

The Ombudsman's final decision

Summary: Mr X complains the Council failed to investigate his reports of a statutory noise nuisance which was causing him distress. The Ombudsman intends to find fault with the Council for delaying taking reasonable action to address the noise nuisance. This caused Mr X significant distress. The Council has agreed to make financial payment and carry out a service remedy.

The complaint

1. Mr X complains the Council delayed addressing a noise which impacted his living conditions and quality of life.
2. Mr X complains the Council granted planning permission for a new unit but failed to address the noise impact from the previous unit that he was complaining about.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. I have used the word 'fault' to refer to these. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
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How I considered this complaint

7. I considered Mr X's complaint and information he provided. I also considered information provided by the Council.

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8. I invited Mr X and the Council to comment on my draft decision and considered the comments I received.

What I found

Legislation and guidance

Statutory nuisances

9. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'. Typical things which may be a statutory nuisance include:
 - noise from premises or vehicles, equipment or machinery in the street;
 - smoke from premises;
 - smells from industry, trade or business premises; and
 - artificial light from premises.
10. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
11. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers (generally an environmental health officer, or EHO) to gather evidence. They may, for example, ask the complainant to complete diary sheets, fit noise-monitoring equipment, or undertake site visits. Councils will sometimes offer an 'out-of-hours' service for people to contact, if a nuisance occurs outside normal working time.
12. Once the evidence-gathering is complete, the environmental health officer(s) will assess the evidence. They will consider factors such as the timing, duration, and intensity of the alleged nuisance. The officer(s) will use their professional judgement to decide whether a statutory nuisance exists.
13. Councils can also decide to take informal action if the issue complained about is causing a nuisance, but is not a statutory nuisance. Examples of such action may include writing to the person causing the nuisance, or suggesting mediation

What happened

14. Mr X lives next door to a restaurant. He complained to the Council in December 2020 that refrigerator and air conditioning units from the restaurant were causing a statutory nuisance. Mr X said the units were causing noise which impacted his standard of living.
15. The Council sent Mr X diary sheets to fill out and he returned them in January 2021. The Council investigated the refrigerator units by completing a visit to the restaurant in February 2021 and installing noise recording equipment in March 2021. It determined that the noise was being caused by two sets of units. One old set, and a newer set that was recently installed.
16. The Council accepted the units were creating a noise nuisance. It agreed to work with Mr X and the restaurant owner to address the noise nuisance. One of the ways suggested for this was for a noise survey to be undertaken to record the exact noise levels. This would be submitted with retrospective planning permission for new units to be installed.

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17. The restaurant applied for retrospective planning permission for the new units. It also commissioned an acoustic report to support the new units. It said this would alleviate the noise previously caused. However, the Council felt this had not addressed the noise of the previous units which were still functioning. The first application was refused in April 2021 as the Council felt there was insufficient evidence about the measures to mitigate noise.
 18. A second application was submitted in June 2021. The Planning for this was granted in February 2022. The Council said the delay in this decision was due to miscommunication between the planning and environmental health departments about the acoustic report.
 19. Whilst the retrospective planning permission for the new units was being decided the Council's noise team said it would serve an abatement notice for the older units as it still considered them to be a statutory noise nuisance.
 20. The Council confirmed in August 2021 to both Mr X and the restaurant that it would be serving an abatement notice, but with scope to work with the restaurant about what would be reasonable. The Council agreed with the restaurant on new terms of use for the units. However, it appears the Council did not serve the abatement notice.
 21. The Council did not serve an abatement notice, and it said it did not so because it could not agree new terms with the restaurant.
 22. The retrospective planning permission was granted by the Council for changes to the restaurant in February 2022. The planning conditions cited the restaurant was not to be occupied until acoustic measures had been taken to prevent noise to nearby residences.
 23. Mr X complained again to the Council about the noise. The Council said the retrospective planning permission ensured the noise from the new units would be suitable, and that it had worked with the restaurant and the planning department to ensure the older units were covered to minimise the noise.
 24. Mr X remained unhappy with the Council's response and bought his complaint to the Ombudsman. During this time, the Council also offered Mr X a further visit from Council officers to observe the noise, however it did not receive a response from Mr X.

Analysis

25. Councils have a duty to investigate suspected statutory noise nuisances, which include noise from premises. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers
26. The Council has been able to evidence that officers carried out site visits to the noise and determined that it was a statutory noise nuisance. It also has been able to evidence that it worked with Mr X and the owner of the restaurant to try and reach resolutions of the noise.
27. The Council was aware the planning application would have addressed the issue of noise from the new units, but not noise from the old units, and so it looked to serve an abatement notice. The planning permission that was granted cited that occupation of the restaurant was not allowed until noise mitigation measures had been taken. This shows the Council was aware of the impact of the noise.
28. The communication between the Council, Mr X and the restaurant owner show the Council was aware that the older units were causing a statutory nuisance. The Council at first said it would be serving an abatement notice and then decided it

would not. However, the Council failed to address the ongoing issue through other means for another 4 months.

29. The issue continued as the restaurant applied for a change in planning conditions for the existing units. This did not end until June 2022 when officers visited and were satisfied the new units were in place and the old units were no longer causing a statutory noise nuisance.
30. However, this means that Mr X was living with a statutory noise nuisance the Council was aware of for over a year. While I can appreciate the Council was trying and resolve the issues, there were significant gaps in the Council's actions, which caused long periods of time where the issue was not addressed.
31. I consider this fault by the Council which resulted in Mr X living with a statutory notice for longer than was unnecessary. This caused him significant distress.

Agreed action

32. Within 4 weeks of the final decision the Council has agreed to
 - Write to Mr X and apologise for the fault identified above
 - Pay Mr X £500 in recognition of the distress caused by the Council's delay
33. Within 12 weeks of the final decision the Council has agreed to
 - Review how it ensures investigations are being carried out in a timely manner.

Final decision

34. I have now completed my investigation. I find fault with the Council for causing delay to the investigation of a statutory noise nuisance. This caused Mr X to live with a statutory noise nuisance for longer than necessary.

Investigator's final decision on behalf of the Ombudsman