**Andrea Clerk**

**10 Nant Road**

**London NW2 2AJ**

19 September 2019

**Freedom of Information Request (Environmental Regulations)**

**Context**

**This request is made with a view to establishing Barnet Council’s position in relation to EPA 1990. Specifically, it relates to the complaint about nuisance (Barnet ref no 101000736382) which concluded that the law was unclear and that it was therefore not possible to establish whether nuisance exists. The request seeks to establish whether Barnet Council and its Environmental Health Department acknowledges what this Act states (namely that smoke can constitute nuisance to domestic dwellings) and how Barnet Council applies EPA 1990 when it examines nuisance that arises from smoke emitted from boiler fumes. The Chief Executive’s office stated that there was no requirement of Barnet Council to provide answers to questions on its stance on the matter, hence the FOI is used to ascertain Barnet’s position.**

**According to Barnet Council, boiler installations that are carried out by Gas Safe registered fitters through the approved competent person scheme are not investigated by Barnet Council because Barnet relies upon Gas Safe to ensure that both safety and nuisance are complied with. Gas Safe is therefore, according to Barnet Council, responsible to rectify any identified shortfall (see reply from Chris Lloyd dated 15 June 2018 to the** Information request Barnet Council reference: 4278396)**.**

**Gas Safe, in turn, claims that their role is merely in relation to safety matters and that issues relating to nuisance are within the realms of Local Authorities in accordance with the EPA 1990.**

**Questions to which answers are requested are highlighted in red and put in context so it is clear what they mean and what information is sought.**

**Question 1:**

**What is Barnet Council’s role and duty in relation to complaints of nuisance that arises from boiler fumes? I.e. is Barnet Council responsible for investigating complaints of nuisance?**

**Question 2:**

**Why does Barnet direct complainants of nuisance arising from boiler fumes to Gas Safe? In other words, why did it direct me to Gas Safe (which is not a body responsible for investigating complaints of nuisance)?**

**Question 3:**

**Does Barnet Council, as a matter of standard practice, follow up on the investigations that are carried out by Gas Safe after it directs the complainants of nuisance to Gas Safe?**

**Question 4:**

**After Barent Council directed me to Gas Safe, did it follow up on the investigation carried out by Gas Safe with Gas Safe in any way? If yes, what transpired? If not, why not?**

**Context:**

**When (in November 2015) I first complained about nuisance to Barnet Council, the Council directed me to Gas Safe claiming they were responsible for the matter. Gas Safe investigated the installation and prepared a report.** Barnet Council was aware of the Gas Safe investigation because I provided all the details to the Council. **However, I was not, at that time, in possession of the report. The report, prepared by Gas Safe for the owner of the house, and presented to me as a result of FOI request by HSE stated this:**

**......**



**Question 5:**

**Did Barnet Council request a copy of the report prepared by Gas Safe after its investigation, from Gas Safe? If yes, what action did it take after it read this report? If not, why not?**

**Context:**

In an email from Ralph Haynes, Group Manager Consultancy and Scientific Services, Environmental Health, dated 17.3.2016, he said this in reply to my complaint of nuisance:

*“The Council can only control dark smoke from furnaces or boilers that are running rather inefficiently; nuisance action cannot be taken regarding condensing boilers that run efficiently and emit mainly steam to the atmosphere”*

**Question 6:**

Does the above statement, sent to me by Ralth Haynes on 17.3.2016 remains the position of Barnet Council?

**Context:**

In an email from James Armitage, Associate Director, Regulatory Services dated 22.3.2016, I received this explanation on the matter on behalf of Barnet Council:

“Statutory nuisance powers under the Environmental Protection Act 1990 would only be relevant where the boiler was not running efficiently and discharging smoke, fumes or gases in sufficient concentrations to be considered a nuisance or prejudicial to health....As Mr Haynes has already set out, emissions from (efficiently operating) condensing boilers comprise water vapour and a small amount of carbon dioxide. This gas is a greenhouse gas, but is not prejudicial to health in the concentrations typically emitted from condensing boilers installed according to Building Regulations. Residential boilers that give out white clouds of steam (water vapour) do not significantly contribute to poor air quality. Unfortunately, steam can only be considered a nuisance if it is emitted from industrial, trade or business premises.”

**Question 7:**

Does the above statement, sent to me by James Armitage on 22.3.2016 remains the position of Barnet Council?

**Context:**

The letter from John Hooton, then Chief Operating Officer and Interim Chief Executive of the Barnet Council, addressed to me and dated 13 May 2016 states, on page 2 that

“... the plume emitting from the condensing boiler does not constitute a statutory nuisance as the act only refers to steam as a nuisance from industrial trade or business premises. Para 79(1)(c) EPA 1990 of the act, which relates to dwellings, refers to “fumes” or “gases” ...”

