

TONBRIDGE & MALLING BOROUGH COUNCIL

HOUSING and ENVIRONMENT SERVICES ADVISORY BOARD

09 November 2015

Report of the Director of Planning Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 UPDATE ON THE WORK OF THE ENVIRONMENTAL HEALTH TEAMS

Summary

This report provides an update on the recent work of the Environmental Health Teams, including the recommendation to introduce a Kent and Medway Memorandum of Understanding (MOU) for Health and Safety and national developments in air quality.

1.1 Background

1.1.1 The Environmental Health Service includes both the Environmental Protection Team and the Food and Safety Team. The aim of the Service is to protect and improve the health of residents within the scope of the statutory powers it is given.

1.1.2 The Food and Safety Team are responsible for inspecting the Borough's food premises, certain workplaces with regard to health and safety requirements and investigating accidents at work. The Environmental Protection Team deals with a wide range of reactive and proactive issues relating to all aspects of pollution including air quality, contaminated land and neighbourhood noise. Both Teams respond to requests for service relevant to their respective areas of work.

1.2 Better Business for All (BBfA)

1.2.1 BBfA is a national initiative which aims to bring regulatory and business communities together to improve the way that regulation is delivered. The benefits of the initiative are that regulators across all sectors support businesses with achieving compliance, whilst focussing enforcement efforts on "rogue traders" and through this approach develop a more positive perception of regulatory services.

1.2.2 The Kent and Medway BBfA Partnership has recently gained considerable momentum through the recent delivery of training on BBfA to nearly 300 regulators across the County, obtaining a commitment from the Kent and Medway Business Advisory Board to support the work of the BBfA Steering Group and developing close working links with Kent Invicta Chamber of Commerce, the Federation of Small Businesses and Produced in Kent.

- 1.2.3 The ongoing focus of the Steering Group will be to develop a strategic approach to business engagement across Kent and Medway, a significant part of this will be the launch of the BBfA website developed in Kent www.bbfa.biz and a commitment from Kent Invicta Chamber of Commerce that BBfA will be included in the Growth Hub.

1.3 Estates Excellence

- 1.3.1 Estates Excellence is an initiative that the Health and Safety Executive have successfully used to bring together business owners, commercial landlords and health and safety regulators, such as local authorities and Fire and Rescue Services, to improve health and safety in the workplace. This is a non-enforcement led project designed to support and help business growth and very much supports the principles of BBfA.
- 1.3.2 Tonbridge and Malling B.C have been selected to deliver this project in the borough during the first quarter of 2016/17. It is anticipated that business estates in Tonbridge and Larkfield areas will be targeted. This will involve working with partners from both local businesses and regulators to provide support, education and free training to help SMEs focus on the most hazardous aspects of their work activities.
- 1.3.3 It is hoped that our project will target approximately 300 businesses and will include working with partners in the Healthy Living Team and our Economic Development Officer to deliver a wider range of work place support initiatives alongside traditional health and safety advice and support.

1.4 Kent and Medway Health and Safety Memorandum of Understanding (MOU)- Flexible Warranting Scheme

- 1.4.1 The National Local Authority Enforcement Code for Health and Safety at Work expects local authority resource to be used consistently and to best effect. To facilitate this across health and safety interventions, local authorities in Kent and Medway are considering the introduction of a joint Memorandum of Understanding to enable joint working on a flexible warranting scheme for health and safety enforcement.
- 1.4.2 The aim of the Flexible Warranting Scheme is to enable local authorities to appoint and indemnify suitably qualified Inspectors from other local authorities to undertake work in other local authority's areas, for example following a major incident or investigation, to undertake a specific piece of work on their behalf or to participate in a county wide or local project.
- 1.4.3 Each local authority will be responsible for nominating inspectors that meet qualification and competency requirements.
- 1.4.4 As a general principle it is not anticipated that inter-authority charging will be applied when work is undertaken within the scope of the MOU by an officer from a

different local authority. However, the scheme does allow for parties to agree charges where the work required is considered to be more than the local authority can reasonably be expected to provide without a charge.

1.5 Food Hygiene Training

- 1.5.1 The provision of food hygiene training is a potential source of revenue for the Council. In the last six months the Food and Safety Team have delivered a Chartered Institute of Environmental Health (CIEH) Level 2 Award, Food Safety in Catering hygiene course for 16 delegates, with a further course to follow next month.
- 1.5.2 Seven delegates also attended a CIEH Level 3 Award in Supervising Food Safety in Catering. This course held over three days is designed for supervisors and managers in catering businesses. It is particularly relevant for those who have to develop or monitor food safety management procedures and systems.
- 1.5.3 The team will be considering whether it is feasible to run additional courses during the year, which may include sessions that focus on specific styles of catering and the associated risks.

