

The Ombudsman's final decision

Summary: There is no evidence of fault in how the Council made its decision to serve an abatement notice which allowed a clay pigeon shoot to hold shooting events and practice shoots for 87 days per year.

The complaint

1. Mr X complains about the Council's decision to serve a noise abatement notice on a clay pigeon shoot allowing it to operate for 87 days per year which means he is affected by noise nuisance for a significant number of days. In particular Mr X complains:
 - a) The Council wrongly categorised shooting on a Friday as being practice shoots not shooting events despite the shooting on these days causing noise nuisance;
 - b) Failed to carry out appropriate checks on the claims provided by the shoot and residents about the pattern of shooting at the site;
 - c) Held a number of meetings with the shoot but only met with residents on one occasion;
 - d) Failed to visit Mr X's property to investigate the impact of the noise at his property;
 - e) Overreacted to the requirement to avoid litigation by allowing variations proposed by the shoot to the noise abatement notice.

The Ombudsman's role and powers

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
3. I have limited my investigation to events from January 2018. Complaints concerning events prior to this time would be late and there are no good reasons to exercise discretion to consider events before January 2018.

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4. We investigate complaints of injustice caused by ‘maladministration’ and ‘service failure’. I have used the word ‘fault’ to refer to these. We cannot question whether a council’s decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
 5. If we are satisfied with a council’s actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. I have:
 - Considered the complaint and the information provided by Mr X;
 - Made enquiries of the Council and considered the information provided;
 - Invited Mr X and the Council to comment on the draft decision.

What I found

7. Councils must investigate about issues that could be a statutory nuisance - a nuisance covered by the Environmental Protection Act 1990. If they agree that a statutory nuisance is happening, has happened or will happen in the future, councils must serve an abatement notice.
8. For the issue to count as a statutory nuisance it must do one of the following:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises;
 - injure health or likely to injure health.
9. Section 17B of the Town and County Planning Act 1990 sets out time limits for taking enforcement action for unauthorised development. Development becomes immune from enforcement if no action is taken:
 - Within 4 years of substantial completion for a breach of planning control consisting of operational development.
 - Within 4 years for an unauthorised change of use to a single dwelling house.
 - Within 10 years for any other breach of planning control (essentially other changes of use).

What happened

10. Mr X lives approximately one mile away from a site which is used for clay pigeon shooting and has been operating for a number of years. Mr X has lived in his property since 2012. The Council has said it concluded in 1980s that the site had established use and no specific planning consent for the shoot was required.
11. Local residents complained over a number of years about noise nuisance from the shoot and an increase in the frequency of events. The Council carried out noise assessments in 2016 and made recommendations to the club to reduce the noise. The Council did not serve a noise abatement notice at this time. I refer to this by way of background as I am investigating events from January 2018.
12. Following further complaints from residents about noise, the Council asked them to keep noise diaries between January to May 2018. The Council considered the noise diaries contained evidence that a statutory noise nuisance might occur.

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13. In October 2018 the Council served a noise abatement notice on the club. The notice set out a number of requirements on the notice including that there should be no more than 24 club events and a maximum of four further multi club events per calendar year. The notice also required single practice shooting could only take place on a Friday for two hours.
 14. A person served with an abatement notice has the right to appeal to the magistrates court within 21 days of receiving the notice. The magistrates court has the power to quash, vary the abatement notice or uphold it. A business can appeal on the grounds that it has used the best practicable means to reduce a statutory nuisance.
 15. The club appealed against the notice. The Council withdrew the notice as it considered it was likely the magistrate would uphold the best practicable means defence and would vary the notice.
 16. The Council served a new abatement notice in January 2019. The notice set out a number of requirements including no more than 36 Saturday shooting events per year, practice shooting to only be allowed on a Friday from a single trap. The notice restricted the duration of events and shooting practice. The club did not appeal against this notice. The Council has said there has been no evidence to show the club has breached the notice.
 17. Mr X made a complaint to the Council. He considered the Council had allowed the club to increase the number of shooting days. Residents had recorded 74 shooting days in 2018 and the Council was now allowing up to 87 days. Mr X also considered the Council was arbitrarily categorising Fridays as practice days despite the number of shots being equal or in excess of those occurring during events. Mr X also complained the Council did not meet with residents despite requests to do so, failed to visit his property to gauge the true impact of the noise and overacted to the threat of litigation. The Council did not uphold Mr X's complaint.
 18. In response to my enquiries the Council has said:
 - Shooting activity had historically taken place at the site for many years. The use of the land for the shoot was lawful and it did not require planning permission to continue.
 - The frequency and pattern of shooting at the site did not amount to a statutory nuisance. But the shooting could become a statutory nuisance if allowed to increase unchecked. The measures put in place reflected the lawful use of the site for shooting but also imposed an effective restriction to guard against further intensification and a statutory nuisance occurring.
 - The revised noise abatement notice has not allowed an increase in shooting hours as there were no previous controls on the hours and days of the week on which the club could operate.
 - Its decision that shooting on Fridays was classed as practice shoots was based on the pattern of use demonstrated by residents' evidence. The Council did not regard the shooting on Friday as an event as it amounted to a single gun and trap at any one time. So the level of activity of those days is less intense than club events on Saturdays which involve multiple guns and traps.
 - Residents did not request a meeting during 2018. Visiting the club was an essential part of the Council's investigation. The Council updated residents about the progress of the investigation in letters of August, November 2018 and January

2019. I note Mr X states residents asked for meetings on at least three occasions between 2017 and 2019.

- Officers visited locations around the club, including properties close to the site, to hear the noise for themselves. It was not necessary to visit Mr X's property as the noise would be quieter there due to the distance of his property from the site.

My assessment

19. The key issue is how the Council decided that the restriction of 36 days of shooting events plus Friday practice sessions would prevent a statutory nuisance from occurring. On balance, I do not consider there is evidence of fault in how the Council reached its decision.
20. The Council considers the site has lawful use for a shoot so it could not prevent shooting at the site. Mr X disputes that the Council has demonstrated the site has lawful use for shooting. But even if this is the case, shooting has taken place on the site for a significant number of years, so the site will be immune from enforcement action. The Council therefore had to balance the use of the site with preventing a statutory nuisance to residents.
21. The Council gathered evidence from residents, in the form of diary sheets, to inform its decision that there could be a statutory nuisance at the site if intensification occurred. The Council has also said it visited the site and properties close to the site to inform its understanding. Mr X has said the Council should have checked the pattern of shooting at the site. The Council had information from residents as well as the shoot which it could compare. So, on balance, I am satisfied the Council was aware of the pattern of shooting at the site when making its decision to serve an abatement notice and when amending that notice to allow events on 36 days plus practice shoots on Friday.
22. The Council has explained why it considers shooting on Fridays to be practice, not shooting events, namely that it involves one rather than multiple traps. I acknowledge Mr X disagrees with the Council's decision and believes the noise from practice sessions is as intrusive as the noise from events. But as the Council has considered the matter and explained reasons for its decision, there is no evidence of fault.
23. Mr X considers the Council should have visited him at home to witness the noise he experienced from the shoot. The Council has explained it did not consider it was necessary to do so as it had visited properties closer to the site where the noise would be louder. The Council is entitled to decide which properties to visit as part of its investigation. I acknowledge Mr X disagrees with the Council's reasons for not visiting his property. But the Council has explained its reasons for not visiting Mr X so I am satisfied it has considered the matter. I therefore do not have grounds to question its decision not to visit Mr X.
24. There is a conflict of evidence as to whether residents asked to meet with the Council. Mr X has said residents asked on three occasions, the Council has said residents did not request a meeting in 2018. But it is not proportionate to pursue this matter further. The Council had gathered evidence from residents about the pattern of shooting through the diary sheets. The Council would have to visit the club as part of its investigation into the noise. So, even if the Council did receive requests for meetings in 2018 and 2019, this would not call into question its decision regarding the number of days the club could operate.
25. The Council is not at fault for reconsidering the abatement notice when the club appealed. Councils should consider whether an appeal is likely to be successful

when deciding if they should defend an abatement notice. The magistrate has the power to quash or vary the abatement notice so the Council could lose control of the site if the magistrate upheld the club's appeal. The Council considered it could not defend the abatement notice so it is not at fault for withdrawing the notice and serving the amended abatement notice.

26. Mr X has questioned the Council's decision to reconsider the noise abatement notice as the Council did not take legal advice and the decision was not taken by an officer with legal training. This does not call into question the decision. It is for the Council to decide if legal advice is necessary and which officers can make such a decision. The officers who made the decision were environmental health officers who had investigated the complaints. It was a matter for them to exercise their professional judgement to decide if they could defend the appeal.
27. Mr X has also said the Council ignored legal precedent set by an unsuccessful appeal against a conviction for non compliance with a previous noise notice some decades earlier. On balance, this is not fault. The Council had to consider the circumstances at the time it served the noise abatement notice rather than events some decades earlier.
28. Mr X considers the abatement notice has allowed the shoot to increase the number of days it operates. This is not the case. Prior to the service of the abatement notice, the shoot could operate as frequently as it wanted to as there were no restrictions. The service of the abatement notice means its operation is now restricted.

Final decision

29. The Council is not at fault in how it made its decision to serve an abatement notice which allowed a clay pigeon shoot to hold shooting events and practice shoots for 87 days per year. I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman