

IMPROVING THE QUALITY OF ENVIRONMENTAL NOISE CONTROL

Paper submitted on behalf of the Right to Peace & Quiet Campaign
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INTRODUCTION

It is a unique privilege for a lay person to address the highest authority in acoustics in the UK. I am, therefore, deeply conscious of the massive responsibility placed upon me, not only to meaningfully address the issue of noise in the UK, the paper will also hopefully explain the UK position to our partners within the EEC. The object of this paper is to stimulate the euro noise debate and provide a "grass roots" perception of the way forward.

The paper will almost certainly exhibit the writer's enthusiastic commitment to European environmentalism, since so much progress stems, not from national governments, but from the driving force of the EEC. The control of noise in the workplace is but one example of what might be achieved by full implementation of the social chapter of EEC policy.

It is not my intention to patronise the members of the Institute. The numerous papers produced by members on the various issues of planning and noise, inadequate building insulation, road traffic noise, aircraft noise, railway noise, industrial/commercial noise, noise from sport and entertainment, and many other sources are of the highest possible quality and integrity. Neighbour disputes form perhaps the most intractable and tragic disputes. The purpose of this paper is to question why this cumulative knowledge fails to improve the quality of life for so many citizens, and massive public dissatisfaction exists.

The statistics concerning noise complaints published in the reports of the Institution of Environmental Health Officers (IEHO) continue to climb inexorably. To quote but one example from the annual report of the IEHO 1986/87, noise complaints from construction and demolition sites increased by a massive 61%. In comparison, the number of prosecutions is extremely small.

Professor Geoffrey Levanthall, well known to most members of the Institute, encapsulates the problem in the leaflet produced for the Forest Hill neighbourhood noise awareness scheme. The sound produced by one citizen's work or leisure is another citizen's unwanted sound - noise. "Frequent disturbance by noise is not only annoying, but leads to stress and illness". It also leads to many other social problems including community violence,

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marital breakdown and planning blight. The danger to health particularly from high levels of noise is well documented. A shooting magazine recently published an article exhorting clay pigeon shooters to protect their hearing from almost certain deafness.

THE ENGLISH LEGAL SYSTEM

For the benefit of European readers, it appears desirable to provide a brief lay appraisal of the complex English legal system. Almost all EEC readers will be much more familiar with the more precise Roman Law system which also applies within the Scottish legal system. The English common law system depends almost entirely on the development of case law. Private actions for nuisance necessitate the selection and presentation to the Court many examples of appropriate and well defined similar cases.

This involves expert legal judgement, in my experience well beyond most average High Street solicitors. The burden of proof is high, and may involve exquisitely complex technical and legal argument. The failure to prove a case may have massive financial cost implications for the complainant (plaintiff). This renders common law action beyond the means of most citizens. For these reasons few individual private actions are brought. The common law does, however, recognise "Acts Beyond Normal User", or "Extraordinary And Unreasonable User" which may apply to any consideration of Statutory action under public health legislation. The courts have long held that planning consent is not a licence to commit offenses of nuisance, and no long standing (prescriptive) right to commit offenses exists (see London Borough of Redbridge v Jaques 1971 1 ER (All English Law Reports)).

STATUTORY LAW

Acts of nuisance may also be unlawful under a specific Public Health Statute. The IEHO in the annual reports 1987/90, identifies the "primary objective of public health is the prevention of disease and the prolongation of life. Environmental health officers (EHOs) bring their experience to bear in the pursuit of this objective by a variety of means which aim to eliminate or ameliorate the stressors present in housing, the workplace, the environment and in the food we eat".

The National Society for Clean Air and Environmental Protection (NSCA) campaigns against all forms of pollution including noise pollution. It is widely supported by proactive local authorities (LAs). NSCA research recently established that previous controls under the Control of Pollution Act 1974 "COPA were not consistently effective and that they were not consistently applied. In particular, response to noise complaint varied widely from LA to LA".

