

Date:
Your Ref:
My Ref:
Contact: Environmental Health
Directline: 01442 228455
Email: environmental.health@dacorum.gov.uk



The Borough of Dacorum
is twinned with
Neu-Isenburg, Germany

The Forum, Marlowes,
Hemel Hempstead,
Herts HP1 1DN

Switchboard (01442) 228000
Minicom (01442) 228656
DX 8804 Hemel Hempstead

Dear Sir / Madam,

Report of Statutory Noise Nuisance Environmental Protection Act 1990

Following your recent complaint to Dacorum Borough Council regarding possible nuisance I am enclosing our nuisance help pack. There are a number of documents included, some of which may appear rather daunting at first glance. However, please take the time to read them carefully and you will find they are quite straightforward.

The most important enclosures in the nuisance help pack are the diary sheets. These help us to assess the level of nuisance, establish any pattern, and hopefully to reach some sort of informal agreement with the subject of your complaint. Diary sheets can be used as supportive evidence in a legal prosecution, it is therefore essential that any diary record is factual, accurate, signed and witnessed. (Please note it is only your signature that is being witnessed, NOT the events you have recorded.) An instruction sheet together with an example is provided to assist you in producing the most effective evidence. Completed diary sheets should be returned to us after a period of approximately two weeks, **unless you have contacted us in advance of a potential delay in returning the diary sheets the complaint will be closed automatically within 21 days**. If however your complaint relates to a noise which occurs at times that you may predict (for example a daily or weekly event) you should discuss this with your investigating officer.

Should you require further diary sheets please contact us and we will be happy to post or email them to you. Alternatively if you have the facility photocopies are perfectly acceptable. You may download copies of individual documents or the complete nuisance help pack from the Pollution/Noise section of the website. <http://www.dacorum.gov.uk/noise>

Once your initial set of diary sheets have been returned these will be reviewed and at this stage a letter will be sent to the subject informing them that a complaint has been made and advice will be given on resolving the problem. Please be assured that your details are confidential and will not be revealed to the subject. Experience has shown that this informal type of approach is successful in many instances and we hope that this will be so in this particular case.

Unfortunately, in a proportion of cases this type of informal action fails to resolve the problem. In this event a decision regarding further action will be based largely on the detail you have recorded on your diary sheet. Please note that any further action would only be taken with your full agreement following consultation with you.

If the problem is resolved by this informal means you do not need to do anything further. If we have not heard from you after a period of 21 days from your original contact we will assume that no further action is required.

There may be occasions when you would prefer to take your own action to resolve a nuisance issue, or Dacorum Council is unable to help or act with the urgency you desire. In such a situation individuals or groups are entitled to bring their own action under The Environmental Protection Act 1990. Advice on this action is provided in the nuisance help pack

I hope that this is satisfactory but if you have any questions or wish to discuss the matter further please do not hesitate to contact Environmental Health.

Yours faithfully,

Regulatory Services



Noise Nuisance Help Pack

Your Guide to Reporting Neighbourhood Noise Issues

List of contents.

- 1) Introduction
- 2) Instructions for completing nuisance diary record
- 3) Nuisance diary record example sheet
- 4) Nuisance diary record sheet
- 5) Guidance notes on private nuisance action

Should any of these items be missing or you require further copies please contact the Regulatory Services Department on:

Phone: 01442 228000

Email: environmental.health@dacorum.gov.uk

Visit: www.dacorum.gov.uk

Write to: Dacorum Borough Council
Environmental Health
The Forum
Marlowes
Hemel Hempstead
Herts HP1 1DN

Introduction

The noise nuisance help pack contains a number of documents which may at first glance appear rather daunting, however please take the time to read them carefully and you will find they are quite straight forward.

The most important enclosures in the nuisance help pack are the diary sheets, these help us to assess the level of nuisance. It is therefore essential that any diary record is factual and accurate. Instruction sheets together with examples are provided in this pack to assist you in producing the most effective evidence. Completed sheets should be returned to us within a period of approximately two weeks.

Whilst Dacorum council is willing to help solve the problem, please bear in mind that the most satisfactory solutions are the ones reached between those concerned. For this reason you may prefer to try and resolve the problem using mediation, which means asking for help in talking to the other person before pursuing a formal complaint. Hertfordshire Mediation is an independent organisation providing a confidential service. If you would like more information you can contact the Mediation Service directly on telephone number 01442 268044.

