

Noise from Licensed Premises: Frequently Asked Questions

**Environmental Protection Act 1990
Licensing Act 2003**

A little about the Licensing Act 2003

The Licensing Act 2003 introduces a new licensing system which covers the sale of alcohol, the provision of regulated entertainment, and the provision of late night refreshment (the provision of hot food and drink after 11.00pm) under one licence - a Premises Licence. Premises which already have an existing Public Entertainment Licence, Club Certificate and/or Alcohol Licence have what are known as Grandfather Rights which means that current hours, conditions etc will automatically be transferred to the licence. If a variation to existing hours or type of licence is required then in addition to the above, a further variation application will need to be made during this period.

In addition, there will be the introduction of a new Club Premises Certificate and a notification process for smaller events taking place over a limited number of days, called Temporary Event Notices, which will cover both the provision of regulated entertainment and the provision of alcohol.

A premises is required to have a licence if they provide certain activities ie the sale of alcohol, regulated entertainment and late night refreshment. A Licence holder has a responsibility to meet 4 licensing objectives, which have been defined by Government:

- 1. The Prevention of Public Nuisance**
- 2. Public Safety**
- 3. Protection of Children from harm**
- 4. Prevention of Crime and Disorder**

Environmental Services must consider whether the licence holder will meet the first two objectives and a premises may have a number of conditions attached to their licence in respect of these objectives.

In addition, any person may apply to the Licensing Authority for a Temporary Event Notice (TEN) for up to (12) occasions per year or the maximum aggregated duration of 15 days. IF the number of people attending is below 500.

How does the council investigate complaints about noise from Licensable activities?

Complaints are investigated under the Environmental Protection Act 1990. South Norfolk Council's Licensing Team would be advised of any complaints to clarify if the premises is keeping to the conditions on its licence. Letters would be sent to both the complainant and to the premises to outline the nature of the complaint together with how the council will investigate the matter. The complainant is asked to complete diary sheets to detail how the noise is affecting them. Visits may also be made by officers to attempt to witness the noise in question.

Regardless of the findings of any visits, South Norfolk Council will take the opportunity to discuss with the Licence Holder the fact that a noise complaint had been received. Officers will provide advice and assistance to the premises in question, regarding measures that could be taken to ensure noise is kept to an acceptable level for the particular environment within which the premises is positioned. Please note dictaphones can be made available as an alternative to completing monitoring forms on request.

Can the police do anything about noise?

While Environmental Services assess licensable premises in relation to the achievement of the first and second licensing objectives. The police have additional powers to close a premises for a period of time not exceeding 24 hours where:

- there is or is likely imminently to be, disorder in the vicinity of and related to the premises and the closure is in the interest of public safety or;
- public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance.

Please note that the noise has to be substantial and not just music related to be able to use this legislation.

Is there a fixed noise level above which action can be taken?

NO, there is no fixed noise level, time of day, frequency or duration defined in the Environmental Protection Act 1990. Formal action can only be taken where the evidence proves that the noise in question is causing a statutory nuisance and / or that the noise is causing a public nuisance.

What is a Statutory Nuisance?

There is no set definition but case law has defined a Statutory Nuisance as a "material interference with the comfort and enjoyment of another's home."

What is Public Nuisance?

Public nuisance is nuisance that affects a group or class of individuals. It does not require that the nuisance affects you in your own home, but obviously some noise in a town centre or near a pub or club is inevitable.

What does this mean?

In practice, to be a Statutory Nuisance, the noise would have to be excessive and unreasonable in the circumstances and significantly interfere with the use and enjoyment of someone's home. Examples could be: disturbance of sleep, forcing you to close your windows, preventing you from using your garden etc due to the level, time, frequency and duration of the noise.

What Action could the council take against noise?

If a Statutory Nuisance is occurring, then a notice can be served to reduce or stop the activity occurring under the Environmental Protection Act 1990.

In addition, Environmental Services can request a review of a licence if there are serious concerns in respect of the Public Nuisance.

What does a review involve?

An application for the review of a premises licence or club premises certificate must be given in writing on the prescribed application form.

The licensing authority must advertise a request for a review of a licence or certificate. Other interested parties and responsible authorities then have a period of 28 days starting the day after the day on which the application was given to make comments on such a request.

If the request is not rejected then the licensing authority must hold a hearing at the licensing authority to consider the application, unless all parties agree that this is unnecessary.

Guidance is available in respect of this matter on the following website;

www.culture.gov.uk/alcohol_and_entertainment/advice_and_guidance/residents.htm

What if I don't want to make a formal complaint to the council?

Any person may take a private action for statutory nuisance in respect of such matters. The weight of evidence required in a private action differs from the council's action and therefore in certain instances it may be easier to establish nuisance by taking private action. You are advised to contact a Solicitor regarding private action. Please note that you would be responsible for any costs incurred by this course of action.

It is also important to consider that many situations can be resolved on informal basis, perhaps by speaking with the person in charge of the premises where the noise is coming from. Environmental Services are unable to investigate anonymous complaints under the Environmental Protection Act 1990. However, there is the option for any individual to take a private action under the same Act without any involvement by the council. We have produced a leaflet with some guidance on how to tackle your neighbour entitled "Direct Negotiation with a Neighbour". In addition an individual can ask the licensing authority to review a licence or certificate if problems occur which undermine the four Licensing Objectives outlined previously.

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Can I request a review of a licence?

Yes, but to have your say, you must be an “Interested Party” for the premises concerned.

You can ask the licensing authority to review a licence or certificate if problems occur which undermine the four Licensing Objectives outlined previously. The licensing authority can, however, reject an application for a review if they are considered to be “frivolous”, “vexatious” or a “repetition”(identical or similar to previous applications).

To make an application for review you must be either:

- a person living in the vicinity of the premises (decided, in the first instance, by the licensing authority (and where there are disputes, by the courts);
- a body (e.g. a residents association) representing people in that vicinity;
- a person involved in a business in the vicinity of the premises;
- a body (e.g. a trade association) representing people involved in businesses in the vicinity of the premises.

Before applying for a review

Before applying for a review please consider whether the matter could be dealt with informally or more effectively outside of the review process. This could involve:

- talking to the licence or certificate holder to make them aware of your concerns and to determine whether there are steps they may be willing to take to resolve the situation;
- asking the licensing team to talk to the licensee on your behalf;
- asking your local MP or Councillor to speak to the licence holder on your behalf;
- contacting Environmental Services and or the police in relation to Crime and Disorder to determine whether there is other legislation which could help resolve the issue.

Contacting us

Licensing Team: (01508) 533692 / 533621 or 533704

Environmental Protection Team: 01508 533708

Alternatively :

In person: South Norfolk House, Swan Lane, Long Stratton, Norwich NR15 2XE

By post: Licensing Team, Democratic Services, South Norfolk House, Swan Lane, Long Stratton, Norwich, NR15 2XE

Email: licensingteam@s-norfolk.gov.uk or ehl@s-norfolk.gov.uk

Visit: www.south-norfolk.gov.uk

Please note that all South Norfolk Council fact sheets are available in large print, cassette form or alternative languages upon request.