



Performance Management Board

Tuesday, 27 November 2018

Environmental Health Enforcement Update

Report of the Executive Manager – Neighbourhoods

1. Purpose of report

- 1.1 This report provides information on the delivery of the Council's Environmental Health service and in particular its approach to enforcement work to secure compliance.
- 1.2 The report enables the Board to be informed of the nature and extent of enforcement work undertaken within environmental health services and to comment on this information.

2. Recommendation

It is RECOMMENDED that

- a) The Board consider, make comment on and endorse the work and performance of the Environmental Health service as outlined in this report and the accompanying presentation.

3. Reasons for Recommendation

- 3.1 This is an opportunity for the Board to comment on the Council's Environmental Health Enforcement activity and identify any areas for further improvement.

4. Supporting Information

- 4.1 Environmental Health is a statutory regulator and enforces a wide range of legislation that ensures the health, safety and well-being of our communities and encompasses the following services.



- 4.2 The service undertakes statutory enforcement activities and provides a range of regulatory and advisory services to the council, local businesses, members of the public, residents and visitors to the Borough.
- 4.3 The work of the service comprises both programmed or planned activities and reactive work in response to service requests or complaints. The activities are diverse and wide ranging and frequently risk based therefore some activities are undertaken only on a reactive or infrequent basis often in accordance with statutory requirements and/or within national guidelines. This report details the principal activities and associated enforcement activities that are undertaken.
- 4.4 The current Corporate Enforcement Policy was adopted in March 2010 and was last revised in June 2017. The policy is an umbrella policy which applies to legislation enforced or administered by the Council in the following service areas and to officers engaged in enforcement activity in those areas:
- a) street cleansing
 - b) 'enviro' crime – fly tipping, graffiti, litter, abandoned vehicles
 - c) environmental health – food safety, health and safety, private sector housing, environmental protection, statutory nuisance, dogs
 - d) licensing
 - e) building control
 - f) planning and development control (now referred to as Planning and Growth)
 - g) benefit fraud.
- 4.5 Environmental Health promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes and secure compliance without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 4.6 The primary purpose of enforcement is to generate action which will protect the public. This includes protecting health and safety, the environment, business and legitimate economic interests. The enforcement policy sets out how the Borough Council will generally carry out its enforcement functions and each service will then operate in accordance with its own practices and

legislative requirements. This report deals solely with the Environmental Health enforcement function. It should also be noted that Licensing enforcement has not been considered in the scope of this report.

4.7 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

4.8 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

4.9 The criteria to be taken into account when considering the most appropriate enforcement option include:

- The seriousness of the offence or contravention;
- The history
- The likelihood of compliance
- The consequence of non-compliance
- The likely effectiveness of the enforcement options

4.10 Having considered all the relevant options the choices for action for most environmental health legislation include the following:

Action Type	Circumstances
Informal Warnings	Usually written letters which will often prompt action by the recipient to secure compliance
Statutory Notices (including Fixed Penalty Notices and Community Protection Notices)	Used in appropriate cases and may be used in conjunction with other action, such as prosecution, as appropriate.
Cessation Notices	There may be circumstances where due to the significant risk of harm to the public, individuals or the environment that employment of a specific operation, premises or piece of equipment is either permanently or temporarily prohibited.

Simple Caution	Used as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
Prosecution	A prosecution is appropriate where there is a breach of a legal requirement and prosecution is considered to be in the public interest

Regulatory Themes

4.11 Environmental Protection

4.12 This function includes the issuing, monitoring and regulating of environmental permitted processes e.g. petrol stations, dry cleaners etc. Assessment and monitoring of local air quality and investigating atmospheric pollution complaints. The monitoring and investigation of noise and other nuisance complaints in respect of industrial / commercial premises. The service is also consultee to borough council and county council planning departments as well as licensing applications and the investigation and remediation of contaminated land.

4.13 The team also delivers the councils Dog Warden / Pest Control functions and is responsible for seizing stray dogs, enforcing dog fouling laws and other dog control orders, promoting responsible dog ownership – including microchipping, investigating dangerous dog related complaints and inspecting animal related businesses under the new animal welfare licensing requirements. They also provide pest control services / treatments to residential premises across the Borough and treat sewers to manage rodent populations.

