

# **ENVIRONMENT SCRUTINY COMMITTEE**

**WEDNESDAY 5<sup>TH</sup> SEPTEMBER 2012**

**AT 6:00PM  
IN COMMITTEE ROOM 2  
THE COUNCIL HOUSE  
DUDLEY**

**If you (or anyone you know) is attending the meeting and requires assistance to access the venue and/or its facilities, could you please contact Democratic Services in advance and we will do our best to help you**

**HELEN SHEPHERD  
DEMOCRATIC SERVICES OFFICER  
Internal Ext – 5271  
External – 01384 815271  
E-mail – [kim.fellows@dudley.gov.uk](mailto:kim.fellows@dudley.gov.uk)**

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## **IMPORTANT NOTICE**

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Your ref:

Our ref:  
05/09/12/HS

Please ask for:  
Miss H Shepherd

Telephone No.  
(01384) 815271

23<sup>rd</sup> August, 2012

Dear Member

**Meeting of the Environment Scrutiny Committee – Wednesday 5<sup>th</sup> September, 2012 – 6.00pm**

You are requested to attend a meeting of the Environment Scrutiny Committee to be held on Wednesday 5<sup>th</sup> September, 2012 at 6.00pm in Committee Room 2 at the Council House, Dudley to consider the business set out in the Agenda below.

The agenda and reports for this meeting can be viewed on the Council's internet site [www.dudley.gov.uk](http://www.dudley.gov.uk) and follow the links to Meetings and Decisions.

Yours sincerely



Director of Corporate Resources

**A G E N D A**

1. APOLOGIES FOR ABSENCE

To receive apologies for absence from the meeting.

2. APPOINTMENT OF SUBSTITUTE MEMBERS

To report the appointment of any substitute members serving for this meeting of the Committee.

3. DECLARATIONS OF INTEREST

To receive Declarations of Interest in accordance with the Members' Code of Conduct.

4. MINUTES

To approve as a correct record and sign the Minutes of the meeting of the Committee held on 14<sup>th</sup> June, 2012 (copy attached).

5. PUBLIC FORUM

6. ANNUAL REPORT OF THE SCRUTINY COMMITTEE TO COUNCIL (PAGES 1 – 4).

To consider a report of the Lead Officer to the Committee.

7. ESTABLISHMENT OF A HOUSING WORKING GROUP (PAGES 5 – 7))

To consider a report of the Assistant Director of Housing Services.

8. WELFARE REFORMS

To receive a verbal update from the Assistant Director of Housing Services.

9. BADGERS (PAGES 8 – 10)

To consider a joint report of the Director of the Urban Environment and the Director of Adult, Community and Housing Services.

10. COMPLAINT TO LOCAL GOVERNMENT OMBUDSMAN – ENFORCEMENT MATTER (PAGES 11 – 32)

To consider a joint report of the Director of Corporate Resources and the Director of the Urban Environment.

11. TO ANSWER QUESTIONS UNDER COUNCIL PROCEDURE 11.8 (IF ANY).

AND QUESTIONS ON INFORMATION ITEMS PREVIOUSLY CIRCULATED SEPARATELY.

Members are asked to e-mail Kim Fellows, at the address shown on the agenda cover, at least three working days before the meeting details of any questions they would wish to raise ON THE INFORMATION ITEMS.

This will enable responses to the questions to be circulated prior to the meeting.

Questions on information items raised at the meeting will receive a written response following the meeting.

To: All Members of the Environment Scrutiny Committee, namely:

M. Aston	Boleyn	Duckworth	Hanif	Harley
James	Jordan	J Martin	Roberts	Mrs Shakespeare
Mrs H Turner				

## **ENVIRONMENT SCRUTINY COMMITTEE**

Thursday 14th June, 2012 at 6.00pm  
in Committee Room 2, The Council House, Dudley

### **PRESENT:-**

Councillor Hanif (Chair)  
Councillor Mrs Shakespeare (Vice-Chair)  
Councillors M Aston, Harley, Jordan, J Martin, Roberts, Mrs H Turner and Wright.

### **Officers**

Director of Corporate Resources (As Lead Officer to the Committee), Assistant Director Planning and Environmental Health, and Assistant Director of Environmental Management (Directorate of the Urban Environment), Head of Housing Management-North (Directorate of Adult, Community and Housing Services) and Miss K Fellows (Directorate of Corporate Resources).

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#### 1. **OPENING REMARKS OF THE CHAIRMAN AND INTRODUCTIONS**

This being the first meeting of the municipal year, the Chairman welcomed those present and Members and Officers introduced themselves.

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#### 2. **APOLOGIES FOR ABSENCE**

Apologies for absence from the meeting were submitted on behalf of Councillors Boleyn, Duckworth, A Finch and James.

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#### 3. **APPOINTMENT OF SUBSTITUTE MEMBERS.**

It was reported that Councillors Roberts and Wright had been appointed as a substitute members for Councillors Boleyn and James respectively for this meeting of the Committee only.

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#### 4. **DECLARATIONS OF INTEREST**

No member made a Declaration of Interest in accordance with the Members' Code of Conduct.

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#### 5. **MINUTES**

RESOLVED

That, the minutes of the meeting of the Committee held on 19<sup>th</sup> March, 2012, be approved as a correct record and signed.

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6. PUBLIC FORUM

No matters were raised under this agenda item.

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7. WORK PROGRAMME FOR 2012/13.

A report of the Lead Officer to the Committee was submitted on the Work Programme for the Scrutiny Committee for 2012/13.

In presenting the report submitted the Lead Officer referred to the Anti Social Behaviour Review Report advising that this may not be submitted to this Committee, and may be considered by the Community Safety and Community Services Committee in accordance with their terms of reference.

Arising from the presentation of the report submitted Members made suggestions as follows:-

That a report in relation to Badgers to include residential support and the Council's duties and responsibilities in relation to Badgers be submitted to the September meeting of this Committee.

That a report in relation Recycling be submitted to the January meeting of this Committee.

That the Assistant Director of Planning and Environmental Health be requested to ensure that information in relation to Badgers including residential support and the Council's duties and responsibilities in relation to Badgers are displayed on the Council's website.

RESOLVED

(1) That, the Work Programme for the Committee for 2012/13 be approved as follows:-

- Matters for information, e-mailed to Members, June 2012  
that they may wish to ask questions about (eg  
Equality and Diversity annual report).
- Work Programme for 2012/13 June 2012
- Food Service Plan 2012/13 June 2012
- Housing Fraud June 2012

- Any questions on matters e-mailed for information (eg Quarterly Corporate Performance Management Report) September 2012
- Annual Report of the Scrutiny Committee to Council September 2012
- Welfare Reforms September 2012
- Badgers to include residential support and the duties and responsibilities of the Council in dealing with Badgers. September 2012
- Matters for information, e-mailed to Members, that they may wish to ask questions about (eg Update on the Council's Capital Strategy and Quarterly Corporate Performance Management Report). November 2012
- Rogue Traders and Age Restricted Products. November 2012
- Anti Social Behaviour Review Update. November 2012
- Proposed Revenue Budget. November 2012
- Any questions on matters e-mailed for information (eg Quarterly Corporate Performance Management Report). January 2013
- Trade Waste and Recycling. January 2013
- Air Quality Management Report January 2013
- The Regulation of Private Landlords January 2013
- Any questions on matters e-mailed for information (eg Quarterly Corporate Performance Management Report and Equality and Diversity Action Plan) March 2013
- Provisional Work Programme 2013/14 March 2013



- (2) That the Assistant Director, Planning and Environmental Health be requested to ensure that information in relation to Badgers including residential support and the Council's duties and responsibilities in relation to Badgers are displayed on the Council's website.
  - (3) That Members be requested to email the Lead Officer and the Chair details of any items that they wished to add to the Work Programme.
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8. FOOD SERVICE PLAN 2012/13

A report of the Director of the Urban Environment was submitted on the Food Service Plan 2012/13. A copy of the Food Service Plan Summary 2012/13 was attached as an Appendix to the report submitted.

