

Neighbourhood Noise Enforcement Policy 2015

Environmental Health - Pollution Control Team

www.portsmouth.gov.uk



Introduction

Portsmouth City Council is committed to improving the health and wellbeing of our residents and the quality of their surroundings. Noise is defined as unwanted sound and can be irritating and stressful. Neighbourhood noise can include noise from industrial and commercial activities, recreational and entertainment sources, and that created by neighbours and anti-social behaviour.

This enforcement policy sets out the general approach which the City Council will adopt when enforcing specific noise legislation and the more general powers which have been provided to tackle noise related anti-social behaviour. The aim of the policy is to secure compliance with legislation through education, by providing advice and through enforcement.

It is important to note that there is no right to absolute peace and quiet and people need to be tolerant of occasional disturbance from noise. We aim to effectively investigate serious or persistently unacceptable levels of noise and thereby maintain a quality of peaceful life through the prevention and abatement of statutory nuisance and noise related anti-social behaviour.

To do this, together with our partner stakeholders, we have developed a consistent joined up approach to proactively and reactively investigate unreasonable noise. Our commitment to the public and a summary of our procedures used to investigate and combat neighbourhood noise is contained within this document.

What are our objectives when handling noise related complaints?

At all times we aim to:

- communicate our policies, powers and procedures to the public;
- provide advice and guidance on the appropriate control of noise;
- take timely and appropriate action to control, mitigate and seek to prevent serious or persistent noise through proactive and reactive assessment;
- prioritise and investigate complaints relating to noise in a cost effective manner;
- focus resource on urgent and recurring nuisance and serious noise related to anti-social behaviour;
- keep complainants informed of any significant developments in our investigations;
- actively liaise with and assist other agencies in a co-ordinated and mutually supportive way to provide the best overall remedy to noise problems;
- seek to protect the identity and confidentiality of those making complaints about noise until enforcement proceedings begin and seek to protect the identity and confidentiality of persons about whom complaints have been made;
- ensure that our actions are proportionate and reasonable and do not infringe the rights of others who may be the target of malicious or unfounded complaints;

- act in a fair and impartial manner, ensuring that our policies serve all parties fairly and enforce the law in a non-discriminatory manner;
- ensure that all our actions and decision making is properly recorded and transparent and that we are accountable for our decisions;
- maintain the Health and Safety of our enforcement officers;
- maintain the professional development of staff;
- ensure effective maintenance and calibration of all recording equipment used in the investigation of nuisance complaints where there is a likelihood of enforcement proceedings; and
- continue to improve and identify where changes in the service might be justified.

What does the law say about statutory noise nuisance?

A statutory noise nuisance is defined by the Environmental Protection Act 1990, however within 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.

To ensure we can help you the noise must be:

- substantial; and
- unreasonable.

Numerous other factors are taken into account when determining nuisance. These vary but the common nuisance assessment criteria issues are:

Locality

If you live in an area of the City that has a high number of restaurants it may be reasonable to expect some low level noise from extraction equipment. Likewise if you live next to a pub it may also be reasonable to expect occasional minor impact from music, to hear some voices, witness the inconvenience of deliveries and/or suffer minor interference from the use of gardens. Living by a shop or adjoining an industrial area is likely to generate noise which is different to that experienced in a domestic neighbourhood as plant and delivery noise may periodically be heard. People who have domestic neighbours should also expect to hear them. Perhaps they keep different hours, work shifts, carry out DIY, own pets, have young children or argue a lot. Wherever you live and whoever your neighbour is you will have to tolerate hearing them from time to time.

Duration and frequency

For example, “one-off” parties that are reasonably managed and controlled but still audible are unlikely to be a nuisance.

The time the nuisance occurs

For example, undertaking DIY activities, lawn mowing and vacuuming are all very reasonable activities if carried out during a sensible hour, doing so late at night or in the early morning is however likely to cause problems for neighbours.

Sensitivity

The test for assessing sensitivity has two elements. Not only must the person causing the nuisance be acting unreasonably but the complainant must also be acting reasonably.

For example a shift worker trying to sleep during the day and complaining of general daytime noise, such as the use of a washing machine from a neighbour, is not being reasonable.

Case law requires us to act as the standard person when reaching a decision so we cannot take into account those who might have a different or higher expectation of peace and quiet (e.g. shift workers, persons who may be ill, infirm or otherwise susceptible to noise).

Social Acceptance

Certain activities such as children playing or crying are socially accepted commonplace and unavoidable. The impact of children is therefore unlikely to be classified as a nuisance.

It is understood that children, and/or adults, using foul language, whilst not necessarily a noise issue, may be socially unacceptable and distressing. In such cases, and/or in cases where concerns are raised in respect to child/adult protection issues other agencies may be informed.

Evening fireworks around the 5th November, planned street celebrations, music on New Years Eve, public events such as fun fairs, fetes, carnivals or festivals held on our open spaces may all give rise to some noise and cause a degree of disturbance. These are, however, often tolerated and accepted by the community as they are part of tradition, celebration or are held for the public as a whole to enjoy and therefore these may not be classified as a nuisance.

The use of the Noise Act 1996

In addition to statutory noise nuisance as defined in the Environmental Protection Act 1990, the Noise Act 1996 introduced an offence of emitting excessive noise from a dwelling or licensed premises at night (between 23:00 and 07:00 hours). If noise measured inside the dwelling of a complainant exceeds the 'permitted level' as prescribed in legislation the Local Authority may prosecute. Alternatively the Local Authority may offer the person who has committed the offence the opportunity to discharge liability to conviction with payment of a fixed penalty notice within 14 days.

The use of the Anti-Social Behaviour Crime and Policing Act 2014

Most complaints received by the City Council in relation to noise nuisance are likely to be dealt with under the Environmental Protection Act 1990. This legislation is however of little assistance in dealing with noise which occurs outside the boundary of a premise.

Where appropriate, complaints relating to noise in public areas will be dealt with using powers provided under the Anti-Social Behaviour Crime and Policing Act 2014. Such powers include the use of Civil Injunctions, Criminal Behaviour Orders, Community Protection Notices and Closure Notices. The aforementioned assessment criteria will however continue to be relevant when assessing the impact of the noise under this Act.

So what should you do if you believe you are suffering from unreasonable noise?

Generally we all accept when living in such a small, densely populated City that we will hear noise from time to time. However, when it is unnecessary, excessive in volume or duration, has a material impact and / or occurs at unreasonable times of the day it should not have to be tolerated. Regardless of who is creating the problem, complaints of these types of noise should be made to the pollution control team of the City Council.

Other agencies may be able to assist with low level noise disturbance or other associated anti-social behaviour and where appropriate we will either signpost you to these agencies or contact them directly to discuss the detail of your complaint with them. These agencies may include landlords, Community Wardens, the Police, Community Support Officers and the Anti Social Behaviour Unit. All these groups have very limited powers regarding noise issues and although they may be able to help us resolve the problems informally it is vital that serious widespread or repeat disturbance should always be reported directly to the pollution control team.

If you are suffering with noise from a domestic neighbour we would suggest that you first attempt to resolve the matter by approaching them directly, particularly as this is often the easiest and most efficient method of settling problems. It's possible that they may not even be aware that they are causing you a problem. However, understand that you may be unwilling or unable to do so and therefore we do not require this prior to accepting your complaint.

It does not matter if you own your home, rent it from either a private or social landlord, or if you are a Council tenant. If you are suffering with unreasonable noise then we will try to help you.

What about noise from open air events?

Should you have concerns in relation to the level of music from formal organised events held upon City Council land, be assured that it is highly likely that considerable pre-planning has already taken place to ensure that the levels of noise created are reasonable.

The City Council is keen to ensure that appropriate balances are achieved whilst:

- encouraging the use of our open areas;
- meeting our own and the organisers' objectives to provide high quality events;
- ensuring that attendees' expectations in terms of noise level are achievable; and
- safeguarding the interests of the community at large, who may be affected by the resultant entertainment noise levels.

When approving or providing events the City Council accepts that not everyone will enjoy the musical entertainment provided and some residents and businesses may suffer some disruption. In addition, in areas where residential accommodation is in close proximity to open areas such as Southsea Common, the City Council accepts that negative impacts from musical entertainment, particularly if it can be heard inside peoples' homes, may lead to some dissatisfaction.

All complaints received in relation to such events will be assessed in accordance with the aforementioned assessment of nuisance criteria.

