



Elmbridge
Borough Council

... bridging the communities ...

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Noise Policy

1. Introduction

Noise is an inevitable consequence of a modern and vibrant society. For some, the noise of modern life provides a desirable sense of excitement and exhilaration, but for others noise is an unwanted intrusion that can adversely impact on their quality of life, affecting their health and wellbeing.

There is no right to absolute peace and quiet and people should be tolerant of occasional disturbance from noise. However Environmental Health & Licensing (EH&L) aim to investigate and resolve serious or persistently unacceptable levels of noise from both businesses and residents thereby maintaining a quality of life through the abatement of statutory noise nuisance.

This policy along with the EH&L Enforcement Policy sets out the general approach, which the Council will adopt when enforcing noise legislation. We work with partner agencies in a joined up approach to proactively manage unreasonable noise.

Where possible, prevention and education precede legal action. Advice and information for both businesses and residents on a wide range of noise issues and possible solutions are provided via the online Noise Toolkit available 24/7. For those without access to the Internet there is the option of contacting officers by telephone during office hours.

2. Noise Nuisance

Statutory nuisance is defined by the Environmental Protection Act 1990, but in simple terms it is "a legal term which has been developed over many years and has come to mean something which is stopping you from enjoying your land or property".

In the UK there is no absolute right to silence within your home. Therefore, although you may be unhappy with the level of noise you are exposed to, if it does not amount to a statutory nuisance you may have to endure it.

A statutory noise nuisance is more than a mere annoyance and would have a significant impact on the health and wellbeing of those affected. Apart from the noise being substantial and unreasonable, numerous other factors are taken into account when determining nuisance. The principal ones being:

1. Location. Is the noise typical for the area? A cockerel crowing in the countryside would be more acceptable than in a quiet urban residential road.

2. Time of day. A statutory nuisance can exist at any time of the day, however the affects of noise late at night when most people are sleeping would be given greater weight than the same noise occurring during the day.

3. Frequency. How frequently are you affected by the noise? Noisy parties every weekend would be viewed differently to one held every now and then.

4. Duration. How long are you disturbed? A dog barking at the postman and a few occasional cats strolling by would be viewed differently to one barking most of the day.

5. Intensity. How loud is the noise? How intrusive? We all have different noise thresholds and tolerances. In determining nuisance the judgement would be how the noise would affect an ordinary individual, not someone who had a particular sensitivity to the noise complained of.

6. Number of people affected. A view will be taken on the number of people who are, or could be, affected by the noise. If only one person complains when the whole street could equally be affected then there could be a challenge that the individual making the complaint could be unduly sensitive. This also links to point 5 above.

Where noise amounts to a statutory nuisance an abatement notice will be served requiring the nuisance to be abated. Failure to comply with an abatement notice is a criminal offence. The maximum fine per offence is £20,000 for businesses and £5,000 for domestic noise.

The Environmental Protection Act 1990 is the principal piece of legislation controlling noise nuisance and is wide ranging. There are, however, additional pieces of legislation that seek to manage noise in specific situations, namely: -

The Control of Pollution Act 1974 has specific requirements in the management of noise from construction sites.

The Licensing Act 2003 allows for the reviews of premises licences on the grounds of the prevention of public nuisance.

Town and Country Planning Act 1990 may impose planning conditions on your premises, some of which may be to control noise either directly i.e. requiring additional sound insulation, or indirectly i.e. stipulating opening and closing times.

3. Investigation

All complaints of noise should firstly be directed to the Pollution Service within Environmental Health & Licensing where they will be acted on. Those demonstrating the most significant impact will be acted on first.

Noise complaint investigation, by its very nature, can be quite complex and more often than not will take time to investigate, particularly where the noise is occurring intermittently.

