



EREWASH BOROUGH COUNCIL

POLICY ON NOISE COMPLAINTS

Final: October 2017
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Owner: Elizabeth Street. Environmental Health Manager

1. INTRODUCTION

- 1.1 Noise is often described as unwanted sound. Complaints of noise represent over 30% of the service requests dealt with by the Environmental Protection Team.
- 1.2 Actions of the Environmental Protection Team concern 'statutory' noise nuisance which need to affect a person while in their home. Because of this our action is limited if the person being affected does not wish to provide their details or give evidence in court if needed. Initial investigations will ensure confidentiality and may resolve the issue.
- 1.3 This policy explains:-
- The law which applies how we decide whether the noise complained of is, or is not, a statutory nuisance.
 - How we go about investigating a complaint about noise.

2. LAWS AND STANDARDS

- 2.1 Erewash Borough Council has a statutory duty to carry out a reasonable investigation into allegations of statutory noise nuisance.
- 2.2 The law relating to statutory noise nuisance is contained in the Environmental Protection Act 1990 (EP Act). There are lots of other pieces of legislation relating to noise but these do not relate to statutory nuisance.
- 2.3 A statutory noise nuisance is defined in the EP Act as:
- i) Noise emitted from premises so as to be prejudicial to health or a nuisance; or
 - ii) Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.
- 2.4 In common law 'nuisance' can be 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.
- 2.5 A statutory nuisance needs to pose a threat to health or to have a significant effect on another person at their premises. It must therefore be more than just an annoyance or irritation.
- 2.6 A statutory nuisance needs to occur for some length of time, or with some frequency. "One-off" occurrences are much less likely to be regarded as statutory nuisances. The judgement as to whether a statutory nuisance exists must have regard to what most people consider to be reasonable.
- 2.7 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. Where the noise is caused by a trade or business, the possibility of the alleged offender involving a best practicable means defence must also be considered.

3. COUNCIL POWERS

- 3.1 If we establish that a statutory nuisance does exist, we have to serve a notice, though we can attempt to resolve the issue informally first.
- 3.2 These powers 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 may trigger this type of action includes pop concerts, large celebratory events, weddings etc., and temporary events on licensed premises.

- 3.3 If the noise continues after a notice is served than the person making the noise may be prosecuted for breaching the notice.
- 3.4 If a 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 can then be recovered from the person responsible and/or the owner of the premises.

4. COMPLAINANT INFORMATION

- 4.1 For the council to take any action the complainant (i.e. the person suffering from the noise) must:-
- provide us with their name and address;
 - be prepared to go to court if needed; and,
 - provide a specific address of where the noise 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.

- 4.2 Once a complaint has been made a letter is sent to the complainant that contains a noise diary (log sheets).

This diary may be used as a witness statement if needed. Complainants must be aware that they are making a witness statement, which ultimately could be used in court proceedings. Knowingly giving false information could be a criminal offence.

- 4.3 A noise diary is useful for the following reasons:-
- It provides a more accurate picture of when noise occurs;
 - The information in the diary can be used to allow an officer to programme site visits with a reasonable expectation of hearing the noise in question;
 - It is a demonstration of the complainant's commitment and honesty; and,
 - A noise diary provides good historical evidence if we have to go to court.

5. TYPES OF COMPLAINT

5.1 Resident complaining about another house

The complainant will be sent a noise diary (log sheets) which they will be asked to keep for between one and two weeks depending on the severity and the frequency of the noise being experienced. Complainants may put historic entries on the diary, providing that they can vouch for their accuracy.

5.2 Resident complaining about noise from commercial or industrial premises

Examples of this situation would include noise from pubs, air conditioning units at offices, refrigeration motors at supermarkets or machinery noise from factories. Complaints of this nature are dealt with in a similar way to complaints about noise from domestic premises.

It can be the case that the occurrence of the noise is more frequent, it may be continuous or easily predicted, i.e. a regular karaoke session at a public house. In these situations officers may commence their investigation and may make monitoring visits before a completed diary is returned.

Where complaints are about premises licensed under The Licensing Act 2003, i.e. public houses, night clubs etc., the Environmental Protection Team notify the Licensing Team as in some circumstances the complaint of noise may also indicate a breach of licensing conditions.

5.3 Some common misconceptions regarding noise

Complying with health and safety legislation is enough

- this is not the case and a statutory nuisance may still exist

Noise cannot be a nuisance during the day

- It is not true that loud music can be played all day as long as the volume is turned down in the evening.
- Although night time noise is more likely to be a nuisance due to the likelihood of sleep disturbance and lower background noise levels, day time noise can still be classed as a nuisance in appropriate circumstances.

