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| REPORT TO: | ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE | AGENDA ITEM: 8 |
| DATE OF MEETING: | 1st MARCH 2018 | CATEGORY: RECOMMENDED |
| REPORT FROM: | STRATEGIC DIRECTOR (SERVICE DELIVERY) | OPEN |
| MEMBERS' CONTACT POINT: | MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER | DOC: |
| SUBJECT: | ENFORCEMENT AND COMPLIANCE REPORT | REF: |
| WARD(S) AFFECTED: | ALL | TERMS OF REFERENCE: EDS14, HCS10 |

1. Recommendations

- 1.1 That Members satisfy themselves on the basis of the report that the Council is using its regulatory powers in a way proportionate to the demands for all regulatory services it provides.

2. Purpose of Report

- 2.1 To provide Members with details of the Councils use of its tools and powers to take appropriate enforcement action.

3. Background

- 3.1 One of the key objectives identified by Members under the 'People' theme of the 2016-21 Corporate Plan was that the Council would "*Use existing tools and powers to take appropriate enforcement action*".
- 3.2 The Council is authorised to use in excess of 100 different statutes to regulate and ensure compliance in areas of work as diverse as planning, food hygiene, licensing, pollution control, anti-social behaviour, building control, public health, waste and dog control.
- 3.3 The way in which the Council utilises these powers is governed by law, statutory guidance and previous legal precedent. Some services (notably many of the functions of Licensing and Environmental Health) also have a duty to have regard to the five governing principles of the Legislative and Regulatory Reform Act 2006, namely that all regulatory interventions are transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 3.4 This report provides a high level summary of the regulatory action over the past year and provides a comparison against historical levels of regulatory action.

Demands for services

- 3.5 The demand for our services this year is illustrated by Figure 1 in the report appendix.
- 3.6 In the first three quarters of 2017/18 there has been a 55% reduction in complaints about dogs (fouling and dangerous dogs) and a 15% reduction in noise complaints compared to last year. Complaints about abandoned vehicles remain very high compared to historical levels.
- 3.7 Unfortunately complaints about abandoned vehicles remain very high compared to historical levels. Complaints about air pollution are 10% higher than last year.
- 3.8 Fly tipping incidents are roughly the same as last year and remain a corporate priority to try to reduce.

Demands for Inspections of Businesses

- 3.9 Food hygiene and pollution control laws require that businesses are risk assessed and then inspected with a frequency based on national legal guidance. Figure 2 in the appendix to this report illustrates the number of inspections carried out.
- 3.10 More than 85% of food businesses have been awarded the top score for their food hygiene. Over 98% of food businesses are defined as 'broadly compliant', which means that our food inspectors are satisfied that they can be left to manage their own hygiene practices until their next programmed inspection.

Legal Interventions

- 3.11 The Council has published an enforcement policy which explains how we will go about using our various tools and powers to help our business community and residents to meet the various laws we are tasked with regulating. When we are unable to ensure compliance through persuasion we may need to resort to use of more formal means. We have powers in the form of various compliance notices which can be issued requiring some form of action to be taken (or to be stopped) by the recipient in order to more formally require compliance than through advice and guidance.
- 3.12 Figure 3 in the appendix to this report illustrates the numbers of formal notices issued and in broad terms the nature of the problem which led to the notice being served.

Punitive Outcomes from Offences

- 3.13 In a small number of cases, the Council is required to resort to the courts or other forms of judicial punishment in order to seek restitution for confirmed offences. This restitution can be in one of three forms; Firstly, for a limited number of offences and where the offender admits to the offence, we can issue a fixed penalty notice. Where the offender admits the offence and there is no fixed penalty notice option available, but prosecution is not deemed to be proportionate then the offender may be given the option to sign a formal caution. Usually the most severe form of intervention is a prosecution.
- 3.14 Table 1 below summarises the recent numbers of each of these punitive outcomes compared to historical levels.

Table 1 – Summary of Punitive Outcomes following Offences

| | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 Q1 to 3 |
|--|---------|---------|---------|---------|--------------------|
| Total Fixed Penalty Notices | 3 | 6 | 34 | 91 | 46 |
| Dog offences | 0 | 1 | 23 | 9 | 4 |
| Fly tipping & waste offences | 1 | 1 | 0 | 7 | 5 |
| Litter | 2 | 4 | 8 | 65 | 30 |
| Community Protection Notice / PSPO breach | 0 | 0 | 3 | 10 | 7 |
| Formal Cautions | 0 | 3 | 3 | 1 | 3 |
| Prosecutions | 0 | 0 | 3 | 1 | 4 |

- 3.15 Overall the Council is making significantly greater use of fixed penalty notices for low level offences than has previously been the case.
- 3.16 In 2015-16 Safer Neighbourhood Wardens focused on using FPNs to improve the control of dogs within the Districts parks and open spaces. Anecdotal feedback from park users is that the increase in enforcement activity in 2016 resulted in a significant improvement in dog stewardship in the parks. In 2016/17 significantly more FPNs were issued for littering offences - mainly relating to material being left illegally at the recycling sites at Hatton and Willington. The Council has also increased its use of the new anti-social behaviour laws which enables fixed penalty notices to be issued for breaches of Community Protection Notices and Public Spaces Protection Orders.
- 3.17 Fixed Penalty Notices are issued where the recipient admits to the offence and agrees to pay the fine to discharge their liabilities. If the recipient of an FPN subsequently fails to pay the fine then the Council should be considering the need to prosecute for the offence. To date no prosecutions have been taken for failure to pay an FPN.