Gathering evidence and witnessing the noise complained of are a pivotal part of an investigation of alleged noise nuisance. This can include: -

3.1. Reactive observations

This is where we receive notification from a complainant that the noise being complained about is occurring at that time. We will seek to visit the complainant's home or business to meet with the complainant and to verify their complaint and where a statutory nuisance is found to be occurring, to collect evidence to support further action.

The Council does not have a reactive noise monitoring service outside the Council's normal office hours ((9 am-5 pm Monday to Friday with the exception of public holidays). However the Noise Toolkit, in particular the Noise Quick Guide, provides specific advice on what to do out of office hours including how complainants can gather evidence of the nuisance.

Although the Police work out of office hours they do not routinely attend complaints about noise nuisance. However, any reports of alleged noise nuisance made to them out of office hours will be risk assessed to determine the specific circumstances and vulnerability of those individuals involved, together with any wider antisocial impact on the community in determining if any response on their part is appropriate.

3.2. Proactive observations

This is where we target premises that are causing noise nuisance, or where we believe there is the potential for a noise nuisance. We will use this approach where regular patterns of disturbance occur, where reactive observations have failed to verify the complaint, or where the noise occurs persistently outside office hours.

Although the Council does not have an "out of hours" noise service however proactive visits can be made outside office hours by staff from the EH&L Team to witness alleged noise nuisance.

3.3. Unattended monitoring

This is where we place specialist monitoring equipment in the complainant's home to enable them to record the noise complained of. The equipment continually records the noise levels. However, it will only ever record the actual sounds when the complainant activates the record switch, enabling them to capture the noise they are complaining about.

This equipment used by EH&L has been specifically designed for this particular role and is widely used by other Councils and Social Housing providers to investigate complaints of noise nuisance. Evidence gathered in this way can be used to support legal action.

3.4. Independent evidence

Independent evidence from persons other than the complainant can be used to verify allegations of noise nuisance. In the event that criminal proceedings against the noise maker are contemplated, this evidence would need to be in the form of a witness statement and witnesses might need to attend court to give evidence.

We also use witness statements produced by independent professional witnesses, such as the Police and Housing Officers, to support investigations and enforcement action.

3.5. The complainant's role

The person making the complaint can have a significant role in the investigation, particularly in more complex and long running cases.

At an early stage in the investigation, we will ask complainants to complete nuisance record sheets recording each noise incident and how it impacts on them and their family. They have an important role in the investigation and not providing this information can delay the progression of the investigation and in certain situations can even lead to the case being closed.

An investigation will involve visits to the complainant's home to enable officers to witness the noise complained of and/or install specialist noise monitoring equipment. Complainants who refuse these measures may prevent their complaint being progressed further and the case being closed.

The online Noise Toolkit can assist complainants with gathering evidence, in the form of diary sheets, witness statements and audio/visual recordings. This evidence supports the investigation of a complaint but on its own does not solely determine what constitutes a statutory nuisance; this is for the investigating officer and their professional judgement.

3.6. Unreasonable complaints and unreasonably persistent complainants

The Council recognises that there are a small number of individuals who make unreasonable complaints or who are unreasonably persistent complainants. This is defined as "Those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's, complaints".

An unreasonable or unreasonably persistent complainant would normally be identified as a result of a repeated and obsessive pursuit of either:

- Unreasonable complaints and/or unrealistic outcomes repeatedly requested; and/or
- Reasonable complaints in an unreasonable manner, including abusive or threatening language and/or behaviour.

Those complainants classified as unreasonable or unreasonably persistent will be handled in accordance with the Council's corporate complaints procedure.

3.7. Anonymous complaints

An anonymous complaint will not routinely be investigated but a record will be kept. Should further anonymous complaints be received about the same subject, the matter will be investigated.

4. Education

Where possible, prevention and education precede legal action. The EH&L online Noise Toolkit at www.elmbridge.gov.uk/noise provides comprehensive advice and information on noise control to both businesses and residents. Those businesses and residents without access to the Internet can telephone (01372 474750) and speak to an officer or request the online advice and information be printed and posted to them.

