



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Social Services, Housing and Community Safety Scrutiny Committee 15th December 2022

Report of the Head of Planning and Public Protection – Mr Ceri Morris

Matter for Information

Wards Affected: All Wards

Report Title: Environmental Health Briefing Note: What is a statutory nuisance?

Purpose of the Report

At a recent Forward Work Programme session of the Social Services, Housing and Community Safety Scrutiny Committee, Members wished to receive a report on 'What is a statutory nuisance in Environmental Health?'.

This report presents a briefing note with information produced by Environmental Health to answer this question.

Executive Summary

This report will highlight the main legislative definition of a statutory nuisance according to section 79 of the Environmental Protection Act 1990 and provide some commentary around the subject matter to include considerations used to determine if a statutory nuisance exists or not.

Categories of Statutory Nuisance

1. The prescribed matters that constitute a statutory nuisance are set out in section 79 of the Environmental Protection Act 1990:
 - a. any premises in such a state as to be prejudicial to health or a nuisance – This category was developed to largely deal with conditions at dwellings but it also includes land and vessels.
 - b. smoke emitted from premises so as to be prejudicial to health or a nuisance – Smoke is defined in section 79(7) as including soot, ash, grit and gritty particles emitted in smoke and has been held to include the smell of smoke. This section mainly covers smoke from domestic premises (other than from chimneys in a smoke control area) and smoke other than dark smoke from industrial and trade premises.
 - c. fumes or gases emitted from premises so as to be prejudicial to health or a nuisance – This section only applies to private dwellings. Fumes and gases are defined in section 79(7) as: “fumes” means any airborne solid matter smaller than dust; and “gas” includes vapour and moisture precipitated from vapour.
 - d. any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance – This section only applies to industrial and trade premises. The term “effluvia” includes smell.
 - e. any accumulation or deposit which is prejudicial to health or a nuisance – The terms used in this section are not defined but deposit suggests an individual instance whereas accumulation suggests the result of a number of deposits.
 - f. any animal kept in such a place or manner as to be prejudicial to health or a nuisance – In this section the term animal has a wide meaning – it has been held to include poultry. The term

'kept' is also important, as this section does not apply to animals gaining access to a place (such as feral pigeons entering buildings).

- g. noise emitted from premises so as to be prejudicial to health or a nuisance - The definition of noise includes vibration but does not apply to noise caused by aircraft other than model aircraft.
 - h. noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street – The provisions relating to noise in a street does not apply to road traffic noise.
 - i. any insect emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance – This provision was introduced to deal with flies near waste water treatment works.
 - j. artificial light from premises so as to be prejudicial to health or a nuisance – This provision relates to security lights (domestic and commercial), sports facilities (like floodlit football pitches), decorative lighting of buildings or landscapes, laser shows and light art.
2. For any of the above matters to count as a **statutory nuisance**, evidence must be established to prove one of the following:
- a. it unreasonably and substantially interferes with the use or enjoyment of a home or other premises, or
 - b. it causes harm to health or is likely to cause harm to health.

Duty to Investigate

3. A Local Authority must take such steps, as are reasonably practicable, to investigate any complaint of statutory nuisance from

a person living in its area. This function is delegated to Environmental Health.

4. Sometimes it is not possible for an officer from Environmental Health to witness or be satisfied of a statutory nuisance, and as such we are unable to assist in all cases reported to us.

Matters for Consideration

5. Environmental Health staff will consider matters previously established by the courts (called “case law”), in order to evaluate whether a nuisance exists and determine if the Local Authority can act or not. Factors include:
 - a. **Impact of the activity** – this is a measure of the impact of the alleged nuisance on the receptor. In some cases assessment of the impact can be supported by objective measurements (such as noise monitoring) but in many cases it will be a subjective assessment as to the degree of health risk or interference.
 - b. **Locality of neighbourhood** – This considers the location of both the receptor and assesses if the activity is normal for the character of the area.
 - c. **Time of activity** – This considers the time of the activity. Many nuisances have a significant impact because of the time of day at which the nuisance occurs e.g. noise from an entertainment venue would be less acceptable after 23:00hrs.
 - d. **Frequency** – This considers how often the activity occurs. Activities that occur frequently or continuously are more likely to be determined to be a nuisance.
 - e. **Duration** - This considers how long the activity lasts. For example, an activity lasting one hour would be assessed

differently to a four hour activity. The duration is considered alongside time and frequency.

- f. **Reasonable person test** – This considers what a ‘reasonable person’ would find objectionable or not. In addition, it also considers what is widespread practice or common usage in an area.
- g. **Importance of the activity** - This element considers how important the activity is to the local community. However, there is a point when a socially beneficial activity creates such an effect that it becomes unacceptable.
- h. **Mitigation factors** – This considers what reasonable steps have been taken to minimise the impact of the activity and what further steps are required. In some cases, there is a legal defence available that ‘best practicable means’ were used to prevent or counteract the effects of a statutory nuisance.

Service of Notice

- 6. Where Environmental Health is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice on the person responsible, premises owner or occupier. The notice will require steps and/or works to be taken to the abatement of the nuisance or prohibition or restriction of its occurrence or reoccurrence.

Appeal of Notice

- 7. The person on whom the notice is served may appeal to the Magistrates Court within 21 days of date on which he is served with the notice.

Enforcement

- 8. Failure to comply with the terms of an abatement notice without reasonable excuse may result in prosecution action being taken in

the Magistrates Court. The defence of best practicable means will be considered for certain types of nuisance.

9. If an abatement notice is not complied with, Environmental Health may take the necessary steps to abate the nuisance itself. Although this power exists, due to financial considerations, it is not always possible for these measures to be used. These powers are more regularly used in cases of noise nuisance, where officers seizure noise making equipment.

Individuals can take private action for an alleged statutory nuisance

10. If, for whatever reason, the local authority cannot establish a Statutory Nuisance, it is possible under section 82 of the Environmental Protection Act 1990 for a complainant to apply directly to Swansea Magistrates Court with their evidence and ask that the Court issues an Abatement Order on the responsible person.

How to report an alleged statutory nuisance to Environmental Health

11. The easiest way to report a statutory nuisance to Environmental Health is via the Council's online reporting at www.npt.gov.uk and complete a complaint form to report a 'Pollution Incident or Nuisance'.

[I want to report...](#)

Coronavirus Complaint	Fly Tipping	Missed collections
Street lighting fault	Noise Nuisance	Dog fouling
Abandoned Vehicle(s)	Benefit Fraud	Blue Badge Misuse
Change of Address	Empty Property	Food Hygiene Complaint
Found Dog	Graffiti	Highways Issue
Litter, Dog Foul and Grit Bin Issue	Lost Dog	Pest Problem
Pollution Incident or Nuisance	Pothole	Problem with a Rented Property
Street Cleaning Issue	General Incident Report	

12. Please note that should Environmental Health be able to take the complaint further to investigation phase, officers will write to the address being complained about in order to bring the matter to their attention.
13. In addition, Environmental Health may require the complainant to attend Court and act as a witness for the Local Authority.
14. Monitoring log sheets will be required to demonstrate the effects of the activity in terms of nuisance and health impact. These forms may be presented at Court should the Local Authority consider there is enough evidence to act on behalf of the complainant.

Financial Impacts

No implications

Integrated Impact Assessment

There is no requirement to undertake an Integrated Impact Assessment as this report is for information purposes.

Valleys Communities Impacts

No implications.

Workforce Impacts

No implications.

Legal Impacts

No implications.

Risk Management Impacts

No implications.

Consultation

There is no requirement for external consultation on this item.

List of Background Papers

Part 3 of the Environmental Protection Act 1990

([www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-
nuisances-england-and-wales](http://www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-
nuisances-england-and-wales))

England and Wales guidance on Statutory Nuisance
([www.gov.uk/guidance/statutory-
nuisances-how-councils-deal-with-complaints](http://www.gov.uk/guidance/statutory-
nuisances-how-councils-deal-with-complaints))

Guidance to accompany the Statutory Nuisance Provisions in Scotland
([https://www.gov.scot/binaries/content/documents/govscot/publication
s/advice-and-guidance/2009/01/guidance-accompany-statutory-
nuisance-provisions-public-health-etc-scotland-
act/documents/0076564-pdf/0076564-
pdf/govscot%3Adocument/0076564.pdf](https://www.gov.scot/binaries/content/documents/govscot/publication
s/advice-and-guidance/2009/01/guidance-accompany-statutory-
nuisance-provisions-public-health-etc-scotland-
act/documents/0076564-pdf/0076564-
pdf/govscot%3Adocument/0076564.pdf))

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