

1. Introduction:

1.1 Sound is all around us and we experience it in enjoyable ways e.g. music and babbling brooks, or in ways which are ignorable such as the normal operations of central heating or fridges in our own houses. Sound becomes noise when it is unwanted. A sound that is pleasing to one person can be noise to another. For this reason the laws surrounding nuisance have developed largely through court decisions to attempt to provide protection for those with a normal response to sound when they describe it as noise.

1.2 Mr Craig Thomson has petitioned the Scottish Government, calling on them to provide for the needs of people who experience sound sensitivity due to disability or medical conditions to be taken into account in legislation and guidance on noise and antisocial behaviour. Mr Thomson advises that he suffers from Asperger's Syndrome and is sound sensitive. He has been disturbed by a neighbour having parties, but no enforcement action has apparently been available to his Local Authority.

1.3 It is difficult to comment on the above circumstances without knowledge of the investigation carried out by the Local Authority in which the petitioner resides.

1.4 Even non-sensitive individuals would be disturbed by regular parties – there is legislation for Local Authorities to deal with persistent antisocial behaviour (outwith Part V of the Antisocial Behaviour Etc. (Scotland) Act 2004¹).

1.5 The petitioner (in comments on the petition webpage) references wearing both ear plugs and ear defenders and still being disturbed. Whilst we cannot rule out that the hearing protection was of poor quality or not properly worn, if this hearing protection did not help the client, it would indicate that additional sound insulation (as he has suggested should be installed) would also not help.

2. Existing Approach to Noise and Antisocial Behaviour

2.1 When noise issues are investigated, as a potential nuisance, this is an objective assessment. The criteria used will depend upon the type of noise being investigated. Examples of such criteria are Noise Rating curves, Leq, Lmax etc. In any event, evidence will be considered within the accepted test of nuisance, e.g.: time of day, location, frequency, duration etc. Differing sensitivities cannot be accounted for in a way which is fair and reasonable to all parties involved.

2.2 When a report of antisocial behaviour is investigated, each case is assessed individually taking into account any Duty of Care or legislative requirements.

¹ Provisions relating to noise nuisance and associated fixed penalties

2.3 The investigation would aim to gather any evidence of the reported antisocial behaviour, to establish that the person responsible is behaving antisocially in accordance with the definition within the Antisocial Behaviour Etc. (Scotland) Act 2004.

2.4 The nature of the reported antisocial behaviour, and the evidence gathered would inform the subsequent approach to address the issue, which could involve a range of non-enforcement and/or enforcement action, such as an Antisocial Behaviour Order.

2.5 Any enforcement action would be matched with support for the person creating the noise where appropriate, to tackle any underlying causes of the antisocial behaviour.

3. ASB Noise Levels

3.1 Mr Thomson suggests that the permitted noise levels under the Antisocial Behaviour (Noise Control) (Scotland) Regulations 2005 should be changed.

3.2 The Scottish Parliament consulted all Local Authorities in 2014 in relation to the ASB Noise Regime, including appropriateness of permitted levels. No changes to the levels have so far resulted from this consultation.

3.3 Whether or not the permitted level is the most appropriate, it would be impossible to offer a different level to noise-sensitive people that would satisfy them, as each one would have different expectations or criteria. Application of two or more different levels dependent on individual circumstances leads to ambiguity and inequalities across the population.

3.4 Legislation needs to uphold the rights of those affected by noise, but also those of the person making the sound, protecting them from unreasonable demands.

3.5 The City of Edinburgh Council therefore feels it would be inappropriate to provide separate legislative protection for sensitive individuals.

4. Sensitivities

4.1 There are many reasons why someone might consider themselves “noise sensitive”, including, but not limited to:

- Mental Health Conditions
- Learning Difficulties
- Cancer
- Stress
- Insomnia or sleep conditions
- Shift Working

4.2 The extent to which someone is “noise-sensitive” cannot be determined; since it will be entirely subjective to the circumstances of the individual (good hearing is not the same as noise sensitivity).

4.3 Medical conditions or medication can cause hyperacusis (intolerance to everyday sounds) or recruitment (exaggeration of certain sounds or frequencies).

4.4 There will also be medical conditions or ototoxic medication which mimics external noise within the persons own auditory system, e.g. tinnitus.

4.5 Modifying standards to address sensitivity issues would create unreasonable burdens on the person who is the source of the sound by restricting the ordinary enjoyment of their own home; an important principle of nuisance.

4.6 It would be unreasonable to expect an individual to adapt their behaviour for all the “sensitivities” of their neighbours and consequent changes to noise or antisocial behaviour laws would have the potential to negatively impact on a person using their own home in a reasonable manner.

4.7 There are no standards or criterion with which to assess vulnerability or sensitivity to noise in a consistent and fair manner.

4.8 It is the position of City of Edinburgh Council that the current system adopts a fair and reasonable approach which provides adequate protection for the majority of individuals. It would not be feasible to take into account all of the varying degrees of sensitivity an affected person may experience and could unduly restrict others from enjoying their own home.

5. Sound Insulation

5.1 Mr Thomson believes that sound insulation should be added where poor insulation is causing a noise nuisance.

5.2 If there is poor sound insulation, then even non-sensitive people will have problems with noise from their neighbours.

5.3 Where properties meet the standard that was extant when they were developed, there is no legislative requirement to retro-fit insulation.