For example: -

- The Noise Code for Licensed Premises.
- Local Code of Practice and Guidance on Control of Noise from Outdoor Events.
- Mediation Services.

5. Enforcement

When we are satisfied that a significant noise disturbance or statutory nuisance exists or is likely to occur or recur, we will take the appropriate enforcement action. This will be in accordance with the EH&L Enforcement Policy available online at http://www.elmbridge.gov.uk/documents/detail.htm?pk_document=390. A paper copy is also available upon request.

In relation to noise the following actions may be taken: -

Service of a statutory notice. Where statutory nuisance has been substantiated or where formal enforcement action is considered necessary and appropriate.

Issuing a simple caution. These may be issued following the service of a statutory notice and the admission of guilt involving first time, low-level, offences.

Seizure of noise making equipment. This may occur where there have been substantiated multiple or repeated breaches of a statutory notice.

Carry out works in default. If necessary we will undertake work to resolve ongoing nuisance from audible alarms following the service of statutory notices.

Seek a review of a premises licence. This will be in accordance with the provisions of the Licensing Act 2003 on the grounds of the prevention of public nuisance.

Prosecution in the Magistrates' Court. We may consider prosecution for multiple substantiated breaches of statutory notices, i.e. where statutory notices have not been complied with.

Criminally Related Anti Social Behaviour Orders (CRASBO). These may be pursued immediately following a successful prosecution, where we believe there is a realistic possibility that the criminal conviction will not act as a sufficient deterrent against a further offence being committed and where there has been, or likely to be, harassment, alarm or distress.

County Court Injunction. May be pursued for serious and persistent breaches of statutory notices where proceedings in the Magistrate's Court have failed to ensure compliance with a statutory notice.

Taking your own action. Section 82 of the Environmental Protection Act 1990 makes provision for private individuals to take their own action in the Magistrates' Court if they are aggrieved by the existence of a statutory nuisance. The Court can issue an Order requiring the abatement of the nuisance and can also issue a fine. Breach of such an Order is a criminal offence, punishable by a further fine.

6. Partner involvement

Officers from EH&L work in close partnership with other teams within the Council for example Planning Enforcement and The Community Safety Partnership, as well as external agencies, in a joined up way, to proactively manage unreasonable noise.

Our principal external partners are:

Surrey Police. Officers from EH&L are responsible for the investigation and enforcement of noise nuisance, not the Police. However officers in EH&L liaise with the Police on a variety of noise investigations particularly where there is an antisocial behaviour concern.

Elmbridge Housing Trust. We have a partnership in noise with Elmbridge Housing Trust (EHT), the Borough's largest social housing provider, whereby officers from EH&L take the lead on all complaints of noise from EHT properties.

Mediation North Surrey. Mediation North Surrey (MNS) is an independent charity offering free and confidential mediation within Elmbridge.

Where officers from EH&L, in their professional judgement, feel the alleged noise is unlikely to amount to a statutory nuisance and that mediation could provide a positive outcome, this service will be offered to all parties involved.

Mediation is available to parties at any point in an investigation of alleged noise nuisance. While the mediation process is underway, the investigation of alleged nuisance will be put on hold.

Further details on our partners' involvement with noise is available at www.elmbridge.gov.uk/noise

7. Customer Service Standards

Elmbridge Borough Council is committed to continually improving our services to provide you, the customer, the best possible service we can. Details on our customer care standards are available at <http://www.elmbridge.gov.uk/Council/customercare.htm>

8. Complaint procedure

Elmbridge Borough Council takes feedback from customers, including complaints and other expressions of dissatisfaction with our services very seriously. The Council are committed to viewing complaints as a valuable source of information, which can be used to improve Council processes and service delivery.

An expression of dissatisfaction about the service provided will be dealt with as a complaint. Details on the Council's Corporate Complaints Policy is available at <http://www.elmbridge.gov.uk/Council/feedback.htm>