

**EREWASH BOROUGH COUNCIL**

**NUISANCE COMPLAINTS**

**INVESTIGATION POLICY**

**Final:** March 2021

**Review Date:** March 2024

**Owner:** Elizabeth Street. Environmental Health Manager

# **INTRODUCTION**

1.1 A nuisance from noise, smoke, fumes, dust, smell, artificial light or accumulation of waste may result from the way an occupier uses a premises. Only when this is unreasonable due to frequency or duration and interferes with the use and enjoyment of your property is it a ‘statutory nuisance’ and the Council has powers to action.

1.2 As a nuisance can only be a statutory nuisance when it affects a person in their home. This means we can only take action if the person being affected provides their details and is prepared to give evidence in court if needed. Initial investigations will ensure confidentially and may resolve the issue.

1.3 This policy explains:-

* The law that applies.
* How we investigate a complaint.
* How we decide if the nuisance complained of is a statutory nuisance or not and what action we can take.

# **2. LAWS AND STANDARDS**

2.1 The law relating to statutory nuisance is contained in the Environmental Protection Act 1990 (EP Act). This Act gives the Council powers to deal with statutory nuisance from:

a) Noise emitted from premises or caused by a vehicle, machinery or equipment in a street that is prejudicial to health or a nuisance.

b) Premises in such a state as to be prejudicial to health or a nuisance.

c) Smoke or fumes from domestic or industrial premises; garden fires or chimneys

d) Dust, steam, smell or other effluvia emitted from industrial trade or business premises, but not a domestic premises.

e) Artificial light.

f) Accumulations or deposits such as domestic refuse, dog faeces etc.\*

\*Note accumulations or deposits may be dealt with differently as the health effects may be more apparent and could require a more immediate action.

2.2 Past decisions by the court and common law have resulted in a ‘nuisance’ being described as an act which causes:-

*Unreasonable disturbance to the use and enjoyment of one’s property*

The need to demonstrate disturbance to the ‘enjoyment of one’s property’ means we cannot action anonymous complaints and why a person must be affected in their property.

2.3 This definition is relevant as this means that a statutory nuisance needs to pose a threat to health or to have a significant effect on another person at their premises and must be more than just an annoyance or irritation. A statutory nuisance needs to occur for some length of time, or with some frequency. "One-off" occurrences are much less likely to be a statutory nuisance. The judgement as to whether a statutory nuisance exists must have regard to what most people consider to be reasonable. This also means it any individuals sensitivity or health issues cannot be taken not account.

2.4 Statutory nuisance is not defined in terms of set levels. Officers use their professional judgement to determine whether the noise is causing unreasonable disturbance to the use and enjoyment of property. When a nuisance is caused by a trade or business an additional factor is that they may have ‘a best practicable means defence’.

2.5 If the council is to act on a complainant's behalf, it is the investigating officer, not the complainant, who decides whether a nuisance may be considered a statutory nuisance.  The officer must decide if, on the basis of their experience and knowledge, a 'reasonable person' would find the nuisance unacceptable.

2.6 Where complaints are about premises licensed under The Licensing Act 2003, i.e. public houses, the Council’s Licensing Team will be notified as in some circumstances the complaint of noise may also indicate a breach of licensing conditions.

# **3. REQUIRED INFORMATION**

3.1 For the council to take any action the complainant i.e. the person affected must:-

* provide us with their name and address;
* be prepared to go to court if needed; and,
* provide a specific address of where the nuisance is coming from.

Section 2 provides details on why this information is needed. However during the initial stages of the investigation complainant details are kept confidential.

3.2 Once a complaint is received the complainant is sent a diary to complete for between one and two weeks depending on the severity and the frequency of the issues being experienced. Historic entries can be included in the diary, providing that the complainant can vouch for their accuracy.

This diary is in the form of a witness statement. Complainants must be aware that they are making a witness statement, which could ultimately be used in court proceedings. Knowingly giving false information could be a criminal offence.

3.3 A diary is necessary for the following reasons:-

* It provides a more accurate picture of when the nuisance occurs;
* The information in the diary can be used to allow an officer to programme site visits with a reasonable expectation of witnessing the nuisance;
* It is a demonstration of the complainant’s commitment and honesty; and,
* A diary provides good historical evidence if we have to go to court.

# **4. COMPLAINTS WE ARE UNABLE TO ACTION**

4.1 For the Council to take action the nuisance has to be significant enough for the officer to consider that it can be classed as a ‘statutory nuisance’. See Section 2 for more information. The following are some examples of situations which are **NOT** a ‘statutory nuisance’ and the Council is unable to investigate or take action.

