**Environmental Protection Service:**

**Commercial Team**

**What is a Statutory Nuisance?**

Statutory Nuisances are a list of issues which local authorities have a legal duty to deal with. These issues, and the legal powers used to deal with them, are set out in sections 79 to 82 of the Environmental Protection Act 1990 (as amended). They include noise, smoke and smells, along with other nuisances.

The statutory nuisances listed in the Act are:

* premises in such a state as to be prejudicial to health or a nuisance;
* smoke emitted from premises so as to be prejudicial to health or a nuisance;
* fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
* dust, steam, smell etc. from industrial, trade or business premises being prejudicial to health or a nuisance;
* any accumulation or deposit which is prejudicial to health or a nuisance;
* any animal kept in such a place or manner as to prejudicial to health or a nuisance;
* any insects emanating from relevant industrial, trade or business premises being prejudicial to health or a nuisance;
* artificial light emitted from premises so as to be prejudicial to health or a nuisance;
* noise emitted from premises so as to be prejudicial to health or a nuisance;
* noise that is prejudicial to health or a nuisance and is emitted from or caused by vehicle, machinery or equipment in a street (NB this does not include noise from traffic).

Prejudicial to Health

Legally, ‘prejudicial to health’ means injurious, or likely to cause injury to health.

Deciding the meaning of this definition is complicated. Over time, legal decisions, known as case law, have determined that this term excludes things which might give rise to physical injury, for example a pile of rubbish containing glass or sharp objects which could give rise to injury would not be covered. A similar accumulation of rotting waste, which is likely to attract rats and has the potential to spread disease, would be included.

Most complaints about the types of issue listed above are dealt with as a potential 'nuisance' rather than proving the more difficult alternative 'prejudicial to health'.

Nuisance

There is no set definition of the term ‘nuisance’, but case law has, over many years and hundreds of cases, shaped what is considered by Courts to be a nuisance, in law. This is known as ‘legal precedent’.

When making decisions, Council officers consider relevant legal precedent, rather than what someone might think to be a ‘nuisance’ or ‘annoyance’ in everyday language.

Legal precedent says that, for something to be a statutory nuisance, it must be considered to be unreasonable to the 'average person' and something that is more than an annoyance. Things that will be considered when deciding if something is a nuisance, or not, include:

**Impact.** The problem must have a real effect on how a person can reasonably use or enjoy their property (normally their home). For example, noise from a business premises may be audible, but it would have to be loud enough to impact significantly on sleep, conversation, watching TV etc. for it to be a nuisance. For something to be a statutory nuisance it must also have an impact directly on a person (such as noise affecting sleep, dust getting into eyes or hair etc.) If the effect is on property, for example dust on cars or window ledges, then this may not be a statutory nuisance, although the person(s) affected may take civil legal action themselves.

**Frequency.** Some things which happen only occasionally might not be a nuisance. For example, a licenced premises holding a limited number of events with amplified music during the day or early evening. However, if the same thing occurred more often, for example every other week or month, then it could be a nuisance. One-off events may be a nuisance if they affect residents late into the evening or night time and their sleep is being affected.

**Duration:** If something happens for a relatively short period of time it may not be a nuisance, dependent upon the impact caused.

**Time of day/night:** This is similar to ‘impact’, because something that might be a problem through the night, might not necessarily be a nuisance when happening in the day. Similarly, some days are more sensitive. Some commercial and industrial activities are restricted, or prohibited, on Sundays.

**Sensitivity:** Statutory nuisance must be considered in the context of an average person, in a reasonable state of good health and having a normal pattern of everyday activity. Statutory nuisance cannot be used to make people or businesses do more than might reasonably be expected of them because someone else may be more sensitive than the average person. E.g., a night-shift worker trying to sleep during the day, or someone with respiratory problems being more sensitive to dust or smoke. [NB. We do also encourage businesses to have regard to the impact they are having on more vulnerable neighbours, but statutory nuisance powers should not be used to require businesses to do more than would be reasonably be expected of them.]

**Public benefit:** Works essential to wider public benefit may cause an inconvenience but may not be considered a nuisance. For example, temporary road works, harvesting of crops, construction/demolition activity during SCC adopted ‘Code of Practice’ core hours[[1]](#footnote-1).

**Context:** Legal precedent has determined that some activities are considered more, or less likely to be deemed a statutory nuisance, according to their context. The context is sometimes referred to as the ‘character of the area’. An area’s established character can evolve and may be affected by planning decisions. Commercial activities are judged against a different standard in rural setting, than in an urban setting. This could include noise or light pollution.

**Best practicable means:** If a business is doing all they reasonably can to prevent or counteract the effect of a nuisance, then they will have a defence in law against any statutory nuisance action. Council officers will therefore consider if a business is doing all it can when deciding if something is a nuisance or not. What is considered ‘practicable’ can be based on several things, including available technologies, reasonable cost, and site-specific factors.

Examples of things that have been found to be a nuisance:

* Loud noise from licenced premises e.g., from outside speakers, noise from open doors/windows, or repeated disturbance from loud outdoor entertainment.
* A business installing new noisy equipment without adequate sound insulation.
* Existing equipment serving commercial premises which becomes intrusively noisy due to a developed fault e.g., worn bearings on a fan.
* Strong odours from a hot food takeaway caused by a poorly designed or poorly maintained kitchen fume extraction system.
* Smoke from open fires on a commercial site, going into windows of nearby homes.
* Stray light from a commercial site, shining directly into a neighbour’s bedroom, which cannot be easily kept out with curtains or blinds and which makes it difficult to sleep.

Examples of things that have been found not to be a nuisance:

* Noise from construction or demolition activities occurring during normal working hours1 and not caused by faulty equipment, or by avoidable activities such as loud site radios.
* Noise from emergency out-of-hours repair works to essential services or utilities.
* A slight odour coming from a take-away, which had all proper extract ventilation and odour control in place.
* Noise from occasional outdoor entertainments conducted on licenced premises which happened a few times a year and which finish at a reasonable time in the evening.
* Dust from a construction site where reasonable control methods were being used.
* Traffic noise.
* Occasional noise from premises intruder alarms which cuts out after 20 minutes.
* Smoke from a premises’ flue or chimney which stops within 20 minutes of start-up.

How will an officer establish if something is a Statutory Nuisance?

The Council has trained officers, usually qualified Environmental Health Practitioners, who are authorised to investigate complaints of statutory nuisance. These officers will investigate cases which are not able to be resolved informally to determine if the issue being complained about amounts to a statutory nuisance.

Officers will need to gather evidence and will use a combination of the following:

* Talking to the business that is the subject of complaint, and those who are affected.
* Officers witnessing the problem themselves.
* Written nuisance records from people affected (often called a noise log, or diary).
* Inspecting commercial premises and checking compliance with any enforceable controls e.g.; premises licence conditions, environmental permits or planning conditions.
* Using measuring devices, such sound level meters and light meters.
* Leaving specialist noise recording equipment in the property of people affected.
* Expert evidence from specialists e.g., consultant reports.
* Evidence from partner agencies such as police officers, planning enforcement officers, Environment Agency officers, etc.

1. The core hours for commercial demolition and construction activities are; Monday to Friday 0730 to 1800 hours; Saturdays 0800 to 1300 hours; No working Sundays and Public Holidays. These are default timings typically allowed without prior agreement. They may be subject to variation, by prior agreement, in extenuating circumstances. In such cases, EPS Commercial Team typically seek to agree controls to minimise impacts on neighbours, though unplanned emergency works may sometimes occur. [↑](#footnote-ref-1)