
Neighbourhood Noise Policy

Planning and Environmental Health 2022



Elmbridge

Borough Council

... bridging the communities ...



Foreword

Welcome to Elmbridge Councils – Pollution Teams, Neighbourhood Noise Policy. This Policy sets out how the Pollution Team will manage and investigate noise complaints within the borough, working in partnership with colleagues and external agencies.

Noise is an inevitable consequence of a modern and vibrant society. For some, the noise of modern life provides a desirable sense of excitement and exhilaration, but for others noise is an unwanted intrusion that can adversely impact on their quality of life, affecting their health and wellbeing.

There is no right to absolute peace and quiet and everyone needs to be tolerant of the occasional disturbance from noise. Essentially both sides must be reasonable and learn to tolerate some noise from their neighbours and local business.

The local authority has no legal powers to deal with low level and occasional noise disturbances.

We would always encourage neighbours to communicate with each other and where possible, to try and resolve the situation themselves before making a complaint to the Council. A polite letter or face to face discussion can be very successful. The Council promotes the use of mediation services, which is a free and effective way of resolving neighbour disputes. Mediation Surrey is independent of the Council but is available to all our residents.

This policy, along with the Environmental Services Enforcement Policy, sets out the general approach which the Council will adopt when enforcing noise legislation and where possible, use prevention and education before legal action. We work with partner agencies in a joined-up approach to proactively manage complaints from our residents of unreasonable noise and any noise associated with Anti-Social Behaviour (ASB).

Information and advice on noise is available at
<https://www.elmbridge.gov.uk/pollution/>

Accessibility

We have actively considered the needs of blind and partially sighted people in accessing this document. We will make this document available in full on our website and you may download and translate into other accessible formats. If you have other needs in this regard, please contact the Pollution Team.

Contact us

You should send all correspondence to envhealth@elmbridge.gov.uk or the Pollution Team, Planning and Environmental Health, Elmbridge Borough Council, Civic Centre, High Street, Esher, Surrey, KT10 9SD.

Legal Controls

Environmental Protection Act

The Environmental Protection Act 1990 is the principal piece of legislation controlling noise through statutory nuisance provisions. In simple terms, a statutory nuisance is "a legal term which has been developed over many years and has come to mean something which is stopping you from enjoying your land or property".

A statutory noise nuisance is more than a mere annoyance or interference and would have a significant impact on the health and wellbeing of those affected. Apart from the noise being substantial and unreasonable, numerous other factors are taken into account when determining nuisance. The principal ones being:

- 1. Location.** Is the noise typical for the area? Example: A cockerel crowing in the countryside would be more acceptable than in a quiet urban residential road.
- 2. Time of day.** A statutory nuisance can exist at any time of the day, however the effects of noise late at night when most people are sleeping would be given greater weight than the same noise occurring during the day.
- 3. Frequency.** How frequently are you affected by the noise? Example: Noisy parties every weekend would be viewed differently to one held every now and then.
- 4. Duration.** How long are you disturbed? Example: A dog barking only at a delivery person would be viewed differently to one barking for most of the day.

5. Intensity. How loud and intrusive is the noise? We all have different noise thresholds and tolerances. In determining nuisance, the judgement would be how the noise would affect the average individual, not someone who had a particular sensitivity to the noise complained of.

6. Number of people affected. A view will be taken on the number of people who are, or could be, affected by the noise. Example: If only one person complains when the whole street could equally be affected then there could be a challenge that the individual making the complaint could be unduly sensitive. This also links to point 5 above.

Where noise is witnessed to amount to a statutory nuisance, a Noise Abatement Notice (NAN) will be served requiring the nuisance to be abated (unless an exemption exists). Failure to comply with a NAN is a criminal offence with an unlimited fine in addition to a daily fine for each day the offence continues after conviction for certain categories of premises.

Taking your own action If the Council is unable to investigate a complaint or take formal action, Section 82 of the Environmental Protection Act 1990 makes provision for private individuals to take their own action direct to the Magistrates' Court if they are aggrieved by the existence of a statutory nuisance. The Court can issue an Order requiring the abatement of the nuisance and can also issue a fine. Breach of such an Order is a criminal offence, punishable by a further fine.

Antisocial Behaviour, Crime and Policing Act

The Antisocial Behaviour, Crime and Policing Act 2014 provides regulators with tools to deal with a wide range of Anti-Social Behaviour (ASB).