**Question 8:**

Does the above statement, contained within the letter dated and 13 May 2016 sent to my by John Hooton remains the position of Barnet Council?

**Context**

The letter from John Hooton, then Chief Operating Officer and Interim Chief Executive of the Barnet Council, addressed to me and dated 13 May 2016 states, on page 2 that

“ The assessment found that your neighbours’ condensing boiler has been fitted correctly and in accordance with building Regulations Approved Document J and was in good working order.”

**Question 9:**

Who made the assessment referred to within the above mentioned letter? Please provide a copy of the report on the assessment referred to

Question 10:

When was the assessment, referred to in the above mentioned letter sent to me by John Hooton dated 13 May 2016 made? Please provide a date if the report does not contain the date of the assessment

**Context**

The letter from John Hooton, then Chief Operating Officer and Interim Chief Executive of the Barnet Council, addressed to me and dated 13 May 2016 states, on page 2 that

“The Local Authority cannot enforce action based on guidance documents such as British Standard BS5440-1, or the Guide to the condensing boiler installation assessment procedure for dwellings, Technical Bulletin 23.”

**Question 11:**

Does the above statement, sent to me by Mr Hooton in his letter dated 13 May 2016 remains the position of Barnet Council?

Question 12:

If the above statement remains the position of Barnet Council, and if Barnet Council does not use the above guidance when enforcing boiler installation that does not comply with Building Regulations, what criteria/guidance/standards does Barnet Council use when it receives a complaint of nuisance relating to smoke emitted from condensing boilers?

**Context**

In the email from Ralph Haynes, dated 18 July 2016, which was an email from Barnet Council to the Ombudsman, Mr Hanes stated:

“Environmental Health have procedures for dark smoke and bonfires but this is not relevant here; steam or fumes or smoke from condensing gas boilers would not be classified as a Statutory Nuisance if a boiler was not giving off dark or excess fumes and correctly sited.”

**Question 13**

Does the above statement, given by Mr Haynes on 18 July 2016 to the Ombudsman remains the position of Barnet Council?

**Context**

As part of her investigation into my complaint, Sara Elias-Bassett whom Mr Hooton appointed to investigate my complaint requested that this question be answered:

“We would like confirmation of whether the smoke plumes from her residents neighbouring property constitutes as a ‘statutory nuisance’ under the Environmental Planning Act? Also, we have been given advice from the Environmental Health team, is this advice correct in regards to what constitutes a statutory nuisance?”

This request for advice was made on 29 April 2016 and sent to Sarah Wilson; Matthew Adams; and Paresh Mehta. It is not clear to me who these individuals are: from the reply it appears that they are employees of Harrow Council. The letter I received from Mr Hooton says that HP Law was consulted. Sara Elias-Bassett received a reply from Krupali Patel, Lawyer – Litigation, at Harrow Council on 5 May 2016. The reply stated this:

“Part III, Section 79 (1) (c) of the EPA 1990 states “fumes or gases emitted from premises so as to be prejudicial to health or a nuisance” constitute a statutory nuisance for the purposes of the EPA 1990. “Fumes” has been defined in the EPA 1990 as “any airborne solid matter smaller than dust” and “gas” has been defined in the act as including “vapour and moisture precipitated from vapour”.

“Fumes”, “vapour” and “moisture” are not defined further in the EPA 1990. On the face of it, it may be arguable that the vapour from the condensing boiler could constitute either fumes, vapour or moisture. The most likely fit appears to me to be within the definition of “gas”. However having said that, it seems that whether the vapour from the boiler fits within Section 79 (1) (c) is a technical issue depending on the composition of the discharge produced, and it is one which an engineering expert would really have advise/report. Clearly this would be costly.

In conclusion, whether vapour from a condensing boiler can amount to a statutory nuisance under the EPA 1990 is not clear cut and should this matter proceed to the stage of issuing an abatement notice or prosecution expert evidence may be the best way to reach a more conclusive decision about whether the emissions could constitute a statutory nuisance under the EPA 1990.”

**Question 14:**

Having received the above reply was Sara Elias-Bassett, who is a senior employee of Barnet Council content with the reply that the law (as it stands) was unclear and therefore Barnet Council could not follow the law?

Question 15:

Did Sara Elias-Bassett sought any further clarification as regards the legal position of was she content with the email (quoted above) which stated that law was unclear?

**Context**

Sara Elias-Bassett who investigated my complaint of statutory nuisance on behalf of Mr Hooton also sought advice from James Armitage. In an email sent to him on 28 April 2016 at 17:43 she asked him this:

“I do have a query regarding some advice that the council provided to her. In your e-mail

dated 22 March you stated that the Environmental Planning Act is not applicable because

steam is not seen as a nuisance from a dwelling, only from industrial or business properties.