How do you contact the team?

To register your complaint you can either:

Telephone the City Help Desk on 023 9283 4167;

E-mail: cityhelpdesk@portsmouthcc.gov.uk;

Write to City Helpdesk, Civic Offices, Guildhall Square, Portsmouth, PO1 2BG.

When you contact us by telephone you will be asked a number of questions to enable us to appropriately process your complaint. Should you choose to write or e-mail please ensure that you include the following:

- Your name, address and telephone numbers;
- The address, site or vehicle / machinery where the noise is coming from;
- Details of the type of noise, how long it lasts for and how often it occurs;
- An explanation of how the noise affects you, where, when and in what circumstances it can be heard;
- Details of any action you have taken to try to deal with the problem yourself. This may include speaking with your neighbour directly, approaching your landlord or details of any actions or approaches to other agencies such as the Portsmouth Mediation Service, the Community Wardens or the Police.

What will happen next?

We will normally categorise complaints as either urgent or recurring.

Urgent complaints are classified as one-off events that are so serious that they require a rapid investigation and response.

These might include:

- building alarms;
- complaints received from three or more separate households regarding the same address.

Domestic noise

Most complaints are likely to relate to recurring noise. These types of problem often affect only one person or household but over a period of time result in much greater disturbance. In an attempt to immediately resolve complaints of this type, where possible, upon receipt and prior to any investigation, we will write to or visit those accused of creating the noise.

During this contact with the accused, we will not disclose details of the complainant but we will highlight the nature of the problem, provide advice and explain our procedures. We hope that this contact will prevent a recurrence of the problem and solicit a response.

We are always interested in discussing problems with both parties, so should you receive our letter of complaint notification we would suggest that you contact us as soon as possible. Should an officer visit your home or approach you in respect to noise complaints, we would be grateful if you would either discuss the matter directly or arrange a convenient time for the officer to re-visit.

We hope that our contact with those accused will resolve the problems. Should the noise continue after the date of registration, we ask complainants of domestic noise to notify us that we have failed to resolve the problem.

Complainants usually choose to do this by telephone or e-mail but any method of contact is acceptable. Should you decide to visit the Civic Offices to report recurring noise and wish to discuss an issue with an officer it will be necessary to do so through a prior appointment. You can however register a new recurring nuisance complaint in person, our reception staff will be only too pleased to assist you.

Should we be notified that we have not prevented a recurrence of the problem, or if the noise is occurring in open areas and pre-emptive contact with the perpetrators is impossible, complaints will become active and assigned to an officer for investigation. This officer will contact you to explain how further incidents of unreasonable noise should be reported and how they will be investigated.

Non domestic noise

All complaints about non-domestic noise, such as those registered against businesses or entertainment venues, will be activated immediately upon receipt and you will be able to contact us for investigation next time the noise disturbs you. We will also make contact with the company concerned in an attempt to resolve the problems so that you are not disturbed again.

How do we investigate the noise problem?

Upon activation we generally employ four methods of investigation.

Reactive observations

This is where we receive notification by telephone from a complainant that a noise incident is occurring. We will seek to make a rapid response by visiting the complainant's home to verify the complaint and collect evidence to support further action.

We are aware that noise is most likely to cause significant problems during the evening and night and therefore we operate an out of hours service. We are available almost every evening of the year for registered complainants to report recurring noise.

Pro-active observations

This is where we target premises that are causing noise nuisance or where we believe problems may be caused. We will aim to target times where we expect problems to occur. We will often 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 our normal operational hours. We are more likely to employ this approach to investigate non-music related complaints.

Unattended monitoring

This is where we place a monitoring device such as an audio recorder and sound level meter in the complainant's home to either operate continually or more typically under the control of the complainant.

Independent evidence

This is where we receive information from persons other than the complainant to verify their allegations. We will need to be satisfied that the evidence is genuine and that it can be presented persuasively in any court proceedings. Typically we will rely upon evidence of this type when provided by independent professional witnesses such as the Police.

What happens when we are satisfied that a noise problem has occurred?

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.

Where we are satisfied that a problem is continuing, and where it is appropriate to do so, we will increase the level of enforcement until the problem has been resolved.

