



NOISE CONTROL ENFORCEMENT POLICY

1. GENERAL

- 1.1 The content of this Policy will be revised as necessary to meet changing circumstances. The Policy shall be reviewed by Officers at least every three years and proposed amendments shall be submitted to the Cabinet for approval.
- 1.2 All relevant Officers of the Planning, Health and Environmental Division are required to support and comply with the Noise Control Enforcement Policy.
- 1.3 This Enforcement Policy takes into account and complies with the provisions of The Regulatory Compliance Code.
- 1.4 This Policy takes into account the guidance set out in the 'Code for Crown Prosecutors'.
- 1.5 The Council recognises that there are many situations where there is a shared or complementary role with other agencies. All relevant Officers of the Planning, Health and Environment Division will work together with other agencies to ensure that the best possible outcome is achieved within the terms of this Policy. This will require actively seeking collaboration with agencies such as the Police, Fire Authority and the Health and Safety Executive as well as internal colleagues of the Council such as Development Control, Building Control and the Legal and Democratic Services Division. This list of agencies is indicative but is by no means exhaustive.
- 1.6 This Policy is available to the general public on request and is also available on the Council's website www.wyreforestdc.gov.uk
- 1.7 The Council has made provision for visits out of normal office including inspections of late night and weekend activities.
- 1.8 This Policy is monitored for compliance and reported through the Council's Cabinet by means of the Service Business Plan. Any deviation from the Policy will be reported to Cabinet.

- 1.9 This Policy should be read in conjunction with the 'Enforcement Policy for Environmental Health and Licensing'.

Policy Aims

- 1.10 The aim of this Policy is to secure efficient and effective compliance with noise control legislation, while minimising the burden to businesses and to the Council.
- 1.11 Enforcement decisions will be fair, consistent and relate to common standards whilst facilitating a fair trading climate.
- 1.12 The aim of the Council is to make a significant contribution to a clean, safe, healthy, accessible and sustainable local environment using either formal or informal procedures to achieve the most effective compliance with the relevant statutes.
- 1.13 The Council aims to ensure that every member of the public receives a uniform approach to the treatment of noise problems.
- 1.14 The Council aims to ensure that the following summary of the public's reasonable expectations in dealing with noise complaints are met:
- To be able to sleep without disturbance
 - Protection from loss of amenity due to noise or vibration
 - Qualified professional staff available to assess the existence of a noise
 - Not to hear excessive noise from neighbours in their home on a regular basis from, e.g. music, barking dogs, alarms, DIY activities
 - Sound insulation in homes to be sufficient to avoid undue disturbance from the normal reasonable behaviour of neighbours
- 1.15 The Council aims to respond to all noise complaints within 3 days of receipt (or on the same day for emergency situations, e.g. continuously sounding intruder alarms, vehicle alarms).

2. THE POLICY – PART ONE

Noise Nuisances

- 2.1 The noise nuisances which the Council can take action upon include:
- Noise from factory activities, e.g. machinery and plant, extraction fans

- Noise from commercial activities such as offices and shops, e.g. ventilation plant noise, refrigeration equipment
- Noise from pubs, clubs or other places of entertainment – amplified music, pay parties etc.
- Noisy building sites – the Council has powers to specify methods of working to minimise noise on construction sites
- Domestic noise, e.g. domestic parties, DIY activities, amplified music
- Barking dogs, persistent barking over an extended period of time
- Noise from intruder alarms – intruder alarms should be fitted with a cut off device which stops the alarm after 20 minutes
- Noise from ice cream chimes (and similar) – loudspeaker chimes should not be used before noon or after 7.00 p.m.
- Noise emitted from, or caused by, a vehicle or equipment in a street

