



## Communities Scrutiny Group

Thursday, 5 October 2023

### Review of Smoke Control Areas

## Report of the Director – Neighbourhoods

### 1. Purpose of report

- 1.1. This report provides the background information required to enable members to input and shape a public consultation on revised smoke control orders within the Borough.

### 2. Recommendation

It is RECOMMENDED that the Communities Scrutiny Group:

- a) considers on the options provided for smoke control areas within the Borough
- b) indicates a preferred option enabling public consultation to take place
- c) recommends its preferred option to Cabinet for adoption.

### 3. Reasons for Recommendation

The report sets out four options for the Council to consider in Paragraph 4.22. The Government's Air Quality Strategy priorities include the reduction of pollution from domestic burning through Smoke Control Areas (SCAs) and use of cleaner fuels. The strategy clearly states the Government's expectation that local authorities use their powers to reduce PM<sub>2.5</sub> and that all councils should support the delivery of national PM<sub>2.5</sub> targets by taking action to reduce emissions from sources within their control. It is therefore officers' recommendation that the Council revokes the existing Smoke Control Orders and declares a new Smoke Control Order to cover the entire Borough (Option D).

### 4. Supporting Information

- 4.1. In 1952, London experienced a smog which lasted for five days, leading to the Government passing the first Clean Air Act in 1956. This was an important moment in public health. This Act allowed local authorities to declare parts of their areas to be "smoke control areas". A great deal of work was done by local authorities to make sure that open fireplaces were replaced by appliances that used only "smokeless" fuels – either solid fuel or gas, and grants were given towards the cost of the work. The designation of SCAs in towns and cities in the UK made a dramatic difference in air quality, with smoke and sulphur dioxide levels greatly reduced. The 1956 and 1968 Clean Air acts were repealed by the Clean Air Act 1993 which consolidated and

extended the provisions of the earlier legislation. The Environment Act 2021 makes amendments to the Clean Air Act 1993 as outlined in this report.

- 4.2. Air pollution can impact health when there is exposure over a lengthy period increasing the risk of those being exposed to it of developing certain health conditions.
- 4.3. One of the main pollutants of concern is particulate matter (PM), with the smaller particles, referred to as PM<sub>2.5</sub>, identified by the World Health Organization as the most damaging to human health. It is accepted that there is no safe level of PM<sub>2.5</sub> pollution so any reductions of emissions of this pollutant, especially in locations close to where people live and are exposed to it, will be beneficial to health.
- 4.4. In the UK, domestic burning accounted for 27.3% of total PM<sub>2.5</sub> emissions in 2021. The use of wood alone in domestic indoor burning activities accounted for 20.5% of PM<sub>2.5</sub> emissions in the same year. The level of exposure to pollution from this source is potentially much greater than the emissions from industry and manufacturing because people live much closer to home chimneys than they do from most industrial sources, so there is less opportunity for the pollution to disperse before people are exposed to it. Pollution is also released directly into the home when open fires and stoves are used.
- 4.5. The emissions from a small number of solid fuel appliances, especially if they are operated in a manner that does not comply with the regulations, could raise short term pollution levels enough to directly impact the health of vulnerable individuals.
- 4.6. The Air Quality Strategy for Nottingham and Nottinghamshire 2020–2030 provides estimated reductions in mortality and morbidity across Nottinghamshire for a ten-year period from 2017 if levels of particulate matter (PM<sub>2.5</sub>) were reduced to lower than 12µg m<sup>-3</sup>. The modelled estimates for Rushcliffe indicate a reduction of approximately 1200 cases of heart disease, respiratory illness, stroke, diabetes and lung cancer and a reduction in the annual number of deaths of 113 with a reduction in PM<sub>2.5</sub> exposure. The corresponding estimated cumulative costs avoided is in the region of £12.75million for PM<sub>2.5</sub>.
- 4.7. According to the UK Health Security Agency (formerly Public Health England), poor air quality is considered to be the largest environmental risk to public health in the UK. Air pollution can cause health impacts across a person's lifetime, contribute to health inequalities and impact on NHS and social care costs.
- 4.8. The vision for the Air Quality Strategy for Nottingham and Nottinghamshire 2020-2030 is for all of Nottinghamshire residents and visitors to have clean air that allows them to lead healthy and fulfilling lives. Strategic objective three relates to reducing, minimising and preventing emissions from all sources and activities, including by enforcing existing (e.g., smoke control orders) and any

new legislation that minimises emissions from commercial and domestic solid fuel combustion.

