

## **APPENDIX B**

### **SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (NUISANCES)**

The purpose of this appendix is to provide more information on the provisions of statutory nuisance legislation under the Environmental Protection Act 1990 and its relationship with Anti-social behaviour legislation.

#### **Statutory Nuisance Enforcement**

##### **Proactive Inspections**

Whilst much statutory nuisance work will involve reactive responses to complaints from the public, the Council also has an important responsibility to carry out pro-active regulation to protect the amenity of residents. In particular, we will carry out proactive inspections, and take all necessary actions in the following circumstances:

- To control the emission of dusts, smoke, odour or effluvia where there is a very high likelihood of nuisance occurring and/or history of complaints or an on-going investigation
- To control potential nuisance from planned events, specific operations or activities, with a potential to cause significant disturbance
- To assist the Planning Department in assessing, and controlling, the impact of potential nuisance from proposed developments

Pro-active inspections may be conducted out-of-hours (e.g. during the evening or weekends) as well as normal working hours.

##### **Abatement Notices**

We have a duty to investigate complaints related to statutory nuisance and to serve an Abatement Notice if a nuisance exists. It is an offence not to comply with an Abatement Notice without a reasonable excuse.

The majority of statutory nuisance service requests relate to individuals and are usually due to the behaviour of a neighbour for example playing music too loud. These requests for service can be due to a clash of lifestyles or a consequence of a long-standing neighbour dispute. It is expected that the complainant/s will be willing to give evidence in court if necessary unless there are extenuating circumstances.

The Council receives many complaints about different types of noise including alarms, loud music, construction sites, barking dogs, DIY, kitchen extract systems, and air conditioning units. The Council has legal powers to deal with noise that is a 'nuisance'.

Other statutory nuisances definitions are wide-ranging and complex in terms of the premises and nature of emissions to which they apply. In addition to noise from any premises, they include premises which are in such a state to be prejudicial to health or a nuisance and emissions of smoke, fumes, gases from any premises. Or dust, steam, odours or effluvia from industrial, trade or business premises. It also includes animals kept in such a way so as to be prejudicial to health or a nuisance and insects from industrial, trade or business or light

emanating from any premises. Finally, it can include any accumulation or deposit that is prejudicial to health or a nuisance.

Moving vehicles on the highway are not relevant premises for the purposes of statutory nuisance. Parked vehicles, machinery or equipment in the street can give rise to noise nuisance under the statutory nuisance legislation.

### **Out-of-hours actions**

We do not currently operate an out-of-hours reactive complaint investigation service. We will therefore investigate any nuisance complaints during normal working hours and respond initially within 5-working days. As indicated above, proactive inspections can be carried out outside of normal hours if justified and we can also carry out overt surveillance (i.e. where we have warned the person(s) likely giving rise to the complaint notice of our intention to carry out monitoring) including the use of monitoring equipment such as noise recording devices.

### **Nuisances and anti-social behaviour**

Anti-Social Behaviour (ASB) is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder that makes many people's lives a misery. We work closely with many other agencies in Mid Devon to tackle and reduce ASB. The ASB legislation puts victims of crime first by having effective powers for tackling ASB, which provide better protection for victims and communities, act as a real deterrent to perpetrators.

These enforcement powers include:

- Civil injunction
- Criminal Behaviour Order
- Community Protection Notice
- Public Spaces Protection Order
- Closure Powers

Many of these powers overlap with Nuisance and Licensing laws acting as an alternative less punitive/rehabilitation action against offenders, other than proceeding through the courts (a possible action with statutory nuisance cases).

When investigating nuisance complaints we will therefore work within the options available to us under both Statutory Nuisance and Anti-social behavior legislation. If we conclude at any stage during an investigation that a Statutory Nuisance is proven then we must take action under the Environmental Protection Act 1990 rather than ASB.

Mediation may also be offered as an alternative to statutory nuisance or ASB action where it is appropriate.

### **Defences**

Commercial businesses and other activities may have a range of statutory defences for example the use of best practicable means available to abate the nuisance or a right by prescription to commit what would otherwise be a nuisance as a result of a substantial history of operating without interruption. These are defences arising from case law and as such all current and relevant case law will be taken into account together with the specific circumstances of the nuisance in question.

## **Procedures and closing investigations**

We will follow set procedures when undertaking nuisance investigations following a common or related set of stages. These procedures are available from us upon request. We will always carry out an initial assessment and send out standard letters and diary sheets to the source of the complaint and complainant respectively alongside exploring mediation and other informal actions. If after 28 days we have resolved the complaint and/or we have received no further communication (including completed diary sheets) from the complainant then we will close the investigation and take no further action.

## **Individual action not involving the Council**

If you are the occupier of premises affected by noise, you can under section 82 of the Environmental Protection Act 1990 complain directly to a Magistrates Court. You may wish to do this because you do not want to involve us or that we are unable to help having investigated your complaint.

## **Other legislation dealing with nuisances and harmful emissions**

The Environmental Health team may draw upon a wide range of other regulatory powers as appropriate to deal with nuisances or other harmful emissions. These include (not an exhaustive list):

- Public Health Acts 1936 and 1961 – for example in respect of sanitary complaints, noxious premises, drainage and verminous provisions
- Prevention of Damage by Pests Act 1949 – for example for dealing with damage and nuisance caused by infestations of rats and mice
- Control of Pollution Act 1974 – for example in respect of noise from construction sites
- Building Act 1984 – for example in respect of defective drainage
- Clean Air Act 1993 – for example in respect of dark smoke from chimneys and bonfires
- Environment Act 1995 – for example in respect of imminent danger of serious pollution
- Environmental Damage Regulations 2009 – for example in respect of pollution to land from commercial activities (not historic land contaminated prior these regulations coming into effect)

In applying these various regulatory powers we will do so in accordance with best practice and codes of practice issued by the relevant agencies and bodies including DEFRA, Environment Agency and Chartered Institute of Environmental Health.