



Protocol for dealing with noise

DOCUMENT INFORMATION

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1.0 PURPOSE

- 1.1 This guidance sets out the Council's approach to dealing with noise complaints and the appropriate use of relevant legislation.
- 1.2 The aims of the guidance are to set out;
- our approach to preventing unreasonable noise occurring.
 - how we will deal with situations that occur.
 - how we will work with internal and external partners to tackle noise.

2.0 INTRODUCTION

- 2.1 The Council is committed to protect and improve the health of people living and working within the Borough. One major environmental concern is noise and the effects it can have on individuals. Excessive noise can cause stress, interfere with sleep and affect people's health and quality of life.
- 2.2 Complaints about unreasonable noise are dealt with by the Council's Environmental Control Team within Health and Community Care Services.
- 2.3 The objectives of the service are to:
- meet the our statutory duty to investigate all noise nuisance complaints
 - protect residents and the environment from excessive noise
 - protect the health of residents (mental health, stress etc.)
 - contribute to safer communities and reduce anti-social behaviour

3.0 BACKGROUND

- 3.1 Noise is often described as "unwanted sound". Common sources of noise include amplified music, shouting, barking dogs, construction and maintenance activities, alarms and noise from vehicles. The key legislation relating to noise is the statutory noise nuisance provisions within the ***Environmental Protection Act 1990***. This does not define a specific level of noise, nor does it give a right to silence within a property, but it gives powers to deal with noise that is of such a level and frequency that it is a statutory nuisance.
- 3.2 A statutory nuisance is not simply something that annoys you - it is something that causes a serious and unreasonable interference with your right to enjoy your property, or damages your health in terms of the threat of disease, rather than the risk of injury. Statutory nuisance is a criminal offence. We have a duty to take reasonable steps to investigate allegations of statutory nuisance. This means we have to make a determination based on what the average reasonable person would find unacceptable, and cannot take into account individual sensitivities or personal circumstances related to ill health.

- 3.3 In determining whether noise is a nuisance, a number of factors are taken into consideration including whether it is substantial and/or unreasonable, and the locality, duration, frequency and time of the noise.
- 3.4 The **Noise Act 1996** also makes it an offence of emitting excessive noise from a dwelling or a licensed premise between 2300 hrs and 0700 hrs.
- 3.5 The **Control of Pollution Act 1974** allows local councils to specify noise emission standards in relation to an existing or proposed construction sites and to issue a consent setting out conditions.
- 3.6 We have no statutory powers to deal with noise from aircraft, trains or moving vehicles on the public highway. We will refer these matters to the Civil Aviation Authority, Railtrack and the highway authority respectively.

4.0 OUR APPROACH TO PREVENTING NOISE PROBLEMS

- 4.1 Our aim is to prevent noise nuisance at the point of planning applications or premises licence applications being submitted to the Council for approval.
- 4.2 Where possible, we will seek to resolve concerns with applicants. If this is not possible, we will seek to mitigate/reduce the noise impact by recommending the imposition of conditions to any planning consent or raising a representation in respect of a premises licence. Officers will present evidence at relevant hearings and reviews.
- 4.3 Where other services or agencies are also involved, we will work with them to agree an action plan, and contribute to any joint enforcement.
- 4.4 We have a responsibility to co-operate with DEFRA (Department for Environment, Food and Rural Affairs) in relation to noise from highways or railways identified in Noise Action Plans.

5.0 OUR APPROACH TO COMPLAINTS AND ENQUIRIES

- 5.1 We will provide information that is useful for both residents and businesses. Our web pages on noise include:
- Frequently Asked Questions
 - Tips for good neighbour behaviour
 - Advice for planning applicants and business
 - Advice on sound insulation
- 5.2 Wherever possible, both parties should use this information to resolve noise matters without the need for the Council to be involved. Where we receive complaints, we will advise the complainant about the law relating to noise and advise them to discuss their complaint with the alleged perpetrator. We acknowledge that there may be circumstances where it is not possible to communicate such as where there is a history of conflict or the customer has insufficient capacity, but these are exceptions.
- 5.3 Persons wanting to take private action via the Magistrates Court can do so under Section 82 Environmental Protection Act 1990. This process can be carried out without

legal advice, but in most cases, we advise the affected party to speak to a solicitor or the Citizens Advice Bureau. Where this route is taken there are a number of key stages that need to be followed:

1. Write to the perpetrator informing them of the type of disturbance you are suffering and that you intend to seek legal advice if the disturbance continues.
2. Record the evidence of the nuisance with a description of when it occurs, how long it lasts and how it affects them.
3. Write to the perpetrator giving them at least three days notice of the intention to proceed to the Magistrates Court.
4. Contact the Clerk to the Justice at the Magistrates Court who will arrange a time for them to visit the court to show the evidence to a Magistrate.
5. The Magistrate Court decides what action can be taken.