* The issue is an annoyance rather than being a statutory nuisance.
* Reasonable activity or behaviour such as cooking or smoking odours from a domestic property.
* Poor insulation allows noise from reasonable normal activity to be heard.
* An individual person is more sensitive or less tolerant to the problem or has a health condition that is affected by the subject of the complaint for example smoke from a garden fire.
* Music is from a one off party or similar intermittent activity*.*
* Noise from traffic on the highway.
* Noise created early in the morning when a person drives away from his home. Assuming that the person’s behaviour is reasonable, i.e. no shouting etc.

NB: if the car is excessively noisy, this may be an issue for the police.

* Noise from construction work which is being undertaken at reasonable times

NB: there are provisions to allow unsocial hours working where it is not practical to carry out works during normal hours such works on railway lines and major roads.

* An occasional fire or fires lit by different neighbours, each burning occasionally. There is no specific law to restrict garden fires at certain times or days or prohibit them altogether. However, there may be occasions when the lighting is unreasonable and so may be a statutory nuisance.

4.2 Erewash Premises affecting a resident living outside the Borough

The principle of statutory nuisance is that it has to affect a person’s enjoyment of their property.  On this basis, residents that live in a neighbouring local authority but are affected by a premises within Erewash Borough must make the complaint to their own local authority to investigate.

4.3 A Permit issued to an Industrial Process

Compliance with the permit conditions issued under Environmental Permitting Regulations should mean no nuisance is caused. As such the EP Act 90 is not the most appropriate legislation if permit conditions exist that cover emissions to air, water, ground, waste streams and noise. The Environment Agency are responsible for issuing A1 permits which cover the more significant industrial process and they would be as the most appropriate regulator. Complainants will be requested to contact the Environment Agency directly if they have concerns regarding an A1 permitted premises.

# **5. THE INVESTIGATION PROCESS**

5.1 The speed and nature of our response will depend on the circumstances of the case. As a general rule we will follow the procedures below but will modify our approach should the situation demand it. See appendix 1 for an overview of nuisance investigation process

5.2 Once a completed diary is returned an officer will make an assessment of the severity of the problem by reviewing the diary submitted by the complainant.

5.3 If the officer decides, based on the evidence available, there may be a statutory nuisance, a letter is sent to the alleged offender for their views. In the many cases, this initial letter may resolve the issue.

5.4 If the problem recurs or the alleged offender refutes the allegations, the officer will arrange to make monitoring visits to your home or in the case of noise arrange for noise recordings to be taken. Prior to undertaking monitoring, the Council is obliged to contact the alleged offender to make them aware that monitoring is to be undertaken.

5.5 For a noise complaint in some cases we may need to install recording equipment. If this is the case:-

* Noise monitoring equipment is typically left in the property for a week, during which time the complainant activates the equipment when the noise occurs.
* We ask that a log is kept of when the equipment has been triggered. This log is also in the form of a witness statement that can be submitted as evidence in court.
* On completion of the monitoring period the recordings are reviewed by the investigating officer.

5.6 The investigating officer will review all the evidence available such as

* Diaries, officer visits (normally a maximum of 3 officer visits will be undertaken).
* Third party evidence i.e. statements from Police or other independent witnesses.
* Noise recordings (if relevant).

5.7 If the nuisance is **not** considered a statutory nuisance, no formal action can be taken See Section 7 for more information.

# **6. ACTION FOR A STATUTORY NUISANCE**

6.1 If a statutory nuisance is determined, an abatement notice is served unless we can get cooperation from the offender.

6.2 If the offender is uncooperative we would serve a statutory nuisance abatement notice on the person or persons responsible for the nuisance or if they cannot be identified, on the owner of the premises.

6.3 The notice will state the nature of the issue causing the statutory nuisance, what the offender needs to do to stop (abate) and how quickly they need to stop. There is a right of appeal against the notice and in some cases, the requirements of the notice will be suspended if an appeal is made.

6.4 The notice can also extend to future events, which in the opinion of the council, are likely to cause a statutory nuisance. In these circumstances, the council is empowered to serve an abatement notice imposing all or any of the following requirements:-

i) The prohibition or restriction of the nuisance; and

ii) the execution of such works and the taking of such other steps as may be necessary for any of these purposes.

Events which generate noise are most likely to trigger this type of action such as pop concerts, large celebratory events, weddings etc., and temporary events on licensed premises.

6.5 If a statutory noise nuisance is caused by an intruder alarm sounding and a key holder cannot be contacted to stop the alarm. The council has the power to request a warrant from a Magistrate to enter the premises and turn off the alarm. The cost of silencing an alarm is recovered from the person responsible and/or the owner of the premises.

6.6 If the offender does not comply with the notice council officers will need to witness any breaches of the notice before any formal action is considered. If we can obtain evidence that the notice requirements are not being complied with we can prosecute. If the court agree with the Council and convicts the person or persons responsible, they can impose a fine of up to £5,000 (£20,000 for industrial/commercial premises).

**Please note** that no compensation is payable to the persons who have been affected by the nuisance.

6.7 In the case of noise, if there is a delay in bringing the case to court and the breach of the notice is continuing, we may consider seizing the equipment causing the noise (typically sound systems etc). Such action is only considered in extreme cases.

# **7. STATUTORY NUISANCE IS NOT DETERMINED**

7. 1 If the nuisance is **not** considered a statutory nuisance, no formal action can be taken and you will informed in writing. In appropriate circumstances, we may offer advice on how the impact of the nuisance may be reduced or may be able to refer your complaint to other sections of the Council, e.g. Licensing Team or external agency.

7.2 If you disagree with the officer’s decision you should, in the first instance, discuss the issue with the officer concerned. If you wish to make a complaint you can register your concerns through your ‘My Erewash’ account or contact the council’s Performance and Community Manager by emailing [enquiries@erewash.gov.uk](mailto:enquiries@erewash.gov.uk) or in writing to Erewash Borough Council, Wharncliffe Road, Ilkeston, Derbyshire, DE7 5RP.

More details on our procedure can be found on our [complaints page](http://www.erewash.gov.uk/complaints)

7.3 An individual who is suffering the effects of a nuisance may take their own action under Section 82 of the Environmental Protection Act 1990 and forms to undertake this can be provided. As with any potential legal action, you should consider very carefully before embarking on this course of action and you are strongly advised to seek independent legal advice.

# **8. RESOLUTION OF A COMPLAINT**

8.1 A complaint is resolved when the one of the following outcomes has been achieved:

* The complainant withdraws their complaint.
* The complainant fails to return a completed diary.
* A sufficient number of monitoring visits made at appropriate times have failed to witness the nuisance.
* The complaint does not provide sufficient additional information to progress the investigation either on request within a relevant / agreed timescale and/ or if appropriate following a reminder letter requesting the information.
* An officer has witnessed the nuisance complained of and/or reviewed any additional evidence such as recordings on monitoring equipment and has concluded that the nuisance does not constitute a statutory nuisance.
* Informal or formal action has been taken and no complaints have been received within 28 days from the date of notifying the complainant in writing of the action taken by the Environmental Protection Team or the expiry date specified in any statutory notice served.
* The complainant has been informed that:

(i) The nuisance complained of does not fall within the Councils’ jurisdiction, i.e. noise from aircraft or from premises licensed by the Environment Agency.

(ii) Action is better undertaken by another agency.

In such cases the complainant will be given details of the appropriate agency to contact.

8.2 Re-investigation of resolved cases will not be undertaken following the closure of the original case unless circumstances have changed significantly and the complainant has evidence to justify re-investigation.

# **9. CONTACT INFORMATION**

Complaints may be submitted via:-

* email [environmentalhealth@erewash.gov.uk](mailto:environmentalhealth@erewash.gov.uk)
* by telephone on 0115 9072244 ext 3820, or
* by letter to:- Erewash Borough Council

Environmental Health

Merlin House, Merlin Way, Ilkeston. DE7 4RA.

Complainants should include:-

* their full details (name, address, telephone contact number, email address);
* the nature of their complaint; and
* provide a specific address of where the nuisance is coming from.

**Please note:- for nuisance complaints the council cannot take anonymous complaints**

**Appendix 1. Overview of Nuisance Investigation Process**

Complaint of alleged statutory nuisance received

**Completed diary returned**

Assessed by Environmental Protection Officer

Is there sufficient information and/or evidence to justify further investigation or possible statutory nuisance?

Advice and witness statement diary sent to complainant

**NO**

Complainant advised and other options for resolution explored where possible

**YES** - letter advising

* Alleged offender of complaint / possible monitoring
* Complainant to contact officer if no improvement

Further complaint

Letter to alleged offender advising monitoring maybe undertaken

**No diary returned**

No further action

Results of monitoring visits or review of noise recordings

**Statutory nuisance confirmed**

No statutory nuisance - no further action possible. Complainant notified

Contact with alleged offender Statutory abatement notice served if not resolve by informal approach

Complainant to keep diary of further incidents / officer monitoring for compliance

**NO** - no further action

**YES** - Notice conditions breached

Discussions with alleged offender

Consider prosecution / Seizure of equipment

**Statutory nuisance continues**