
REPORT TO:	ENVIRONMENTAL & DEVELOPMENT SERVICES	AGENDA ITEM: 6
DATE OF MEETING:	10 AUGUST 2023	CATEGORY: RECOMMENDED
REPORT FROM:	HEIDI McDOUGALL, STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
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SUBJECT:	ANNUAL ENFORCEMENT AND COMPLIANCE REPORT 2022/23	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: EDS14, HCS10

1. Recommendations

- 1.1 That the Committee notes the contents of the report and approves 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 during the 2022/23 reporting period.

3. Background

- 3.1 Under the priority of 'Our Environment' in the 2020-2024 Corporate Plan, one of the key aims is "*Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate*".
- 3.2 Under the priority of 'Our People', one of the key aims is "*Help tackle anti-social behaviour and crime through strong and proportionate action*".
- 3.3 The Council is authorised to use more than 100 different laws 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.
- 3.4 The way in which the Council utilises these powers is governed by law, statutory guidance and 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.

3.5 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 and Commentary on Trends

3.6 The demand for Council services in 2022/23 compared to previous years is illustrated in Figure 1 in the report appendix.

3.7 After a large spike in **air pollution** complaints during 2020/21, the numbers of complaints in 2022/23 returned to pre-pandemic levels. Data from air quality monitoring locations across the District demonstrate that air quality has progressively improved over the last decade as demonstrated in the Councils most [recent annual report](#) on air quality.

3.8 Complaints about **dogs** (fouling, dogs off leads, aggressive dogs) have progressively increased. This increase roughly reflects the progressive increase in the overall population of South Derbyshire and the more general trend of an increase in dog ownership since 2020.

3.9 The number of complaints generally classified as '**public health**' has remained high for the last three years. This covers a diverse range of issues but the majority of these relate to waste on land, properties in a filthy condition, drainage problems, dangerous trees and high hedges. Further comment on the possible underlying cause of this trend is provided later in this report.

3.10 After a large spike in complaints about **food hygiene** during 2020/21, (mainly linked to the Covid Regulations), the numbers of complaints returned to approximately pre-pandemic levels, albeit that there has been a progressive increase in complaints over the last five years. Information about food hygiene standards in food businesses is provided later in this report.