However, having now read the Act, it seem that section 1c “fumes or gases emitted from

premises so as to be prejudicial to health or a nuisance” relate specifically to private dwellings (“Subsection (1)(c) above does not apply in relation to premises other than

private dwellings”).”

James Armitage sent Sara Elias-Bassett a reply on 28 April 2016 at 18:31 and copied it to Ralph Haynes. His reply said:

“Hi Sara,

In answer to your question, s.79(1)(d) of the Act makes specific reference to steam and

restricts this to industrial, trade or business premises. If the intention had been to include

steam in residential dwellings as a stat nuisance, this restriction would not have been included. It would be an incorrect reading of the Act therefore to infer that the definition

of gas in s.79(1)(c) would encompass steam from residential dwellings. This is an established restriction within the Act that is recognised amongst the enforcement

community.

I would be grateful if you would share your proposed draft with Ralph and I prior to it

being sent as we have previously experienced problems with stage 3 responses containing

information based on incorrect interpretation of technical requirements. “

**Question 16:**

**Is the position of Barnet Council that condensing boilers are run purely on water (which creates steam) and that for this reason the definitions in the EPA 1990 for domestic premises are not applicable because steam can only be a nuisance in industrial premises?**

**NB. This is the only interpretation we could deduce from the above message so please clarify.**

**Question 17**

**What is, according to Barnet Council, the correct reading of the EPA 1990? (see context above), ie is smoke emitted from condensing boilers included or excluded as a gas/fume that can create nuisance to domestic premises?**

**Context**

As part of her investigation into my complaint, Sara Elias-Bassett whom Mr Hooten appointed to investigate my complaint contacted Gloucester Council and requested clarification from them on whether boiler fumes represent statutory nuisance. In an email From Shaun Fudge on 05 May 2016 at 14:43 sent to Sara Elias-Bassett on the Subject Condensing Boiler fumes - statutory nuisance (REF:SR 314843) this was said:

“....The emphasis is on potential fumes emitted rather than steam (with statutory nuisance only applying to industrial, trade or business premises) and I am not aware that we have had to resort to any formal action with these.”

It is clear that Gloucester Council understood that steam can only be a nuisance in industrial, trade and business premises and that fumes emitted from boilers are not steam. Sara Elias-Bassett did not report what Gloucester Council said but misled me and Mr Hooten in her findings sent to me in the letter dated 13 May 2016. The letter states on page 2:

...”After consulting with Gloucestershire Council.... it appears that it is unclear whether vapour from a condensing boiler can amount to a statutory nuisance ....”

**Question 18:**

**Why did** Sara Elias-Bassett mislead Mr Hooton in her report, prepared on his behalf and sent to me by presenting information which was clearly not the information she obtained? (what she says Gloucester Council said is not what they said: it is, in fact, the opposite of what they said)

**Context**

In 2018/19 I corresponded at some length with the CEO of Gas Safe. In one of his replies, he stated that “British Standard 5440-1:2008 will be relevant. He explained that this Standard requires outlets from flues to be sited such that wet products of combustion are unlikely to cause damage or nuisance. He also stated that “clearly from the images the likelihood of both is confirmed.”

**Question 19:**

Does Barnet Council agree with the assessment of Gas Safe quoted above? If not, why not?

Question 20:

Does Barnet Council uses photographs to establish whether nuisance has or is occurring?

(This question is asked because every Standard I put forward is dismissed by Barnet Council as not-enforceable. The question therefore is what does Barnet Council considers evidence that is enforceable when assessing nuisance from condensing boilers?)

Context:

I attach, at the end of this request, a number of photographs, taken at different times since 2015 when the boiler was installed. Since then, it caused nuisance and it continues to cause nuisance.

Question 21:

Do photographs enclosed at Appendix to this request demonstrate that nuisance is occurring? If not why not?

Question 22:

Do lose cables shown on photographs enclosed at Appendix to this letter point to nuisance and possible danger and damage (ie fire risk) to my property which is in close proximity?

**Context**

**In 2019 Gas Safe undertook another investigation and as part of it they visited my property. Gas Safe explained again (in person and in writing) that their remit was limited to safety and that the Council is responsible for addressing the nuisance. Gas Safe confirmed (in person and in writing) that in their opinion the installation represented a nuisance to me.**

**Gas Safe sent another report to my neighbour. This report confirms that the installation is “non compliant” and explains that this is because the product of combustion discharges across the boundary. I requested and was sent a copy of this report by Gas Safe in accordance with rules imposed on Gas Safe by the HSE ie in accordance with FOI regulations.**

**Question 22:**

**Is Barnet Council in possession of a copy of the letter that Gas Safe sent to my neighbour in February 2016?**

**Question 23:**

**Is Barnet Council in possession of a copy of the letter that Gas Safe sent to my neighbour in February 2019 after it carried out further investigations?**