- 4.9. The Rushcliffe Borough Council Climate Change Strategy 2021-30 highlights the Council's commitment to tackling climate change and to making a major contribution to reducing greenhouse gas emissions for the Borough.
- 4.10. The Rushcliffe Air Quality Action Plan 2021-2026 includes a measure to increase residents' awareness of changes in legislation that seek to improve air quality and take enforcement action, as necessary. Once a final decision is made by Cabinet on the preferred option it is anticipated that a comprehensive media campaign will be undertaken to increase public awareness.
- 4.11. The Strategy states that local authorities should keep the boundaries of existing SCAs under review, especially if development has taken place outside of the boundaries. They should consider whether it would be beneficial to declare a new SCA. Local authorities with SCA are expected to enforce restrictions which apply within those areas. All local authorities should enforce solid fuel regulations - fuel sold for domestic purposes should have the 'Ready to Burn' logo. No retailers should be selling traditional (bitumous) coal for indoor domestic burning from 1 May 2023. It should be noted that it is expected that this element will be enforced by Trading Standards colleagues at Nottinghamshire County Council.
- 4.12. Government expects that in most cases providing information to householders will be sufficient to address smoke emissions in SCA. However, where this is not the case, it is expected local authorities will enforce the SCA.
- 4.13. The Government is not considering a ban on domestic burning in England as there is recognition that some householders are reliant on solid fuel burning as a primary source for heating, hot water and cooking.

#### **What is a Smoke Control Area?**

- 4.14. Anyone responsible for premises within a SCA must not:
  - Allow smoke emissions from the chimney of a building;
  - Obtain and use solid fuel (including logs), other than authorised fuel; and
  - Tradespersons must not sell by delivery solid fuel, other than authorised fuel to premises located within the SCA.
- 4.15. Exemptions do apply however, and Department for the Environment, Food and Rural Affairs (DEFRA) approved 'authorised fuels' can be used within SCAs because they burn either without causing smoke or are fuels that contain less harmful pollutants. In addition, 'exempt appliances' that are specifically listed in regulations can be used in SCAs because they have passed tests to demonstrate that, when used correctly and with the fuel for which they are designed, they are capable of burning solid fuel without emitting harmful smoke. For example, certain wood-burning stoves would qualify as exempt appliances. It should be noted that there are no

Government funded grants available to support the replacement of unauthorised appliances.

- 4.16. Unauthorised fuel, such as logs or coal, cannot be burnt in an open fireplace or wood burning appliance within a SCA. These fuels produce smoke containing harmful pollutants which have an impact on health and the environment. It should also be noted that it is already an offence to acquire or sell unauthorised fuels e.g. logs to be used within a SCA.
- 4.17. Permanent moorings including moored vessels may be entitled to apply for reimbursement from the Council to upgrade their solid fuel appliance to comply with the SCA requirements (up to 70% of the total cost). There is a legal duty for the Council to reimburse permanent moorings only. RBC does not hold specific records on numbers of permanent moored vessels in the Borough. However, an initial data query would indicate there are likely to be fewer than 30 (located in Barton in Fabis, Ratcliffe on Soar and Wilford Lane West Bridgford).

#### **Existing Smoke Control Area coverage across Rushcliffe**

- 4.18. The existing SCA coverage includes parts of West Bridgford and Edwalton as shown by the shaded area in Appendix 1. This area was declared under a series of nine separate Smoke Control Orders in the 1970s and early 1980s.

