

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD**

**11 June 2019**

**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 ENVIRONMENTAL HEALTH PERFORMANCE 2018/19**

**Summary**

**This report summarises the operational activities of the Council in relation to its statutory Environmental Health functions undertaken by the Environmental Protection Team and Food and Safety Team for 2018/19.**

1.1.1 The Environmental Health function is primarily concerned with protecting the public from the harm they may encounter in the wider environment, food, workplaces and with improving health. Environmental Health Officers act as advisers, educators and regulators and carry out site visits and give assistance to individual householders and businesses and to managers and workers. In certain circumstances, they take enforcement action to ensure compliance with legislation designed to protect the health of the public.

1.1.2 Two Teams work in this area:

- Food and Safety Team (FST) – responsible for the food premises inspection and food sampling programmes, health and safety in our local workplaces providing advice and guidance to employers and responding to requests for service relating to these areas; and
- Environmental Protection Team (EPT) – responsible for requests for service relating to alleged nuisances, responding to planning and licensing applications, contaminated land enquiries, proactive landfill gas and water quality monitoring and meeting the statutory requirements of the environmental permitting, local air quality management and private water supply regimes.

**1.2 Food and Safety Team**

1.2.1 A significant part of the work of the team is the food premises inspection programme, which includes full or partial inspections of high and medium risk food businesses and questionnaires to low-risk business. A total of 469 full or partial

inspections and 100 information gathering interventions were carried out which includes questionnaires sent to low risk premises. In addition 79 re-visits to food premises were undertaken to ensure legal contraventions had been remedied. All but seven programmed interventions, that were due in 2018/19, were completed, mainly due seasonal closures. Specific details of food safety interventions are shown in **[Annex 1]**.

- 1.2.2 The Council's results show that at the end of 2018/19, 97 per cent of our food businesses are broadly compliant and have achieved a rating of three or better in the National Food Hygiene Ratings Scheme. Full details are presented in **[Annex 2]**.
- 1.2.3 Food sampling is important to help ensure the safety of food. The Food and Safety team participated in national sampling surveys which included ready to eat foods such as pastry products from retail and catering establishments, swabs in catering premises to assess cleaning standards and frozen fruit and vegetables with a focus on Listeria. In addition, samples were taken as a result of food poisoning allegations or complaints of poor hygiene and routine surveillance of a variety of food businesses. In 2018/19, officers took 214 samples and sent them for microbiological examination. Sixty four unsatisfactory results were investigated and advice given to businesses to resolve problems. Re-samples were taken where required. Further details can be found in **[Annex 3]**.
- 1.2.4 During 2018/19, a total of 242 reports of food poisoning were made and investigated when food businesses were implicated. Campylobacter cases continue to be the largest number of reported cases of food poisoning in the borough, with 187 cases. The incidence of salmonella was just 20 in comparison. The team provides advice to people suffering from food poisoning or food related disease and, where necessary, further investigations and sampling are undertaken with businesses that may be implicated.
- 1.2.5 Officers continue to deliver food safety and hygiene training as part of the West Kent Local Authority Training Partnership, operated in conjunction with other West Kent local authorities. In 2018/19, officers delivered four Level 2 food hygiene courses at Tonbridge and Malling as part of the partnership arrangement, training 36 food handlers.
- 1.2.6 Nine visits were made as a result of formal accident reports received.
- 1.2.7 The Food and Safety team received 133 service requests in 2018/19. These included complaints about food, food premises and the hygiene of food handlers, as well as workplace health and safety complaints. All these complaints were fully investigated and relevant action taken.
- 1.2.8 The team has set up a Primary Authority partnership covering workplace health and safety with a company responsible for providing student accommodation. At the request of the business officers have conducted two health and safety audits and the business has been charged on a cost recovery basis.

1.2.9 **Formal Enforcement Action** – Although our aim is to provide advice and guidance to business operators in the majority of cases, in order to protect public health, it is sometimes necessary to take formal action against businesses. In 2018/19, nineteen food hygiene improvement notices were served to secure compliance for offences such as lack of food hygiene training and inadequate food safety management systems. One restaurant voluntarily closed due to an active pest infestation. One takeaway premises was prosecuted for four food safety and one health and safety offence and received fines totalling £9000 plus costs of £4,542. Two health and safety prohibition notices and six improvement notices were also served on other businesses.

### 1.3 Environmental Protection Team

1.3.1 During the twelve months from 1 April 2018 to 31 March 2019, 504 requests for service were received to which the team responded to all but two within five working days. Of that total, 65 concerned the odour from Drytec in Tonbridge. Other issues that generated significant requests for service included noise both from domestic and licensed premises, barking dogs, bonfires, and various types of accumulations on private land. Specific details of the types of requests received are shown in **[Annex 4]**.

1.3.2 On receipt of a complaint, letters are sent to the complainant (with diary sheets enclosed) and to the person alleged to be causing the nuisance, advising them that a complaint had been received and requesting them that if the allegation is correct to resolve the situation. In the majority of cases, no further communication is received by officers from either party, indicating that the initial letter to the person alleged to be source of the problem resolves the issue with no further involvement from officers.

1.3.3 On some occasions it is necessary for the team to instigate formal action to protect public health/prevent Statutory Nuisance. This is usually because the enforcement options, as set out in the Enforcement Policy, have been exhausted. A summary of Notices served in this period is provided in **[Annex 5]**.

