging Live Music in Edinburgh: Update](#)

The Desire Lines document is available at <http://desirelines.scot/>

Alastair D Maclean

Deputy Chief Executive

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Links

Coalition pledges	P24 Maintain and embrace support for our world-famous festivals and events P31 Maintain our city's reputation as the cultural capital of the world by continuing to support and invest in our cultural infrastructure
Council outcomes	CO8 Edinburgh's economy creates and sustains job opportunities CO20 Culture, sport and major events – Edinburgh continues to be a leading cultural city where culture and sport play a central part in the lives and futures of citizens CO26 The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives
Single Outcome Agreement	SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all SO3 Edinburgh's children and young people enjoy their childhood and fulfil their potential
Appendices	1. Working Group Memberships 2. The Music Venue Trust Report

Working Group Memberships

Music is Audible Group membership (alphabetically by surname):

Katy Allison (Media, City of Edinburgh Council - hereafter, Council), Councillor Norma Austin-Hart, (Chair and Vice Convener, Culture & Sport), Councillor Gavin Barrie, Colin Baxter, (Licensing & Trading Standards, Council), Dr Adam Behr, (University of Edinburgh), Councillor Chas Booth, Dr Matt Brennan, (University of Edinburgh), Tim Brinkhurst, (Manager, Young Fathers), Karl Chapman, (General Manager, Usher Hall, Council), Alison Clyne, (Assistant Committee Clerk, Council), Dermot Connolly, (Day Noise Team, Council), Councillor Nick Cook, Neil Cooper, (Writer & Critic - Music, Art & Theatre), Graham Croucher, (DA to Cllr Richard Lewis, Council), Nicholas Fraser, (Senior Solicitor, Licensing, Council), Ronnie Gurr, (Creative & Cultural Skills), Brian Guthrie, (Twenty Stone Blatt Records), Councillor Richard Lewis, (Convener, Culture & Sport), Gillian McArthur, (Studio 24 (former owner)), Stuart McKay, (Musician), Brian McNeil, (Musician & Record Producer), Andrew Mitchell, (Community Safety & Licensing, Council), Ross Murray, (Assistant Committee Clerk, Council), Rebecca Peppiette, (Arts Strategy & Funding Manager, Council), Ian Pettigrew, (Musician), Samantha Roberts, (Phoenix), Naomi Sandilands, (Planning & Building Standards, Council), Caroline Sewell, (Musicians Union), Councillor Alastair Shields, Eleanor Smith, Nick Stewart, (Sneaky Pete's), Gillian Turnbull, (Rear View Music/Founder, ECMP).

Live Music Matters membership (alphabetically by surname):

Karl Chapman, (General Manager, Usher Hall (Chair)), Dr Adam Behr, (University of Edinburgh), Dr Matt Brennan, (University of Edinburgh), Tim Brinkhurst, (Manager, Young Fathers), Neil Cooper, (Writer & Critic - Music, Art & Theatre), Morvern Cunningham, (Festival Director, Leith Late), Olaf Furniss, (Born to be Wide), Ronnie Gurr, (Creative & Cultural Skills), Brian Guthrie, (Twenty Stone Blatt Records), Adrian Harris, (Queen's Hall), Andrew Hobbes Richardson, (Musician), Stuart McKay, Gillian McArthur, (Studio 24 (former owner)), Rebecca Peppiette, (Arts Strategy & Funding Manager, Council), Douglas Robertson, (Soundhouse.Org), Caroline Sewell, (Musicians Union), Ian Smith, (Creative Scotland), Nick Stewart, (Sneaky Pete's), John Stout, (Regular Music), Matt Ward, (Blogger, Words of Wardy), Stuart Wilson, (Catalyst Productions), Matthew Young, (Song, by Toad).



Report for City of Edinburgh Council: The Challenges for Live Music in the City

INTRODUCTION

Recent press coverage of music venues removing or reducing the live music on offer has focused on musicians and venues blaming the City of Edinburgh Council's Noise Enforcement policy and the use of an 'inaudibility test' as the main factors in bringing about these changes. In response, the Council set up the Music is Audible (MIA) Working Group which is seeking to find solutions. As part of this process Music Venue Trust (MVT) was brought in to take an overview of the situation in Edinburgh and make recommendations based on its work across the UK and in the context of the international research and discussion of which MVT is a part.

Music Venue Trust is a charity which seeks to safeguard the future of the UK's network of grassroots music venues. It provides specialist consultancy with experience of working in other cities where tensions around live music exist, including chairing the Mayor of London's Music Venues Taskforce. MVT believes that grassroots music venues (small and medium capacity independent venues) have an important role to play in the cultural, social and economic life of the towns and cities in which they are located, at the same time placing a strong emphasis on the need for such venues to be responsibly and professionally run.

