

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE

WEDNESDAY, 16 JANUARY 2019 AT 10:00 HOURS
IN COMMITTEE ROOMS 3 & 4, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chairman to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 APOLOGIES

To receive any apologies.

3 - 10

4 MINUTES

To confirm and sign the Minutes of the meeting held on 19 December 2018.

11 - 16

5 TOBACCO CONTROL: SHISHA UPDATE

Report of the Acting Director of Regulation & Enforcement

17 - 24

6 THE ENVIRONMENTAL PROTECTION (MISCELLANEOUS AMENDMENTS) (ENGLAND AND WALES) REGULATIONS 2018

Report of the Acting Director of Regulation & Enforcement

<u>25 - 48</u>	7	<u>A CLEAN AIR STRATEGY FOR THE CITY OF BIRMINGHAM</u>	Report of the Acting Director of Regulation & Enforcement
<u>49 - 62</u>	8	<u>PROSECUTIONS & CAUTIONS NOVEMBER 2018</u>	Report of the Acting Director of Regulation & Enforcement
<u>63 - 66</u>	9	<u>OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS: NOVEMBER 2018</u>	Report of the Acting Director of Regulation & Enforcement
<u>67 - 72</u>	10	<u>FPN'S ISSUED OCTOBER & NOVEMBER 2018</u>	Report of the Acting Director of Regulation & Enforcement
<u>73 - 74</u>	11	<u>SCHEDULE OF OUTSTANDING MINUTES</u>	To consider the schedule of outstanding minutes.
	12	<u>OTHER URGENT BUSINESS</u>	To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.
<u>75 - 78</u>	12A	<u>UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS</u>	Report of the Acting Director of Regulation and Enforcement.
	13	<u>AUTHORITY TO CHAIRMAN AND OFFICERS</u>	Chairman to move:- 'In an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

BIRMINGHAM CITY COUNCIL

<p>LICENSING AND PUBLIC PROTECTION COMMITTEE 19 DECEMBER 2018</p>
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**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY 19 DECEMBER 2018 AT 1000
HOURS IN COMMITTEE ROOMS 3 AND 4
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Olly Armstrong, Bob Beauchamp, Nicky Brennan,
Neil Eustace, Adam Higgs, Nagina Kauser, Mike Leddy, Bruce
Lines, Mary Locke and Martin Straker-Welds.

NOTICE OF RECORDING/WEBCAST

- 1093 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there were confidential or exempt items.

DECLARATIONS OF INTEREST

- 1094 Members were reminded that they must declare all relevant pecuniary and non pecuniary interests relating to any items of business to be discussed at the meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.

There were no declarations of interest.

APOLOGIES

- 1095 Apologies were received from Councillors Mike Sharpe and Sybil Spence for non-attendance.
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MINUTES

- 1096 The Minutes of the meeting held on 21 November 2018, having been previously circulated were confirmed as a correct record and signed by the Chairman.
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The business of the meeting and all discussions in relation to individual reports are available for public inspection via the web-stream.

GAMBLING ACT PRINCIPLES - POST CONSULTATION REPORT 2018

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 1)

Shawn Woodcock, Licensing Operations Manager, made introductory comments relating to the report and in response to questions and comments from Members of the Committee made the following points:-

- a) The revised Statement of Gambling Principles had taken on board comments made in response to the consultation if appropriate.
- b) The Licensing Authority had no control over fixed odds betting machines.
- c) Staff within the industry were trained to spot problem gambling and in some areas a bet watch scheme operated so that details of problem or addicted gamblers could be circulated in order for interventions to take place.
- d) Officers undertook visits to licenced premises to ensure training and other things such as incident books were in place. Whilst officer did not carry out 'test purchases' in a secret shopper type scenario there were organisations such as GamCare who provide assistance to those with gambling addictions.
- e) Within shops machines had limits on both the amount of money played and the time a player had been at the machine. Staff within the shop should intervene to encourage players to take a break.
- f) It was difficult to control gambling addiction as the industry was a legitimate one. The number of premises could not be limited but the introduction of a risk assessment would be beneficial as the amount of premises in a particular area could be considered.
- g) The Safe Guarding Children's Board removed themselves as a responsible authority and was replaced by the Child Protection, Performance and Partnership within the Birmingham Children's Trust who had been consulted. The organisation had named officer who headed a team and who was consulted on in respect of Gambling.

With reference to e) above Chris Neville, Acting Director of Regulation and Enforcement, confirmed that control of an individual's gambling was difficult to control when they moved from premises to premises. Whilst staff individual premises were meant to engage with individuals to discourage them from over gambling this had its own problems if the customer became aggressive towards staff.

Responding to comments from Councillor Mike Leddy, Chris Neville explained the Committee's powers were only in respect of licensing premises and other issues such as online gambling, advertising etc. were under the Gambling Commission. In addition there were no powers under the Gambling Act 2005 for the Licensing Authority to restrict the number of premises as there was in the Licensing Act 2003 by way of a Cumulative Impact Policy. Local Risk Assessments would go some way in assessing the needs of a local area.

Councillor Mike Leddy proposed that a Gambling Act Task and Finish Working Group of the Committee be established to look at the wider perspective of gambling policy to inform officers and Central Government. Councillor Nicky Brennan seconded that proposal.

The Chair put the proposal to establish a Gambling Act Task and Finish Working Group to the meeting and by 8 votes for to no votes against with 3 abstentions it was agreed.

The Chair put the recommendation to the meeting and by 8 votes for to no votes against with 3 abstentions it was agreed.

Therefore it was-

1097

RESOLVED:-

- (i) That a Gambling Act Task and Finish Working Group be established to look in depth at the Gambling Policy and make recommendations to officers and Central Government; and.
- (ii) that the Committee endorses the Post Consultation Draft Statement of Gambling Principles and recommends the draft document at Appendix 2 to full City Council.

CHRISTMAS EVENTS IN BIRMINGHAM CITY CENTRE

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 2)

Nick Lowe, Operations Manager Food Team, made introductory comments relating to the report. In response to comments and questions from Members of the Committee he made the following points:-

- a) Problems were mainly found at the City Social and Cathedral Craft Fair. The latter had brought forward the opening date to coincide with the Frankfurt Christmas Market so the schedule was rushed and a number of problems were identified which were rectified. The use of the communal wash area for food preparation was a significant concern and monitored.
- b) The pre opening inspection of the Christmas Market worked well in identifying issues with the buildings such as holes that allowed pest access which could be addressed before the opening day.
- c) The issues relating to the lack of allergen advice at two stalls at the Christmas Market were quickly addressed by the traders as one had allergen advice in English to hand which could be shown to customers and the other re labelled items in English
- d) No public complaints had been received relating to the 3 events.
- e) Issues of emergency access were considered by the Safety Advisory Group for the event and information regarding incidents at the events could be circulated to Members.

Councillor Mike Leddy suggested that Garry Peal, Events Commissioning Manager, be invited to the February Committee Meeting to talk about the Frankfurt Christmas Market.

The Chair put the recommendation in the report to the meeting which was unanimously agreed.

1098

RESOLVED:-

That the report be noted.

At 1110 hours the meeting was adjourned.

At 1117 hours the meeting was reconvened.

PROSECUTIONS AND CAUTIONS – OCTOBER 2018

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 3)

Chris Neville, Acting Director of Regulation and Enforcement, made introductory comments relating to the report highlighting some of the cases.

A discussion ensued relating to the recovery of costs and Councillor Bruce Lines suggested that representations be made to the courts in respect of cost recovery. Chris Neville undertook to write a letter on behalf of the Chair.

Reference was made to the successful prosecutions for fly tipping and Members thanked officers for their work.

The Chair put the recommendation to the meeting which was unanimously agreed.

1099 **RESOLVED:-**

That the report be noted.

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
OCTOBER 2018**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 4)

Chris Neville, Acting Director of Regulation and Enforcement, made introductory comments relating to the report.

The Chair put the recommendation to the meeting which was unanimously agreed.

1100 **RESOLVED:-**

That the report be noted.

**ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC
PROTECTION COMMITTEE OCTOBER 2018**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 5)

Chris Neville, Acting Director of Regulation and Enforcement made introductory comments relating to the report and advised that the Chair had had revoked two further licences as follows:-

On the 5 November 2018 driver reference 34304 attended the Licensing office and made an admission of smoking cannabis the previous day. In the interests of public safety the Acting Director Regulation and Enforcement acting in consultation with the Chair revoked the private hire licence held by driver reference 34304 with immediate effect in accordance with sections 61(1)(b) and 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.

On the 5 November 2018 The Licensing Enforcement Section was informed by West midlands Police that driver reference 6374 had been arrested for an allegation of rape of a female customer on 3 November 2018. Investigations were on going but driver reference 6374 had been released on bail and one of the conditions was that he did not operate as a private hire driver. In the interests of public safety the Acting Director Regulation and Enforcement acting in consultation with the Chair revoked the private hire licence held by driver reference 6374 with immediate effect in accordance with sections 61(1)(b) and 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.

In response to a question from Councillor Bruce Lines Chris Neville, Acting Director of Regulation and Enforcement advised that licenses were always revoked as the Authority could not suspend and then go on to revoke a licence.

The Chair put the recommendation to the meeting which was unanimously agreed.

1101 **RESOLVED:-**

That the report and verbal update be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 6)

Chris Neville, Acting Director of Regulation and Enforcement, note all 3 Outstanding Minutes would be reported upon in January.

1102 **RESOLVED:-**

That all Outstanding Minutes be continued.

DATE AND TIME OF NEXT MEETING

1103 That it be noted that the next meeting will be held at 1000 hours on Wednesday 16 January 2019.

OTHER URGENT BUSINESS

1104 There were no items of other urgent business.

AUTHORITY TO CHAIR AND OFFICERS

1105

RESOLVED:-

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 1130 hours.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 January 2018
ALL WARDS

Tobacco Control: SHISHA UPDATE

1. **Summary**

- 1.1 This report sets out current interventions and work undertaken by Environmental Health, relating to venues operating as Shisha premises in Birmingham.

2. **Recommendations**

- 2.1 That the report be noted.
- 2.2 That a letter be sent on behalf of the Licensing and Public Protection Committee to Jake Berry MP (Minister for Local Government) highlighting the concerns and supporting the call for better legislation in this area.
- 2.3 That outstanding minute 934(ii) be discharged.

Contact Officer: Janet Bradley, Operations Manager Environmental Health
Telephone: 0121 303 5435
E-mail: janet.bradley@birmingham.gov.uk

3. Background

- 3.1 Tobacco shisha smoking is smoking, similar to tobacco cigarette smoking and, therefore, has the same potential health harms as tobacco cigarette smoking. This method of smoking is also called hookah, narghile, water pipe, or hubble bubble smoking. It is a way of smoking tobacco, sometimes mixed with fruit or molasses sugar, through a bowl and hose or tube¹. Electronic shisha is also available to consumers which are usually in the form of shisha pens or electronic shisha pipes. Electronic shisha is similar to electronic cigarettes in that tobacco is not burnt and water vapour with a flavour is the inhaled product, not smoke. This report is concerned with shisha tobacco smoking and, therefore, includes venues operating as shisha premises (commonly known as Shisha lounges).
- 3.2 Your officers have continued to tackle issues surrounding shisha activities within Birmingham. The majority of interventions undertaken by Environmental Health are in response to complaints, inspections following complaint or in conjunction with incidents received by other agencies. There is no programme of proactive inspections at a risk rated frequency.
- 3.3 Since the Health Act 2006 there has been a steady increase in Shisha Lounges across the City. It is believed there are now approximately 37 premises. There is a continuing turnover of businesses and ownership in some areas with Digbeth experiencing the highest concentration of premises.
- 3.4 Unfortunately, as these premises were not prominent at the time the Health Act was drafted they are not adequately addressed within the legislation. Accordingly Environmental Health has led in organising a multi-disciplinary team with WM Police, WM Fire Service, Trading Standards, Licensing and Customs & Excise to disrupt non-compliant businesses.

