



## Report of the Cabinet Member for Environment Services

### Overview Briefing for Scrutiny Panel 6<sup>th</sup> November 2018

## Overview of Air Quality and Noise Control

**Purpose:** To provide an overview of the management of local air team management and noise control.

**Content:** An outline of activity in this field and the rationale in terms of national policy and the statutory framework.

**Councillors are being asked to:** Consider this overview and provide appropriate comments.

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### 1. General Description

1.1 The Pollution Control Division in the Housing and Public Health Service is responsible for air-quality matters and noise control. Air pollution control has been an environmental health function in local government for at least 150 years, although the extent and nature of this work has changed radically since the 1970s. We still have traditional regulatory functions in terms of dealing with Clean Air Act offences in domestic or industrial settings, as well as issuing detailed permits for certain specified industrial activities. The main change in emphasis is to move from monitoring air pollution on a piecemeal basis across the country towards a proper assessment of air-quality in all areas. This was largely due to the UK government and the EU clarifying air quality targets based on public health evidence. Noise control is still fundamentally delivering a service to protect people from unreasonable nuisance as initially laid down in 1974. This is very reactive work and generates some regular litigation. The environmental noise Directive has influenced our work in the noise and planning field.

- 1.2 The service users are any member of the public with a complaint, or requiring data, or operating a business with emissions (noise or air), planners and planning committee members, developers and consultants needing data or advice, public health colleagues needing our data to match against epidemiological data. Clearly all users and the general population are beneficiaries in that the aim of the service is to protect and improve public health. Businesses also benefit by us fairly regulating to provide a level playing field as well as protecting them against unreasonable complaints. We endeavour to make as much information as possible available free of charge through our website. This is a little more difficult for noise control customers as every case is considered on its merits; however up to 5000 complaints every year have been dealt with in a consistent way since the early 80s. It is interesting to note that while the total number of noise complaints each year has plateaued, we now get as many complaints in the night-time as we do receive during office hours. Over the years there has also been a great deal of activity through national and local media where most authorities have been as open as possible to raise awareness of these issues.
- 1.3 Fundamentally the regulatory tools are very similar to those brought in during the 1970s, with permitting relating to air quality starting in 1990. Various minor amendments have been made over the last two decades due to changes at European level or legal changes made by Welsh government. Local air-quality management was established early in Swansea as we were one of the few pilot authorities back in 1995. Increasing attention has been paid to air-quality at central government level – almost certainly due to the threat of infraction by the EC. Increased media attention on the public health impacts and the ever increasing medical evidence across a broad field has all helped to focus attention on the main issue, which is road vehicle emissions in congested areas. Whilst Brexit may remove the threat of infraction, it will not remove the very real risk of continuing litigation. Also we should bear in mind that Welsh Government have already legislated to avoid any weakening of environmental standards which will apply in Wales in the future.
- 1.4 This area of work has always been highlighted in our service and corporate plans. It is an issue which involves Highways and Planning colleagues as well as cutting across various other public health plans and the effects of those plans on many other service users. As the pressure has increased from Welsh Government and resources available to local Councils have shrunk, there are fewer local initiatives as we all have to focus on delivering statutory activities which in themselves are very demanding. There is a continuous assessment and reporting cycle and those detailed reports are public documents which clearly state the position for Swansea in terms of all the pollutants of interest. Fortunately in Swansea we were uniquely positioned to have a clear knowledge on the spatial distribution of air pollution since 1986. Over the intervening period we have also looked at a wide range of pollutants including Radon and other radionuclides, carbon monoxide, sulphur dioxide, hydrogen sulphide, pollen, various nuisance particulates etc. More recently (particularly after dealing with 2 long-term burning

sites) it was clear that some of those pollutants are now at such a low level, we cannot continue to justify the cost of monitoring them all. Some local initiatives did have a value but could not continue to be resourced, such as the kerbside vehicle testing programme carried out with the police.

## **2. Why We Do This**

2.1 Air and noise statutory nuisance work is a duty imposed by the Environmental Protection Act (EPA) 1990 as amended by the Noise Act 1996 and other regulations.

The permitting of industry is now covered by the Environmental Permitting Regulations as it has been regularly amended since the initial EPA 1990.

Other noise powers are contained in the Control of Pollution Act 1974 and much of the traditional air pollution control work is still a statutory duty under the Clean Air Act 1993 (which is fundamentally the same as the 1956 and 1968 acts).

Local air-quality management is a statutory duty brought in by the Environment Act 1995 with all the detail in various policy and guidance documents issued on a UK basis but with slight variations for the devolved administrations. Basically air-quality is a devolved matter but for the sake of EU compliance the guidance is usually brought out for each administration in a joint document.

<https://gov.wales/docs/desh/publications/170614-policy-guidance-en.pdf>

There are many EC Directives on air and noise including a framework Directive. Clearly the intention of Welsh government is to ensure that business in Wales can assume that we will continue to work to agreed international standards.

<https://gov.wales/docs/desh/policy/180731-interim-supplemental-air-quality-plan.pdf>

2.2 Apart from the many statutory duties contained in legislation over many decades, there is now irrefutable evidence that air and noise pollution cause great harm to child development, cardiovascular systems, lung capacity, the central nervous system, mental health as well as many other environmental and ecological issues. Input is also required into other statutory plans such as the LDP.

2.3 There is also the statutory power for the Minister to intervene if they feel we are failing to deliver the services; the Act also gives them the right to charge the full cost of the intervention back to the local authority. As mentioned before the local government ombudsman also exercises their power to rectify inadequacies in this service area and to compensate those members of public affected. This has happened regularly over the past few years and only a few weeks ago a London Borough experienced this in terms of failing to properly deal with noise nuisance complaints.

### **3. Management and Support**

- 3.1 This area of work is managed as part of the Pollution Control function in the Housing and Public Health service alongside monitoring and management of bathing water quality, drinking water regulation, contaminated land and other associated topics. The Pollution Control manager and team leader are also responsible for the Pest Control and Animal Warden service.

### **4. Stakeholders**

- 4.1 Apart from all our service users and beneficiaries there are many other stakeholders with a direct interest in the service. Local primary and secondary care staff, Public Health Wales, the research community, planning, highways and transportation in the broadest sense, Welsh government and UK government all have a direct role to play in the provision of this service. All are increasingly vocal in terms of our service given the pressures they are all under to deliver in the context of reducing resources.

### **5. Financial Implications**

- 5.1 There are no financial implications associated with this report.

### **6. Current Performance and Trends**

- 6.1 There are no current performance indicators in this field as each local authority has to submit very detailed reports on air-quality every year to the government following detailed national guidance. All the reporting is processed by external expert auditors appointed by the government. In Wales these reports also include an update on environmental noise. In the past we have received awards for leading the way with our monitoring and our web site; however there has been little growth over the last few years of financial constraint.

<http://swansea.airqualitydata.com/>

This year there has been an improvement in air-quality. Overall concentrations of pollutants are down and the number of sites measured which fail a target are reduced. However there are still failures in the three areas highlighted by our air quality management order.

<https://www.swansea.gov.uk/article/2850/Local-air-quality-management-reports>

Our current predictions based upon all our monitoring suggest that we are still a few years away from compliance. This has been highlighted within the Air Quality Action Plan, first produced in 2004, which will shortly be subject to public consultation. Of course this is using the best estimates of the likely level of vehicles locally over the next few years; this has been the most difficult element to forecast accurately since 1995. A major advantage in Swansea is our historic investment in

accurate traffic flow measurements, using a technology which categorises all vehicles into the various European emission classes. This was done to make our Nowcaster system work accurately, but has the added benefit of providing extra clarity on the current vehicle mix on each of the significant highways.

## **7. Future Challenges & Opportunities**

- 7.1 The obvious immediate challenge will be Brexit; without the threat of infraction there may well be less government pressure to meet the agreed standards. There is uncertainty over the regulation of this area in future, however most countries have always developed environmental standards that are based upon WHO standards and if that continues in Wales there should be no major changes. Like all cities we have to work together across all the disciplines to encourage development and change in a way which does not exacerbate the existing problems of congestion and air pollution. The Future Generations Act in Wales should enable public bodies to focus on the right issues, but it remains to be seen if this can have an effect in the short-term. Maintaining this service in the current financial position is a real challenge, while demands on the service are continuing to increase.

## **8. Risks**

- 8.1 We had removed the risk of infraction from the corporate risk register as it was not entirely under our control. However it has become clear over the last few years that litigation on air-quality is likely to continue on a national basis and that the UK courts will continue to exert pressure on the UK governments.
- It should also be noted that many of the pollution major incidents in this area over the past two decades have required considerable effort to monitor air pollution accurately and in real-time so that the incident can be safely managed. Fortunately our investment in these technologies has been hugely valuable in dealing with those incidents quickly and safely.

## **9. Assessment**

- 9.1 In summary the key issues are that noise control is being carried out to the best of our ability within the current statutory framework although it will be a real challenge to maintain the service and avoid challenges by the Ombudsman.
- 9.2 The biggest challenge as always has been the statutory requirement to deliver air-quality compliance with the health based standards. No one argues about the multiple benefits, but it has been very difficult to deliver any significant actions at a local level. Currently all the additional money recently identified by Welsh government for air quality management has been allocated outside of Swansea and it seems unlikely that any major investment will be available to deal with local air-quality failures.

9.3 If we can maintain our efforts and expertise in these fields, which is difficult in times of reducing budgets, we will continue to play our part and will be able to highlight the needs for national governments to agree policy changes which will deliver a fundamental shift in local and regional transport.