In response to the MIA Working Group's request for assistance, MVT undertook to:

1. Read all relevant strategies and protocols to assess where music venues sit in relation to CEC priorities
2. Conduct a selection of interviews with representatives from relevant CEC departments and Councillors, representatives of music venues and musicians to gather a range of views as to the main challenges
3. Assemble key questions about CEC's situation to refer to our acoustics, licensing and legal experts
4. Assemble examples of Best Practice from other world cities with a key cultural role who are also seeking to balance the needs of residents with their cultural priorities to assist with framing recommendations
5. Feed back suggestions for ways in which the current challenges could be addressed

Special attention was paid to the need for the piece of work to be framed in the context of the long-term vision of Edinburgh as a world class cultural city seeking a balance between its economic and cultural life and the needs and wishes of residents.

CONTEXT

The UK music industry contributes £3.8 billion to the economy, representing a year on year growth of 9%. The sector produces exports worth £2.2 billion and sustains 111,000 jobs in the UK. The live music industry accounts for £789 million in GVA. Grassroots music venues are an essential part of the music industry ecosystem. Not only are they the places in which artists develop their craft and audiences access a range of new music, but small independent music venues across the UK have a proven track record in training up creative professionals, offering early opportunities to future arts managers and technicians as well as artists. (1)

Edinburgh has a rich musical history sporting a variety of live music scenes, from the Old Town pubs that housed the Edinburgh Folk revival and gave early platforms to the likes of The Incredible String Band and Bert Jansch, to the parallel dance hall network that eventually gave the world the biggest band on the planet in the early 1970s, The Bay City Rollers. Inspired by The Clash bringing their White Riot tour to Edinburgh Playhouse in 1977, Edinburgh College of Art students Bob Last and Hilary Morrison founded Fast Product records in their Keir St flat. Fast changed pop music forever by releasing the first records by The Human League and The Gang of Four, was an acknowledged influence on Factory Records, which started a year later, while Last also put out records by Fire Engines, who, along with Josef K, have long been cited as a major influence on Franz Ferdinand. Other independent labels of note include Pop Aural, 53rd & 3rd and Nightshift. Today many specialized labels from rock to folk and jazz are Edinburgh-based.

Out of the same Edinburgh post punk scene future Garbage star Shirley Manson played with Goodbye Mr Mackenzie, while a fertile 1980s underground formed Edinburgh Musicians Collective. Elsewhere the likes of Shop Assistants and Jesse Garon & the Desperadoes were key figures in the influential C86 scene, while in 1990, the club Pure was and remains one of the most important club nights ever. Pure was a big influence on Boards of Canada, while out of a 1990s indie scene Idlewild went on to global success. Today, with Edinburgh's live music scene livelier than ever, bands such as Chvrches, Mercury Award winners Young Fathers and a host of others are the most high profile success stories.

Edinburgh is also home to some of Scotland's biggest management and promotions companies (Schoolhouse Management, Regular Music, Unique Events, Triple G), plus recording studios, post-production and mastering rooms, an A&R community, and music publishers such as national publications The Skinny & The List and book publisher Mainstream.

This independent music scene operates with limited contact with CEC, rarely seeking funding or other support. The Edinburgh University/Live Music Exchange, 'Edinburgh Live Music Census 2015' (2) identified the following key points which highlight the value of music to Edinburgh's economy:

- annual total **attendance** of live music events in Edinburgh is around **2.7 million people**
- Edinburgh hosts over **23,300 live music events** per year
- total estimate of **direct spend** on live music in Edinburgh per year is at least **£40 million**

Music venues' main contact with CEC is through the statutory licensing process regarding sale of alcohol. The City of Edinburgh Licensing Board is a quasi-judicial committee which stands apart from CEC and is the body responsible for licensing premises for the sale of alcohol. The Licensing Board has no staff of its own so CEC Licensing Standards Officers (LSOs) operate on behalf of the Board to enforce Licensing protocols. The vast majority of premises licensed for the 'on sale of alcohol' i.e. pubs and clubs, have a specific condition of the licence which states, "All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential properties." If a complaint is received, LSOs are required to investigate whether there has been a breach of conditions. As CEC's

LSOs are the public interface between the policies and the businesses they concern, the perception that 'The Council' are responding to a resident's complaint about noise is understandable.

The emphasis of the current procedure is on compliance by the venue so as to not have their licence removed. This means that venues that have been operating for many years can suddenly be faced with a real threat to their continued existence due to one complaint from a nearby resident. A reduction/restriction in ability to programme live music can lead to loss of business for the venue and there are many examples across the UK where a venue closes within a couple of years of an official complaint because of the knock-on effects of the imposed operational changes or costs involved in installing soundproofing. Every venue that closes represents the loss of a local business, loss of jobs and loss of money in the local economy, as well as depriving musicians of places to play and audiences of the live music experience. There is often a negative knock-on effect on surrounding businesses as fewer people come to that part of the city in the evening, damaging the night-time economy.