4. Current interventions surrounding shisha premises

- 4.1 Despite Multi-Agency Team actions and interventions to try and ensure lawful trading of these premises, there continues to be high profile anti-social behaviour; criminal activity; non-compliance with the smoke free legislation; and non-compliance with fire regulations. A number of these premises operate in a manner which has a disproportionate resource demand from all agencies involved in regulating them.
- 4.2 In the last 18 months the level of antisocial behaviour has escalated to a point where both the Police and the Council's own Community Safety team now recognise many of the issues that Environmental Health have been dealing with previously. They have now come to the forefront in proactively tackling the environmental impact of these businesses when poorly operated. This positive response strengthens the City's ability to respond to immediate and emerging challenges. All intervention outcomes are aimed at assisting

¹ <https://www.bhf.org.uk/heart-health/risk-factors/smoking/shisha>

premises to be safe, compliant and have minimal impact in their neighbourhood. However those that will not change are more likely to be prosecuted or closed down under antisocial behaviour powers.

- 4.3 The Police have led on three shisha premises being subject to Closure Orders under antisocial behaviour powers. A Closure Order issued on a licensed premises triggers an automatic review of the licence. Although it does not address the health issues this action has significantly addressed the wider issues experienced by the neighbours of the poorly run shisha lounges.
- 4.4 Much of the work now undertaken by Environmental Health focusses on dealing with reactive complaints relating to smoke free or assisting other agencies reactively or proactively.
- 4.5 In 2018 a prosecution was taken under the Health Act 2006 against a shisha premises within Birmingham regarding smoking within an enclosed premises. The conviction was overturned on appeal at Crown Court. The defence put forward was that the shisha pipes present at the time of the inspection at the premises were electronic and therefore complied with the Smokefree Legislation. Environmental Health were unsuccessful at proving beyond reasonable doubt that the pipes present were not electronic. No costs were awarded against Environmental Health for the appeal. Determining whether or not electronic shisha is present at a premises is now part of the inspection.
- 4.6 All of the multi-agency team's activities are aimed at ensuring customer safety and reducing impacts from associated activities on surrounding communities. This high demand demonstrates the inadequacies of current legislative framework surrounding shisha premises.

5. Draft Shisha Strategy

- 5.1 At Birmingham's Licensing and Public Protection Committee in November 2017 a draft shisha strategy was presented and endorsed for further consultation with other West Midlands Local Authorities, Public Health England and West Midlands Association of Directors of Public Health (APDH).
- 5.2 Although the work is aimed to maximise Harm Reduction, there was insufficient support to take the strategy forward.
- 5.3 Presently, Environmental Health are now only discharging their statutory duties as it relates to Smoke-free legislation.

6. Current Legislative Provisions for Shisha Venues

- 6.1 There is no legal requirement for the business or the operators to be authorised, licensed or registered to open and operate as a shisha premises other than the general requirements to gain planning permission, register as a food business and/or apply for a licence for alcohol, regulated entertainment, gambling etc. as required.

- 6.2 The fact there is no single piece of legislation with which to effectively regulate these premises means the only control which can be applied is limited to individual agencies enforcing their own specific legislation which is of limited effect. This can mean many different agencies dealing with issues separately, effectively causing a low level of impact on the business and therefore leaving little incentive for compliance.
- 6.3 When considered in isolation, the breaches may appear to be relatively minor and might not trigger more severe enforcement action, as opposed to if the breaches were able to be considered cumulatively, by a single agency.

7. Future Proposals

- 7.1 As stated above and reported previously to your committee, the current legislative controls surrounding shisha premises are piecemeal and inadequate with a disproportionate public sector resource required to deal with the challenges.
- 7.2 Following discussions with Environmental Health, Licensing, WMFS and WM Police concerns were raised with Shabana Mahmood MP with a proposal to change the legislative landscape surrounding shisha premises by bringing them within a licence regime.
- 7.3 On 5th December 2018 Shabana Mahmood MP presented the proposal for further regulation at a Westminster Hall debate. A transcript of the debate can be found on Hansard from 2.30pm onward at: <http://bit.ly/2QhNuyl>
- 7.4 The proposal suggested by Ms Mahmood MP was to amend the Local Government (Miscellaneous Provisions) Act 1982 to introduce a new licensing regime. This would be akin to the existing provisions within the Act as it would allow for local policies with local conditions, and has the added benefit of being adoptive legislation, meaning there would be no burdens placed on Local Authorities who do not experience any of these issues. It would also be possible to identify and set 'fitness' standards for those people operating the businesses.
- 7.4 Also party to the debate was Jake Berry MP - Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government. In response to the debate, Mr Berry said:
- "I happily invite [Ms Mahmood MP] to come and meet me and officials, together with council officers who have real expertise in this area, and we as a Department should start that dialogue about how we can help and what would be an appropriate national response, if indeed one is required. The bar for closing someone's business should be quite high, as should the bar for a national response when many powers already rest with local authorities. I have not closed my mind to the fact that there should perhaps be a national response, but a lot of work must take place before we get there. I hope that is helpful."*

7.5 The Local Government Policy Office have already been in touch with officers with a view to arranging a meeting. Further updates will be provided to your Committee in due course.

8. Implications for Resources

8.1 The work identified in the report was undertaken within the resources available to your Committee.

8.2 Any enforcement actions taken in relation to Shisha are subject to the considerations in Regulation and Enforcement's enforcement policy.

9. Implications for Policy Priorities

9.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.

9.2 The work particularly addresses the Council plan priority "To tackle inequality and deprivation, promote social cohesion across all communities in Birmingham and ensure dignity, in particular for our elderly and safeguarding for children". The work further addresses the Council plan priority "Creating a healthier environment For Birmingham".

10. Public Sector Equality Duty

10.1 Nothing proposed within the report will have an impact on our Public Sector Equality Duty. Should a proposal for further regulation be taken forward by Government, it will be subject to all of the necessary equality impact assessments. This report only seeks to update the Committee.

11. Consultation

11.1 The content of this report has been discussed with partners but no further consultation is required at this stage.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:
NIL

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 January 2019
ALL WARDS

**The Environmental Protection (Miscellaneous Amendments) England and
Wales) Regulations 2018**

1. **Summary**

- 1.1 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 – amendments relating to household waste transfer: penalty notices in England comes in to force on 7th January 2019.
- 1.2 These Regulations introduce a new fixed penalty notice for householder duty of care offences under Section 34(2) of the Environmental Protection Act 1990.
- 1.3 This report seeks to inform and update the committee of the legislative changes as well as the options available in respect of the new fixed penalty for householder duty of care.
- 1.4 This reports requests that the committee set the fee to be utilised for the fixed penalty notice householder duty of care.

2. **Recommendations**

- 2.1 That Committee determines a fixed penalty amount between £150 and £400 for Section 34(2) (A) Environmental Protection Act 1990 offences. It is recommended that the default figure of £200 is utilised.
- 2.2 That Committee determines if it wishes to set a reduced fixed penalty amount for payment of the fixed penalty notice within 10 days of its issue. It is recommended that Committee do not set any reduced fixed penalty amount and if the case progresses to Court the Council will seek to recover full costs.
- 2.3 If Committee determines at 2.2 to allow a reduced fixed penalty amount then it must be set between the statutory minimum and maximum early re-payment levels of £120 and £150. If Committee do determine to set a reduced fixed penalty amount then it is recommended this be set at £150.

Contact officer: Tony Quigley, Head of the Illegal Money Lending Team/Waste Enforcement Unit
Telephone: 0121 303 9158
Email: Tony.quigley@birmingham.gov.uk

3. Background

3.1 Section 34 (2) of the Environmental Protection Act 1990 (the Act) deals with household duty of care. The duty of care requires occupiers of domestic properties to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.

3.2 Householders (occupiers of domestic properties) should check whether a person or business is authorised to take waste before they transfer their waste to them. An authorised person is one of the following:

1. someone who has a valid registration as a carrier, broker or dealer of waste issued by the Environment Agency
2. a waste management operator who has an environmental permit or registered exemption to accept such waste issue by the Environment Agency

3.3 The duty of care requirement equates to the householder asking the person or business they transfer their waste to or who arranges the transfer for evidence of their authorisation, such as a copy of their waste carriers registration or proof of their exemption registration.

Householders can also use the Environment Agency public register to check any evidence of registration provided to them either online (<https://www.gov.uk/guidance/access-the-public-register-for-environmental-information>) or by telephone (03708 506 506).

3.4 The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. There is no obligation for council authorised officers to offer an alleged offender the option to discharge liability through payment of a FPN. However, issuing a FPN can be more proportionate than prosecution through the courts in appropriate circumstances.

3.5 The fixed penalty notice provisions are made under the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 and come into force on 7th January 2019. The provisions are intended to allow a person who would potentially be subject to prosecution to discharge their liability to court action where they have failed in their duty of care to dispose of their rubbish by way of an authorised collector.

3.6 For individual “household duty of care” offences the legal requirement to consider whether issuing a fixed penalty notice or another disposal option is the most appropriate course of action will continue to be determined on a case by case basis taking in to account all of the circumstances including the amount, type, and deposit of the controlled waste as well as any relevant information available at the time regarding the offender and the offending.

The determination is made against the Crown Prosecution Service *Code for Crown Prosecutors* and the Enforcement Policy.

4. Environmental Protection Act 1990, Section 34 (2A) - Fixed Penalty Notices

- 4.1 Government has extended the non-court sanctions available to local authorities through the introduction of a FPN for this offence. The FPN for “household duty of care” is an alternative to prosecution of offenders and is aimed at allowing householders to discharge their liability through payment of a fixed penalty amount.
- 4.2 Fixed penalties, however, can only be used if there is evidence that a named individual (a person) has committed a criminal offence of failing in their duty to present their waste to an authorised waste carrier etc.
- 4.3 This means you cannot issue this type of fixed penalty or take action against an “occupier” of a household unless they were responsible for the “transfer” of waste to an unauthorised individual.
- 4.4 A person issued with a FPN does not commit an offence if they chose not to pay the fixed penalty amount. As with other types of FPNs related to the Act, failure to pay renders a person liable to prosecution for the original offence for which the FPN was issued. On conviction the maximum penalty for this offence is an unlimited fine.
- 4.5 The Secretary of State for Environment, Food and Rural Affairs has issued statutory guidance with the Regulations. Principal areas are highlighted in the following extracts from the guidance:

2. When you Can Give Fixed Penalties

You may give the FPN when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- *where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person*
- *where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property*
- *where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption*

An authorised person may still fly-tip waste so tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate that they took

reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.

3.1 Proportionate Use

The government wishes to encourage a balanced approach to enforcement. The principles of the Regulators Code apply to the enforcement of the household waste duty of care. An effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable. Under the Legislative and Regulatory Reform Act 2006, you have a duty to carry out regulatory activities in a way which is transparent, accountable, proportionate and consistent, and for them to be targeted only at cases in which action is needed. In no circumstances should enforcement be used as a means to generate income.

If an individual is considered to be a vulnerable person (for example due to age related ill-health or a mental or physical disability or divergence), you should give close consideration as to whether it is proportionate and in the public interest to proceed with enforcement, on a case-by-case basis.

An individual giving their waste to a friend or family member to dispose of would breach the duty of care. However, it would only be appropriate and in the public interest to enforce in this and similar circumstances where there is evidence the friend or family member has disposed of the waste inappropriately. For example enforcement would not be appropriate if a neighbour takes their waste to the local household waste recycling centre.

To help reduce the potential for breaches of the Duty of Care, Local Authorities should have regard to the WRAP Household Waste Recycling Centre (HWRC) Guide in relation to promoting responsible behaviour by local residents through not charging residents for waste from small scale DIY activities.

3.2 Local Authority Waste Collections

This FPN is not applicable where an individual intends for waste to be collected by the local authority collection service, for instance where this is put out in household waste or recycling bins. It is reasonable to believe the local authority or any contracted provider working on their behalf is an authorised person and so in putting the waste out for collection by a local authority, the individual has taken all reasonable steps to ensure the person they transfer it to is authorised. Other penalties are already available for individuals not complying with waste receptacle requirements and this FPN does not provide a substitute or supplementary penalty for it.

3.3 Tradespersons

As per section 5.2 of the Waste Duty of Care Code of Practice, where a tradesperson is working on a property, they are responsible for the waste they produce. As the occupier is not producing the waste, they are not transferring it to the tradesperson and so the duty of care does not apply.

3.4 Household Waste Cleared by Landlords

Where a landlord is arranging the clearance of premises after a tenancy has ended, the resulting waste is not considered to be household waste, nor are they the occupier. This means the duty of care under Section 34(1) of the Environmental Protection Act applies instead and this FPN cannot be used.

