

## Case File

**NB This scenario focuses on the activities of a small metal fabricating and paint spraying business. No special knowledge of such a business is required as all information necessary to undertake the tasks is provided.**

You are employed as an EHP working for Chadwick Valley Borough Council's Public Protection Team. The authority has recently reorganised its public protection service and this reorganisation has seen its specialist teams disbanded and 6 new general district posts created to cover all aspects of environmental health within defined areas of the Borough. You hold one of the district officer posts for the council and cover all aspects of environmental health in the north of the Borough.

The village of Yatton is a 'ribbon development' village on your district which has expanded considerably over the last 40 years and has been identified as one of the locations within the Borough where additional housing is to be provided at its north-end and where a large housing estate already exists alongside pockets of small-scale industry. Development has already commenced by Bloore Homes to build 85 new homes on the site marked on the attached plan – approximately 15 new homes have already been completed and sold and new residents are starting to move in.

During the planning process covering the Bloore Homes development, you advised the planning department against granting permission for the development due to the proximity of the site to the premises of Batavon Group Steel Fabricators and Michael Burdge Ltd's concrete batching plant (both identified on the plan), both of which are known to you as sites that operate processes of environmental health significance and which have been the subject of numerous complaints in the recent past from residents living in Arnolds Way and Hawthorne Crescent.

Now that residents of the new homes are starting to move in, the last month has seen you receive 5 complaints from the new residents as well as 3 additional complaints from existing residents in Hawthorne Crescent concerning early morning noise from the steel fabrication premises. Of the residents of Hawthorne Crescent, complaints from the Rev. Simon Hill (retired) and his wife Julia are the most numerous and vociferous. The Hills live in premises that are marked on the attached plan and, at their closest, the bottom of their garden lies less than 50 metres from the Batavon Group's site and they are complaining of noise associated with early morning (prior to 6-30am) deliveries to the site on at least three days each week. The hitherto normal working hours of the site are 7-30am to 4-30 pm Monday to Friday.

The Batavon Group's Yatton premises is one of three sites within the group whose registered office is at the Yatton site (3 North End, Yatton, BS49 4EQ). The group's managing director is Mr Giles Jones and the Company Secretary is Mr Jones's wife, Emilia Jones. Batavon have operated from the site over the last 27 years and the company has grown rapidly during this time and now employs 25 people in Yatton. The Yatton site started life as a steel stockholders but is now expanding to also include steel beam fabrication and small-scale paint coating for the finished, fabricated beams. Chadwick Valley Borough Council is the enforcing authority for health and safety on the site.

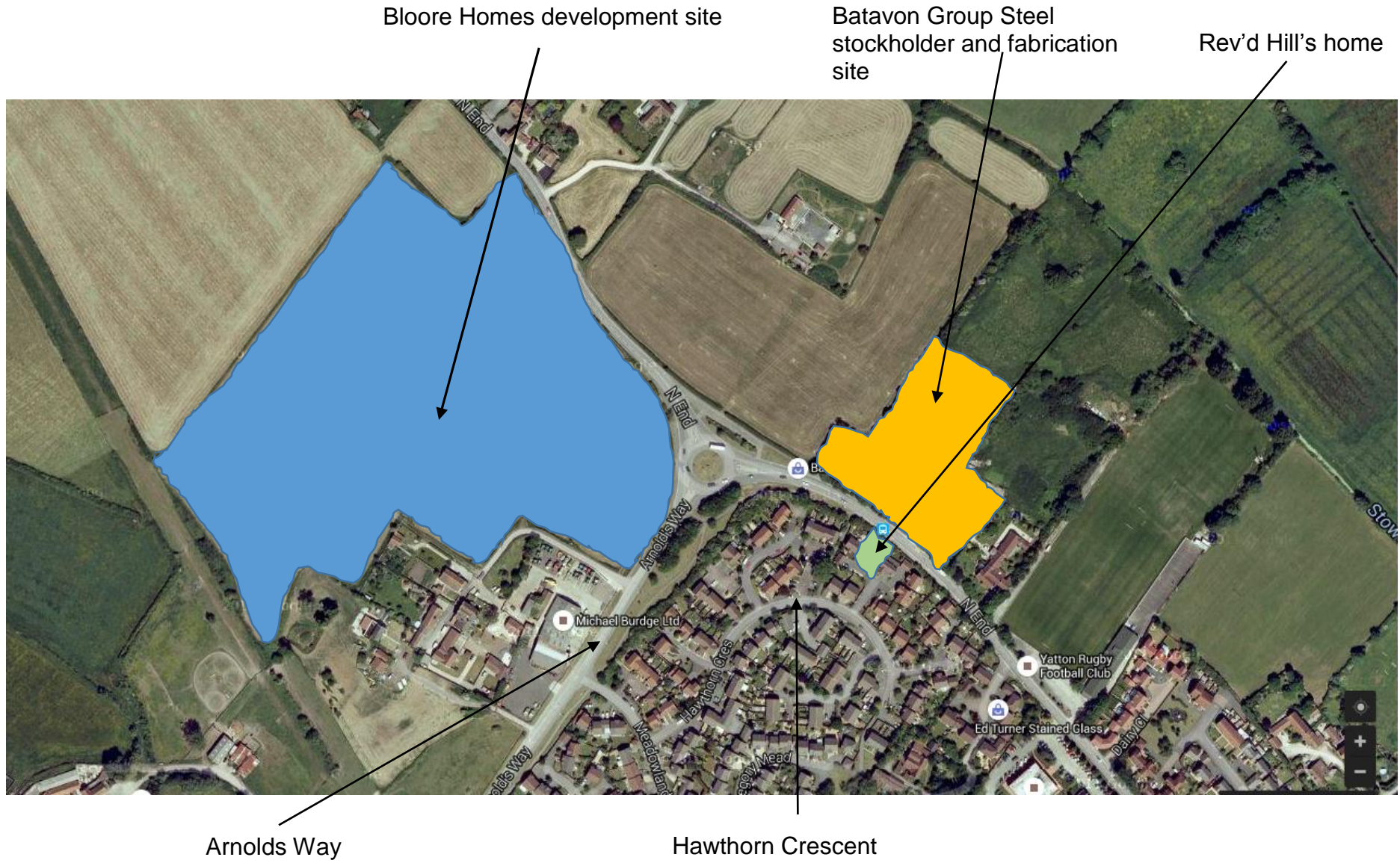
Following receipt of the latest complaints and bearing in mind the repeated and vociferous nature of the Rev'd Hill's complaints, you visit Batavon's premises where you meet the work's