A city is a complex mesh of people so no one person's actions should be considered in isolation. This piece of work attempts to balance these factors and offer recommendations for improving how the music community feels it is valued by the city, while being sensitive to residents' needs and budgetary constraints.

RECOMMENDATIONS

We have identified ten achievable actions (1-10) grouped into 6 categories (A-F) for CEC to consider.

A. Communications and Policy

1. Consider the balance between the contribution of music venues to the cultural and economic life of Edinburgh and the needs of residents.

The Desire Lines process signals an important first step in this and it is encouraging to see recommendations coming through this wider sector consultation which echo issues relevant to music venues, including:

- establish a compelling evidence base that demonstrates the positive impacts of arts and culture on the economy and society
- raise the profile of arts and culture in Edinburgh and beyond
- adopt an enabling culture for licensing of events and venues all year round
- ensure that local artists and cultural producers have easy-access routes to present and promote their work all year round, including participating in the festivals if they wish.

This last point is key to the MVT recommendation, as there is a prevailing sense of injustice amongst the art community that the 'indulgence' shown during festival season is incompatible with the attitude towards the year-round arts providers. Addressing the current imbalance to offer a more supportive approach to the venues and artists who live and work in Edinburgh will create a sustainable music offer which will benefit the city both artistically and economically. MVT understands that the Council and other partners have yet to respond officially to the Desire Lines recommendations, but that these points will be included in the development of the Council's Culture Plan due to be reported to the Culture and Sport Committee at the end of this calendar year.

B. Licensing Policy

Much of tension between CEC and the music community is due to the fact that the City of Edinburgh Licensing Board attaches a 24 hour Inaudibility Clause condition to licenses which CEC's LSOs have a duty to enforce. This is notable because it is unusual for a Licensing Board (Scotland) or local authority (England and Wales) to have a blanket policy of inaudibility, rather than applying the clause in exceptional circumstances or post 11pm. (3)

MVT considers that the current policy is unhelpful in achieving a balance between the needs of local businesses and culture providers and local residents, and that a policy which is more sensitive to Edinburgh's position as both a densely populated city and a world class cultural city is required. MVT recommend that CEC open discussions and consultation with the Licensing Board, Licensing Forum and Community Councils to:

2. Change the Licensing Policy wording to "Amplified music shall not be an audible nuisance in neighbouring residential premises".

We strongly advise that the existing policy is challengeable on a number of fronts:

- Difficulty in defining "inaudible" as an absolute
- An apparent supposition that music is a noise nuisance by its inclusion in a 'Preventing Public Nuisance' clause

- Public nuisance vs private nuisance - doubt as to whether one person's complaint can provoke a response under policy to combat public nuisance, when public nuisance is usually defined as 'affecting several people' (see Appendix 1 for further explanation)
- Charging LSOs with investigating noise complaints, a responsibility that more often rest with other professionals in other locations. An LSO is trained to conduct duties relevant to the enforcement of Licensing Policy. However, this training does not currently include noise issues, a specialism within the profession of Environmental Health Officers (EHOs). (4)

A framework for the assessment of what constitutes a nuisance should follow the 8 criteria recommended by the MIA Working Group which more closely follows existing legislation found in the Statutory Noise Provisions of the Public Health etc (Scotland) Act 2008:

- Impact
- Locality
- Time
- Frequency
- Duration
- Convention
- Importance
- Avoidability

This represents a practical approach to assessing the problem (see Appendix 2 for details) which would signal a move away from the current position of pre-supposing music to be a nuisance and help council officers when they need to explain their assessments. It should also be noted here that noise nuisance assessments should (according to national Environmental Health guidelines) be made on what impacts an 'ordinary reasonable person' rather than individual sensitivities.

As evaluation of whether a noise constitutes a nuisance is likely to remain within the remit of LSOs, MVT recommend that an assessment be made of the supplementary training requirements for these officers so that they can respond to a new framework with confidence and clarity.

MVT understands that changes to Licensing Policy take time to implement as there are statutory processes to adhere to. The following points represent measures that could be implemented more rapidly as part of the overall process of change.

C. Terminology

If CEC receive a noise complaint from a resident then officers from the Licensing Department have a duty to investigate the complaint and, if noise is indeed audible in the residential property, resolve the matter. The stated role of LSOs in responding to a noise complaint is information, guidance, compliance and mediation. (5)

This procedure raises a number of issues:

The process in place terms the resident the Licensing Department's 'client'. This immediately suggests that CEC considers it is acting on behalf of the resident in investigating and attempting to resolve the complaint. Scottish Government guidelines (Licensing Scotland Act 2005) use the terms Noise Victim and Noise Maker which could suggest greater impartiality. MVT recommend that CEC:

3. Change their terminology to indicate that both resident and venue are clients for the mediation process required to settle the complaint.

