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REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 11
DATE OF MEETING:	15 <sup>th</sup> August 2019	CATEGORY: RECOMMENDED
REPORT FROM:	ALLISON THOMAS, STRATEGIC DIRECTOR – SERVICE DELIVERY	Open
MEMBERS’ CONTACT POINT:	MATT HOLFORD, <a href="mailto:matthew.holford@south-derbys.gov.uk">matthew.holford@south- derbys.gov.uk</a> , 01283 595856	DOC:
SUBJECT:	Annual Enforcement and Compliance Report 2018/19	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: EDS14, HCS10

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## 1. Recommendations

- 1.1 That the Committee notes the contents 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 the Committee with details of the Council’s use of its tools and powers to take appropriate enforcement action.

## 3. Background

- 3.1 One of the key objectives of the ‘People’ theme of the 2016-21 Corporate Plan is that the Council will “*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 compared to previous years is illustrated in Figure 1 in the report appendix.
- 3.6 For the second consecutive year there has been a significant reduction in complaints about dogs in public places (fouling, animal welfare concerns, dogs off leads). This may be a reflection of the introduction of new laws on microchipping and the increased activity of the Community Safety Enforcement Officers in issuing fixed penalty notices for dog offences, although it is likely that there are a range of causes of this welcome trend.
- 3.7 The Council ran two education and engagement campaigns in 2018/19 relating to dog fouling (We're Watching You) and litter prevention (Swadlincote Heroes). Feedback on both events is the subject of a separate Committee item.
- 3.8 Services continue to experience high volumes of complaints about public health problems. Predominantly these consist of waste on private land, untidy land, filthy and verminous property, drainage complaints and other forms of nuisance such as light trespass and high hedges.
- 3.9 During 2019/20 there was an increase in requests for food hygiene services. This was mainly driven by applications for registration for new food businesses rather than complaints about food establishments, which reflects the continued strong growth in the local food and drink sector.
- 3.10 Complaints about noise increased by 41% compared to the previous year. This trend was directly as a result of the very hot weather during the summer of 2018. There is a well-documented correlation between hot weather and increased noise complaints.
- 3.11 For the first time in five years the number of complaints about abandoned vehicles has reduced. Nevertheless the number of complaints are still five times higher than they were in 2014.
- 3.12 For the second consecutive year there was a fall in the recorded number of fly tipping incidents in 2018/19. Fly tip incidents in 2018/19 were 15% lower than two years ago. The underlying causes of fly tipping are many and varied. Over the past two years the Council has committed significant time and energy into tackling fly-tipping and the year end data provides some confidence that these efforts are paying dividends.

## **Demands for Inspections of Businesses**

- 3.13 Food hygiene law requires 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.
- 3.14 At April 2019, 85.2% of food businesses in South Derbyshire had been awarded the top score for their food hygiene. This is the highest ever percentage of businesses to achieve the top rating and reflects the continuous work of environmental health staff to encourage and support the local food and drink sector to maximise its potential. The 14% of food businesses who are yet to meet the top score are the toughest group to positively influence. The Commercial Team, which delivers food hygiene inspections, is looking at various forms of behavioural change interventions as well as

direct legal action on the rare occasions it is appropriate, to improve the Council's influence on this hard to change group.

- 3.15 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. This is unchanged from last year.

### **Legal Interventions**

- 3.16 The Council has published an enforcement policy which explains how it will use the various tools and powers to help the business community and residents to meet the various laws the Council is tasked with regulating. When the Council is unable to ensure compliance through persuasion it may be necessary to resort to use of more formal means. The Council has 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.
- 3.17 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.
- 3.18 Overall the number of legal notices served has remained relatively consistent over the past five years. The most interventions in the form of legal notices are issued due to legal breaches in private properties - both rented and owner occupied.