The principal tool for controlling noise related ASB is the Community Protection Notice (CPN). The test for a CPN is when '*the conduct of the individual or body is having a detrimental effect, of a persistent and continuing nature, on the quality of those in the locality AND the conduct is unreasonable*'. A CPN can be used to deal with noise at a lower standard compared to the relatively high bar required of statutory nuisance, however the noise must impact more than one person.

If a CPN is breached, on conviction, a fine of up to £2,500 may be imposed on an individual or up to £20K where an organisation is involved. Other sanctions may follow, which include an Order to get works done, a forfeiture or seizure of goods. The Council also has recourse to the use of a Fixed Penalty Notice (FPN) of up to £100.

Other tools available within the Act include Civil Injunction Criminal Behaviour Order (CBO) and Closure Powers. These can be used to deal with noise issues generally as part of wider ASB partnership action.

The Control of Pollution Act

The Control of Pollution Act 1974 contains specific powers in the control of noise from construction sites.

The Licensing Act

The Licensing Act 2003 contains four licensing objectives, one of which is the Prevention of Public Nuisance that covers noise. Conditions to control noise can be included on Premises Licences and there is the option for licences to be reviewed. Information on these procedures can be found on our Licensing webpage. <https://www.elmbridge.gov.uk/licensing/>

Adoption of and adherence to best practice guidance, for example, the Noise Council Code of Practice on Environmental Noise Control at Concerts, and other recognised codes of practice are used to support licensing objective, Prevention of Public Nuisance.

The Clean Neighbourhoods and Environment Act

The Clean Neighbourhoods and Environment Act 2005 makes provision for dealing with noise from defective audible intruder alarms and vehicle repairs carried out on public roads.

The Town and Country Planning Act

The Town and Country Planning Act 1990 may impose planning conditions on your premises, some of which may be to control noise either directly i.e. requiring additional sound insulation, or indirectly i.e. stipulating opening and closing times.

The Council will review each individual case on its merits and decide as to the most appropriate piece of legislation to pursue, and in certain circumstances this may involve one or more of the above legislations.

Investigation

All complaints of noise should firstly be directed to the Pollution Team which is part of the wider Planning and Environmental Health Service. Those demonstrating the most significant impact will be acted on first.

Noise complaint investigations, by its very nature, can be quite complex and will take time to investigate, particularly where the noise is occurring intermittently. Typically, this can be weeks for a relatively straightforward case to many months for the more complex ones.

We cannot deal with the reasonable everyday sounds of living in dwellings, such as children playing, people walking across their floors, washing machines, doors banging, and the occasional dog barking. This also includes reasonable periods and levels of music playing, neighbours carrying out DIY works at reasonable times, people shouting, laughing and arguing, and such like. These behaviours may be irritating when they happen, but they are not illegal or criminal activities, and the Council cannot take formal legal action to stop it from happening.

In these cases, it may be possible for the Council to write informally to your neighbour offering some general advice on neighbour noise or suggest the use of the Mediation Surrey service in these circumstances.

We are unable to investigate one-off incidents or noise that occurs on an infrequent or intermittent basis since a statutory nuisance is something that builds up over time and must be capable of being witnessed by an authorised officer. Gathering evidence and witnessing the noise complained of are fundamental in all noise complaint investigations.

The complainant's role

Where a complainant feels able to and it is safe to do so, we would encourage them to first try and resolve the situation themselves before making a complaint to the Council. A polite letter or face to face discussion can be very successful.

An alternative to making a formal complaint to the Council is to request mediation. This is a free professional service within Elmbridge and is undertaken by the independent charity Mediation Surrey. Mediation is highly effective at resolving neighbour disputes. <https://mediationsurrey.org/>

The person making the complaint has a key role in the investigation; their role can be significant in the outcome of complex and long running cases.

At an early stage in the investigation, we will ask complainants to complete a noise diary sheet, recording each noise incident and how it impacts on them and their family. We will also request the use of the Noise App to record the noise as it happens. This combined evidence is a key part of the investigative process and when assessed together, this evidence will assist the investigating officer in being able to decide how best to progress the case. This evidence supports the investigation of a complaint but on its own does not solely determine what constitutes a statutory nuisance; this is for the investigating officer and their professional judgement.

Investigations can involve visits to the complainant's home to enable officers to witness the noise complained of and/or install specialist noise monitoring equipment.

The Council's webpage provides information and tools that can assist complainants with gathering the necessary evidence to progress their complaint. The investigating officer is responsible for dealing with the complaint however making a noise complaint requires more than just the initial registering of the complaint.

