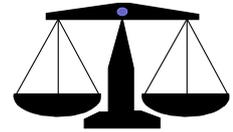


TAKING YOUR OWN ACTION UNDER SECTION 82 OF THE ENVIRONMENTAL PROTECTION ACT 1990



TAKING PRIVATE ACTION

The Environmental Protection Act 1990 (EPA), Section 82, can be used to deal with statutory nuisances actionable under section 79 of the Act.

Newcastle-under-Lyme Borough Council is unable offer advice on how you should proceed with any particular case, should you decide to take the matter to court yourself. However, set out below is an outline of things that might assist you if you are suffering from a noise nuisance. The procedure also applies to other nuisances actionable under the Act.

It is beneficial if any dispute with neighbour's etc. can be resolved in a friendly manner. They may not be aware that their actions are causing nuisance or the cause for complaint may not be under their control. A personal approach can sometimes obtain the desired result or, if you feel wary of approaching them personally, a polite letter may resolve the problem. On occasions, such an approach will result in improvements and even if it fails it will help to show to the courts that you have acted reasonably.

In the case of noise it usually will be necessary to show to the Courts that the noise unduly interferes with your comfort and convenience. The Courts will balance your right to quiet enjoyment of your property with the right of the other party to use their premises in a normal manner. It is unlikely that the courts would require complete silence as living in any residential area requires a degree of tolerance towards noise, but you do not have to experience unreasonable levels. When deciding what is an unreasonable level the Courts will look at the level and nature of the noise, together with its frequency, duration and the times and days the noise occurs. For example, a shift worker who has to sleep during the day, a home worker who needs complete silence to work etc., might be unlikely to be classified as average persons when deciding upon noise nuisance.

TAKING YOUR OWN ACTION:

Taking your legal action is fairly straightforward and can be taken in easy steps, which are set out below. Many people have used this legal action, without the need of a solicitor. You can represent yourself during the court hearings if you are able and feel confident enough. The procedure is not difficult and advice is available from the Citizens Advice Bureau, and the Magistrates Courts. (Addresses and Telephone numbers are provided below). You may also wish to take advice from your household insurance company where you have appropriate legal cover covering neighbour disputes.

SUGGESTED PROCEDURE PRIOR TO STARTING LEGAL ACTION:

1. Speak to the person who is making the noise. Try to come to a suitable arrangement, e.g. turning the music down, or perhaps limiting the hours of the noise.
2. If you do not wish to speak to the person, or if the noise continues after you have spoken to them, write to the person explaining the problem and telling them what action you would like them to take to reduce the noise. Make sure you date the letter and take a copy.
3. If the situation does not improve, (and if you are not already keeping one) start keeping a written diary of the noise.

Include in the diary record:-

- a. when it happens, include the date and time.
- b. the length of time the noise lasts.
- c. what type of noise it is, e.g. loud music, machinery, people shouting.
- d. why it is a nuisance, e.g. because you cannot get to sleep, the effect on your life etc.
- e. if you know any other person bothered by the noise, or who has witnessed the noise, ask them if they would be willing to give evidence at court if you started proceedings against the person making the noise. If they are, ask them to keep their own diary of the noise. They will also need to make a written statement if the matter goes to court.

You are now in a position to take legal action against the person making the noise under Section 82, Environmental Protection Act 1990.

THE PROCEDURE:

You must have sufficient evidence to support your claim. Proceedings under S.82 are criminal matters, and your case must be proved beyond reasonable doubt.

1. First of all, you must give the person responsible for the nuisance at least 3 days' notice in writing. This notice must state that you intend to bring proceedings in the magistrates' court if

specific action is not carried out. It is essential that this letter is dated and you keep a copy. If posted, it should be sent Recorded Delivery.

2. If there is no improvement after you have sent the letter, you should contact South Staffordshire Magistrates' Court, Court House, South Walls, Stafford, ST16 3DW (Telephone 01785 223144) Tell him/her you wish to make a complaint under S.82 of the Environmental Protection Act 1990. S/he will probably make an appointment for you to go and see them.
3. At the court, you will see one of the Clerks of the court who advises the magistrates. S/he will advise you of the procedure and will take the details of your 'complaint' i.e., ask you for the information they need to decide whether they should issue a summons. A summons is a document that informs the person who is causing the nuisance that you have complained to the Court about the noise and that they must attend at the Court at a time and day to 'answer' the complaint. A small administration fee is payable for this.
4. You must provide the clerk with any schedule of the works, or change in behaviour, which you consider should be done to stop or abate the nuisance. In many cases this may be as simple as requiring the other party not to play loud music at night, but it may be that with certain types of noise nuisance technical matters will arise, and you will need to have information from a specialist.
5. The summons will have the date, time and place of the hearing.
6. At the hearing the person who has been summoned will be asked to plead 'guilty' or 'not guilty'. If the person pleads 'guilty' it is likely that the matter will be dealt with then. You will be asked to present your case and provide to the court copies of any written evidence, e.g. your diary of the noise and any letters that you might have written.

The Magistrates will want you to tell them what you require to abate the nuisance and will then make an order that the other party do what you have requested, or to take some other reasonable course of action.

7. If the person pleads 'not guilty' the case will be put back so that a trial can take place. You will be asked how many witnesses you will be calling, and the day for hearing will be read out in court. You will need to prepare your case for that hearing:
 - i. obtain written statements from any of your witnesses, and write one about your own experiences;
 - ii. compile any other evidence that you might have, e.g. doctor's notes, expert's reports, etc.

A copy of everything that you are intending to use at the trial must be forwarded to the other person (or their solicitor if they have one) as soon as possible.

8. If, at the hearing, the Magistrates are satisfied that a nuisance exists, they will grant what is called an abatement order. This tells the other party who is causing the nuisance that they must stop the nuisance from causing you trouble any longer. They can also be fined and ordered to pay costs.

COSTS:

If you are successful the Court might make an order that the other person should pay your costs. You should keep a record of any costs that you have incurred or that your witnesses have incurred, e.g. having to take a day off work unpaid, travel expenses etc. In other circumstances, magistrates have discretion as to how to award costs and either you or the nuisance maker could pay all or part of both sides' costs according to circumstances.

In some cases you might be able to get legal aid to assist your case. This will only be available if you employ a solicitor to act on your behalf, and is subject to a test of your financial circumstances.

FURTHER ADVICE:

For further advice you are advised to contact a solicitor or the following:-

Citizens Advice Bureau
25 Well Street,
Newcastle under Lyme,
Staffordshire

☎ 0870 1264049
<http://www.citizensadvice.org.uk/nulcab.htm>

Citizens Advice Bureau
Liverpool Road
Kidsgrove
Stoke on Trent

☎ 01782 786529
<http://www.citizensadvice.org.uk/nulcab.htm>