3.5 Investigating the Fly-tipper

You should give consideration to whether the evidence provided by an individual investigated for breach of the household waste duty of care enables investigation or prosecution of the fly-tipper, and whether enforcement against that individual would have a positive or negative impact on that investigation or prosecution.

3.6 Opting for Prosecution

FPNs should not be given where prosecution through the courts is more appropriate, for example the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties for environmental offences.

- 4.6 Merely finding documents in waste is not sufficient evidence to identify who transferred the waste and whether the persons depositing the waste was un-authorized and would not meet the required standard of proof to issue a FPN.
- 4.7 The Standard of proof remains at “beyond a reasonable doubt” which is the same threshold as that required in the criminal court to secure a conviction. As with all criminal matters the burden of proof remains with the prosecutor prove that an offence was committed. This means that these FPN can only be used if there is credible evidence that a named occupier (a person) has committed a criminal offence.
- 4.8 It should be recognised that the fixed penalties are a way of reducing magistrates’ court service workload reducing the need for prosecution for smaller scale offences, but they cannot be used if there is insufficient evidence.

- 4.9 The same amount of investigative input is required whether a fixed penalty notice is being issued or a full prosecution is being pursued.

5. The New Fixed Penalty Notice

- 5.1 Local authorities can set the level of the fixed penalty amount locally and where this is done the level must be set within the prescribed statutory range which is between £150 and £400. Where no local level is set the Regulations require the default level to be £200.
- 5.2 Fixed penalties are payable within 14 days of issuing. Local authorities can set locally a reduced fixed penalty amount for early payment (made within 10 days of issuing). Where this is done the level must be set within the prescribed statutory range which is between £120 and £399.
- 5.3 As with other types of fixed penalty notices related to the Act, failure to pay the fixed penalty amount renders a person liable to prosecution for the original offence for which the fixed penalty notice was issued.

6. Matters for Consideration

- 6.1 In determination of any fixed penalty amount, Officers would ask Committee to consider the following matters:

a) Existing fixed penalty amounts	Currently, all of FPNs for which local levels can be applied by your Committee have been set at the maximum tariff amount. (The primary reason for this is that although FPNs potentially enable court proceedings to be avoided, Officers are still required to gather evidence and investigate offences to the full criminal burden of proof which is resource intensive). However, in this instance the household duty of care should be considered in the context of the existing maximum tariff for FPNs relating to non-compliance by businesses with duty of care, which is £300. There is a greater expectation on businesses to have made adequate due diligence checks regarding their legal duties relating to trade waste disposal (see (d) below).
b) Existing early payment reductions	Currently, no "early payment" reduction is applied to any FPN for which your Committee has the statutory discretion to offer a reduction. (This is primarily because analysis for littering FPNs showed that offering a reduced amount showed no significant increase in payment rates or allied reduction in administrative or court related processing costs).
c) Investigation and regulatory cost	The FPN regime is intended to reduce burdens relating to the court process. Without court proceedings local authorities have no ability to recover investigatory or legal costs and the regulator carries the full financial burden.

	<p>FPNs are not intended as a cost recovery tool; however the investigation of small scale fly-tipping requires full evidence to be gathered to enable potential court proceedings to be mounted in the event that a FPN was not paid.</p> <p>Fly-tipping investigations that may lead to household duty of care failures, irrespective of size, invariably require Officers to conduct formal interviews under caution with suspects and may require witness statements to be gathered or police support to facilitate enquiries. The FPN amount must take account of the investigatory and regulatory input required for this type of offence.</p>
d) Fixed penalty levels and payment rates – Allied offences	<p>Under the Act the offence of failing to provide written Duty of Care details relating to the disposal arrangement for commercial waste from business premises carries a £300 FPN level.</p> <p>Around a third of Duty of Care FPNs issued to businesses are paid, which requires the remainder to be considered for court proceedings. A high FPN amount may dissuade payments by offenders who hope for a lesser amount at a court trial.</p>
e) Impact on the Environment	<p>No-one fly-tips or abandons their waste by accident. The FPN is a tool to target a 'deliberate act' which continues to be a national problem. The City has arrangements in place for collection of waste through both free and chargeable services.</p>

7. Consultation

- 7.1 The draft Regulations have been through consultation, however, the setting of local FPN tariffs is a matter for individual local authorities and their respective democratic processes. Your Committee reviews FPN amounts annually through the fees and charges process.

8. Implications for Resources

- 8.1 FPNs issued appropriately will not reduce implications for resources due to the level of investigation required prior to service of any potential fixed penalty notice, however, it may reduce time in court or the necessity of court proceedings.

9. Implications for Policy Priorities

- 9.1 The issuing of FPNs is another application Regulation and Enforcement officers, in particular, the Waste Enforcement Unit can utilise for tackling

environmental offences and improving the cleanliness of the city and supporting the operations of legitimate waste collection operators.

10. Public Sector Equality Duty

10.1 There are no specific implications identified.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Birmingham City Council: Corporate Charging Policy

Guidance for local authorities on household waste duty of care fixed penalty notices.

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 JANUARY 2018
ALL WARDS

A CLEAN AIR STRATEGY FOR THE CITY OF BIRMINGHAM

1. Summary

- 1.1 Officers have been working to produce a Clean Air Strategy (CAS) for the City of Birmingham.
- 1.2 This report introduces the draft CAS for information.

2. Recommendation

- 2.1 That the report be noted.

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3. Background

- 3.1 Officers from all Council services have been working to draft a Clean Air Strategy for the City of Birmingham (CAS), under the lead of Environmental Health. A copy is appended at Appendix 1.
- 3.2 The CAS has been drafted and progressed through Council governance processes and will be presented to Cabinet on 22 January 2019 where Cabinet approval will be sought to confirm the draft strategy and progress to formal consultation and engagement.
- 3.3 The draft CAS has been discussed at a cross party meeting chaired by the Cabinet Member for Transport and Environment resulting in broad agreement for the principles contained within the strategy.
- 3.4 The principle behind the CAS is to promote action to improve air quality across all communities and not just those directed via our legal duties.

4. Consultation

- 4.1 Pending Cabinet approval a formal process of consultation and engagement on the CAS will be commenced with a view to identifying the priorities and pledges to take forward.

5. Implications for Resources

- 5.1 The resources to undertake the consultation and engagement will be drawn from within the existing budget for Regulation and Enforcement.

6. Implications for Policy Priorities

- 6.1 The development of a Clean Air Strategy aligns with the Council Plan 2018-2022, specifically Priority 4 “We will improve the environment and tackle air pollution”, within Outcome 4 “Birmingham is a great city to live in”.
- 6.2 Furthermore, the improving of air quality in the form directed by the Clean Air Strategy indirectly supports specific priorities within all outcomes.

7. Public Sector Equality Duty

- 7.1 No specific implications have been identified at this stage. The broad principle is that the future agreed actions will seek to reduce air pollution to benefit public health, which is a clear benefit to young and elderly citizens (Age), and to the unborn child (Pregnancy and Maternity).

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

BRUM BREATHES

A city wide approach to tackling air pollution

INTRODUCTION

Birmingham City Council believes that every person who lives and works in Birmingham has the right to clean air and that visitors to our city should also benefit from this clean air. But poor air quality in the city is contributing to hundreds of early, preventable deaths and making many existing health conditions worse. Poor air quality disproportionately affects the poorest and most vulnerable in our communities, including children. Furthermore, we have to recognise that many air pollutants have no known safe limits and although our efforts to date have rightly focused on the city centre we must ensure that all neighbourhoods of our city benefit from future interventions to improve air quality.

As well as tackling the health impacts from poor air quality we need to consider how improving air quality can be linked into economic growth for both the city and the wider region. This 'clean growth' means growing our income whilst tackling air pollution, protecting the natural environment, and cutting greenhouse gas emissions, thereby future-proofing our city as we look ahead to the middle of the century.

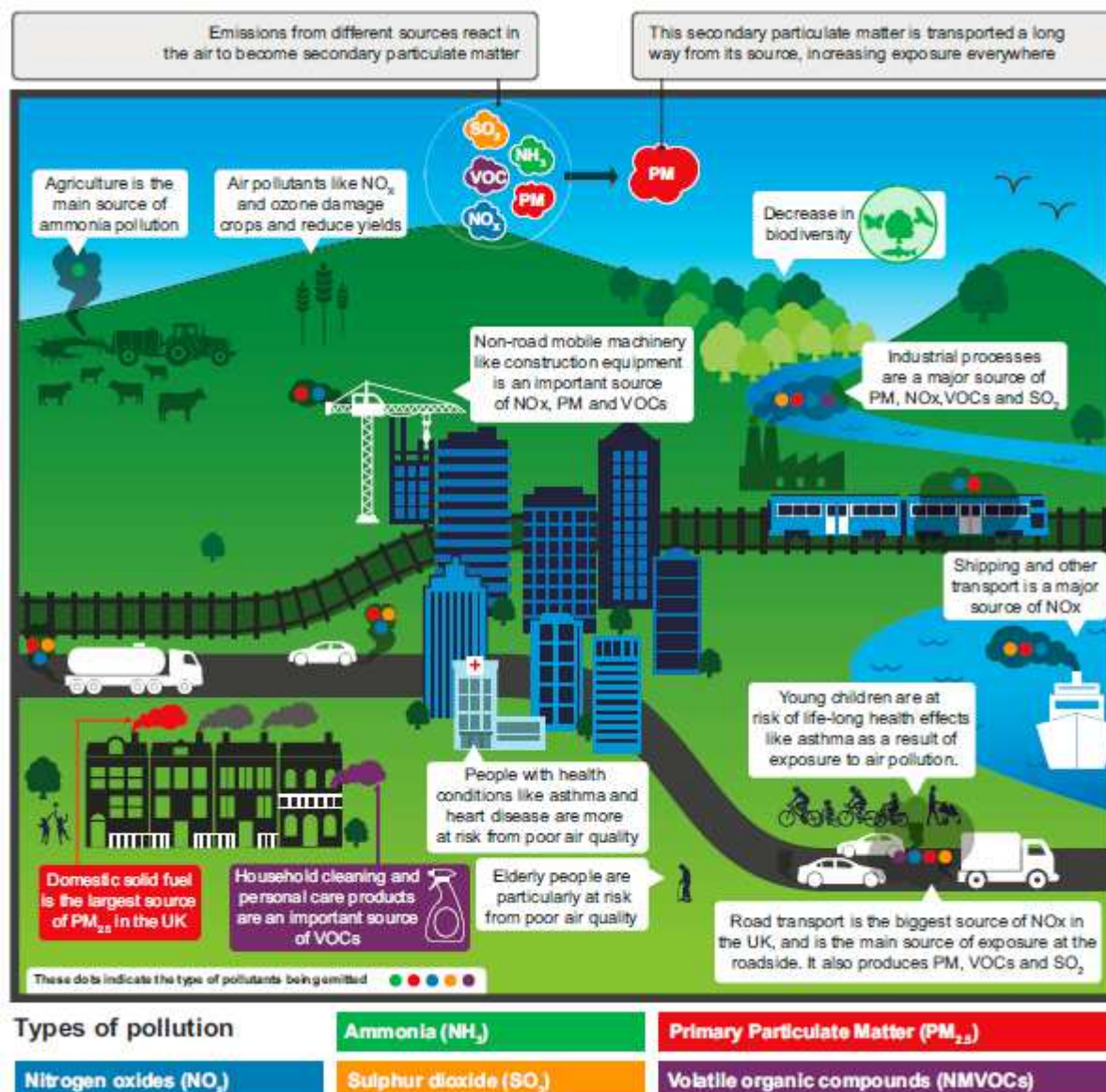
Birmingham is home to the largest local authority in Western Europe and as the centre of the West Midlands conurbation is well placed geographically with well-developed businesses and academic institutions and a centralised transport network. This existing infrastructure, married to an ambition to be a 'first mover' within the region makes Birmingham perfectly placed to actively encourage change and enable regional discussion on the wider implications of clean growth.

Working with partners across the region we can use this focus to maximise development in new technologies to encourage regional growth in world-class industries, such as the electric taxi production in Coventry. By embracing the air quality agenda as a positive challenge we can position the region, with Birmingham at the centre, as a centre of excellence which has the health of its citizens and improved air quality at the heart of decision making.

THE CAUSES OF POOR AIR QUALITY?

There are a range of pollutants which affect air quality and Government have identified five key pollutants to address within their National Clean Air Strategy¹. The following infographic taken from the Government's draft strategy explains the sources of the pollutants and how they interact in the environment.

