Cabinet Committee Members Briefing

Introduction to Statutory Nuisance (Noise)

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Introduction to Statutory Nuisance

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Introduction to Statutory Nuisance
The Team

Communities

Regulatory Services

Environmental Health

Environmental Protection Team

Allan Glasson & Deborah Wilders (Senior EHOs)

Mark Lees, Keith Moorhouse, Tony Holyomes (Senior EHTs) & Kirstie Atkins (Contaminated Land Officer)
Statutory Nuisances are dealt under Part III of the Environmental Protection Act 1990.

Section 79 lists all matters that constitute statutory nuisances which include:

(g) Noise emitted from premises so as to be prejudicial to health or a nuisance

This specifically excludes:

- Military premises occupied by the Ministry of Defence;
- Premises occupied by or for the purposes of a visiting force, and;
- Noise caused by aircraft other than model aircraft.
S79(1) was amended by the Noise and Statutory Nuisance Act 1993 to also include:

(ga) Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street

With the exclusion of noise made:

- by traffic
- by any naval, military or air force of the Crown or by a visiting force, or
- by a political demonstration or a demonstration supporting or opposing a cause or campaign
S79 of the Act states that:

“it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.”

Because of this duty, all complaints received which allege nuisance due to noise that has the potential to constitute a statutory nuisance are reasonably investigated.
Introduction to Statutory Nuisance Legislation

Taking formal action on statutory nuisances

Due regard is given to the **Environmental Protection & Animal Control Enforcement Policy** to:

- Ensure consistency of approach and enforcement in respect of environmental protection and animal control issues
- Provide officers with guidelines to enable them to make reasoned decisions regarding enforcement
- Inform the public and the proprietors of businesses of the principles by which enforcement action is determined and subsequently taken
- Adopt a positive and proactive approach towards ensuring compliance in line with the Regulators Compliance Code.
Introduction to Statutory Nuisance Legislation

Principles of enforcement

Enforcement needs to be fair but firm and effective. The following principles underpin this approach:

- Agreed standards and procedures
- Helpfulness
- Openness
- Transparency
- Proportionality
- Consistency
- Complaints procedure
Taking formal action on statutory nuisances

S80 states:

(1) “…where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”) imposing all or any of the following requirements:

• requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
• requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes,

…and the notice shall specify the time or times within which the requirements of the notice are to be complied with.”
The Clean Neighbourhoods and Environment Act 2005

CNEA amended S80 EPA 1990 by providing local authorities with an alternative discretionary option to delay service of an abatement notice by seven days if it is considered that the problem can be resolved informally.

If at any time within the seven day period it appears that the problem is not going to be resolved informally then an abatement notice will be served.
Introduction to Statutory Nuisance Legislation

S80 Penalties for non compliance of an abatement notice

• It is a criminal offence to breach, or fail to comply with, any requirement or prohibition imposed by an abatement notice.

• Offenders are liable on summary conviction to a fine of up to £5000, with a further fine of an amount equal to one-tenth of that amount for each day on which the offence continues after the conviction.

Except:

• Where a person commits such an offence on industrial, trade or business premises they shall be liable on summary conviction to a fine of up to £20,000.

• Where appropriate, seizure is the first action following breach of an abatement notice due to the comparative speed and effectiveness of resolving the nuisance compared to prosecution. Irrespective, prosecution also remains an option.
What if the LA cannot help?

In such cases where the LA is unable to help or is not satisfied a statutory nuisance exists or is likely to occur or recur, or where a person does not wish to involve the council, private action may be taken through the Magistrates’ Court under S82 EPA 1990.

Whilst private action can be taken without employing a solicitor, people wishing to do so will need to pay a court fee of approximately £250.
Introduction to Statutory Nuisance Legislation

It’s not just noise…

These matters can also amount to a statutory nuisance if they are prejudicial to health or a nuisance…

(a) Any premises in such a state
(b) Smoke emitted from premises (e.g. bonfires)
(c) Fumes or gases emitted from premises
(d) Any dust, steam, smell or other effluvia arising on industrial, trade or business premises
(e) Any accumulation or deposit
(f) Any animal kept in such a place or manner
(fa) Any insects emanating from relevant industrial, trade or business premises
(fb) Artificial light emitted from premises
(h) Any other matter declared by any enactment to be a statutory nuisance;
“Prejudicial to Health” or “A Nuisance”

‘Prejudicial to health’ is defined in the Act and means injurious, or likely to cause injury, to health. This could include significant sleep deprivation.

‘A nuisance’ is not defined in the Act and is therefore given its common law meaning and defined by case law (precedents set by previous court case rulings)

In the case of Wivenhoe Port Ltd v Colchester Borough Council (1985) it was stated that:

“….a nuisance to be a statutory nuisance had to be one interfering materially with the personal comfort of the resident...although it might not be prejudicial to their health…”
Introduction to Statutory Nuisance
What does it all mean?!