### **Punitive Outcomes from Offences**

- 3.19 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:
- For a limited number of offences and where the offender admits to the offence a fixed penalty notice can be issued;
  - 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;
  - The most severe form of intervention is a prosecution.
- 3.20 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	2018-19
Total Fixed Penalty Notices	3	6	34	91	79	72
Dog offences	0	1	23	9	6	14
Fly tipping & waste offences	1	1	0	7	7	8
Litter	2	4	8	65	54	43
Community Protection Notice / PSPO breach	0	0	3	10	12	4
Abandoned vehicles	0	0	0	0	0	3
Formal Cautions	0	3	3	1	3	4
Prosecutions	0	0	3	1	5	7

- 3.21 Over the past three years the Council has made significantly greater use of fixed penalty notices for low level offences than has previously been the case, however, the use of fixed penalties to deal with offences is now relatively stable. This form of intervention is mainly used to deal with incidents of littering / small scale fly-tipping and dog offences. The reduced incidents of fly tips and near halving of dog complaints over this period suggest that they are an effective deterrent, although Council officers are conscious that a mix of education and engagement along with enforcement is the most likely route to success.
- 3.22 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.
- 3.23 Seven prosecutions were taken during 2018/19, of which five related to waste offences, one to a licensing offence and one an animal welfare offence.

#### **Matters of Particular Note**

- A man from Hilton was imprisoned for four months after he breached a High Court injunction obtained by the Council and then breached a written commitment he had given to the High Court not to burn waste on his land. Injunctions required the man to stop banger racing on his land for more than 14 days a year; to stop burning waste on the land and to comply with planning law. At an adjourned hearing in November 2017 he gave a written commitment to the court not to burn waste. A matter of days later an estimated 300 tonnes of illegally stored waste was set on fire which burned for 11 days, caused complaints up to five miles away and led to the closure of the A50. As well as the prison sentence the high court took the unprecedented step of agreeing to completely prohibit banger racing on the land and prohibiting any further waste fires.





- A man from Walton on Trent pleaded guilty to breeding puppies without a licence and was ordered to pay more than £5,000 costs. The Council's Licensing Team discovered four litters of puppies at the man's property in January 2018. One litter was three days old, another litter was three weeks old and the other two litters were approximately eight weeks old. They also found a number of occupied and unsuitable kennel and stable units on the premises. Following a complaint in 2016, the man had been told he would need a license if breeding dogs but he had not applied for one.
- Two Criminal Behaviour Orders (CBO) were served on two prolific shoplifters and mamba users. A four year CBO was served on a Council tenant who has been harassing County and District Council staff, elected members and vulnerable neighbours. A five-year CBO was served on a town centre street drinker who abused members of the public and caused significant nuisance to local business owners and staff.
- 18 Community Protection Notice warnings and five Community Protection Notices have been issued to individuals for a range of anti-social behaviours in locations including Swadlincote Town Centre, Midway Community Centre and a multi-occupancy property in Newhall.
- Two men from Derby pleaded guilty to multiple incidents of fly tipping at various locations in the northern parishes of South Derbyshire. The waste originated from a food business in Derby which had cancelled its trade waste collection service. The pair pleaded guilty to 13 counts of fly tipping offences. The Judge commended the Community Safety Enforcement Team for the investigation and sentenced both men to 26 weeks custody on each offence to run concurrent suspended for 12 months, 150 community service and over £3,000 costs.



- The Council introduced a Public Spaces Protection Order (PSPO) to ban access into a short stretch of land off Staker Lane, Findern. The secluded location had been used as a regular fly tipping spot and location for other forms of anti-social

behaviour and criminality. The effect of the PSPO has been to almost entirely stop all fly tipping and ASB at this location. There is no information to suggest that this has been displaced to other locations and so it appears to have been a successful intervention.

- A man from Burton on Trent was found guilty of fraud by false representation at Leicester Magistrates Court. He was given a 12-month community order. The Council's Licensing Team worked in partnership with the Licensing Team at North West Leicestershire District Council after it was discovered that the man had failed to notify both authorities about his licence history. The man had failed to declare on his application form that he had held a private hire driver's licence with East Staffordshire Borough Council that had been revoked on two occasions.
- A woman from Newall pleaded guilty to breaches of the Animal Welfare Act as a result of allowing her property to become littered with animal excrement and urine throughout the living room and kitchen. The woman was jailed for 12 weeks, given a lifetime ban on keeping pets and ordered to pay more than £3,000 costs after pleading guilty to two charges of animal neglect.

#### **4. Financial Implications**

- 4.1 The Council's regulatory services cover environmental health, licensing, community safety and planning. Overall the net cost of these services is approximately £800,000 and the Council has progressively reduced these net costs in recent years while at the same time increasing the volumes of work activity.

#### **5. Corporate Implications**

##### **Employment Implications**

- 5.1 None.

##### **Legal Implications**

- 5.2 None.

##### **Corporate Plan Implications**

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

##### **Risk Impact**

- 5.4 The proposals will have a beneficial mitigating action against the corporate risk of "Managing the environmental impact of incidents across the District".