5.4 Noise that the council cannot action

For the council to take action the noise has to be classed as a 'statutory nuisance'. See Section 2 for more information. The following are some examples of situations which, though they may be irritating, are NOT a 'statutory nuisance'.

- Music from a neighbouring property for 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 which can be dealt with by 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. The most common examples of this are works on railway lines and major roads. In these circumstances the contractors are required to ensure that disturbance is reduced to a minimum.

6. THE INVESTIGATION PROCESS

- 6.1 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.
- 6.2 Once a completed noise diary is returned in the majority of cases an officer will make an assessment of the severity of the problem by reviewing the noise diary submitted by the complainant.
- 6.3 If the officer decides, based on the evidence available, that the issue may be a statutory nuisance, a letter is sent to the alleged offender and asks for their views. In the majority of cases this initial letter tends to resolve the issue.
- 6.4 If the problem recurs or the alleged offender refutes the allegations, the officer will arrange to make monitoring visits to your home or install electronic monitoring equipment. Prior to undertaking monitoring, the Council is obliged to contact the alleged offender to make them aware that monitoring is to be undertaken.
- 6.5 Noise monitoring equipment is typically left in the property for a period of 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.
- 6.6 On completion of the monitoring the equipment is brought back to the office and the recordings reviewed by the investigating officer.
- 6.7 The investigating officer will then review all the evidence available – noise diaries, officer visits (normally a maximum of 3 officer visits will be undertaken), third party evidence (i.e. statements from police officers or other independent witnesses) and the noise recordings (if appropriate).
- 6.8 If the noise is not considered to be a statutory nuisance, no formal action can be taken, though in appropriate circumstances, we may offer advice on how the impact of the noise may be reduced (See Section 9).

7. ACTION WHEN STATUTORY NUISANCE IS IDENTIFIED

- 7.1 If it is determined that the noise is a statutory nuisance, an abatement notice will be served unless we can get co-operation from the offender.
- 7.2 If the offender is uncooperative we would serve a statutory nuisance noise abatement notice on the person or persons responsible for the nuisance or if they cannot be identified, on the owner of the premises.
- 7.3 The notice will state the nature of the noise causing the nuisance, what the offender needs to do to abate (stop) the nuisance and how quickly they need to do it. Persons or organisations who receive a notice have a right of appeal. In some cases the requirements of the notice will be suspended if an appeal is made.
- 7.4 If the offender does not comply with the notice council officers would need to witness any breaches of the notice before we could consider taking any formal action. 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.

- 7.5 If there will be a delay in bringing the case to court and the breach of the notice is continuing, we can consider seizing the equipment causing the noise (typically sound systems etc). Such action will only be considered in extreme cases.

8. RESOLUTION OF COMPLAINTS OF ALLEGED NOISE NUISANCE

- 8.1 A complaint will be deemed to have been resolved when the one of the following outcomes has been achieved:

- The complainant withdraws their complaint.
- The complainant fails to return a completed noise diary.
- A sufficient number of monitoring visits made at appropriate times have failed to witness the noise.
- 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 noise complained of or reviewed noise recorded by the complainant on monitoring equipment and has concluded that the noise 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 noise complained of does not fall within the Directorate's jurisdiction, (i.e. noise from aircraft or from premises licensed by the Environment Agency). In such cases full details of the complaint will be forwarded to the appropriate agency for attention and the complainant will be notified accordingly.
 - (ii) Some action is required but it is better undertaken by another agency or Directorate. In such cases details of the complaint will be forwarded to the appropriate agency or Directorate and procedures put in place to monitor the outcomes. The complainant will be notified accordingly.

- 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 can produce proof of this.

9. COMPLAINANT ACTION IF A STATUTORY NUISANCE IS NOT IDENTIFIED

- 9.1 On completion of the investigation the Council officer dealing with your complaint will write to you confirming their findings. If they consider that the issue does not constitute a statutory nuisance they will inform you accordingly. In some cases they may refer your complaint to other sections of the Council, e.g. Development Control or the Licensing Section if they believe they may have an interest or in some cases may make referrals to external agencies such as The Environment Agency.
- 9.2 If you disagree with the officer's decision you should, in the first instance, discuss the issue with the officer concerned. If you still feel aggrieved you should write to the Environmental Health Manager stating your grievance. A case review will be undertaken and a response given within 15 working days.
- 9.3 An individual who is suffering the effects of a noise nuisance may take their own action under Section 82 of the Environmental Protection Act 1990. The Environmental Protection Team can supply you with copies of the forms you will need to undertake this. 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.

10. CONTACT INFORMATION

Complaints may be submitted via:-

- email 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 (amplified music, dog barking etc.); and
- the address where the noise originates from.

Please note:- for noise complaints the council cannot take anonymous complaints.

**Flow chart of noise investigation process
From initial receipt of complaint to resolution**