This action may include any number of the following:

Action	Comment
Service of Statutory Notices.	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 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.
Service of Warning and Fixed Penalties Notices	<p>These notices relate to noise only from dwellings and licensed premises between 23:00 and 07:00 hours. A warning notice may be served if an officer is of the opinion that the “permitted noise level” may be exceeded.</p> <p>A fixed penalty notice may be served following the service of a warning notice once the “permitted level” has been exceeded. The fine is £100 for domestic and £500 licensed premises.</p>
Seek a review of a Premises Licence	This will be in accordance with the provisions of the Licensing Act 2003. It is likely that this procedure will only follow the service of a Statutory Notice and/or where warnings regarding the problem have remained unheeded by the person responsible.
Prosecution in Magistrate’s Court	<p>We are likely to seek a prosecution for multiple substantiated breaches of Statutory Notices, i.e. where Statutory Notices have not been complied with.</p> <p>Maximum fine for a single offence is £5,000 for domestic and £20,000 for commercial premises.</p>

Civil Injunctions	<p>Injunctions may be used to prevent individuals from engaging in noise related anti-social behaviour. It is envisaged that the use of injunctions will usually be a last resort used in situations where other noise specific legislation is unavailable or has failed to provide a permanent remedy. Injunctions could be used as a fast and effective protection for victims and communities, so there may be circumstances where injunctions may be appropriate to prevent serious noise problems from escalating.</p>
Criminal Behaviour Order	<p>Criminal behaviour orders (CBO) may be used when a perpetrator is convicted of a criminal offence and where there is evidence, beyond reasonable, doubt that the offender has engaged in noisy behaviour that caused or was likely to cause harassment, alarm or distress and the court considers that making the order will help in preventing such behaviour.</p> <p>As contravention of a noise abatement notice served under the provisions of the Environmental Protection Act 1990 is a criminal offence it is possible to seek a CBO on a conviction obtained under our specific noise related powers.</p>
Community Protection Notice	<p>Community protection notices (CPN) are intended to deal with repeated or on-going conduct which negatively affects the quality of life of the community. The test for anti-social behaviour under this part of the Act is that officers have to be satisfied, on reasonable grounds, that the noisy conduct of the individual or business is having a detrimental effect on the quality of life of those in the locality and its effect is persistent or continuing in nature. Where proven, where the governing procedural issues have been implemented, a CPN could be issued in relation to noisy behaviour.</p> <p>There is a principle of law that a specific power e.g. statutory nuisance under EPA1990 should be used in preference to a general one. Therefore prior to the service of a CPN consideration should first be given to the use of statutory nuisance legislation.</p>

Closure Notices	<p>Anti-Social Behaviour Crime & Policing Act 2014 gives powers to enable closure of premises associated with noise nuisance for up to 48 hours by issuing of a Closure Notice (CN) and for up to 3 months by obtaining a Closure Order from the Courts.</p> <p>To issue a CN officers must be satisfied on reasonable grounds:</p> <ul style="list-style-type: none"> • That the use of a particular premises has resulted or is likely to result in noise nuisance to members of the public; or • There has been or is likely soon to be disorder near those premises associated with the use of those premises and that the notice is necessary to prevent the noise nuisance from recurring or occurring. • Authorised officers of the Council can issue CN for a period of 24hours, whilst the Chief Executive Officer or a designated officer for the Chief Executive Officer can issue Closure notices for a period of up to 48 hours in relation to noise emissions.
Absolute ground for possession	<p>Although not a power likely to be used unilaterally by the pollution control team, working in partnership, landlords have powers to seek mandatory possession within a 4 week notice period once a tenant or a member of their household or a person visiting the property has been convicted for breaching a noise abatement notice or a CBO.</p>

When will we take enforcement action?

It is important that each case be treated on its merits and therefore it is not possible to give definitive answers to every situation. The following guidance indicates the type of action we will normally take:

Minor breaches of legislation

Where low level disturbance is witnessed and the person responsible is prepared to put things right, no further action may be taken, although warning letters may be sent.

Serious breaches of legislation

Although we prefer to secure compliance with legislation by a process of education and encouragement, from time to time more formal action will be necessary. This may involve the service of enforcement notices which state what must be done and gives a time for completion.

Such Notices are most likely to be served when:

- there has been a breach of law; and/or
- the Council has a statutory duty to serve notice; and/or
- an informal approach by the Council has not been successful.

