

FOI number: **HBC_FOI_2019097**
Date FOI Received: **30/01/2019**
Department: **Environmental Health**
Title: **Statutory noise notices**
Description: **Details of the noise notices issued by the Council in the last five years and the number withdrawn and the method.**

Request: *(As Redacted sent by requestor)*

1. How many statutory noise notices has your local authority served under the Environmental Protection Act 1990 in the last 5 years?
2. Of those mentioned in 1. above, how many have been withdrawn and what were the reasons for the withdrawal for each notice?
3. What is the average time period between the local authority being satisfied that a statutory noise nuisance existed and the notice being served?
4. Does the local authority have a policy and/or procedural document setting out the procedure for investigating a statutory noise nuisance? Please provide copies
5. Does the local authority have a policy and/or procedural document setting out the criteria for withdrawing a statutory noise nuisance? Please provide copies
6. If the notice was withdrawn, would the complainant be consulted and be told why the notice was being withdrawn or explained to them?

Response: *(Response as Redacted sent by service)*

The answers:

1. 152
2. One. The notice was defective.
3. Not recorded
4. See attached document
5. No
6. Yes

If you have any queries about the processing of your request then please do not hesitate to contact me. Further information explaining the Council's process for responding to information requests together with a complaints/appeals procedure is available in our reception or via our website at:

<https://www.hertsmere.gov.uk/Your-Council/Official-Publications--Guides--Policies/Access-to-Information.aspx>

The Information Commissioner oversees the application of the Freedom of Information Act. You may contact the Information Commissioner at:

Information Commissioners Office

Wycliffe House, Water Lane

Wilmslow

Cheshire SK9 5AF

Telephone: 01625 545700

Website: www.informationcommissioner.gov.uk

Please include the above reference number on all correspondence related to this request.

Thank you for your request.

Kind regards

Information Services



Hertsmere Borough Council

Environmental Noise Investigation and Control

Guidance for Officers

This guidance sets out the Council's approach to the investigation of environmental noise complaints made by the domestic and commercial residents of the Borough. A copy of this document will be made available to the public and other interested bodies upon request.

General Principles

1. The Council is required by the Environmental Protection Act 1990 to take such steps as are reasonably practicable to investigate complaints of statutory nuisance. Nuisance originates from the common law and is described as '*an unlawful interference with a person's use or enjoyment of land*'. It therefore follows that not every complaint of noise nuisance will constitute a statutory nuisance that the Council can investigate. The nuisance must be having a serious affect such as sleep disturbance, denying the use of a habitable room, or denying the use of outdoor space within the boundary of the premises. Noise from normal living activities in a premises with defective sound insulation would not constitute a statutory nuisance.
2. The law relating to nuisance is based on a reasonable person with average sensitivity, and what such a person would be expected to endure. The law makes no allowance for persons with excessive sensitivity, light sleepers, or night workers. The Council will investigate complaints of noise nuisance with this in mind.
3. The investigation of a noise complaint may at some point require the Council to take legal action in a criminal Court where the case must be proved '*beyond reasonable doubt*'. Evidence of the nuisance will therefore need to be gained from within the complainant's premises. The Council will not therefore investigate anonymous complaints.
4. The Council will not investigate noise complaints made by a third party unless the reporter is acting on behalf of a complainant that is unable to communicate directly with an officer of the Council through reasons of disability, illness or infirmity. The third party may be required by the Council to validate their relationship with the complainant before an investigation is undertaken.

5. The investigation of statutory noise nuisance complaints will be undertaken only by authorised officers of the Council's Environmental Health section. Officers authorised to serve nuisance abatement notices may do so without consultation with a senior officer.
6. The Council will investigate all statutory noise nuisances in a fair and unbiased manner, using standard letters wherever possible. Investigating officers will use detailed work instructions for dealing with specific causes of environmental noise nuisance to ensure a consistency of approach.
7. The Council will make a response to all complaints of noise nuisance within three working days (day of receipt plus two).
8. The Council currently provides a 24 hour service in response to noise complaints. This service is restricted when the Council offices are shut. The night time offence powers of the Noise Act 1996 have been adopted by the Council, but the obligation to provide a 24 hour service to use these powers is no longer mandatory.
9. This guidance is not to be taken as a detailed explanation of the law. The guidance is applicable to most domestic and commercial nuisance complaints, although different steps may need to be taken for specific incidents where legislation other than that stated may apply. For example, the provisions of the Control of Pollution Act 1974 will be used for noise arising from construction and demolition sites.