Matters of Particular Note

- A man from Derby has been prosecuted and fined over £2,500 for dumping household waste near to Findern. For the first time the courts also took the unprecedented action of banning him from driving for 6 months. The Safer Neighbourhood Warden team brought the prosecution despite the man initially denying any knowledge of the incident and claiming that the vehicle identified as responsible was not in his possession at the time of the incident.



- A man from Church Gresley has been given a 5 year Criminal Behaviour Order to stop his anti-social behaviour in Swadlincote town centre. The Order prohibits the man him from harassing residents, consuming or carrying alcohol in public areas or entering any retail or business premise within Swadlincote town centre other than for collecting medication. He must also leave any public place within Swadlincote Town Centre when requested to do so by a police officer or a PCSO, or a Council authorised officer.
- A man formerly of Overseal has been fined over £12,000 for illegally burning waste. The waste consisted of a mix of plastics, rubber and other materials being burned in a large skip on his property in May 2017. This exposed residents to potentially high levels of air pollution. The man had been given previous verbal advice and warnings about how to dispose of waste properly.



- Twenty-two Council officers were taken through an intensive two day training course on the use of the Police and Criminal Evidence Act in gathering and presenting criminal evidence.

4. Financial Implications

- 4.1 None to minor adverse. Most forms of actions to achieve compliance have a cost implication. In cases of formal legal interventions we will always seek to recover costs, however most of the rest of the costs are currently established within the revenue budgets of each of the relevant departments.

5. Corporate Implications

- 5.1 The report has been produced to provide Members with details how officers are delivering the “People” themed objective of “Keeping Residents Safe and Happy” in the 2016-21 draft Corporate Plan and in particular the aim to “Use existing tools and powers to take appropriate crime enforcement action”.

6. Community Implications

- 6.1 Beneficial. Proportionate regulation is an important feature of ensuring community cohesion and economic growth.

7. Conclusion

- 7.1 That Members agree that officers are using tools and powers to take appropriate enforcement action.