In order for a statutory noise nuisance to exist under S79 (1)(g) or (ga) respectively:

- The noise must be coming from a premises (inside or outside), or from V,M or E in the street, and entering a premises (i.e. not a public or a communal area) where...

- The noise must ‘interfere materially with the personal comfort of the resident(s)’ or be prejudicial to their health and

- The noise must be caused by an unreasonable act.
What factors should be taken into account when assessing whether a nuisance is ‘interfering materially with the personal comfort of the resident’ to the point of being a statutory nuisance?

- The level of noise present in/on the complainants’ property
- The duration of the noisy event(s) experienced
- How regularly the disturbance occurs
- How ongoing the problem is, i.e. how long it has been in existence
- The time(s) at which it is occurs, and
- The sensitivity of the complainants – “if abnormally sensitive there can be no actionable nuisance” [2]

Introduction to Statutory Nuisance
What does it all mean?!

An unreasonable act?

There is a “balance between rights of occupier and rights of neighbour” [1]

Consider:

• What the noise is/what is causing the noise
  – Is it excessive/unusual/malicious/preventable at a reasonable cost?
• The level of noise
• The duration of the noisy event(s)
• How regularly it occurs/how ongoing the problem is
• The times at which it is occurs, and
• The character of the neighbourhood – your assessment should be made taking into account the normal accepted standard of comfort for the area:

[1] Sedleigh; Denfield v O’Callagahan 1940
Introduction to Statutory Nuisance
What does it all mean?!

“What would be nuisance in Belgrave Square would not necessarily be a nuisance in Bermondsey.” [3]

This quote is from “a landmark case in nuisance. It decides that the reasonable use of a person’s property depends on the character of the locality. Though it may in some cases be harsh, this means therefore that it is not necessarily a defence to a nuisance claim to say ‘I was here first’.”[4] It also demonstrates that there is no fixed point at which a nuisance does or does not occur.

[3] Sturges v Bridgman 1879
How do we Assess Statutory Noise Nuisances

Is the disturbance being caused by an unreasonable act?

- Is it excessive/unusual/malicious/preventable at a reasonable cost, bearing in mind the time of day?

Is the disturbance unreasonable?

First consider: what would an average person be doing at that time?

- Watching TV or sleeping, etc.
- With the windows/doors open or closed?
  - (consider whether this is ‘normal’ given the time of year and weather)
Assessing Statutory Noise Nuisances

Then consider: does the disturbance prevent normal enjoyment or use of the property based on what an average person might be doing at that time?

Common Tests:

- Can the noise be heard above the TV when at a normal level?
- Does it mask the TV completely/is it just audible/is it distracting, etc?
- Does the noise make having a normal conversation difficult?
- Would the noise stop you from falling asleep or wake you up?
- Could you concentrate on reading a book, etc?
- Does opening or closing windows or doors make a difference?
Over 4,500 in the last 7 years relating to noise:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Service Requests</th>
<th>Formal Notices (EPA &amp; COPA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>600</td>
<td>Not recorded</td>
</tr>
<tr>
<td>2008</td>
<td>727</td>
<td>Not recorded</td>
</tr>
<tr>
<td>2009</td>
<td>799</td>
<td>27</td>
</tr>
<tr>
<td>2010</td>
<td>631</td>
<td>27</td>
</tr>
<tr>
<td>2011</td>
<td>684</td>
<td>22</td>
</tr>
<tr>
<td>2012</td>
<td>602</td>
<td>15</td>
</tr>
<tr>
<td>2013</td>
<td>480 to date</td>
<td>7</td>
</tr>
</tbody>
</table>
Introduction to Statutory Nuisance
Investigating (in the office)

First Stage Actions:
• Conversation with the complainant to let them tell you their story.
• Informal letter sent to the subject of the complaint to advise them of the allegation. Leaflet included. Gives them the opportunity to tell you the situation from their perspective.
• Letter sent to complainant with confirmation of actions taken, leaflet and log sheets which they must complete over the following 3 weeks and return.

Possible Outcomes:
• If logs are not returned a reminder letter is sent. If this is not replied to, the matter is closed.
• If logs are returned they are assessed to determine what further action is possible; i.e. potential statutory nuisance or not?
• If they do not show a possible statutory nuisance then the complainant is advised accordingly and information is given on how to take private action under S82 EPA 1990 if appropriate.
• If they do show a possible statutory nuisance then the matter is discussed in more detail with the complainant. If it is apparent that there has not been an improvement or change in circumstance since the logs were returned then the matter is pursued further…
## Introduction to Statutory Nuisance

Investigating (in the office)

**Gravesham Borough Council**

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**Record of events from:** (Auto-filled from Uniform with address of subject premises)