Activity	2016-17	2017-18	2018-19 (6-mths)
Risk based inspections of permitted process	5	25	2
Notices to permitted processes	0	0	0
Complaints about noise (industrial/commercial)	158	145	87
Complaint about dust (industrial/commercial)	10	12	11
Complaints about smoke (industrial/commercial)	85	72	34
Nos of Abatement Notices served	2	2	1
Prosecutions	0	0	0
Stray Dogs Seized	143	162	64
Dog Fouling FPNs	1	0	0

Total Number of Requests for Service	2886	2786	1864
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4.14 The caseloads within environmental protection are reasonably stable but frequently involve quite complex investigation. Most cases are resolved via informal means i.e. advice and subsequent behaviour change by the perpetrator rather than formal action.

4.15 **Community Safety**

4.16 The community safety team undertakes the following activities – investigation of domestic nuisance complaints in respect of noise, dust, smoke, accumulations etc. The investigation of anti-social behaviour and environmental crimes such as fly tipping, fly posting and litter. The service also works closely with the Police and the South Notts Community Safety Partnership to help prevent crime through targeted campaigns e.g. bike marking and other proactive work such as ShopWatch .

Activity	2016-17	2017-18	2018-19 (6-mths)
Enviro crime Notifications	1133	559	242
Enviro crime FPNs	90	22	47
Enviro crime Prosecutions	2	0	3
ASB complaints	143	144	83
Complaints about noise (domestic)	168	167	119
Seizure of equipment	0	0	1
Community Protection Warnings (CPWs)	8	36	21
Community Protection Notices (CPNs)	1	5	5
Prosecutions	0	0	1

4.17 Enviro-crime includes fly-tipping, littering, dog fouling, graffiti and flyposting plus dog fouling as covered in paragraph 4.10. The majority of fixed penalty notices (FPNs) issued were for fly posting, “sale boards” being the most prevalent where particular developers put up multitudes of for sale boards or site sales signs along the highway network. In addition this year we issued 20 FPNs in respect of flyposting during the Tour of Britain.

4.18 The Anti-Social Behaviour, Crime and Policing Act 2014 introduced a range of new powers to address anti-social behaviour. These powers are intended to put victims first by providing quicker and more flexible tools for both the police and local authorities to respond to problems within their communities.

4.19 Community Protection Notices (CPNs) were introduced to address persistent, unreasonable behaviour detrimental to the quality of life of those in the area. A Notice is preceded by a Community Protection Warning (CPW) that advises the recipient that the police or local authority require the person to cease certain behaviours.

4.20 The service has found the use of CPWs and CPNs to be particularly useful in tackling local issues of anti-social behaviour, waste and nuisance including noise and odour hence the numbers being issued have increased.

4.21 Food Safety / Health and Safety:

- 4.22 This function includes the inspection of food premises, sampling of foodstuffs, investigation of complaints relating to food and food premises. The registration/licensing of food premises and maintenance of the national food hygiene rating scheme. Other activities include the investigation of infectious disease cases / outbreaks and inspection of tattooing, acupuncture, ear piercing and electrolysis establishments and the sampling of swimming baths. The service also delivers the enforcement role for local authority allocated premises for health and safety e.g. shops, restaurants etc. In addition to a risk based inspection programme it includes the investigation of serious accidents and complaints and the provision of advice and support along with the enforcement of smoke free legislation.
- 4.23 The service fulfils the Councils statutory role as a 'Food Authority' for the enforcement of food law. This work is carried out in partnership with the Governments Food Standard Agency (FSA). The team also fulfils the Council's role as a Health & Safety Enforcement Authority. This work is carried out in partnership with the Health & Safety Executive (HSE).
- 4.24 In terms of both food safety and health and safety at work the Council annually publishes a specific plan for its enforcement activity. This is developed in line with the relevant codes of practice and guidance for Food and Health and safety.

