

**TEST VALLEY BOROUGH COUNCIL
HOUSING, HEALTH & COMMUNITIES SERVICE**

Environmental Nuisance Policy

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1 Introduction

This policy has been produced by the Environmental Protection Team of Test Valley Borough Council's Housing, Health and Communities Service in relation to environmental nuisances.

A key aim of the Environmental Protection Team is to provide high quality, flexible, Best Value services focussed on priority areas influenced by statutory requirements and local issues. The purpose of this policy is to help to meet this aim in relation to the handling of nuisance complaints.

2 Legal background

Certain types of nuisance problem can be dealt with by the Council using the 'statutory nuisance' provisions of the Environmental Protection Act 1990. Examples of common statutory nuisance problems which may be dealt with are:

- Noise from loud music and barking dogs;
- Smoke from garden bonfires;
- Odour from industrial premises;
- Dust from building sites.

In very general terms, a statutory nuisance is a problem which interferes substantially and unreasonably with a person's wellbeing or comfort, or the enjoyment of his/her property. Legal precedents from case law must be followed when determining whether action can be taken to deal with a particular type of problem.

3 Competency

Environmental nuisance complaints are investigated by officers of the Environmental Protection Team who are authorised under the relevant legislation. All officers, whether professionally qualified or not, will be supervised and/or trained to a level appropriate to their role and responsibilities. Additionally, officers that are members of the Chartered Institute of Environmental Health are required to take part in a Continuing Professional Development scheme.

4 Prevention of complaints

Opportunities exist for the Housing Health and Communities Service to minimise the likelihood of environmental nuisance complaints through their role as consultee in the planning process and premises licensing regime.

The Environmental Protection Team is routinely consulted on planning applications where there is an expected environmental impact, for example in respect of noise, atmospheric emissions or intrusive lighting. Such impacts may arise either by introducing new sensitive development close to existing uses which may give rise to complaint or by introducing new uses close to existing sensitive development. The team's role is to review information submitted in support of an application and make

recommendations in accordance with the appropriate planning guidance and British Standards, for example with regard to providing suitable noise mitigation measures.

In terms of premises licensing the team is consulted on new applications and proposed variations to existing applications and will consider if conditions are appropriate to prevent public nuisance to people living and working in the vicinity of the premises. Commonly this is by recommending the restriction of the number of events or the hours during which they take place.

Advice is also offered on an informal basis to anyone contacting the team in advance of holding a one-off event, such as a garden party.

5 Complaint handling

5.1 Initial handling of complaints

Often the best and longest lasting remedies to nuisance problems are reached by informal agreement and compromise. For this reason we will generally encourage complainants to approach their neighbour before requesting the intervention of the Council.

Complaints will be categorised as either urgent or non-urgent, recorded on a complaints database, and then assigned to a case officer. Urgent complaints relate to the most serious nuisance problems and situations where it is anticipated that there may be an immediate risk to human health or the environment.

5.2 Anonymous complaints

In general, nuisance action cannot be taken without supporting evidence from a complainant living or working within the borough to demonstrate the impact of the situation. Therefore, anonymous complaints will not be investigated unless the problem relates to harm to human health or pollution of the environment or otherwise appears to be very severe.

6 Complaint investigation

6.1 General approach to complaint investigation

We will choose a method of investigation that is both cost effective and best suited to the type of case involved. We will try to be as flexible as possible and discuss any particular needs with the complainant. Every case will be taken on its merits.

In most cases the first step will be to approach the person complained about, either by means of a visit or a letter. The purposes of doing this are to notify the person complained about of the complaint and to give an opportunity to that person to respond to the complaint and/or take steps to address the complaint.

When considering whether a statutory nuisance exists, we will take account of all of the circumstances, for example when and how often the problem is caused, how many people it affects and its severity.

Before a decision is made as to whether statutory nuisance action is warranted, corroboration by an officer from the Environmental Health Unit will almost certainly be

required. This is usually achieved by personal visits at a time when the problem is occurring, although recording systems often have a role in the investigation of noise problems. It may sometimes be possible to rely upon independent professional witnesses such as police officers or housing officers for corroboration.