Figure 1 - Requests for Enforcement Action

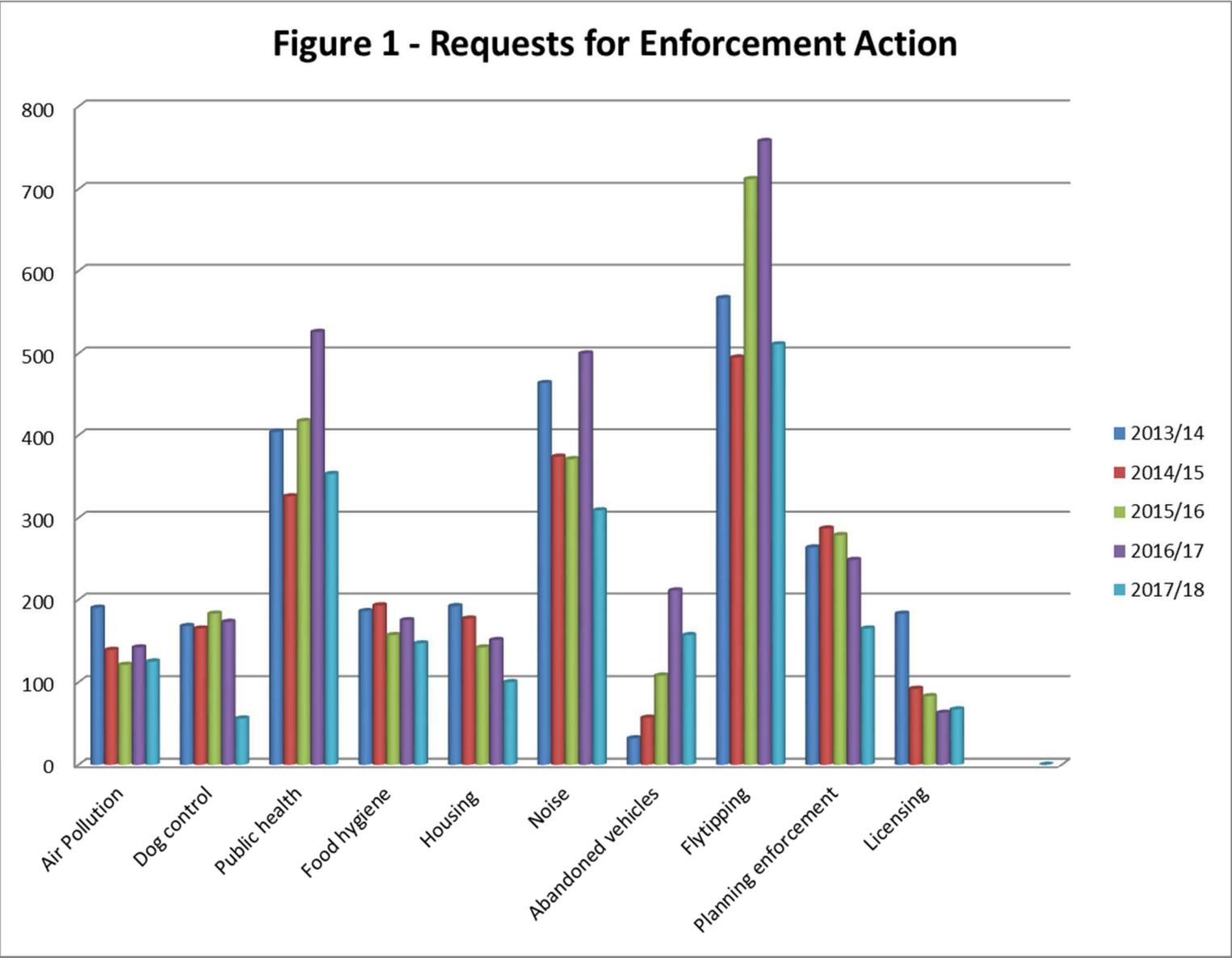


Figure 2 - Proactive Inspections of Businesses

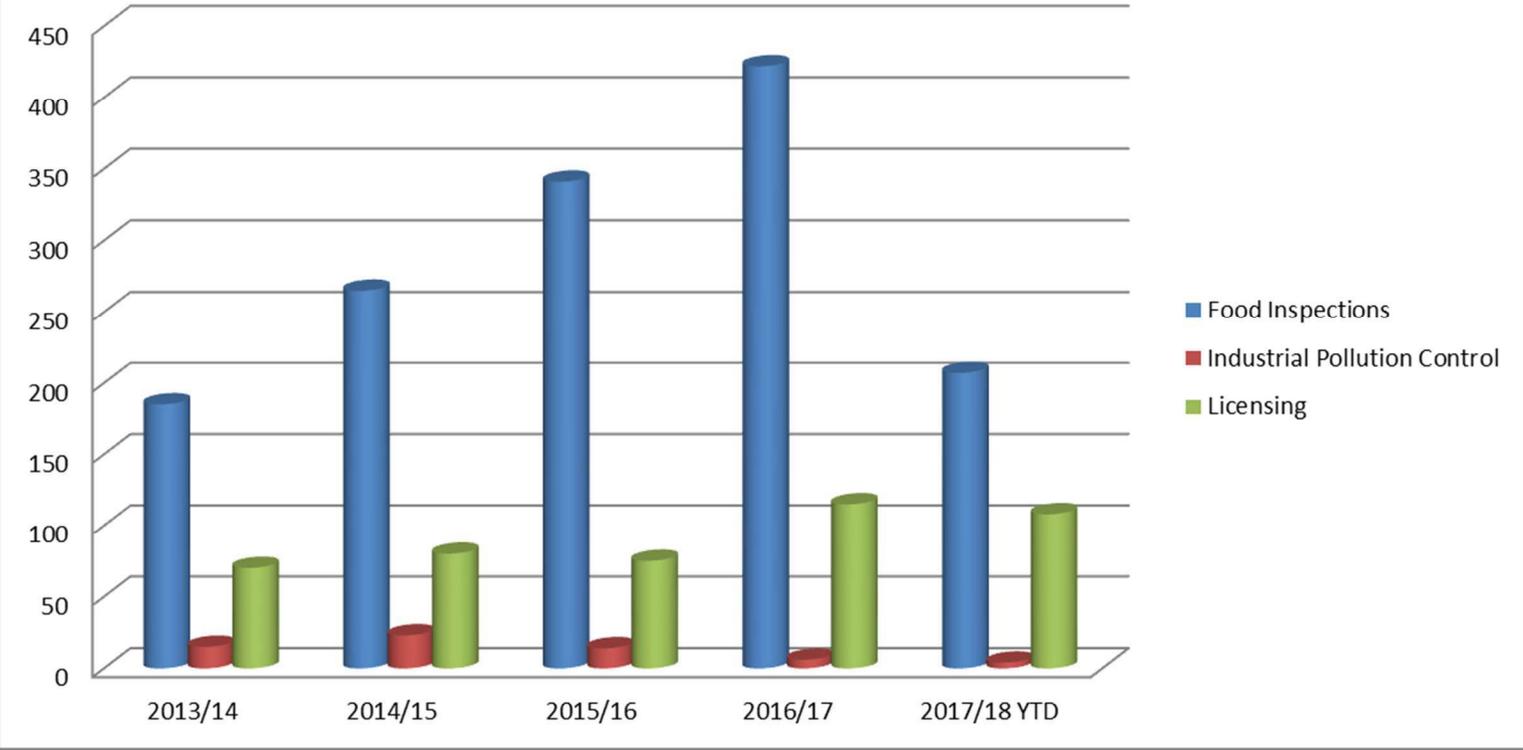


Figure 3 - Enforcement Notices Served

