

**REPORT TITLE** Anti- Social Behaviour, Crime and Policing Act 2014 & Environmental Protection Act 1990 – Noise Nuisance Mr Dennis John YARDLEY

**Submitted by:** Head of Environmental Health Services

**Portfolio:** Operational

**Ward(s) affected:** Thistleberry

### **Purpose of the Report**

To advise members of the enforcement and legal action taken to date in relation to a noise complaint of banging throughout the night time period.

### **Recommendations**

**Members receive the report.**

### **Reasons**

This report provides an update on action previously approved by this committee. It is hoped that the matter has been resolved and that legal proceedings can now be concluded.

## **1. Background**

A report was presented to the 30<sup>th</sup> June 2015 Public Protection Committee, which resulted in members authorising the following action in respect of continued noise from banging

That subject to approval from legal services, that a graduated approach be undertaken to instituting legal proceedings against Mr Y, should the noise nuisance continue, this graduated approach to include:

- i. Officers (under existing delegated powers) continue to serve FPNs for breaches of the CPN.
- ii. Legal proceedings be instituted arising from any non-payment of fixed penalty notices in respect of noise nuisance arising from breach of CPN (Anti-Social Behaviour, Crime and Policing Act 2014).
- iii. That in respect of breaches of the noise abatement notice (Environmental Protection Act 1990) that Mr Y is offered a formal caution, if this is not accepted then legal proceedings be instituted.
- iv. That following a or b, should further breaches of either the CPN and NAN occur that civil injunction proceedings are instituted against Mr Y under part 1 of the of the Anti-Social Behaviour, Crime and Policing Act 2014

## **2. Update**

Since the report, your officers have taken the following action

- a. Issued a total of 5 Fixed Penalty Notices in arising from breach of a Community Protection Notice which sought to prevent banging (Anti-Social Behaviour, Crime and Policing Act 2014). Each of the notices has been paid resulting in total fixed penalty fines of £375.00

- b. Offered a formal caution for breaches of the noise abatement notice issued under the Environmental Protection Act 1990 which was subsequently accepted by Mr Yardley on the understanding that it could be taken into account in any further breaches of the noise abatement notice
- c. Taken County Court Injunction proceedings against Mr Yardley under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.

In November 2015, the Council obtained an interim injunction from Stoke on Trent County Court, against Mr Yardley prohibiting him from causing noise nuisance from banging. The interim injunction order was subsequently extended by the Court in January 2016 following further incidents of banging having been evidenced and was confirmed in full at a hearing in May 2016.

At the May 2016 hearing, the Circuit Judge was satisfied that the noise which had been evidenced and played to the court originated from human activity which resulted in banging noise being experienced in the neighbouring property during the late evening and night time hours. The trial judge awarded costs of circa £10,000 against Mr Yardley to cover the council's costs in bringing the case. It was also explained to Mr Yardley that he risked imprisonment and an unlimited fine for breach of the injunction.

Further complaints were made alleging a breach of the full injunction and these were subsequently evidenced and accordingly an application for committal was made for breaches of both the interim injunction obtained in November 2015 and the full injunction issued in May 2016. Twenty seven separate incidents were put before the court out of over 200 individual incidents.

The committal hearing took place in late June 2016, however as Mr Yardley was not represented, the hearing was adjourned until the 12<sup>th</sup> September 2016 to provide time for legal representation

At the final hearing on the 12<sup>th</sup> September 2016, which was some twenty three months after the complaint being brought to the attention of the Council, Mr Yardley gave an undertaking to the court, which was accepted by the Council and Court, in the following terms

*The defendant gave an undertaking to the Court that he would vacate his property by no later than 4pm on 23.09.16 (though he may leave his fixtures, fittings and chattels there) and he would not return (a) either to reside there without permission from the Court, or (b) to attend there for any other reason without either the permission of the Court or the prior written agreement of the Claimant on such terms as the Claimant may specify.*

Mr Yardley was advised by the trial judge that the proceedings for breaches of the injunction for which the Council had sought committal would "stay on file" and would be taken into account by the Court together with any subsequent incidents were he to be found to be not adhering to the terms of the undertaking.

There have been no further incidents of banging reported since the conclusion of legal proceedings and to date, Mr Yardley is complying with the undertaking and injunction. Mr Yardley has since advised that he is in the process of selling his house and will be moving to an alternative property within the Newcastle area as an owner occupier. He has been informed by your officers, that although the noise abatement notice issued under the Environmental Protection Act 1990 Part III and the Injunction obtained under the Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 will effectively lapse, that any future issues of a similar nature will result in the past history been taken into account by the Council in connection with any further proceedings under either Act.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

The action taken achieves the following priorities detailed within the Council Plan

- Priority 1 – A clean, safe and sustainable borough
- Priority 3 – A healthy and active community
- Council Plan Outcome 1.3 The negative impact that the Council, residents and local businesses have on the environment will have reduced

5. **Legal and Statutory Implications**

Injunction action under Part I of the Anti-Social Behaviour Crime and Policing Act 2014 is a discretionary power. Any legal action taken by the Council where there is an element of discretion is fully considered in line with the Council's Enforcement Policy and relevant legal advice.

6. **Financial and Resource Implications**

Legal costs of circa £10k have been awarded to the Council by the court and this must be met in full by Mr Yardley. Investigation costs including officer time and case preparation and attendance at court have been met from the Environmental Health Division's staffing budget and not accounted for in the costs award. Any decision to award costs is at the Courts discretion and costs involved in taking legal action will always feature in the "public interest test" which must be considered by your officers before embarking on such action.

Cases such as this are somewhat unique and pose a number of challenges in seeking an appropriate resolution. It has taken some 23 months from the complaint being originally notified to the Council to secure an appropriate outcome for the Council and the resident subjected to the unwanted banging. Your officers have sought engagement from Mr Yardley throughout and have secured assistance from a number of professionals outside of the Authority in an attempt to bring about a long term and sustained resolution.

Your officers consider that they have made full and effective use of the legal tools available to the Council in an attempt to secure a timely and sustained resolution. However, where the Council is reliant on the Courts to test evidence and determine the appropriate outcome in line with the legislation there may be occasions where the decision of the final outcome will be inherently delayed for example due to for example the legal process which must be followed, capacity of the individual, the court needing to be satisfied that an individual has had an adequate opportunity to seek legal advice and the complexity of the evidence before the court.