¹ <https://consult.defra.gov.uk/environmental-quality/clean-air-strategy-consultation/>



As part of our on-going duty under Local Air Quality Management the City Council has reviewed and assessed the state of the air over two decades and considered the impact arising from a wide range of pollutants. Our experience tells us that in Birmingham the only pollutant which is found at concentrations above legal limits is nitrogen dioxide (NO₂), and that this has a measurable impact on health.

We also know from health studies that fine particulate matter (PM_{2.5}) has a significant health burden, contributing to a range of adverse health outcomes, and whilst we are presently compliant with legal limits, given the harm we know it causes, we believe more must be done to reduce emissions and lower concentrations; vehicular traffic will always generate particulate matter from both exhaust and non-exhaust sources (friction and wear from tyres and brakes), whilst the increasing lifestyle trend for wood burning stoves / boilers creates an increasing new source of pollution. Despite this we know that there remain many unknowns around PM_{2.5}, specifically around the sources and how they interact and seeking answers to these questions will better enable focused action to address pollutant concentrations.

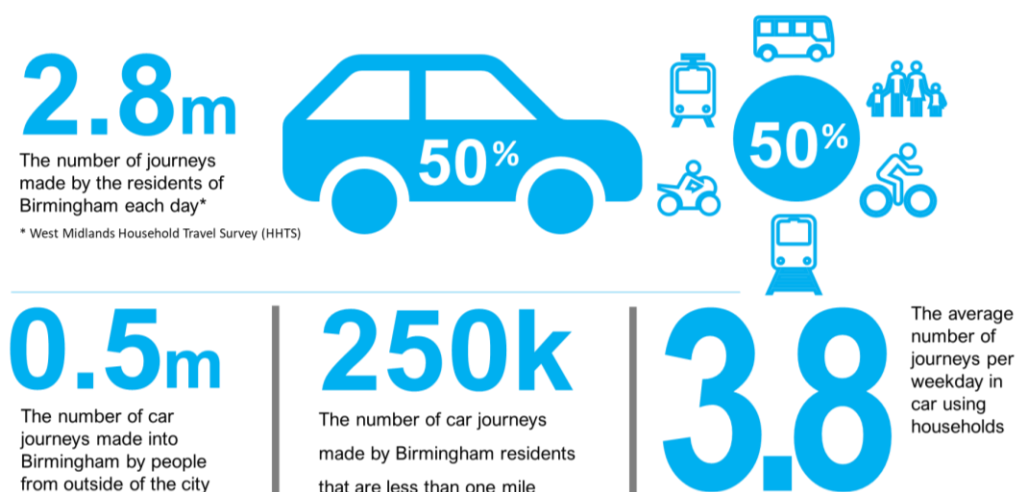
Appendix 1

We accept that other pollutants are important but due to the way they are formed and react in the environment we feel that a focus on NO₂ and PM_{2.5} will allow us to have the greatest impact on health in the city of Birmingham at this point in time.

We are conscious that a majority of local sources of NO₂ and PM_{2.5} are combustion based e.g. from vehicle engines, and that present solutions seek to provide alternative technologies to reduce the emissions. We acknowledge that there is a risk that this will result in a shift in the pollutants being emitted and/or a rise in carbon emissions. We will maintain a review on the evidence base surrounding all key pollutants to ensure they do not emerge as environmental risks to the population of the city.

Vehicular emissions in Birmingham

We know that vehicular emissions comprise the majority of local emissions to which people are exposed. Source apportionment undertaken for the Clean Air Zone study suggested that in 2016 road traffic accounted for 66% of nitrogen oxide emissions at key sites.



Clearly, a reduction in car usage will have a corresponding benefit in terms of reduced emissions and large health co-benefits, through increases in cycling, walking and other active transport.

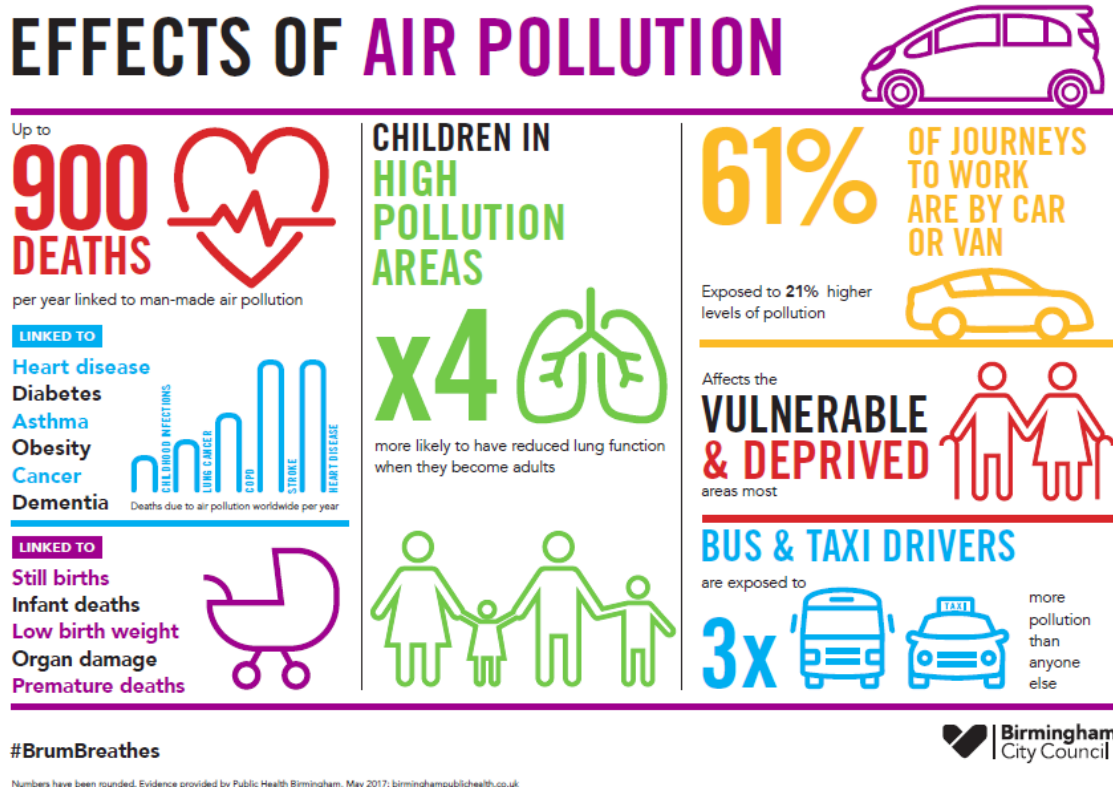
Other emissions in Birmingham

Although the focus will initially be on vehicular trips we should not lose sight of the fact that there are other emissions sources, such as from industrial and commercial premises e.g. from factories and businesses, domestic emissions in the form of boilers such as older gas boilers and wood burning stoves, emissions from the rail network in the form of diesel trains, construction plant and other non-road mobile machinery, as well as emissions from outside the city such as from agriculture and from regional and trans-boundary sources.

Given this wide range of sources we will do what is within our power to control these emissions; for instance those industries with the greatest potential to pollute are regulated through an environmental permitting scheme by both the Council and the Environment Agency. The environmental permitting scheme is a successful example of pro-active regulation to protect the public from harmful emissions. Other emissions sources are also regulated predominantly on a by-complaint basis.

WHAT ARE THE HEALTH EFFECTS OF POOR AIR QUALITY?

While the World Health Organisation advises that no levels of air pollution are safe, those with pre-existing respiratory and heart conditions and children are most vulnerable to its effects. Furthermore, people from socially and economically disadvantaged backgrounds are more likely to be exposed to higher levels of air pollution and are more at risk of negative health effects with children being particularly vulnerable.



The evidence base underpinning the detail in the above infographic is drawn from a wide range of research articles, with new evidence emerging on an almost constant basis. A list of the key articles is presented in Appendix 1, although this is by no means exhaustive.

Small changes can make a big difference – just a $1\mu\text{gm}^{-3}$ reduction in $\text{PM}_{2.5}$ concentrations this year could prevent 50,000 new cases of coronary heart disease and 9,000 new cases of asthma nationwide.

WHAT ARE WE DOING TO TACKLE POOR AIR QUALITY?

Earlier this year we announced plans to introduce a Clean Air Zone and ran an extensive consultation with the citizens and businesses of Birmingham. Through this consultation we have been able to talk to a wide range of business leaders, health experts, academics and, importantly, our community – inviting them to share their ideas for improving the air we breathe.

“We now know that clean, green and healthy environments in urban and rural areas are an essential component of progress, not a barrier to economic development”

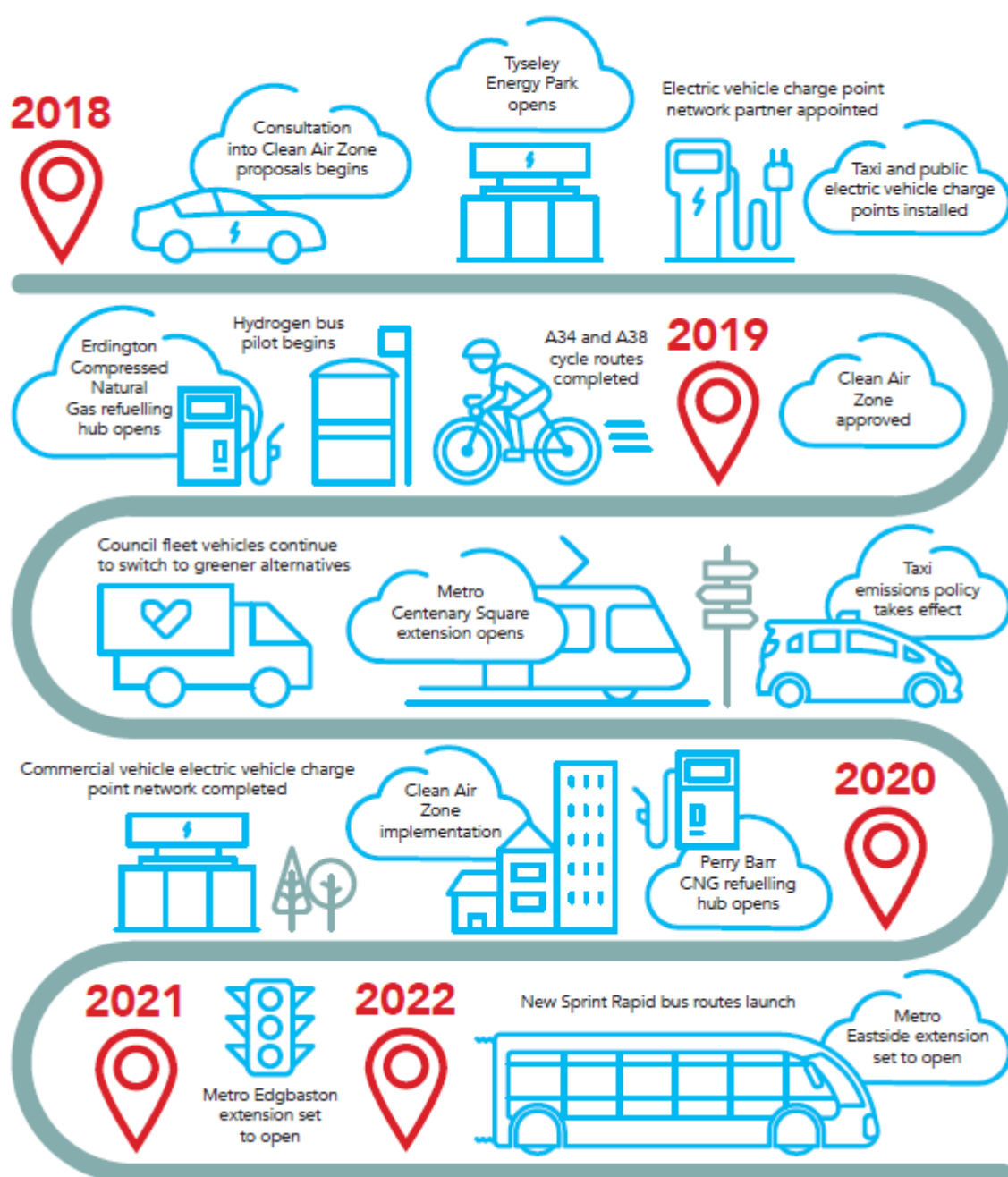
National Clean Air Strategy, Defra, 2018

Cleaning up our air and allowing Birmingham to breathe is not the sole responsibility of one group, rather it is a collective social duty on the Council, the people who live in the city, businesses, health and educational institutions and the Government.

