Noise Nuisance Information

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Surrey Heath Borough Council’s Environmental Pollution Team receives around 800 complaints every year relating to noise. Unwanted noise can cause both stress and sleep disturbance. The most common noise complaints relate to:

- The playing of loud music/TV
- Antisocial behaviour
- Barking dogs
- Intruder alarms
- DIY

However, a sound being audible in your home does not automatically make it a statutory nuisance and it should not be assumed that it can be resolved by council intervention. The Environmental Pollution Team has a staged approach in dealing with noise complaints and determining if the noise is a statutory nuisance. An officer will not normally go out to witness a noise problem on your initial call to the Council, other more informal action is taken first. However, before the Council takes any kind of action we advise you to consider resolving this problem informally. For instance, with barking dogs the owner may be out of the house and not aware that their dog is causing a problem. A neighbour may be upset if Council or legal action is used before a direct approach has been made to them. It is very important that people do their best to resolve any problem in a friendly way. Let your neighbour know of the problem and the way the noise is affecting you in the first instance.

**What is a Statutory Noise Nuisance?**

A statutory noise nuisance is determined under the provisions of the Environmental Protection Act 1990. The legal definition of what constitutes a statutory nuisance is complex and based on many years of case law.

We need to consider the following key factors when investigating a noise nuisance:

- There must be a material interference with the enjoyment and use of the complainant’s property. The noise must therefore be considerable.
- The noise must substantially affect the enjoyment of comfortable living, such as loss of sleep, interfering with conversation or watching television. However there would have to be consideration of the time the noise occurs, the intensity of the noise, its character and its duration.
- Isolated acts, unless extreme, would not be considered to be a nuisance, for example ‘one-off’ parties. The problem must normally be continuous or frequent.
- Neighbour disputes, harassing or repetitious (vexatious) complaints will not be investigated.
• Any assessment of whether a particular problem amounts to a statutory nuisance is made from the perspective of an ordinary reasonable person. This means that the council must exclude any personal circumstances or sensitivities of the complainant from our considerations when assessing nuisance.

• Factors such as unusual shift patterns, medical conditions or other sensitivities of the complainant cannot be taken into account when we decide whether a particular problem is causing a statutory nuisance.

It is a person’s basic right to use and enjoy their property. However, there is no right to tranquillity or silence.

The following list outlines some of the common complaints we receive, but cannot deal with under the provisions of the Environmental Protection Act 1990.

• Household noise, for example, talking, slamming doors, walking/running up and down stairs, children playing, flushing toilets and noise between flats where laminated floors have been installed.

• Anonymous Complaints

• Noisy Behaviour in Streets

• Noisy Children or playing in street or gardens

• People singing/shouting/screaming

• Normal use of appliances such as washing machines, hoovers, dishwashers

• Occasional or one off noise

• Aircraft Noise

• Road/Traffic Noise

• Railway Noise/track repairs

• Helicopter Noise

• DIY noise at reasonable hours of the day

• Firework noise

• Noise due to poor insulation between older properties (pre 1984)

• Where noise is part of a larger conflict between neighbours who generally don’t get on.

• If the complainant is ill or more sensitive than the average person

• Military noise on army land-guns, tanks, helicopters, exercises

• Complaints from night shift workers about normal day noise

• Noisy vehicles/motorbikes

• Buskers and street entertainers

• Police or emergency services operations

• Noise from road works

• Car or lorry/van noise in the street, parking areas.

• Noise from animals in the wild.
If your complaint is in relation to anti-social behaviour, harassment, alarm, threatening behaviour, verbal abuse or distress to one or more persons not of the same household, the authority has an anti-social behaviour officer and they may be contacted on 01276 707100.

**Stages in investigating a noise complaint**

When a person first contacts Surrey Heath Borough Council with a domestic noise complaint, the complainant’s details and the nature of the complaint are taken by our Contact Centre Staff and recorded on our computer database.

If you want to make a complaint you cannot remain anonymous because in order to determine if the noise is a nuisance we have to know who the noise is affecting and how it is affecting them. We will, of course, keep your details confidential in the initial stages of the investigation. However, you do need to be aware that if the process went all the way through to court proceedings then you would be required to give evidence. However taking a prosecution and going to court does not occur often and we would hope that the problem was resolved without things becoming that serious.

**Information and evidence gathering**

**Diary Sheet**

The first action in this stage is to send a diary sheet to the complainant requesting that details of the alleged noise occurrence(s) is/are recorded. We would request that you complete the nuisance log over a 21 day period, however, if you do not feel this time period is representative of the noise experienced then we would advise that you contact the investigating officer for further advice.