Arising from the presentation of the report submitted, Members asked questions and the Assistant Director, Planning and Environmental Health responded stating that:-

In relation to the Obesity Strategy, work was conducted in partnership with NHS Dudley. She also referred to the work that was undertaken with schools and food businesses in order to ensure that they had healthy food choices, and work with young consumers in relation to food labelling. Details in relation to the project "Dudley Food for Health Award" were also outlined.

The Food and Occupational Safety and Trading Standards Sections were separate sections undertaking all food safety and food standards inspections in accordance with Food Hygiene Legislation.

In outlining the work of the above Sections, that they were responsible for emergency closures and prosecutions, responding to a number of concerns reported by the public and investigating food poisoning outbreaks. It was noted that inspections for Health and Safety were also undertaken.

Details of routine microbiological testing were also provided.

In relation to campylobacter this was the most common form of food poisoning bacteria and that symptoms could be severe and one of the most common place that bacteria resided was in raw chicken.

There were eleven full time qualified Environmental Health Officers working on food safety.

Every food business needed to be registered and inspected and the frequency of inspections would depend upon the relevant risk involved.

Work was conducted with colleges with their catering facilities being inspected.

The procedure in relation to the permanent closure of food business was outlined together with details of the inspections following closure in order to ensure that there was no longer a risk to health and once this was established a certificate would be issued in order that those businesses could be re-opened.

The Chair and Vice Chair praised the work of Environmental Health Officers and the Council's Scores on the Doors Scheme.

#### RESOLVED

That the information contained in the report, and Appendix to the report, submitted on the Food Service Plan 2012/13, be noted and referred to Cabinet and full Council.

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#### 9. HOUSING FRAUD

A report of the Director of Adult, Community and Housing Services was submitted on the approach taken in Housing Services on the prevention and detection of Housing Fraud. The Housing Counter Fraud Policy was appended to the report submitted.

Arising from the presentation of the report submitted Members asked questions, and the Head of Housing Management North responded stating that:-

The moral reasons for investigating housing fraud outweighed the potential cost of doing so and that non-investigation would result in losses occurring to the Council.

In relation to housing fraud regarding "right to buy", this had occurred where properties had been re-possessed and investigations in relation to those cases remained ongoing.

Investigation times would depend upon the complexity of the case.

A charge would be registered against those properties that were purchased through the right to buy scheme, however should those properties be re-possessed, the principal lender would be repaid in the first instance, which could result in the Council's charge not being repaid.

The benchmarking club on housing fraud provided by "HouseMark" had been signed up to recently with the first set of data being populated later in the year.

The agreement with Birmingham City Council to share data from housing records would result in obtaining details as to whether tenants had obtained properties in different areas.

Investigations in relation to housing fraud commenced immediately once these cases came to the Council's attention.

Work in relation to sharing national insurance numbers had commenced with the Council's Housing Benefits department.

A quality impact assessment had raised issues in relation to the use of photograph identity and a consultation exercise was being undertaken in relation to the black, minority and ethnic communities.

All data matching work was conducted with social landlords, however it was intended to widen the scope of the national fraud initiative.

There was not currently a dedicated resource to investigate housing fraud, however this was being reviewed with support being offered by the Council's Audit Services.

The Council were utilising the Corporate Group in order to deal with housing fraud.

The indicative figures referred to at paragraph three of the report submitted also included the costs of temporary housing and the cost of re-building properties.

There may be a loss to the Council should housing benefit be fraudulently claimed.

The Council Fraud Hotline had been introduced at the end of 2011 and other initiatives were being investigated in order to promote this such as posters on the Council's repair vehicles.

In relation to the Council participating with the "best use of stock summit" and the workshop on housing fraud, feedback relating to this would be provided to a future meeting of the Committee.

Following Members raising concerns in relation to the potential cost to the Council of housing fraud it was agreed that a report would be submitted to a future meeting of this Committee detailing the specific costs involved.

#### RESOLVED

- (1) That, the information contained in the report, and Appendices to the report, submitted on the approach taken in Housing Services on the prevention and detection of Housing Fraud, be noted.
- (2) That the Director of Adult, Community and Housing Services be requested to submit a report to a future meeting of this Committee in relation to the Council's participation with the "best use of stock summit".

- (3) That the Director of Adult, Community and Housing Services be requested to submit a report to a future meeting of this Committee in relation to the actual cost implications to the Council in relation to housing fraud.

The meeting ended at 7.20pm

CHAIRMAN

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**Environment Scrutiny Committee – 5th September 2012**

**Report of the Lead Officer to the Committee**

**Annual Report of the Environment Scrutiny Committee for 2011/12**

**Purpose of Report**

1. To submit to the Committee and Council the Annual Report of the Environment Scrutiny Committee for 2011/2012.

**Background**

2. Article 6 of the Council's Constitution requires that Committees report annually to the full Council on the work carried out over the previous municipal year making both recommendations for key areas of future work and any amended working methods, if appropriate, for the forthcoming year.
3. In deciding its work programme for 2011/12, the Committee chose to concentrate on a manageable list of important issues to ensure that they could be properly scrutinised, whilst at the same time giving the Committee some flexibility to add some additional items that arose during the course of the year.
4. Accordingly, items included in the planned work programme for the Committee in 2011/12 were as follows:-
  - (a) The Homelessness Service Annual Report 2011/12;
  - (b) Air Quality Action Plan;
  - (c) Food Service Plan;
  - (d) High Cost Voids;
  - (e) The Outcome of the Recycling Trial and Recycling Proposals;
  - (f) Rogue Traders and Doorstep Crime;
  - (g) Age Restricted Products;
  - (h) Tenancy and Estate Management;
5. The Committee's Work Programme for the 2011/12 municipal year also included the following standard reports:-
  - Quarterly Reports on Corporate Performance Management;

- Update on the Council's Capital Strategy;
- Revenue Budget Strategy for 2012/13;
- The Equality and Diversity Report 2011/12 of the Directorate of Corporate Resources.

### **Food Service Plan 2011/12**

6. Reports were submitted and noted on the Food Service Plan for 2011/12 and 2012/13. Copies of the Food Service Plan Summaries were also submitted.

