

# Proceedings of the Institute of Acoustics

## ABATING THE NUISANCE WITHOUT SATISFYING THE NOTICE

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### 1. INTRODUCTION

1.1 Each local authority in the United Kingdom has a statutory obligation to inspect its area for noise nuisance. This obligation is normally translated as a requirement to investigate complaints of noise from residents of its area. However, the method of investigation and the response to noise nuisance varies widely even between neighbouring authorities. This paper concerns itself with the actions of the local authority when it encounters noise amounting to a nuisance, and the possible courses of action for the author of the nuisance.

1.2 The requirement on local authorities to serve a notice when a nuisance is observed is not discretionary. However, the defence of best practicable means is available to authors of a statutory noise nuisance where it is generated during the carrying out of a trade or business. It is an implicit requirement therefore that the local authority should consider the possible defence of best practicable means when assessing the nuisance.

1.3 When specifying the actions needed to abate the nuisance, the most straight-forward wording of the notice from the local authority would simply be to 'abate the nuisance.' Although there may be some benefits to this approach, they are outweighed by the disbenefits, the most obvious of which is that a notice so worded could be considered imprecise, and appealed on that basis.

1.4 By detailed reference to three case histories in which the author has been involved, instances of poor practice are illustrated and it is hoped to provide an example of a more reasonable approach. In the first two cases assistance was provided to the author of the noise, and in the third case assistance was provided to the local authority addressing the noise nuisance.

### 2. THE PRINTING WORKS

#### 2.1 Background

A printing company took over occupancy of premises with existing planning permission for light industrial use, following extensive fire damage at their previous address. The issue of whether the subsequent problems were nuisance-related or planning related resulted in a parallel debate which in fact out-ran the noise investigation.

2.2 Access to the premises was gained via a small enclosed courtyard, with residential premises on one side and light industrial premises on the other. The residential premises had first and second floor bedroom windows facing onto the printing works, within about 25

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metres, although ground floors were shielded by a high brick wall. The enclosed nature of the courtyard meant that other sources of ambient noise, other than overflying aircraft, were largely excluded; as a result background noise (LA90), at approximately 43 dB in the early evening, was low for an urban location close to Central London.

2.3 Soon after the printing company took occupancy complaints were received by the local authority concerning noise emanating from the premises. These were investigated by the environmental health department by visiting the affected premises during the evening, but without any visit to the printing works. Satisfying themselves that a statutory noise nuisance existed, a notice was served under Section 80 of the Environmental Protection Act 1990 [1].

### 2.4 The Notice

The notice served required the printing company, with immediate effect, to operate the printing machinery only during normal working hours of 8am-6pm, Monday to Friday, and 9am-1pm Saturdays. No operation of printing machinery was permitted at any other time.

2.5 In addition, the local authority decided that the notice should not be suspended in the event of an appeal, on the grounds that the noise was:

- injurious to health, and;
- the expenditure which would be incurred ..... in complying with the notice ..... would not be disproportionate to the public benefit to be expected ..... from ..... compliance.

### 2.6 The Appeal

An appeal was lodged against the notice on several grounds, from the Appeals Regulations [2]. Principally the notice was considered to be unreasonable in character or extent [Ref 2 para (2)(c)] for the following reasons:

- by serving the notice with immediate effect, the printing company were prevented from carrying out remedial sound installations works to solve the problem;
- by prohibiting the operations of machinery, the company was prevented from using quiet machinery which may not cause a nuisance;
- the complaints related primarily to late evening sleep disturbance and there was no evidence that a nuisance existed between, say, 6pm and 8pm.

2.7 Additionally, the company were advised that in the event of a successful appeal, a subsequent damages claim for loss of income may also be possible, as the notice as worded had unreasonably prevented them from carrying on their business.

Basically, the notice did not address the issue of nuisance; the notice conditions were more onerous than best practicable means, and the company could successfully abate the nuisance without satisfying the notice.