**Notification of complaint**

A letter will be sent to the person(s) complained of, advising them that a complaint has been received and asking them to take any necessary steps to prevent the noise nuisance (and/or to contact the investigating officer for advice and information). Hopefully this letter will make the person aware that their noise is having an affect on someone else and the problem will be solved. The letter will also advise that officers may monitor the
noise as part of their investigation. The complainant’s identity and the dates of any noise monitoring that will take place will not be discussed with the person or persons being complained about at this stage.

**Receipt of log**

Upon receipt of the completed nuisance log, we may consider a monitoring programme based on the information provided. Where possible, an officer may undertake programmed visits to the area for the purpose of substantiating your complaint. Alternatively, it may be necessary to install noise recording equipment within your premises. However upon receipt of your completed diary an officer may advise you by letter that the evidence provided is not likely to be a statutory noise nuisance. The case will be closed unless you advise us in the future that the noise has become significantly worse.

If a noise diary is not returned without a reasonable explanation within 21 days the complaint will be closed.

**Recording equipment**

There is usually a waiting list for the allocation of recording equipment, and officers will prioritise within the resources available, based on the evidence already collected. Officers will install noise recording equipment at the noise sensitive property as quickly as possible.

When available, the noise recording equipment will be left at the complainant’s property, for a period of up to 7 days, or as seen appropriate by the investigating officer. It is important to note that equipment is normally located inside a dwelling in a habitable room such as a main bedroom or living room. The complainant’s co-operation will be required to trigger the recording equipment as and when the noise nuisance is occurring. This will involve pressing a button when the noise nuisance occurs. Officers will issue advice and guidance when the equipment is installed. It is also important that any advice or instruction given by the officer is adhered to so that any evidence collected is not jeopardised or corrupted. Please be aware that if the evidence is used by the authority in any formal action then we would require a witness statement from the person operating the equipment to authenticate the evidence.

**Visits**

Officers will usually undertake a maximum of four visits to substantiate your complaint. If after the four visits no noise nuisance has been established, the officer will close the case.
Assessment of evidence

Upon the return of the equipment the collected data will be analysed to assess whether a statutory nuisance has occurred. On completion of the assessment, the complainant will be advised of the results, and the way forward. The time involved in this stage of the investigation can vary, depending on the complexity of the complaint. It is necessary on occasions to analyse a significant amount of data, both audio and statistical, especially in the more complex cases.

Enforcement

We will assess the evidence collected and decide if a nuisance is occurring or not. In many cases the evidence is insufficient, and the investigation of the complaint is ended.

If at any stage you are not happy with the council’s findings, you can take your own action under Section 82 of the Environmental Protection Act 1990.

In cases where the council is satisfied that a nuisance is occurring then a Noise Abatement Notice(s) can be served. A reasonable time will be given to comply with the terms of the notice. Failure to comply with a Noise Abatement Notice(s) is a criminal offence. Once a Noise Abatement Notice has been served the subject has 21 days of appeal and can appeal the terms of the Notice at

the magistrate’s court. However in most cases this does not remove the necessity to comply with the Notice through the appeal period.

When there is reason to believe that a Noise Abatement Notice has not been complied with the council will undertake further monitoring and investigations and will then make a decision on how to proceed. This could result in seizure of a particular items and/or prosecution in the magistrate’s court. If the person on whom the Notice is served appeals, then the magistrates court again determines the outcome. Court proceedings can introduce delays which can be significant, for example up to 12 months.

In order to achieve a successful appeal/prosecution, complainants will almost certainly have to give evidence in court, in support of any evidence collected by the council.

Taking your own action

Under the Environmental Protection Act 1990 you may take private action against noisy neighbours.

You need to complain direct to the Magistrate’s Court and you must give three clear days written notice, to the persons who you allege are causing you nuisance, of your intention to go before the Magistrate. This is required by law.
You will need to convince the Magistrate that the noise you are complaining of is a statutory noise nuisance. In this regard you should refer to the noise records you have kept, the attempts you have made to deal with the noise nuisance, include any direct attempts you have made with the occupiers of the property concerned, as well as any contacts with this office or the police.

If the Magistrate decided there is a case to answer a summons will be served on the person responsible for the noise giving the date and time the person must attend Court when the case is heard. The Magistrate will advise you as to what happens next.

You do not have to employ a solicitor to take action under the Environmental Protection Act. There are, however, a number of rules to be followed. Solicitors are trained in applying these rules and if you are not represented you may have difficulties in getting all your evidence heard.

If you use a solicitor you will have to pay their fees. However, if you successfully prove your case, you can ask the court to order the defendant to pay your costs in bringing these proceedings. It may be better for you to take a civil case to apply for an injunction or for damages, and a solicitor will be able to advise you on the best course of action and your chances of success.

Remember, if you bring a case before the Magistrates and fail to prove it, you may be required to pay the costs incurred by the court, the defence solicitors and the costs of any witnesses summoned to appear as well as your own costs.

If you require further clarification on anything covered in these pages, please contact Deborah Courtney on 01276 707100 who will be happy to advise you further.