

LONDON BOROUGH OF BROMLEY

Public Protection

S82 Environmental Protection Act 1990

A step to step guide to taking your own action



ENVIRONMENTAL PROTECTION ACT 1990 Section 82

Section 82 of the Environmental Protection Act 1990 allows individuals who are aggrieved by a statutory nuisance to take their own action. This may be necessary when the local authority has been unable to witness the nuisance because of the intermittent nature of the nuisance or the time that the nuisance occurs or where individuals do not agree with the Council's conclusion.

The procedure outlined in this pack gives you a step by step guide to taking your own action. However, below are some general points to consider first.

1. What is a nuisance?

A nuisance is an activity that interferes with the use or enjoyment of your home, including your garden. Several factors will be relevant e.g. time, place, extent and duration of the nuisance. A single isolated occasion would not be likely to succeed nor perhaps a normal sort of noise e.g. lawn mower used regularly at reasonable times.

2. Who can take action?

Only the person aggrieved by the nuisance can take action although they may use neighbours as witnesses.

3. Who do I take action against?

Action is taken against the person responsible for causing the nuisance. It is therefore necessary to take all reasonable steps to identify who is responsible for causing the nuisance.

If that person cannot be found then action can be taken against the owner or occupier of the premises from which the nuisance is emitted.

4. What proof do I need?

You will have to prove that the activity amounts to a nuisance. You must convince the Magistrate beyond a reasonable doubt that the nuisance exists and that the defendant is the person responsible for the nuisance.

5. How much will it cost?

The process is inexpensive and with the help of this guide action can be taken without the help of a solicitor. If you lose, you may have to pay the defendants' costs, as well as your own. Even if you win costs are not automatically given to you, you must make an application for them.

STEP 1 KEEP A RECORD

- Included in this pack are diary sheets that can be used to record the details of the activity that you think is a nuisance. **See *Appendix A***
- Your diary will be the basis for your evidence and should describe the occurrence of the activity details. It is vital that you are accurate in your description.
- It must be noted that the diary is your witness statement and that providing false evidence is a criminal offence.
- The diary should be written as the activity occurs or as soon as possible afterwards. A description of the activity for each event is also useful particularly if it is different each time. It is also important to describe the effects of the activity on you and/or family e.g. 'it woke me up'; 'I couldn't hear the TV'; etc as this will be the evidence to prove that the activity is a nuisance to you.
- It would support your evidence if other people similarly affected by the nuisance keep a record. Speak to your neighbours and find out if they are being affected too and are prepared to attend court as witnesses on your behalf.

STEP 2 INFORMAL APPROACH TO PERSON THE RESPONSIBLE

- An informal approach to the person responsible for the nuisance may stop the nuisance. If not it would still be to your advantage when you go to court if you have taken informal action to resolve the problem. A magistrates' court is unlikely to be very sympathetic to your case unless you can show that you have attempted to deal with the matter in a friendly non-aggressive manner face to face, before presenting your complaint to the court.
- You should send a letter to the person responsible outlining the problem and keep a copy for yourself that is signed and dated.

STEP 3 NOTICE OF INTENTION TO TAKE ACTION

- If the nuisance is not abated then you may decide you have no option but to start legal proceedings.
- Before bringing legal proceedings you are required to serve a notice on the person responsible at least 3 days before approaching the court.
- You can use the notice in **Appendix B** of this pack for this purpose. You must describe the nuisance and how you are aggrieved. The notice should be hand delivered or sent by recorded delivery.

STEP 4 MAKE THE COMPLAINT TO THE COURT

- To commence proceedings you must contact the Clerk of the Court. **See Appendix C.**
- Complete the complaint form in **Appendix D** and take this to the Magistrates Court and ask to see the Clerk. The court may charge a small fee and you should try to find out how much this will be before you start proceedings
- The Clerk will check the complaint and take you to the Magistrate who will hear your complaint.
- If they feel your complaint is justified they will issue a summons to the person responsible for the nuisance (known as the defendant).

STEP 5 THE COURT PROCEDURE

- Once the summons has been served you will be given a date to attend court.
- On the day of the hearing if the defendant appears in person and pleads guilty, you will only need to present the general circumstances of the case. The court will then make an order requiring the abatement of the nuisance or prohibiting its recurrence.
- If the defendant pleads "not guilty" you will then have to prove your case by giving evidence under oath and calling any or all of your witnesses. The defendant can question you and your witnesses. They may also call witnesses of their own. If the defendant gives evidence or calls any witnesses, you will also be able to question them. You can only question them on the facts pertaining to the noise problem
- You will have to give evidence from the witness box recounting how the nuisance occurred. If you ask the magistrate you may refer to your diary while in the witness box. Your evidence must be restricted to true statements of fact. You will not be allowed to speculate or make unfounded assumptions.
- Once you have given your evidence the defendant may ask you questions and the Magistrate may also want to ask you some questions.
- You may then call any witnesses you wish the court to hear and question them so that they can present their evidence. You must only ask questions you are not allowed to make statements while questioning.
- If the courts find your complaint to be justified they will make a nuisance order requiring the abatement of the nuisance or prohibiting its occurrence. The court may also impose a fine.
- A person who without reasonable excuse breaks the requirement of the order is guilty of an offence under the Act. You should therefore continue to keep a record of any further occurrences in case it proves necessary to return to Court.

Appendix A

Record of Disturbance

Address of Complaint _____

Record kept by _____

Address _____

Signature _____

Signature of witness _____

Date	Type of nuisance Eg. Dog Barking, Loud TV	Time Started	Time Finished	Description of Incident (How does it affect you)

Appendix B

NOTICE OF INTENTION TO BRING PROCEEDINGS
under section 82 of the Environmental Protection Act 1990

To.....

Of.....

I

Of.....

.....

Being aggrieved by a statutory nuisance, namely

in relation to the premises known as

.....

HEREBY GIVE YOU NOTICE under section 82(6) of the Environmental Protection Act 1990, that I intend to bring proceedings for an [abatement] [and] [prohibition] order under section 82(2) of the said Act in the magistrates' court sitting at.....

against you, as [the person responsible for the said nuisance] [the {owner} {occupier} of the said premises].

Dated.....

Signed.....

Appendix C

Bromley Magistrates Court
The Courthouse
1 London Road
Bromley
Kent
BR1 1RA

Tel. 0845 6013600

Appendix D

Complaint in respect of Statutory Nuisance

Magistrates' Court

Date:

Defendant:

Address:

Alleged Offence: that I am aggrieved by the existence of a statutory nuisance under Section 79 (1) of the Environmental Protection Act 1990, namely

at or in respect of the premises known as

and the defendant is [the person responsible for the said nuisance] [owner] [occupier] of the premises]

The complaint of:

Address:

who states that the particulars given above are true

Taken before me this day of

[Justice of the Peace] [Justices Clerk]