

# Odours:

## Frequently Asked Questions

### Environmental Protection Act 1990

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#### **What odours can the council investigate?**

There is no definitive list but Environmental Services investigate a variety of smoke and odour complaints in both domestic and commercial settings.

#### **How is odour measured?**

Complaints about smoke and odour are investigated using an olfactory assessment ie the human nose. No machine can match the human nose which is the most sensitive method of detecting odours. Formal action can be taken in relation to smoke and / or odours if the council is satisfied that it is causing a statutory nuisance under the Environmental Protection Act 1990.

#### **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 does this mean?**

In practice, to be a Statutory Nuisance, the smoke and / or odour 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 odours.

#### **How does the council investigate complaints about odour?**

Complaints are investigated under the Environmental Protection Act 1990. Standard letters are sent to both parties, and the complainant is required to complete diary sheets to record when the odours occur. Thereafter, visits may be made by officers to determine whether or not a Statutory Nuisance is occurring. We would try and offer advice and assistance to the person who is alleged to be causing the nuisance of measures that could be taken to minimise the odours.

#### **What action could the council take?**

If the council is satisfied that the odour is causing a Statutory Nuisance, a notice can be served which can stop the activity occurring.

## **What if I don't want to make a formal complaint?**

Many situations can be resolved on an informal basis, perhaps by speaking with your neighbour to discuss your concerns and trying to reach an agreement. 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".

## **How do I take a private Action?**

It is possible for you to take your own legal action in respect of a nuisance. 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. This may be done in two ways:-

1. Under section 82 of the Environmental Protection Act 1990, any person may make a complaint directly to the Magistrates' Court on the grounds that they are aggrieved by a statutory nuisance.
2. You may take your own legal action for an injunction or damages in respect of private nuisance.

Environmental Services would advise contacting a Solicitor regarding private action. Please note that you would be responsible for any costs incurred by this course of action.