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### 2.8 Remedial works

Despite being somewhat taken aback by the local authorities attempts to prevent their operation, the need to address the noise problem was quickly agreed. A programme of remedial works was specified, costed and installed within about a week. This involved:

- the replacement of glazed skylights with proper sealed structures contiguous with the roof structure;
- the replacement and sealing of unused lightweight doors and windows facing the courtyard;
- the installation of self-closing internal doors between the printing machines and the entrance lobby.

### 2.9 Conclusion

Although the appeal went to the magistrates court, the matter was resolved out of court on the day of the hearing, and both the appeal and the notice were withdrawn. Further remedial works were not required at the printing works, and it became apparent that separate monitoring visits immediately prior to the appeal had confirmed to the local authority that the nuisance had been abated. A claim for damages for loss of earnings was not made.

## 3. THE MILL

### 3.1 Background

An animal feed mill has operated from a site for many years, and over recent years there has been a gradual growth in the size of the business. This has manifested itself as an increase in vehicle movements, longer working hours and an intensification of the use of mechanical plant within the mill. Although in a rural area, with the early morning background noise ( $L_{A90}$ ) as low as 35 dB, the nearest housing is some 40 metres from the mill across a lightly-trafficked 'A' road. However, the 'A' road carried a significant number of empty gravel lorries early in the morning which serve a local pit.

3.2 Complaints of excessive noise were received by the local authority, and were followed by informal discussions with the mill operators. The complaints related to two sources of noise, namely:

- heavy lorries loading, unloading and manoeuvring during early morning hours. This included the unreasonable use of radios in lorry cabs;
- noise associated with production plant within the mill.

The negotiation process failed to adequately resolve the matter, despite several capital projects being carried out to improve the sound insulation performance of the mill.

An initial notice was served under the Control of Pollution Act 1974 [3] and although a contravention of the notice was not witnessed, complaints persisted. Following further

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visits the local authority re-served a notice for statutory nuisance under Section 80 of the Environmental Protection Act.

### 3.3 The Notice

The notice served required the mill operators, within 56 days, to reduce the noise levels emanating from the premises to below 35 dB(A) at the site boundary (with the main road). The noise limit was to be met at all times except between 7am-7pm, Monday to Friday, 7am-5pm Saturdays and 9am-5pm on Sundays.

### 3.4 The Appeal

An appeal was lodged against the notice on several grounds, but principally on the grounds that the notice was unreasonable in character or extent, with the following argument:

- 35 dB(A) at the site boundary equates to a level of approximately 20dB(A) within the nearest dwelling, even through an open window;
- 35 dB(A) is not related to the level which would need to be achieved to abate the nuisance;
- 35 dB(A) does not represent disturbance, since the peak levels from non-mill lorries on the main road during the same time was between 80-85 dB(A);
- 35 dB(A) is below existing noise levels.

### 3.5 Remedial works

As mentioned, considerable expenditure had been incurred in attempting to control the noise emanating from within the mill. However these efforts had been a little uncoordinated and hence a final schedule of works was drawn up, as far as possible to demonstrate best practice. In addition, a more radical solution was introduced to address the issue of noise from vehicles. A complete ban was (self) imposed on all lorry deliveries and collections before 8am, with extra staffing capacity introduced at the end of the day, from 3pm-7pm, to compensate for this. The change in operation was advertised through the erection of clear signs at the mill and the weighbridge, and with a mailshot to regular customers and suppliers.

3.6 By preventing all vehicle movements on site enduring the early morning hours at least 50% of the problem was solved. The residual problem of noise from the mill was addressed through the completion of attenuation works which it was felt constituted best practicable means.

### 3.7 Conclusion

At the time of writing, some ten months after the last notice was served, enforcement action has not been deemed appropriate by the local authority. Although they have no doubt witnessed technical contraventions of the notice they have not subsequently witnessed a nuisance. It has been confirmed verbally that a nuisance no longer exists and it is expected that the notice will be withdrawn shortly.

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### 4. THE CLAY PIGEON SHOOT

#### 4.1 Background

Planning permission was obtained to operate a clay pigeon shooting school on farmland in a rural area. The initial permission granted was temporary for a period of twelve months. Full planning permission was subsequently gained under more relaxed conditions than the temporary permission. However the issue had already become contentious since the planning authority were criticised for inadequate consultation with the neighbouring authority, which contained the nearest residential properties most likely to be affected.

4.2 The final planning permission granted provided little in the way of control of the intensity of shooting. It was alleged that use of the facility was less frequent during the temporary permission but intensified following the granting of full permission to the extent that a considerable number of complaints were generated. Upon investigation, the local authority (not the planning authority) satisfied themselves that a statutory nuisance existed.

#### 4.3 The Notice

Negotiations with the shooting school failed to reach agreement on a revised acceptable schedule for operation of the shooting school. In drafting the notice with the local authority we remained keenly aware of the likelihood of any notice being appealed, and the defence of best practicable means being available to the shooting school if the controls were too onerous.

4.4 Extensive reference was made to the various codes of practice issued on the subject, although none of these has approved status, and in general the notice was intended to be:

- sufficiently onerous to protect local residents;
- based on accepted good practice;
- reasonable;
- enforceable;
- able to be verified;
- aware of the operating needs of the shooting school;
- limited in its contradiction of the existing planning permission.

#### 4.5 Conclusion

An attempt to appeal the notice on the shooting school failed as it was not received within the specified time period. Use of the facility during the winter has remained light, partly it is felt due to the current economic recession. The local authority await the intensification of activity, and propose a programme of monitoring to respond to complaints and to check compliance with the notice.

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### 5. DISCUSSION

5.1 There is a strange lack of specific guidance available on the investigation of noise complaints, the assessment of nuisance and the application of statutory nuisance controls. The following are considered to be key points which must be considered and addressed during the wording of a notice:

- Is there sufficient time available for compliance?
- Is the notice precise?
- Are the requirements technically achievable?
- Will they solve the problem?
- Can the requirements be verified by objective observation or measurements, ie, how easy is it to check that the notice conditions have been complied with?

It is clear that the enforcing officer, normally the environmental health officer (eho) must have a clear insight into the nature of the problem and the solutions available. This is often not the case.

5.2 The local authority would normally choose to set either a performance requirement to be met, or an engineering solution to be put in place within a specified time period. Additionally, some authorities will require the author of the nuisance to submit a scheme of attenuating works for agreement by the local authority, and to implement these works within a specified time. It is felt that this last approach can be criticised for its imprecision, and it also does not encourage the local authority to familiarise themselves with best practicable means on the site.

5.3 It is possible and indeed desirable to separate the different stages of assessment and control of a statutory noise nuisance, as follows:

- (1) Assessment of noise and identification of nuisance (by the eho)
- (2) Specification of abatement requirements (by the eho)
- (3) Response in order to abate nuisance (by the author of the noise).

It is significant that the eho must link (1) and (2) above in order to be precise when serving the notice, but the author of the noise need not link (2) and (3) in responding to the notice and abating the nuisance.

### 5.4 Conclusions

A lack of experience or confidence in tackling noise nuisance causes some authorities to be imprecise when serving abatement notices. Practical advice, taken from neighbouring authorities or from a consultant, can assist greatly in getting it right first time.

Before serving the notice the local authority must gain an awareness of what constitutes best practicable means in each instance; the notice must reflect this if it is not to increase the risk of being appealed.

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In assessing the effectiveness of any remedial works the local authority must have regard only to whether the nuisance has been abated, not to whether the notice conditions have been satisfied. If the nuisance has been abated, technical contraventions can not be taken successfully to the magistrates court.

### **ACKNOWLEDGEMENT**

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### **REFERENCES**

- [1] Environmental Protection Act 1990. Part III. Statutory Nuisances and Clear Air. Section 80. Summary proceedings for statutory nuisances.
- [2] SI 1190/2276. The Statutory Nuisance (Appeals) Regulations 1990.
- [3] Control of Pollution Act 1974. Section 58.