3.11 Complaints about **private sector housing** nearly doubled in 2022/23 compared to historic volumes of complaints.

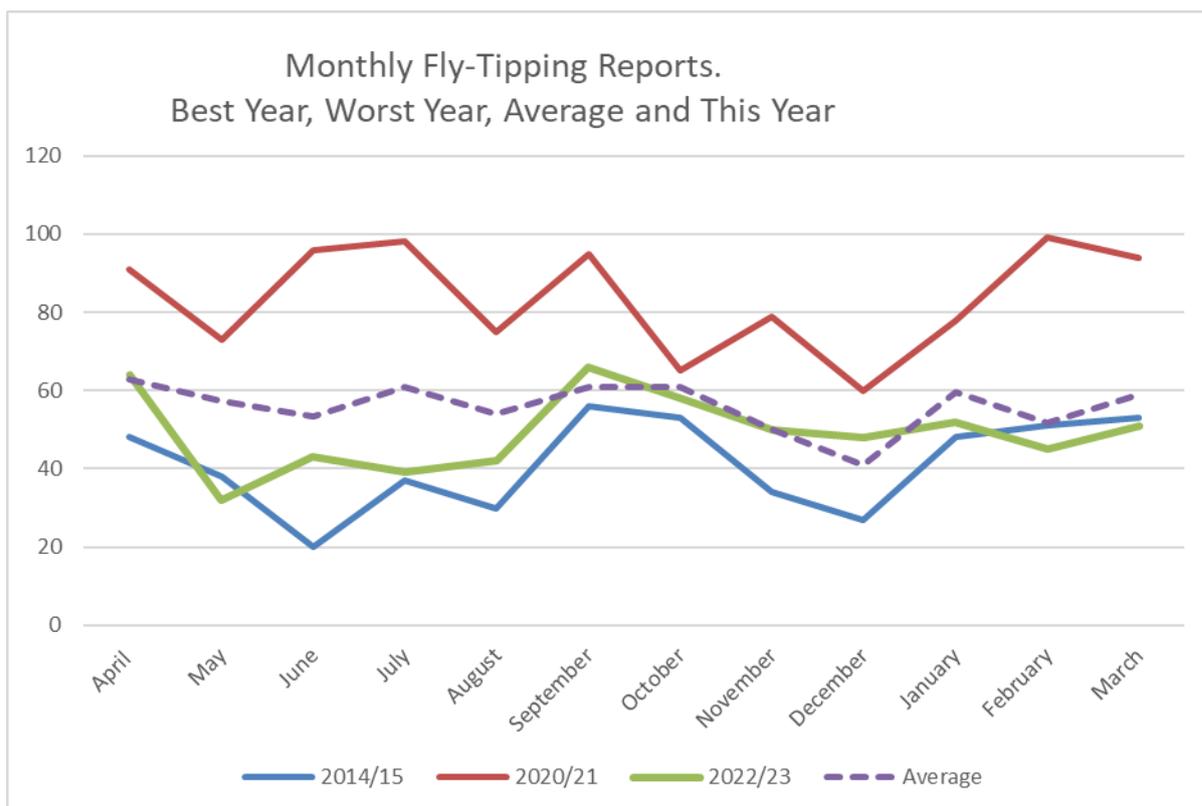
3.12 As well as a doubling in complaints about private sector housing, there was high demand for inspections of properties of people who have applied to be sponsors for displaced Ukrainian guests under the Homes for Ukraine scheme. The Private Sector Housing Team inspected 78 properties to provide help and advice to potential sponsors to enable them to provide safe accommodation for Ukrainian guests.

3.13 Complaints about **noise nuisance** have remained consistently high for the last five years. Complaints about noise in South Derbyshire in 2022/23 were 7.0 per 1000 population compared to a Derbyshire average of 5.7 per 1000 population. Noise nuisance complaints make up approximately 50% of all of the anti-social behaviour complaints made to the Council.

3.14 Complaints about incidents of **abandoned vehicles** increased in 2022/23 back to a previous historic high last observed in 2016/17. After investigation, the majority of the complaints were found to be about vehicles which had not been abandoned. Of the 212 complaints about abandoned vehicles the Council only needed to take formal action in 46 cases.

3.15 Incidents of **fly tipping** during 2022/23 were lower than they have been for 8 years. The reduction in numbers is encouraging. However, a relatively high proportion of

these offences are now being linked to illegal waste businesses and to organised crime which is significantly increasing the complexity and duration of investigations.



3.16 The **Licensing Team** continues to provide a high level of service in ensuring applications are dealt with in line with the legislative deadlines despite the increased demand on the service in terms of applications and complaints. Again, the number of inspections carried out by the Team has increased over the past 12 months. The Licensing Team has employed an additional Officer which should assist in dealing with the continuing high demand on the service.

3.17 Policy documents continue to be developed, consulted on and approved by Members. The Team has introduced legislative changes into the Service such as new safeguarding requirements for private hire drivers and new duties on drivers and operators under the Equality Act 2010.

3.18 In addition to the introduction of legislation, the Team continues to streamline internal procedures and the Team has introduced a new online application system in conjunction with the Business Digital Change Team. The new application service is slowly being rolled out and feedback has been very positive.

3.19 The Team continues to work very closely on joint enforcement initiatives with the Environmental Health Team and the Police to tackle non-compliant premises and unlicensed premises. The Team successfully prosecuted one couple in Hilton for unlicensed breeding with a total fine of £24,000 being awarded by the Courts. There are several other cases pending court hearings.

Demands for Inspections of Businesses

3.20 Food hygiene law requires that businesses are risk assessed and then inspected at a frequency based on national statutory guidance. Figure 2 in the appendix to this report illustrates the number of food hygiene inspections carried out.