Failure to assist in the investigation will result in the case being closed, for example:

- Not completing and returning noise diary sheets
- Failing to keep in touch with the investigating officer to provide updates on the current noise climate
- Not allowing access to your home to witness the noise or refusing to have noise monitoring equipment installed

If the Council advises it is unable to investigate the complaint or where reasonable attempts have been made to investigate a complaint of noise nuisance and officers have been unable to establish nuisance, there is an expectation that residents will need to consider taking their own action. Section 82 Environmental Protection Act makes specific provision for people aggrieved by statutory nuisance to take their own action direct to the local Magistrates' Court. Before considering this option, we recommend legal advice is sought to determine if this is appropriate in the circumstances.

Reactive observations

This is when we have an active investigation and we receive notification from the complainant that the noise is occurring at that time. We will seek to visit with the complainant at their home or business to substantiate their complaint and where appropriate, gather evidence to support further action. However, this is dependent on the resources available at the time and no guarantees can be offered that an officer can attend at short notice.

The Council does not have a reactive noise monitoring service outside the Council's normal office hours (9 am-5 pm Monday to Friday with the exception of public holidays). Calls can be made to the "Out of Hours" call handling service, which will be responded to the next working day.

Advice on noise is available on the Council's Noise webpage which includes information on the use of the Noise App to assist gathering evidence
<https://www.elmbridge.gov.uk/pollution/report-noise/>

Although Surrey Police work out of office hours, they do not routinely attend complaints about noise. However, any reports of alleged noise nuisance made to them out of office hours will be risk assessed to determine the specific

circumstances and vulnerability of those individuals involved, together with any wider antisocial impact on the community in determining if any response on their part is appropriate

Proactive observations

This is where we target specific premises that are known to us for causing noise complaints, or where we believe there is the potential for a noise nuisance. We will use this approach where we have evidence to show regular patterns of reoccurring disturbance, where reactive observations have failed to verify the complaint, or where the noise occurs persistently outside of office hours.

Although the Council does not have an “Out of Hours” noise service, proactive visits can be arranged outside office hours by officers as part of their investigations.

Unattended monitoring

This is where we place specialist noise monitoring equipment in the complainant’s home to enable them to record the noise complained of. The equipment continually monitors the noise levels however, it will only ever record the actual sounds when the complainant activates the record switch, enabling them to capture the noise they are complaining about.

This equipment used by the Pollution Team has been specifically designed for this particular role and is widely used by other Councils and Social Housing providers to assist in investigating complaints of noise. Evidence gathered in this way can be used to support legal action.

Before specialist noise monitoring equipment is installed, the party being investigated will be written to making them aware that a complaint has been made and that as part of the investigation we could use noise monitoring equipment. No further details are given to the party being investigated.

Independent evidence

Independent evidence from persons other than the complainant can be used to verify and support allegations of noise nuisance. In the event that criminal proceedings against the person making the noise are being considered, this evidence would need to be in the form of a witness statement, and witnesses might need to attend court to give evidence.

We also use witness statements produced by independent professional witnesses, such as the Police and Housing Officers, to support investigations and enforcement.

Unreasonable complaints and unreasonably persistent complainants

The Council recognises that there are a small number of individuals who make unreasonable complaints or who are unreasonably persistent complainants. This is defined as “Those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority’s consideration of their, or other people’s, complaints”.

An unreasonable or unreasonably persistent complainant would normally be identified as a result of a repeated and obsessive pursuit of either:

- Unreasonable complaints and/or unrealistic outcomes repeatedly requested; and/or
- Reasonable complaints in an unreasonable manner, including abusive or threatening language and/or behaviour.

Those complainants classified as unreasonable or unreasonably persistent will be handled in accordance with the Council’s corporate complaints procedure.

Anonymous complaints

An anonymous complaint will not routinely be investigated but a record of the complaint will be kept. Should further anonymous complaints be received about the same subject, the matter may be investigated.

Education

In most cases prevention, independent mediation and education precede legal action. The Councils Pollution webpages provides advice and information on noise. Advice and information can also be sought from other websites.

<https://www.elmbridge.gov.uk/pollution/>

Enforcement

When we are satisfied that a significant noise disturbance has occurred or is likely to recur, or statutory nuisance exists or is likely to occur or recur, we will take the

appropriate enforcement action. This will be in accordance with our service Enforcement Policy. This is available online or a paper copy can be sent on request.

In relation to noise the following actions may be pursued:

Noise Abatement Notice (NAN) Where a statutory nuisance has been substantiated or where formal enforcement action is considered necessary and appropriate.