The way that complaints are investigated will normally depend on the type of problem. Most nuisance problems can be categorised as intermittent, continuous, or single / temporary events.

6.2 *Intermittent problems*

Most nuisance problems consist of intermittent but frequently recurring incidents, as is commonly the case for amplified music or periodic bonfires. As part of the investigation into such problems, it is usually necessary to collect evidence as to the extent of the problem, as well as the effect that the problem has on the complainant. In such cases, the complainant will usually be asked to complete record sheets which may be used as evidence in any future legal proceedings. Before formal action is contemplated, we normally need to be satisfied that the complainant is prepared to make a witness statement if necessary and appear in court. Where record sheets are not completed, despite one or more requests to do so, then the case will not, in normal circumstances, be pursued and the complainant will be advised of this.

6.3 *Continuous problems*

In other cases, the problem runs more or less continuously without stopping, for example as is often the case for noisy refrigeration plant or badly designed flood lighting. Such problems can normally be investigated by means of one or more observation visits without the need for record sheets to be completed. However, the complainant may be also asked to complete a witness statement as evidence and appear in court if necessary.

6.4 *Single / Temporary events*

These are short-lived events or temporary situations, for example odour from muck spreading, loud music from the occasional house party and noise from construction activities. Generally, statutory nuisance action would not be taken in such circumstances unless the problem is very severe or is likely to be harmful to health. In such cases, an investigation visit would normally be made as soon as possible to assess the situation and determine whether formal nuisance action is warranted.

6.5 *Out of hours complaints*

Where incidents giving rise to complaint only occur out of normal office hours consideration will be given to the most effective means of collecting evidence. This may be through proactive or reactive visits where reasonably practicable or through the use of a noise recording system.

Noise recording systems provide a tool to allow a complainant to make recordings from their home to help illustrate a problem comprising noise incidents at unpredictable times, without the need for an officer to be present. The recordings can be re-played and assessed at a later date by the case officer.

Before using such a noise recording system in an investigation, the person complained about will be informed that noise recordings may be made as part of any continuing investigation. However, no indication will be made as to precisely when recordings will be made, as this would be likely to defeat the object of the investigation.

Such recording systems are designed and used in a way to record incidents of nuisance noise only and not normal conversations. Care will be taken to avoid using the recording systems in any situation where it is anticipated that normal private speech might be recorded.

6.6 *Working with other agencies*

Due to the nature of environmental nuisance there are often opportunities for working jointly with partners both internally and externally. The main example of this is working with registered social landlords where the matter of complaint is also a tenancy related issue. Where the Environmental Protection Team is aware that a tenant is involved, action is normally taken to inform the landlord and identify if a joint approach would be beneficial. This may include sharing of information, joint visits, case meetings and, in some situations, providing witness statements.

7 *Complaint resolution*

7.1 *Informal action*

In most cases, we will seek an informal resolution to the nuisance problem before considering enforcement action. In the majority of cases of justified complaints, an informal approach is successful in resolving the problem without the need for further action. This approach will not however be taken where this would result in an unreasonable delay in stopping any statutory nuisance being caused.

7.2 *Abatement notices*

The first step of formal action when a statutory nuisance is in existence, is the service of an abatement notice. Where a nuisance has been established, Test Valley Borough Council may delay service of a notice if the evidence suggests action is in hand to resolve the problem. An abatement notice requires the recipient to take steps to stop the nuisance occurring and also where appropriate prohibits the recurrence of the nuisance in the future. Notices will either specify a date for compliance, for example if particular works are required to stop a nuisance from continuing, but more often will prohibit any further nuisance from occurring and have no fixed compliance date. It is an offence for the recipient to fail to comply with the requirements without reasonable excuse. If approached after an abatement notice is served, Test Valley Borough Council will consider any reasonable requests for amendments, either in steps to be taken to stop or restrict the nuisance, or the timescale for compliance.

7.3 *Works in default*

An abatement notice may also require specific works to be carried out to abate a nuisance, for example to enclose a loud piece of equipment or to remove a putrid accumulation. Such notices will have a compliance date by which the works must be achieved. If the person responsible has not carried out the works, Test Valley

Borough Council may arrange for the works to be done on their behalf and re-charge the reasonable costs incurred.

