

Complaint reference:
17 006 272

Complaint against:
North Tyneside Metropolitan Borough Council

The Ombudsman's final decision

Summary: The Council correctly assessed a noise nuisance and planning enforcement case. The Council failed to adequately respond to a complaint about those investigations, and explain its reasoning. The Council will apologise for the frustration, time and trouble it caused.

The complaint

1. The complainant, who I will call Mr B, says the Council failed to properly investigate his complaint of noise nuisance from a neighbouring gym. Mr B says the Council only considered volume in assessing whether it was a statutory nuisance. It did not consider the frequency or type of noise, the timings, the location of the building in a residential area, or the sudden, unexpected and intrusive nature of the noise. Mr B also says the Council failed to properly consider the planning permission at the gym, and failed to properly consider his complaint.

The Ombudsman's role and powers

2. 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*)
3. 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*)
4. 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

5. I considered:
 - Information provided by Mr B, and discussed the complaint with him.
 - The Council's response to my enquiries.
 - The Environmental Protection Act 1990.
 - The gym's website

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- The Town and Country Planning Act 1990
 - The Council's 'procedure for dealing with domestic noise complaints.'
 - Responses from both parties to a draft of this decision.

What I found

6. Mr B moved to his property in May 2015. Shortly after moving in, Mr B heard sudden and irregular noises which left he and his wife on edge. Mr B will not know when the noises will occur, how many times, and for how long. Mr B can hear 30-50 repetitive bangs over a short period, and the noise may then stop for some time. The noises are mainly mornings (6-7am) and evenings. The noise is unpleasant and abrasive, and it is a relief when it is over. Mr B has a dog who is hypersensitive to noise; so is negatively affected.
7. Mr B went to the building next door one Sunday morning shortly after moving in, and discovered it was a gym. The noises he hears are heavy weights being dropped and reverberating. Mr B explains it is a single skin brick building with no sound proofing, so is not suitable for this use.
8. Mr B complained to the Council about the noise nuisance and the use of the building.

Noise nuisance

9. Councils must look into complaints about noise that could be a statutory nuisance, in accordance with the Environmental Protection Act 1990. For the noise to count as a statutory nuisance it must do one of the following:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises
 - injure health or be likely to injure health
10. The Council's procedure for dealing with domestic noise complaints shows the first course of action is usually to ask the complainant to keep diary sheets of the noise. If the diary sheets show there is a nuisance the Council will offer to install noise monitoring equipment. All tapes must be listened to and the complainant informed by telephone followed by letter within 10 working days of the outcome being known.
11. Mr B completed diary sheets, and the Council installed noise monitoring equipment; in accordance with its procedure. The Council also completed a second set of noise monitoring.
12. The Council explains that determination of the nuisance is based on the frequency, duration, character of area, as well as level of noise. This determination of statutory nuisance is based on case law and other sources such as the World Health Organisation's community noise guidelines, and British Standards 8233:2014 which gives guidance levels for internal noise. There is also guidance for rating and assessing industrial and commercial sound: BS4142.
13. The Council failed to tell Mr B of the result of the monitoring within ten working days; this was fault as the Council did not comply with its procedures. Mr B had to chase the Council. The Council has apologised, which is appropriate to acknowledge the time, trouble and frustration it caused Mr B.
14. Mr B says the Council only focused on the volume of the noise when assessing whether there was a statutory nuisance in this case. Mr B has this impression

because of the Council's letter of 30 June 2017, which says "The decibel levels were not considered to be at a sufficient level that they would constitute a statutory nuisance."

15. The Council's 'noise monitoring record sheet' shows that as well as the volume it also considered the time of day, the frequency, and other background noise. The letter of 30 June 2017 does also refer to the time of day, duration and frequency.
16. The Council failed to show how it considered the character of the area. In response to my enquiries the Council explains the gym is situated in a town centre area. The gym is separated from Mr B's property by a lane, and to the rear of Mr B's property is a car park and shopping area. The Council explains noise levels in a town centre will be higher than would be expected in a non-commercial area. The noise monitoring recorded noise from the lane as well as noise from the gym. It considered the activities in the gym were part of the character of the area.
17. The Council has determined the noise nuisance is not a statutory nuisance, and therefore it has no powers to help Mr B. I can see no reason for the Ombudsman to criticise this decision, given the Council considered diary sheets and noise monitoring. The Council properly assessed the noise nuisance, considering various relevant factors, not just the volume as Mr B believes.

Planning enforcement

18. Because of Mr B's complaint, the Environmental Health Team referred concerns about the use of the building as a gym to the planning enforcement team.
19. The Council can consider whether the building has the proper planning permission to run as a gym.
20. The Town and Country Planning (Use Classes) Order 1987 puts uses of land and buildings into various categories known as 'use classes'. It is generally the case that you will need planning permission to change from one use class to another.
21. The use of the building as a gym from a parish hall would be a change of use. The gym is a D2 use class. The Council established the D2 use seems to have been in operation for more than ten years, as in 2004 it was used as a martial arts centre.
22. The Town and Country Planning Act 1990 specifies that in cases such as this no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
23. Planning enforcement powers are discretionary and the Council must consider whether it is expedient to take enforcement action. In this case, given the Council considers it likely the D2 use has become legal due to the passage of time, it does not consider enforcement action is proportionate or in the wider public interest.
24. I can see no reason to question or criticise the Council's decision, given it has carried out enquiries and considered the relevant law.
25. The Council has spoken with the user of the building regarding reducing noise and being a considerate neighbour; but the Council has no powers to require certain levels of soundproofing or limiting the use of the building as Mr B would wish.

Complaint

26. The Council accepts it delayed responding to Mr B's initial concerns. The Council should have provided the result of the noise monitoring within ten working days,

but instead it took around two months. The Council also delayed giving the result of the planning enforcement enquiry. The Council has apologised which is appropriate.

27. Mr B complained further as he did not feel the noise nuisance had been adequately assessed. Mr B felt the Council had only concentrated on the volume of the noise. The stage two response did not address Mr B's concerns.
28. I have considered the Council's responses to Mr B and do not feel they give sufficient information for him to understand the various factors it considered when establishing there was not a statutory nuisance. Therefore, the Council failed to address Mr B's specific concerns in its complaint correspondence. This caused Mr B the time and trouble of progressing his complaint to the Ombudsman, when the Council could have resolved it internally had it given more detail and responded to his specific concerns.

Agreed action

29. To acknowledge the impact on Mr B, the Council will:
 - a) Apologise to Mr B, within two weeks of the Ombudsman's final decision, for the time and trouble it caused him having to pursue his complaint. And for the frustration caused by its delay, and lack of thorough explanation of the outcome of Mr B's noise nuisance complaint.

Final decision

30. I have closed the case on the basis the agreed action is sufficient to acknowledge the identified fault.

Investigator's decision on behalf of the Ombudsman