There may be occasions when you would prefer to take your own action to resolve a nuisance issue, or Dacorum Council is unable to help or act with the urgency you desire. In such a situation individuals or groups are entitled to bring their own action under The Environmental Protection Act 1990. Advice on this action is provided in the nuisance help pack



INSTRUCTIONS FOR COMPLETING NUISANCE DIARY RECORD

Please read these instructions thoroughly before completing diary sheets

1. Remember that, as the record may have to be presented in evidence and you may be required to attend court to give evidence based on the information detailed on the diary sheets, the diary sheets must therefore be a statement of fact and be clearly understandable.
2. Each adult person affected should keep a separate record of the events as they affect them (although a parent may record the effect upon their children) and each page must be completed in full.
3. Expanding on the column headings:-
 - (a) Date - this is self-explanatory, except that, if the noise commenced before and ceased after midnight, both dates should be entered and bracketed together.
 - (b) Time - record the time the noise started and when it ceased and bracket the two times together, e.g. 10.15 am to 10.55 am.
 - (c) Description - try to be specific. What exactly was the noise? e.g. machinery noise, radio playing, TV, Barking Dog, etc.

Effect - this is this column that will be the most valuable in convincing the Magistrates in court that you are being subjected to a statutory nuisance. It is used to record what you had to do to overcome the noise, or what the noise prevented you from doing, or what effect it had on each individual affected, e.g. could not sleep, awoke children, closed the windows, left the house etc.
4. Please ensure all Diary Sheets are signed, dated and witnessed before being returned. Return to: Dacorum Borough Council, Environmental Health, The Forum, Marlowes, Hemel Hempstead, Herts HP1 1DN.



EXAMPLE NUISANCE DIARY RECORD

Statement of observations and their effect taken by (name in full): **John Smith**

Age: **over 21** (if over 21 enter 'over 21') of (address): **1 Some Street, Anytown, Herts. SG99 1BC**

Address (of premises) at which nuisance is occurring: **3 Some Street, Anytown, Herts.**

Name of Occupant if known: **Unknown**

DATE	TIME		DESCRIPTION OF CAUSE	RESULTANT EFFECT
	Start	Finish		
05/01/13	21:15	23:30	Very loud music, bass beat especially disturbing.	Unable to enjoy Television programme so went to bed but couldn't sleep because of noise.
07/01/13	22:05	23:45	Loud music again, heavy bass. Could hear words of songs.	Disturbed sleep.
(08/01/13 09/01/13)	22:30	02:15	Loud music and bass again!	Very tired, especially after yesterday's disturbance. No sleep until after music stopped.

This statement, consisting of 1 page(s) each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything, which I know to be false or do not believe to be true.

Dated the **10th** day of **January** **2013**

Signed **John Smith**

Signature witnessed by **Ann Smith**



R: «refno»
Dacorum Borough Council
NUISANCE DIARY RECORD

Statement of (name):
continuation sheet

DATE	TIME		DESCRIPTION OF CAUSE	RESULTANT EFFECT
	Start	Finish		

(Signed):

(Signature witnessed by):



R: «refno»
Dacorum Borough Council
NUISANCE DIARY RECORD

Statement of (name):
continuation sheet

DATE	TIME		DESCRIPTION OF CAUSE	RESULTANT EFFECT
	Start	Finish		

(Signed):

(Signature witnessed by):



R: «refno»
Dacorum Borough Council
NUISANCE DIARY RECORD

Statement of (name):
continuation sheet

DATE	TIME		DESCRIPTION OF CAUSE	RESULTANT EFFECT
	Start	Finish		

(Signed):

(Signature witnessed by):



GUIDANCE NOTES ON PRIVATE NUISANCE ACTION

Application

The assessment of noise or other nuisances may present practical difficulties for Local Authority officers where the nuisance is intermittent, irregular or unpredictable in occurrence. In these circumstances the Local Authority may not be satisfied as required by section 80 of the Environmental Protection Act 1990 that a statutory nuisance exists or is likely to occur or recur.

In other circumstances a nuisance may be more easily demonstrated, but the Local Authority may not be in a position to act with the urgency desired by the complainant.

The Environmental Protection Act 1990 therefore offers an alternative which allows individuals or groups to bring their own action. This facility is set out in section 82 of the Act.

Which Nuisances are included?

Section 79 of the Act defines the nuisances which can be dealt with. The Environmental Health Officer will provide more guidance, but in general the following circumstances would be included:

- (a) Some conditions of a neighbouring premises which adversely affects your own property;
- (b) Smoke emitted from premises;
- (c) Fumes or Gas emitted from domestic premises;
- (d) Dust, steam, smell or effluvia emitted from business premises;
- (e) Accumulations or deposits;
- (f) Animals kept in an unacceptable place or manner;
 - (i) Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance.
 - (ii) Artificial light emitted from premises so as to be prejudicial to health or a nuisance.
- (g) Noise.

The test for any of these which you think may apply, is the effect that the situation has on you. It must either be prejudicial to the health of you or others living in your property, or a nuisance in that it interferes with your enjoyment of your property. It is not sufficient, for example, if you are disturbed by something which is merely an eyesore, or by merely being able to hear your neighbours.

The common sense test which the Courts apply is "Is the activity or situation unreasonable or excessive or both in the opinion of the ordinary man in the street; not somebody who may be oversensitive or in unique circumstances?" If you consider the answer to be "yes", then you could proceed with reasonable confidence.

What is the procedure?

An occupier of any premises affected by a nuisance may complain directly to a Magistrate Court and request a hearing to consider the issue of a Nuisance Order. Before contacting the court, complainants should take the following action:

1. Discuss the problem, if possible, with the person who you consider to be responsible. Explain how you are affected and be prepared to agree a compromise.
2. Follow up any agreement in writing and keep notes of any discussion. Where direct contact is not practical, write a letter to the person responsible expressing your concerns. Keep copies of all correspondence.
3. If the problem persists, keep a diary of occurrences and collect other evidence, such as photographs or statements from others affected.
4. It is essential that your information is accurate, dated, detailed and honest. Do not be tempted to exaggerate. Where noise is the cause of the problem, describe the type of noise and how it affects you, for example: interrupting sleep; interference with concentration. Your evidence should allow you to "Paint a Picture" for the Magistrates in order that they may appreciate your problem.
5. It is possible to make the complaint to a Magistrates Court without the benefit of legal advice but you are strongly advised to familiarise yourself with Court procedure. In practice, the Clerk of the Court will guide you through the legislation, but you will need to present your own evidence.
6. The first stage at the Court is the issue of a summons on the person responsible for the nuisance. The summons requires that person to attend a hearing. On arrival at the Court, go to the office and explain that you wish to request a hearing under S.82 of the Environmental Protection Act 1990 and that you wish for a summons to be issued. A member of staff will guide you through the relevant procedures and you should take with you your evidence to demonstrate that you have an arguable case. You must be able to give them the full name and address of the person you consider to be responsible.
7. The Court will decide if the case is arguable, or will indicate what further information would be required. When satisfied they will issue the summons and notify you of a hearing date. A small charge will be made for the issue of the summons. The hearing date will be at least 21 days after the date of the summons.

8. You should continue to keep records and to gather other evidence up to the date of the hearing and you should take this with you to present on the day. You will need at least 3 copies of all your evidence which must be submitted to the Court before the hearing (the Court will advise you on this). Your evidence should be well-organised and in date order. Each item must be referred to in your submission - they should be numbered to enable them to be easily identified.
9. At the hearing, the Magistrates will invite you to put your case, using witnesses where appropriate. They will then invite the defendant to respond. It is important to bear in mind that the defendant may be legally represented, and they may put questions to you.
10. After hearing the evidence, the Magistrates may be satisfied that the alleged nuisance exists, or is likely to recur. In that case, the Court must make an order which requires the defendant to abate the nuisance and/or prohibit its recurrence. They will specify a time limit and may specify works to be carried out. The Magistrate also has the facility to impose a fine, and to require the defendant to pay any expenses you have incurred.
11. If the Magistrates decide that there is no Statutory Nuisance, they will not issue an Order, and costs may be awarded against you.

What Happens if the Nuisance Continues?

A person who contravenes the requirements of an Order may be guilty of an offence and liable on conviction to a fine. It is also possible for an injunction to be issued which must be complied with. If the defendant continues to ignore the injunction, that person will be in contempt of Court and may be liable to imprisonment. As before you will need to provide evidence to prove that the nuisance has continued, and you may be liable to pay costs if you fail. There are certain defences in the Act which would be considered and you are advised to seek legal representation if you wish to pursue action for contravention of a Nuisance Order.

Officers from the Environmental Health Department can be contacted for advice regarding the application of these procedures and the evidence required. You must remember that these processes can take some time and your anonymity cannot be preserved. This action should not be taken lightly and may lead to poor relations with your neighbours.