
REPORT TO:	ENVIRONMENT & DEVELOPMENT SERVICES	AGENDA ITEM: 7
DATE OF MEETING:	11 AUGUST 2022	CATEGORY: RECOMMENDED
REPORT FROM:	ALLISON THOMAS, STRATEGIC DIRECTOR – SERVICE DELIVERY	Open
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SUBJECT:	ANNUAL ENFORCEMENT AND COMPLIANCE REPORT 2021-22	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 2021/22 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 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.

3.4 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

3.6 The demand for Council services in 2021/22 compared to previous years is illustrated in Figure 1 in the report appendix.

3.7 Covid-19 continued to have a profound effect on the demand and delivery of services throughout 2021/22, although the effect was less pronounced than during 2020/21.

3.8 After a large spike in air pollution complaints during 2020/21, the numbers of complaints returned to pre-pandemic levels in 2021/22, albeit that there has been a progressive increase in complaints over the last five years. Data from air quality monitoring locations across the District demonstrate that air quality has progressively improved over the last decade.

3.9 Complaints about dog offences slightly reduced compared to 2020/21.

3.10 There has been another significant increase in the number of complaints generally classified as 'public health'. 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.

3.11 After a large spike in complaints about food establishments 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.

3.12 Complaints about private sector housing have progressively increased over the last five years.

3.13 Complaints about noise nuisance have remained stubbornly high for the last four years. Complaints about noise in South Derbyshire in 2020/21 were 6.4 per 1000 population compared to an East Midlands average of 4.5 per 1000 population and an England average of 6.8 per 1000 population.

3.14 Complaints about incidents of abandoned vehicles increased in 2021/22 after a progressive fall since a peak in 2016/17. Despite the high numbers of complaints, after investigation most were established as being unsubstantiated with most complaints associated with annoyance due to parking. In 2021/22, of the 175 complaints about abandoned vehicles the Council only needed to take formal action in 18 cases.

3.15 In 2021/22 the Council also received over 150 requests for support and information in relation to compliance with the Covid Regulations from the public and business owners over the course of the year.

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. The Team continues to provide advice and guidance to businesses to ensure they are compliant with the relevant pieces of legislation post Covid. Again, the number of inspections carried out by the Team has increased with the assistance of the Covid Marshals whilst they were in contract.

- 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 guidance for animals, tax checks for private hire drivers, operators and scrap metal dealers and new requirements for the private hire national database of refusals and suspensions.
- 3.18 In addition to the introduction of legislation, the Team continues to streamline procedures to improve the service for customers by introducing an online booking system for the depot tests and online Disclosure and Barring (DBS) checks making the application process easier for licence holders and applicants whilst maintaining the high standards to hold a licence within the District.
- 3.19 Complaints regarding unlicensed dog breeding continue to grow and joint enforcement initiatives have been undertaken with the Environmental Health Team, Royal Society for the Protection of Cruelty to Animals (RSPCA) and the Police to tackle and disrupt the businesses of the most persistent offenders with several prosecutions pending.

Direct Effects of Covid 19

- 3.20 Throughout 2021/22, the Council employed a dedicated Business Compliance Officer to support Covid outbreak control investigations. The innovative outbreak mapping process developed by the Business Compliance Team was recognised by the Local Government Association (LGA) as an example of national excellence.
- 3.21 The Council also commissioned Red Snapper Ltd to provide Covid Marshal services until the end of March 2022. The Marshals subsequently played a huge role in advising and assisting local businesses to follow government guidance as the economy reopened.
- 3.22 Over the course of the year the Covid Marshals carried out 995 visits to business premises to provide Covid compliance audits and advice. These involved the Marshals providing structured reviews of the Covid control measures of each business and comparing them to the relevant guidance issued by government for that business sector.
- 3.23 The audits showed that compliance levels with all measures contained in the Covid guidance were consistently above 90% in the local business community.

Demands for Inspections of Businesses

- 3.24 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 food hygiene inspections carried out.
- 3.25 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.
- 3.26 Due to the 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.

- 3.27 In April 2022, 86.9% 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.
- 3.28 In April 2022 there were 941 registered food businesses in the District. This represents a significant increase in the number of local food and drink businesses over the course of the last two years. In April 2020, the number of registered food businesses was 856.
- 3.29 Hygiene standards in 98.8% 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.