- 3.21 Due to the extensive constraints on the hospitality industry during periods of Covid lockdown, many routine food hygiene inspections of food businesses could not take place in 2021/22. In response to guidance from the Food Standards Agency, Council officers prioritised their work to focus on high-risk businesses, new businesses and to respond to complaints.
- 3.22 Due to this enormous disruption to the hospitality sector – and by extension to the food hygiene inspection programme, the Food Standards Agency has issued a ‘Local Authority Recovery Plan’ which provides national statutory guidance on enabling food hygiene regulatory services to deliver services to March 2023.
- 3.23 South Derbyshire has met and exceeded the expectations contained in its Local Authority Recovery Plan.
- 3.24 In April 2023, 89.4% of food businesses in South Derbyshire had been awarded the top score for their food hygiene at their last inspection. This is thought to be one of the highest figures in the UK although no national statistics have been published by the Food Standards Agency since the end of 2018/19 to enable a full comparison.
- 3.25 In April 2023 there were 909 registered food businesses in the District. This represents an increase in the number of registered local food and drink businesses over the course of the last three years. In April 2020, the number of registered food businesses was 856. We hope that this is a positive sign that the local food and drink sector has been relatively resilient to the damage caused to this sector by the Covid pandemic.
- 3.26 Hygiene standards in 95% of food businesses were assessed at their last inspection as being ‘broadly compliant’ which means that the Council’s food inspectors are satisfied that they can be left to manage their own hygiene practices until their next programmed inspection without any further intervention. This is a slight reduction from the figure in 2022 of 98.8%.

Other Significant Matters

- 3.27 Breaches of Animal Welfare law emerged as a significant feature of regulatory work during 2022/23. Animal welfare law is complex, time consuming and expensive.
- 3.28 During early to mid-2022 evidence emerged of several suspected illegal breeding establishments. Demand for pets increased dramatically during the Covid lockdowns. This led to a rapid escalation of the sale price for dogs and in turn this appears to have encouraged the establishment of suspected illegal dog breeding establishments.
- 3.29 Council officers plus Police, RSPCA and vets executed court warrants at a number of different properties in spring and summer 2022. As a result of these warrants, approximately 200 dogs and pups were taken into possession using powers under the Animal Welfare Act.
- 3.30 One animal welfare case has now been concluded (see below). Investigations are ongoing in relation to other cases.
- 3.31 In response to the lessons learned during this intensive period of activity, the Council has published and adopted an Animals In Distress Policy to help guide officers and to mitigate liabilities to the Council.

- 3.32 A common theme which has emerged across a number of areas of work has been an increase in mental health conditions, which is generating significant additional pressures upon demand for services.
- 3.33 The increase in complaints about public health, noise nuisance and public sector housing all appear to be linked to people experiencing a deterioration in their mental health status. This is leading to consequences such as self-neglect, hoarding, substance abuse, self-isolation and anti-social behaviour.
- 3.34 Officers are reporting much higher volumes of cases where poor mental health appears to be a significant contributory factor than was the case pre-pandemic. Not only is the additional volume of these cases causing pressure on services, but individual investigations can often be much more complex and time consuming.
- 3.35 Illustrative examples of the impact of the poor mental circumstances of some clients on our ability to provide services are provided in Appendix 1.
- 3.36 These experiences reflect those of a number of Police forces from across the UK. In June 2023 the Metropolitan Police announced that they would stop attending most calls involving mental health where more appropriate support is or should be available to support an individual in distress. This involves introducing an initiative called Right Care Right Person (RCRP) which was first implemented by Humberside police in 2020.
- 3.37 Home Office has apparently stated that RCRP will soon be standard practice across the whole of England and Wales via a “national partnership agreement”.
- 3.38 In Derbyshire, a new mental health street triage service was launched in March 2023 by Derbyshire Constabulary and the NHS to improve the way people in mental health crisis are treated in emergency situations.
- 3.39 Derbyshire Mind have partnered with the NHS to launch three new mental health community drop-in services across Derbyshire for immediate out-of-hours support for those with mental health concerns. The first of the three drop-in centres to open will be in Buxton in August this year and a further two sites are set to open their doors in December 2023 in Ripley and Swadlincote.
- 3.40 This additional mental health support capacity is welcomed. However, reports suggest that systematic pressures on mental health services continue to build given that there has been little growth in the mental health workforce in England over the last 10 years, with many of the key staff groups either remaining at a similar level since 2009 or declining. Reports suggest that there has been a loss of 7,000 nurses, health visitors and midwives and 6,000 clinical support staff since 2009.
- 3.41 In order to mitigate some of the time and resource pressures associated with working with clients with underlying mental health challenges, officers are considering whether it is reasonable to implement changes in the delivery of some services to some clients. Any such changes would need to be based in policy and therefore subject to the full scrutiny of an Equalities Impact Assessment. Any such policy will also be brought to this Committee.