All parties have to accept that it is a worthwhile goal for the future of the city. It will be a long journey for all of us but we want to ensure everyone can play a role so that everyone can reap the benefits of cleaner air.

Route map to cleaner air in Birmingham

Encouraging transport behaviour change



June 2018

Based on these conversations we believe that the most effective way to clean up our air is to focus on transportation sources as these have the greatest impact, however other sources should not be overlooked. Accordingly, we believe the priorities for cleaning up our air are:

1. A reduction in the number of dirty journeys by reducing the most polluting vehicles whilst improving the infrastructure for electric and low emission vehicles to support cleaner vehicle journeys
2. Improving the wider transport network to support smoother and faster journeys, whilst increasing the range of cleaner and environmentally/health-friendly journey options available to travellers e.g. cycling networks, walking schemes
3. Continuing to invest in our public transport network to produce services which the city can be proud of and which encourage more people to shift from private vehicle journeys
4. Ensuring that reducing emissions and exposure to air pollution are key considerations for decision making when planning development of buildings and public space
5. Embedding behaviour change as a golden thread that runs through and supports all of our conversations with residents of Birmingham, As we make physical changes to the infrastructure and transport of the city to make it easier to travel in ways that don't contribute to poor air quality, it is important

These are broad priorities for the city and each is framed to encompass a range of possible measures or interventions to allow more relevant, targeted action based on the input from key partners and stakeholders.

We also believe that a focus of our approach should be in maximising the synergies between the clean air (air quality) and carbon (global warming) agendas so as to avoid or mitigate any disbenefits arising from the result of actions. The most obvious example of this was the push to diesel fuelled cars to reduce carbon emissions without the accompanying appreciation of the adverse public health impacts that have contributed to our current position. Our decisions have to be joined up and have to future proof our city.

Based on these priorities we have made a series of pledges which outline our commitment to make Birmingham a cleaner, greener and healthier city, a place where businesses will thrive and where people are happy to grow up and live fulfilling lives.

These pledges will explain the broad approach we intend to take to deliver on our commitment. However, because air quality is an issue that affects everyone we want to build a consensus with others around the city. We want to foster a real spirit of collaboration and partnership working and this Strategy is the first step and with your support will form the basis for developing actions to improve air quality across the City of Birmingham, incorporating your views and opinions and a set of common goals.

Appendix 1

It is not possible to detail all the interventions that could be undertaken to improve air quality within this strategy and although the pledges are more focused than the priorities some still encompass a mix of actual actions to bring together thematic approaches and maximise the impact from the pledge. Just because an approach is not specifically stated does not mean it is excluded as many different interventions will come together to provide the maximum benefit. Many other approaches can be taken to improve air quality as shown in the following infographic:

Infographic / picture outlining the range of interventions that can be undertaken to improve air quality:

- Cycling (proper segregated cycle lane)
- E-bikes (last mile delivery)
- Walking
- EV tech
- H₂ bus
- Trees / shrubs
- Train
- Canal barge
- AQ monitoring
- CAZ image
- Park & ride
- Anti-idling
- Clean Air Day literature
- Factory stack
- Grow local centres to reduce the need for trips whilst generating investment and jobs
- Etc.

Overarching message has to show inclusion for all the city i.e. not just city centre
Have outcome link showing child, teen, adult, elderly person with reference to good health

Pledges

Each pledge comprises the actions to be considered within the broad approach. Given the breadth of the pledges there can be a number of different, albeit related, actions within each. The commentary explains what we have done to date, what is within our power to change and be accountable for, what else we intend to do and, importantly, what we need others to do and what individuals can do to support the pledge.

The Council's commitments are framed within the City Council's model of "lead – support – communicate – collaborate";

Lead

- The City Council will take responsibility for its own actions and provide a lead for the city. We will invest the appropriate resources into becoming a clean, sustainable and inclusive city. We will set the standard and ensure that the Council's wider policies contribute to tackling air quality.

Support

- We will support and encourage our communities and businesses to make healthy and active choices that result in clean air, focussing support on those most affected by poor air quality.

Communicate

- We will communicate a clear and consistent message on air quality which acknowledges and accepts the challenge we have. We will raise awareness of the impact of poor air quality making it clear why action is needed

Collaborate

- Improving air quality is our shared responsibility. We will work in partnership with the West Midlands Mayor and the Combined Authority, neighbouring Districts, educational institutions, transport operators and the communities and business of Birmingham.

PLEDGE 1: We will introduce a Clean Air Zone in Birmingham city centre

In order to provide the singular greatest reduction in pollution Birmingham City Council will implement a Clean Air Zone (CAZ) covering the most polluted area of the city. The CAZ will target the dirtiest vehicles, seeking to encourage their owners to replace them or to avoid entering the area covered by the zone. The aim is to reduce concentrations of nitrogen dioxide (an oxide of nitrogen) to under health based legal limits in the shortest possible time and reducing public exposure to this harmful pollutant.

Principle priorities supported

1, 2, 6

Lead

The City Council has already undertaken detailed traffic and air quality modelling to identify the most polluted area and which vehicles contribute to that poor air quality. Our data suggests that the area within the A4540 ring-road will need to be included within the CAZ, whilst the ring-road will become the cordon. Our data further suggests that all vehicles types will need to be affected in order to reduce pollution concentrations and public exposure in the shortest possible time (a Class D CAZ).

We will continue to progress the CAZ by submitting our business case to Government and accessing appropriate funds to deliver the required infrastructure to enable the CAZ to go live at the beginning of 2020.

Support

We accept that the CAZ will have an impact on citizens and businesses and to help we will consider exemptions and mitigation where appropriate and we will seek to leverage monies from Government funds to support affected businesses in changing or retrofitting their affected vehicles. We will look at how we reach out to organisations and community groups who want to work with us to help support their travel planning and encourage behaviour change, where this is feasible.

Communicate

We have undertaken a six week public consultation in which we have presented all our work to date, including the detailed models which underpin the requirement for a class D CAZ.

Collaborate

We will work with businesses and residents to mitigate the impacts arising from the CAZ where we can do so.

What can others do to support this pledge?

We would like to see businesses and citizens consider their future journeys in the light of whether they are necessary or whether they can be undertaken by a different route or mode.

We would like to see businesses and citizens continue to engage with the Council to ensure the maximum benefit is gained from the CAZ.

PLEDGE 2: We will continue to deliver a world class transport system, which prioritises public transport, cycling and walking

Birmingham has ambitious plans for sustainable and inclusive economic growth and the Birmingham Development Plan 2031 sets out how this will be achieved. If Birmingham is to deliver its growth agenda and attract investment it must provide the necessary infrastructure to support the projected growth levels.

Population is projected to grow by an additional 150,000 people by 2031 and in order to provide employment for the city's growing population, an additional 100,000 jobs need to be created. It is estimated that the growth in the city's population will result in 1.2 million additional daily trips across the network by 2031 (by all transport modes within Birmingham). It is not possible or indeed desirable to accommodate these by private car.

The aim is to deliver world class transport system to support a world class city. We are committed to creating a cleaner, greener, go-anywhere, integrated transport system that puts people first and delivers better connections and will work with partner organisations and key stakeholders to make this happen.

This includes: rebalancing the network (in favour of sustainable modes), managing demand for travel, transformational investment and maximising efficiency.

Principle priorities supported

1, 2, 3

Lead

Building on the foundations of the Birmingham Connected Transport Strategy, the City Council will bring forward an updated Birmingham Transport Plan to reenergise established strategic principles and set out a series of Big Moves to accelerate the transformation of the city's transport networks. The 2022 Birmingham Commonwealth Games is a focal point for much of this work, and we will make the most of this synergy to encourage healthier and less polluting travel on the network.

The Birmingham Walking and Cycling Strategy sets out a long-term plan to ensure that active travel becomes the popular choice for short journeys and to increase the opportunities for recreational cycling and walking with a particular focus on short journeys and linked trips. The Strategy aims to raise levels of cycling to 5% of all trips by 2023 and 10% of all trips by 2033.

Support

We will support our partners, businesses and communities to fundamentally change the way they travel, and keep the city moving during periods of transition, construction and disruption.

We will support Network Rail in improving the air quality at New Street Station through the provision of expert advice on reducing pollution and passenger exposure and the lobbying of Government to shift from diesel to cleaner trains.

Communicate

We will ensure that the vision for the future of transport in our city, and need for and pace of change, is widely communicated and understood.

Collaborate

We will work with our delivery partners, in particular Transport for West Midlands, to secure additional investment needed to transform our transport network and deliver the highest standard of service.

What can others do to support this pledge?

Individual citizens can help by considering the use of modes other than the car for some journeys, even just one or two changes a week make a difference. Businesses and schools can support through implementing travel plans. Longer term, planning now for the way that transport networks will operate in the future.

PLEDGE 3: We will identify schools which are exposed to air pollution problems and work with the school to identify intervention strategies to reduce the exposure of the children

We know that air pollution has a disproportionate effect on certain members of our society. Evidence has shown that children in areas of higher pollution are four times more likely to have reduced lung function when they reach adulthood as a consequence of their exposure during their formative years.

Using our monitoring and modelling expertise we can determine which schools are most likely to be affected by air pollution. We can follow the principle of Clean Air Zones (CAZ) to either restrict traffic in full or in part, or take alternate action at key times. A one size fits all approach may not be appropriate and the CAZ concept allows for targeted interventions (not necessarily involving restricting vehicles or charging) based on the relevant evidence.

Principle Priorities Supported

1, 5

Lead

The City Council will take the lead in devising a programme to identify those schools most exposed to pollution. We will share this information with citizens so that the real impact of poor air quality can be seen, and will encourage changes in behaviour.

Support

The Council will support schools who are seeking to reduce the exposure of their children through the use of a range of interventions from education and engagement campaigns, utilising enforcement policy, leveraging funding for infrastructure and energy efficiency improvements, through to the sensible and targeted use of green infrastructure.

Communicate

We will ensure adequate consultation takes place with schools and parents on the issues arising and on options available to reduce the exposure to children attending school. Furthermore we will build on existing engagements including 'Modeshift STARS' and the 'Clean Air Cops' programmes.

Collaborate

We will work in partnership with schools and parents to identify the most suitable intervention(s) for their particular school.

What can others do to support this pledge?

Schools who are flagged as being affected by poor air quality can help by assisting the Council in engaging with parents to help determine the most appropriate intervention for the school to deliver air pollution reductions.

PLEDGE 4: We will expand our air quality monitoring network, incorporating new technologies and through partnership working with educational institutions and citizen science projects we will make the results readily available to all

Birmingham City Council monitor air pollution at a number of sites across the city under the Local Air Quality Monitoring (LAQM) regime and publish these annually in the Annual Status Report. There is an increasing demand for environmental information and newer technologies are being developed which can help deliver greater levels of information at a cheaper rate.

By working with partners, including supporting citizen science projects, we can build a more detailed picture of pollution concentrations across the city and not just in areas where we have exceedance of legal limits to both inform policy and guide local action.

Principle Priorities Supported

5, 6

Lead

The City Council will continue to monitor air pollution under LAQM and will expand the network where resources permit to ensure that the network enables the Council to deliver on its legal duties.

Support

We will support action to monitor air quality through citizen science projects by the provision of advice and, where possible, monitoring equipment to enable pollution concentrations to be determined at local sites, with the results coordinated with the wider network.

Communicate

The City Council will develop a website to hold all air quality monitoring data from the range of sources and permit the easy identification of pollutant concentrations at a local level.

Collaborate

The City Council work in partnership with Universities and developers of monitoring technologies to field test emerging equipment alongside the Council's own stations with a view to gaining better understanding of the use to which alternate technologies can be put and to aid in their further development.

What can others do to support this pledge?

Key partners will be educational institutions who will be asked to maintain their close working relationship with the Council to both test new technologies and to undertake joint funding bids to develop new tools to assist the monitoring and modelling processes.

Citizen groups will be key in supporting the Council by deploying monitoring equipment (diffusion tubes) in local areas to provide data that can be used by the Council to help better target future interventions.

