

NUISANCE ADVICE PACK

How Swindon Borough Council can help you

Swindon Borough Council has a legal duty to advise and assist local residents on statutory nuisance issues. This document provides advice on the following common complaints of excessive and unreasonable intrusion from:

- Noise
- Light
- Dust
- Odour
- Smoke

You can contact us by:

Telephone Monday to Friday during office hours **01793 466068**

'Out of Office Hours' Tuesday to Saturday
18:00hrs to 02:00hrs 01793 466453

Fax 01793 466165 **Letter** Environmental Improvement,
Swindon Borough Council,
3rd Floor Premier House,
Station Road,
Swindon
SN1 1TZ

Email ep@swindon.gov.uk

Web www.swindon.gov.uk

Our website provides more information about the Environmental Improvement Team and its role in improving and maintaining the environment.

Problems with your neighbours?

If your neighbour's activities are disturbing you, an important but often overlooked method of dealing with the problem is to talk to your neighbour politely and discuss it with them. We try to urge all complainants who contact us to try to resolve the problem informally with their neighbour first, however, this may not always be possible either because previous informal attempts have failed or because they are worried about violence or intimidation - especially where alcohol or drug use is suspected.

It may also be appropriate for you to involve Swindon Community Mediation Service. All contact is confidential and they can be contacted for general advice or more involved assistance.

Telephone Monday to Friday 9:00 to 17:00 01793 527285

E-mail admin@familymediation.fsnet.co.uk Swindon Community
Mediation Service

Website www.communigate.co.uk/wilts/cms 34 Milton Road,
Swindon

If you cannot resolve the problem easily with your neighbour, please ask to speak to the Environmental Improvement Team at Swindon Borough Council; your name and address will be kept completely confidential (unfortunately, we are unable to respond to anonymous complaints).

What actions can the council take and what can you expect from us?

Once we have received your request for advice or action our quality target is to reply to you within two working days, you will be contacted by a member of the Environmental Improvement Team who will discuss your complaint with you, however, if the complaint is of an especially urgent nature, i.e. a car or intruder alarm sounding or a very loud party we will get back to you as soon as possible.

We will need to know details about the type of problem (i.e. loud music, dust etc.) and we will also ask whether or not you have attempted to resolve the situation yourself informally.

The officer will provide you with information explaining the law and our procedures and may ask you to complete and return a diary sheet, giving details of when the problem occurs, how long it lasts, and how it affects you. This information is useful for predicting when an officer may witness the nuisance and for providing valuable evidence in court should formal action be necessary.

Upon receipt of a complaint and after discussing the situation with you the first action will be that the investigating officer will usually write to the person or organisation alleged to be causing the problem advising them of the complaint, requesting their co-operation and reminding them of their legal obligations; once again, we would stress that your details will be kept confidential and not disclosed.

If after we have sent out the letter you are still being affected by this problem then please contact us and we will investigate the matter in order to determine if it amounts to a '**Statutory Nuisance**' under the Environmental Protection Act 1990.

In order for us to formally progress your case enforcement officers need to gather independent evidence to demonstrate to a court that a Statutory Nuisance is occurring. This usually means that one of our officers will visit you, in your home, when the problem is occurring, (or is likely to be occurring based on your diary notes). We will also consider supplementary evidence such as diary sheets and that of other independent professionals such as Police Officers or Housing Officers who may have witnessed the problem when carrying out their own duties.

If we are unable to assess the problem in person (for example if it occurs at very irregular times or between 02:00hrs and 09:00hrs), then we may arrange

for an officer to be available or in the case of noise, we may install monitoring equipment.

Should the Environmental Improvement Team obtain sufficient evidence of the existence of a Statutory Nuisance then an Abatement Notice would be served on the person(s) responsible.

What is an Abatement Notice?

An abatement notice is a legal document that requires the person on whom the notice is served to stop the nuisance or restrict its occurrence or recurrence (i.e. to certain hours of the day) or it can require works to be carried out. Please bear in mind that it may take weeks or even months to gather sufficient evidence for us to be able to take formal action on your behalf where informal action, such as mediation, has not resolved the nuisance.

If the nuisance persists after an Abatement Notice has been served then we will continue working with you to gather evidence proving that the requirements of the notice are not being met.

Breaching an Abatement Notice is a criminal offence and, in line with our enforcement policy, we may decide to issue a written warning, recommend a formal caution or prosecute those responsible (and in the case of a noise nuisance we may also potentially seize any noise making equipment such as stereos and speakers).

Please remember at this stage you and/or other witnesses would be required to give a statement and appear in court; if your neighbour was to be found guilty they may be liable to a fine of up to £5000 (or up to £20,000 if it is a business that is causing the nuisance).

What constitutes a Statutory Nuisance?

The Environmental Protection Act 1990 does not provide a definition for Statutory Nuisance, instead, the concept of nuisance depends on:

- **Time and duration**
- **Frequency**
- **The nature of the area (i.e. rural or urban)**
- **Interference**
- **Reasonableness**
- **Motive**
- **Sensitivity** – *the problem must be shown to be unacceptable for the 'average person' and is not designed to take account of personal sensitivities such as shift working.*

Essentially if the nuisance is severe enough to be either prejudicial to health or if it stops you from enjoying a normal routine e.g. prevents you from

watching television or stops you sleeping, then it is likely to be considered as a statutory nuisance.

On the whole the judgement of an experienced and independent officer is enough to determine if a problem can be considered a Statutory Nuisance or not.

What if the nuisance is not considered by Swindon Borough Council to be a 'statutory nuisance'?

The assessment of nuisance may present practical difficulties for the Local Authority where it is intermittent, irregular or unpredictable. In these circumstances it is not always possible for the Local Authority witness the nuisance and to be satisfied (as required by Section 80 of the Environmental Protection Act 1990) that the nuisance exists or is likely to occur or recur.

In this instance, you may choose to apply directly to a Magistrates Court for an Abatement Notice, if you would like further advice on this procedure then please contact us.

If you are not happy that we have adequately investigated your complaint then in the first instance you should complain via the Councils own Complaints procedure; if this proves to be unsatisfactory you may then choose to also contact the Local Authority Ombudsman.

Noise Nuisance

Sound is an essential part of our daily lives and can arise from a wide range of sources or activities and sound is often considered to be normal or even pleasurable, however, on occasions it can cause annoyance and this unwanted sound is referred to as noise.

Whilst exposure to very high levels of noise can affect hearing, lower levels may also affect health by increasing the anxiety or stress levels of the person subjected to the noise, further problems may develop if the noise prevents sleep.

Some of the most common sources of noise include:

- Barking Dogs
- Stereos / Televisions
- Musical Instruments
- Misfiring Alarms
- Construction/Demolition
- DIY
- Parties
- Industrial / Agricultural Noise
- Pubs / Clubs etc.

The Environmental Improvement Team can take action under the Environmental Protection Act 1990 in cases where noise is considered to be a statutory nuisance. Whether or not noise constitutes a statutory nuisance depends on several factors, including, the loudness, duration, how regularly it occurs and whether it would interfere with the “average” person's reasonable enjoyment of their property.

The extent to which noise travels between properties will depend on their construction and sound insulation, in some circumstances (particularly in flats) where walls, ceilings etc may be thin, a certain level of noise from neighbours should be expected and accepted as being normal.

Although there are no legal time limits for when people are allowed to make noise until, the time of day (or night) does have a bearing on whether noise is likely to be considered a statutory nuisance.

The Council can deal with complaints relating to noise coming from vehicles, machinery or equipment in the street, however, this excludes normal traffic noise.

There are some noise nuisances that are not usually amenable to Statutory Control:

- Children's noise
- Shouting, screaming and raised voices
- General domestic noise
- Slamming doors and heavy footfall on stairs etc.

Smoke

The smoke and smell from bonfires can be very irritating to neighbours, particularly during the warmer months, as this tends to be when people are most likely to:

- Want to enjoy sitting in their gardens
- Hang washing out to dry in their gardens
- Have their windows open for ventilation

Additionally, burning waste may give rise to gaseous products that may be harmful to human health or the environment, particularly if the waste being burnt contains plastic, rubber, man-made fibres, or painted/treated materials. If the exposure to bonfire smoke is short-lived then health effects are unlikely to be significant, however, asthmatics, bronchitis sufferers and those with heart conditions may suffer to a greater degree

There is no offence of lighting a bonfire and in Swindon there are no byelaws or “Smoke Control Areas”.

The Council can, however, take action in cases where smoke constitutes a statutory nuisance. Whether or not smoke constitutes a statutory nuisance depends on several factors, including the amount of smoke travelling onto your property, the duration of smoke episodes, how regularly they occur, and whether they would interfere with the “average person's” reasonable enjoyment of their property.

If a business burns material giving rise to black smoke, this is usually an immediate offence and we need to know about it so please contact us and ask to speak to the Duty Enforcement Officer.

If you are worried about the safety of a neighbour's fire then you should contact the local Fire Authority for advice, only dial 999 **in an emergency**, i.e. if you believe that there is an immediate threat to life or property.

Dust and Odour

Dust and Odour may be considered to be statutory nuisances Whether or not smoke constitutes a statutory nuisance depends on several factors, including the nature of dust/fumes/gases, the source and reason for emission, frequency and duration of release and the effects on local residents.

Please be aware that Statutory nuisance of dust and odour only applies to commercial sources, not domestic.

Light

Artificial light has many uses as the illumination of streets and hazardous areas, security lighting and increasing the hours of usage for outdoor recreation facilities, but it can cause problems and light in the wrong place can be intrusive. Excessive amounts of artificial light could qualify as a statutory nuisance provided it causes a material interference with the comfort and enjoyment of your property; the criteria for statutory nuisance is not the same as "annoyance".

Light pollution is any form of artificial light that shines outside the area it needs to illuminate, and it although light pollution may affect the beauty of the night sky and our view of the stars it is not a *light nuisance*.

Light Nuisance does not include artificial light emitted from the following premises:

- Airports
- Harbours
- Railway premises
- Tramway premises
- Bus stations and associated facilities
- Street lighting
- Public service vehicle operating centres
- Goods vehicle operating centres
- Lighthouses
- Prisons
- Premises occupied for defence purposes

Where can I get further information?



08459 33 55 77

Customer Contact Unit
Eastbury House
30 - 34 Albert Embankment
London
SE1 7TL

helpline@defra.gsi.gov.uk



Environment Agency
National Customer Contact Centre
PO Box 544
Rotherham
S60 1BY

08708 506 506 (Mon-Fri 8-6) <http://www.environment-agency.gov.uk>

Website Links

Noise

<http://www.defra.gov.uk/environment/noise/neighbour.htm>

Light Nuisance

<http://www.defra.gov.uk/environment/localenv/nuisance/light/index.htm>

Light Pollution

<http://www.environment-agency.gov.uk/yourenv/eff/1190084/pollution/152227/?version=1&lang=e>

Odour/ Smoke/ Dust

<http://www.defra.gov.uk/environment/localenv/nuisance/index.htm>