We will also provide advice about mediation services available:

- Guildford Mediation Service - <http://www.guildford.gov.uk/article/1709/Guildford-Mediation-Service>

5.3 If the complainant has tried, but cannot resolve the matter with the other party, we will deal with the matter as follows:

5.4 All noise complaints received by the Council will be dealt with by Health and Community Care Services, where necessary, working with other partners to help achieve a resolution.

5.5 We will prioritise cases in accordance with the procedure set out in Appendix 1, and we will concentrate attention and resources according to these categories.

6.0 CONTROLS

6.1 Complaint about service procedure

6.1.1 We aim to provide an efficient and fair enforcement service, and promote a culture of accountability and transparency. Where an individual or business is not satisfied with the service provided (as opposed to the outcome) the complaint will be dealt with through our Corporate Complaints Procedure:
<http://www.guildford.gov.uk/article/939/Making-a-complaint>.

6.1.2 In order to avoid unnecessary complaints it is important that we define what we can and cannot do and this document sets out our approach.

6.1.3 Where we receive a complaint about the outcome of a complaint the Head of Health and Community Care Services will conduct the review.

6.1.4 Where we receive a complaint about how we handled an investigation this will be dealt with through the Council's complaints procedure.

6.2 Monitoring

6.2.1 DEFRA guidance (DEFRA/CIEH Noise Management Guide 2006) is that the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA), are generally not applicable. However, there may be some investigations, where the use of recording equipment comes within the definition of covert surveillance, for example where the device is likely to be positioned in such a way that it can record personal information. In principle the investigation is valid if the details recorded can be heard by "an unaided ear".

6.3 Human Rights and Equalities

6.3.1 Under the **Equality Act 2010 and Human Rights Act 1998** the Council will have due regard to the equalities and human rights implications of their activities and decision-making while investigating cases.

References

DEFRA and Chartered Institute of Environmental Health
publication "Neighbourhood Noise Policies and Practice for Local Authorities – A
Management Guide", 2006
http://www.cieh.org/library/Knowledge/Environmental_protection/Noise/NoiseManagementGuideSeptember2006.pdf

Environmental Health and Licensing Services Enforcement Policy (Revised 2006 and 2007)
<http://www.guildford.gov.uk/CHttpHandler.ashx?id=3040&p=0>

Noise Action Plans (DEFRA)
<http://www.defra.gov.uk/environment/quality/noise/environmental-noise/action-plans/>

The Local Government Ombudsman, Special Report: Neighbour nuisance and anti-social
behaviour
<http://www.lgo.org.uk/GetAsset.aspx?id=fAAxADEAOAB8AHwAVABYAHUAZQB8AHwAMAB8AA2>

PROCEDURE FOR PRIORITISATION AND INVESTIGATION OF COMPLAINTS

1.0 Administration

- 1.1 Record all noise complaints and allocate a case number upon receipt. The enquirer will use the number as a reference, which will allow them to follow the progress of the case, it is proposed to operate this service via the Council's website.

2.0 Prioritisation

Complaints will be prioritised as Low, Medium or High:

2.1 Low priority:

- One-off parties with no history of complaints, (large events with adverse potential impact will be escalated to High Priority)
- Long intervals between noise events (more than four weeks)

For low priority cases:

- The standard response target by an administrator is no more than three working days.
- We will provide the complainant with advice and ask them to complete diary sheets to record incidents of potential noise nuisance. We ask the complainant whether they are willing to give evidence and appear in Court if necessary.
- If completed diary sheets are returned within one month, and these provide evidence of potential nuisance, we will elevate the case to medium priority and allocate to an officer for investigation. We will also elevate the complaint to medium priority if there is a particular concern, for example more than two complaints received during a week, or complaints received from two or more people about the same noise source (this does not apply to one-off parties).

2.2 Medium priority:

- Frequency of less than once a week, but more than once every four weeks
- Repeat complaint within a period of four weeks
- Where there is a substantial or sustained impact on the complainant
- Diary sheets from low priority complaints indicating potential nuisance

For medium priority cases:

- The standard response target by an investigating officer is no more than three working days
- A "warning" letter will be sent to the alleged perpetrator, and the complainant will be advised to telephone the Council to advise of further incidents (if this has not already happened in response to a low priority complaint).
- Officers will, liaise with the relevant service to decide on an action plan to deal with alleged breaches of conditions relating to planning or licensing permissions. Where

appropriate, officers will engage other stakeholders, including Social Services, Police and Neighbourhood and Housing Management Services.

- Officers will aim to respond to further complaints by visiting the property to witness potential nuisance, or by installing appropriate recording equipment. This will either be a sound level meter for constant noise or a Digital Audio Tape operated by the complainant.
- Formal action (see Appendix 1) will be taken if evidence of nuisance is witnessed or recorded by the service.