### **Housing Matters**

- 7(a) A report was submitted on the actions taken in respect of high cost voids since the previous report submitted to the Committee in January, 2011 and the actions taken in respect of high cost voids were noted by the Committee.
- 7(b) A report was submitted and noted on homelessness activity during 2010/11. It was also noted that opportunities for additional funding and partnership working in order to meet acute housing needs were always actively pursued.
- 7(c) A report was submitted and noted on Housing Management Activity. The outcomes from the consultation on the Council's Review of Anti Social Behaviour, and the Welfare Reform Key Measures were also submitted.
- 7(d) A report was submitted and noted on the approach taken by Housing Services on the prevention and detection of Housing Fraud. The Housing Counter Fraud Policy was also submitted. Arising from consideration of the report it was agreed that reports would be submitted to a future meeting of the Committee in relation to the Council's participation with the "best use of stock summit" and the actual cost implications to the Council in relation to housing fraud.

### **Progress with Dudley MBC Air Quality Action Plan**

8. A report was submitted and noted on an update with progress with the Dudley MBC Air Quality Action Plan. Details of funding obtained from the Department for Environment, Food and Rural Affairs in relation to re-locating air quality monitoring equipment and the Council resources in relation to the delivery of the Plan were also considered. Support was given to the proposal that the final version of the Air Quality Action Plan be reported to Cabinet for adoption by the Council.

### **Recycling Trial Collection Scheme**

9. A report was submitted and noted on the outcome of the plastic and card recycling trial and containing details in relation to a possible Borough-wide roll out. Details in relation to the new Blowers Green Recycling Depot were also considered.

### **Rogue Traders and Doorstep Crime**

10. Committee considered and noted a report submitted on the role of the Council's Trading Standards Service in combating the problems of doorstep crime and investigating rogue traders.

## **Age Restricted Products Enforcement**

11. A report was submitted and noted on legislation enforcement and advice activity carried out by the Trading Service, concerning the sale of alcohol to persons aged under eighteen. An annual report on tobacco enforcement activity detailing the current and forthcoming tobacco control legislation was also submitted.

## **Network Management Strategy 2012 – 2015 and compliance with the Traffic Management Act 2004.**

12. The Committee considered a report on the Network Management Strategy including legislative requirements imposed on local traffic authorities by the introduction of the Traffic Management Act, 2004. The report also outlined how the Council would respond to the legislation to ensure the expeditious movement of traffic on the road network and achieve compliance with the Act. The Network Strategy Plan incorporating the Speed Management Strategy was circulated to Members.
13. At the meeting held on 14<sup>th</sup> June, 2012, the following items were proposed for inclusion in the work programme for the 2012/13 municipal year:-
  - Matters for information, e-mailed to Members that they may wish to ask questions about.
  - Work Programme for 2012/13.
  - Food Service Plan 2012/13.
  - Housing Fraud.
  - Annual Report of the Scrutiny Committee to Council.
  - Welfare Reforms.
  - Badgers to include residential support and the duties and responsibilities of the Council for dealing with Badgers.
  - Rogue Traders and Age Restricted Products.
  - Anti Social Behaviour Review Update.
  - Proposed Revenue Budget.
  - Trade Waste and Recycling.
  - Air Quality Management Report.
  - The Regulation of Private Landlords.
  - Provisional Work Programme 2013/14

In addition to the above, following a referral from the Cabinet Meeting on 20<sup>th</sup> June, 2012 the Committee will also consider a report entitled Complaint to the Local Government Ombudsman – Enforcement Matter.

## **Conclusion**

14. The areas forming the bulk of the Committee's work continue to concentrate upon issues relating to housing, promoting environmental well-being and consumer issues.

## **Finance**

15. There are no direct financial implications arising from this report at this stage.

## **Law**

16. The requirement for the Committee to submit an annual report to the Council is contained in Article 6 of the Constitution as read with Part II of the Local Government Act, 2000, together with Regulations, Orders and Statutory Guidance issued by the Secretary of State.

## **Equality Impact**

17. This report complies with the Council's Equality Policy.
18. This report has no specific effect on children and young people. There is no requirement for consultation with children and young people in producing the report or the development of proposals.

## **Recommendation**

19. That the Annual Report of the Environment Scrutiny Committee for 2011/12 as set out above, be received, noted and referred to Council.



.....  
**PHILIP TART**  
**LEAD OFFICER TO THE ENVIRONMENT SCRUTINY COMMITTEE**

Contact Officer: Kim Fellows, Directorate of Corporate Resources  
Telephone: 01384 – 815241 (ext. 5241)  
Email: [kim.fellows@dudley.gov.uk](mailto:kim.fellows@dudley.gov.uk)



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**Environment Scrutiny Committee – 5<sup>th</sup> September, 2012**

**Report of the Assistant Director of Housing Services**

**Establishment of a Housing Working Group**

**1. Purpose of the Report**

- 1.1 For Members of this Scrutiny Committee to agree to the establishment of a cross party Housing Working Group.

**2. Background**

- 2.1 Some Members will recall that in September 2006 the then Select Committee on the Environment agreed to establish an all party Choice Based Lettings Working Group to oversee and monitor the Choice Based Lettings pilot, the banding criteria and associated issues.
- 2.2 The Working Group proved to be a successful business model. The advantages being:
- With officers acting in the capacity of advisers it allowed for detailed debate on individual topics and/or issues.
  - Recommendations were then presented to the Select Committee for additional direction/scrutiny.
  - Decision making, as required, was then through the Council's procedures of either Decision Sheet or Cabinet.
- 2.3 A decision was taken last municipal year that the Working Group was no longer required and that all business could be incorporated into the main Committee Agenda.
- 2.4 On 2<sup>nd</sup> August 2012 a meeting was held with Councillor Khurshid Ahmed, Cabinet Member for Housing, and his advisers Councillors A Finch, R Body and K Casey, to consider policy issues facing Housing. Appendix 'A' outlines broadly the issues.
- 2.5 When considering a process for policy development and decision making, it was agreed that a Working Group model (based on the successful Choice Based Lettings model) should be developed. As this Scrutiny Committee has the remit for 'overview and scrutiny of matters relating to Housing' it was felt that the Working Group should be made up of Members of this Committee plus open invitations to the Cabinet Members' advisers.

**4. Finance**

- 4.1 Any associated costs will be met from existing budgets.

**5. Law**

5.1 Section 111 of the Local Government Act, 1972 empowers the Council to do anything, which is incidental or is conducive to the discharge of its functions.

**6. Equality and Diversity**

6.1 This report in itself does not have any equality impact implications.

**7. Recommendations**

7.1 That Members agree to the establishment of a cross party Housing Working Group.

7.2 That in addition to Members of this Committee there is an open invitation to the Cabinet Members' advisers.

7.3 The first meeting of the Group is convened as quickly as possible to establish a work plan and priorities.



.....  
**Diane Channings**  
**Assistant Director of Housing Services**

Contact Officer:

Diane Channings	Assistant Director, Housing Services
Telephone	01384 815063
Email	<a href="mailto:diane.channings@dudley.gov.uk">diane.channings@dudley.gov.uk</a>

**Policy Issues** (not in any order of priority)

- 1) Best use of stock
- 2) Review of allocations
- 3) Implications of Welfare Reforms and Localism Act
- 4) Right to Buy
- 5) Void management
- 6) Anti-social behaviour
- 7) Tenant's own repairs.