Mediation - In MVT's view, a large part of the challenge in the current process is that, although part of the stated role of LSOs is information, guidance, compliance and mediation (5), the music community feels that the emphasis is on the compliance element. The process offers little opportunity for discussion of what might have caused the complaint and pre-supposes that the venue must 'do something' in response to the complaint. This appears to assume fault on the venue's part, even if that venue has not made any changes to its operating plan prior to the complaint.

For meaningful mediation to take place the following steps are required:

- Witnessing of the noise in the residential property and assessment of whether the noise constitutes a nuisance.
- Completion of a checklist of resident information (see point 9 below).
- Notification to venue of complaint.
- Venue undertakes steps laid out in Guidance for Venues in the Event of a Noise Complaint document (see point 6 below) to ensure that it is operating within its own plan and following responsible procedures for management of sound. At this stage problems of noise leakage may be solved and the matter may be considered closed.
- If the resident is still unhappy then a mediation meeting between resident and venue representative should take place to discuss possible solutions to the problem. It may be appropriate to consider soundproofing solutions for the residential property which may be cheaper than soundproofing in the venue. The emphasis should be on negotiating an amicable, cost-effective solution.
- As a final measure unresolved complaints are referred to the Licensing Board.

D. Training and Awareness Raising

Another point of tension regards the suitability of LSOs offering mediation and guidance on matters for which they may not have the necessary expertise. LSOs do not receive training on noise issues, although they are able to consult with EHOs should they need to. The other problem here is that, although guidance is a stated role in the process, funding does not currently exist for LSOs (or EHOs) to offer this service to either party involved in the complaint. It should be noted that LSOs do not feel that a lack of training is what currently causes tension with venues, as their role is to witness noise and instruct the venue to comply with the license condition of inaudibility. They feel that it is the stringency of the condition which creates this tension, with them being cast as enforcers. As stated previously, a change in the framework for assessment of whether any noise nuisance is occurring and the subsequent process of mediation towards resolving the dispute, will necessitate an evaluation of training requirements for LSOs.

In light of the probable need for further training for LSOs and the costs that this would incur, MVT recommends the following steps be taken to potentially reduce the number of formal complaints that are lodged and need to be dealt with by the Licensing Team:

4. Implement an awareness raising campaign within CEC (members and officers) of the impact of complaints on the city - greater awareness across Council departments of the potential negative impact of a formal noise complaint (leading to loss of business, loss of jobs, loss of money in the local economy) could assist in reducing the number of complaints made by raising awareness amongst the wider community of the complexity of the issues. Consideration of the fact that Edinburgh is a heavily tenemented city and that there is bound to be some noise from co-inhabitants should perhaps be encouraged in discussion with residents. Time and frequency of the 'noise nuisance' should also be considered in terms of what is reasonable, along with information concerning the Agent of Change principle (more about this below). Articles such as [this](#) provide

helpful background and context: <http://www.theguardian.com/cities/2015/sep/09/the-slow-death-of-music-venues-in-cities>

5. Encourage residents to talk to the venue about their concerns as a first step - If a venue has made a recent change to their programme or operation they may be unaware that this is inconveniencing neighbours. Once informed of the 'noise problem' the venue should either return to their previous mode of operation, or follow the steps laid out in the Guidance for Venues protocol to try and halt sound leakage. This action is in line with similar campaigns run by the Council's Noise Team in 'Living with your Neighbours', leaflet attached at Appendix 3.

6. Provide all music venues with a Guidance for Venues in the Event of a Noise Complaint document - During MVT's research it became clear that there is a real tendency for venues in Edinburgh to over-react to a noise complaint because they fear losing their alcohol license (even the most music-focused of venues knows that not having an alcohol license would greatly weaken their ability to trade). The Licensing Department is proud of the fact that during the past 3 years all formal complaints have been resolved without referral to the Licensing Board. While this sounds positive, anecdotal evidence suggests that around a third of these cases are solved by the venue withdrawing its music programme, while other venues reduce the hours on offer. As previously stated, this can have a knock-on effect on the venue's long-term viability as a business, as well as the city's cultural offer.

It should be noted here that statistics from the Edinburgh University/Live Music Exchange 'Edinburgh Live Music Census 2015' indicate that 42% of the venues that responded had experienced noise issues or restrictions that relate specifically to live music. This does not refer exclusively to noise issues that have involved council officers or police but the whole spectrum of problems relating to sound leakage; whilst 42% of venues reported 'noise issues' only 15% reported 'licensing issues' not all of which may not have been related to noise. In conjunction with the fact that 44% of musicians indicated that their gigs had been affected by noise restrictions this indicates that a relatively high level of self-policing is taking place amongst venue operators. This is supported by further census responses from venues, which describe reaching an accommodation with neighbours and self-imposing live music curfews. (2)

Draft guidance has been written during this research that a subgroup of the MIA Working Group will take forward and refine to ensure it is both easy to follow and effective. The guidance procedure includes conducting:

- An Operations Audit - running through the way the venue operates, noting any activity that might lead to sound bleed such as propping doors open, staff going outside to smoke, windows left open etc. Reviewing door policy during gigs and see if there are any ways to limit sound travel
- A Building Audit (a thorough inspection of the premises, checking for gaps around doors and windows that could be allowing sound to escape, boarding up windows not required for light etc.)