Formal Legal Interventions

- 3.42 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 to more formally require compliance than through advice and guidance.

3.43 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.

3.44 The Council issues relatively small numbers of formal notices. By far the greatest number of legal notices were issued in 2020/2021 when 171 compliance notices were issued to private sector landlords who had failed to respond to new legal duties to improve the energy efficiency standards in their private rented houses.

Punitive Outcomes from Offences

3.45 In a small number of cases, the Council is required to resort to the courts or other forms of judicial punishment for confirmed offences. This 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.

3.46 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

	16-17	17-18	18-19	19-20	20-21	21-22	22-23
Total Fixed Penalty Notices	91	79	72	27	59	72	35
Dog offences	9	6	14	4	5	4	3
Fly tipping & waste offences	7	7	8	5	23	21	11
Litter	65	54	43	13	24	45	16
Community Protection Notice / PSPO breach	10	12	4	4	5	1	5
Abandoned vehicles	0	0	3	1	0	1	0
Covid Regs (business breaches)	-	-	-	-	2	0	-
Formal Cautions	1	3	4	6	13	8	5
Prosecutions	1	5	7	5	0	3	5

3.47 There was a reduction in fixed penalty notices issued in 2022/23 compared to many of the previous years. This is largely due to a reduction in the number of notices issued for littering offences.

3.48 The reduction in littering offences is directly attributable to the removal of various recycling centres which had been located in Council car parks across the District. The recycling centres had generated poor recycling return rates and had also acted as hot spots for 'side waste' – namely people leaving non-recyclable material next to the recycling banks.

