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B1: Noise

Music festival – outdoor stage – statutory nuisance – council code of practice

Ms Lockwood complained about a council's involvement in allowing and helping to organise an event with amplified music outdoors.

The complaint

1. The complaint was about the council's monitoring of noise arising from the Great British Rhythm and Blues Festival held in a town centre for three days at an August bank holiday in 2001 and 2002. This was despite complaints of excessive noise in 2000 and independent professional evidence of excessive noise in 2001.
2. In particular the complaint was about the noise arising from an outdoor stage event. The outdoor stage was some 100 metres from Ms Lockwood's home. She said that during the last three years the event had been so noisy that in 2002 she had to leave her home for the weekend as well as employing a noise consultant to prove her point to the council. She said that she and other residents experienced serious stress due to vibration and noise caused by the loud outdoor music.
3. Ms Lockwood also complained that the council failed to deal with her complaints satisfactorily through its own complaints procedure.

What the Ombudsman found

4. The Ombudsman found that, when preparing for the event in 2001, the council took no action in response to what Ms Lockwood and others said about the event in 2000. The leisure services department failed to ensure that environmental health officers knew about complaints reported by a council member.

5. There were clear and ample indications from local residents that, in their opinion, a nuisance had occurred in 2000 and would recur if the outdoor event was staged again in 2001. The Ombudsman said the council should have involved environmental health officers in preparing for the event. They should have been proactive in seeking either to prevent nuisances occurring or detecting them if they did.
6. The environmental health team leader did find noise at the 2001 event which, in her professional opinion, amounted to a statutory nuisance. The council took no action following that conclusion. That was maladministration.
7. The Ombudsman noted that the council supported an event which was going to be in breach of the law on noise-making equipment in streets after 9pm. It did not take a formal resolution to adopt powers enabling it to give consent for the operation of a loudspeaker after 9pm, which would have enabled it to impose conditions.
8. The council failed to require noise levels to be kept to the maximum recommended by the Noise Council's code of practice on environmental noise control at concerts. The council imposed no noise limit and that was maladministration.
9. The Ombudsman expressed a number of reservations over the council's planning for and monitoring of the festival in 2002 but did not find maladministration. But the council mishandled Ms Lockwood's formal complaint to the council and that exacerbated her sense of injustice. The Ombudsman observed that the council needed to ensure that it responded promptly and fully to complaints.

Outcome

10. Following recommendations by the Ombudsman the council agreed to:

- compensate Ms Lockwood by paying her £250 for her time and trouble in making her complaint, £150 for the noise she endured, £100 in respect of the occasion she left her home to avoid the noise, and £650 in respect of the consultant's report she commissioned to prove her point to the council;

- provide a regime of control for music events and impose sensible conditions publicised in advance;
- ensure that it dealt with complaints of statutory nuisance as required by statute; and
- consult Ms Lockwood and other residents in the area during the planning of the next year's event.

(Report 02/C/7687)

B2: Noise

Statutory nuisance – failure to serve abatement notice – records – communication

Two residents complained about the way a council dealt with a noise nuisance.

Their complaint

1. Mrs Smith and Mr Jones complained that a district council did not properly investigate or deal effectively with noise nuisance from a skateboard park near their homes. They also complained that the council failed to provide them with information about its investigations and discussions with the local town council. Mrs Smith and Mr Jones said they suffered unreasonable noise and nuisance.
2. The skateboard park was owned by the town council. The district council commissioned a noise consultant to monitor noise from the skateboard park. The consultant found that the noise was a statutory nuisance.
3. The district council did not serve an abatement notice but allowed the town council time to carry out modifications to the equipment in the hope that this would reduce the noise. After completion of the work, the noise consultant reported that the noise was still a statutory nuisance.
4. The district council had told the complainants that it would serve an abatement notice but did not do so. It allowed the town council to investigate further options for reducing noise from the site. Around a year later, an acoustic fence was constructed.

The council's actions

5. The Ombudsman said it was reasonable for the council to instruct a noise consultant. However, the council had not

based its decision solely on the consultant's reports. The council's own officers visited the site but did not keep any written records of their observations. The Ombudsman commented:

"Keeping proper records is an essential part of any investigation of noise nuisance."

6. The Ombudsman said that, since the officers' own observations had informed the decisions, the council should have kept written evidence of the visits. The failure to do so was maladministration.
7. The Ombudsman pointed out that the law was quite clear that a council had to serve an abatement notice once a statutory nuisance was established. Although it was reasonable for the council to try to resolve the situation informally as a first step, that informal action continued for far too long. To allow for informal action to continue for over two years, the Ombudsman said, was unreasonable. The council should have served an abatement notice when it knew a statutory nuisance continued despite the completion of remedial works.
8. The Ombudsman said it was unreasonable for the council to commission monitoring from a noise consultant then fail to act on the results. The Ombudsman noted that some two years had passed since the skateboard park opened, and during most of that time the council had evidence of a statutory nuisance.
9. The Ombudsman considered that Mrs Smith and Mr Jones suffered a statutory noise nuisance for at least a year longer than necessary. The noise significantly interfered with their enjoyment of their properties.

Communication

10. The council failed to communicate properly with the complainants. It should have supplied copies of the noise monitoring reports or at least provided comprehensive details of the outcome of the noise monitoring. The council told the complainants that its initial noise monitoring indicated a statutory nuisance. But it did not tell them that, after completion of remedial works, monitoring still suggested there was too much noise.
11. The Ombudsman said the council should also have been much more open with the complainants about its reasons for not serving an abatement notice. The council's failure in this respect caused Mrs Smith and Mr Jones further injustice from frustration at not knowing the council's position and avoidable time and trouble in pursuing their complaints with the council.

Outcome

12. The Ombudsman recommended that the council should:
 - pay each complainant £1,500 as compensation for loss of amenity;
 - pay each complainant £500 as a contribution to their costs and their time and trouble pursuing the complaints; and
 - take all reasonable steps to ensure that the skateboard park operated without causing a statutory nuisance.

(Report 03/B/4011 et al)

B3: Nuisance

Shipbuilders – statutory nuisance – house purchase scheme

Mr Saddler complained that a council failed to resolve problems of noise and dust pollution affecting his home.

The situation

1. Mr Saddler lived next to a slipway which was used by a shipbuilding company. When he bought his house the slipway had not been used for 30 years. But three years later the slipway came back into use. Ship repairing activities on the slipway gave rise to complaints from local residents, including Mr Saddler.
2. Environmental health officers assessed that nuisance had occurred in the form of noise and dust through use of the slipway.

Proposed solution

3. The shipbuilding company was the largest employer in the council's area and the business was seen by the council as of great importance to the local economy. The council therefore wished to solve the problem for the residents while at the same time enabling the company to continue with its operations. The council's proposed solution was to give financial assistance to the company to enable it to purchase the five houses involved.

Problems

4. The Ombudsman found that the council's actions were flawed in many ways. There was a delay of over a year in reaching the decision to proceed with the plans for property purchase. Six years later, at the time of the Ombudsman's report, the problem for Mr Saddler had still not been resolved.

The Ombudsman said that, in view of the council's statutory duty to abate the nuisance, the council should have made it clear to the shipbuilders that, if the purchase plans foundered, the alternative would be the service of an abatement notice.

5. No mechanism was put in place for reviewing the financial arrangements. The Ombudsman recognised that the sum set aside by the council originally could well have been realistic at the time. But since then house prices in the area had increased. The offer made to Mr Saddler was not satisfactory to him and the Ombudsman said that, in effect, Mr Saddler was being asked to put up with the nuisance or sell his house at a price which was six years out of date.
6. There were no contingency plans to cover the possibility of the purchase scheme being unsuccessful, and the council took no firm stance on the shipbuilders' preferred option of acquiring the properties piecemeal. One resident showed no interest in selling his home and it appeared unlikely that he would wish to do so. The council risked a situation where it had assisted the shipbuilders to buy some of the houses but still had a duty to abate the nuisance being suffered by the residents of the remaining houses.

Severity of the nuisance

7. The Ombudsman said he had rarely known a case where a private resident had had to endure such a degree of intrusive noise in his own home. The environmental health officer who recorded noise levels at the property experienced temporary hearing impairment as a result of his visit, and on another occasion was prevented from

going into the rear garden because of the risk of hearing damage and pain. The Ombudsman commented:

“That cannot be acceptable in a private home, even for a short time. To experience this, even intermittently, over a period of over seven years longer than should have been the case here is, in my view, a gross injustice.”

8. The Ombudsman concluded that Mr Saddler’s house had been rendered uninhabitable. The council’s proposals for the purchase of the property bore witness to that.

Remedy

9. The Ombudsman recommended that the council should either take urgent steps to carry out its statutory duty to abate the noise and dust nuisance, or take urgent steps to buy Mr Saddler’s house at a price equivalent to its current market value if there were no nuisance.

10. In addition to one or other of those measures, the Ombudsman recommended that the council should make a payment of £20,000 to Mr Saddler to reflect over seven years of severe loss of amenity, and the outrage, distress and frustration of having to pursue the matter with the council and with the Ombudsman.

(Report 02/B/6551)