PLEDGE 5: We will further develop our approaches to tackling emissions from both existing buildings and proposed developments

The Birmingham Development Plan (BDP) 2031 sets out a spatial vision and strategy for the sustainable growth of Birmingham for the period 2011 to 2031, and will be used to guide decisions on planning, development and regeneration. We will use this plan to form policy to guide developers on reducing emissions from their development or preventing new development from being affected by existing pollution sources. Our officers will utilise this plan when responding to planning applications to ensure that developers are properly guided in progressing their developments.

The increasing trend for wood burning stoves in the domestic setting presents an increasing risk to urban air quality. Domestic solid fuel burning is the largest source of particulate matter in the UK (38%) and is estimated to contribute to between 23 and 31% of the urban derived fine particulate matter (PM_{2.5}) in Birmingham with certain other emissions being known carcinogens e.g. benzo(a)pyrene.

Principle Priorities Supported

4, 5

Lead

The City Council will ensure appropriate regulatory framework is in place to guide new and existing developments to minimise air pollution emissions. We will develop policy to ensure that development proposals consider air quality and are accompanied by an appropriate scheme of mitigation where negative impacts are identified. We will continue to lobby Government to ensure that future policy e.g. National Clean Air Strategy, review of air quality legislation, revisions to the National Planning Policy Framework, are fit and appropriate for the 21st century and that they deal with emerging risks.

Support

Communicate

We will consult on the development of planning policies in relation to air quality.

Collaborate

We will collaborate with a range of stakeholders to develop appropriate planning policies in relation to air quality.

What can others do to support this pledge?

We need Government to review and tighten the legislation around the use of both domestic and commercial wood burning stoves in urban areas.

PLEDGE 6: We will work with key partners and stakeholders throughout the West Midlands region to help inform our own work and provide leadership where required

There are many organisations within the city of Birmingham and the wider region who wish to either take direct action to improve air quality or who simply wish to ensure it is incorporated in their day to day business operations. For many organisations identifying the right or proper action to take may not always be clear given the requirements of the business.

The correct action to improve air quality is often delivered through legislation, but there are many optional actions that may be taken which organisations may either be unaware of, or require additional support in developing. By ensuring that legislation is correctly framed and that key organisations are able to identify one another to enable effective and targeted communications, as well as being aware of what support is available and how to access that support, organisations can be reassured that the actions they take are the most effective and are consistently applied within the city and across the region.

Principle Priorities Supported

5, 6

Lead

The City Council will push Government to develop air quality legislation that is fit for the 21st century and that considers the risks to health and climate. The City Council also calls on the Combined Authority to lead in coordinating business engagement and investment in the region.

Support

Working in conjunction with key partners we will support businesses to transition to a cleaner and greener economic and business base by identifying funding streams and providing the expertise to assist them in making successful bids.

Communicate

We will communicate our knowledge around air quality and how it can be best applied across all sectors through regular channels e.g. internet, business engagement, as well as through a series of workshops and directed events e.g. Clean Air Day.

Collaborate

The City Council will support joint ventures which have a focus on improving air quality and the environment as an active partner. The City Council is a key partner in the University of Birmingham led NERC RISE Project “WM-Air” which seeks to provide a series of joint work-streams designed to inform air quality decisions across a range of public and private sector organisations.

What can others do to support this pledge?

We need organisations and businesses to recognise what they can do to improve air quality, from single actions to policies which span entire organisations, and internalise air quality decisions in their business models in a constructive method to achieve clear and defined positive outcomes.

FRAMING THE CLEAN AIR STRATEGY AND NEXT STEPS

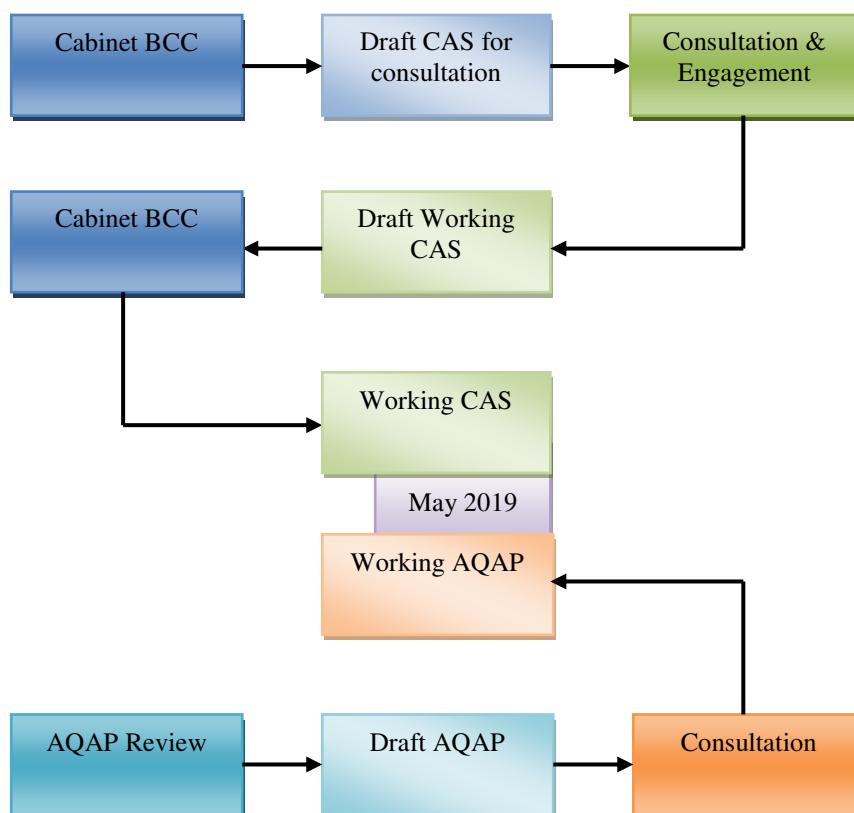
This Clean Air Strategy forms the first stage in a wider engagement process with key stakeholders and partner organisations including the citizens of Birmingham to ensure that items that matter to organisations or individuals are identified and considered and where appropriate built into the strategy and taken forward as actions.

This developing Clean Air Strategy is not a stand-alone document, rather it is a key component in the wider City Council BrumBreathes air quality programme. The strategy overarches all City Council functions where air quality is or may be a factor, ensuring that the City Council embeds air quality into the decision making process.

Furthermore, the strategy links into the Air Quality Action Plan (AQAP), a statutory document required under the Local Air Quality Management (LAQM) regulatory regime. The AQAP is presently being updated and the intention is to have a document which identifies those actions which need to be undertaken to improve air quality to the legal level and also actions which go beyond our legal duties; to consider pollutants for which we have no direct legal duty under LAQM e.g. PM_{2.5}, to consider action in areas of the city that presently comply with legal limits but where air quality could nevertheless be improved, such as local centres, to focus action to benefit the more vulnerable members of our society, e.g. around schools, and to identify and deliver cross cutting measures that benefit both air quality and climate change.

The AQAP will also include a mechanism for the rapid review, addition or removal of actions which are additional to our legal requirements so as to ensure that changes to the Clean Air Strategy can be progressed without the need to wait for a formal review of the AQAP. In this way the Clean Air Strategy will remain a live document and have a structured delivery framework in the form of the AQAP.

The process flow and estimated completion date are presented in the diagram below.



REDUCE AIR POLLUTION

5 SIMPLE THINGS

1 CHANGE THE WAY YOU TRAVEL

By leaving your car at home and choosing to cycle, walk or use public transport, you can help reduce air pollution by 20%.



2 CHANGE THE TIME YOU TRAVEL

If you must use your car, avoid morning and evening rush hours – this will reduce congestion and produce less pollution as a result of not idling in traffic jams.



3 CHANGE THE ROUTES YOU TRAVEL

If you are cycling or walking, avoid main roads and choose routes using quieter back streets, parks or canals. Even walking on the side of the pavement furthest from the road can help reduce your exposure to air pollution.



4 CHANGE THE WAY YOU DRIVE

Driving economically – such as accelerating gently and sticking to speed limits – uses less fuel, saves money, reduces the risk of having an accident and reduces air pollution.



5 THE SCHOOL RUN

Cycling or walking to school with your children will help reduce the impact of air pollution. If you do have to drive then turn your engine off when waiting by the school gates.



#brumbreathes www.birmingham.gov.uk/cleanair



Appendix 1 – Public Health infographic references

Single citation on health effects

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More details of the individual papers

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BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING SERVICE DIRECTOR REGULATION AND
ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 JANUARY 2019
ALL WARDS

PROSECUTIONS AND CAUTIONS – NOVEMBER 2018

1. Summary
 - 1.1 This report summarises the outcome of legal proceedings taken by Regulation and Enforcement during the month of November 2018.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Chris Neville, Acting Service Director Regulation and Enforcement
Telephone: 0121 303 6111
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3. Results

3.1 During the month of November 2018 the following cases were heard at Birmingham Magistrates Court, unless otherwise stated:

- No Licensing cases were finalised or cautions administered as set out in Appendix 1.
- 75 Environmental Health cases resulted in fines of £21,291 and prosecution costs of £17,183 were awarded. A 12 month Community Order was also imposed. No simple cautions were administered as set out in Appendix 2.
- Two Trading Standards cases were finalised resulting in a total of 14 years imprisonment and a fine of £200. Prosecution costs of £300 were awarded. One simple caution was administered as set out in Appendix 3.
- Appendix 4 lists cases finalised by district in November 2018 and cases finalised by district April – November 2018.
- Appendix 5 lists the enforcement activity undertaken by the Waste Enforcement Team in April - October 2018.

4. Consultation

4.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and business in terms of the regulation duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.

5. Implications for Resources

5.1 Costs incurred in investigating and preparing prosecutions, including officers' time, the professional fees of expert witnesses etc. are recorded as prosecution costs. Arrangements have been made with the Magistrates Court for any costs awarded to be reimbursed to the City Council. Monies paid in respect of fines are paid to the Treasury.

5.2 For the year April 2018 to November 2018 the following costs have been requested and awarded:

Licensing

£18,601 has been requested with £15,302 being awarded (82%).

Environmental Health

£246,750 has been requested with £189,999 being awarded (77%).

Trading Standards

£42,010 has been requested with £16,091 being awarded (38%).

- 5.3 For the month of November 2018 the following costs have been requested and awarded:

Licensing

No costs were requested.

Environmental Health

£22,482 has been requested with £17,183 being awarded (76%).

Trading Standards

£2,217 has been requested with £300 being awarded (14%).

- 5.4 Since the start of the financial year until the end of November 2018 the following income has been received from the courts:-

Licensing

£10,624 has been received.

Environmental Health

£126,847 has been received including Waste Enforcement cases.

Trading Standards

£51,402 has been received.

(Total £188,873)

- 5.5 This will not directly correlate to the values awarded in the same time period as individual cases are often cleared in instalments with the associated fines and court costs taking precedence over the settling of BCC legal costs. Therefore, income received may relate to cases from the previous financial year or earlier.

6. Implications for Policy Priorities

- 6.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.

7. Public Sector Equality Duty

- 7.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Licensing and Public Protection Committee which ensures that equality issues have been addressed.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

LICENSING CASES

APPENDIX 1

There were no licensing prosecutions finalised during November 2018.