Reference should also be made to national guidance published by [Eventbrite](http://www.eventbrite.co.uk/blog/how-independent-music-venues-can-protect-themselves-against-anti-noise-legislation/), created in conjunction with MVT: <http://www.eventbrite.co.uk/blog/how-independent-music-venues-can-protect-themselves-against-anti-noise-legislation/>

MVT recommends that all music venues identified by the 2015 Edinburgh Music Census be sent a copy of this guidance document and that in future all venues being notified of a sound complaint are given a further copy of the guidance.

E. Agent of Change

If venues can demonstrate that they are acting responsibly and trying to resolve tensions with their neighbours, MVT would like to recommend that CEC :

7. Consider the local conditions in detail that relate to Agent of Change (the right of the first occupant), and consult with Scottish Government on the legal process required for legislative change, to enable Edinburgh to be the first city in Scotland to adopt the Agent of Change principle.

Agent of Change says that the person or business responsible for a change is responsible for managing the impact of that change. This means that an apartment block to be built near an established live music venue would have to pay for soundproofing, while a live music venue opening in a residential area would be responsible for the costs. A resident who moves next door to a music venue would, in law, be assessed as having made that decision understanding that there's going to be some music noise, and a music venue that buys a new PA would be expected to carry out tests to make sure its noise emissions don't increase.

Agent of Change has been trialled and tested in Australia and it works; better planning, better developments, people thinking about what exists where they want to live and how they will live with it, music venues and others thinking more about their neighbours. The Mayor of London's Music Venues Taskforce Report has recommended that Agent of Change is adopted across London and it looks likely to be agreed. For Edinburgh to make the same commitment to lead the way for Scotland would be a powerful statement. Representatives from the Culture, Legal, Planning, Licensing and Communications departments of CEC have been involved in the MIA Working Group and have discussions about the viability of exploring Agent of Change and are largely supportive of exploring this further. It is interesting to note here that reference to Agent of Change is made within Desire Lines. (6)

A move towards championing the ethos of Agent of Change could be signalled by:

8. Changing the tone of discussions about tensions and disputes between residents and venues by focusing on the factors leading to the complaint and how to resolve the result of that combination of factors, rather than looking to blame one party and instruct them to sort the problem out.

Informed mediation demands that information is collected from both parties. This process does not infer blame but asks questions about actions which may have unknowingly contributed towards a situation where the resident feels the need to complain. MVT understands that asking residents about their actions may be sensitive but a way to do this without any inference of judgement should be sought in order to facilitate meaningful mediation. We recommend that CEC:

9. Create a checklist for residents making complaints to assist in mediation and solution of the problem.

It would not be appropriate for an outside organisation to dictate the specifics of this but we would encourage consideration of the following potential factors that can provoke a complaint as they lead to a change in the way the resident uses their home:

- Newly moved in
- Structural works conducted in the residence - for example, it is common for maintenance works on pipes to involve the removal of padding around the pipes, effectively depriving the resident of a layer of soundproofing between the ceiling of the premises below and its floorboards

- Redecoration - removal of carpets, curtains and other such materials that absorb sound could increase the amount of music heard in the residence. Hard surfaces conduct sound / soft surfaces absorb
- A change in working pattern - being in the home at significantly different times of day or needing to sleep at an earlier hour than previously
- Rezoning rooms in the home - a change of use meaning that the resident now spends their evenings in a room which was previously little used
- A change in domestic circumstance which can impact on the way the home is used

It is important to emphasise that information-collecting is not a judgemental process but merely intended to inform discussion about possible solutions. In the same way that a venue will run through an Operations and Building Audit to check what factors may have led to the complaint on their end, information needs to be gathered from the resident. MVT knows of a number of cases in which discussion between venue and resident has resulted in an amicable solution, at a relatively low cost, eg.

- a venue in York bought a resident a new television with better sound, at which point the resident was happy because they could not hear music over their own entertainment
- a venue in London shared the costs of installing double-glazing in a nearby home to mitigate sound bleed

Examples like these are at odds with experiences related in Edinburgh during this piece of research, the most extreme case being a venue which invested in soundproofing at great cost, only to discover that this did not solve the problem because they were not supplied with the relevant information as to exactly what the problem was.