Investigation and Control

10. On receipt of a complaint via the Council's Central Control, by letter, electronic mail, or by any other indirect means, the investigating officer will attempt to contact the reporter by telephone where a number has been provided. Where telephone contact is not possible or appropriate the officer will request the reporter in writing or by email to contact the officer before any further action is taken. When contact is made the investigating officer will question the reporter on the circumstances surrounding the complaint.
11. On receipt of a complaint by telephone, or in person, the investigating officer will question the reporter on the circumstances surrounding the complaint. Where the officer has reason to believe that the described noise may constitute a statutory nuisance, then the reporter will be informed that the Council will investigate.
12. Where the complaint does not constitute a statutory nuisance, then the reporter will be informed that the Council will not be investigating. Where appropriate the reporter will be offered advice or other assistance to resolve the matter informally.
13. Where the noise nuisance is stated to be continuous or occurring at the time the report is being made then the investigating officer will visit as soon as possible in order to witness the nuisance. Such visits will be made at the discretion of the officer, and only made where it is deemed safe by the officer to do so. If necessary the officer will be accompanied by another officer of the Council or a police officer.

14. Where the reported noise nuisance is being caused by a domestic premises and is not occurring at the time the report is being made then the person who has made the complaint will be asked to maintain a log of noise events for a period of approximately two weeks. When the log is returned to the investigating officer it will be used to determine if further action should be taken. Where log sheets are not returned within 28 days, or other agreed period of time, then it will be assumed by the Council that the problem has been resolved and no further action will be taken. If the investigating officer determines that further action is required then they will write to the complainant, giving them access to the Council's 24 hour service, and write to the premises alleged to be responsible for the nuisance to inform them of the complaint, inform them of the powers available to the Council, and will ask them to contact the investigating officer to discuss the complaint. They will also be advised that the Council may use sound recording equipment to determine the substance of noise complaints.
15. Authorised officers of the Council will make up to three visits in order to witness the nuisance at the request of the complainant. In exceptional circumstances more than three visits will be undertaken. After three unsuccessful attempts to witness the nuisance the complainant may be offered the Council's sound recording equipment. The equipment will be installed in the complainant's premises for one week, subject to availability. Where the nuisance is believed to be of short duration, or otherwise difficult to witness by personal visits, then the complainant may be provided with the Council's sound recording equipment instead of visits.
16. The Council's sound recording equipment will only be used within six months of advising the person alleged to be responsible in writing that such equipment may be used. Where more than six months has elapsed then further advice in writing will be required and the complainant may be required to complete a further nuisance diary to justify such advice in writing.
17. Where the noise nuisance is being caused by a commercial or business premises, construction or demolition site, or a licensed premises, then a visit to the offending premises or site will usually be made prior to confirming the complaint in writing. Where appropriate the initial contact may be made in writing.
18. Measurements with a sound level meter will be taken where appropriate. For example, where the noise is being caused by industrial or commercial plant and machinery and 'on and off' measurements are possible. Measurements of domestic noise like shouting or music at varying levels will not give a representative indication of the likelihood of nuisance.
19. The investigating officer will make a subjective assessment of a noise nuisance based on the loudness of the noise, the time of the occurrence, the duration of the noise, and the frequency of occurrence. The assessment as to whether or not a statutory nuisance is occurring will be based on the affect that such exposure would have on the average person within the boundary of their own premises.

20. If a statutory nuisance is found to be occurring without reasonable excuse the Council will serve a Notice made under section 80 of the Environmental Protection Act 1990. This will require the nuisance to stop within a time-scale that will be stated on the notice. If it is not stopped in that time-scale, the investigating officer will need to be satisfied that the nuisance is continuing before the Council can take legal proceedings in the Magistrates Court against the person or persons responsible. The Council may use the power to seize noise-making equipment in certain circumstances. In almost all circumstances a written warning will be given before serving notice (see section 14). A verbal warning will be given before serving notice where a nuisance is determined outside of normal office hours by an officer who is responding as an 'on-call' duty officer, unless they are aware that a written warning has already been given.
21. Notices will be served on the person responsible for the nuisance. If that person cannot be identified the notice will be served on the owner or occupier of the land. Council Tax records will be used to identify the owner or occupier. Where the nuisance is being caused by a limited company then the notice will be served on the company at the address registered with Companies House.
22. If the investigating officer cannot find the necessary evidence to substantiate a statutory nuisance after a thorough investigation then a recommendation may be made that the complainant should consider taking their own action using the powers given to individuals by section 82 of the Environmental Protection Act 1990. Full details of how to undertake the procedure will be provided. The procedure will not be recommended where the noise complained of is not a statutory nuisance.
23. Where a thorough investigation into a noise complaint has been undertaken and a statutory nuisance has not been found, then the complaint will not be investigated again, subject to the Council's discretion, unless the circumstances of the complaint have significantly changed.
24. The identity of the complainant will not be revealed at any time during the investigation, except where required by the rules of disclosure in a criminal prosecution. An opportunity to withdraw the complaint will be given if prosecution is seen as a likely outcome.