*(Address of source)*

**Enquiry Reference Number:** 00/00000/ABCDEF

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Observed Start Time</th>
<th>Observed Stop Time</th>
<th>Description of disturbance, including its nature and source</th>
<th>Effect the disturbance had on you/your household</th>
<th>Observer's initial's</th>
</tr>
</thead>
<tbody>
<tr>
<td>05/07/2012</td>
<td>18:42</td>
<td>19:17</td>
<td>Two dogs barking unnecessarily and non-stop in the back garden. Owners did not intervene.</td>
<td>Unable to relax in my garden or house and could not hear my TV. It gave me a headache.</td>
<td>Example</td>
</tr>
<tr>
<td>23/01/2012</td>
<td>22:05</td>
<td>01:40</td>
<td>Loud music with heavy bass coming from their lounge. Guests were shouting and screaming.</td>
<td>Couldn't hear the music word for word. Impossible for my family to sleep. Very stressful &amp; upsetting.</td>
<td>Example</td>
</tr>
<tr>
<td>08/08/2012</td>
<td>07:40</td>
<td>22:00</td>
<td>Acrid smelling smoke from a large bonfire in their rear garden.</td>
<td>Unable to open windows or hang washing. Made my entire house stink and made me feel sick.</td>
<td>Example</td>
</tr>
</tbody>
</table>

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I hereby certify that this is a true record; signed: ................................................................. Date: .................................................................

**Full name and address of person keeping this record:** (Auto-filled from Uniform with name and address of complainant)

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*Issued by: Regulatory Services, Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU*
Second Stage Actions:

• More formally worded letter sent to the subject of the complaint to advise them:
  – Of the continued allegations.
  – That ‘monitoring will now be carried out to determine if a statutory nuisance is being caused.’
  – Of the legal action that will be taken if an authorised officer is satisfied a statutory nuisance exists and,
  – Of the penalties for failing to comply with an abatement notice

• Further letter sent to complainant with confirmation of assessment and actions taken, more log sheets to complete throughout the investigative process and details of monitoring methods to be used if disturbances continue, which include:
  – Use of a recording device
  – Calling the office when the noise is occurring so that a visit can be made to assess the disturbance at the time, and
  – The Out of Hours Service (OOH)
When does it operate?

Regulatory Services operates an out of hours on call system for noise whereby an officer from Environmental Health is available over the following times:-

March and April 9.00 p.m. – 2.00 a.m. Saturday night
May to August inclusive 9.00 p.m. – 2.00 a.m. Friday and Saturday nights
September and October 9.00 p.m. – 2.00 a.m. Saturday night
How does it work?

If a member of the public is unreasonably disturbed by noise they can ring the OOH line via the switchboard number (01474 56 44 22). Their call will be automatically diverted to Invicta Lifeline where a member of their call centre team will take the callers’ details and details of the complaint.

Invicta will then call the OOH duty officer, if within the operational times, and pass details of the complaint to them for the officer to follow up in the appropriate way.

Officer carries a case with procedures, torch, first aid kit, stationary, emergency alarm, complaint forms, TENS, etc. and a folder of on-going cases which require a visit if a complaint is received about them, i.e. they are at the 2nd stage action.

Complaints of loud music and parties, including one-offs, are most common.
Limitations

The duty officers work alone and must have due regard to the council’s policy in respect of lone working. They are not to enter into a situation which they feel places them in undue risk which presents obvious, albeit necessary, limitations depending on the individual and the nature/location of the complaint.

Reliance Units are carried but these do not provide actual protection or immediate support and are limited by mobile network coverage across the borough.

Officers should not visit subject properties alone so require support from Community Wardens (only work until 01:00 latest) or Police (often have more urgent matters to tend to on Fri/Sat nights).
Introduction to Statutory Nuisance
Joined-up working

Partner Departments/Teams and Agencies

- Housing Services
- Community Safety
- Licensing
- Planning Enforcement
- Leisure Services
- Commercial Team (Environmental Health)
- Kent Police
- Social Services
- Environment Agency
Introduction to Statutory Nuisance
Noise education
FAQ’s:

Q: What is the maximum permitted dB level?
A: There isn’t one in statutory nuisance law – the assessment is subjective, although British Standards, etc. can be useful.

Q: Where is your sound level meter (SLM)?
A: They are seldom used in statutory nuisance assessments due to the above.

Q: What times can I play my music loudly between?
A: There are no preset times in statutory nuisance law – a nuisance can occur at any time of the day or night.

Q: Why don’t you just seize it – I saw on TV that they do it in other boroughs?
A: Seizure is a last resort following proven breach of an abatement notice and requires a court order.
Any other questions?
Introduction to Statutory Nuisance

All new complaints/enquiries should be directed to:

01474 33 73 34
health.admin@gravesham.gov.uk

Or via the on-line complaints form

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01474 33 72 55

Mark Lees
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