#### **6. Community Implications**

##### **Consultation**

- 6.1 None

##### **Equality and Diversity Impact**

- 6.2 Fair and proportionate application of the law should ensure that improvements in equality and diversity are indirectly delivered by tackling crime and anti-social behaviour.

### **Social Value Impact**

- 6.3 Beneficial.

### **Environmental Sustainability**

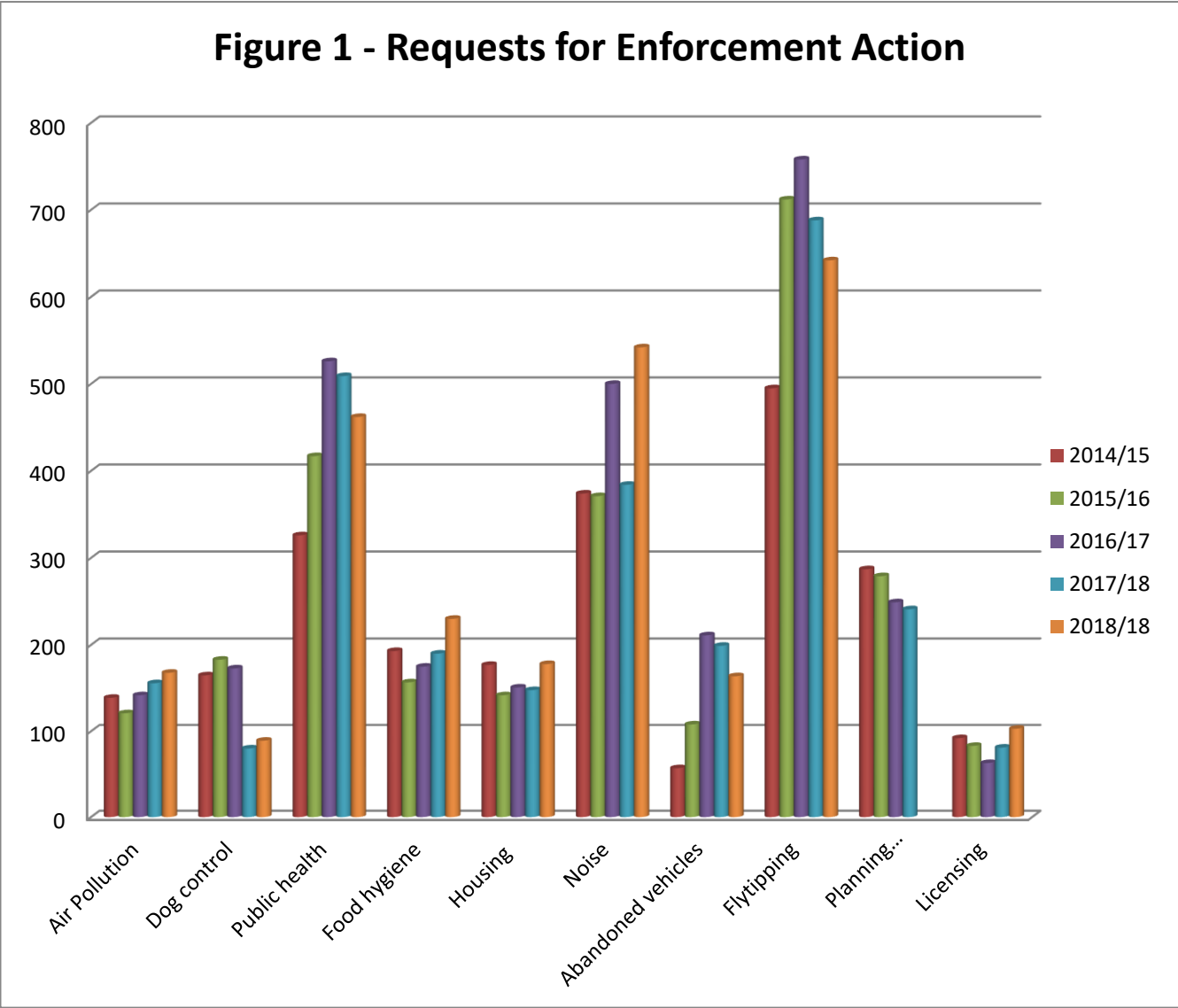
- 6.4 Beneficial. Proportionate regulation is an important feature of ensuring community cohesion. It also ensures positive economic growth by preventing businesses which operate outside the law from gaining a competitive advantage in their respective market.

