

NOISE

KEY POINTS

- Many complaints from residential blocks of flats arise from noise, DIY or building activity, late night music, laminated floors and barking dogs are the main causes
- The government advises residents to solve their noise problems by taking a stepped approach
- What your landlord or agent can do to prevent noise will be limited. It is unlikely that a court will evict a long leaseholder for noise problems
- There are help lines and information leaflets available to assist you

WHAT LESSEES CAN DO

Use the following stepped approach:

1. Keep Records
2. Start building relationship with your neighbour
3. Have a quiet word about the problem
4. Have a stronger word: explain the impact on you and/or your family
5. Employ mediation services
6. Contact your local authority
7. Contact abatement societies
8. Take legal action yourself.

KEEPING RECORDS OF NOISE

Keep a record of the nuisance as soon as it happens e.g. date, time, type etc. It is not a legal requirement, but you may need to back up your complaint and it could be used in evidence if you go to court.

APPROACHING YOUR NEIGHBOURS

If you do approach them, wait until a suitable time, and although you may feel angry, do not lose your temper. It could be used against you at another time. Plan what you are going to say and keep calm.

Before you approach your neighbour it is important to assess the risk to your personal safety and property. If you feel frightened or intimidated by your neighbour and you are worried they may respond aggressively, then approaching them to complain may not be the best option for you; you may wish to consider contacting the police in these circumstances.

Most problems can be solved amicably without a need for further action. You may feel anxious about approaching your neighbour but remember that they may be genuinely unaware that they are the source of the problem. When approached, often they will be embarrassed about the nuisance they have been causing and will be more considerate in the future. It is

important to do this as early as possible before the problem spirals out of control.

CONTACTING YOUR LOCAL AUTHORITY

Your local authority has a statutory duty to take reasonable steps to investigate complaints. Under section 80 of the Environmental Protection Act 1990, the environmental Health Officer (EHO) is required to take "all reasonable" steps to access where the noise constitutes a statutory nuisance.

If the EHO is satisfied that a statutory nuisance exists, or is likely to occur or reoccur, they have to serve a noise abatement notice. However, they may suggest other works forward:

- **Mediation:** Many local authorities have independent trained mediators who will offer to mediate between you and your neighbour. Sometimes, this may work, but other times it may not be appropriate
- **A warning letter.** Some local authorities may send a warning letter. Again, this may work, but it can backfire. It can alert the neighbours that you have complained and therefore the noise may become more intermittent and collecting evidence may be a problem.

- An abatement order; ultimately, if the noise persists and the local authority has deemed the noise a statutory nuisance, they have a duty to serve a notice on the offenders. If the offender fails to comply they can face court action. The local authority also has the power to confiscate noise producing equipment.

LATE NIGHT MUSIC AND PARTIES

Some local authorities now have emergency response teams to deal with urgent noise problems. They can issue warnings, seize equipment and issued fixed penalty notices of £100 (Noise Act 1996)

WHAT CAN YOU EXPECT FROM YOUR AGENT?

Many Lessees believe the agents have a big stick to wave at noise nuisance in blocks of flats. This is not so. Most leases will contain covenants which say leaseholders shall not cause nuisance and annoyance to neighbours. There may be more specific restrictions such as no loud music between say, 11 p.m and 7.30 am or that floors should be carpeted.

These clauses are all well and good but in practice difficult to enforce for several reasons.

The meaning of the covenant should be clear before considering enforcement. Any benefit of the doubt over the meaning will always be given to the lessee.

The lease may not contain a clause that requires the landlord to enforce the covenants; if it does not there is no obligation on the landlord to take any action.

Even if the lease contains a clause requiring the landlord to enforce the covenants against other lessees (a mutual enforceability covenant) there is usually a catch; the catch is that the complainant leaseholder suffering the noise will have to pay the landlord's cost of enforcing the covenant.

So how does a landlord enforce a covenant against say noise or one that requires carpets not laminated floors? A reminder letter to the offending leaseholder may work. If it does not, then the legal remedies open to the landlord are an injunction or forfeiture.

Injunctions are costly but can be applied for with or without forfeiture. Also the aggrieved lessee can apply for an injunction and may well be more successful if he/she does.

Forfeiture is not an easy route for landlord and can be extremely costly; neither will it produce quick results. However the threat of forfeiture may well produce a response to say the lack of carpets in a flat where the covenants require them, and use of forfeiture may be the most effective way to prevent the use of laminated floors spreading in a block.

CONCLUSION

For all the above reasons the more practical route for a managing agent, faced with distressed lessees complaining about noise from neighbours, is to offer advice on how they can take better and cheaper action themselves as set out in the stepped approach above.