**Context**

**Both of these reports confirm that the installation is not compliant and that it is not a remit of Gas Safe to deal with nuisance**

**Question 24:**

**Does Barnet Council disagrees with the content of the reports prepared by Gas Safe? If it disagrees with the reports, please explain why?**

**Question 25:**

**As the reports states that the installation is non compliant, and as Barnet Council relies upon Gas Safe for assessment of boiler installations, has Barnet Council undertaken any action? If yes, what action did it take? If not, why not?**

**Context:**

**Gas Safe met with Barnet Council with a view to resolving the issue. Gas Safe explained to me, in their letter dated 25 Feb ’19, as follows:**

“During the meeting with Barnet Council on Friday the 8thFebruary 2019 Barnet Council provided Mr R Denman a high level over view of their investigation and the findings regarding the allegation of nuisance from number 8 Nant Rd, NW2 2AJ. Barnet Council provided an insight into the investigation that they have conducted with dealing with this complaint and the reasoning to explain why it was not deemed a nuisance in accordance with the Environmental Protection Act. Barnet Council hold statutory legal powers for dealing with alleged nuisance caused by neighbouring domestic gas boilers and it is not for Gas Safe Register to challenge the decision that they have made. As the meeting was facilitated by Barnet Council Mr R Denman did not take minutes of the meeting and you may wish to contact Barnet Council to enquire if meeting minutes are available.”

**Question 26:**

**Are minutes of the meeting, held of 8 Feb 2019, and related to the complaint of nuisance I submitted to the Council available? If yes, could I please have a copy of the minutes?**

**Question 27:**

**If minutes are not available, could you please provide me with the information that you provided to Gas Safe at the above mentioned meeting?**

**Context**

**Gas Safe explained to me, in person and in writing, that they have no legislative powers to enforce my neighbour to install the extension kit to stop the nuisance, and that the Council has such powers. They confirmed this after the meeting with Barnet Council in their letter dated 25 Feb ’19, when they wrote as follows:**

“Following the meeting on the 8thFebruary 2019 with Gas Safe Register and Barnet Council it was agreed that we would be a signee on the outgoing letter to you as an acknowledgement to the references made within the letter that relate specifically to Gas Safe Register and to avoid either party issuing the letter being misquoted. By signing the letter Gas Safe Register are not acting as an agent of Barnet Council. For the avoidance of doubt none of the actions taken by either party are deemed to have created a partnership, or relationship of principal and agent between the parties, or authorise either party to make representations or enter into any commitments for or on behalf of the other. If you feel that the Council have misrepresented any facts or have any queries this is a matter between you and the Council...

Please note that Gas Safe Register are not an authority on the Environmental Protection Act (EPA) and we can only conduct ourselves within our defined remit as specified by the Health and Safety Executive. Any action taken or considered under the EPA is a matter for the local Authority who hold the necessary legal powers.”

**Question 28:**

**Does Barnet Council agrees with the position of Gas Safe as presented to me in their letter from which I quote above?**

**Question 29:**

**If, after numerous complaints, supported by rules, guidelines and reports prepared by Gas Safe, Barnet Council still consider that the smoke causes no nuisance to me, what is its reason for this assessment?**

**Context**

**In a letter dated 13 February 2019 addressed to me, James Armitage says that during several visits to my property, the Council was not able to establish that statutory nuisance exists.**

**Question 30:**

**When did these “several” visits take place? I ask because I am not aware of the several visits to which Mr Armitage refers, so could you please provide me with the dates of these visits and the assessment made at the visits?**

**Question 31:**

**Was the boiler which emits smoke that discharges across to my property switched on during your visits or was the boiler switched off during the visits?**

**Question 32:**

**Because there is a discrepancy of fact with regards to the alleged numerous visits (I am not aware of those visits), please provide detailed notes of the visits to which Mr Armitage refers?**

**Question 33**

**How many complaints has Barnet Council received, over the last 5 years, in relation to nuisance caused from smoke from condensing boilers?**

**Question 34**

**How many abatement notices has Barnet Council issued, over the last 5 years, as a result of their investigations of nuisance from condensing boilers?**

Appendix - photograps

|  |  |
| --- | --- |
| C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0646.jpg | C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0648-2.jpg |
| C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0653.jpg | C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0649.jpg |
| C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0510.jpg | C:\Users\RichardClerk\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\IMG_0502-2.jpg |
| View of persistent clouds of white smoke taken from bedroom window | |

 

Since the installation of this boiler, flue and additional piping in 2015, a number of outlet pipes began to leak, including the sewer pipe. This can be clearly seen on a day when temperature falls below zero and frozen water forms icicles on leaking pipes and lose cables (the two pictures above were taken on 1 March 2018). This arrangement is unsatisfactory as the sewer pipes produce smells, particularly noted in hot weather. It appears that the heat from the flu has had an effect on the surrounding pipes.



         