F. Music Champion

MVT's final recommendation is that CEC:

10. Explore the possibility of identifying a key person to act as a music champion to liaise between CEC and the music community going forward. (This function could also be fulfilled by a small group of people.) As has already been referenced, this part of the arts community demands little of CEC and is generally happy to carry on with its business unless a problem arises. When faced with a noise complaint music venues have, in the past, felt that they have no-one to talk to /nowhere to turn for support. This statement is made with total respect for LSOs and the restrictions placed on their interactions with venues within the existing complaints procedure.

As the average person has a limited understanding about the working of local authorities, it would be helpful if there could be both an identified person to whom venues could address questions regarding the process following a complaint and one point of reference for all relevant policies and guidelines. A clearer understanding of the role of LSOs, EHOs and other parties would be helpful. For example, if a noise complaint concerns something other than music, a venue can receive advice from an EHO about how to combat the problem. This same service is not offered if the complaint regards music. If mediation is required, who assembles the information and manages the process?

It should be noted that the suggested Music Champion could be a CEC officer but could equally be someone external to the council but co-funded (perhaps with Creative Scotland or a similar agency?) by CEC and with a recognised role in liaising with CEC departments. In the Netherlands cities have Night Mayors - individuals whose role is to liaise between night-time economy businesses, residents

and the local authority. The Night Mayor is elected to ensure that all parties have confidence in their ability to be effective in this capacity.

MVT understands that this recommendation implies a cost to CEC so could be challenging to implement, but our intention is that the adoption of the earlier recommendations should reduce the number of cases that get as far as requiring mediation. If fewer formal complaints are lodged then costs of processing them can be reduced, so freeing up resources for effective mediation.

NOTES

1. Lighting, sound and video industry market leader [White Light](http://www.whitelight.ltd.uk/) (<http://www.whitelight.ltd.uk/>) confirms that London's West End theatres are largely staffed by technicians who gained initial training in the UK's grassroots music venues.

2. Edinburgh Live Music Census 2015 - Dr Adam Behr & Dr Emma Webster with Dr Matt Brennan. Research was carried out on and around 6 June 2015 with the report published September 2015.

3. Inaudibility

Other places generally apply inaudibility in exceptional circumstances rather than as a blanket policy. These include:

- a) Glasgow - as a final measure
- b) Perth & Kinross 11pm - 7am
- c) Hackney 11pm - 9am
- d) Stratford upon Avon - post 11pm
- e) Eastbourne - For premises having events that take place between 10am and 11pm on more than 2 days in any 7 day period or more than 30 events per year and for all events that take place after 11pm.

Ones that we have come across that appear to share Edinburgh's policy are:

- a) Dundee
- b) Isle of Wight

4. 'All non-EHO or technically qualified technical officers should undertake the Institute of acoustics (IOA) Certificate of Competence in Environmental Noise Assessment' - *www.gov.scot report on Noise Management Policies, March 2005*

5. '13.1 LSOs are an integral part of the monitoring and compliance regime under the Act. Their role is :

- providing information and guidance concerning the operation of the Act to licenceholders, members of the public and other interested persons.
- supervising compliance with licence conditions, Board policies and other requirements under the Act by premises licenceholders and holders of occasional licences.
- providing mediation services in order to avoid or resolve disputes or disagreements between the holders of premises or occasional licences and other persons concerning issues of compliance.' - *City of Edinburgh Licensing Board: Licensing (Scotland) Act 2005 - Statement of Licensing Policy*

6. ' A variety of solutions have been suggested in response to these issues, with many advocating for a more enabling attitude with regards to licensing temporary venues, and supporting the 'agent of change' principle, whereby venues are given precedence when they pre-date residential developments (and vice versa). If progress is made through these and other actions, our vision is for Edinburgh to have a first class mix of traditional and contemporary venues from small to large scale, encouraging a lively cultural life throughout the year.' - *Desire Lines, 2015*

Resources

In addition to the knowledge and expertise of Music Venue Trust, CEC representatives, MIA Working Group members and other representatives of Edinburgh's music community, the following publications were referenced during this piece of work:

A Brighter Future for our Towns and Cities, Commission for Underperforming Towns and Cities (2015)
City of Edinburgh Licensing Board Statement of Licensing Policy, November 2007-2010
Creative Scotland Music Sector Review (2013)
Desire Lines (2015)
Edinburgh City Cultural Venues Study (2009)
Edinburgh's Evening Economy, A report for the City of Edinburgh Council (2010)
Edinburgh Festivals: Thundering Hooves 2.0 (2015)
Edinburgh Live Music Census, Edinburgh University/Live Music Exchange (2015)
Environmental Protection Act 1990, Chapter 43
Guidance on Existing Statutory Noise Provisions, The Scottish Government (2014)
Measuring Music, UK Music (2014)
Night-Time Economy in the UK, NightMix News (2010)
Noise Management Guide, Scottish Executive & REHIS (2005)
Revised Guidance issued under section 182 of the Licensing Act 2003, Home Office (2015)
The Mastering of a Music City, Music Canada (2015)
Understanding Small Music Venues, Music Venue Trust (2014)