#### **Environment Act 2021 Changes**

- 4.19. The Environment Act 2021 made amendments to The Clean Air Act 1993 and came into force on 1 May 2022. It:
- introduced civil financial penalties for smoke emissions in a SCA;
  - strengthened the offences in relation to the sale of certain solid fuels for use in SCAs;
  - provision to include moored vessels in a SCA (although this is not a requirement).
- 4.20. Before making a smoke control order there is a legal requirement for the Council to undertake a public consultation exercise which, in addition to the normal channels, will include publishing a notice detailing the proposals in the London Gazette and a local newspaper. The Council is required to consider any objections which currently will be brought as part of a final report and recommendation to the meeting of the Cabinet in January 2024. An order shall come into operation not less than six months after it is made. The consultation on any proposed changes to the SCA coverage across the Borough will last for at least four weeks and will be widely publicised through our usual communication channels.
- 4.21. It is currently proposed that the Council will need to consider one of the following options:

**Option A** - Do nothing / Leave unchanged – coverage remains limited to parts of West Bridgford and Edwalton;

**Option B** - Revoke the existing Smoke Control Orders and seek to declare a Smoke Control Order to cover the whole of West Bridgford, Gamston and Edwalton;

**Option C** - Revoke the existing Smoke Control Orders and seek to declare new Smoke Control Orders to cover the whole of West Bridgford, Gamston and Edwalton and the larger town and villages areas across the Borough including Bingham, East Leake, Keyworth, Ruddington, Radcliffe on Trent and Cotgrave;

**Option D** - Revoke the existing Smoke Control Orders and seek to declare a Smoke Control Order to cover the entire Borough. Within this option the Council can also decide whether to include moored vessels in the Smoke Control Order.

### **Enforcement**

- 4.22. The Council will need to develop an underlying policy to support enforcement action. This will sit underneath the Council's Corporate Enforcement Policy and will detail how the civil financial penalty provisions will be implemented in the SCA. The Environment Act 2021 enables the Council to issue a civil financial penalty of between £175 to £300 if smoke is emitted contrary to the requirement of the smoke control order. It is proposed that the penalty level will be based on the seriousness and repetition of offences with the statutory minimum (£175) for the first offence, increasing to £225 then £300 for subsequent offences.
- 4.23. It is expected that enforcement will be based on intelligence and complaints rather than proactive checks and will need to follow the Council's Corporate Enforcement Policy which encourages a reasonable and proportionate approach. An indicative outline procedural flowchart is provided in Appendix 2.
- 4.24. Once smoke is observed emanating from a chimney within the smoke control order area, the Act enables the Council to issue an Improvement Notice to the occupier of the property. This notice will contain information including the SCA restrictions, when smoke was seen, how the person can burn solid fuels in a SCA legally, and what happens next. If smoke is again observed, then the Council will issue a Notice of Intent to the building occupier which informs them that there is enough evidence to prove that smoke was emitted from their chimney in a SCA, when the smoke was observed and the Council's intention to issue a civil penalty. The occupier has the right to object in writing to the proposed financial penalty within 28 days from the day after the notice was given and must do so with supporting evidence. If the building occupier does not object to the notice of intent or if the objection is not accepted a final

notice will be issued detailing the amount of the fixed penalty to be paid within 28 days.

- 4.25. The declaration of a SCA does not impact on outdoor barbeques, chimineas or pizza ovens unless the appliance uses a chimney on the roof of a building e.g., a summerhouse. Garden bonfires are not prohibited in an SCA however existing statutory nuisance laws will still apply.

