

Date: 29 July 2021
Our Ref: 21/01750/NI
Doc Type: RSCORR
Please ask for: Mr Paul Carter

Civic Offices
Union Street
Chorley
PR7 1AL

Mr Craig Leeming
Applejax Night Club
1 Back Mount Street
Chorley
PR7 1EA

Dear Mr Craig Leeming

**ENVIRONMENTAL PROTECTION ACT 1990 SECTION 79
ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014
APPLEJAX NIGHTCLUB, 1 BACK MOUNT STREET, CHORLEY**

I am writing further to a visit made to the above premises on Tuesday 27th July accompanied by a colleague from Chorley Council Licensing. The visit was made following multiple complaints of noise nuisance throughout the previous weekend and until the early hours on each day.

The above legislation places a duty on the Council to investigate all such complaints to determine whether a statutory nuisance exists or if there is evidence of anti-social behaviour of a persistent nature that causes alarm, harassment or distress.

We discussed at length about your responsibilities to manage the noise from amplified music at the premises and that you should regularly patrol outside nearby noise sensitive properties to assess noise breakout.

You should categorically ensure that the rear doors are kept closed at all times when regulated entertainment is on and ensure that you make any artists / DJs aware that they must control the noise to a reasonable level so as to not cause disturbance to local residents.

I currently have 11 complainants monitoring this situation and making records of any further disturbance. If you require any further advice then please do not hesitate to contact me on 01257 515738 or paul.cater@chorley.gov.uk

For your convenience, I have attached some information that explains how the Council investigates nuisance and anti-social behaviour complaints. This is the same information that has been sent to the complainant. Please read this guidance carefully and contact the Council if you require any further assistance.

Yours sincerely

Chorley Council
cc. Tracy Brzozowski- Licensing- Chorley Council
Linda Robson- Chorley Police Licensing



21/01750/NI

How we investigate

Nuisance and Anti-Social Behaviour

What is a statutory nuisance?

There are different types of nuisance defined in law, including public nuisance and private nuisance. The council has powers under the Environmental Protection Act 1990 to take action with regard to the most severe, which are statutory nuisances.

A statutory nuisance is something that significantly interferes with the complainant's life. Noise is the most obvious of these sorts of nuisance. For a noise to constitute a statutory nuisance it needs to be shown that the noise is not just audible or annoying, but that it is unreasonable and preventing the ordinary person from continuing their normal activities.

Other things can also be a nuisance, such as odour or fumes from a commercial kitchen, or accumulations of rotting waste at a property.

Whatever the complaint, the investigation is the same. The assessment is basically an independent test of reasonableness, both in regard to the action causing the complaint and the reaction of the complainant.

The officer's job is to determine whether the activity that is causing the complaint is reasonable to the average person. This impact assessment is based on the type of nuisance, intensity, duration, frequency of occurrence, times of day and what would be a realistic expectation of reasonable behaviour in that locality.

What is Anti-Social Behaviour?

Anti-Social behaviour is a broad term that can include problems of noise and nuisance but can also extend to harassment and causing feelings of fear and intimidation. Where someone feels that they are a victim of Anti-Social behaviour this will often be considered across a number of agencies, such as the police, housing associations, private landlords and the Council to ensure that the behaviour is addressed, and the appropriate tools used improve the circumstances.

Where the Issues related to harassment or criminal activity then this should be reported to the Police, who will then liaise with any other appropriate authority.

Neighbour Disputes

It is not for the Council or the Police to become involved in neighbour disputes, such as arguments over boundaries and parking. Where it is clear to the authorities that the matter relates to a dispute between neighbours then both parties will be provided with some advice, but the authorities may withdraw from the investigation in such circumstances.

What the council needs from the complainant

Where possible we would encourage you to talk to your neighbour to discuss your concerns before pursuing a formal complaint. However, we appreciate that in some circumstances this may not be possible.

It can be a criminal offence to cause a statutory nuisance or anti-social behaviour, therefore when the council carries out an investigation we operate in a similar way to the police. We must gather enough evidence to take action against someone, otherwise the case would collapse.

The most important witness in the case is the complainant, and they will be expected to complete an evidence log. This is a formal witness statement, which can later be used in court, but also provides details to the officers on how to direct the investigation, so that the best use of officer time is achieved. This evidence log must be precise, specific and accurate. A lack of evidence in the monitoring record may result in the officer deciding that there is insufficient evidence to continue the investigation.

If the evidence log supports further action by the council, then the details of the log will be used to direct the investigation. The officer may arrange a visit, or for noise complaints arrange for noise monitoring equipment to be fitted in the complainant's premises.

