

# Housing, Homelessness and Fair Work Committee

10.00am, Tuesday, 27 February 2024

## The Noise App

Executive/routine  
Wards

Routine  
All

### 1. Recommendations

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- 1.1 It is recommended that Committee:
  - 1.1.1 Note the content of the report; and
  - 1.1.2 Agree that, based on the investigation into the efficacy of digital applications and the legal advice provided regarding their usefulness, that purchase of such applications should not be pursued at this time.

**Paul Lawrence**

Executive Director of Place

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## The Noise App

### 2. Executive Summary

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- 2.1 This report responds to the [adjusted motion](#), approved by the Council on 4 May 2023, requesting a report to the Housing, Homelessness and Fair Work Committee regarding an evaluation of the efficacy of new tools (such as digital applications including noise type Apps), and where such applications are used, an assessment of legal considerations (such as compliance with the Regulation of Investigatory Powers (Scotland) Act 2000), potential cost implications, property ownership types potentially covered, and any other relevant factors.

### 3. Background

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- 3.1 It is acknowledged that antisocial behaviour, including antisocial noise, can have a negative impact on people's lives. When neighbours disagree on what is and what is not reasonable living noise, the Council has a duty to investigate such complaints.
- 3.2 Complaints about household noise are often challenging for officers to investigate, as well as being challenging to substantiate. This could be when the noise is sporadic and intermittent, rather than constant and persistent, and so is difficult to substantiate 'there and then'. This can bring challenges when officers assess it is appropriate to act against a household where there is antisocial noise. The motion raised asks the question about whether new, digital applications may be able to assist officers in their work of investigating complaints of noise.
- 3.3 This report addresses the specific requests in the motion:
- 3.3.1 Making an evaluation of the efficacy of applications (Apps) of this type;
  - 3.3.2 Providing an assessment of legal considerations such as compliance with the Regulation of Investigatory Powers (Scotland) Act 2000;
  - 3.3.3 Providing potential cost implications;
  - 3.3.4 Explaining property ownership types potentially covered; and
  - 3.3.5 Outlining any other relevant factors.

## 4. Main report

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### **Evaluation of the efficacy of The Noise App**

- 4.1 The Antisocial Behaviour etc (Scotland) Act 2004 (The Act) defines Antisocial Behaviour as where a person acts "...in a manner that causes or is likely to cause alarm or distress; or pursues a course of conduct that causes or is likely to cause alarm or distress to at least one person not of the same household as them".
- 4.2 Complaints of household noise are reported to the Family and Household Support service (FHS). Types of noise complaints are wide ranging, including: noise from children running around or playing, noise from footfall because of non-carpeted flooring, people shouting and screaming, situations of domestic abuse, banging and thudding, doors slamming, hoovering, washing machine noise, music, and parties.
- 4.3 While seeking to work with those affected to help them resolve the situation as quickly as possible, addressing the underlying cause of behaviour is more likely to resolve the situation for the longer-term.
- 4.4 FHS respond to complaints of household antisocial noise taking restorative approaches including offering Mediation and taking into consideration all aspects of the household circumstances.
- 4.5 In the first instance, a FHS officer will assess if Mediation might be an option for trying to resolve the situation. Where Mediation is unsuitable or refused by the interested parties, the officer assesses whether there is evidence of the noise, whether the noise could be considered as antisocial, and if it is, what other steps could be taken to try and resolve the matter.
- 4.6 These steps could include a range of considerations including working with the household being complained about to help change the behaviour or cause of the noise; consideration of enforcement action; or, undertaking further investigation to consider surveillance such as professional witnesses attending to listen to the noise. These interventions would not be enhanced by the use of digital applications.
- 4.7 For Council tenants, enforcement options are usually incremental and normally include issuing a formal Warning for breach of tenancy agreement. For serious and persistent antisocial behaviour, the Council solicitor would be instructed to apply under The Act for legal Orders (which could be an Antisocial Behaviour Order (ASBO) or eviction). Eviction is ultimately a possibility for Council tenants however, eviction action for antisocial behaviour requires a very high level of evidence, takes a long time and is costly to achieve.

### **Are there benefits to using digital applications?**

- 4.8 Digital applications may offer some benefits to some residents complaining of antisocial behaviour, however, these benefits do not outweigh the limitations and challenges of using such applications (see 'Challenges and Limitations' below) in investigating antisocial behaviour.
- 4.9 Digital applications may allow residents who have access to a smartphone or other digital device to report their complaint, send in recordings of noise, and keep a

digital diary of their experience which can be shared with the FHS officer electronically.

### **Challenges and Limitations**

- 4.10 Digital applications rely on the resident having a compatible smartphone to download an App and access it. This may not always be the case. Furthermore, the quality of the sound recording is dependent on the quality of microphone on the smartphone. Digital applications available to the public record all noise including any background noise, and do not measure actual noise levels.
- 4.11 To assist in investigations, FHS officers need to know the exact location (tenancy) source of the noise. Research for this report suggests that while an App can verify the general location of the device, they are unable to pin-point the exact flat in a property block.
- 4.12 This means that while the officer will know that a recording has been taken within a block of flats, they will be unable to verify that the recording was made in a specific flat (for example the complainer's home). They will also be unable to verify where exactly the noise is coming from (for example the alleged perpetrator's home). As such, the FHS officer is relying on the testimony of the complainer.
- 4.13 To identify whether the legislation has been breached, officers need to be able to verify the location of the recording, the noise levels available from the recording and the locations the noise recorded is coming from. None of the digital applications available to download offer this facility.
- 4.14 These limitations mean that (i) any recordings made using a digital application will be of very limited evidential value in any court proceedings, and (ii) the investigating officer will continue to rely on current methods of responding to complaints as described above. The investigating officer therefore must continue to make a professional judgement on whether the noise is antisocial or could be considered daily living noise regardless of the use of digital applications.
- 4.15 Accordingly, while a digital application may be another route for residents to notify the Council of a noise issue, officers will still be required to respond as they currently do. Introducing a digital device like an App may also give rise to significant numbers of complaints, which would impact on current resourcing.

### **Legal Considerations**

- 4.16 The Regulation of Investigatory Powers (Scotland) Act 2000 deals with matters of covert surveillance, intrusive and directed surveillance and the conduct of covert human intelligence sources. As such, the use of digital applications where any means of recording takes place (including photographs and sound recordings) must be compliant with the Regulation of Investigatory Powers (Scotland) Act 2000.
- 4.17 In summary, the advice is that if sound recordings allow (i) the content of conversations to be understood, or (ii) (if the monitoring is over an extended period) allows officers to discern a pattern of private/family life within the target premises, then the Regulation of Investigatory Powers (Scotland) Act 2000 authorisation is

recommended to be sought. The threshold for obtaining authorisation is high, reflecting that the use of surveillance should normally be a last resort.

- 4.18 The detailed legal opinion of the Council's Legal services is available to Committee Members on request.
- 4.19 It will be challenging for officers to be able to decide beforehand if a recording will pick up on the content of conversations. As such, this would be considered a further limitation to the use of digital applications given the duties that the Regulation of Investigatory Powers (Scotland) Act 2000 imposes on public authorities.

### **Property types covered by Digital Applications**

- 4.21 If a digital application was made available, in line with the agreed Procedure for Investigating Antisocial Behaviour Complaints, existing property types the Council currently investigates are:
- Council tenancies;
  - Homeowner Occupiers;
  - Some Private Rented Accommodation (excludes Short-term Lets); and
  - Some Temporary Accommodation tenancies (excludes PSL accommodation).
- 4.22 Other Register Social Landlords (Housing Associations) investigate their own complaints of antisocial behaviour. Digital applications would not be offered by the Council to other Registered Social Landlord tenants.

## **5. Next Steps**

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- 5.1 No further action will be taken should members agree the recommendations contained in this report.

## **6. Financial impact**

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- 6.1 An indicative cost for the purchase of a licence to use digital applications would be in the region of £17,000 + VAT.

## **7. Equality and Poverty Impact**

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- 7.1 There are no direct impacts from this report.

## **8. Climate and Nature Emergency Implications**

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- 8.1 There are no direct implications from this report.

## **9. Risk, policy, compliance, governance and community impact**

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9.1 The policy and compliance impacts are detailed in the main report section of this report.

## **10. Background reading/external references**

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10.1 None.

## **11. Appendices**

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None.