## 5. Risks and Uncertainties

Option	Potential benefits	Potential risks
A	<p>Retain existing SCAs</p> <p>No change to existing system</p> <p>No impact on residents during a cost of living crisis</p>	<p>RBC not aligned with the Government Air Quality Strategy.</p> <p>RBC not aligned to corporate objectives</p> <p>Perceived inequality across the Borough.</p> <p>Not making changes to the existing coverage could be perceived by residents as a lack of interest in taking measures to improve air quality and public health</p> <p>Existing SCAs have not been reviewed since their inception in the 1970s and 1980s. The urban areas defined in the SCAs have expanded significantly in that time.</p>
B	<p>Reviewing and updating the smoke control orders will ensure they are brought up to date.</p> <p>Limited changes to the existing system</p> <p>Limited impact on residents during a cost of living crisis</p>	<p>RBC not aligned with the Government Air Quality Strategy.</p> <p>RBC not aligned to corporate objectives</p> <p>Perceived inequality across the Borough</p> <p>Not making significant changes to the existing coverage could be perceived by residents as a lack of interest in taking measures to improve air quality and public health</p>
C	<p>New Orders focussed on more urban areas of the borough where higher concentrations of pollution would be expected and the majority of people live but minimising impact in rural areas of the Borough.</p> <p>Better alignment with the Governments Air Quality Strategy and the Councils corporate objectives</p> <p>Demonstrating readiness to take action to improve public</p>	<p>Perceived inequality across the Borough.</p> <p>Extending coverage could be viewed negatively particularly due to current cost of living crisis owing to the impact of higher fuel costs and new approved replacement appliances.</p> <p>Anybody who buys or sells controlled solid fuels in a SCA is guilty of an offence and could be prosecuted except if it is for use in an approved fireplace. In effect anyone who wishes to continue to burn a controlled fuel such as logs will need to ensure that they are doing so using an approved appliance. It is anticipated that it would cost in excess</p>

	<p>health outcomes</p> <p>Increasing coverage will reduce smoke emissions and therefore improve public health outcomes for the majority of residents</p>	<p>of £1,500 to upgrade each appliance.</p> <p>Impact on residents with open fireplaces and wood burning appliances and existing business that sell and deliver logs within the borough.</p>
D	<p>Alignment with the Governments Air Quality Strategy and the Council corporate objectives.</p> <p>Demonstrating readiness to take action to improve public health outcomes.</p> <p>Equality across the Borough</p> <p>Increasing coverage will reduce smoke emissions and therefore improve public health outcomes for all residents</p>	<p>Extending coverage could be viewed negatively particularly due to current cost of living crisis.</p> <p>Anybody who buys or sells controlled solid fuels in a SCA is guilty of an offence and could be prosecuted except if it is for use in an approved fireplace. In effect anyone who wishes to continue to burn a controlled fuel such as logs will need to ensure that they are doing so using an approved appliance. It is anticipated that it would cost in excess of £1,500 to upgrade each appliance.</p> <p>Even greater impact on residents with open fireplaces and wood burning appliances and existing business that sell and deliver logs within the borough.</p>

## 6. Implications

### 6.1. Financial Implications

6.1.1. Implementation costs will be covered by the DEFRA Air Quality New Burdens Grant for 2022/23 (£11,710 was received in June 2023).

6.1.2. Permanent moorings including moored vessels may be entitled to apply for reimbursement from the Council to upgrade their solid fuel appliance to comply with the SCA requirements (up to 70% of the total cost). It is believed that the cost of the upgrade could be as much as £3k and current estimates suggest we have a maximum of 30 such moorings. It has not yet been confirmed if DEFRA will provide additional funding for this and therefore this could be a cost burden for the Council. It is however an option to exclude moored vessels from the SCA which would mitigate this risk.

6.1.3. Any associated enforcement costs will be contained within existing budgets.

### 6.2. Legal Implications

This report supports the use of statutory powers to deal with offences of a smoke control order.

### 6.3. Equalities Implications

An Equalities Impact Assessment has been undertaken which identified no major or adverse impact (Appendix 4).

### 6.4. Section 17 of the Crime and Disorder Act 1998 Implications

The implications of the Crime and Disorder Act have been considered.

### 6.5. Biodiversity Net Gain

There are no Biodiversity Net Gain implications contained within this report.