The council's enforcement policy

Any action taken by the council must to be in line with the enforcement policy. This states that formal action should be the last

option, and the council should seek to resolve issues informally and assist in trying to reach a solution. At this stage, it may be appropriate to disclose the identity of the complainant to allow the premises or person responsible to ensure that any action they take reduces the impact at the right location.

The Role of Mediation

In some cases the Council or the Police will recommend the use of mediation to resolve issues rather than the progression of a formal investigation and potential enforcement action, mediation is provided by a professional service and does not necessarily require all parties to be present in the same room. We have had very encouraging results from mediation and this tool has been used to good effect to change behaviour and build better relationships, which has resulted in an improved quality of life and positive outcomes for participants.

What the person allegedly causing the issue should do

The person who has had a complaint made against them is encouraged to contact the council to discuss the issue. The Environmental Health Officers will often provide guidance and advice on practical solutions once the officer has taken an objective view of what the problem might be.

If the officer is satisfied that a nuisance is likely to arise from a business premises, the business may be advised to employ a consultant to assist them as this is often a very effective way of solving the issue quickly and permanently, particularly for noise and odour problems.

Defences against formal action

For complaints relating to commercial and industrial premises, the officer may mention something called a 'best practicable means defence'. This is where the company is doing all they realistically can to prevent them impacting on others, but a nuisance persists. This may be due to an inherently noisy activity, such as pile driving on a construction site, or they are operating a process that must run 24 hours a day.

When the officer carries out the investigation, this type of defence against formal action will be given consideration by the officer and the legal team. If there is a very strong 'best practicable means defence', it may not be in the public interest for the council to pursue formal action for that particular case.

What formal action means

Where a statutory nuisance is determined the first formal action would be the service of an abatement notice. The nuisance must have been witnessed by the officer for them to serve a notice and there must be enough evidence to ensure that the officer can defend an appeal against the notice. The notice will require the person responsible for the nuisance to reduce the impact so that the nuisance no longer exists.

This will not necessarily stop the activity altogether; the requirement of the law is to abate the nuisance and bring the impact down to a reasonable level as determined by the officer.

Where the evidence supports the existence of Anti-Social Behaviour the initial stage would be the issue of a Community Protection Warning, which may require the stopping of some activities but also require additional actions to be taken by the person responsible.

Failure to change their behaviour will result in the service of a Community Protection Notice, as a second stage to the process. This may require wider and more detailed action by the perpetrator.

If the premises or person does not comply with either type of notice, the officer will need the complainant to collect further evidence. The officer will then need to witness the breach of the notice, to determine whether an offence has been committed.

This can sometimes take time to establish and gather sufficient evidence to satisfy the legal team that a prosecution in the Magistrate's Court is appropriate. In some cases, the breach of a Community Protection Notice may be dealt with by the issue of a Fixed Penalty/ Fine, but the need for evidence to support this action is equivalent to that needed by the courts.

If the council decides to take the case to court, all the evidence the complainant has collected will be used and the complainant may be expected to appear in court as a witness.

Helpful Examples

Unlikely to be a nuisance or ASB	More likely to be a nuisance or ASB	Action that may be taken if problem identified
A dog barking several times a day for short periods when people approach the property	A dog howling most of the day because it is left alone	The dog's owner may be asked to try leaving a radio on for the dog, asking someone to walk the dog or take the dog to another location during the day so that it is not left alone
Music from a premises that finishes before midnight and only happens once at a weekend	Music that happens 3-4 times a week after midnight, regularly preventing neighbours from sleeping	Music from a pub may be controlled by a noise-limiting device and hours may be limited. Music systems from residential premises may be confiscated
Occasional odours, noise and flies from muck spreading to land	Persistent odours and flies from poultry houses and large agricultural slurry storage units	Bedding for animals may be treated with chemicals to reduce odour and flies breeding, muck spread to land may be required to be ploughed in, storage facilities may be relocated
One off bonfire in a domestic garden which is under control, burning clean dry material and the smoke is not entering other people's properties.	More regular garden bonfires that are left unattended and on windy or days with nice weather when people have windows open / washing out. Materials being burnt that cause dark smoke.	The person responsible for the fire will be informed and a decision will be made whether to serve an abatement notice in order to prevent further occurrences of the nuisance.
Occasional odour from commercial kitchen extraction where appropriate filtration and cleaning schedules exist	Continuous strong odour from commercial kitchen extraction	Increase in flue height and improvements to filtration system to reduce odour emitted and improve dispersal of fumes
Overgrown garden	Accumulation of waste, excessive amounts of dog excrement	Removal of waste and a requirement to maintain the area
Noise from a construction site, but complying with guidance restricting times and noise levels	Noise from construction before 7am or after 7pm and throughout the weekend	Noise levels and times are restricted. However, some activities will be exempt from time restrictions, such as operations on railway lines