

## **NOISE NUISANCE AND MALADMINISTRATION**

**Derbyshire Dales DC (Ref 11 022 700). [2013] JPL 1067**

### **Background**

Mr and Mrs W (W) complained to Derbyshire Dales DC (D) about noise from business premises which were situated close to their home. D also complained that had failed to keep a commitment which had been given to the Ombudsman that D would resolve the noise nuisance by the summer of 2011.

The noise in question emanated from machinery which was situated on the premises. The machinery operated throughout the night. W first complained to D in July 2007 about the noise. W triple-glazed their bedroom windows in order to lessen the impact of the noise. However, D was of the opinion that the noise only amounted to a statutory nuisance when the windows were open.

In 2010 W complained to the Ombudsman about the way in which D had dealt with their complaint. The Ombudsman investigated the complaint. He found that D had not kept proper records of its discussion with W. D had, indeed, commissioned an independent report which confirmed that the noise in question ranked as a statutory nuisance in terms of s79(1)(g) of the Environmental Protection Act 1990(EPA). However, D allowed the nuisance to continue. In 2010 towards the end of the Ombudsman's investigation, W made a new complaint to D about noise from a different source from the offending premises. D then installed noise measuring equipment in W's house in 2011. D then gave a commitment to the Ombudsman that D would, *inter alia*, pay £300 to W for D's delay and would resolve any continuing noise problem before the end of the summer of 2011. D also undertook to carry out further noise measurements. Up to that point the Ombudsman was of the opinion that D was taking reasonable measures to collate sufficient evidence to ensure a successful prosecution.

W complained to D again in 2012 about the noise from the premises and also about D's failure to honour its commitment to the Ombudsman. D then took further measurements from the premises which found that the noise in question ranked as a statutory nuisance. An abatement notice was served on the owner of the premises in August 2012.

### **Findings**

The Ombudsman found that D had unreasonably delayed in dealing with W's complaint. D had also failed to honour its commitment to the Ombudsman. The delay amounted to maladministration in relation to which W had sustained injustice.

### **Recommendation**

In order to remedy the injustice which W had suffered, the Ombudsman recommended that D should apologise to W and should also pay them £10 per night for the two summers during which D had failed to take remedial action.

## **Comment**

In the author's opinion, this case illustrates the marked reluctance of certain local authorities to abate statutory noise nuisances, especially in relation to noise from business premises. Anecdotal evidence suggests that as far as business premises are concerned, local authorities are conscious of the fact that a potential defender can invoke the defence of best practical means under the EPA and are therefore reluctant to take statutory action. Furthermore, while in the instant case, D's delay in dealing with the complaint was unreasonable, one can accept the fact that in order to present a cogent argument before a court in a noise nuisance case, a local authority is required to collate evidence over a number weeks or even months from the noise source.

Finally, this case serves as a useful illustration that a disgruntled noise victim can turn to the ombudsman in the face of intransigence on the part of a local authority.

**Francis McManus**

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