5.4 Even current sound insulation standards are unlikely to meet the expectations of a “noise-sensitive” person. If sound insulation between two properties was shown to be deficient in relation to the standard when it was built, any costs would be shared between the owners of the two properties. In order to objectively demonstrate that sound insulation is deficient a sound insulation test must be undertaken. In occupied properties this is a disruptive and expensive procedure that requires the full cooperation of both the sound maker and the person experiencing it. It is likely even if a sound insulation test was considered possible the sensitive receptor would not wish to experience this disruption.

5.5 If either of the properties are privately owned or let, there is no legal recourse available to the Local Authority to force owner / occupiers to be involved, particularly considering the upheaval and financial implications.

5.6 Sound insulation requires mass and weight and has a law of diminishing returns, such that it becomes increasingly difficult to make improvements.

5.7 Sound insulation tends to be applied on walls and floors / ceilings. This may not be all the pathways through which the noise travels (flanking transmissions / windows etc).

5.8 Often, for a noise-sensitive person, it's not the level of noise, but the type of noise which is the problem, so making the noise quieter does not always alleviate the problem for that individual.

5.9 There are already mechanisms in place if deficient sound insulation is determined between properties. Once again, the Building Standards, as well as the test for nuisance, are what would affect an average person, not someone with a specific condition or sensitivity.

6. Housing Allocation

6.1 Mr Thomson suggests that sound insulation should be included under disability adaptations and extra points should be allocated to noise-sensitive individuals on housing waiting lists. He also suggests that individuals with a criminal or violent background should not be housed next to vulnerable persons or children.

6.2 Disability adaptations are generally required for people with physical disabilities under Local Authority responsibilities.

6.3 There could be a significant resource / cost burden for Local Authorities to put in place "solutions" (e.g. insulation) which have no guarantee of resolving the problem.

6.4 Assessment costs alone would be a burden (assessment of an individual for level of noise protection needed and assessment of suitability of adaptations or works).

6.5 This suggestion has the potential to severely limit the housing options and rights of an individual, who may have a criminal record or history of antisocial behaviour.

6.6 Criminality or a history of violence does not necessarily mean that an individual is likely to create more noise nuisance than anyone else.

6.7 It is only possible to approve addresses for offenders leaving prison where they are subject to supervision or licence conditions with a requirement to live in accommodation as approved (e.g. parole/non-parole licence, Sexual Offences Prevention Order etc); these orders relate to risk of harm posed to others in the community, and are not specific to their general behaviour.

6.8 Local Authorities do not have any control over owner occupied/private rented accommodation, therefore, anyone with a criminal conviction or a history of violence (who isn't subject to any licence conditions or orders) can stay wherever they choose.

6.9 The Housing (Scotland) Act 1987, as amended 2001 and 2014 sets out 'reasonable preference categories'. This means that under the 2014 Act, extra priority for social housing is given to people assessed as statutorily homeless, living in accommodation below tolerable standard or under occupying their existing accommodation. Social housing providers may also award additional priority to other client groups to address housing need, such as people with physical disabilities, people living in overcrowded conditions and people who are being relocated due to a regeneration programme.

6.10 In Edinburgh, people deemed to be in exceptional housing need can be referred to an Officer Panel for consideration of additional priority. Examples of exceptional housing need include people with mental health issues, learning difficulties, autistic spectrum disorder (who need specific types of accommodation); families who need extra bedrooms to accommodate children with behavioural problems or medical conditions etc. Each case is considered individually against evidence provided, and a decision made on the award of additional priority is based upon the evidence and assessed need.

6.11 It should be noted however, that problems relating to noise could persist, even if an individual is assisted to move home.

6.12 Each Local Authority will differ with regard to its allocation policies and priority groups, whilst adhering to the Housing (Scotland) Act 1987 (as amended 2001 and 2014). The existing legislation does not identify those with noise sensitivity as a priority group. Local Authorities may (and do on occasion) agree to adapting homes for people who are noise sensitive, however, this is done on a case by case basis. In Edinburgh, homes have been developed for people with autistic spectrum disorder; these homes were built with additional sound-proofing, to reduce noise nuisance and the distress this may cause to individuals. These homes are, however, in short supply and it is not possible to introduce policies that would be applied across the board to deal with this issue. On that basis, each referral for people who are noise sensitive would be considered on a case by case basis.

7. Conclusion

7.1 Legislation and guidance is provided to protect the general population but must always be balanced to protect the rights of individuals as well. The current regime provides a high level of protection for the majority of the population, without infringing on the rights of the individual to enjoy their own home. The City of Edinburgh Council does not, therefore, feel that Mr Thomson's suggested changes are feasible or equitable.

7.2 The following are suggestions in relation to this specific case and may be of assistance:

- In some cases, and subject to availability, Mediation is a useful tool.
- Housing options advice can be given to assist the individual to seek alternative, more appropriate accommodation (e.g. through applying for rehousing, mutual exchange etc).
- If the individual is on medication, they can discuss with their doctor if noise-sensitivity is a potential side-effect. It may be that alternative medication is available.
- Consideration of medical interventions to address noise sensitivity – e.g. cognitive behavioural therapy, counselling, sound therapy (desensitisation) and support for those with tinnitus.
- A full antisocial behaviour investigation should be carried out by the relevant Local Authority, if they have not already done so.