LICENSING SIMPLE CAUTIONS

During the period of November 2018, no simple cautions were administered

ENVIRONMENTAL HEALTH CASES**WASTE OFFENCES**

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	8/11/18	Inayah Daycare Ltd 214-215 Bacchus Road Birmingham B18 4RE	Environmental Protection Act 1990 Pleaded guilty to one offence of failing to comply with a notice requiring written information of how waste from Inayah Daycare Ltd, 214-215 Bacchus Road, Birmingham was disposed of within 7 days.	£600 £485 costs (£485 requested)	Soho & Jewellery Quarter	Soho & Jewellery Quarter
2	8/11/18	Pakeeza Halal Meat Centre Ltd 139 Soho Road Birmingham B21 9ST	Environmental Protection Act 1990 Pleaded guilty to one offence of failing to comply with a notice requiring written information of how waste from Pakeeza Halal Meat Centre, 139 Soho Road, Birmingham was disposed of within 7 days.	£300 £620 costs (£620 requested)	Soho & Jewellery Quarter	Soho & Jewellery Quarter
3	22/11/18	Omid Pishan Birmingham	Environmental Protection Act 1990 Pleaded guilty to two offences; one of failing to take reasonable measures to prevent a contravention in that waste from Kurdish Nan, 614 Washwood Heath Road, Birmingham was found on the pavement outside 604 Washwood Heath Road and one offence of failing to comply with a notice requiring written information of how waste from the business was disposed of within 7 days.	£300 – offence 1 No separate penalty for offence 2 £641 costs (£641 requested)	Weoley & Selly Oak	Ward End

4	22/11/18	CV Brothers Ltd 560B Coventry Road Small Heath Birmingham B10 0UN	Environmental Protection Act 1990 Pleaded guilty to one offence of knowingly causing or permitting controlled waste, namely till receipts, large quantities of ice cream and milkshake related food waste products and packaging from Shake House, 560B Coventry Road, to be deposited on the pavement near 560 Coventry Road and outside 564 Coventry Road, Birmingham.	£4,000 £944 costs (£944 requested)	Small Heath	Small Heath
5	22/11/18	Asima Muzzaker Birmingham	Environmental Protection Act 1990 Pleaded guilty to one offence of failing to comply with a notice requiring written information of how waste from Impact Hair & Beauty, 786A Coventry Road, Birmingham was disposed of within 7 days.	£300 – offence 1 No separate penalty for offence 2 £275 costs (£550 requested)	Small Heath	Small Heath
6	22/11/18	Kundun Sweets Ltd 648-650 Washwood Heath Road Birmingham B8 2HQ	Environmental Protection Act 1990 Pleaded guilty to two offences; one offence of knowingly causing or permitting controlled waste, namely one black sack containing till receipts and utility bills, to be deposited on the pavement near 604 Washwood Heath Road and one offence of failing to comply with a notice requiring written information of how waste from Kundun Sweets Ltd, 648-650 Washwood Heath Road, Birmingham was disposed of within 7 days.	£500 – offence 1 No separate penalty for offence 2 £600 costs (£922 requested)	Ward End	Ward End

7	22/11/18	Xing Yi Huang Sutton-In-Ashfield	Environmental Protection Act 1990 Pleaded guilty to one offence of depositing controlled waste, namely two fridge freezers, onto land on Bissell Street, Birmingham.	£905 £838 costs (£838 requested)	Out of area	Nechells
8	26/11/18	Bargains for Sure Ltd 1174 Stratford Road Birmingham B28 8XB	Environmental Protection Act 1990 Found guilty in their absence of one offence of failing to comply with a notice requiring written information of how waste from Bargains for Sure, 451 Brays Road, Birmingham was disposed of within 7 days.	£400 £620 costs (£620 requested)	Hall Green North	Garretts Green

ANIMAL WELFARE OFFENCES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	21/11/18	Rameez Hussain Birmingham	Animal Welfare Act 2006 Pleaded guilty to two offences; one offence of being the person in charge of a dog, namely an American bulldog type dog at an address in Birmingham, and failing to take all reasonable steps to ensure that the needs of the animal were met and one offence of causing unnecessary suffering to the dog by reason of an unsuitable environment. There was no clean, dry area for the dog to lie down and no evidence of food. The floor was covered in faeces, urine and water.	Community Order for 12 months and to complete 25 RAR days (Rehabilitation Activity Requirement). Disqualified from keeping animals for 5 years and deprived from owning the dog. £1,000 costs (£5,312 requested)	Glebe Farm & Tile Cross	Glebe Farm & Tile Cross

LITTERING OFFENCES – SINGLE JUSTICE PROCEDURE

Date Cases Heard	Total Number of Cases	Total Fines imposed	Total Costs awarded	Total Costs requested
9/11/18	33	£7,086	£5,675	£5,775
23/11/18	33	£6,900	£5,485	£5,775

ENVIRONMENTAL HEALTH SIMPLE CAUTIONS

No simple cautions were administered during November 2018.

TRADING STANDARDS CASES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	7/11/18 at Birmingham Crown Court	Ibrar Hussain Birmingham Sabiha Shaheen Birmingham Mohammed Afsar (AKA Malik) Birmingham	Criminal Law Act 1977 Theft Act 1698 Criminal Justice and Public Order Act 1994 Hussain, Shaheen and Afsar each pleaded <u>not guilty</u> to one offence of conspiring together to commit fraud by falsely representing that items of jewellery, namely gold bangles which were sold from retail premises on the Stratford Road, Birmingham, were made of 22 carat gold when they were not. Hussain pleaded <u>not guilty</u> to three further charges of threatening witnesses with violence, intending for the course of justice to be obstructed. Afsar pleaded <u>not guilty</u> to one further charge of making a demand with menaces, by threatening an employee that if he did not continue to work without pay his family would suffer violence and he would be reported to the authorities as a visa over stayer. Found guilty following trial.	Hussain - a total of 7 years imprisonment (5 years x count 1 + 12 months x counts 6 & 7 - concurrent with each other but consecutive to 5 years + 12 months x count 8 Shaheen - 3 years imprisonment and disqualified from being a Director of a Company for 7 years Afsar - a total of 4 years imprisonment (4 years x count 1 + concurrent sentence of 4 years on count 2) POCA Timetable set	South Yardley	Sparkhill

2	22/11/18	Fozia Shabir Slough	Consumer Protection from Unfair Trading Regulations 2008 Pleaded guilty to one offence of recklessly engaging in a commercial practice which contravened the requirements of professional diligence by advertising and offering for sale a Range Rover Sport vehicle from Ambassador Automobiles Ltd, 568 Moseley Road, Birmingham without carrying out a basic inspection to ascertain whether the vehicle was safe, roadworthy, of satisfactory quality or economical repair.	£200 fine £300 costs (£2,217 requested) £2,532 compensation awarded	Out of area	Balsall Heath West
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TRADING STANDARDS SIMPLE CAUTIONS

One simple caution was administered during November 2018

Road Traffic Act 1988 Section 75(5)

One caution was issued for supplying a Hyundai Getz in an unroadworthy condition.

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – NOVEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	0	0	0	0	0	0	0	0
Environmental Health (FPNs) Not paid and prosecuted	0	0	0	0	66	0	0	0	0	0	0	66
Environmental Health (non FPNs)	0	0	0	5	3	0	0	0	0	1	0	9
Trading Standards	0	0	2	0	0	0	0	0	0	0	0	2

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – NOVEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	0	0	0	0	0	0	0	0
Environmental Health (FPNs) Not paid and prosecuted	1	1	4	9	11	2	1	4	0	3	30	66
Environmental Health (non FPNs)	0	0	1	4	2	1	0	0	0	0	1	9
Trading Standards	0	0	0	0	0	0	0	0	0	1	1	2

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – APRIL-NOVEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	18	0	0	5	1	0	0	24
Environmental Health (FPNs) Not paid and prosecuted	0	0	0	0	498	0	0	0	0	0	0	498
Environmental Health (non FPNs)	4	11	16	19	41	2	6	5	2	18	1	125
Trading Standards	1	1	4	1	2	0	2	1	0	0	0	12

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – APRIL-NOVEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	3	6	2	0	4	0	0	2	7	24
Environmental Health (FPNs) Not paid and prosecuted	17	15	26	43	76	22	31	14	3	22	229	498
Environmental Health (non FPNs)	3	10	16	21	28	6	4	6	1	9	21	125
Trading Standards	0	1	4	1	1	0	1	1	0	1	2	12

WASTE ENFORCEMENT UNIT – ENFORCEMENT ACTIVITY
APRIL 2018 – MARCH 2019

	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Total 2018/2019
Waste Investigation Outcomes								
Duty of Care inspections into the waste disposal arrangements of commercial premises	125	120	156	82	112	128	104	827
<u>Section 34 Environmental Protection Act</u> demand notices issued: (trade waste statutory information demands)	105	102	122	71	111	74	67	652
<u>Section 34 Environmental Protection Act</u> fixed penalty notices issued to businesses (£300)	30	41	50	35	62	80	83	381
<u>Section 87 Environmental Protection Act.</u> Fixed Penalty notices issued for commercial and residential litter offences (£80)	0	2	0	0	0	0	1	3
<u>Section 33 Environmental Protection Act</u> fixed penalty notices issued for fly tipping (£400)	4	5	3	7	6	3	7	35
Prosecutions								
Number of prosecution files submitted to legal services (number produced quarterly)			43			24		67

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 January 2019
ALL WARDS

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
November 2018

1. Summary
 - 1.1 This report advises the Committee of the outcomes of appeals against the Sub Committee's decisions which are made to the Magistrates' Court, and any subsequent appeals made to the Crown Court, and finalised in the period mentioned above.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Emma Rohomon, Acting Head of Licensing
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3. Summary of Appeal Hearings for November 2018

	Magistrates'	Crown
Total	5	
Allowed		
Dismissed	4	
Appeal lodged at Crown		
Upheld in part		
Withdrawn pre-Court	1	

4. Implications for Resources

- 4.1 The details of costs requested and ordered in each case are set out in the appendix below.
- 4.2 In November 2018 costs have been requested to the sum of £4783.80 so far with reimbursement of £4483.80 so far (93.7%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2018 to November 2018, costs associated to appeal hearings have been requested to the sum of £12054.50 so far with reimbursement of £10600.10 so far (87.9%) ordered by the Courts.
- 4.4 For the fiscal year thus far, April 2018 to November 2018, costs contra Birmingham City Council associated to appeal hearings have been requested and awarded in excess of £10483.

5. Implications for Policy Priorities

- 5.1 The contents of this report contribute to the priority action of providing an efficient and effective Licensing service to ensure the comfort and safety of those using licensed premises and vehicles.

6. Public Sector Equality Duty

- 6.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Regulation and Enforcement Division, which ensures that equality issues have been addressed.

7. Consultation

- 7.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action taken as a result of the contents of this report is subject to that Enforcement Policy.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Prosecution files and computer records in Legal Proceedings Team.

MAGISTRATES' COURT – PRIVATE HIRE DRIVER'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Nesar Ali	02.11.2018	Dismissed	£300.00	£0.00	The appeal was against the Sub-Committee decision to refuse to grant a private hire driver's licence to Mr Ali due to convictions recorded against him. The appeal was heard before a lay bench. Mr Ali attended and was unrepresented. Mr Ali gave evidence saying that the offences were committed a long time ago and that he had spent a lot of money in making his application. The bench were sympathetic with Mr Ali, however they did not consider that the sub-committee had made a wrong decision and dismissed the appeal. An application for costs was made but the Court did not make an Order for costs.
2	Komor Ali	16.11.2018	Dismissed	£250.00	£250.00	The appeal was against the Sub-Committee decision to revoke the private hire driver's licence previously issued to Mr Ali, following a conviction recorded against him for assault. Mr Ali failed to attend Court and the appeal was dismissed. The District Judge ordered the appellant to pay our costs in the sum of £250.
3	Aslam Ahmed	16.11.2018	Dismissed	£300.00	£300.00	The appeal was against the Sub-Committee decision to revoke the private hire driver's licence previously issued to Mr Ahmed, following convictions recorded against him for plying for hire and no insurance. The District Judge dismissed the appeal saying that the decision was in line with settled policy and the decision was not wrong. The Judge ordered the appellant to pay our costs of £300.

4	Mohammad Akhlaq	26.11.2018	Dismissed	£250.00	£250.00	The appeal was against the Sub-Committee decision to revoke the private hire driver's licence previously issued to Mr Akhlaq following convictions for plying for hire and no insurance recorded against him. The Court was not satisfied that the decision to revoke Mr Akhlaq's licence was wrong and therefore dismissed the appeal. Our costs were awarded in full in the sum of £250.
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MAGISTRATES' COURT – LICENSING ACT 2003

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Mohammed Malik In respect of Cloud Nine 76 Gooch Street North Birmingham B5 6QU	n/a	Withdrawn pre-Court	£3683.80	£3683.80	The appeal was against the Sub-Committee decision to revoke the licence following a review which had been triggered by a closure order. The appeal was abandoned, the court awarded full costs totalling £3683.80.

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 JANUARY 2019
ALL WARDS

FIXED PENALTY NOTICES ISSUED SEPTEMBER 2018

1. Summary
 - 1.1 The report sets out a breakdown, on a Ward basis, of fixed penalty notices issued in the City during the period of October and November 2018.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Mark Croxford, Head of Environmental Health
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3. Background

3.1 The issuing of fixed penalty notices [FPN] by officers from Regulation and Enforcement is one of the means by which the problems of environmental degradation such as littering and dog fouling are being tackled within the City.

