

BOSTON
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DOMESTIC BONFIRES

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What is Statutory Nuisance?

The Council has powers under the Environmental Protection Act 1990 to take action with regard to smoke which amounts to a Statutory Nuisance. There are no specific byelaws that prohibit garden bonfires or require them to take place between certain hours.

A Statutory Nuisance is something which significantly interferes with the complainant's life or the reasonable occupation of their property. To constitute a statutory nuisance it needs to be shown that the smoke from the bonfire is not just annoying, but that it is a recurrent and persistent problem which is unreasonable and prevents someone from continuing their normal activities.

The everyday meaning of the word 'nuisance' is not always the same as the legal term. Sometimes smoke from a bonfire may be annoying but it may not constitute a statutory nuisance in law.

It should be noted that abnormal sensitivity is not a factor - the law of nuisance considers what would be unreasonable for an average person. If you have increased sensitivity to smoke due to illness such as asthma this cannot be taken into account when assessing nuisance.

Helpful examples

Unlikely to be a Statutory nuisance	More likely to be a Statutory nuisance
Your neighbour burns a small fire comprising garden waste occasionally and there is the smell of smoke in the air.	Your neighbour burns regular fires of garden waste and these are regularly filling your garden and house with smoke.

You experience smoke from two or three fires in a relatively short period, however, these are from different sources within your locality (each source can only be considered in isolation).

Your neighbour has a small stable and burns the manure. This smoulders for days and the smell of smoke as a result lingers for some considerable time.

What happens when I complain?

Ideally before you complain to Boston Borough Council you would have spoken to your neighbour causing the problem to try and resolve the problem. Often a cordial approach can resolve an issue and maintain neighbourly relations.

Where the matter complained of is not, in the opinion of the officer concerned, either a statutory nuisance or a matter that can be better dealt with by other legislation you will be advised verbally or in writing. For example, if your neighbours runs a business elsewhere and is bringing this waste home to burn this is likely to breach waste disposal legislation and therefore may be better dealt with by the Environment Agency, the organisation that enforces the majority of waste matters, rather than Environmental Health.

On receipt of a complaint in most circumstances the alleged perpetrator will be contacted by letter or visited to advise them that a problem has been reported and they will be given advice. The alleged perpetrator



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will be offered the opportunity to moderate their behaviour and discuss the matter with Environmental Health.

You will be sent a letter advising you what initial action has been taken and a diary sheet on which you should record any further incidents. If the problem continues and we receive your completed diary sheets an assessment of the problem will be made and an appropriate course of action determined.

Officers may make visits to your home to try and witness the problem and, where considered necessary, visits may take place outside normal working hours. It is an offence to cause a Statutory Nuisance, therefore when the Council carries out an investigation we have to operate in a similar way to the Police, we must gather sufficient evidence to take action against someone, otherwise the case would collapse.

What should I do if I am complained about?

The person who has had a complaint made against them is encouraged to contact the Council to discuss the issue. Environmental Health will offer guidance and advice on practical solutions once the officer has taken an objective view of what the problem might be. You will also have the opportunity to state your case. We recognise not all complaints are justified.

What formal action can be taken?

In a statutory nuisance investigation, the first formal action would be the service of an abatement notice. The nuisance must have been witnessed by the officer for them to serve a notice and/or there must be enough evidence to ensure that the officer can defend an appeal against the notice in the Magistrate's Court. The notice will require the person responsible for the nuisance to reduce the impact so that the nuisance no longer exists. This will not necessarily stop the activity

altogether, the requirement of the law is to abate the nuisance and bring the impact down to a reasonable level. For example a notice may restrict the number of fires in a given time period.

If the premises or person does not comply with the notice, the officer will require the complainant to collect further evidence. The officer will then need to witness the breach of the notice, to determine whether an offence has been committed. This can sometimes take time to establish and gather sufficient evidence to satisfy the legal team that a prosecution in the Magistrate's Court is appropriate.

If the Council decides to take the case to court, all the evidence the complainant has collected will be used and the complainant will be expected to appear in court as a witness. Formal action is the last option.

Helpful advice if you have a garden bonfire

Firstly, do you really need to burn the waste – could you compost it or take it to the local civic amenity site at Slippery Gowt Lane, Wyberton. Only burn dry materials and do not leave fires unattended or to smoulder. Consider neighbours and weather conditions – can you burn on a day where the wind will take smoke away from neighbours? Speak to neighbours – this can avoid washing being tainted with smoke or a family event being spoiled by your smoke.

Do not burn household rubbish, rubber, plastic, paint or foam. Do not light the fire with oil, petrol or methylated spirit – you could damage yourself along with the environment.

We can provide this information in other languages and formats for example, in large print, in Braille, on CD or audio cassette.

Please phone (01205) 314308.

Contact us

Boston Borough Council

Municipal Buildings

West Street

BOSTON

Lincolnshire

PE21 8QR

(01205) 314200

(01205) 314247

env.serv@boston.gov.uk

www.boston.gov.uk