

Warwick District Council

Noxious Odour Policy (Private Residential Premises)

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Warwick District Noxious Odour Policy

Nuisances caused by odours are regulated by the statutory nuisance provisions in the Clean Neighbourhoods and Environment Protection Act 1990, which outlines that a statutory nuisance is 'any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance'.

District Councils are duty bound to investigate complaints of odour nuisance.

Where a smell, from a private address is very unpleasant or persistent and has a serious or detrimental impact on residents the Council may be able to take action using alternative tools and powers within the ASB Crime and Policing Act 2014.

This procedure is designed to provide an overview of how local councils and partners will deal with complaints of noxious substances, perceived to be caused by illicit substances.

What is an Odour?

Odour is the smell that is detected from substances, usually carried by air into the nose. The degree to which people are affected will depend on the sensitivity of their sense of smell and their tolerance of the odour in question. Odours arise from a wide range of sources e.g. accumulations of waste, decomposing animals, bonfires, cooking, etc. The main concern with odour is its ability to cause a response in individuals that is considered to be objectionable or offensive.

This procedure is specifically designed to deal with complaints of odour believed to be caused by the use of an illicit substance, namely cannabis.

What is involved in an Odour Complaint Investigation?

Due to society changes, it is recognised that the use of recreational and illicit substances is extensive. The local council and partners will be able to consider an investigation if there is evidence to support that the impact of the odour is having a significant and detrimental impact on an individual or household, is of a persistent or continuing nature, and is unreasonable.

Judgement as to whether or not an odour constitutes a nuisance can take time, especially if the occurrence of the odour is unpredictable and only apparent for short periods of time. It is important to note that under these circumstances it may not meet the criteria for this procedure.

The following relevant factors are taken into consideration during an investigation:

- Offensiveness of the odour
- Intensity of the odour
- Duration of exposure to the odour
- Frequency of the odour exposure
- Impact on the exposed subjects
- Tolerance and expectation of the exposed subjects

Any person making a complaint of a noxious smell, may as part of the process, be asked to keep a record of incidents and complete diary sheets. The Council/ Police will use this information to try to find the cause and examine what, if anything, can be done.

If, during the initial investigation, it is found that there are mitigating circumstances, it may not be possible to utilise this procedure.

Landlord responsibilities under s.8 Misuse of Drugs Act 1971 remain, however, this procedure can be used to evidence a proactive response, alongside any tenancy related action taken, to address the problem.

If the property omitting the odour is privately rented, the landlord will be informed by letter as the first opportunity to engage with them on the issue and seek their support to help resolve the problem. Consideration may also be given locally as to whether further action should be taken against the landlord (alongside the tenant), should the issue continue.

The Council/Police will endeavour, in the early stages of the process, to ensure the complainant's details remain confidential. However, due to the nature of the complaint, it can be easily apparent to the alleged perpetrator/s, who has made the report. If the problem persists, the complainant's anonymity may need to be exposed to further support the investigation through written statements and, if required, attendance at court.

It is important to note that the council may not always be able to stop the behaviour even if formal sanctions apply. The aim is to reduce the impact.

This procedure relates solely to the noxious odours caused by the use of illicit substances and not any other household smells.

Diary Sheets & Recording of Incidents

During the process, a complainant will be required to keep a record over a period of time, of what they can smell, for how long and what time of day. Also, visits will be made by a professional witness (i.e. council, police or housing association representative) to further determine the type of odour being expelled. The

Council/Housing Association will then use this information to determine if there is any pattern to the problem and then seek to find the cause and address the issue.

If the odour is evidenced by diary sheets and/or visits and found to be noxious and directly and significantly impacting on an individual, then proportionate action can be considered through the Anti-social Behaviour Crime & Policing Act 2014.

Sometimes, however, the evidence and thresholds cannot be met, and the matter cannot be progressed. All the Council can do in those circumstances is request that the person or household responsible takes reasonable steps to minimise the odours.

A complainant also has the right to seek and take independent civil redress against the person causing the nuisance to them.