2.3 High priority

- Noise occurs regularly (several times a week)
- One-off parties or raves
- Complaints from at least three different properties within four weeks
- Noise abatement notice is in place

For high priority cases:

- The standard response time is no more than one working day.
- We will add the property subject to the complaint to the priority list.
- We will send a standard warning letter to the alleged perpetrator and the complainant will be advised to telephone the service to advise of further incidents (if this is not already happened in response to a low priority complaint).
- Officers will respond to further complaints by visiting the property to witness potential nuisance or by installing appropriate recording equipment. This will either be a sound level meter for constant noise or a Digital Audio Tape operated by the complainant.
- We will give the complainant details of the noise patrol service, which will operate on Friday and Saturday nights from 2200 hrs to 0200 hrs.
- For occurrences at other times, officers will make proactive arrangements where possible, to visit the property when noise nuisance is likely to occur.
- We will take formal action if evidence of nuisance is witnessed or recorded by the service.

3.0 Procedures

3.1 Specific procedures covering the whole process of “complaint to compliance” are in place for key topics including noise from residential properties, commercial and licensed premises, streets and barking dogs. These procedures will be fully maintained and updated by Regulatory, Information and Management Systems (RIAMS), which is a nationally recognised company used by a number of local authorities.

4.0 Working with partners

4.1 In many cases, noise is one of a number of issues raised by complainants and we will, therefore, work with partners to adopt a more holistic approach to resolving such cases. This type of approach is particularly effective in dealing with neighbourhood problems, improves the local environment and controls licensed premises/events. Such partners may include;

- the police neighbourhood and licensing teams

- Council planning policy and development teams
- Council housing officers and housing associations,
- Council licensing officers
- social workers
- landowners including responsible services within both the Council and Surrey County Council
- academic institutions including University of Surrey, Law College
- the Environment Agency and Health and Safety Executive

4.2 Where noise is the main issue, regardless of the ownership or status of the offending premise, we will register complaints as a case within Environmental Control Team. This will ensure consistent treatment of all noise complaints.

4.3 A case team will set up, led by an officer within Environmental Control, reporting to either of the Joint Action Group (dealing with problems in locations), Town Centre Disorder Group (dealing with town centre issues mainly at night) or the Community Engagement Action Group (dealing with problems relating to individual's behaviour). Each case leader will produce an enforcement plan.

5.0 Closure of investigations

5.1 We recognise that the closure of a case is significant to the complainant and will handle it in a consistent and sensitive manner. In all cases, we will send a letter or e-mail to close current investigations to complainants only in the following instances:

- the complaint is withdrawn
- diary sheets are not completed and returned correctly within one month
- diary sheets are returned and/or noise monitoring completed, but there is no evidence of statutory nuisance being identified
- the property has been included on the priority list for four weeks, and no further complaints have been received, or statutory nuisance witnessed
- informal action has been taken and the nuisance has abated for four weeks
- formal action has been taken and the nuisance has abated for four weeks
- improper action by complainant (e.g. proven fabrication of evidence)
- investigation or effective action is not practical
- conditions of a consent, licence or permission have been complied with
- a business can demonstrate that they are taking the best practicable means to control or minimise the noise. This is a legal defence only available to business premises.

In all cases, we will invite the customer to provide feedback so we can monitor performance.

6.0 Formal action

6.1 We will consider each case on the evidence available and having regard to the Council's Enforcement Protocol. The decision on what level of enforcement is necessary will be determined by the severity, environmental impact, history, willingness of the alleged perpetrator to cooperate, and public interest. Where we are satisfied that a noise problem exists there are a number of enforcement options:

Action	Reason
Service of statutory notice	A statutory nuisance has been substantiated
Issue of a caution	An admission of guilt to a first time, low level offence or following evidence of a breach of a statutory notice.
Prosecution in Magistrates Court	Generally for multiple breaches of notices. Fines for each offence up to a maximum of £5,000 for domestic and £20,000 for commercial
Service of warning and fixed penalty notice in Noise Act 1993 cases	A warning notice can be served, if between 23.00 and 07.00 permitted noise levels are exceeded from a dwelling or licensed premises. A fixed penalty notice can be issued if the warning notice is breached
Seizure of equipment	If an abatement notice is substantially or repeatedly breached.
Carrying out works in default	Following service of a statutory notice, work can be carried out to resolve a nuisance; This is usually employed in relation to audible alarms.
Review of a premises licence	Under the Licensing Act 2003 a responsible authority may ask for a review of the licence
Breach of premises licence and planning	Any breaches of conditions relating to noise can be taken to the Magistrates Court under notice.
Anti Social Behaviour	The Anti Social Behaviour Act 2003 allows the local authority or police to apply for a closure order.
High Court Injunction	This can be sought in cases where serious breaches of abatement notices occurred and/or have failed to secure compliance