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Cllr Gavin Barrie, Convener of Regulatory Committee and Licensing Sub-Committee
Cllr Norma Austin Hart, Chair MIA Working Group and Vice-Convener, Culture & Sport
Dr Adam Behr, Research Associate (Music), University of Edinburgh
Gillian McArthur, Studio 24
Gillian Turnbull, Musician / Edinburgh Community Music Partnership
Ian Pettigrew, Musician
John Stout, Regular Music
Karl Chapman, General Manager, Usher Hall
Neil Cooper, Journalist / Critic
Nick Fraser, Senior Solicitor, Licensing (CEC)
Olaf Furniss, Born to be Wide / Journalist
Rebecca Peppiette, Arts Strategy and Funding Manager (CEC)

Appendix 1

Revised Guidance issued under section 182 of the Licensing Act 2003

March 2015

Public nuisance

2.14 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.15 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.16 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.17 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

Appendix 2

Statutory Noise Provisions of the Public Health etc (Scotland) Act 2008

There are 8 key issues to consider when evaluating whether nuisance exists:

- i. **IMPACT** - this is a measure of the impact of the alleged nuisance on the receptor. In some cases assessment of the impact can be supported by objective measurements (such as noise) but in many cases it will be the objective view of the local authority as to the degree of health risk or interference. In addition to the impact on individuals the authority should consider the extent of the impact (how many persons, how far from the source etc.)
- ii. **LOCALITY** - the potential for amenity interference is largely related to the character of the neighbourhood. It was famously summarised as 'what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey (*Sturges v Bridgman* 1879). Many odour and noise nuisances are due to the proximity of the receptor to a source that is generally out of character with the area (for example a factory or a waste water treatment works adjacent to a housing estate). The number of persons affected and the degree of intrusion will depend upon the proximity of the source and receptor and the sensitivity of the receptors.
- iii. **TIME** - many nuisances have a significant impact because of the time at which the nuisance occurs and the degree of impact changes depending upon the time of occurrence. For example noise from an entertainment facility would be less acceptable after 23.00 hours. Also odours are often subjectively more annoying during periods when members of the public are outdoors (for example daytime periods during summer months).
- iv. **FREQUENCY** - nuisances that occur frequently or continuously are more likely to be determined to be a nuisance (depending to some degree on the impact). For example dust emissions from a quarry once per month would be regarded very differently to emissions four days per week for 6 weeks a year. Restriction of the frequency of an activity may be method of abatement (a farm was limited to spreading manure for 15 days per year - *Wealden DC v Hollings* 1992). However, in some circumstances odours that are released periodically can be more intrusive and in this case the odour frequency is often assessed in conjunction with the odour's persistence in the environment.
- v. **DURATION** - in general short-term events would be regarded differently to longer period or continuous impact. For example a person practicing a musical instrument for one hour would be assessed differently to a four-hour practice session. However the duration would have to be considered alongside the time and frequency - practice for one-hour at 23.00 hours or every day may constitute a nuisance. Similarly a fixed period temporary noise source (such as construction works) may not constitute a nuisance (*Gosnell v Aerated Bread Co Ltd* 1894).
- vi. **CONVENTION** - convention is important when determining what a reasonable person would find objectionable. For example whilst some persons may find the noise of garden equipment on a Sunday morning objectionable - however such practice is widespread and accepted and would be unlikely to be held as a nuisance. Therefore the existence of a widespread practice or common usage in an area is an important factor (*Leeman v Montagu* 1936).
- vii. **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 also be considered along with the avoidability of the impact and also the principle of best practicable

means.

viii. AVOIDABILITY - even though an activity may have social importance there should be a balance as to whether reasonable steps have been taken to minimise the impact. For example it would be difficult to control noise from a children's playground during the day but there are many methods available to reduce the impact of dust from the extraction equipment at a woodworking factory.

Appendix 3 - Living with your Neighbours leaflet

If you are disturbed by neighbour noise

There may be occasions when your neighbours aren't as considerate as you and are causing problems with their noisy behaviour. Here are some things you can do if you are affected.

Informal action

It's always worthwhile speaking to your neighbours in the first instance, as they may be unaware of the problem. If you're unsure where the noise is coming from, you could put a polite note on the stairwell door.

Mediation service

Mediation is a free confidential service available to all residents in Edinburgh and is a way of resolving neighbour disputes on a purely informal basis.

The Mediation Service can be contacted on 0131 624 7299 or
E-mail: info@edincm.sacro.org.uk
www.sacro.org.uk



'It's always worthwhile speaking to your neighbours in the first instance, as they may be unaware of the problem.'

