Resources

Legal

A case for complaint

New procedures may be needed for serving noise abatement notices, following a recent High Court case

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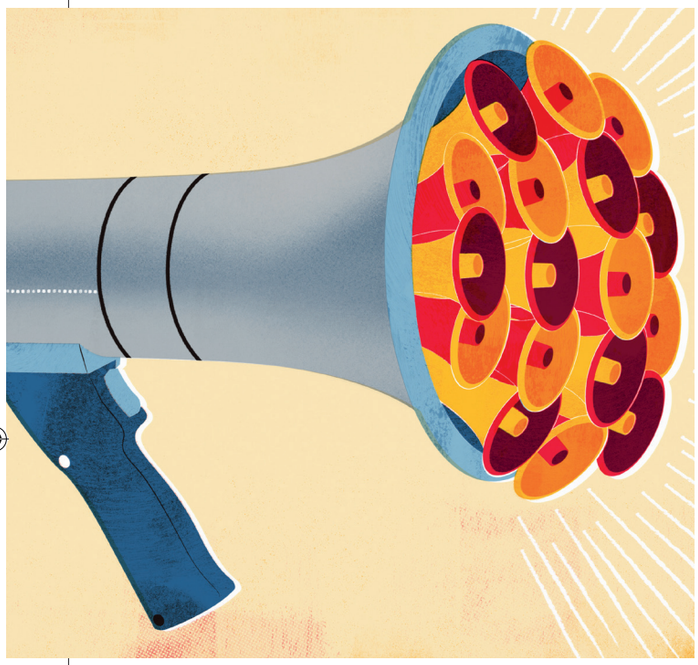

IMAGE: IKON

A recent High Court judgement should concentrate the minds of environmental health service managers, and require them to review their policies and procedures for investigating noise nuisance from commercial premises.

In Southampton City Council *v* Odysseas (OP Co) Ltd [2017] EWHC 2783 (Admin), the local authority lost an appeal, by way of case stated, against the decision of the Crown Court to order the council to pay its costs following the company's successful appeal against an abatement notice served upon the business under Section 80 of the Environmental Protection Act 1990 (EPA).

The facts are that on 4 March 2016, the council served an abatement notice in relation to the night club 90 Degrees that required the business to forthwith 'ensure that the level of amplified music at the premises does not reach a level that causes a statutory nuisance.'

> It highlights the perils of local authority enforcement officers conducting a limited investigation into complaints of noise nuisance

The business appealed to the magistrates court, where the appeal was dismissed, and subsequently appealed to the Crown Court. The Crown Court heard that the council's officer made a subjective assessment from inside the complainant's property that there was a statutory nuisance on the night of 26 February 2016, but conducted no further enquiry at the time to establish whether the offending noise originated from the club. Unbeknown to the officer at the time of his assessment, there had been a power cut at the club and as a result no music could be played there. During a subsequent investigation, it was established that when the sound systems were switched off in the club, music noise could still be heard in the complainant's property.

In the High Court, the judge criticised the council's investigation, stating: 'In my view, the city council's technician was not obliged to form the view that he was satisfied that the respondent was responsible for a statutory nuisance, simply on the basis of one visit – albeit for 40 minutes on one evening – without making other enquiries, in particular of attending the respondent's premises. If the technician had attended the respondent's premises on the night of 26 February, it is likely that he would have found that because of a power cut there was no noise whatsoever or the club was closed or the noise was coming from somewhere else.'

The High Court concluded that the Crown Court had been entitled to regard the council's decision to serve the notice as sufficiently unreasonable to justify the award of costs against them.

The High Court judge also commented on the provision of Section 80(2A) of the EPA, which empowered the local authority to take alternative steps to persuade the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

She noted: 'It would have been open to the city council to contact the respondent with the evidence which it had and invite them to prohibit a recurrence of the nuisance and point out that they only had seven days within which to do so. The respondent was not given that opportunity.

'Moreover, Section 80(2C) does not require that the nuisance in fact be abated within seven days. It is directed towards whether the local authority is satisfied, within that seven-day period, that the steps it has taken will be successful in persuading the person to abate the nuisance (or preventing its recurrence).'

This judgement is significant for several reasons. Firstly, it echoes the decision in R (on the application of the London Borough of Hackney) *v* Moshe Rottenberg [2007] EWHC 166 (Admin) and highlights the perils of local authority enforcement officers conducting a limited investigation into complaints of noise nuisance emanating from a non-domestic source. Officers should be wary of reaching judgements on the basis of an assessment of nuisance solely from the complainant's perspective. Environmental health services should have in place clear policies and procedures for dealing with commercial sources of noise that are distinguished from their approach to dealing with domestic noise nuisance. In particular, an evaluation as to what may constitute a best practicable means approach to resolving the problem is needed.

Secondly, again with reference to the Rottenberg judgement, the council officer's evidence would have been more credible had a properly conducted scientific assessment been made involving the recording and analysis of noise measurements/recordings.

Thirdly, local authorities should give full consideration in noise nuisance cases to the seven-day grace period provided by Section 80(2A) of the EPA to explore all opportunities to resolve the problem before deciding to serve an abatement notice. Failure to do so is likely to make the local authority liable for costs in a successful appeal against a notice. **E**

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