



Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

S&S @ The Fox Patching LTD
The Fox Inn
Arundel Road
Patching
Worthing
West Sussex
BN13 3UJ

Tel: 01903 737755
Fax: 01903 723936

Web: www.arun.gov.uk
Email: pollution@arun.gov.uk

07 September 2022

Please ask for:
Carol Reynolds
Environmental Health
Direct Line: 01903 737678
Email:
carol.reynolds@arun.gov.uk

Our Ref: 4962

Dear Siobhan Murphy and Simon Boxall,

Environmental Protection Act 1990 Section 79-82
Statutory Nuisance (Appeals) Regulations 1995
Regulation of Investigatory Powers Act 2000
Re: The Fox Inn, Arundel Road, Patching, Worthing, West Sussex, BN13 3UJ

Arun District Council has received complaints regarding the aforementioned premises.

Visits have been made by a duly authorised officer of the Council on 13th and 20th August 2022, which have witnessed noise from amplified music and voices emitted from the Fox Inn, Patching that amounted to a statutory nuisance.

Enclosed is an abatement notice (reference N4962) issued under the provisions of the Environmental Protection Act 1990 which requires you to abate the nuisance and prevent any recurrence of that nuisance

You may appeal against the enclosed notice to a Magistrates' Court within 21 days, beginning on the date of the service of the notice, however the notice will not be suspended pending determination of an appeal. Please refer to the relevant regulations, which are reproduced at the end of the enclosed notice.

The Environmental Health department will continue to monitor the site to ensure compliance with the notice. The complainants have also been asked to keep a record of when they are disturbed by nuisance.

Yours sincerely

Carol Reynolds
Senior Environmental Health Officer



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ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 80

Abatement notice in respect of a statutory nuisance

Dated:12/09/2022 Notice Reference:4962

To: S&S @ The Fox Patching Ltd

Of: The Fox Inn, 145 Arundel Road, Patching, West Sussex, United Kingdom, BN13 3UJ

Take Notice That

1. The Arun District Council (“the Council”) is satisfied that a statutory nuisance has occurred and is likely to recur under Section 79(1)(g) of the Environmental Protection Act 1990 at the premises known as:

The Fox Inn, 145 Arundel Road, Patching, within the district of the Council.

The nuisance is:

noise from amplified music and voices emitted from the premises.

2. This Abatement Notice is served on you because you are the owner of the premises.

What you are required to do

3. You are required to abate the nuisance and thereafter neither to cause, permit nor otherwise allow its recurrence.

The following steps are required

- Implement measures or take action to prevent noise emitted from the premises causing an impact which results in the material interference of an occupier’s use or enjoyment of any neighbouring premises or property.

4. You are required to comply with the requirements of this notice within 14 days from the date of the service of this notice. The recurrence of the said nuisance is prohibited.

What happens if you fail to comply with this Notice

5. If, without reasonable excuse, you contravene or fail to comply with any requirement or prohibition imposed by this notice, you will be guilty of a criminal offence under Section 80(4) of the Environmental Protection Act 1990. On summary conviction fines on level 5 may be imposed. Further fines up to one tenth of that level may be imposed for each day on which the offence continues after the conviction.
6. If the Council considers that these criminal proceedings would afford an inadequate remedy, it may take proceedings against you in the High Court for securing the abatement, prohibition or restriction of the nuisance.
7. Whether or not the Council takes proceedings for this offence under Section 80(4) of the Environmental Protection Act 1990, it may abate the nuisance itself and do whatever is required to achieve compliance with this notice. Any expenses incurred in doing so may be recovered by the Council from you.

Your right to appeal

8. You may appeal against this notice to a Magistrates' Court within 21 days, beginning with the date of the service of this notice. Please refer to the relevant regulations, which are reproduced at the end of this notice.

The effect of this notice if you appeal

9. This notice will not be suspended in the event of an appeal being brought. Regulation 3(2) of the Statutory Nuisance (Appeals) Regulations 1995 applies to this notice as the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

Signed

Date 12/09/2022

A handwritten signature in black ink, appearing to read 'C Reynolds', enclosed within a hand-drawn oval.

Carol Reynolds
Authorised Officer

THE STATUTORY NUISANCE (APPEALS) REGULATIONS 1995 provide as follows:

Appeals under Section 80(3) of the Environmental Protection Act 1990 ("the 1990 Act")

- 2.(1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case -
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
 - (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
 - (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
 - (e) where the nuisance to which the notice relates -
 - (i) is a nuisance falling within section 79(1)(a),(d),(e),(f) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or
 - (ii) is a nuisance falling within section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney, or
 - (iii) is a nuisance falling within section 79(1)(ga)(a) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes
- that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
 - (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 (the 1974 Act) (control of noise on construction sites and from certain premises), or
 - (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
 - (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
 - (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise Statutory Nuisance Act 1993 (loudspeakers in streets or roads);
 - (h) that the abatement notice should have been served on some person instead of the appellant, being -
 - (i) the person responsible for the nuisance, or
 - (ii) the person responsible for the vehicle, machinery or equipment, or
 - (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
 - (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;
 - (i) that the abatement notice might lawfully have been served on some person instead of the appellant being -
 - (i) in the case where the appellant is the owner of the premises, the occupier of the premises, or
 - (ii) in the case where the appellant is the occupier of the premises, the owner of the premises,and that it would have been equitable for it to have been so served;
 - (j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -
 - (i) a person also responsible for the nuisance, or
 - (ii) a person who is also owner of the premises, or
 - (iii) a person who is also an occupier of the premises, or
 - (iv) a person who is also the person responsible for the vehicle, machinery or equipment,and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may -
- (a) quash the abatement notice to which the appeal relates, or
 - (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or,
 - (c) dismiss the appeal;
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
 - (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above the court -
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
 - (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Suspension of notice

- 3.(1) Where -
- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and -
 - (b) either -
 - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or
 - (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
 - (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,
- the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where -
- (a) the nuisance to which the abatement notice relates -
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
 - (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
 - (b) shall include a statement as to which of the grounds set out in paragraph (2) apply.

These factors include the number of people affected or potentially affected by the offence, the degree of damage, risk or harm, the attitude and history of the alleged offender, the likelihood of the offence being repeated, whether there may have been malice or harassment, and many more.

If the case passes both tests, the investigating officer must satisfy an Enforcement Review Panel consisting of at least two managers from Environmental Health, Private Sector Housing or Environmental Amenities and a solicitor that prosecution is the appropriate option. There will also be close and regular liaison with the Council's Solicitor during the preparation of the case. At each of these stages, the alternatives to prosecution will be discussed. Even when the decision to prosecute has been made, it is kept under review and may be changed right up until the hearing.

Who can we go to for more advice?

Any of the staff within Environmental Health or Private Sector Housing and Public Health will be happy to help you. If they cannot give the advice you need themselves, they will put you in touch with a colleague who can. A copy of the more detailed Enforcement Policy is available on the Council's website at www.arun.gov.uk/eh

Some useful contact details for our Service areas are given below, all of which are **prefix 01903** numbers:

Environmental Health	737683
Nat Slade	
Housing Standards, Public Health and Pest Control	
Louise Crane	737669
Fax (all service areas):	723936
Contact Centre:	737755

Email: env.health@arun.gov.uk
Post: Environmental Health Services
or Private Sector Housing & Public Health Team
 Arun District Council
 Civic Centre
 Maltravers Road
 Littlehampton
 West Sussex
 BN17 5LF



Environmental Health Services and Private Sector Housing

Enforcement Policy and its delivery



What is meant by Enforcement?

In the context of this leaflet, the term enforcement is used to describe two of the functions which the Environmental Health Service or Private Sector Housing and Public Health Team of the Council may carry out. These are:

- (a) making sure that the various laws relating to Environmental Health, Private Sector Housing and Public Health are being complied with, and
- (b) taking appropriate action against businesses or individuals, when those laws are being broken or ignored.

What is covered by the Laws?

A very wide range of issues, all of which are designed to protect people, the environment, or both.

Examples range from inspecting food premises or bedsits to licensing taxis, and from ensuring the safety of those at work to preventing nuisance from noise, dust, smoke or the fly tipping of rubbish.

Much of the enforcement work concerned with checking compliance is a legal duty for the Council and may be carried out to a risk based programme of inspections.

What action can be taken for breaches?

Again, there is quite a variety, ranging from a warning letter right through to prosecution, with several stages in between. Action taken depends upon the nature of the offence and the powers given to the Council by the relevant legislation.

The actions which may be taken are described in more detail in the section of this leaflet entitled '**What are the Enforcement Options?**'

How is Enforcement carried out?

Arun District Council is committed to carrying out its enforcement duties in accordance with guidelines issued

by the Government in its publication '**Regulators Code**'.

What does the Regulators Code say?

This obliges the Council to:

1. carry out their activities in a way that supports those they regulate to comply and grow
2. provide simple and straightforward ways to engage with those they regulate and hear their views
3. base their regulatory activities on risk
4. share information about compliance and risk
5. ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. ensure that their approach to their regulatory activities is transparent

What are the Enforcement options?

When circumstances indicate that the law may have been broken, there may be options open to the Council as to the actions available.

The following describes these actions, but not all of them will be available in all circumstances. Anyone who is in doubt as to the actions open to the Council can contact our officers for advice.

- a) **Prosecution** - This is reserved for the more serious or repeated offences. In some cases, prosecution action can be taken straight away while, in others, it can only be taken if a formal Notice has been served and the Conditions ignored or breached.
- b) **Simple Caution** - This is a course of action which may be offered as an alternative to prosecution. The offender admits guilt and, if further offences are committed, the Caution may be taken into account by a Court if prosecution action is then taken.

c) **Formal Notice** - A Notice may be served requiring specified actions to be taken, usually within a time limit. In most cases, there is the right of Appeal against a Notice. Subject to any Appeal decision, it is an offence to fail to comply with a Notice.

d) **Works in Default** - In some cases, if the business or individual fails to carry out required works, the Council may do the work itself and raise a reasonable charge for doing so. Works in Default may include the confiscation of equipment causing noise or other nuisance, after a Notice had been served and ignored. If the Council has undertaken the works, then doing so does not preclude prosecution in suitable circumstances.

e) **Revocation, Variation or Suspension** - If a Licence or Permit is needed to operate a business, this may be revoked, suspended or varied if the conditions are breached. There is usually a right of Appeal.

f) **Written Warning** - Minor breaches may be dealt with by no more than a warning, which will be retained on file for future reference.

g) **Fixed Penalty** - A Notice may be issued requiring payment of a fixed sum for offences such as dog fouling.

Before Prosecuting

The decision to prosecute is not taken lightly and involves a number of stages, following a detailed Procedure.

Firstly, the Investigating Officer will assemble the evidence and examine the results in the light of two Tests, these being:

- a) **the Evidential Test** - The strength of the evidence will be tested. Prosecution will not take place unless there is a reasonable prospect of success.
- b) **the Public Interest Test** - A large number of factors will be weighed to determine whether or not prosecution would be in the public interest.