"The public has a right to expect uniformity of approach to problems of

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neighbour noise and this (LA guidance) note is intended as a minimum standard of response to complaints and enforcement of the new legislation" (Environmental Protection Act 1990 EPA90). NSCA asserts that whilst "Statutory Nuisance" remains undefined in the EPA90, the courts have held that it includes noise which is a nuisance at common law. "It has long been established in Britain that noise can be considered a nuisance when it is a condition or activity which unduly or materially interferes with the individual's rights, use or enjoyment of land. It is only necessary for one person to be affected by a nuisance for an authority to be required to investigate" (NSCA LA Guidelines 1991). The NSCA 1992 Pollution Handbook asserts individual rights to protection from noise nuisance, and refutes the "three neighbour rule" applied to noise complaints by certain reactive LAs.

This confusion and inconsistency causes great public dissatisfaction. Citizens read in the national press of some LAs taking action over "chiming clocks", whilst their complaints concerning the "heavy metal" music from the adjoining flat remain unaddressed. The machinery noise and the heavy hammering on iron from a factory in West Kingsdown continues to wake citizens at 0600 hours on an otherwise quiet Sunday morning. The factory building is worth approximately 20dB(A) in terms of noise containment! At the Brands Hatch motor racing circuit also in West Kingsdown the formula 3000 racing cars scream past the bottom of some residents gardens, each car pass peaking at approximately 120dB(A), while baby Jimmy Brown (fictitious name) aged seven weeks attempts to sleep and grow in his pram on a warm summer day. Here, not UK or EEC law prevails - but FISA regulations! How can a lay citizen succeed in convincing magistrates in a private statutory action taken under s82 of the Environmental Protection Act 1990, when his/her LA refuses to adequately fund a competent investigation into an allegation of causing nuisance which is undefined in statutory law? The issue becomes more complex in statutory law, in which action against a commercial/industrial noisemaker is limited to the constraints of "best practicable means". The burden of proof is the highest - beyond reasonable doubt. How does the average citizen obtain the necessary high quality evidence?

HISTORY OF STATUTORY NOISE CONTROL LEGISLATION

The various Public Health Acts of the nineteenth and early twentieth century dealt with noise within a generalised concept of nuisance. Mr John Connell, alarmed by the growth of noise, founded the Noise Abatement Society in 1959. The successful campaign resulting in Parliament passing The Noise Abatement Act in 1960. This was codified into the Control of Pollution Act 1974. (COPA) which was replaced by the EPA90. Mr Connell still campaigns against unnecessary noise over thirty years later.

The determination of a statutory nuisance remains vested in the subjective opinion of an EHO. The Consumers Association magazine Which? dated Sept 1990,

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carried an article headed "Noises Off". In spite of well defined acoustic investigative procedures, the article claimed that EHOs are not required to measure noise and may choose to rely solely on their personal "subjective" response to the offending noise. This confirms the writer's own experiences. Many complainants are deeply dissatisfied with the current methodology. They assert that EHOs subjective responses may be strongly conditioned by a subconscious recognition that they do not have to live with the noise. It appears impossible to form an objective database for ongoing monitoring without recording sound level data.

LAY PARTICIPATION IN NOISE CONTROL

West Kingsdown Noise Action Group

The West Kingsdown Noise Action Group was founded in 1990. It has provided evidence for the Report of the Noise Review Working Party 1990 (Batho Report), on the issue of noise generation from sport and entertainment, and commented on the draft Planning Policy Guidance note (PPG) to replace DoE circular 1073 Planning and Noise. It attempts to provide free advice on noise related problems, and neighbour conciliation. It also offers free advice on noise generating or noise sensitive planning matters.

The Right to Peace and Quiet Campaign

The nationally organised Right to Peace and Quiet Campaign was founded in 1991 by the remarkable Ms Valerie Gibson, who has succeeded in raising the issue of noise and noise awareness in a national debate. Noise sufferers unquestionably owe Ms Gibson a massive debt of gratitude. Ms Gibson asserts that "the problems of noise are largely solvable, requiring some modification of social behaviour, changes in attitudes, additional deterrents and greater efforts to enforce the laws already available to deal with the noise nuisance".

Ms Gibson also highlights the inconsistent approach of LAs, the lack of 24 hour enforcement, the high burden of proof, and the protracted procedures involving the service of statutory notices. HM government has raised public expectations for a cleaner, greener, quieter environment. The creation of an immediate offense of unreasonable noise making appears inevitable.