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**Environment Scrutiny Committee – 5<sup>th</sup> September 2012**

**Joint Report of the Director of the Urban Environment and the Director of Adult, Community and Housing Services - Badgers**

**Purpose of Report**

1. To advise members of the Committee of the duties and responsibility of the Council with regard to Badgers and the law.
2. To advise members on how Officers are able to provide support to communities in relation to Badgers.

**Background**

3. Badgers are a protected species by law under the Protection of Badgers Act 1992. It must be made clear that the Council has no jurisdiction in relation to badgers. Recognising the issues surrounding Badgers within the urban area, there are a number of officers within directorates of the Council who can offer support and advice to the community in relation to this issue. Officers often act in a facilitating and sign- posting capacity to aid individuals and the wider communities in the Borough.
4. In the event of Badgers being present on Council owned land the Local Authorities role is that of any landowner who has land affected by badger presence and activity. The Council, like any other landowner or affected party, must apply to Natural England, (the Government Agency appointed to administer such issues) for a licence if they wish to disturb the habitat of the badgers.
5. The Council has responsibilities as a landlord where Badgers are present in the vicinity of Council Homes and has a duty of care for its tenants. The Council has a duty to ensure the maintenance and safety works are carried out and any defects are remedied in the event of disturbance by badgers.
6. The Council will take action to communicate and support the affected communities by providing regular updates as to the action taken and support liason between the community and Natural England. Officers will work closely with ward members throughout.
7. In fulfilling its role in this capacity, in any instance where badgers are present on Council land, the Council may need to commission an expert independent report to be undertaken to determine the extent of the matter. The locality and extent of the issue and the options available to the Council are determined and presented within the independent report which will be duly considered.
8. Following receipt of the expert independent report the Council will meet as required with Natural England to seek advice and guidance on any appropriate and recommended courses of action, ensuring that the right level of evidence and legal safeguards are in place. In some cases it may be appropriate to gain the

appropriate licences from Natural England to move Badgers and/or to interfere with their habitats. All these actions must be undertaken by suitably qualified persons.

9. Where there are badgers present on private land the Council has no jurisdiction to act, however they will, if requested, facilitate discussions between Natural England and the private individual/s to enable the legal processes to be undertaken by the landowner.
10. Members and residents also have available information provided through the Dudley MBC website where there are links to the Natural England website where guidance is provided together with legal responsibilities in relation to badgers. This ensures the guidance is current.

### **Finance**

11. The cost of addressing issues relating to badgers on Council land would need to be met from within existing Council resources. There are no specific budgets set aside for such issues. The cost in relation to private property remains with the owners of the land.

### **Law**

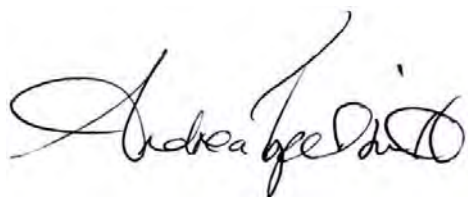
12. Badgers are a protected species by law under the Protection of Badgers Act 1992. The Council has no regulatory jurisdiction in relation to badgers.

### **Equality Impact**

13. The Council is undertaking its duties in relation to being a landowner within its own jurisdiction and within the provisions of the Protection of Badgers Act 1992. In exercising those duties the Council has due consideration for any matters raised on all sectors of the community.

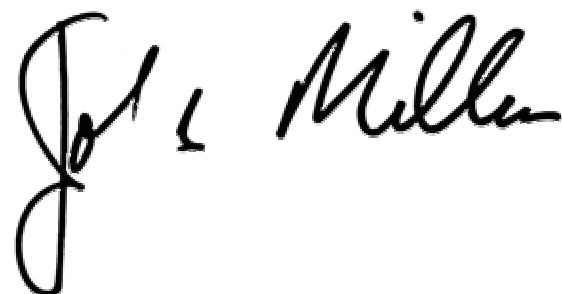
### **Recommendation**

14. It is recommended that the Scrutiny Committee note the content of the report.



**Andrea Pope Smith**

**Director of Adult, Community and Housing Services**



**John Millar**

**Director of the Urban Environment**

Contact Officer

Diane Channings DACHS

Annette Roberts DUE

**List of Background Papers**

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**Environment Scrutiny Committee – 5<sup>th</sup> September, 2012**

**Joint Report of the Director of Corporate Resources and Director of the Urban Environment**

**Complaint to the Local Government Ombudsman – Enforcement Matter**

**Purpose of Report**

1. To consider and comment on the report of the Local Government Ombudsman into a complaint made against this Council considered by the Cabinet at its meeting held on 20<sup>th</sup> June, 2012 and referred to this Committee to establish what lessons can be learned from the process.

**Background**

2. Attached as an Appendix to this report is a copy of the joint report of the Director of Corporate Resources and the Director of the Urban Environment on the conclusions of the Local Government Ombudsman into a complaint made in respect of an enforcement matter alleging that over 100 local residents had been affected by noise, smell and other disturbance from a nearby aluminium foundry and that there had been unreasonable delay by the Council in controlling and taking action to limit the problems caused by the foundry.
3. The joint report also sets out the comments of the Director of the Urban Environment on the findings of the Ombudsman and the full report of the Ombudsman on the investigation into the complaint made is also attached as part of the Appendix to this report.
4. Arising from the consideration given to the Ombudsman's report by Cabinet at its meeting on 20<sup>th</sup> June, 2012, in addition to approving the payment of compensation to the complainant and the 27 households most directly affected Cabinet also resolved that the Ombudsman's report be referred to this Committee for consideration and comment.
5. Regarding complaints made to the Local Government Ombudsman the Committee are asked to note that this is the first report received with a finding of maladministration with injustice in the last four years and that the Local Government Ombudsman in her Annual Review Letter for 2011/12 stated that she was pleased to say that she had no concerns about the Council's response times in dealing with complaints and that there were no issues arising from the complaints that she would want to bring to the Council's attention.

The Committee are also asked to note that this matter was a particularly complex one as indicated by the comments made by the Director of the Urban

Environment in the covering report.

6. The Committee are also asked to note the further comments of the Director of the Urban Environment on this complaint arising from its referral to this Committee, as follows:-

The Council is disappointed with the conclusion that the Ombudsman has come to in this report. The matter was particularly complex in relation to technical and legal issues and remains of the opinion that it took the most appropriate steps to control the emissions as quickly as it could, given the complexities of the foundry operation and the law.

Through out the period referred to in the Ombudsman report the Council did investigate complaints, kept the complainants informed as to progress and worked with the company in order to progress matters as quickly as possible.

At all times the Council had regard to the impact on residents as well as the requirements placed on a key employer.

Despite attempts by the Company to meet the permit conditions the Company decided to cease operations at the site on the 31<sup>st</sup> March 2011.

The Council does believe that it used the available resources to the best effect and took the most viable option to achieve a successful outcome.

7. The officers have carefully considered the findings of the Ombudsman and have reviewed the formal processes associated with issuing a permit under the relevant regulations together with the approach to the ongoing internal case conferences undertaken in any such matters.

It should be noted that the process to issue a permit is laid down in National Guidance. Officers will focus in future particularly on the time taken by any company to provide the required technical information as part of the permit process. The time given must be reasonable as required by law and will be dependant on the complexity and availability of that information. If additional information is then required the time given to the company to provide it will again be the focus, although as above it has to be of reasonable length. This issue will be carefully monitored at all case conferences. See appendix 2.

## **Finance**

8. There are no direct financial implications arising from the content of this report. Any compensation determined, arising from an investigation by the Local Government Ombudsman, is met from existing Directorate budgets.



## **Law**

9. The Commission for Local Administration (the Ombudsman's Service) was created under Parts 1 and 3 of the Local Government Act, 1974.

## **Equality Impact**


10. This report accords with the Council's Equality Policy. The role of the Ombudsman affords a system of complaint and redress to members of the public who consider that they have been subject to maladministration by the Council.

## **Recommendation**

11. That, in accordance with the resolution of the Cabinet of 20<sup>th</sup> June, 2012, the Committee are asked to consider and comment on the Ombudsman's report in relation to this particular complaint, with a view to establishing what lessons can be learned in respect of the process for dealing with such matters.



.....  
**Philip Tart**  
**Director of Corporate Resources**



.....  
**John Millar**  
**Director of the Urban Environment**

Contact Officer: J Jablonski – Assistant Principal Officer (Democratic Services)  
Telephone: 01384 815243  
Email: [Josef.jablonski@dudley.gov.co.uk](mailto:Josef.jablonski@dudley.gov.co.uk)

## **List of Background Papers**

Report on an investigation into complaint number 10010095 against Dudley Metropolitan Borough Council dated 22<sup>nd</sup> March, 2012.

Report to Cabinet on 20<sup>th</sup> June, 2012 – complaint to the Local Government Ombudsman – enforcement matter

Appendix 1

**Joint report of the Director of Corporate Resources and the Director of the Urban Environment on the conclusions of an investigation into complaint number 10010095 against Dudley Metropolitan Borough Council dated 22<sup>nd</sup> March, 2012.**

**Background**

1. Caparo Aluminium Technologies Ltd operated a non ferrous foundry business at Sunrise Business Park at High St, Wollaston, Stourbridge.
2. The closest residential properties are approximately 40 metres from the site boundary in Hollybush Lane and lie roughly on the same level as the roof ridge of Caparo. Over 50 dwellings lie within 200 metres to the East of the foundry site.
3. In 2006 Caparo took over Zeus Aluminium who produced aluminium castings on the site. While at the site Zeus were the source of many complaints relating to odour and noise which resulted in the Council serving an abatement notice for noise nuisance which Zeus breached and they were subsequently fined £10,000 in the magistrates court. Complaints from residents about noise, odour and sand fallout continued after Caparo took over the site.
4. In March 2007 DMBC served a noise abatement notice on Caparo which they appealed and then withdrew their appeal in January 2008.
5. In March 2007 Caparo applied for an permit under the provisions of the Pollution and Prevention Control Act 1999 to control environmental pollution including noise. The basic content of the application was accepted on 19<sup>th</sup> March 2007, subject to further supporting information being obtained from the applicant before determination.
6. During 2007 Schedule 4, Part 4 (Pollution Prevention and Control (England and Wales) Regulations 2000) notices were served on Caparo in relation to requiring more information on noise, odour and site investigations issues. In addition officers were also involved with the preparation of officer statements & evidence, the preparation and collection of resident's statements, meetings / discussions with Councils solicitor & attendance at court hearings relating to the noise abatement notice appeal.
7. In 2008 consultants were appointed to consider all the information on noise and odour provided by Caparo. Their reports were not concluded until June and September 2008.

8. Between October 2008 and February 2009, reports and recommendations were considered by senior managers and then with members for a decision on the determination of the permit application. There was also continuing correspondence with Caparo and investigation of ongoing complaints
9. The draft decision to issue a permit was made by the Leader of the Council & the Lead member for the Environment on 16<sup>th</sup> March 2009 in order to give the company the opportunity to demonstrate compliance with permit conditions.
10. This initiated a statutory consultation exercise which resulted in two separate petitions of 165 and 145 signatures respectively one objecting to the issue of a permit until all issues on noise, unpleasant emissions and discharges from Caparo are totally resolved and the second requesting that the conditions attached to any permit must include conditions to compel the company to ensure that noise, smell and other environmental concerns are brought to and kept within national guidelines and with due consideration to local residents. Many of the names on the petitions were repeated in both petitions. Objections were also received via letters, telephone calls and e mails either objecting on varying grounds of noise, smell and fallout,
11. The Council decided through the Decision Sheet process dated 22<sup>nd</sup> June 2009 to issue a permit to Caparo Aluminium Technologies Ltd for the following reasons
  - a) To give the company the opportunity to demonstrate compliance with permit conditions.
  - b) To retain and safeguard the current level of employment provided by the company.
  - c) To enable the effective enforcement of conditions by the local authority in order to protect the environment and the amenities of local residents.
12. From June 2009 officers were involved with configuring the permit conditions with the Council's appointed consultants which also involved consultation with both Caparo and the Caparo Action Group / residents. Discussions also took place with the Health Protection Agency (HPA) and Dudley PCT concerning alleged health issues. A public meeting with residents took place in September 2009.
13. Due to a high level of complaint about sand fallout the initial permit was issued on the 10<sup>th</sup> November 2009 to control emissions apart from noise and odour. This was felt appropriate pending the drafting of more complex conditions on noise and odour by the Council's officers assisted by consultants.
14. A full draft permit was issued in March 2010 for consultation with both Caparo and the Caparo Action Group. The final permit including noise and odour was issued 5<sup>th</sup> May 2010.

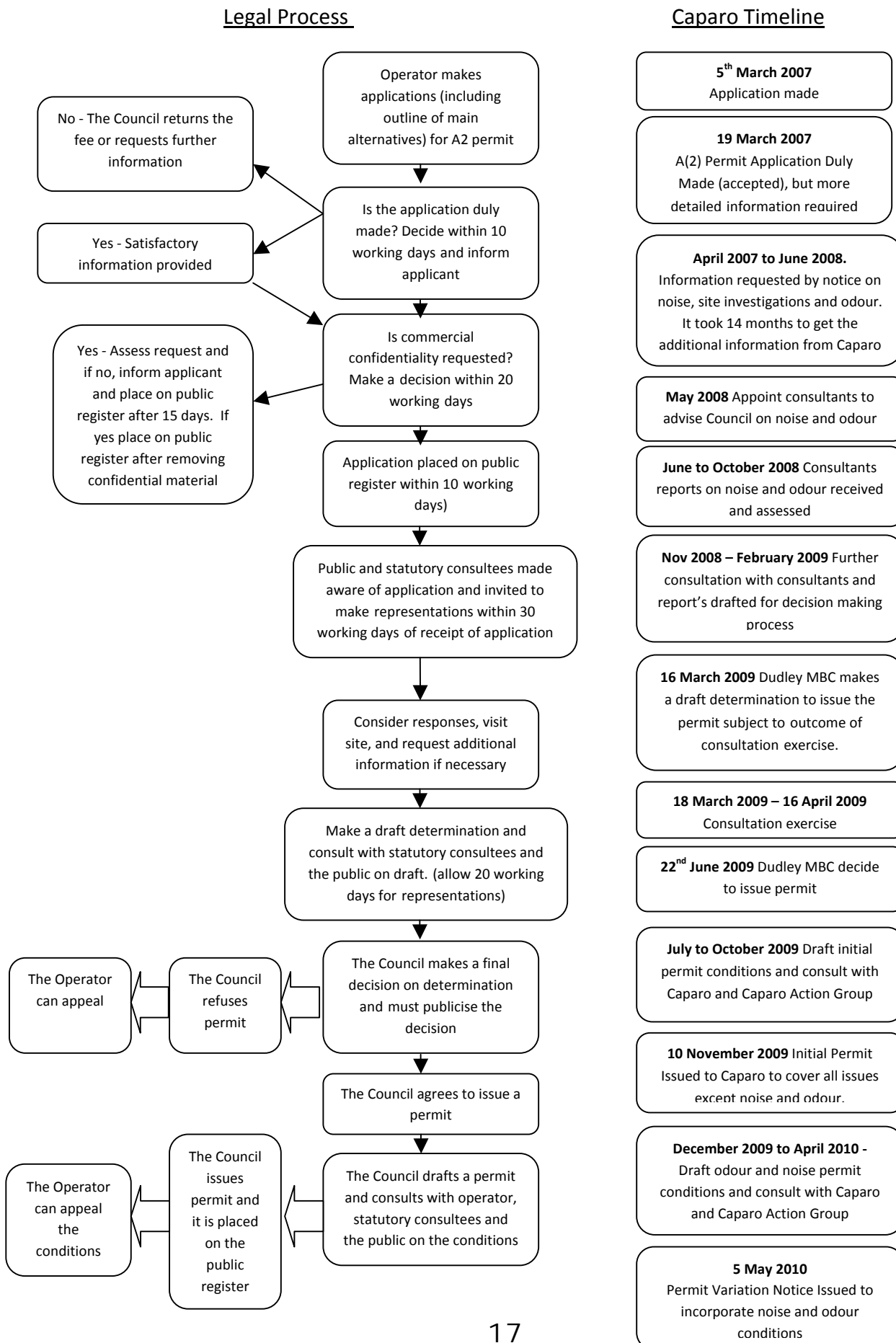
15. In September 2010 Caparo announced that it could not comply with the permit conditions and remain a viable business. The business closed on the 31<sup>st</sup> March 2011

## **Conclusions**

1. The Ombudsman considered that there was unreasonable delay in the Council issuing the permit between March 2007, when the permit application was accepted, and issued in May 2010.
2. Determination of the permit application was lengthy because of the complexity of the technical and legal issues involved, addressing ongoing daily complaints, the obtaining of additional technical information from the company and drafting appropriate conditions to adequately control the emissions. Consultants were employed to assist in this process.
3. During this period there was regular contact with both the Caparo Residents Action group and Caparo. Efforts were made by the Company to try and resolve the issues complained off with the Action Group meeting Senior Management of Caparo and officers on a number of occasions and officers and members attending a public meeting.
4. In relation to noise while the Council could have enforced the Noise Abatement notice , it was determined that the issue of a permit with conditions to control noise was the more appropriate route. The statutory provisions in relation to controlling nuisance allows for appeal which could have delayed matters for 12 months or more with a further appeal to a higher court. During this period the Company could continue production and generate the levels of noise complained of. There was also no certainty of the outcome of prosecuting the company or that any resultant fines would have improved matters. It was considered that this course of action would have delayed matters further
5. However the Ombudsman report does assert that the prime responsibility for the disturbance caused lay with the operators of the foundry and that the Council had to take account of the best use of resources in deciding on which course of action to take and also the most viable option to achieve a successful outcome.

## Appendix 2

### Determination of LA-IPPC (Part A2) Applications including Caparo timeline



**Meeting of the Cabinet – 20<sup>th</sup> June, 2012**

**Joint Report of the Director of Corporate Resources and**

**Director of the Urban Environment**

**Complaint to the Local Government Ombudsman – Enforcement Matter**

**Purpose of Report**

1. To note the conclusions of the Local Government Ombudsman into a complaint made in respect of an enforcement matter and approve the remedy as set out at paragraph 52 of the Ombudsman's report attached as Appendix 1 to this report.

**Background**

2. In January, 2011, the Council received details of a formal complaint from a complainant on behalf of local residents who had been affected by noise, smell and other disturbance from a nearby aluminium foundry. He complained that there had been unreasonable delay by the Council in controlling and taking action to limit the problems caused by the foundry.
3. Following investigation of the complaint the Ombudsman has concluded, in paragraphs 41 to 51 of her report, that there was maladministration causing injustice on the part of the Council in that there was an acceptance by the Council of ongoing disturbance caused by noise, odour and particulate emissions, delay in the time taken to issue a permit and a failure to properly consider how to control nuisance from the site. (A permit to operate is required in law for certain industrial processes. The aim of a permit, issued by the Council, is to put conditions on the operator to control pollution)
4. Arising from the investigation of the complaint a remedy has been agreed upon involving the payment of compensation to the complainant and 27 households.
5. Although a remedy has been determined, the Ombudsman has issued the report attached as Appendix 1 to this report as she considers that the complaint raises issues of public interest.
6. A copy of the report of the Ombudsman is also available in the Member's Room.
7. The views of the Director of the Urban Environment on the Ombudsman's conclusions and remedy are as follows:-

The Council is disappointed with the conclusion that the Ombudsman has come to in this report. Through out the period referred to in the Ombudsman report the Council did investigate complaints, keep the complainants informed as to

progress and worked with the company in order to progress complex technical issues as quickly as possible, with local residents attending a number of meetings with the company. At all times the Council had regard to the impact on residents as well as the requirements placed on a key employer.

The Company took steps to try and resolve the problems with regard to noise and with the emissions but ultimately decided that it could not comply with the conditions imposed by the permit and closed the site on the 31<sup>st</sup> March 2011.

The Council is pleased that the report asserts that the prime responsibility for the disturbance caused lay with the operators of the foundry and that the Council had to take account of the best use of resources in deciding on which course of action to take and also the most viable option to achieve a successful outcome.

While the Council accepts that some local residents were affected by noise, dust and odour it is of the opinion that it took the most appropriate steps to control the emissions as quickly as it could given the complexities of the foundry operation and the law.

### **Finance**

8. As indicated in this report and the report attached as Appendix 1 compensation payments are proposed to the complainant and 27 households most affected by disturbance from the foundry site.

### **Law**

9. Section 31(2) of the Local Government Act, 1974, requires the Council to consider the Ombudsman's report.
10. Section 31(3) of the Act enables the Council to incur expenditure in making a payment and providing a benefit to a person who has suffered injustice.

### **Equality Impact**

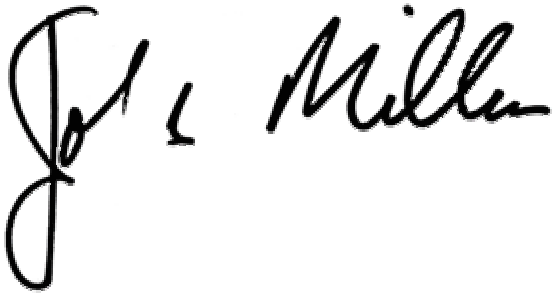
11. Equality issues have been taken into account.

### **Recommendation**

12. That the content of the Ombudsman's report, attached as Appendix 1 to the report submitted, be noted and that approval be given for the payment of compensation to the complainant and the 27 households most directly affected.



.....  
**Director of Corporate Resources**



.....  
**Director of the Urban Environment**

Contact Officer: Joe Jablonski  
Telephone: 01384 815243  
Email: josef.jablonski@dudley.gov.uk

**List of Background Papers**

Report on the investigation into complaint number 10010095 against Dudley Metropolitan Borough Council dated 22<sup>nd</sup> March, 2012.



# Report

on an investigation into  
complaint number 10 010 095 against  
Dudley Metropolitan Borough Council

22 March 2012

# Investigation into complaint number 10 010 095 against Dudley Metropolitan Borough Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

## Key to names used

Mr A

The complainant

## **Report summary**

### **Subject**

#### ***Enforcement***

Mr A complained on behalf of over 100 local residents that there had been unreasonable delay by the Council in controlling and taking action to limit noise, smell and other disturbance from a foundry. In March 2007 the Council issued a noise abatement notice. The foundry appealed against it but this was withdrawn and the notice took effect from 31 December 2007. Also in March 2007 the foundry applied for a permit to operate. The Council appointed consultants to advise on the application and in March 2009 the Council was minded to issue a permit. There was then a period of consultation and the final permit was issued in May 2010.

The foundry could not operate within the terms of the conditions on the permit and activity at the site ceased on 31 December 2010.

#### **Finding**

Maladministration causing injustice, remedy agreed.

#### **Remedy**

The Council to pay the occupiers of the 27 properties most directly affected £250 per household compensation and to pay Mr A £250.

## Introduction

1. Mr A complains on behalf of over 100 local residents who have been affected by noise, smell and other disturbance from a nearby aluminium foundry. He complains that there was unreasonable delay by the Council in controlling and taking action to limit the problems caused by the factory. The factory stopped work at the end of December 2010.

## Legal and administrative background

2. At the outset the activity of the foundry was regulated by the Council under the Pollution Prevention and Control (England and Wales) Regulations 2000. That regime was replaced by the Environmental Permitting (England and Wales) Regulations 2007 which came into force on 6 April 2008.
3. The regulations require that a permit is issued to control emissions to air including odour and noise. The Council must either grant a permit with conditions or refuse the application. An application must be refused if the Council considers that the environmental impact from the activity would be unacceptable or that an operator would be unable to comply with any condition that is likely to be set within a permit. Statutory guidance requires that if a permit is issued it should include conditions which ensure that there should be no reasonable cause for annoyance to local residents at their properties from odour or noise from the operations to which the permit relates. The applicant has the right of appeal to the planning inspectorate against any conditions he considers to be unreasonable.
4. The Council's scheme of delegation provides that a decision to grant a permit is delegated to the cabinet member for environment and culture.
5. The law provides that I shall not normally investigate a complaint about matters of which the complainant became aware more than 12 months previously. In this case I have exercised discretion to start my investigation in March 2007. I did so because the problems that are the subject of the complaint and the injustice claimed by the complainants have been ongoing over a period of time. I do not consider it practical to investigate further back and March 2007 is an appropriate place for the investigation to start, given the chronology I set out in paragraphs 6 and 7.

## Investigation

6. The land occupied by the foundry has a planning use class of B2 (general industrial use). A foundry started work on the site in late 2003. No specific planning consent was required. A noise abatement notice was served on the then operators of the site in February 2004. The Council prosecuted the operators for breaches of the abatement notice and they were fined £10,000 in June 2005. A different firm took over operation of the site in 2006.

7. On 12 March 2007 the Council issued a noise abatement notice with a compliance date of 4 June 2007. Also in March 2007 the foundry applied for an A2 permit under the Environmental Permitting Regulations 2007 and appealed against the noise abatement notice.
8. From March 2007 the Council has said that there were ongoing discussions with the foundry about the noise abatement notice, noise monitoring action and the submission of information by the foundry. Following a series of adjournments the appeal against the noise abatement notice was withdrawn on 7 January 2008 after agreement was reached between the foundry and the Council to amend the compliance date to 31 December 2007. This meant that the foundry could not be prosecuted for any breaches of the notice up to 31 December 2007. At this point a substantial amount of work had been undertaken by the foundry to abate the noise nuisance.
9. In May 2008 the Council appointed consultants to advise on odour and noise in relation to the permit. In June 2008 the Council received the odour consultant's report.
10. A file note refers to a meeting between officers in August 2008 to discuss the drafted committee report on the determination of the permit. The Council has explained that although the report was drafted in the form of a committee report it was not intended to be considered by committee. The recommendation of officers based on the application and the consultant's report then received (on odour) was that the permit be refused. The consultant's comments in respect of odour referred to in the report were that:

"[the foundry] has not provided evidence to show that the environmental impact of the process will be acceptable, on the contrary, the available evidence demonstrates that it is likely that there will be offensive odour from the foundry production process beyond the site boundary. Furthermore there is no evidence to demonstrate that steps will be taken by [the foundry] to prevent emissions of offensive odour beyond the site boundary."

11. It was agreed to await the noise report from the consultants and to set up a meeting with senior officers and members.
12. The noise consultants' report was received in September 2008 and was incorporated into the draft internal report. Paragraph 2.18 refers to the noise levels when last measured in 2008 as being higher in one location than when the previous company was successfully prosecuted in 2005 and the consultant's report is quoted as saying:

"Current noise levels from foundry operations will continue to give rise to reasonable cause for complaint. However, there are no proposals within the information submitted by [the foundry] to [the Council] which lead me to conclude

that [the foundry] are planning to take any steps to reduce existing noise levels from its operations."

13. Paragraph 2.2 of the report concluded that:

"the reports from external consultants have confirmed that the foundry will not operate without causing annoyance to local residents by way of offensive odour and noise, and that [the foundry] have not submitted proposals to significantly improve the situation."

14. There was no firm recommendation in the report either to refuse or approve the permit application but paragraph 6.2 said:

"that Members note that there are no current proposals from [the foundry] which [the Council] and our expert consultants can assess as ensuring that there is no reasonable cause for annoyance from odour and noise if a permit is granted."

15. A file note dated February 2009 (five months after the consultant's noise report was received) indicates that the permit application was with senior management.

### **March 2009 meeting**

16. In March 2009 there was a meeting between senior officers, the then leader of the Council and the then cabinet member for the Environment. The draft internal report was considered. Notes of the meeting made by one of the officers say that "the serious implications and consequences of refusing the permit application were considered against the consequences of permitting the installation". The note went on to say that the decision to issue a permit was taken on the basis that it offered the foundry the opportunity to demonstrate that it was capable of operating within national guidelines. And in commenting on the complaint the Council has said that although the foundry had not demonstrated that it could comply with appropriate conditions in respect of noise and odour that did not mean it was impossible for it to do so.
17. The officer who attended the meeting and made the note is a senior environmental health officer. He explained that his professional view was that the application for the permit should be refused. However the leader of the Council asked whether it was impossible for the company to comply with appropriate conditions and he could not say that it was absolutely impossible.
18. The leader of the Council explained that it would not be unusual for a cabinet member to come to him for a view on difficult or contentious matters. It was on this basis that he was involved in the March 2009 meeting. In his view the permit could be issued but if they were minded to do so then there needed to be a period of consultation. It was agreed to carry out the consultation and to meet again in May 2009.