Activity (Food Safety)	2016-17	2017-18	2018-19 (6-mths)
Nos of registered food businesses	900	818	*
% premises broadly compliant	79%	95%	*
Inspections of food premises	459	462	*
Supplementary Visits	99	70	*
Total number of Service Requests/advice	174	93	56
Samples [food]	148	207	119
Samples [swimming pools]	3	5	0
Written warnings	245	140 ⁽¹⁾	*
Improvement notices	12	1	*
Prohibition / closure	0	1	1
Voluntary closure	0	0	1
Prosecution	0	0	0

* Information not yet available

⁽¹⁾ The reduction in written warnings reflects a change in their definition by the FSA

- 4.25 The table above demonstrates that the majority of food businesses within the Borough operate in compliance with food safety requirements. On average over 90% achieve a food hygiene rating of 4 or 5. However this year (2018) the service has had to serve Hygiene Emergency Prohibition Notices on two businesses due to evidence of pest activity. These notices were confirmed by

the magistrate's court and therefore had to remain closed until the businesses had made satisfactory improvements. In another case the service secured a voluntary closure of a food business again due to pest activity. Following extensive investigations including interviews under caution the food business operator admitted fault and owing to the seriousness of the offences and the history of non-compliance the premises is being recommended for a prosecution.

Activity (Health and Safety)	2016-17	2017-18	2018-19 (6-mths)
Proactive inspections	3	0	0
Complaint investigations	55	52	38
RIDDOR accident notifications	63	50	32
Improvement notices	0	4	3
Prohibition notices	0	2	0

4.26 The service undertook a number of inspections of premises with Tandoori ovens last year which was identified as a priority by the HSE. In addition and in accordance with other local authorities the service targets its very limited resources in specific areas of work for example investigating accidents. In this way it is considered that we can have the greatest impact in improving standards. As an example in 2016 we had a number of incidents with hot oil accidents from fat fryers. We were then able to use this information to educate other businesses of this risk.

4.27 This year the service has taken on primary authority for Health and Safety with Boots plc with the key principle being to reduce the burden on businesses whilst driving up compliance and ensuring full cost recovery for the Council.

4.28 We have served several formal notices (post April 2018) and do have an ongoing investigation that may lead to formal action in respect to a major accident at a sporting ground this year.

4.29 **Private Sector Housing**

4.30 The function includes the investigation of private housing complaints e.g. disrepair, overcrowding etc and the inspection of houses in multiple occupation (HMOs). The service also delivers mandatory Disabled Facilities Grant applications and undertakes the inspection of caravan and park homes sites. Other services include the investigation of unauthorised encampments and monitoring of private water supplies.

Activity (Private Sector Housing)	2016-17	2017-18	2018-19 (6-mths)
Nos of complaints	128	153	59
Nos of HMO inspections	90	37	78
Nos of caravan park inspections	7	7	7
Unauthorised Encampments evictions	21	15	8

5 Alternative options considered and reasons for rejection

- 5.1 This report has been provided for information and to seek comments from the Board therefore no alternative options have been identified.

6 Risks and Uncertainties

- 6.1 Failure to deliver effective enforcement of Environmental Health services presents a risk to the Council of non delivery of its statutory functions and risks to public health and safety as well as environmental harm. Improper use of powers can damage Council reputation and carry considerable legal risks.

7 Implications

7.1 Financial Implications

- 7.1.1 In certain cases financial contributions towards cost recovery can be achieved when undertaking enforcement action such as in the case of prosecutions, FPN's etc. However where enforcement action is taken without justification or such action cannot be robustly defended, there may be a risk of an award of costs in the event of an appeal or claims for compensation, It is not possible to provide an estimate of such costs as these will vary from case to case and will depend on the factors impacted by any action, e.g. cost of plant and machinery, lost earnings, cost of expert witnesses to defend appeals etc.

7.2 Legal Implications

- 7.2.1 As highlighted in paragraph 6.1

7.3 Equalities Implications

- 7.3.1 The Council is committed to delivering all enforcement activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to its enforcement and regulatory functions. Therefore, the Council will treat all people fairly with dignity and respect, irrespective of their nationality, political views, race, gender, disability, age, religion, or sexual orientation.

7.4 Section 17 of the Crime and Disorder Act 1998 Implications

- 7.4.1 Whilst there may be community safety implications associated with the delivery of the enforcement function, there are not considered to be any such implications associated with the recommendation and consideration of this report

7.5 Other implications

- 7.5.1 There are no other implications.

8 Link to Corporate Priorities

- Delivering economic growth to ensure a sustainable, prosperous and thriving local economy
- Maintaining and enhancing our residents' quality of life

9 Recommendations

It is RECOMMENDED that

- a) The Board consider, make comment on and endorse the work and performance of the Environmental Health team as outlined in this report and the accompanying presentation.

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Background papers available for Inspection:	None.
List of appendices:	None.