Formal action

Where a more formal approach is required then you can contact the Noise Team on (0131) 529 3030 or
E-mail: asknoise@edinburgh.gov.uk

If you are being disturbed in your home by your neighbours' music, party, shouting, washing machine, DIY noise or barking dogs, we provide a 24 hour, 7 days a week response service, in partnership with Police Scotland, to take action against noisy neighbours.

Contact the Police Force Control Centre on 101 when the noise is happening. An officer will visit your property, and if the noise breaches legally permitted levels, immediate action will be taken.



HAPPY TO TRANSLATE

You can get this document on tape, in Braille, large print and various computer formats if you ask us. Please contact the Interpretation and Translation Service (ITS) on 0131 242 8181 and quote reference number 14-0079. ITS can also give you information on community language translations. You can get more copies of the document by calling 0131 529 3030.

More Information:

Noise Team
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Community Safety
Services For Communities
The City of Edinburgh Council
East Neighbourhood Centre
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EH16 4DS

Tel: 0131 529 3030 (office hours)
Tel: 0131 200 2000 (outside office hours)

E-mail: asknoise@edinburgh.gov.uk
Web: www.edinburgh.gov.uk

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Noise Team

Living with your neighbours



Living with your neighbours

Most residences in Edinburgh share a wall, floor or ceiling with other properties as, for example, tenement flats or terraces.

Although such close living has benefits, there are greater risks of noise disturbance between neighbours, and complaints of this type are very common.

This leaflet provides a few tips on how to avoid causing noise problems for your neighbours while remaining free to live normally in your home.



Amplified music and parties

If you think your music may cause disturbance to other neighbours turn it down and keep it at a reasonable level. Consider reducing the bass in particular. If you like it louder, you can always use headphones. You should position loudspeakers away from walls, ceilings and off floors, and can use speaker stands or wall brackets to reduce sound transmission through to other flats.

If you are having a party, close your windows and doors to minimise noise. We recommend you tell your neighbours if you are planning to have a party. You could put a note on the stair door or notice board, or even invite the neighbours!

DIY noise

DIY noise can, in certain situations, be classed as antisocial noise if it is carried out late at night or in the early hours of the morning. Common types of DIY noise include hammering, drilling, and using floor sanders.

It is a good idea to speak with your neighbours and discuss with them what days and times you are planning to work. If you give them sufficient notice they are less likely to complain. If you are planning to carry out DIY then you should always think about suitable times for these activities.

Hard flooring and banging doors

Laminate flooring is now very common. However, replacing carpeting with hard surfaces can result in noise problems if you have neighbours below. Under such circumstances you should put down quality underlay first.

When fitting laminate or wood flooring it is important that it does not make direct contact with the skirting board or the wall. Think about the layout of your rooms particularly if your living room is above or below your neighbour's bedroom.

Children's toys designed to be wheeled, dropped or bounced can also cause problems. Limit when and where these are used, and consider putting runners or rugs down where the toys are used. If you have young children, you may wish to give special consideration before changing to a hard floor surface, as it could significantly increase the noise heard by your neighbours. Impact noise can occur from banging doors and self-closers can be adjusted to close doors quietly.

Loud voices

Some flats have poor sound insulation and your neighbours may be able to hear you when you speak loudly or shout. Keep this in mind, especially later in the evening and at night.

Appliances

Appliances like washing machines, dish-washers and refrigerators can sometimes cause a problem if they cause noise and vibration in the wall and floor.

If your appliance is causing a problem, move it out slightly from the wall, or place a mat or carpet off-cut under it as this may help isolate the appliance and reduce noise. You shouldn't run appliances or equipment (e.g. vacuum cleaners) at night.

New appliances provide information which allows you to compare different brands and select the quieter model.

Barking dogs

We have produced a separate leaflet on noise from dog barking. Please contact us if you would like one sent to you.



Burglar alarms and smoke alarms

Intruder alarms and smoke alarms are designed to be loud in emergencies, but can also cause extreme annoyance to your neighbours if they accidentally sound when you're out. Ensure one or two trusted neighbours or nearby friends have spare keys, and other neighbours have their contact details, in case the alarm needs switched off.

Stairwell noise

Talking loudly in the common stair, banging stair doors or ringing the wrong buzzer on the intercom can be disturbing to your neighbours. Sound will echo in the stairwell, so voices should be kept low and doors not banged shut at night. Ensure your visitors know which buzzer to press, or phone you to gain access.

Fireworks

Fireworks can be distressing to some pets and larger fireworks can set off car alarms. If you do decide to let off fireworks, please give consideration to your neighbours and set them off at a reasonable time. The Police are responsible for complaints about fireworks, except some licensed events.

Garden noise

Garden equipment like lawn mowers, strimmers, and shredders can be very noisy. Bear in mind that your neighbours may want a lie-in on a weekend morning, therefore using this equipment as late in the day as possible is a good idea.