Other Significant Matters

- 3.30 Fuel Poverty in Private Rented Sector. In April 2020, new legislation requiring minimum standards of energy efficiency in private rented properties was brought into effect. Recognising that combating fuel poverty is a corporate priority, South Derbyshire took early steps to support and encourage local landlords to improve their properties.
- 3.31 Officers also took robust action where landlords were failing to act. Currently just three properties in South Derbyshire out of an estimated 5,000 private rented properties are non-compliant with the new legislation – i.e. 0.06% of the private rented sector stock. The most recent government estimates about national compliance (April 2021) suggests that up to 4.4% of private rented properties may not be complying with the law.
- 3.32 Breaches of Animal Welfare law appear to be increasing in frequency, possibly as a result in the very significant increase in pet ownership during the pandemic.
- 3.33 In 2021/22 this resulted in Council officers seizing 47 animals using animal welfare powers. A number of cases are currently awaiting court proceedings.
- 3.34 A major barrier to the use of animal welfare seizure powers are the associated costs. The Council has powers to seize an animal and then apply to the court to prosecute the offender and subsequently obtain a possession order for the animal to have it rehomed. This process often takes many months and during this time the Council is required to keep all seized animals in a safe animal boarding establishment. The cost implications can run into thousands of pounds per animal.
- 3.35 In February 2022, the Council signed a legal agreement with a dog rescue fostering charity to enable seized animals to be homed with foster carers during the time between their seizure and the conclusion of the court case. This enables the animals, who are often already in a poor state of physical and emotional health, to be looked after in a domestic setting rather than being kept in a boarding kennels. The arrangement also provides a very significant financial saving for the Council. This agreement is thought to be the first of its kind in the UK.
- 3.36 The costs of ensuring the welfare of animals which have been found by Council officers to be 'suffering' (under the definition of the Animal Welfare Act 2006) has escalated significantly in recent months and has now been identified as a new risk on the Service Delivery risk register. This item may be the subject of a further report to Finance and Management Committee.

- 3.37 Officers are actively exploring other solutions to enable animals which are seized under animal welfare powers to be more rapidly found permanent, safe homes.
- 3.38 Towards the end of the financial year the Homes for Ukraine scheme was launched. Environmental Health staff needed to rapidly respond to the implications of the scheme by ensuring that safeguarding checks were carried out on people who had volunteered as sponsors to prevent any potential risk of exploitation.
- 3.39 Officers are also directly supporting the scheme by providing sponsors with advice and resources to prevent any causes of potential serious harm within their households such as electrical and fire safety hazards.
- 3.40 To date approximately 65 home checks have been carried out which will lead to safe accommodation for approximately 130 Ukrainian visitors.

Formal Legal Interventions

- 3.41 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.
- 3.42 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

- 3.43 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.
- 3.44 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

	15-16	16-17	17-18	18-19	19-20	20-21	21-22
Total Fixed Penalty Notices	34	91	79	72	27	59	72
Dog offences	23	9	6	14	4	5	4
Fly tipping & waste offences	0	7	7	8	5	23	21
Litter	8	65	54	43	13	24	45
Community Protection Notice / PSPO breach	3	10	12	4	4	5	1
Abandoned vehicles	0	0	0	3	1	0	1

Covid Regs (business breaches)						2	0
Formal Cautions	3	1	3	4	6	13	8
Prosecutions	3	1	5	7	5	0	3

3.45 The pandemic led to a significant delay in the criminal courts processing low level criminal offences. Therefore, some cases which investigating officers would normally have referred for prosecution had to be dealt with by other means. Fixed penalties and formal cautions were the only viable way of processing these cases and ensuring that the offender faced some level of sanction.

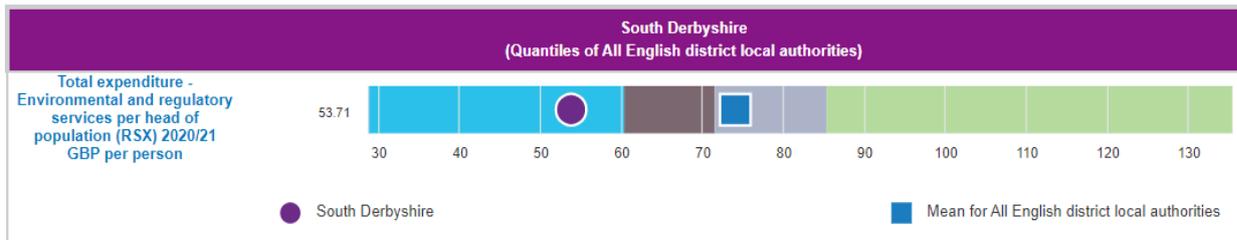
Cases of Particular Note

- 47 animals (mainly dogs) were seized from four different locations due to suspected offences under animal welfare law.
- A man from Swadlincote received fines and costs of £972 after he was found guilty of fly tipping near Coton Park.
- A woman from Mackworth received fines and costs of £1,455 after she was found guilty of fly tipping in a farmer's field near Aston on Trent.
- A man from Derby received fines and costs of £3,900 after he was found guilty of fly tipping near Shardlow.