## **7. Conclusion**

- 7.1 That the Committee notes and endorses the work that officers are undertaking, using the tools and powers available, to take appropriate enforcement action where necessary.

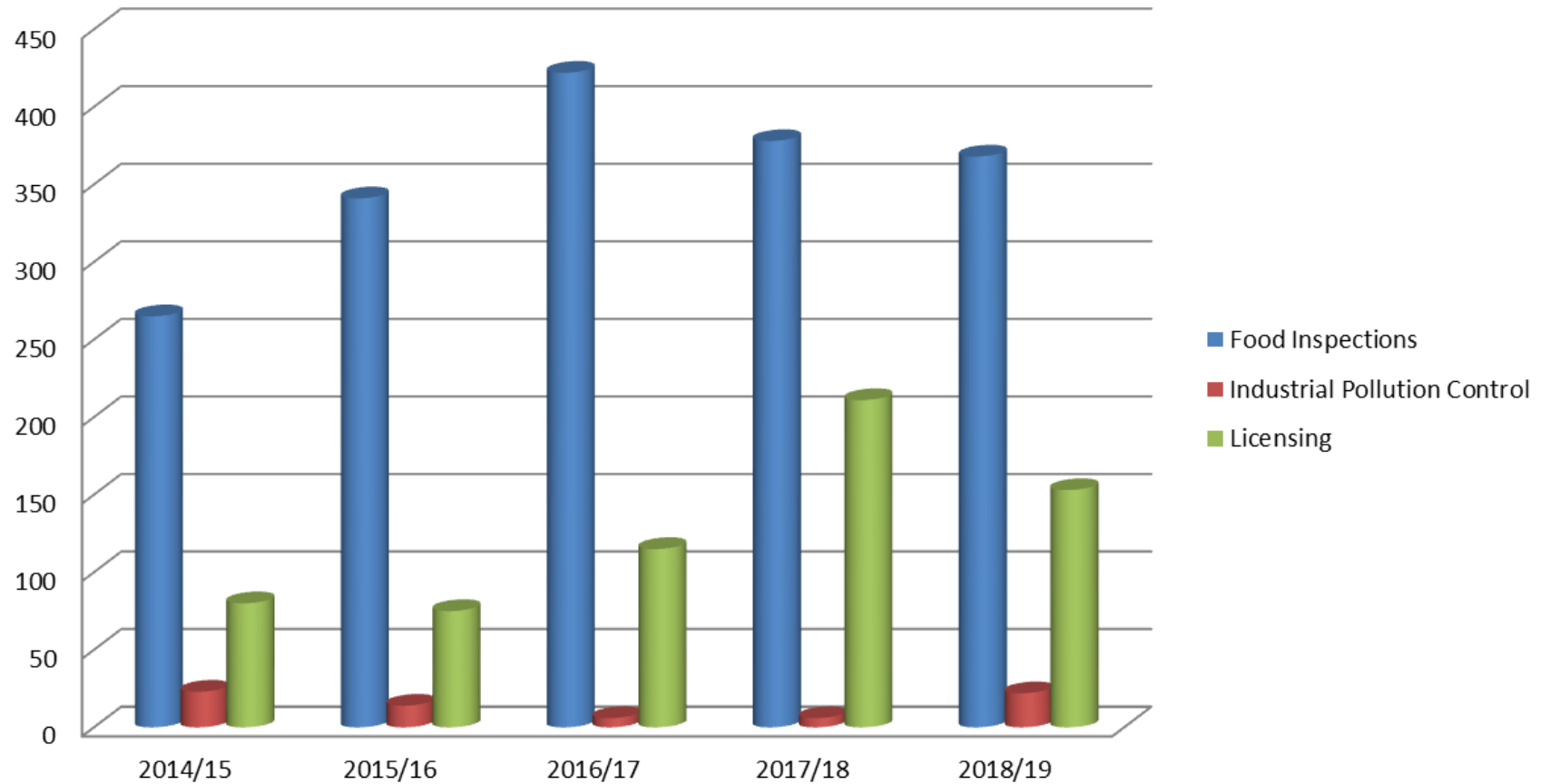
## **8. Background Papers**

- 8.1 None





**Figure 2 - Proactive Inspections of Businesses**



**Figure 3 - Enforcement Notices Served**