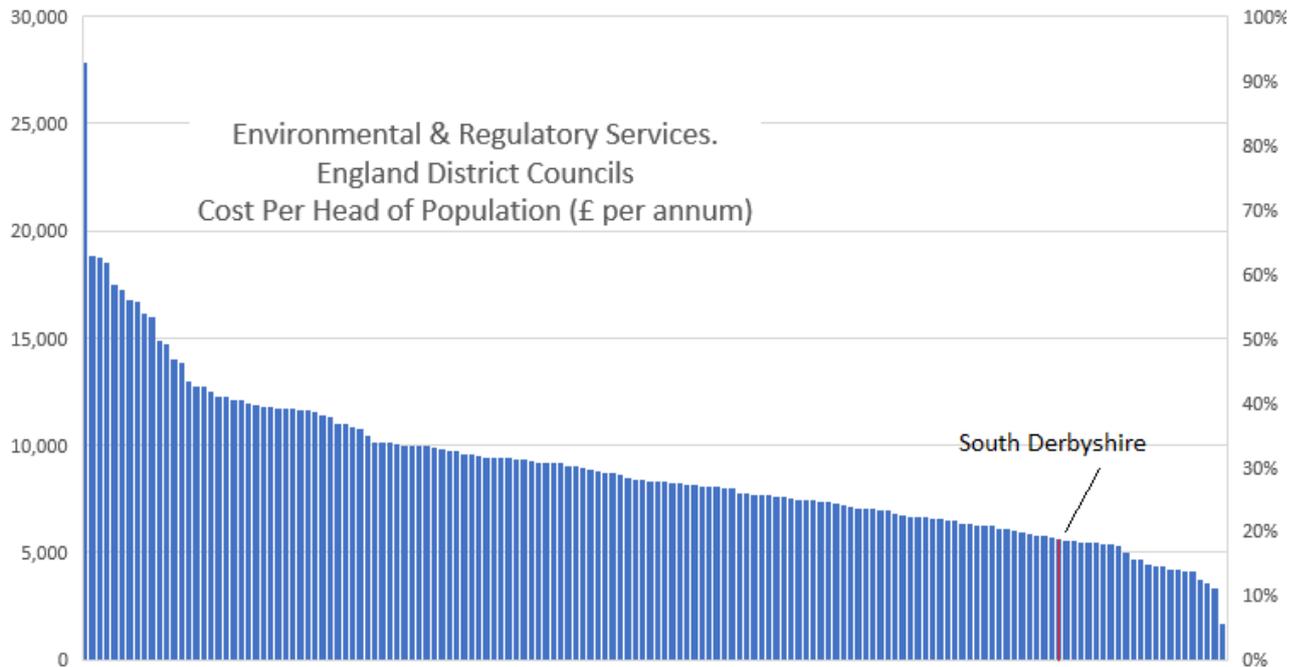
Cases of Particular Note

- A [woman from Derby](#) was fined a total of £434 for two fly tipping offences.
- A [man from Swadlincote](#) received a 12-week custodial sentence suspended for 12 months and was ordered to undertake 180 hours of unpaid work for fly tipping. He was also ordered to pay £3,827.25.
- A [man from Burton](#) was fined £1,332.17 after ignoring an order from the Council banning him from using the unsafe basement of his take-away as living accommodation
- A [man and woman from Linton](#) were fined £4,816 after being convicted of causing unnecessary suffering to animals and failing to ensure the needs of the animals were met. The man received ten weeks imprisonment suspended for eighteen months, a rehabilitation order and he was disqualified from keeping animals for five years. The woman was disqualified from keeping animals for two years.

3.49 All criminal convictions are widely publicised using press releases and social media content as a deterrent to others, with the reach of social media posts regularly exceeding 20,000 a month.

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 £1,000,000 and the Council has progressively reduced these costs in recent years while at the same time increasing the volumes of work activity.
- 4.2 Benchmarking the costs of the Council's regulatory services to other councils in the UK suggests that overall, the services provided are at a relatively low cost.
- 4.3 Based on 2021/22 benchmarking data published by the LGA (published on LG Inform) South Derbyshire's total expenditure per head of population on environmental and regulatory services was £58.73. The average cost for environmental and regulatory services across all District Councils in England was £89.96. Out of 164 English District Councils, South Derbyshire was ranked 132.



5. Corporate Implications

Employment Implications

5.1 None.

Legal Implications

5.2 All activities referred to in this report are carried out within the boundaries of statute and statutory guidance. Council officers must have regard to this in all of their actions. The Council also has internal governance processes in place, such as delegations under the Constitution, which provide assurances that Council officers act appropriately and proportionately.

Corporate Plan Implications

5.3 The report has been produced to provide the Committee with details of how officers are delivering the “Our Environment” aim to *Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate* and the “Our People” aim to *Help tackle anti-social behaviour and crime through strong and proportionate action priority through People* in the 2020-24 Corporate Plan.

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

Appendix 1

Mental Health

Example 1. Resident A living on their own in a terraced property complained about the family next door regularly played music throughout the night. The music was depriving the resident of sleep and they believed it was being done maliciously.

Council investigations included providing digital noise recording equipment to the resident for a week to enable them to take noise measurements and high quality recordings of the noise when it was taking place.

