

Name of Local Authority: Rother District Council

Reference Number: Cncdog/01/2015/Sm

Environmental Protection Act 1990, Section 80

Abatement Notice, not to be suspended if there is an appeal

To: The Secretary

Address: EAST SUSSEX HUNT PROPERTY COMPANY LIMITED (Company No: 02415636), BROOMHILL FARM, CAMBER, RYE, EAST SUSSEX

Postcode: TN31 7SB

Take Notice that, under the provisions of the above-mentioned legislation, Rother District Council 'the Council', being satisfied of the existence of noise amounting to a statutory nuisance under Section 79 of the Act at: the East Sussex and Romney Marsh Hunt Kennels, Horns Corner, Catsfield, East Sussex, TN33 9DU

[within the area of the Council] arising from the barking of dogs by reason of the loudness, frequency and duration of the said noise

As ☒ the person responsible for the said nuisance
☒ the owner of the premises from which the the noise is or would be emitted.
☐ the occupier of the premises from which the the noise is or would be emitted.
the Council requires you within ninety days from the service of this notice to abate the same and also prohibit the recurrence of the same .

This is a notice to which paragraph (2) of regulation 3 of the Statutory Nuisance (Appeals) Regulations 1995 applies and, in consequence, in the event of an appeal this notice shall not be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council,

☒ the nuisance to which this notice relates is injurious to health
☐ the nuisance to which this notice relates is likely to be of a limited duration such that suspension would render the notice of no practical effect
☐ the expenditure which would be incurred by any person in carrying out works in compliance with this notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance

If, without reasonable excuse, you contravene or fail to comply with any requirement of this notice you will be guilty of an offence under Section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be

liable to a fine not exceeding level 5 on the Standard Scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £20,000. The Council may also take proceedings in the High Court for securing the abatement, prohibition or restriction of the nuisance. Further, if you fail to execute all or any of the works in accordance with this notice, the Council may execute the works and recover from you the necessary expenditure incurred.

You may appeal against the notice to a Magistrates' Court within 21 days beginning with the date of service of the notice. See the notes for information on appeals.

Signature: 

Name in capitals: Mr S Mills

Designation: Senior Environmental Health Officer

Date: 4th February 2015

Contact address:
Pollution Control Team
Rother and Wealden Environmental Health Service
Town Hall
Bexhill on Sea
East Sussex TN39 3JX

Email: steve.mills@rother.gov.uk

Telephone: 01424 787560

COMPLAINT REF: 14/00856/CNCD0G
NOTICE REF: 15/00003/EPAGON

Notes

The Statutory Nuisance (Appeals) Regulations 1995

Appeals under Section 80(3) of the Environmental Protection Act 1990 ("the 1990 Act")

2. - (1) The provisions of this regulation apply in relation to an appeal brought by any person under Section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.

(2) The grounds on which a person served with such a notice may appeal under Section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case -

(a) that the abatement notice is not justified by Section 80 of the 1990 Act (summary proceedings for statutory nuisances);

(b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under Section 80A(3) (certain notices in respect of vehicles, machinery or equipment);

(c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;

(e) where the nuisance to which the notice relates -

(i) is a nuisance falling within Section 79(1)(a),(d),(e),(f) or (g) of the 1990 Act and arises on industrial, trade, or business premises, or

(ii) is a nuisance falling within Section 79(1)(b) of the 1990 Act and the smoke is emitted from a chimney, or

(iii) is a nuisance falling within Section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes,

that the best practical means were used to prevent, or to counteract the effects of, the nuisance;

(f) that, in the case of a nuisance under Section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of Section 80(1)(a) of the Act are more onerous

than the requirements for the time being in force, in relation to the noise to which the notice relates, of -

(i) any notice served under Section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or

(ii) any consent given under Section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or

(iii) any determination made under Section 67 of the 1974 Act (noise control of new buildings);

(g) that, in the case of a nuisance under Section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of Section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads);

(h) that the abatement notice should have been served on some person instead of the appellant, being -

(i) the person responsible for the nuisance, or

(i) the person responsible for the vehicle, machinery or equipment, or

(ii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or

(iii) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises;

(i) that the abatement notice might lawfully have been served on some person instead of the appellant, being -

(i) in the case where the appellant is the owner of the premises, the occupier of the premises, or

(ii) in the case where the appellant is the occupier of the premises, the owner of the premises,

(iii) and that it would have been equitable for it to have been so served:

(j) that the abatement notice might lawfully have been served on some person in addition to the appellant, being -

- (i) a person also responsible for the nuisance, or
- (ii) a person who is also owner of the premises, or
- (iii) a person who is also an occupier of the premises, or
- (iv) a person who is also the person responsible for the vehicle, machinery or equipment,

and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under Section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.

(5) On the hearing of the appeal the court may -

- (a) quash the abatement notice to which the appeal relates, or
- (b) vary the abatement notice in favour of the appellant in such manner as it thinks fit, or
- (c) dismiss the appeal;

and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.

(7) In exercising its powers under paragraph (6) above the court -

- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
- (b) shall be satisfied before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Suspension of Notice

3. - (1) Where -

(a) an appeal is brought against an abatement notice served under Section 80 or Section 80A of the 1990 Act, and

(b) either -

(i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal, or

(ii) in the case of a nuisance under Section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and

(iii) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, and abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) This paragraph applies where -

(a) the nuisance to which the abatement notice relates -

(i) is injurious to health, or

(ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or

(b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

(3) Where paragraph (2) applies the abatement notice -

(a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and

(b) shall include a statement as to which of the grounds set out in paragraph (2) apply.