Complaint Details

- 2.2 Complaints should be made in person, by telephone, or letter or via a third party (e.g. a Councillor). It is essential that only trained staff receive the complaint as the complainant's confidence of the Council's service delivery is established or broken at this stage.
- 2.3 Full details of the nature of the complaint together with any details of occurrence must be obtained including any action that the complainant has taken and the result of that action.
- 2.4 The Officer must establish whether the complaint has approach the perpetrator since noise complaints can often be settled amicably between the parties without the Council becoming involved. An informal approach by the complainant is not only courtesy but also the first step in resolving any differences.
- 2.5 The complainant must be asked to make a note of continued noise either in the form of a diary or in notes on the Council's noise record sheets, indicating time, duration, type of noise and its effect.
- 2.6 It is important that the complainant is reassured about anonymity when the complaint is being investigated, however, the person being complained about may guess who has complained or may approach the complainant to ask if they made the complaint. Furthermore,

complainants may be required to attend any subsequent court proceedings to act as a witness on behalf of the Council should this action prove necessary. Anonymous complaints will not be investigated, unless deemed to be in the wider public interest, as the action that can be taken is very limited.

- 2.7 The complainant must be informed of the timescale of the Council's investigation, including response times and resolution times.
- 2.8 In view of the large numbers of domestic noise complaints made to the Council, and in the interests of economy, efficiency and effectiveness, the Council may decide to pre-empt any investigation into individual complaints by first writing to the person being complained about, explaining the nature of the complaint and asking for action to be taken to alleviate the situation. A letter must also be sent to the complainant explaining what preliminary action has been taken.
- 2.9 If the action described in the previous paragraph does not prove successful in alleviating the disturbance/nuisance and complaints continue to be received, it may be necessary for the Council to undertake monitoring to ascertain if a statutory nuisance exists.

Investigation of a Complaint

- 2.10 It is essential that the investigation of any noise complaint is carried out at the time it is considered likely to be witnessed.
- 2.11 Armed with the information provided by the complainant an Officer will visit and interview the complainant at the time most likely to witness the alleged noise. This should be within 3 days or within the working day if an urgent response is required.
- 2.12 If the noise is witnessed during the visit the Officer should make a judgement as to whether the noise is a nuisance. This may be a subjective assessment, e.g. for domestic activities, barking dogs etc. Appropriate measurements may be made for comparison, record purposes etc. Noise monitoring and recording equipment may need to be installed in complainant's premises.
- 2.13 The Officer should reiterate the procedures for dealing with complaints so that the complainant knows exactly what the investigation involves. A copy of the Guide to the Council's Policy on Noise Complaint should be given and explained, together with any appropriate booklets.
- 2.14 For domestic noise the Officer should establish whether the level of sound transmission in his/her opinion amounting to a nuisance, is due to unreasonable behaviour or due to poor inherent sound insulation. A noise nuisance may be caused through the inadequacies of the

building itself in which it would be appropriate to take action against the owners of the buildings involved.

- 2.15 If, and only if, the Officer is satisfied that the noise amounting to a nuisance is caused by unreasonable behaviour, he/she must start summary proceedings for statutory nuisance as required by Section 80 of the Environmental Protection Act (EPA 90) subject to the provision of Part Two of this Policy.
- 2.16 It is considered reasonable for an Officer to make up to four visits to the complainant at times likely to witness the noise which is the subject of complaint to establish whether the noise amounts to a nuisance.
- 2.17 'Statutory Nuisance' has not been defined in the legalisation but the Courts have held that it includes noise which is a nuisance at common law. It has long been established in Britain that noise can be considered a nuisance when it is a condition or activity which unduly or materially interferes with an individual's rights, use or enjoyment of land. This is of particular relevance to neighbour noise issues. It is only necessary for one person to be affected by a nuisance for an authority to be required to investigate.
- 2.18 If after four separate visits the Officer has been unable to witness any noise or only noise which is not considered to be a nuisance, the complainant must be informed:
- of the action already taken to investigate the complaint
 - that the Council is unable to take any further action
 - of how to take their own action in the magistrates Courts under Section 82 of the Environmental Protection Act 1990 (EPA 90)
- 2.19 If at any time during the investigation, the Officer concludes that the complaint should be dealt with by another organisation, the complaint should be referred to the relevant body immediately and the complainant advised accordingly, e.g. civil aircraft noise to the Civil Aviation Authority.