## 7. Link to Corporate Priorities

The Environment	Reduction of harmful pollutants to the environment and supports climate change strategy
Quality of Life	Protection of public health
Efficient Services	None
Sustainable Growth	None

## 8. Recommendations

It is RECOMMENDED that the Communities Scrutiny Group:

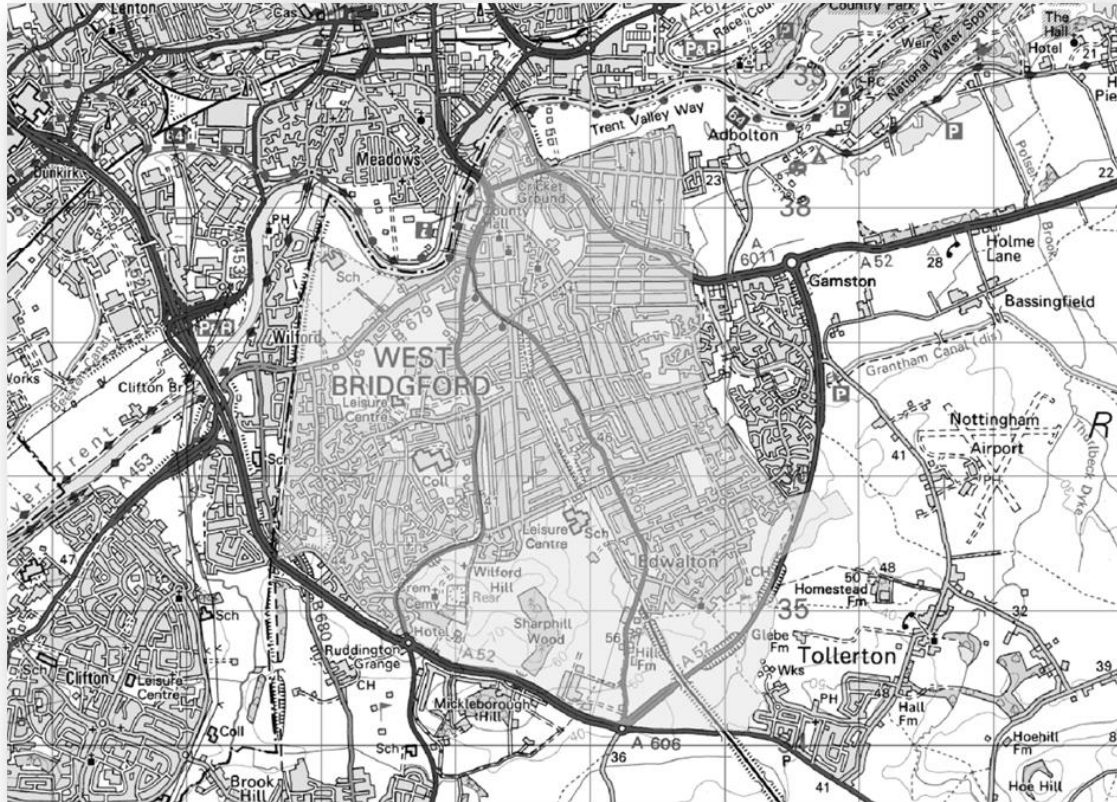
- a) considers on the options provided for smoke control areas within the Borough
- b) indicates a preferred option enabling public consultation to take place
- c) recommends its preferred option to Cabinet for adoption.

<b>For more information contact:</b>	Geoff Carpenter Service Manager - Public Protection <a href="mailto:gcarpenter@rushcliffe.gov.uk">gcarpenter@rushcliffe.gov.uk</a> 0115 9148229
<b>Background papers available for Inspection:</b>	Nottinghamshire Air Quality Strategy RBA Air Quality Status Report 2023 Rushcliffe Borough Council Climate Change Strategy 2021-30 Rushcliffe Air Quality Action Plan 2021-2026 <a href="#">Smoke Control Areas - do you know the rules? A practical guide (defra.gov.uk)</a>



<b>List of appendices:</b>	Appendix 1- current extent of SCA coverage across the Borough Appendix 2 – outline procedure for issuing a fixed penalty notice Appendix 3 – Scrutiny Matrix Appendix 4 – Equality Impact Statement
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Appendix 1 1 Shaded (grey) area depicts current extent of SCA coverage across the Borough



## Appendix 2 Outline Procedure for Issuing a Fixed Penalty Notice