7.4 Prosecutions

Where there is evidence of a breach or breaches of an abatement notice the case will be reviewed for consideration of prosecution in line with the evidential and public interest tests. In some circumstances the issue of a formal caution will be considered instead. Although abatement notices may remain in force indefinitely, after a period of three years without further complaint the notice will either be withdrawn as no longer relevant and therefore not enforced or else reaffirmed by letter before enforcement action is taken.

7.5 Seizure of equipment

For noise offences involving the playing of live or recorded music, powers exist allowing the local authority to seize the noise-making equipment to prevent further nuisance and apply to the Magistrates' Court for a forfeiture order.

7.6 Enforcement policy

A separate enforcement policy covers the decision-making process as to when enforcement action will be taken. This covers our approach to enforcement and is particularly relevant in respect of confirmed breaches of an abatement notice.

8 *Complaint closure for unsubstantiated complaints*

Reasonably practicable steps will be taken to investigate complaints. In cases where the Environmental Health Unit has been unable to substantiate a statutory nuisance or the matter does not warrant any action, then the complainant will be advised of this and the investigation will be brought to an end.

The extent of each investigation will be considered on the individual merits of the case. However, typically, if no evidence of nuisance is found after the following steps have been taken then we are likely to conclude that the investigation should not be continued:

- Three or more visits at times when the problem might reasonably be expected to occur;
- noise recording equipment has been used on two occasions when the problem might reasonably be expected to occur.

9 *Miscellaneous powers*

9.1 Other regulatory frameworks

Although the majority of environmental nuisances dealt with by the Environmental Protection Team fall under the statutory nuisance provisions in Environmental Protection Act 1990, some issues have specific legislation which applies. The most notable of these are outlined below.

9.2 *Construction and demolition noise*

The Control of Pollution Act 1974 gives local authorities the power to agree working hours and methods with developers in advance of large scale projects which have potential for a high impact on the amenity of residents. It also allows the service of a notice imposing requirements as to the way in which construction works are to be carried out.

9.3 *Noise from burglar alarms.*

The Clean Neighbourhoods and Environment Act 2005 gives powers to authorised officers to silence malfunctioning alarms where the noise is likely to give reasonable cause for annoyance. In these circumstances reasonable attempts will be made to contact the householder or keyholder before an alarm engineer is contracted. Powers of entry are given to silence the alarm although a warrant is required if it is necessary to force entry. The costs incurred will be passed to the person responsible for the alarm.

9.4 *Dark smoke*

Under The Clean Air Act 1993 it is an offence for waste to be burned on an industrial or trade premises (or for industrial or trade waste to be burned on any premises) that gives rise to dark smoke.

9.5 *Emissions from Permitted Installations*

Operators of certain potentially polluting activities are required to apply for an environmental permit to operate under The Pollution Prevention and Control Act 1999. Such activities are regulated by either The Environmental Protection Team or by The Environment Agency. Such permits have conditions attached relating to how the process must be carried out to minimise environmental pollution and nuisance.

10 *Service standards*

We aim to initiate an investigation of all complaints classed as urgent by the end of the following working day. Our current target is to achieve this in 95% of all cases. An urgent problem is one anticipated to cause a very serious nuisance, or give rise to an immediate risk to human health or the environment. The first steps of an investigation would normally entail an assessment by an investigating officer either by means of obtaining further information or a visit, in order to decide on what further action ought to be taken.

In the case of all other complaints (i.e. classed as non-urgent) we aim to provide an initial response to the complainants within 3 working days, not including the day of receipt. Our target is to achieve this response time in 95% of cases. An initial response means contacting the complainant for the purpose of providing contact details and where practicable giving verbal advice as to the next stage of the investigation.

We aim to provide a fair and efficient nuisance investigation service and we are committed to a high standard of customer care. Customer satisfaction is monitored by means of sending feedback questionnaires to a proportion of complainants after the case is closed. If at any time it is apparent that the complainant is dissatisfied

with the handling of the case then the case will be reviewed by a manager and the complainant will be informed of the result of the review.