They took four hours of recordings, all at times when they said the music was keeping them awake. Council officers reviewed the entire contents of the recordings and no noise was audible at any time. When this was reported back to the resident, they claimed that the recording equipment was defective.

Given their insistence that the music was continuing, officers instead offered to visit the resident whenever they heard the music during the working day. Three reactive visits were made in response to calls. In all cases officers arrived at his property within 10 minutes of the call. No noise was observed on any occasion.

At their request the noise recording equipment was again provided for a week. Once again, none of the recordings produced any evidence of noise. The resident continues to claim that they are subjected to loud music from next door on most days.

For the duration of the investigation the resident has been actively engaged with their GP and has told officers that they are being investigated for underlying hearing defects such as tinnitus. They say that they have not been diagnosed with any auditory condition. For the duration of the investigation, they also repeatedly contacted Derbyshire Police and Derbyshire County Council Social Services. They have refused help from third sector organisations or referrals to other agencies. The case has now been closed as unresolved.

Total estimated officer time on case - 180 hours

Example 2

Officers were asked to visit the property of a resident in their 60s by a neighbour due to the overgrown state of the garden. Officers visited, received no answer and left a calling card.

The resident did not respond to the calling card, but a visiting Occupational Therapist saw the card and contacted the officer asking for help on behalf of the occupier.

When officers visited the property, they found that the condition of the property suggested significant self-neglect. The resident was being treated at home on a kidney dialysis machine and the bedroom was found to contain hundreds of dialysis bags full of clinical waste. The resident had also stopped using the kitchen due to its poor condition and was preparing and storing food, open and unrefrigerated, in their bedroom, which created a significant risk of food borne disease given that they were already immuno-compromised.

Officers arranged and paid for the property to be cleaned and sanitised, a job which took a contractor team 16 hours to complete. The case was referred to VARM.

Six months later officers were requested by the Occupational Therapist to come back to the property. It had returned to broadly the same state that officers had originally found it in.

Total estimated time on case 130 hours
Total estimated revenue costs £1,500

Example 3

Officers were asked to visit an elderly resident after neighbours raised concerns about self-neglect.

The resident refused to allow anybody into her house, but when seen from the outside the internal housing conditions appeared to be potentially unsafe and to contain significant hoarded material. Officers were required to obtain a warrant from court to require the resident to let them in to the house.

The house was completely full of hoarded material including newspapers, magazines, rotting food and clothing. The house had an extensive mouse infestation. The hoarded material presented a significant fire risk and was preventing the landlord from carrying out vital work from being done to repair electrical defects. The heating system had failed and also couldn't be repaired due to the hoarding.

The resident refused to accept any help and refused to make any changes to improve the condition of the property.

Council officers made over 50 visits to the property over the course of a year and a half. They had to obtain court warrants to enter the property on three different occasions. Legal notices were served under the Public Health Act and Housing Act and after the requirements of these notices were not met, the Council were required to instruct contractors to clear the property on six separate occasions using powers to carry out 'works in default' of the legal notices.

The case remains open and the resident remains to be of significant concern to officers.

Total estimated time on case – 200 hours
Total estimated revenue cost - £6,000

Example 4

A resident contacted the service to complain about problems with their neighbour.

The resident claimed that the neighbour had installed a machine which was causing rashes to appear on their skin and which was causing mould growth on their walls.

Officers investigated and could find no evidence of any material problems with her property or any inappropriate behaviour by the neighbour.

The resident then claimed that the neighbour was releasing a gas in their garden which was causing the resident respiratory ill health. Again, after investigation no evidence was found to support this claim.

The resident was assessed by mental health professionals as having mental capacity and therefore no interventions were made due to their mental state.

The resident then began to take retaliatory action against the neighbours. This resulted in legal action being taken against the resident for harassment and threatening behaviour, but their behaviour continued.

The case for harassment went to court but was dismissed on the basis of two psychological reports which stated that the resident does not have mental capacity in relation to her behaviour towards the neighbours.

The case remains open and unresolved.

