

Case 200503141: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Environmental health and cleansing; noise pollution

Overview

The complainant (Mr C) complained about noise nuisance from a neighbouring bus station. He was concerned that adequate acoustic screening had not been put in place following a redevelopment and that complaints about continuing nuisance were not handled appropriately by The City of Edinburgh Council (the Council).

Specific complaint and conclusion

The complaint which has been investigated is that the Council have not dealt adequately with noise nuisance from a local bus station (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) undertake a thorough review of the complaints handling procedures of the departments involved to ensure that complainants and Council staff understand how complaints should be processed and dealt with. On this point the Ombudsman draws the Council's attention to the Valuing Complaints initiative produced by the Ombudsman's office;
- (ii) develop appropriate policies and procedures for dealing with noise nuisance;
- (iii) take noise readings to assess the adequacy of the arrangements already put in place; and
- (iv) apologise to Mr C for their poor handling of his complaint.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. In January 2004, a man, referred to in this report as Mr C, raised his concerns about noise nuisance from a bus station owned by the City of Edinburgh Council (the Council).¹ Mr C's flat was close to the entrance of the bus station. In a further letter to the Council in February 2004 he said that the problem he was experiencing was due to a major redevelopment at the bus station. Mr C said that as a result of this, buses now passed closer to his flat and stopped more often at a junction near the entrance to the station which was close to his flat. Mr C said he felt that this had not been taken into account during the planning stages and that his flat had been wrongly missed from additional measures taken during the redevelopment to reduce the impact of noise on neighbouring flats.²

2. The complaint from Mr C which I have investigated is that the Council have not dealt adequately with noise nuisance from the local bus station.

Investigation

3. In investigating this complaint, I have reviewed correspondence between Mr C and the Council and had sight of internal Council documents. I have considered relevant legislation and guidance.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Background

5. In their response to Mr C's complaint (paragraph 1), the Council Planning Department informed Mr C that a full acoustic study had been undertaken in 1999 prior to planning permission for the redevelopment being granted. They said this had considered in detail the impact on flats overlooking the station which had been previously protected by a building. They added that the study was not intended to consider the effect of the redevelopment on the public road through which the buses entered and exited the station.

¹ Mr C initially raised concerns with the bus station itself in December 2003.

² An acoustic screen had been erected and some flats provided with double glazing.

6. In June 2004 Mr C brought his concerns to the Ombudsman's office. Mr C was advised to raise his concerns through the Council's complaints procedure. As a result, Mr C pursued his complaint about noise nuisance with the Council's Environmental and Consumer Services Department (the Environmental Department)³ in September 2004 and in March 2005 noise readings were taken. Mr C was informed by telephone on 25 April 2005 that these indicated a statutory noise nuisance existed.

7. Mr C contacted the Ombudsman's office in June 2005 having heard nothing further from the Council concerning the readings. The Ombudsman's office was advised by the Council that they intended to respond to Mr C shortly. This appears not to have happened and on 6 July 2005 Mr C wrote to the Environmental Department again. He asked for a response and said his complaint had now been outstanding for 11 months. A brief note of response was sent to him on 2 August 2005 which enclosed correspondence between the Environmental Department and City Development Department in June 2005 following the readings taken in March 2005 (paragraph 6). Mr C wrote again in detail on 19 September 2005 and contacted the Customer Care Department on 14 November 2005. He received a detailed response on 5 December 2005. Mr C contacted the Environmental Department again on 4 January 2006 and on 1 February 2006 and received a reply on 13 February 2006. This contained an apology for the delay in responding to the letter of 4 January 2006 and said that the City Development Department were continuing to monitor and advise bus station operators about appropriate behaviour. The letter said that to identify further improvements the Council might need access to Mr C's property. In response to Mr C's concerns about the fact the noise readings were indoor measurements and the measurements in the acoustic study were outdoor measurements, they confirmed that they could take into account the effect of the façade and predict external levels. In March 2006 Mr C complained to the Ombudsman's office.

Legislation

8. The Environmental Protection Act 1990 (the Act) places statutory duties on local authorities in relation to noise nuisance. This includes a duty to investigate a complaint of a statutory nuisance and to serve an abatement notice where they are satisfied that such a nuisance occurs. A statutory

³ The Council has undergone restructuring since this complaint began. Where possible I have retained the name used initially by the Council.

nuisance is defined as a result of 'noise emitted from premises so as to be prejudicial to health or a nuisance'. The Act does not set specific standards but the World Health Organisation (WHO) standards for noise suggest a criterion of an average reading of 30 dBA⁴ for bedrooms at night with individual noise events not exceeding 45 dBA. The relevant British Standard BS 8233:1999 sets a limit of a range of 30-35 dBA for average readings and 45 dBA for individual events.

Complaint: The Council have not dealt adequately with noise nuisance from a local bus station

9. Following the redevelopment of the bus station, Mr C's initial letters of complaint about an increase in noise levels were sent to the Transport section of the City Development Department who were responsible for the bus station. A letter dated 19 January 2004 from the City Development Department said that they had discussed the tannoy system and reset the volume to the satisfaction of the Environmental Department. It was said this would only be used sparingly between 21:00 and 07:00. A further letter dated 25 February 2004 said a new traffic management system shortly to be introduced would also reduce the use of whistles but there was little else that could be done to reduce the noise. The letter said Mr C's concerns had been copied to the Planning Department.

10. The Planning Department responded in a letter dated 9 March 2004. They said that acoustic studies had been undertaken to ensure that flats previously protected by an office building prior to the redevelopment did not suffer detriment and, as a result, a barrier had been built and some properties had been double glazed. The Planning Department said, however, that there had been no intention to address the public road area on to which Mr C's flat faced. Mr C had said that his flat was not protected by the barrier, had not been double glazed and that account had not been taken of the effect of the rerouting of all the buses through one entrance. Mr C was told in this letter that he could contact the Environmental Department as the statutory body regulating noisy activities.

11. In the course of this investigation, I was provided with a copy of the acoustic study which was undertaken in 1999 prior to the redevelopment. Paragraph 5.4.1 of this states that rerouting traffic via one entrance could be

⁴ This is a decibel reading weighted to take into account the parts of the sound spectrum to which the human ear is most sensitive.

expected to double the amount of bus movements through the junction.⁵ A location at the junction on the public road was the subject of one of the site readings taken as part of the study. The study concluded that the increase in this area could amount to 3 dBA but that this would not be continuous and:

'Given that an increase in noise level of 3 dBA is normally considered to be only just detectable to the human ear, these increases can be considered fairly small in the context of road traffic noise and the overall acoustic environmental within properties in this location.'⁶

12. As a result of his complaints, the Environmental Department made three assessments of the noise from Mr C's flat. The first assessment took place on 15 September 2004, there was no activity in the bus station and no measurements were taken. The second took place in March 2005 and showed that during the day background noise levels were approximately 42 dBA indoors, and given a likely reduction from the window of 13 dBA, background levels outside were estimated to be 55 dBA. Individual events from noise associated with bus operation were clearly audible within the property at readings above the 45 dBA guideline. The third assessment, also in March 2005, took place overnight and this confirmed that the impact of bus operating and idling (engines being left running while the buses were stationary) early in the morning increased noise levels by 10 dBA for a significant period taking the background noise level up to an average of 36 dBA and, consequently, the average over the night period exceeded 30 dBA (see paragraph 8).

13. In response to my questions, the Council said that the estimated background level of 55 dBA during the day corresponded to levels existing before the redevelopment and recorded in the acoustic study. Even with the individual events reaching over the 45 dBA guideline⁷, the daytime readings were within daytime environmental levels. The Council said that, despite this, it was their opinion that station management should take all reasonable steps to reduce noise where possible on the 'grounds of good neighbourliness'.

⁵ The Council have said that traffic volumes are less in the new bus station and, as a result, this doubling did not occur. They said that the increase was nearer 50%.

⁶ The entrance to the bus station is close to a public car park.

⁷ Mr Millar has said that the readings showed that these at times reached over 60 dBA.

14. However, as indicated in paragraph 6, the Council also concluded, in an internal memo dated 4 May 2005, that the noise at night did amount to a statutory nuisance under the Act and that greater management control was needed between 23:00 and 07:00 to mitigate this. The memo to the City Development Department said that the aim was to reduce the noise nuisance using the best practicable means and asked for suggestions. Practicable was defined in the memo as: 'reasonably practicable having regard, among other things, to local conditions and circumstances, to the current stage of technical knowledge and to the financial implications'.

15. The City Development Department responded on 8 June 2005. They said they intended to implement an operational plan with immediate effect to actively manage bus activity between 23:00 and the arrival of station inspectors at 06:30. They said they would co-operate with any ongoing monitoring and would write to bus and coach operators who used the station. Letters were sent to all bus station operators on 21 June 2005. Following a request for further information on his complaint, Mr C was informed of the plan on 2 August 2005.

16. Following the further complaints made by Mr C in September and November 2005 (see paragraph 7), the Environmental Department again contacted the City Development Department. City Development said in a memo of 23 December 2005 that the operational plan they had set up in June 2005 in response to Mr C's concerns had been applied consistently and that, in the absence of further contact, they had assumed noise levels were tolerable. The memo suggested it might be possible to see whether a different early morning stance allocation would help and asked whether the Environmental Department could assist with the use of monitoring resources. The memo also said that a revised version of the drivers' rules would include reference to the use of horn/brakes/door slamming etc and agreed to look at stance gates opening and closing and whether reversing bleepers should be banned.

17. A meeting was also held at the bus station on 21 February 2006 attended by two officers from the Environmental Department and a manager from the bus station about Mr C's continued complaints. On 2 March 2006 the Environmental Department again wrote to the City Development Department. This letter said that in order to improve the noise climate and ensure they were adopting best practice a number of measures needed to be introduced. These included increasing the size of the 'switch off engines' sign (it had been noted that during

the visit bus engines were not being consistently switched off). Stance locations were to be altered and a rubber layer fitted to the gates. The letter also said discussions were ongoing about the possibility of buses being able to reverse out without turning in order to reduce movement, particularly before 07:00. It was hoped a traffic light system for stances would also help reduce noise but it was noted that the issue of reversing beepers remained unresolved. A letter of 29 March 2006 from City Development informed the Environmental Department of progress on implementation; a revised stance was expected shortly, the switch off engines rule was being more strictly enforced and the Council's Building Services Department contacted about the gate.

18. In response to my questions the Council said that:

'Taking into consideration the location of [Mr C's] flat in a busy part of Edinburgh even without the station being there, taking into consideration the management steps taken by City Development to control noise from source and finally the practical difficulties to control noise from bus engine noise and bus braking, the Council is of the opinion the station operator is managing the station in an appropriate manner. The Council will continue to respond to complaints in order to assure that the measures remain in place.'

19. The Council also said they had no written policy on noise nuisance but that they provided a comprehensive service for investigating complaints and took into account guidance and legal precedent when determining whether to serve a formal notice under the Act. Enforcement action was taken with regard to an Enforcement Concordat. This Enforcement Concordat is a voluntary code issued by the Cabinet Office in 1998. Signatories of the Concordat agree to abide by a set of standards when deciding to enforce statutory powers such as ensuring the business against which they intend to use enforcement action is fully informed, and action taken is done so consistently and fairly. The Concordat also commits the Council to confirming any advice in writing with a time scale and to ensuring that legal requirements are clear.

20. In practice, the Council said if they were investigating noise nuisance and felt that formal action was needed in non-Council premises they would issue a notice under the Act. In the case of Council premises (as in the case here) a letter would go from the Director of Services for Communities to the Director of the Department concerned. If this did not achieve the desired result, a letter would then be sent to the Chief Executive. When asked why they would not

issue a statutory notice as this appeared to be required by the legislation, I was informed that they had not yet had to go further than the Chief Executive for a case of noise nuisance from Council premises. If they did so the Council would need to take legal advice on whether they could serve a statutory notice for noise on themselves.

