



# ENVIRONMENTAL PROTECTION ACT (EPA) AND THE CONTROL OF POLLUTION ACT (COPA)

The Environmental Protection Act: 1990 (EPA) covers the law in England and Wales with regard to noise nuisance. In this Bulletin, we describe the current statutory law with regard to noise nuisance, including relevant parts of the Act in force in England and Wales. We hope, therefore, to help you understand the existing situation and prevent you running into unforeseen problems at the planning and design stages of a project.

The law concerning noise has consequences for:-

- nuisance from noise emitted by fixed plant
- the transfer of noise between adjacent residential flats
- dealing with local government officers (or how they deal with you)
- construction site activities
- noise nuisance emitted by commercial or industrial premises.

## What is Noise Nuisance?

Nuisance is legally defined as:-

*'The unlawful interference with a person's use or enjoyment of land, or of some right over or in connection with it.'*

For noise to be a nuisance there must be some actual interference with property and/or personal comfort. This could be loss of sleep; interference with speech or telephone communications; or simply a lowering of property values because of environmental conditions.

This nuisance need not be injurious to health and the standard considered is that which would be acceptable to the 'ordinary sensible person', not that of somebody who is unduly sensitive.



of the local environment is required, as no fixed standard of 'comfort' is applied. In practical terms for statutory nuisance this judgement is usually made by an Environmental Health Officer acting on behalf of the Local Authority.

### Q: What action can Local Authorities take?

Under Section 79 of the Environmental Protection Act, Local Authorities have an obligation to inspect their areas from time to time, to detect any statutory nuisances. Local Authorities are also obliged to investigate

complaints made to them by any person living within their area. If they are satisfied a nuisance exists, or is likely to occur in their area, then they have to serve an Abatement Notice. (Section 80 of the EPA).

### Q: What action can individuals take?

Individuals can take action directly under Section 82 of the EPA in a Magistrates Court. If the Court accepts that a nuisance exists or may re-occur it would issue a Court Order requiring that steps be taken to eliminate the nuisance.



**Environmental Protection Act 1990**

1990 CHAPTER 43

In deciding whether a noise is a nuisance or not, consideration

### Q: Who can be served with a Noise Abatement Notice/ Court Order?

Normally the person responsible for the nuisance will be served with the Abatement Notice. If the nuisance has not happened yet (the night club next to your house is only half complete!) the Notice is served on the owner or occupier of the premises from which the noise may emanate.

If the noise nuisance arises from any defect of a structural nature, then the Notice is served on the owner of the premises. This has serious consequences for residential landlords where a house is converted to flats or even if the flats are purpose built. If insufficient sound insulation has been carried out, then in the event of a noise nuisance dispute between neighbours, the landlord of the property may be served with the Notice rather than the people creating the noise. (Sections 80(2)(b) and 82(4)(b) of the EPA.)

### Q: What Happens if I Ignore the Abatement Notice or Court Order?

If an Abatement Notice is served by the Local Authority and you ignore it, the Local Authority may take steps to abate the nuisance and claim the expenses of doing so, from you. They may also or instead, take you to Court and if you do not have a good excuse, you can be fined up to £20,000 if you are a business. A broadly similar situation relates to Court Orders.

The moral of the story is, therefore, if you get an Abatement Notice served on you, get proper professional advice immediately!

### Q: What is my best defence?

If you are served with an Abatement Notice or Court Order it may be possible for a business to show that 'best practicable means' (you've tried your best, but it can't be done!) have been used to control the nuisance. This includes allowance for the state of technical knowledge at the time and the financial implications or physical limitations of attenuating the noise.

### Q: Why should this concern me?

Where noise criteria are attached to Planning Approvals, the advice of an Acoustic Consultant is usually sought. Where no such constraints on a developer and his professional team occur, the acoustic impact of commercial premises and indeed the acoustic integrity of premises is often ignored.

*The professional acoustic consultant can advise clients whether a noise nuisance is likely to exist before it actually happens and prevent the client's involvement in any litigation*

It should be remembered that hearing is one of the most important human senses and deserves just as much consideration as the visual aspects of the project.



## Hann Tucker Associates

Consultants in Acoustics Noise & Vibration

#### Head Office:

Duke House, 1-2 Duke Street  
Woking, Surrey GU21 5BA

(t): +44 (0)1483 770595

(e): enquiries@hanntucker.co.uk

#### Manchester Office:

First Floor, 346 Deansgate  
Manchester M3 4LY

(t): +44 (0)161 832 7041

(w): www.hanntucker.co.uk



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