Figure 1 - Requests for Enforcement Action

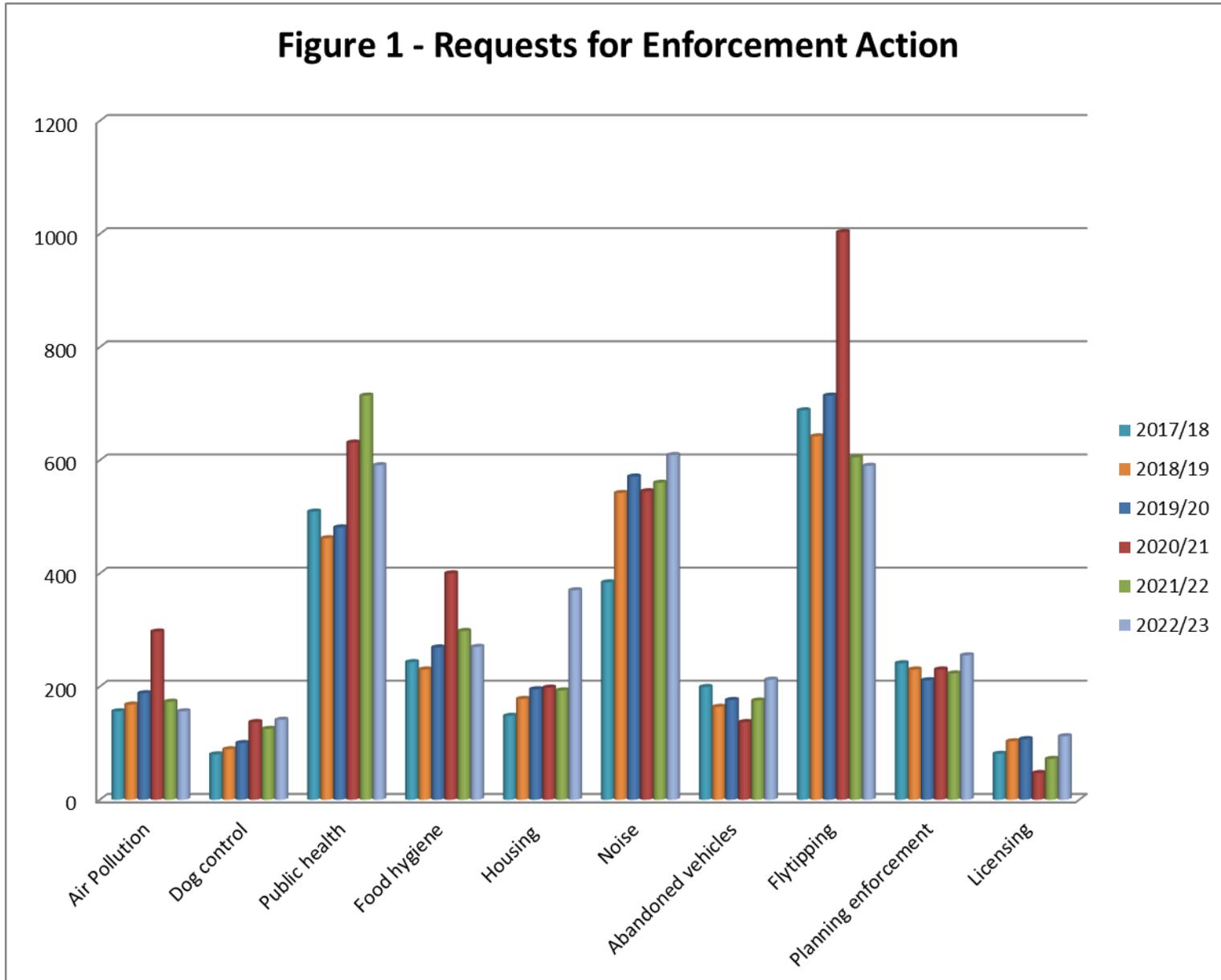


Figure 2 - Proactive Inspections of Businesses

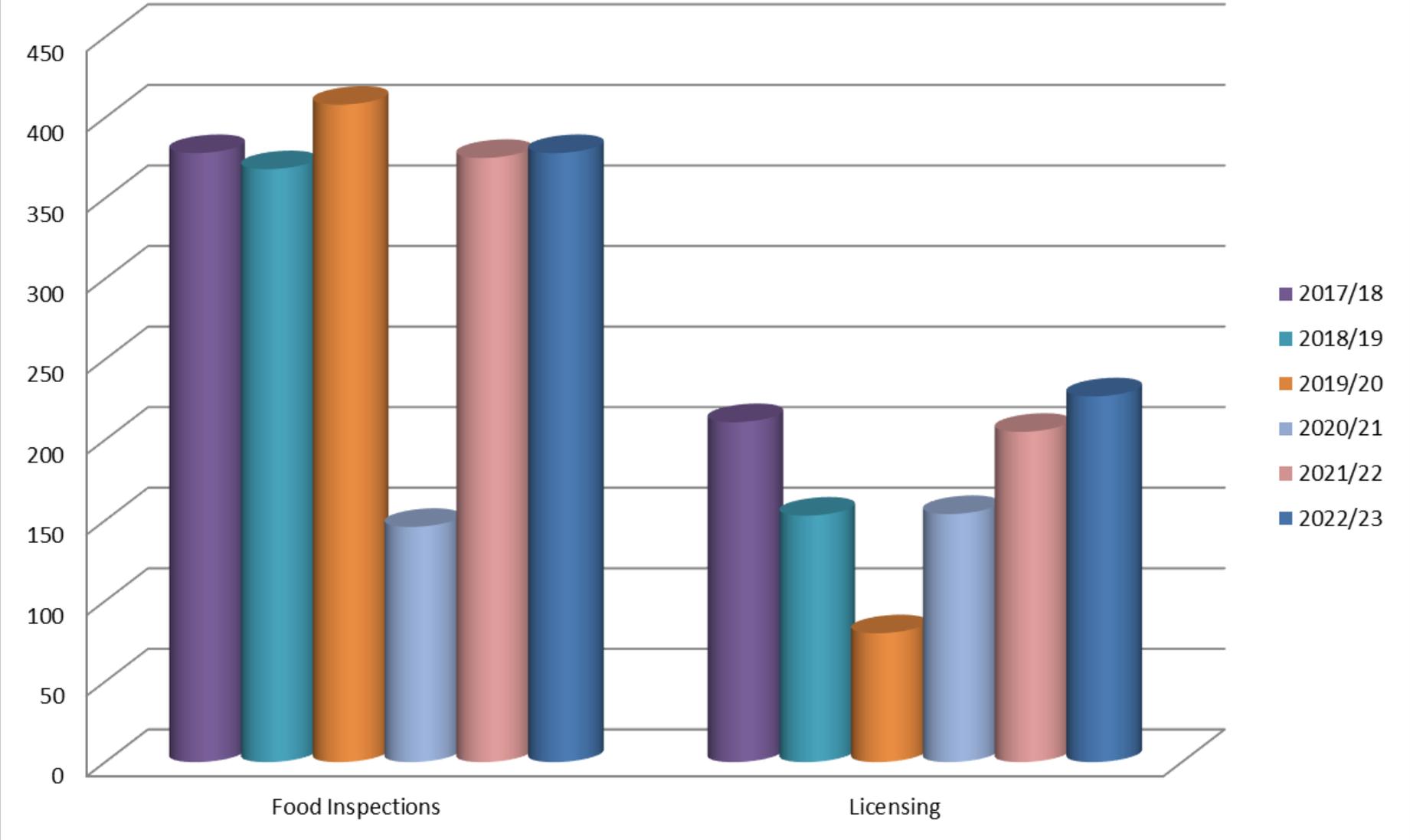


Figure 3 - Enforcement Notices Served