1.6 Air Quality

- 1.6.1 Once again, UK air quality has been in the national headlines over recent weeks following the VW fuel economy scandal, the ClientEarth Supreme Court ruling and renewed attention around the health impacts of poor air quality.
- 1.6.2 In April, the Supreme Court reached a unanimous ruling, in a case brought by ClientEarth, that the government should take immediate action to cut air pollution. As a result of this ruling, the Department for the Environment, Food and Rural Affairs (Defra) were required to quash the current national air quality plan and mandated to produce new plans aimed at meeting the EU air quality objectives for nitrogen dioxide, by 31 December 2015.
- 1.6.3 As a result of the ruling, Defra have published a consultation document entitled 'Tackling nitrogen dioxide in our towns and cities'. The closing date for comments is 6 November 2015. Officers will be responding to the consultation and a verbal update will be provided to this Advisory Board.
- 1.6.4 Defra have then indicated that they will publish a summary of the consultation responses within 12 weeks and remain fully committed to submitting revised air quality plans to the European Commission by the December deadline.
- 1.6.5 Locally the EP Team are following up a number of enquiries with schools and Parish Councils, following their presentation to the Joint Parish Councils Traffic Consultative Group.

1.7 LAQM Review

- 1.7.1 In tandem with the national Air Quality Action Plan consultation described above, Members may recall that that Defra are undertaking a review of the Local Air Quality Management (LAQM) Regime. Officers have previously reported their comments to Round 1 of the Consultation in August 2013 and to Round 2 in January 2015.
- 1.7.2 Defra have indicated that the 3rd Round consultation is to be published imminently and Members will be updates on the contents of this consultation, at subsequent meetings.

1.8 Retrofitting Project

- 1.8.1 In a report presented to the Local Environmental Management Advisory Board in March 2013, officers detailed the award of an Air Quality grant from Defra to retrofit up to 10 Arriva buses, which travel along the A20 corridor (Route 72), with emissions-reducing equipment. There are two elements to the project – the purchase and retrofitting of the emissions-reducing equipment to the buses and the appointment of a contractor to undertake air quality monitoring at strategic locations, along the route, before and during the project and to provide reports detailing their findings.
- 1.8.2 The project is a joint venture with Maidstone Borough Council (MBC), Kent County Council (KCC) and Arriva Buses who all signed up to a Partnership Agreement. It also supports the objectives of the Statutory Bus Partnership.
- 1.8.3 Over the last 18 months progress with the project has been frustrated by numerous personnel changes in all three partners. While there now seems to be some stability in membership of the project group, the viability of the project needs to be confirmed at the next meeting of the group.
- 1.8.4 If it is feasible to continue, it is anticipated that the tender for the monitoring element of the project will be completed before the end of the year.

1.9 Odours in Tonbridge

- 1.9.1 Members will be aware that Drytec appealed against the Abatement Notices which were served on them in June and December 2014. The appeal hearing was scheduled for 5 days in September 2015. Prior to the hearing officers entered into 'without prejudice' discussions with Drytec and their legal representatives to explore if a mutually acceptable out of court agreement could be achieved.
- 1.9.2 The outcome of these discussions resulted in Drytec withdrawing their appeal against the Notices and agreeing to meet the Council's incurred legal and expert costs (which amounted to £38,848.00). The terms of the agreement were agreed by the Court and include an obligation on Drytec to develop an action plan to further reduce odour emissions. Officers feel this result vindicates the approach

taken by the Council to address the odour emissions from these premises and their impact upon the local residents.

- 1.9.3 In practice, the withdrawal of the appeals means that all the Abatement Notices remain fully in force and, in the event there is a breach of the Notices in the future, the Council has the option to bring criminal proceedings in the Magistrates Court.
- 1.9.4 Members are probably aware that there was a fire at Drytec on 16 September. Thankfully, there were no casualties, with only one person being taken to hospital (suffering smoke inhalation) as a precaution. Officers understand that the suppression system within the plant did its job to ensure that the fire was contained to the food flavourings production area. In essence, there was no major damage to the structure of the building or to the plant itself, although work to repair the damage has been ongoing and officers are awaiting confirmation that the plant is back to full production in the week commencing 26 October 2015.
- 1.9.5 In respect of complaints, there are notable periods when no complaints are received. However, during short isolated periods (2/3 days) it does appear that the impact of the odours being detected is less intense and less frequent, than previously recorded.
- 1.9.6 Officers believe there is still room for improvement from Drytec's operation to endeavour to ensure that the impact from odours (arising from their premises), on local residents, is reduced to a minimum. To that end, a meeting is to be held with Drytec to map out a way forward and remind Drytec of their obligation to prepare an action plan once the plant at the premises is fully operational. Our aim, as always, is to endeavour to ensure that the impact of the odours from Drytec on local residents is reduced to a minimum.

1.10 Legal Implications

- 1.10.1 The Council has a range of statutory duties in relation to the work of both Environmental Health Teams. Failure to meet those obligations may result in formal complaints, potential criticism from Defra and the Food Standards Agency and possible legal challenge.

1.11 Financial and Value for Money Considerations

- 1.11.1 All activity is resourced within the planned Service budgets.

1.12 Risk Assessment

- 1.12.1 Failure to properly manage and deliver the food safety functions could result in censure by the Food Standards Agency and breach of Section 18 of the Health and Safety at Work etc. Act 1974

1.13 Equality Impact Assessment

1.13.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.14 Recommendations

CABINET is RECOMMENDED to:

1.14.1 **AGREE** to the Council signing the Kent and Medway Health and Safety MOU.

1.14.2 **SUPPORT** the continuation of the Retro-fitting project, should the project group deem it feasible to continue.

The Director of Planning Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

contact: Jacqui Rands
Melanie Henbest
Jane Heeley

Steve Humphrey
Director of Planning, Housing and Environmental Health