3.2 The yearly total numbers of fixed penalty notices issued are indicated below.

<u>Month</u>	<u>Fixed Penalty Notices Issued</u>
April 2004 – March 2005	382
April 2005 – March 2006	209
April 2006 – March 2007	650
April 2007 – March 2008	682
April 2008 – March 2009	1,147
April 2009 – March 2010	1,043
April 2010 – March 2011	827
April 2011 – March 2012	2,053
April 2012 – March 2013	1,763
April 2013 – March 2014	1,984
April 2014 – March 2015	4,985
April 2015 – March 2016	5,855
April 2016 – March 2017	6,306
April 2017 – March 2018	5,873

4. Enforcement Considerations and Rationale

4.1 The attached appendix shows the wards where FPNs were issued during the month of October and November 2018.

4.2 By and large litter patrols are targeted to the primary and secondary retail areas of the city because there is a high level of footfall and they engage with a full cross section of the population. Targeted areas include locations where there are excessive levels of littering, smoking areas with high levels of cigarette waste that cause blight in the city and areas where there are known problems associated with groups gathering to eat outdoors.

4.3 The number of incidences of Fixed Penalty Notices being issued reflects the fact that there is still a problem with littering on our streets. Since the Health Act came into force there has been a decline in street cleanliness associated with cigarette waste. This is reflected not only in these statistics but also in the environmental quality surveys undertaken by Waste Management that record cigarette waste being the most prevalent waste upon our streets and identify it in 98% of all samples of street cleanliness.

- 4.4 One of the difficulties in resolving the problem of cigarette waste being deposited on the street is that the perception of many smokers is that cigarette waste is not litter. A change in the culture and perceptions of these smokers is critical to resolving this problem.
- 4.5 Anyone who receives a FPN is encouraged to talk to their co-workers, friends and families to promote the anti-litter message.
5. Consultation
- 5.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.
6. Implications for Resources
- 6.1 The work identified in this report was undertaken within the resources available to your Committee.
7. Implications for Policy Priorities
- 7.1 The issue of fixed penalty notices has a direct impact on environmental degradation within the City and the Council's strategic outcome of staying safe in a clean, green city.
8. Public Sector Equality Duty
- 8.1 The actions identified in this report were taken in accordance with approved enforcement policies which ensure that equalities issues have been addressed.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: FPN records

APPENDIX 1

Wards where FPN's are issued

Ward	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Acocks Green	3	0	2	0	5	2	0	0					
Allens Cross	0	0	0	0	0	0	0	0					
Alum Rock	0	2	1	1	3	1	3	1					
Aston	1	1	1	1	1	2	2	2					
Balsall Heath West	0	0	4	0	1	1	0	2					
Bartley Green	1	0	1	0	0	0	0	0					
Billesley	0	2	5	1	0	1	0	0					
Birchfield	0	0	0	2	0	0	0	0					
Bordelsey & Highgate	1	1	1	1	0	0	3	0					
Bordesley Green	0	2	2	2	9	2	9	0					
Bournbrook & Selly Park	0	1	1	9	4	0	1	0					
Bournville & Cotteridge	1	0	0	9	3	0	1	0					
Brandwood & Kings Heath	0	5	3	3	0	0	0	0					
Bromford & Hodge Hill	0	1	1	0	2	1	1	0					
Castle Vale	0	0	0	0	0	0	0	0					
Druids Heath and Monyhull	0	2	0	0	0	0	2	0					
Edgbaston	0	0	2	1	0	6	1	0					
Erdington	2	0	2	6	2	1	0	8					
Frankley Great Park	0	0	0	0	0	1	0	0					
Garretts Green	0	0	0	2	0	0	0	0					
Glebe Farm & Tile Cross	2	0	1	3	0	0	1	1					
Gravelly Hill	1	0	0	0	1	0	0	0					
Hall Green North	0	2	0	0	1	1	2	0					
Hall Green South	0	4	2	0	0	1	0	0					
Handsworth Wood	0	0	2	1	0	0	0	0					
Handsworth	2	0	1	0	1	0	0	2					
Harborne	0	0	1	2	2	1	0	0					
Heartlands	1	1	0	0	1	1	2	0					
Highters Heath	0	0	0	0	0	1	0	0					
Holyhead	1	0	5	0	2	11	0	0					
Kings Norton North	0	0	0	1	0	0	0	0					
Kings Norton South	1	0	0	0	0	0	0	0					
Kingstanding	1	0	0	0	0	0	0	0					
Ladywood	746	777	463	302	399	560	570	730					
Longbridge & West Heath	0	0	0	0	0	0	4	0					
Lozells	2	1	0	0	1	0	0	0					
Moseley	0	1	0	0	0	0	1	1					
Nechells	0	0	0	2	0	3	3	0					
Newtown	0	0	2	0	2	2	2	0					
North Edgbaston	2	1	0	0	0	0	0	0					
Northfield	0	0	0	0	0	0	2	0					

Oscott	0	0	5	0	1	0	1	1						
Perry Barr	0	0	1	0	0	1	4	0						
Perry Common	0	0	1	0	0	1	0	0						
Pype Hayes	1	0	0	0	0	0	0	1						
Quinton	0	0	0	0	0	0	0	1						
Rubery & Rednal	1	0	0	0	0	0	0	0						
Shard End	0	0	0	0	5	0	0	0						
Sheldon	1	0	0	0	1	1	1	0						
Small Heath	3	0	1	2	7	0	3	1						
Soho & Jewellery Quarter	0	0	3	0	1	7	7	2						
South Yardley	0	1	0	0	0	0	1	0						
Sparkbrook & Balsall Heath East	0	2	3	1	4	9	2	1						
Sparkhill	0	1	3	0	1	30	3	0						
Stirchley	0	0	0	0	2	0	0	0						
Stockland Green	0	0	0	0	0	0	0	4						
Sutton Four Oaks	0	0	0	0	0	0	0	1						
Sutton Mere Green	0	0	0	0	0	0	0	0						
Sutton Reddicap	0	0	0	0	0	1	0	0						
Sutton Roughley	0	0	0	0	0	0	0	0						
Sutton Trinity	0	0	0	0	0	0	0	0						
Sutton Vesey	0	2	0	0	0	1	13	1						
Sutton Walmley & Minworth	0	0	0	0	0	1	0	0						
Sutton Wylde Green	1	0	0	0	0	0	5	6						
Tyseley & Hay Mills	0	0	0	0	0	0	2	0						
Ward End	0	0	0	3	1	0	9	0						
Weoley & Selly Oak	0	0	0	1	0	0	0	0						
Yardley East	0	0	0	0	0	1	0	2						
Yardley West & Strechford	0	1	0	0	0	0	1	0						
	775	811	520	356	463	653	662	767	0	0	0	0	5,007	

BIRMINGHAM CITY COUNCIL**LICENSING AND PUBLIC PROTECTION COMMITTEE****16 JANUARY 2019****SCHEDULE OF OUTSTANDING MINUTES**

MINUTE NO./DATE	SUBJECT MATTER	COMMENTS
934 (ii) 15/11/2017	<u>Update Report on Proposed Strategy for Venues Operating as Shisha premises in Birmingham</u> The Acting Service Director of Regulation and Enforcement be requested to instruct officers to undertake a wider consultation with key stakeholders on the adoption of the proposed strategy. Officers to present the outcome of the consultation at a future meeting of Committee, with their recommendations on a finalised Strategy for the Committee's approval.	See agenda item No. 5. Outstanding Minute to be discharged.
942 (ii) 15/11/2017	<u>Revision of Birmingham City Council Act 1990 Establishments for Massage and/or Special Treatments</u> The Acting Service Director of Regulation and Enforcement be requested to provide a report for Committee reviewing the need for the Birmingham City Council Act 1990 and options including delegation of hearings to Licensing Sub-Committees.	Report due in February 2019
1071 21/10/2018	<u>Update Report On Unauthorised Encampments</u> – The Acting Service Director of Regulation and Enforcement be requested to report further in three months' time to update on the various work items contained within the report.	Report due in February 2019

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 JANUARY 2019
ALL WARDS

UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS

1. Summary

- 1.1 This report provides Committee with an update on work being undertaken to improve the response to unauthorised encampments in the city since the last report on the 24 October 2018.

2. Recommendations

- 2.1 That the report is noted and outstanding minute number 1071 be discharged.
- 2.2 That Committee requests a further report to be brought in 3 months to update on the various work items contained within this report.

Contact Officer: Mark Croxford, Head of Environmental Health
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3. Background

- 3.1 This report is an update on activities since the last report to your Committee on 24 October 2018.
- 3.2 An unauthorised encampment is one which is established on land without the express permission of the landowner. The groups responsible generally comprise elements of Gypsy, Romany, Traveller or other ethnic groupings and are collectively known colloquially as “travellers” or more correctly GRT.

4. Injunctive Action

- 4.1 An injunction is a legal remedy obtained in a civil or criminal court. It takes the form of a Court Order that compels a named person or an identified group to refrain from specific acts. All of the injunctions currently obtained by your officers have been obtained under antisocial behavior powers and have the power of arrest attached. A person that fails to comply with an injunction may be fined, imprisoned or have their assets seized.
- 4.2 Currently all of the injunctions that your officers have applied for have been obtained from the High Court in Birmingham. In every instance there has to be sufficient evidence of antisocial behavior causing alarm, harassment and or distress for an application to be made. Following the application, the hearing Judge will consider whether the very significant step of imposing an injunction is a proportional and fair step to take. Although we have been successful in our applications significant attention has to be given to prove that it is a proportionate action to grant the injunction, due to there being no operational alternative sites for the GRT community in the borough.
- 4.3 On 26th November 2018 your officers and Legal Services have successfully applied for the injunctions covering parks in the city to be extended to also include.
 - 1) Parks adjacent to Sarehole Mill, (Hall Green North ward);
 - 2) Chinn Brook Recreation ground (in both Billesley & Hall Green South wards) and
 - 3) The Dell (Druids Heath and Monymhull ward).It is now a breach of the injunction to reside on these parks and there is a power of arrest for anyone who does.

5. Proposed Transit Sites

- 5.1 Colleagues in Housing and Economy Directorates have applied for capital funding to bring the two transit sites in the BDP forward and into operational use, Proctor Street and Hubert Street, Nechells. Currently £50k has been approved from the Homes England Grant and a further capital expenditure of £290k has been identified for 2019/20 and 2020/21 to bring all of this work forward.
- 5.2 Officers are completing the relevant authorities to enable spending to begin on the Proctor Street site first. It is anticipated that vacant possession of that site will be on

or before the 1st March 2019. It is hoped that the developers will then undertake development from the 1st March 2019.

- 5.3 The work stream to bring Tameside Drive transit site back into operational use proceeds slowly. This matter has now been forwarded to Legal Services to as it does not appear to be able to be completed by way of negotiated agreement.

6 Gypsy, Romany, Traveller Needs Assessment

- 6.1 A GRT needs assessment was undertaken for inclusion in the current Birmingham Development Plan (BDP). The BDP identified both of the sites detailed in paragraph 5.1. It became clear that the needs assessment carried out in 2014 is out of date due to a much higher rate of unauthorised encampments occurring in in the city during 2015, 2016 and 2017.
- 6.2 The final GRT needs assessment document is expected to be with planning colleagues by the ended of January 2019. It is intended that this document is then circulated through the normal procedures within planning and then to Licensing and Public Protection Committee.
- 6.3 This report will assist in ensuring the council provides sufficient suitable spaces for the GRT community wishing to visit Birmingham. It will also assist in the proportionality assessment for the city-wide injunction to protect all our parks as we should be able to demonstrate there is sufficient alternative and more appropriate space to be used.

7. Consultation

- 7.1 The report is for information and, therefore, no consultation has been undertaken.
- 7.2 Information continues to be made available to MPs and elected members to offer support in reducing the impact on communities that unauthorised encampments have and to reduce the burden on land owning departments.

8. Implications for Resources

- 8.1 Regulation and Enforcement is responsible for the assessments leading up to legal action, the service of notices and arrangement of resources for an eviction to occur. The default costs (bailiff actions), the repair of land and its cleansing, is borne by the land owning departments. The Environmental Health resources employed in carrying out the work detailed in this report are contained within the approved budget available to your Committee.

9. Implications for Policy Priorities

- 9.1 This work supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

10. Public Sector Equality Duty

- 10.1 The management of unauthorised encampments is a process that affects groups and individuals who are (mostly) from specific and defined ethnic minorities e.g. Romany Gypsies, Irish Travelers.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil