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.
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 CB6 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
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 sound 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, created in conjunction with MVT: [http://www.eventbrite.co.uk/blog/how-independent-music-venues-can-protect-themselves-against-anti-noise-legislation/](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/) 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


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:

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)
Environmental Protection Act 1990, Chapter 43
Measuring Music, UK Music (2014)
Night-Time Economy in the UK, NightMix News (2010)
The Mastering of a Music City, Music Canada (2015)
Understanding Small Music Venues, Music Venue Trust (2014)

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Cllr Norma Austin Hart, Chair MIA Working Group and Vice-Convener, Culture & Sport
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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)
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

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.

More Information:
Noise Team
Community Protection
Community Safety
Services For Communities
The City of Edinburgh Council
East Neighbourhood Centre
101 Niddrie Mains Road
Edinburgh
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
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 classified 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 hard floor surfaces, 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.

### Amplified music and parties

Amplified music and parties can 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.

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### 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.