

APPENDIX 1

14 August 2018

Complaint reference:
17 000 465

Complaint against:
Oadby & Wigston Borough Council

The Ombudsman's final decision

Summary: The Council failed to follow up action under the Environmental Protection Act 1990 after establishing a statutory noise nuisance. The Council took action under the Licensing Act 2003; therefore, the result may have been the same. The Council will assess the current situation, apologise, pay £200 and arrange to meet the complainants.

The complaint

1. The complainants, who I will call Mr & Mrs B, say the Council failed to take suitable action to investigate and prevent noise nuisance from a nearby leisure centre.

What I have investigated

2. I have investigated how the Council's environmental health team investigated the issues of noise nuisance. The final section of this statement contains my reason for not investigating the rest of the complaint.

The Ombudsman's role and powers

3. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)
4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council'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. 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*)
6. If we are satisfied with a council'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*)

How I considered this complaint

7. I considered:

- Information provided by Mr & Mrs B.
- Information provided by the Council in response to my enquiries, including during a telephone conversation.
- The Environmental Protection Act 1990.
- The Licensing Act 2003.
- Comments made from both parties in response to a draft of this statement.

What I found

8. Mr & Mrs B's rear garden is next to a leisure centre. Since December 2014 Mr & Mrs B have complained to the Council about noise nuisance from the leisure centre.
9. The Council has a duty to act under the Environmental Protection Act 1990 where it finds the noise is a statutory nuisance. This means it has to be '*an unreasonable and significant emission of noise that causes significant and unreasonable interference with the use and enjoyment of your premises*'. The noise cannot be a mere annoyance. If the noise is a statutory nuisance the Council must serve an Abatement Notice.
10. The Council's 'Noise Nuisance Investigation Policy 2014-2017' explains that sound is measured in decibels, but volume is not the only thing that can affect our response to sound. Unexpected sound, repetitive bass beats, screeches or whines can make noise more annoying.
11. When assessing noise the Council considers loudness, locality, frequency, duration and the time the nuisance occurs.
12. The Council's policy when investigating noise nuisance says it will normally ask the complainant to keep diary sheets, which it will review after two weeks. If the diary sheets show a statutory nuisance might exist then the Council will install noise monitoring equipment in the complainant's home. An officer may carry out monitoring visits at times when the noise is likely to be occurring. Once an officer is satisfied there is a statutory nuisance, they will give seven days to resolve the issue after which they must serve an Abatement Notice.
13. When Mr & Mrs B first raised the issues with the Council an environmental health officer visited their property and said the noise could be a statutory nuisance if the fire doors of the leisure centre were open and Mr & Mrs B were in their garden.
14. In January 2015 the Council told Mr & Mrs B that it intended to proactively deal with noise from the leisure centre through licensing first. This is in line with its policy, which says it will deal with complaints of noise related to licensed premises under the licensing conditions in the first instance.
15. The Ombudsman cannot look at any actions the Council took under the Licensing Act 2003. This is because Mr & Mrs B had a right of appeal to a magistrate's court, which they took. Mr & Mrs B withdrew the court action because they reached an agreement about noise monitoring. But, once court action has begun it prevents the Ombudsman considering the same issues. I am solely considering the actions of the environmental health team under the Environmental Protection Act 1990.
16. In May 2015 the Council installed noise monitoring equipment in Mr & Mrs B's home; no noise nuisance was recorded. Mrs B says this is because the equipment did not work. A few weeks later an environmental health officer visited

Mr & Mrs B's home and witnessed a statutory nuisance. The Council sent a letter to the leisure centre management. It advised of the statutory nuisance and gave seven days to stop the noise nuisance, before it would monitor to see whether a statutory nuisance still existed.

17. The law allows for this seven day warning to persuade the appropriate person to stop the nuisance. If during that period the Council is satisfied that the steps taken will not stop the nuisance, or at the end of the period if the nuisance still exists or is likely to recur, then the Council should serve an Abatement Notice.
18. There is no evidence the Council monitored the situation at the end of the seven day period to find out if a statutory noise nuisance still existed. Some of the suggestions in the seven day warning letter were followed up under licensing; but that did not remove the need for the environmental health team to monitor after the seven day warning letter, and if a statutory nuisance still existed to serve an Abatement Notice.
19. Mr & Mrs B have repeatedly raised concerns with the leisure centre and with the Council about noise. Understandably they have given up to some degree as feel no-one is interested in helping them.
20. It seems the nuisance has reduced to some extent because of the actions taken under licensing, and due to some changes of use. However, Mr & Mrs B explain it has not removed the nuisance but has changed it. Mrs B says it is likely the decibel level is within an acceptable range as the sound is not so loud. The sound has changed to a repetitive beat noise and a whine. This is annoying for Mr & Mrs B and affecting the enjoyment of their home. The Council's policy confirms that volume is not the only issue to consider.
21. In May 2018 the Council sent diary sheets to Mr & Mrs B; they were not returned so the Council closed the case. Mrs B says they never received these diary sheets.

Was there fault causing injustice?

22. The Council investigated noise complaints in line with its policy. The Council identified a statutory nuisance; it sent a warning but failed to follow it up.
23. The injustice on Mr & Mrs B is hard to assess, because the Council took action under licensing which made the leisure centre change certain practices. Even if the Council had served an Abatement Notice, the result may be the same. However, Mr & Mrs B would have avoided the time and trouble of complaining had the Council acted correctly, and would have been reassured the Council was taking matters seriously.
24. The Council says it continues to monitor the situation, and responds to Mr & Mrs B's complaints when they suggest there may be an issue; Mrs B says she is unaware of this. The leisure centre conducts noise monitoring; this shows the decibel level is within the required range. This does not take account that volume is not the only element of noise that can cause a nuisance.

Agreed action

25. To acknowledge the impact on Mr & Mrs B, and to prevent future problems, the Council will:
 - a) Apologise to Mr & Mrs B and pay £200, within the next month.

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- b) Arrange visits by a senior officer, or somebody independent from the Council, to monitor the noise on a Saturday evening. The Council should consider the repetitive beat which Mr & Mrs B find annoying, and whether it is a statutory nuisance. I suggest the Council visits on four consecutive Saturdays to witness the situation, as Mrs B says it is not always a problem. If there is a statutory nuisance the Council should take action in line with its policy. The Council should contact Mr & Mrs B as soon as possible to make arrangements.
 - c) Meet with Mr & Mrs B to discuss the issues, and attempt to rebuild rapport and trust. The Council should make contact as soon as possible, and arrange to meet within the next month.

Final decision

- 26. I have completed my investigation on the basis the agreed action is sufficient to acknowledge the impact on Mr & Mrs B.

Parts of the complaint that I did not investigate

- 27. Because Mr & Mrs B took legal action under the Licensing Act 2003 the Ombudsman is prevented from investigating how the Council dealt with licensing matters for the leisure centre.

Investigator's decision on behalf of the Ombudsman