manager (Mr Eamon O'Leary), advise him of the new complaints, tour the site and, during discussions with Mr O'Leary, you record the following in your note book:

1. The business principally remains a steel stockholders and 'trade-only' steel retail premises.
2. Due to a recent upturn in the business, uncoated steel beams have, over the last few months, started to be delivered 2/3 time per week from the steel rolling mills in Port Talbot (South Wales) on covered articulated lorries that arrive between 6-30 and 700am. The steel is then unloaded using forklift trucks and the on-site crane before being stored on open air racking before being either sold-on and collected by end-users or being fabricated and coated on-site for use in the construction industry.
3. Mr O'Leary told me that the site's working hours have now generally expanded to 6-30am to 4-30pm.
4. Mr O'Leary confirmed that the steel fabrication and coating part of the business is now growing quite quickly and I have advised him that the Company will need to make an application to the Council for a Local Authority Air Pollution Control (LAAPC) permit under the Environmental Protection Act in respect of the paint coating process.
5. Batavon's risk assessments under Health and Safety at Work Act DO NOT cover the steel fabrication and paint coating activity – this needs to be urgently addressed!
6. Prior to being coated with paint, fabricated steel beams are de-greased inside the fabrication building in large open tanks containing a solvent. Mr O'Leary has confirmed that the solvent is trichloroethylene ('Trike') which is supplied and delivered to site by ICP Chemicals Ltd at least once per month.
7. Mr O'Leary handed me a copy of a fading and un-dated safety data sheet for 'trike' but confirmed that neither he nor his workers know much about the solvent, haven't undertaken any kind of risk assessment in respect of its use under the Control of Substances Hazardous to Health Regs (COSHH) and, beyond using protective gloves, no other personal protective equipment (PPE) is used. Mr O'Leary admitted that he wouldn't know where to start with such a risk assessment and asked me to advise him on what needs to be done.
8. Mr O'Leary advised me that once lowered into the degreasing tanks, beams are held there for a short period of time before being removed and allowed to dry by evaporation before further processing.

*A separate reading pack is provided in support of this case file that includes a copy of the safety data sheets and guidance documents issued by HSE. Candidates will find these useful in addressing some of the tasks.*

**Site Plan**





## Tasks

### Task 1

Outline and discuss the process you would follow to determine whether the complaints of noise, associated with the early morning deliveries of steel beams to the site, amount to a statutory nuisance under the Environmental Protection Act 1990; taking care to cite, where appropriate, the Common Law 'tests of nuisance' and other, relevant case law that establishes a framework for such a process.

### Task 2

Critically evaluate the intervention options available to you, should your investigation reveal that noise, arising from early morning deliveries of steel beams to the site, amounts to a statutory nuisance.

### Task 3

- a) Draft brief written advice to Mr O'Leary on the issues to be included in a 'suitable and sufficient' assessment of risk associated with the use of the solvent Trichloroethylene as a degreasing agent on site, as required by the Control of Substances Hazardous to Health Regulations 2002; and
- b) Outline the control measures that you expect Mr O'Leary to consider implementing in respect of its use.

### Task 4

Briefly describe the enforcement interventions open to you in respect of the uncontrolled use of Trichloroethylene at the Batavon site under the Health and Safety at Work etc. Act 1974 and identify the one you intend to pursue, taking care to offer a full justification for your choice.

## Marking advice

### Task 1

Outline and discuss the process you would follow to determine whether the complaints of noise, associated with the early morning deliveries of steel beams to the site, amount to a statutory nuisance under the Environmental Protection Act 1990; taking care to cite, where appropriate, the Common Law 'tests of nuisance' and other, relevant case law that establishes a framework for such a process.

*This questions simply sets out to test the candidate's understanding of the process to be followed to investigate a complaint of noise that may amount to a statutory nuisance.*

*The expectation is that, as a minimum, the candidate will mention the following:*

- *The requirement set out in the EPA '90 to investigate the complaint*
- *Possible use of diary sheets and/or complainant activated recording/monitoring equipment.*
- *Case law requirement that where an EHP can physically go and witness the nuisance complained of then they should do so. (Ritchings –V- Johns)*
- *Application of principles to emerge from NCB –v- Thorne (1976) regarding the requirement for an EHP to apply the common law test of nuisance as part of the process i.e.*
  - *Excessiveness of the conduct*
  - *Malice*
  - *Character of the neighbourhood*
  - *Time and nature of the incident*
  - *Unusual sensitivity*
  - *Inherent unreasonableness*
- *Reference may be made to BS4142 BUT candidate must state that the final decision is that of the EHP based on the evidence and their professional judgment*

### Task 2

Critically evaluate the intervention options available to you, should your investigation reveal that noise, arising from early morning deliveries of steel beams to the site, amounts to a statutory nuisance.

*This is a straightforward task in which the candidate must demonstrate the skill of critical evaluation.*

*Really there is but one answer to this question – the law requires the service of a statutory notice. Those mentioning this will get extra credit but the expectation is that candidates will explore other options that include:*

- *Verbal warnings; and*
- *Warning letters*

**Task 3**

- a) Draft brief written advice to Mr O'Leary on the issues to be included in a 'suitable and sufficient' assessment of risk associated with the use of the solvent Trichloroethylene as a degreasing agent on site, as required by the Control of Substances Hazardous to Health Regulations 2002; and

*The candidate is expected to be able to address their response to this task in terms of the following framework:*

*All significant hazards have been identified*

*The risks have been properly evaluated considering likelihood and severity of harm*

*Measures necessary to achieve acceptable levels of risk have been identified*

*Actions have been prioritised to reduce risks*

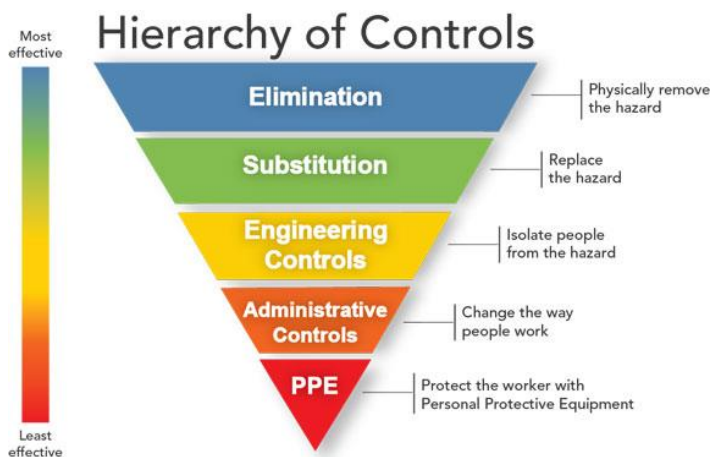
*The assessment will be valid for some time*

*Actual conditions and events likely to occur have been considered during the assessment*

*Everyone who may be harmed has been identified and considered*

- b) Outline the control measures that you expect Mr O'Leary to consider implementing in respect of its use.

*Again a simple answer which should be framed by the candidate around the following but bearing in mind that this is a practical test; reference must be made to the specifics within the scenario:*

**Task 4**

Briefly describe the enforcement interventions open to you in respect of the uncontrolled use of Trichloroethylene at the Batavon site under the Health and Safety at Work etc Act 1974 and identify the one you intend to pursue, taking care to offer a full justification for your choice.

*The candidate must respond by stating that action is proportionate to the severity and likelihood of the harm posed in this case.*

*The candidate should go on to discuss the use of improvement, prohibition notices AND prosecution taking care to justify the use of one or more of these dependant on the level of risk posed.*