

Supplement 2 to the agenda for

Licensing sub-committee

Friday 18 October 2019

10.00 am

**Council Chamber, The Shire Hall, St Peter's Square, Hereford,
HR1 2HX**

		Pages
4.	APPLICATION FOR A REVIEW OF A PREMISES LICENCE IN RESPECT OF ST KATHERINE'S BARN, ST KATHERINE'S, LEDBURY, HR8 1AQ- LICENSING ACT 2003	3 - 8

Environmental Protection Act 1990: Section 80 Notice in Respect of Statutory Nuisance

Reference: U/003035

Date: 17 October 2019

To: Ms Lynn Calvert Jones

of: St Katherine's Barn, St Katherine's, Ledbury

TAKE NOTICE that under the provisions of the Environmental Protection Act 1990 the **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** being satisfied of the existence and likely recurrence of noise amounting to a statutory nuisance under section 79(1)(g) of that Act at the premises known as **St Katherine's Barn, St Katherine's, Ledbury, Herefordshire HR8 1DZ**

which is within the Council's area, arising from:

MUSIC BEING PLAYED AT SUCH A VOLUME AND TONE AS TO BE A NUISANCE

HEREBY REQUIRE YOU IMMEDIATELY FROM THE DATE OF SERVICE OF THIS NOTICE AS THE PERSON RESPONSIBLE FOR THE SAID NUISANCE TO ABATE THE NUISANCE and THEREAFTER NEITHER TO CAUSE, PERMIT NOR OTHERWISE ALLOW THE RECURRENCE of the same and for that purpose require you to ENSURE THAT

OCCUPIERS OF NEIGHBORING PREMISES ARE NOT EXPOSED TO THE PLAYING OF LOUD MUSIC AMOUNTING TO A STATUTORY NUISANCE.

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 be suspended until the appeal has been abandoned or decided by the Court.

If you do not stop causing a nuisance, or contravene without reasonable excuse any requirement of this notice, you will have committed an offence under Section 80(4) of the Environmental Protection Act 1990. On summary conviction you will be liable to a fine not exceeding £5,000 (five thousand pounds), together with a further fine not exceeding £500 (five hundred pounds)* for each day 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 (twenty thousand) pounds. The Council may take proceedings for securing the abatement, prohibition or restriction of the nuisance. If you fail to execute all or any of the works in accordance with this notice, the Council may execute those works and recover from you the necessary expenditure incurred.

Dated: 17 October 2019

Signature: 

Elisabeth Laughland (Authorised Officer)

NB The person served with this notice may appeal against the notice to a magistrates' court within twenty-one days beginning with the date of service of the notice. See notes on the reverse of this form.

Notes

The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:

Appeals under section 80(3) of The Environmental Protection Act 1990 ("the 1990 Act").

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- (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) on 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 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 practicable 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) 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 that 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 1974 Act, or
 - (ii) any consent given under Section 61 or 65 of the 1974 Act, or
 - (iii) any determination made under Section 67 of the 1974 Act;
 - (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 1993 Act (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
 - (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, 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
 - (ii) a person who is also an 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 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 in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation 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 an 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 to
 - (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 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 Notices

- 3 (1) Where:-
 - (a) an appeal is brought against an abatement notice served under 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 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 caused in the course of the performance of some duty imposed by law on the appellant, and
 - (c) either paragraph (2) does not apply or if it does apply but the requirements of paragraph (3) have not been met the 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.

Economy & Place Directorate

Director: Richard Ball

Ms L Jones
St Katherine's Barn
St Katherine's
Ledbury
HR8 1DZ

Your Ref:
Our Ref: U/003035
Please ask for: Ms Elisabeth Laughland
Direct Line / Extension: 01432 261676
Fax: 01432 261982
E-mail: elaughland@herefordshire.gov.uk

17th October 2019

Dear Ms Jones,

**ENVIRONMENTAL PROTECTION ACT 1990
SECTION 80 NOTICE IN RESPECT OF STATUTORY NUISANCE
PREMISES: ST KATHERINES BARN, HIGH STREET, LEDBURY, HR8 1DZ**

Following a visit on 12 October 2019 to a complainants property and visits to the area over the summer and the last three weekends, please find enclose a notice in respect of a statutory nuisance arising at the above premises.

Please be advised that, it is an offence not to comply with the Notice, for which the Council can take prosecution proceedings. It is advisable to read through the attached carefully and contact this office if you have any queries.

If you need any further information, or would like to discuss this further, please do not hesitate to contact me at this office.

Yours sincerely,



**MS ELISABETH LAUGHLAND
PRINCIPAL ENVIRONMENTAL HEALTH OFFICER
ENVIRONMENTAL HEALTH & TRADING STANDARDS**

Enclosure