1.3.4 Members will note the increase in the service of Control of Pollution Act 1974 Section 61 'Prior Consent' Notices. Whilst formal Notices, they differ slightly in that they are issued at the behest of the recipient to self-impose noise restrictions on construction works, and so long as conditions are complied with provide immunity from other potential enforcement action. Most Section 61 'Prior Consent' notices served in this period relate to the resurfacing of rail station car parks across the borough, where work was scheduled to occur overnight.

1.3.5 The EPT are formally consulted by their colleagues in the Planning Service on applications received and on which the EPT make recommendations for the inclusion of conditions or "informatives" if planning permission is granted. These recommendations are intended to pre-empt and address areas of environmental concern prior to development starting. They also ensure that appropriate

mitigation measures and/or remediation measures are addressed and implemented within the proposal to protect the quality of life for the future occupants of the development and neighbouring properties. During the period the team responded to 451 planning and discharge of condition applications.

- 1.3.6 Under the provisions of the Licensing Act 2003, Environmental Health is a statutory consultee in respect of applications for Premises Licences and Temporary Events Notices (TENS). During the year the team responded to 22 Premises Licence applications, and 359 TENS applications.
- 1.3.7 Certain specified processes are required to obtain a 'permit to operate', under the provisions of the Environmental Permitting Regulations, which control emissions from site. Responsibility for enforcement of the regime is divided between the Environment Agency and Local Authorities. There are 47 permitted processes within the Borough for which we are responsible, covering processes which include, petrol stations, dry cleaners and car resprayers. During the year the EPT conducted 4 proactive inspections, and the standard of compliance with the permits and any conditions attached remains high.
- 1.3.8 The Council has an important role in protecting the public from hazards associated with contaminated land. There are three principal aspects to this role:
- identification and prioritisation of known areas of contaminated land within the Borough;
  - ensuring that, through the planning process, areas of potentially contaminated land are identified, investigated and remediated during the development process; and
  - responding to specific enquiries from potential property purchasers who have had concerns raised about potential contaminated land on their prospective property.
- 1.3.9 As well as providing input into planning permission consultations, in 2018/19 the EPT provided 30 reports in relation to specific contaminated land enquiries, the majority from prospective property purchasers.
- 1.3.10 Some members may recall that in February 2018 the EPT in conjunction with Leap Environmental Ltd began a landfill gas investigation at the former Jocopits site, now comprising Tolsey Mead and Eaglestone Close in Borough Green. This work is now drawing to a close with the site classified as low risk for gas (although periodic monitoring will continue). A final report to board will be provided at the next meeting.
- 1.3.11 There are a number of private water supplies (PWS) in the Borough and to safeguard the health of people consuming water from these supplies the team is required to risk assess and sample these supplies. Most occur in residential properties, although there are some commercial premises that maintain a private

water supply. Samples were taken as required during the year to ensure the supplies met required standards.

- 1.3.12 From Annex 4, Members will note one notice was served in relation to failure to comply with required standards of a PWS. EPT members continue to liaise with the owner to ensure appropriate actions are taken to remedy the failure.
- 1.3.13 The Local Air Quality Management (LAQM) regime requires the Council to periodically review and assess the air quality within its area. To fulfil these duties officers in the EPT monitor Nitrogen Dioxide levels across the Borough using diffusion tubes and a continuous analyser (moved from Tonbridge High Street to Wateringbury during this period). The results of this monitoring are reported annually to the Department for the Environment, Food and Rural Affairs (DEFRA). During the year there were no new exceedances of annual or hourly NO<sub>2</sub> levels and no new AQMAs were required to be declared.
- 1.3.14 In August 2018 additional air quality monitoring sites at Wouldham were set up following residents' concerns over air quality in that area, with a significant increase in traffic linked with the Peters Village development. The first formal annual average results for these sites will be available in August 2019, however annualisation of results obtained to date do not indicate that any exceedances of NO<sub>2</sub> levels are likely.
- 1.3.15 Finally members will note that the number of complaints received about odours in Tonbridge has remained steady between 60 and 70 per year over the past three years. Officers continue to investigate whether the odour amounts to a statutory nuisance at complainant's properties, however the test of statutory nuisance is not whether an odour is present but whether its nature, extent and degree including its frequency and duration is sufficient to materially interfere with the use and enjoyment of property. In that regards no evidence has been obtained to date that the odour at any one property amounts to a statutory nuisance.

## **1.4 Legal Implications**

- 1.4.1 The Council has a statutory duty to undertake the full range of functions described in this report, with the exception of promotional and business support activity.

## **1.5 Financial and Value for Money Considerations**

- 1.5.1 All service improvements will be undertaken within existing budgets.

## **1.6 Risk Assessment**

- 1.6.1 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.

1.6.2 The failure of the EPT to meet its statutory obligations could result in formal complaints and potential censure from DEFRA and the Local Government Ombudsman. It could also lead to a potential legal challenge.

## 1.7 Equality Impact Assessment

1.7.1 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.

## 1.8 Recommendations

1.8.1 It is **RECOMMENDED** that the Cabinet **NOTE** the performance information relating to activities associated with the food and safety and environmental protection functions in 2018/19.

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

Nil

contact: Crispin Kennard  
Melanie Henbest

Eleanor Hoyle  
Director of Planning, Housing and Environmental Health