Hard choices may have to be made. A possibility exists that noise control which involves unpleasant and potentially violent work, often during highly antisocial hours, is not to the liking of EHOs. It may be that compulsory competitive tendering (privatisation) of noise control will achieve the desired and cost effective improvement to the public service. This would require strict government guidelines. This could offer business opportunities to members of the IOA. Much of the work could be undertaken by well trained and motivated technical assistants. The police could not satisfactorily perform this work without specialised training and would probably not, under

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present constraints, seek the extra duty. Some form of arbitration in noise disputes appears highly desirable. supervised perhaps by HM Inspectorate of Pollution, which unfortunately is also under severe financial constraints.

Particular mediation schemes are working well with LAs. Paul Holder of the Bristol Mediation and Noise Counselling Service, supported by Mr R Endicott, Manager of the City's Environmental Services Department, successfully applied for DoE funding. An initial three month report has been produced indicating an encouraging early response to mediation. The intervention of lay groups may not, however, be well received by all LAs. Both WKNAG and RPQC support conciliation but could not suppress evidence of wrongdoing. Both are committed to provide active support for the membership by providing truthful evidence in court, including technical evidence, if it can be obtained.

During British Telecom's Environment Week organised by the Civic Trust, copies of the Forest Hill Quiet Neighbourhood leaflet funded by the proactive Thamesmead Town Council were distributed in Woolwich, South East London. The response to the leaflet indicated the scale of the problem. It also illustrated that the problem crossed class and race divisions, with affluent members of ethnic minorities complaining against noisy members of their own race. The paramount complaint concerned dissatisfaction with the standards of LA investigation and enforcement. Neighbourhood noise is clearly a problem of unreasonable behaviour, poor standards of insulation, and a lack of enforcement. Typically, the old, the sick and the disadvantaged appeared least likely to secure improvement.

PLANNING AND NOISE

The draft replacement for DoE Circular 1073 confirms a lack of research into noise, and public attitudes to noise. The response to the somewhat weak draft PPG by the Royal Town Planning Institute (RTPI) is most encouraging. The NSCA 1992 Pollution Handbook provides considerable evidence on the issue of noise, including the penetration and power of low frequency noise (LFN).

The EEC has made a massive contribution to European environmental improvement, with EC Directive (85/337) the Environmental Impact Assessment. This has enabled small action groups such as WKNAG to obtain and utilise technical information in order to successfully oppose major new noise generating activities in the locality. An excellent paper entitled Planning and Industrial Noise Pollution was produced by Ms Sara McLaughlin and Christopher Wood, the latter being Professor of Environmental Planning, Department of Planning and Landscape at the University of Manchester. This remarkable paper clearly demonstrates that planners do have the necessary knowledge of acoustics to accept full responsibility for planning and noise, a point we have made to the RTPI.

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CONCLUSION

The object of the paper is to draw noise pollution, of all types to the attention of the EEC. It makes little difference to citizens whether the noise comes from a blaring hi-fi, the use of building site plant or the grossly unnecessary noise generated by juggernaut trucks (including refrigerated trucks), we should allocate the resources needed to educate, insulate, legislate or design out as much noise as is practically possible. The power and influence of the EEC can succeed, even where a lack of will exists in national governments.

It remains for me to draw together the elements of a wide ranging attempt to secure the support of this assembly - probably the best acoustic talents in the EEC in an appeal on behalf of one old man. Lets call him Fred Bloggs. He lives in Gavin House, Plumstead High Street in South East London. When I recently offered him a copy of the "Good Neighbour" leaflet I put the standard question, "Do you have a neighbour noise problem?" He replied; "Yus mate, I do. The young bloke in the next flat plays blaring music day and night. He goes out and leaves it on. He even admits he does it 'cos he wants to be rehoused by the council. But I'm 81 now and I can't get nuthin' done." Fred has had little education. He knows nothing about the Citizens Charter, This Common Inheritance, The Batho Report, or The Environmental Protection Act 1990. To whom should Fred turn for help with his problem? We can only help Fred, and all other noise sufferers, by **IMPROVING THE QUALITY OF ENVIRONMENTAL NOISE CONTROL.**