21. Following my request for further clarification, the Council sought advice from their Legal Services Department. They said that as the Act envisaged the local authority as a single entity that there was no provision allowing the Council to serve a notice on themselves.

Conclusion

22. The Council ensured a full acoustic study was undertaken prior to the redevelopment and, in seeking to mitigate any effects of the redevelopment, put in place a screen and, where appropriate, double glazing. This study did not predict any additional problems would affect Mr C's flat and it was only when Mr C brought his concerns over noise nuisance to the Council that they became aware of the problem.

23. Following contact with the Environmental Department (which dated from August 2004 to March 2006), Mr C was not informed how he should proceed if he was unhappy with their response or had continued concerns, whether his concerns were being dealt with through the formal complaints process, or whether he had completed this and could bring his complaint to the Ombudsman's office. I have also noted that he did not receive a response to his letter of 19 September 2005 until 5 December 2005 (see paragraph 7) and this was only after he had contacted the Council's customer care service on 14 November 2005. I am also concerned that following the measurements in March 2005, Mr C was not informed of the measures taken until he wrote again in July 2005. This followed assurances given to the Ombudsman's office in June 2005 that a written response was imminent.

24. The Council have said they have no written policies on noise nuisance but have provided some information about their practice. They have also said that they operate in line with the Enforcement Concordat. Although the memo of 4 May 2005 (paragraph 14) does comply with most aspects of the Concordat, it does not include a time scale nor does it fully explain the implications of designating the nuisance a 'statutory nuisance' and, indeed, it was only very recently, as part of my investigation of this complaint, that the Environmental

Department have clarified the legal implications of designating this a statutory nuisance, given the Council was ultimately responsible for the bus station (see paragraph 21). Having considered carefully how the Council dealt with Mr C's representations I believe these were failings on the part of the Council which amount to maladministration.

25. Turning to the noise nuisance issue, I have noted that the Council have sought to put in place measures to resolve the problem with night time noise including changing systems of practice and writing to all bus and coach operators who use the station (see paragraphs 9, 15, 16 and 17). I commend them for having done so. However, in the absence of further noise readings to assess the success of these, I am unable to comment on their adequacy. Although the Council have said that they can adjust readings taken indoors to give an outdoor reading, I am unsure why they have not been able to monitor noise from outside Mr C's flat, particularly given the readings for the acoustic study were originally taken outside. I have also noted that the request for access to Mr C's flat to take additional measurements in Mr C's flat was made in February 2006, some months after measures were put in place in June 2005 and after a statutory noise nuisance had been identified in March 2005. Accordingly, I have not seen evidence that the Council have pro-actively monitored any of the measures put in place and instead it appears they have only reviewed these when they have received subsequent complaints. Accordingly, I am critical of the Council in this regard.

26. It is clear that the Council have taken actions to reduce the noise nuisance. Nevertheless, given all the circumstances including: the absence of any written policies and procedures on noise; the delays in responding to Mr C's concerns and to inform him of their complaint policies and procedures; the failure to follow-up and monitor the effect of action taken; and the failure to fully comply with the Enforcement Concordat, I uphold this complaint.

Recommendation

27. The Ombudsman recommends that the Council:

- (i) undertake a thorough review of the complaints handling procedures of the departments involved to ensure that complainants and Council staff understand how complaints should be processed and dealt with. On this point the Ombudsman draws the Council's attention to the Valuing Complaints initiative produced by the Ombudsman's office;

- (ii) develop appropriate policies and procedures for dealing with noise nuisance;
- (iii) take noise readings to assess the adequacy of the arrangements already put in place; and
- (iv) apologise to Mr C for their poor handling of his complaint.

28. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

20 June 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
The Environmental Department	Environmental and Consumer Services Department
WHO	World Health Organisation
BS	British Standard
The Act	The Environmental Protection Act 1990

Glossary of terms

dBA

Noise power calculated in decibels and then weighted to take into account the fact that the human ear is more sensitive to certain frequencies within the sound spectrum