3.46 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 2020/21 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 £53.71. The cost of the Council's environmental and regulatory services is, therefore, in the lowest quartile of all District Council's in England and well below the mean cost of £73.98 for all English District Local Authorities.
- 4.4 Costs of animal welfare regulatory interventions have escalated very significantly since the start of 2022 and may be the subject of a further report to Finance and Management Committee.



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

Figure 1 - Requests for Enforcement Action

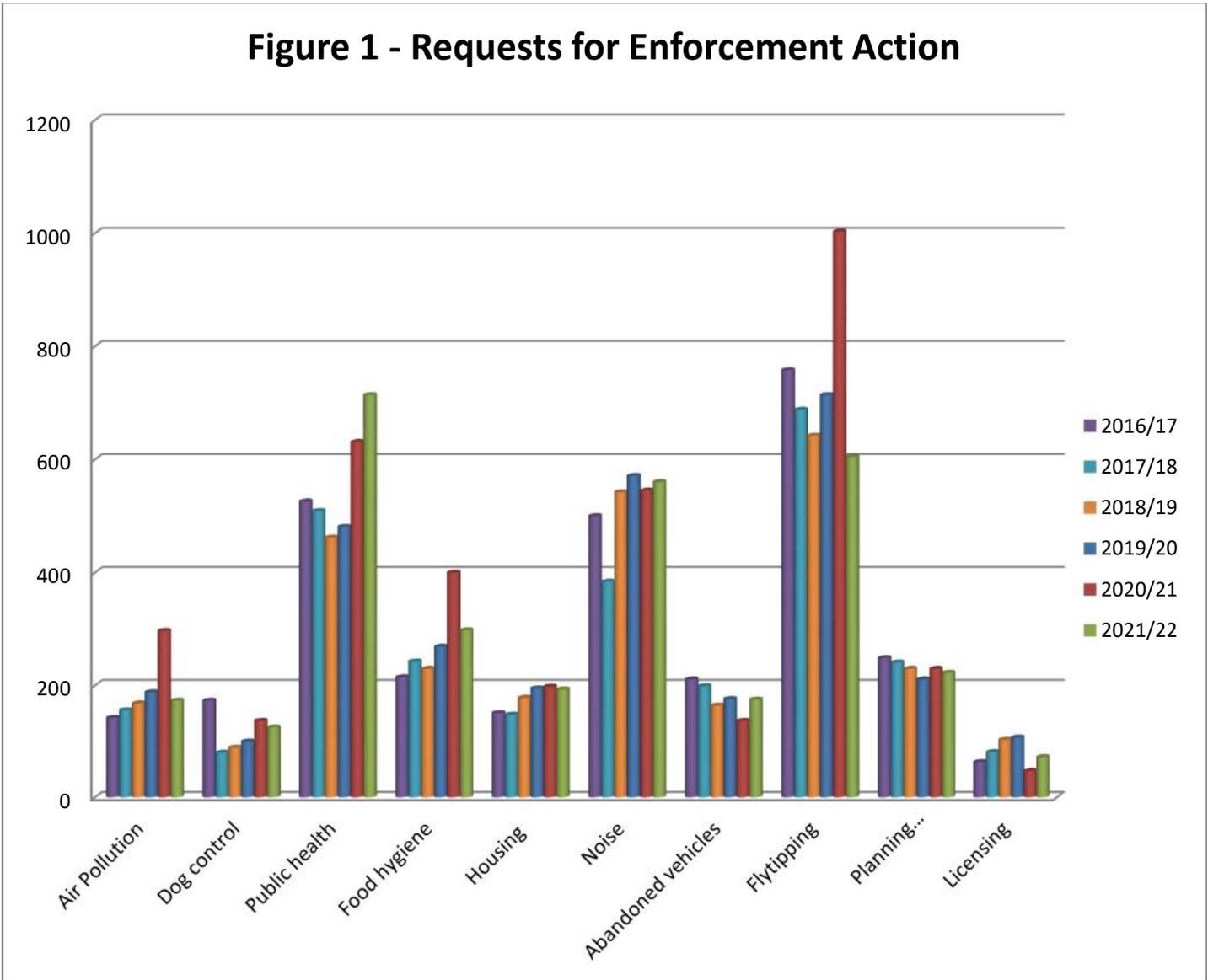


Figure 2 - Proactive Inspections of Businesses