Responsibility of the Complainant

If the problems persist, there is a responsibility on the complainant to provide diaries and/or written statements and be prepared to attend court if a formal investigation is undertaken. This requirement is integral, as any further proceedings the Council may have to make as an authority will entirely be dependent on gathered evidence and statements.

A report of a noxious odour cannot be made anonymously.

How the Council deals with complaints of Noxious Odour

Complaints are dealt with using a staged incremental approach with a strong focus on signposting perpetrators to support and forms of intervention, before potential escalation and legal proceedings.

Each stage of action taken will be recorded on REACT (ASB Case Management System).

The process begins with sending initial correspondence to the person allegedly responsible for the odour. There is no requirement for a fuller investigation at this opening stage. However, if the problem persists, there is clear process for the Council/Police to adhere to. For further details please refer to the Warwick District Noxious Odours – Incremental approach for practitioners.

If there is suspicion that complaints are malicious, the Council/Police will follow the appropriate policy and, if it results in deviating from the Noxious Odour Procedure, the reason why will be documented.

Safeguarding

If, during the investigation, a safeguarding concern is identified, relating to an adult or child, it will be reported to Warwickshire County Council (WCC) using the referral pathways established through the Warwickshire Safeguarding Adults Board and Warwickshire Safeguarding Children Partnership.

Determining if an Odour Is Noxious or Otherwise

When a report of a noxious odour is made, it is not always clear that the source is of an illicit nature. For example, an odour that could be mistaken as a noxious drug odour could, in fact, be that of a vape, perfume, organic product or alternative product.

It is important to note that legal intervention or arrest cannot be made on an odour alone. It requires factual evidence of illegal substance possession or evidence of trade of illegal substances. Any identified illegal activity will be a matter for the police.

Cancard

A Cancard is a medical ID card, recognised by the police. The card allows for the police to exercise discretion by understanding that the patient caught in possession is medicating for their condition. A cancard has a limitation of cover and function and only proves that the holder is legally entitled to a cannabis prescription. It does not entirely protect a user from possession charges or the use of cannabis causing a detrimental impact on others.

It is noted that being a card holder can contribute to being a mitigating factor for the Crown Prosecution Service (CPS), meaning a possession case would unlikely make it to court. However, there must also be consideration to the impact of this on others impacted by the odour.

Identifying whether a perpetrator is a cardholder or not may influence the investigation and the way it is handled.

Change Grow Live

Change Grow Live is a health and social care charity, providing free confidential services for Warwickshire residents around drug and alcohol use. It is important that during this process, assistance and support is extended to perpetrators throughout the incremental approach before formal and legal proceedings. These steps are designed to help those in need or in a vulnerable position before more damaging ramifications are incurred, protecting those that would benefit from intervention and support.

Organisation: Change Grow Live

Telephone No: 01926 353 513

Address: Change Grow Live, Court Street, Leamington Spa, Warwickshire, CV31 2BB

Website: [Drug & Alcohol service - Warwickshire | Change Grow Live](#)

Frequently Asked Questions

Q. What action should be taken if the complaint involves an HMO with no clear indication of who is omitting the odour?

A. Engage with the landlord/letting agent and issue all tenants with a Stage 1 warning letter. If the problem persists continue through the incremental approach, working with the landlord/letting agent.

Q. What if a landlord/letting agent refuses or fails to engage with the Council?

A. The Council should consider taking action against them, using the incremental approach.

Q. Can action be taken on evidence taken from diary sheets alone, or does the odour also need to be witnessed by a professional?

A. The odour needs to be witnessed by a professional e.g. Police/Housing Officer

Q. At Stage 1, if police checks confirm that a specific address is subject to an ongoing investigation, how should the Council manage the complainant's expectations, given that officers may be unable to progress the noxious odour procedure without risking prejudice to the police investigation?

A: In this scenario it is important to highlight the section of the procedure on page 4 '*If during the initial investigation, it is found that there are mitigating circumstances, it may not be possible to utilise this procedure*'. This includes investigation by another agency which may take precedence.

