

Scottish Parliament Region: Central Scotland

Case 200500988: North Lanarkshire Council

Summary of Investigation

Category

Local government: Environmental Health

Overview

The complainant (Miss C) contacted the Ombudsman's office as she was concerned that North Lanarkshire Council (the Council)'s Environmental Health Team was not addressing problems she was experiencing with a noise and vibration problem within her Council house. This, she has stated, led to her suffering health problems.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to take action to properly record and address noise and vibration problems within Miss C's home (*not upheld*).

Redress and recommendations

The Ombudsman makes no recommendations.

Main Investigation Report

Introduction

1. The complainant (Miss C) first contacted the Ombudsman's office in July 2005 in respect of concerns she had about a noise nuisance. She contacted North Lanarkshire Council (the Council)'s Planning and Environment Department (the Department) and asked them for their assistance.

2. There had been substantial correspondence between the Council and Miss C and visits by Council officers in an attempt to identify a noise and associated vibration. The Council have been unable to identify a substantial noise nuisance and, as such, cannot take enforcement action to address the problem.

3. Miss C complained to the Council that they had failed to resolve her concerns. The Chief Executive responded to her complaint on 5 October 2005 advising that the Department was unable to take any further action on her case as they could not witness a noise nuisance. The department has since, however, actively continued to try and establish the source of the noise experienced by Miss C.

4. The complaint from Miss C which I have investigated is that the Council failed to take action to properly record and address noise and vibration problems within Miss C's home.

Investigation

5. I have reviewed the correspondence provided by Miss C and have obtained documentation from the Council including records of visits made to Miss C's home. I have held discussions with officers of the Department and have discussed the complaint with Miss C. I have also examined the relevant legislation and the Council's policies to establish the Council's role in cases of noise pollution.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Miss C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council failed to take action to properly record and address noise and vibration problems within Miss C's home

7. Under the Environmental Protection Act 1990 the Council has a responsibility to deal with any noise which they consider to be statutory nuisance as defined by the Act. They employ Enforcement Officers to measure and take action to address statutory noise nuisance.

8. The Council detail on their web site the process the Department follows on receipt of a complaint about a nuisance. On receipt of a complaint, an Environmental Health Officer will contact the complainant to discuss the details. If a statutory nuisance is found to exist then the officer can serve an Abatement Notice requiring the person causing the nuisance to take appropriate action to stop the noise or reduce it to a more appropriate level. If the individual causing the nuisance fails to comply with the terms of the Abatement Notice, formal action can result in the individual receiving a heavy fine or custodial sentence.

9. Miss C reported her concerns to the Council on 28 June 2005. On 29 June 2005 an officer from the Department visited but did not witness any noise nuisance. Miss C was provided with the telephone number of the Council's Night Noise Service. On 30 June 2005 Miss C telephoned the Night Noise Service to report the noise nuisance and a visit was arranged immediately. Although Miss C maintained that the noise was audible, officers were unable to substantiate her complaint.

10. Officers have attended Miss C's home on numerous occasions since that time during the day and at night and have recorded details of these visits. I have obtained copies of these records. Officers visited at times when Miss C stated that the noise was at its worst but on no occasion were able to identify what they believe would be a statutory noise nuisance. It was believed that the source of the noise was the air conditioning unit in the nearby DSS office. In an attempt to establish whether this was the case, the Council arranged for a meeting to take place between Miss C, Officers from the Department, property managers from the DSS and a representative from the company responsible for the air conditioning unit at the DSS office. As a result of this meeting it was decided to install a Digital Audio Tape (DAT) recording device to try and establish the extent of the problem. A further meeting was arranged for 10 August 2005 at the DSS office to allow engineers to manually operate all commercial plant to allow Officers to determine any resulting noise nuisance. No noise nuisance was identified during the operation of this equipment.

11. On 8 August 2005 Miss C telephoned the Council to advise that the DAT recorder was not working. This was replaced by a new recorder. The DAT recorder was to be operated by Miss C when she identified the noise was at its worst. On 18 August the new recorder was uplifted and the tape was analysed on 19 August 2006. No noise nuisance was recorded.

12. After further visits, officers did manage to identify a slight low frequency hum. This could only be heard with doors to Miss C's hall being closed to prevent background noise from interfering. A new and more sensitive recording device was installed which produced no results until officers purchased higher quality speakers at which point the low frequency hum could be heard. Officers have stated that this noise is no louder than what would normally be considered as background noise levels.

Conclusion

13. Council Environmental Health Officers are employed to ensure compliance with the Environmental Protection Act 1990. To take action in respect of noise pollution they must first identify a statutory noise nuisance.

14. Council records detail the visits which officers have made to Miss C's home and I consider these records to be both accurate and appropriate. The Council has also used appropriate equipment to try and establish the source and scale of the problem and has provided a detailed specification of the recording devices.

15. After significant investigation, officers did manage to identify a background low frequency hum. They consider, however, that the level of noise does not constitute a statutory noise nuisance as it is no louder than what would normally be considered as background noise levels. As such they cannot take enforcement action. I have considered the available evidence and believe that this view is correct. I do not, therefore, uphold this complaint.

27 March 2007

Explanation of abbreviations used

Miss C	The complainant
The Council	North Lanarkshire Council
The Department	North Lanarkshire Council's Planning and Environmental Department
DAT	Digital Audio Tape

List of legislation and policies considered

Environmental Protection Act 1990

Noise and Statutory Nuisance Act 1993

Environment Act 1995