Community Protection Notice (CPN) Intended to deal with particular ongoing problems or nuisances which negatively affect the community's quality of life, by targeting those responsible.

Fixed Penalty Notice (FPN) Under certain circumstances a FPN can be used to discharge the liability from conviction for the offence of breach of a CPN.

Control of Pollution Act 1974, Section 60 Notice. Covers noise from construction sites

Simple caution These may be issued following the service of a statutory notice and the admission of guilt involving first time, low-level, offences.

Seizure of noise making equipment This may occur where there have been substantiated multiple or repeated breaches of a statutory notice or CPN.

Works in default If necessary, we will undertake work to resolve ongoing nuisance from audible alarms following the service of statutory notices.

Review of a premises licence This will be in accordance with the provisions of the Licensing Act 2003 on the grounds of the prevention of public nuisance.

Prosecution in the Magistrates' Court We may consider prosecution for multiple substantiated breaches of statutory notices, i.e. where statutory notices have not been complied with.

Civil Injunction The council can apply for a Civil Injunction from the Court to stop or prevent individuals engaging in anti-social behaviour which is likely to cause nuisance or annoyance. The injunction under Part 1 of **The Antisocial Behaviour, Crime and Policing Act 2014** is a civil power which can be applied for to deal with anti-social individuals.

The Criminal Behaviour Order (CBO) is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. The Council can apply for a CBO to deal with a wide range of anti-social behaviours following the individual's conviction for a criminal offence.

County Court Injunction May be pursued for serious and persistent breaches of statutory notices where proceedings in the Magistrates' Court have failed to ensure compliance with a statutory notice.

Partner Involvement

Officers from the Pollution Team, work in close partnership with other teams within the Council for example Planning Compliance, the Joint Enforcement Team (JET) and The Elmbridge Community and Safety Partnership, as well as external agencies, in a joined up way, to proactively manage unreasonable noise.

Our principal external partners are: -

Surrey Police - Officers from the Pollution Team are responsible for the investigation and enforcement of noise nuisance, not the Police. However, officers in The Pollution Team liaise with the Police on a variety of noise investigations particularly where there is an antisocial behaviour concern.

<https://www.surrey.police.uk/>

PA Housing - We have a partnership in noise with PA Housing, the borough's largest social housing provider, whereby officers from the Pollution Team take the lead on all complaints **solely** about noise from PA Housing properties. Where noise caused from ASB forms part of a wider situation, the lead will remain with PA Housing. <https://pahousing.co.uk/>

Mediation Surrey is an independent charity offering free and confidential mediation within Elmbridge. Mediation is highly effective way of resolving disputes between neighbours. Where officers within the Pollution Team in their professional judgement feel that the alleged noise is unlikely to amount to a statutory nuisance and they don't meet the requirements of a CPN, mediation will be offered.

<https://mediationsurrey.org/>

Mediation is available to both parties at any point in an investigation of alleged noise nuisance. While the mediation process is underway, the investigation of alleged nuisance will be put on hold.

Victim Support (Surrey) is an independent charity that can give emotional and practical help to those affected by crime. An example would be those affected by noise related ASB.

Victim support can be contacted directly or via a referral from another agency.

<https://www.victimsupport.org.uk/resources/surrey/>

Community Harm and Risk Management Meeting (CHARMM) - is a multi-agency group that meets on a monthly basis to discuss and agree actions to reduce the negative impact that problem individuals and families have on the wider community through their anti-social behaviour.

Joint Action Group (JAG) Led by Surrey Police, this is a multi-agency group that meets to consider crime and anti- social behaviour within an area in Elmbridge. Areas that have persistent noise related ASB will be referred to JAG with a view to organising a multiagency response.

Customer Service Standards

Elmbridge Borough Council is committed to continually improving our services to provide you, the customer, the best possible service we can. Details on our customer care standards are available on the Council's website.

<https://www.elmbridge.gov.uk/council/customer-care-standards/>

Complaints Procedure

Elmbridge Borough Council takes feedback from customers, including complaints and other expressions of dissatisfaction with our services very seriously. The Council are committed to viewing complaints as a valuable source of information, which can be used to improve Council processes and service delivery.

An expression of dissatisfaction about the service provided will be dealt with as a complaint.

Details on the Council's Corporate Complaints Policy is available on the Council's website. A paper copy can be sent on request,

<https://www.elmbridge.gov.uk/council/suggestions-compliments-and-complaints/>

This Policy was approved by Cllr Karen Randolph ,Portfolio Holder for Planning and Environmental Health at Individual Cabinet Member Decision Making (ICMDM) on 1 September 2022