Resolution of Complaint

- 2.20 A complaint shall be resolved when it has been investigated and results in one of the following outcomes:
- No action required as no nuisance found (and complainant advised as to how to proceed privately)

- Council's noise policy followed, and nuisance confirmed and either: action taken by the Council – informal/formal or Council's recommendations/requirements implemented.
- Action not within Council's remit, and details passed to relevant authority and complainant informed

2.21 The Council will aim to resolve noise complaints within a period of two months from the date of receipt of the complaint.

3. THE POLICY – PART TWO

3.1 The choices for action are:

- to take informal action by offering information, advice and support, either face to face, by telephone, in writing or by electronic means;
- to take more formal action through the issue of letters warning of non-compliance to try to ensure that neighbours or business proprietors do not, through lack of information or understating, unnecessarily expose themselves to the possibility of formal action;
- to use statutory notices to require compliance with the law. The statutory right of appeal against any notice served will be brought to the attention of the person served with the notice at the time of the service

and, as last resorts:

- to use formal cautions;
- to prosecute;

or a combination of the above, where considered appropriate.

3.2 The criteria to be considered before reaching a decision on the use of formal cautions or prosecution include:

- Has all informal action (where appropriate) to resolve the issue been exhausted;
- Is there blatant disregard of responsibilities under the legislation
- The seriousness of the offence
- The history of previous compliance with legal requirements

- The confidence in an individual's or company's ability to meet legal requirements
- The likely results of non-compliance
- The benefit to public health
- The likelihood of recurrence
- The risk of pollution of the environment or harm to health
- Where the offence causes public alarm and it is desirable to produce a public effect which reassures the public and deters other potential offenders.

3.3 The Council recognises that Section 80 of the Environmental Protection Act 1990 (EPA 90) is quite specific in its requirement that:

- '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:
 - a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence
 - b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of these purposes;

and the notice shall specify the time or times within which the requirements of the notice are to be complied with'. (*Note: The Local Authority can attempt to negotiate a solution prior to the service of any notice*).

If the notice is not complied with, a prosecution can be taken and the Council can carry out remedial work in default including seizure of equipment.

Principles of Enforcement

3.4 The Council's approach to enforcement of the law will be informed by the principles of:

- proportionality, in applying the law and in securing compliance
- consistency, of approach

- transparency, about how the Council as a regulator operates and what those regulated may expect;
- targeting, to channel resources into problem areas;
- helpfulness, as the Council believes that prevention is better than cure
- standards, to be drawn up in consultation with interested parties, setting out the Council's service levels and expected performance
- procedure, to deal with complaints of poor, inappropriate or non-existent service; the procedure will be well publicised, effective and readily accessible to all
- public interest, it must be in the public interest to prosecute

Proportionality

- 3.5 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect that action taken by the Council to achieve compliance will be proportionate to any risks to public health or the environment and to the seriousness of that risk.

Consistency

- 3.6 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar aims. The council will also work closely with other enforcement agencies in its efforts to achieve consistency.

Transparency

- 3.7 Transparency means that the Council undertakes to help those subject to legal requirements to understand what is expected of them and what they, in turn, can expect from the Council. General information and advice will be provided in clear and concise language using a range of formats and media.

Targeting

- 3.8 Targeting means making sure that inspections and visits are targeted primarily towards those whose activities give rise to complaint.

Helpfulness

- 3.9 The Council believes that part of its role is working actively with any person affected by its services to advise on and assist with compliance. The Council will provide a friendly, courteous, easily contactable, efficient service which will deal promptly with service requests whilst minimising unnecessary overlaps and time delays.

Standards

- 3.10 In consultation with interested parties the Council will draw up clear standards setting out the level of service and performance which the public and business proprietors can expect to receive. The council will publish these standards and its performance in meeting these standards, each year.

Procedure

- 3.11 The Council has published details of its Corporate Complaints Procedure and all staff have been trained in its application. The procedure is aimed at dealing officially with complaints of poor, inappropriate or non-existent service. This means making the procedure readily accessible to all service users including those regulated. The Corporate Complaints Procedure applies to all Council services, not just to the Planning, Health and Environment Division. The Corporate Complaints Procedure forms part of the Council's performance monitoring system to assist in continuous improvements to the service which the Council provides. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

Public Interest

- 3.12 When formal enforcement action is necessary, the person responsible for creating the noise must be held to account for it. However, it must still be in the wider public interest that enforcement action is taken.

Enforcement Options

- 3.13 Advice from an Enforcement Officer will be clear, readily understandable and confirmed in writing on request. Before formal action is taken, an opportunity will be given to discuss the circumstances of the case unless there is need for immediate action due to the severity of the situation. Where immediate action is considered necessary an explanation will be given as soon as possible and, in no later than 10 days, confirmed in writing. Any written documentation issued will contain all the information needed to understand what work is required, why it is needed and shall state the

legislation contravened and measures to enable compliance with the legal requirements.

- 3.14 Details will be given of all rights of appeal, whether to Wyre Forest District Council or to external bodies.
- 3.15 When conducting formal investigations Officers will adhere to Policy and Criminal Evidence (P.A.C.E.), Codes of Practice and will comply with the Criminal Procedures and Investigation Act (C.P.I.A.), Code of Practice on disclose of Information and the Regulation of Investigatory Powers Act 2000.

Informal Action

- 3.16 Informal action to secure compliance with legislation includes advice, verbal warnings and requests for action, the use of letters and inspection reports. The circumstances when it is appropriate to consider using information action are as follows:
- The noise was not sufficiently serious to require formal action
 - From past history, it can be reasonably expected that informal action will achieve compliance
 - Where informal action will be more effective than formal action.

Statutory Notices

- 3.17 Enforcement Officers will only consider the use of statutory notices where one or more of the following apply:
- There is/are significant contravention(s) of legislation
 - There is a lack of confidence in a response to an informal approach
 - There is a history of non-compliance with informal action
 - There is evidence of little knowledge of statutory requirements
 - The result of non-compliance could be potentially serious to public health, safety, well-being or the environment
- 3.18 Statutory Notices will only be issued by Officers who have been authorised by Wyre Forest District Council and are considered competent

- 3.19 The failure to comply with a Statutory Notice served under e.g. the Environmental Protection Act 1990, may result in Court Proceedings where the circumstances fulfil the criteria in the Enforcement Policy.
- 3.20 If a right of appeal exists, details will be included with the notice.
- 3.21 *It should be noted that some notices are served in order to obtain specific information and, as such, do not represent enforcement action.*

Formal Cautions

- 3.22 Formal Cautions where appropriate will be issued in accordance with Home Office guidelines. A Formal Caution may be issued where there is sufficient evidence to provide a realistic prospect of conviction but because of the attitude, history and willingness to co-operate, it is considered inappropriate to prosecute.
- 3.23 To issue a Formal Caution, the Council must be satisfied that the offender has admitted to the offence in writing and has agreed to be cautioned.
- 3.24 Formal Cautions issued may be cited when considering any similar offences within three subsequent years.

Prosecution

- 3.25 Circumstances likely to warrant prosecution may be characterised by one or more of the following:
- Where the offence involves a significant breach of the law such that public health, safety, well-being or the environment is, or has been, put at risk
 - Where the alleged offence involves failure by the suspected offender to correct an identified potential risk having been given the opportunity to comply with the lawful requirements of an authorised Officer
 - Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice
 - Where there is a history of similar offences related to risk to public health, safety, well-being or the environment.
- 3.26 Before a prosecution goes ahead, the Officer responsible for deciding on the enforcement action and the Head of Legal and Democratic Services will be satisfied that there is relevant, substantial and reliable evidence that an offence has been committed.

Accountability

- 3.27 The Environmental Health and Licensing Section will regularly consult on the service it provides and comments received will be used to change procedures where appropriate.

IF YOU HAVE ANY COMMENTS ABOUT THE CONTENTS OF THIS POLICY, PLEASE CONTACT THE HEAD OF ENVIRONMENTAL HEALTH AND LICENSING.

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