



ENVIRONMENTAL PROTECTION ACT 1990

Private Legal Action for nuisance - Section 82

Advice to complainants

Introduction

The purpose of this informal advice sheet is to give you, a complainant suffering from an alleged nuisance, some informal advice concerning the making of a formal complaint to the local Magistrates Court yourself, i.e. private legal action, of the nuisance under the provisions of Section 82 of the Environmental Protection Act 1990.

You will appreciate from advice already given to you that the Council is commonly not in a position to take formal action regarding a statutory nuisance. In these circumstances the occupier of a property affected by a nuisance may take private legal action at the Magistrates Court and provide the main evidence himself as the occupier of the property who has witnessed and recorded the incidences which have been the origin of the nuisance.

Definitions

A nuisance is the undue interference with your personal comfort or the enjoyment of your property. A question of what is meant by 'undue' is always a question of degree. Relevant factors would include the time, place, extent, manner etc. of the nuisance which is the subject of your complaint. The following are the categories under which nuisance may fall.

1. Any premises in an unsatisfactory state.
2. Excessive smoke emitted from premises.
3. Excessive fumes or gases emitted from premises.
4. Excessive dust, steam, smell or other effluvia from an industrial, trade or business premises.
5. An unacceptable accumulation or deposit.
6. Any animal kept in an unsatisfactory place or manner.
7. Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance.
8. Artificial light emitted from premises so as to be prejudicial to health or a nuisance.
9. Excessive noise emitted from premises.
10. Excessive noise caused by a vehicle, machinery or equipment in the street.

Initial procedure

The Environmental Protection Act 1990 which came into force on the 1st January 1991 now requires for the person aggrieved by a nuisance to give the person responsible for the nuisance, or where that person can not be found, the owner or occupier of the premises, not less than three days notice of the bringing of the proceedings to the court.

The Court's Powers

Under Section 82 of the Environmental Protection Act the Magistrates Court, on being satisfied of a nuisance, may make an order requiring the nuisance to stop or prohibit its reoccurrence. The court may additionally require the execution of any works necessary to facilitate the abatement of the nuisance. Subsequently, on failure to comply with such a court order, the court can impose a fine on the defendant.

Costs

The court has discretion whether to make any award of costs. Generally, you will not be awarded costs in the event of a successful action unless you instructed a solicitor. If your case is dismissed and a defendant is represented by a solicitor, you may be required to pay all or part of a defendant's legal costs, especially if the court on the day considers your case to have no merits.

The Court's intention is to strike a balance between the right of the defendant to use his property for his own enjoyment and the right of the plaintiff to the undisturbed enjoyment of his own property.

The Court's attitude is that everyone must put up with a certain amount of discomfort and annoyance from legitimate activities of his neighbours.

A useful test to apply is:-

What is reasonable according to the ordinary activities of mankind?

Preparation

Preparation of your case is therefore very important. You may wish to seek the advice of a solicitor or perhaps a Citizens Advice Bureau for this purpose. You should have good evidence on which the court can rely. This will typically be facts/events experienced by you. It is not generally acceptable to relay events which someone else reported to you unless that person also gives evidence in confirmation. You may, however, comment on the effect of the nuisance on that person. The most effective way to prepare your case is to keep a record of relevant incidents, including the time, place, how close you were to the source, the effect. If the Court is satisfied you made a record at the time of each incident, you may be allowed to refer to it in court. This could be particularly helpful if you suddenly become flustered by an awkward question.

It is very desirable that more than one person records the nuisance and that the willingness and availability of such persons to attend Court is known (time off work, holidays etc.).

Procedure

Go to the Magistrates Court and ask to speak to the Duty Court Clerk. Explain your case to the clerk and request that you be allowed to make a complaint to the Justices. You will need to show the Clerk of the Court that you have given three days notice to the person responsible for the nuisance, and for this purpose it will be necessary to keep a copy of any such notice you have given to show to the Clerk. It may be possible to arrange an appointment by telephoning the Justices Clerks office. The Clerk will then arrange for you to go into court when it is convenient. Unfortunately, you must be prepared to wait around a lot. Address the Magistrates "Sir," "Madam", or "Your Worships".

The Clerk may direct you to the witness box to take the oath and then ask you to explain to the Justices your complaint. This stage is not a trial, but the Justices must be satisfied there is evidence of a genuine "case to answer". It is probably best to start with a summary of facts, for example, type of complaint, frequency, number of recorded incidents, number of witnesses and the availability of a record. Ask the Justices whether they want you to go into any detail.

If they are satisfied, they will direct the Clerk to issue a summons to the defendant and fix a date for the first hearing.

First Hearing

On this date the court will usually only hear "guilty" pleas - it will not be scheduled for a full hearing (but you

should check this with the Clerk) and it should not be necessary for your witnesses to attend.

If the defendant pleads “guilty” then the justices will hear both sides of the case briefly before making an appropriate order. If the defendant pleads “not guilty” then the Justices will fix a date for the full hearing and adjourn the case (if they wish to hear the case but your witnesses have not attended, then you may request adjournment for this purpose or, possibly decide to go ahead without your witnesses). If the defendant does not appear at all then the Justices will probably adjourn to give the defendant a further opportunity to appear.

Adjourned Hearing

If the defendant pleads not guilty or fails to attend the first hearing you should attend Court with your witnesses. If the case is “not guilty” there will be a full hearing. If the defendant was absent at the first hearing and is again absent you should ask the Court to proceed in his absence. N.B. If the defendant appears, having failed to appear at the first hearing pleads not guilty, then the Court may fix a further date for a full hearing when all the witnesses should attend.

This note does not purport to be a complete guide to procedures under Section 82 of the Environmental Protection Act 1990. Rather it is given in good faith for the purposes of general information only. It is no guarantee of successful court action. If you are in any doubt regarding the procedure, you should seek professional legal advice. perhaps via the Citizens Advice Bureau, Community Legal Advice on 0845 345 4 345 or your own solicitor. The address of CAB offices in Dover District is given below. Dover District Council cannot accept any responsibility for the events rising from the advice given in this information sheet.

DOVER DISTRICT COUNCIL
Environmental Health Department
White Cliffs Business Park
Dover
Kent
CT16 3PQ
Telephone: (01304) 872428
envhealth@dover.gov.uk

CITIZEN’S ADVICE BUREAU

Dover	Dover Gateway	Deal	Sandwich
Maison Dieu Gardens	Gateway,	The Cedars	Guildhall Cattle Market
Maison Dieu Road	71 Castle Street,	26 Victoria Road	CT13 9AH
CT16 1RW	CT16 1PD	CT14 7BJ	

Opening hours are available on the Council website at
<https://www.dover.gov.uk/Community/Facilities-Organisations/Citizens-Advice.aspx>
Or the Citizen’s Advice website at
<https://www.doverdealadvice.co.uk/>
and via telephone at **0344 848 7978**