Fixed penalty offences

These will only be used in specific circumstances where an investigation takes place which indicates that an offence has been committed under the Noise Act or the Anti-Social Behaviour Crime and Policing Act 2014 as a result of noise from a dwelling, or licensed premises which exceeds the 'permitted level' or when a Community Protection Notice has been issued.

Simple Cautions / Criminal proceedings

These will happen when:

- a formal approach by the council has failed to resolve the problem;
- there has been a blatant disregard of the law and a failure to comply with a notice;
- the offence is so serious that other forms of action would be inappropriate.

When issuing a caution, seeking prosecutions or implementing other enforcement proceedings we will consider all available information and discuss matters with the person or company responsible to ensure that a fair, consistent and objective decision is made. When deciding what action is appropriate we will look at the following:

- the seriousness of the offence;
- the history of the person / company concerned;
- the willingness of the person / company concerned to prevent a repetition;
- any explanation given;
- the public benefit;
- any deliberate actions intended to deceive;
- the likelihood of success of the prosecution and resolution of the complaint thereafter;
- the period from the service of Notice.

In exercising our duties we will enforce the above provisions and will seek to do so in a firm but fair, open, consistent and helpful way.

All actions will be undertaken in line with the principles of good enforcement, which are:

Standards

We have developed clear standards setting out the level of service the public and businesses can expect.

Openness

We will provide information and advice in plain language and ensure it is widely available. We will explain our work and how we undertake it.

Helpfulness

Prevention is better than cure and therefore we will advise and assist with compliance. We will be courteous and provide an efficient service. We will identify ourselves by name. We will ensure we can be contacted easily and we will encourage people to seek advice and guidance from us. We will deal with enquiries efficiently and promptly and ensure, wherever practicable, our enforcement services are effectively coordinated with other services to minimise overlaps and delays.

Proportionality

All our actions will be proportionate to the risks and without unnecessary expense.

Consistency

We will try to ensure that all our officers act the same way when faced with the same enforcement circumstances. We will also work with other Authorities to ensure that this principle is applied at a local and national level.

Good enforcement

We will enforce clearly and simply, explaining enforcement procedures, mitigation and timescales wherever possible, prior to taking enforcement action.

Transparency

We will help people to understand the law and make clear what needs to be done or indeed what cannot be done.

Targeting

Our enforcement efforts will normally be directed against those whose activities pose the most serious risks or those who have a history of non-compliance.

Informative

Enforcement efforts will be given to providing information that is timely, relevant and helpful to each situation.

Any decision to prosecute an individual or company is a serious step. We will therefore comply with the Council's Enforcement Policy. By doing so we will treat victims fairly and prosecute justly and effectively.

The Policy provides the following:

- Our prosecutions will be fair, independent and objective;

- Ethnic or national origin, sex, religious belief, political views or the sexual orientation of the suspect, victim or witness will not influence our decisions;
- We will prosecute the right person for the right offence;
- We will act in the interest of justice and not for the purpose of obtaining a conviction;
- We will ensure the law is properly applied, all relevant evidence is considered and that obligations of disclosure are complied with;
- Our proceedings will be scrutinised and reviewed to make sure they meet the evidential and public interest tests;
- Our review will take into account changes in circumstances i.e. changes in address, further contraventions and admissions of guilt;
- We will be satisfied that there is a realistic prospect of a conviction;
- We will ensure evidence is compliant with admissibility rules, is robust and reliable;
- We will balance factors for and against prosecution carefully and fairly.

What if you are not happy with our service?

We aim to provide an efficient and fair enforcement service incorporating a culture of accountability and transparency. However, in the event that a person or business is not satisfied with the actions of the pollution control team the City Council has a formal procedure for registering complaints.

Any expression of dissatisfaction about the service provided will be dealt with as a complaint. In the first instance the investigating officer may deal with complaints as mistakes and misunderstanding can usually be dealt with quickly and informally. Complaints regarding process management or service delivery will however be directed to the environmental health manager for investigation. Complaints of this type should be made in writing / by email. They will be acknowledged within 5 working days. Within the acknowledgment the complainant will be advised of the date when they can expect a formal response.

Environmental Health

Pollution Control Team

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