19. The cabinet member's recall of the meeting was that there was still some information missing from the foundry and it was not certain that they could not comply with a permit with appropriate conditions. By issuing a permit it was putting the onus on the foundry to demonstrate that it could comply.
20. The consultation exercise resulted in two petitions being submitted: one of 165 signatories objecting to the approval of the permit and one of 145 signatories expressing concern about the need for robust conditions to control problems from the site. There were also other letters, telephone calls and emails of objection.

#### **14 May 2009 meeting**

21. After the consultation there was a further meeting with the leader of the Council. Also present was the chief executive, the head of environmental health and the principal environmental health officer. The notes of the meeting were made by the head of environmental health. They say that he highlighted the opinion of the consultants that there were no conditions that could be attached to a permit that would prevent annoyance to local residents and that his advice was that the application for a permit should be refused. The principal environmental health officer said that there were circumstances set out in guidance when an application must be refused and that those circumstances were present in this case.
22. The note records that the leader considered the decision to be very difficult but felt the Council should issue a permit with conditions accepting that the foundry might well appeal but then it would be for a Government inspector to decide. In response to a question about the reason for the decision, the leader suggested that the decision was made because of the current economic climate. The officer suggested as an alternative three reasons. In summary these were that it would give the foundry a chance to demonstrate compliance with permit conditions, to retain and safeguard employment and to enable effective enforcement.
23. The officer suggested that the leader should sign the decision sheet as it had been his decision on that day but the chief executive said it should be the cabinet member. The decision sheet needed to be advertised for six days which would be after the current cabinet member had retired so would fall to be considered by the new cabinet member.
24. At interview the leader said that his recall was that some officers were saying the foundry would never be able to comply with conditions but others that it may be possible if it was tried and tested. He said the chief executive advised that it was right to take into account economic and employment grounds. He considered that the foundry offered the sorts of jobs they wanted in the borough and that it could rise to 150 jobs if production increased. He felt that not issuing the permit would not have been a solution as the foundry would have continued working while it appealed against the decision.

25. In response to my enquiries on this point the Council replied that the regulations do not specifically exclude taking into account economic circumstances. It was felt appropriate for the Council, in the then economic climate of a recession, to consider such issues as the local economy and jobs. At the time, the number of jobs involved was in the region of 45 and it would have been irresponsible to exclude this factor in the deliberations.

#### **The June 2009 decision**

26. A decision sheet was drafted recommending the permit be issued with conditions. The new cabinet member for environment and culture was briefed by senior officers on the background to the matter at a meeting on 22 May 2009. There is no record of the briefing meeting, which was attended by the head of environmental health and an assistant director. In June 2009 the decision sheet was signed by the new cabinet member and the director of the urban environment.
27. At interview the new cabinet member said that the Council had to be mindful of its responsibilities and could not be seen as an authority going out of its way to lose jobs. He said that issuing the permit with conditions was an appropriate way forward and gave the foundry the chance to see if they could comply.
28. The director who was the co-signatory to the report said he considered that it was a finely balanced decision but that the best way forward was to issue the permit with conditions. He said there was "half an eye" to the job situation.

#### **Subsequent events**

29. The consultants who had advised on noise and odour were again appointed. A simple permit covering all aspects except noise and odour was issued on 10 November 2009. This contained conditions to control emissions relating to particulate matter (sand and dust) and were applicable immediately but there was no requirement to carry out emission monitoring until the specified compliance dates listed in the permit. When monitoring was carried out in December 2009 a particular source of particulate emissions was identified and full refurbishment of the unit was completed in April 2010. The Council did not consider that prosecution was reasonable as it was satisfied that the foundry was taking reasonable steps to resolve the problem.
30. By June 2010 the foundry had not installed all the required continuous monitors but the positions where they were required were not considered to be likely sources of particulate emissions.
31. A permit covering the noise and odour issues was issued in May 2010. The Council carried out noise monitoring immediately and determined that it was unlikely that the levels required by the permit would be met and informed the foundry. Further monitoring took place in August 2010 and confirmed that the



conditions were being breached. In November 2010 the Council was preparing to prosecute the foundry for breaches of the permit in respect of noise.

32. In respect of odour, the Council did not undertake any monitoring as it considered that it was necessary for the foundry to comply with the permit conditions in terms of control at source, containment and treatment and dispersal of odour. The foundry had not complied with the permit conditions so there would continue to be unacceptable emissions of odour.
33. The foundry announced in September 2010 that it could not comply with the permit conditions and remain a viable business and would stop casting on 23 December 2010 and would vacate the site by 31 March 2011.
34. Throughout the operation of the foundry, complaints were made by local residents and other affected occupiers about noise, odour and particulate fallout. The Council replied to Mr A's complaint on 18 November 2010.

### **The Council's position**

35. The Council has referred to section 79(10) of the Environmental Protection Act 1990 which requires the permission of the Secretary of State to prosecute (for the breach of an abatement notice) if it is possible instead to take such action under the Pollution Prevention and Control Act 1999 (the PPC Act) as is the case with the foundry. The Council therefore considered it should determine the A2 permit application which would contain specific conditions to control noise emissions rather than pursuing the noise abatement route. It considers that there were uncertainties about the legalities of taking nuisance action where an activity was subject to controls under the PPC regime although the position has now been clarified following a court case. The noise abatement notice was active throughout the period but for the above reasons the Council did not prosecute for the breach of the notice.
36. In July 2010 officers sought the advice of the Department for the Environment, Food and Rural Affairs (DEFRA). The email said that the Council was having problems from the site with noise and odour and was receiving many complaints. It asked DEFRA about obtaining the Secretary of State's consent to proceed with a prosecution for a breach of the abatement notice. Officers also asked about the process for pursuing enforcement action for a breach of the conditions on the A2 permit. The Department replied immediately. The advice was equivocal but indicated that it was theoretically possible to enforce the permit conditions although a court may be reluctant to hear a case where an appeal was outstanding. It is unclear why the Department referred to an outstanding appeal as there was no outstanding appeal in this case.
37. At interview, the legal officer said that in the three years from January 2008, if evidence of breaches had been collected while the permit was being considered, it would have been possible to prosecute. He understood that priority was given to determining the permit rather than in gathering evidence of breaches of the

abatement notice. He reported in a memo dated 28 February 2011 that he considered it was still expedient to prosecute even though the foundry had ceased trading as it appeared that it had polluted throughout 2006-10, had breached the terms of the abatement notice and permit conditions and it was in the public interest to do so.

38. In commenting on a draft of this report the Council has said that it does not consider that a successful prosecution for non-compliance with the noise abatement notice was certain or, even if it was, that the resulting fine on the foundry operator would have improved conditions for residents at a much earlier date.

### **Impact on residents**

39. The Council accepts that residents have been affected by noise, odour and particulate fallout. The degree of impact varies depending on proximity to the site and the location within the site of various pieces of equipment and processes. The intensity of the operation has varied; at some times the sand reclamation part of the operation operated 24 hours a day, seven days a week; generally the foundry operated two shifts Monday to Friday and until midday on Saturday. The Council received complaints from 12 households between 1 January 2008 and 31 December 2010.
40. While the foundry was operating residents describe windows rattling because of the noise, sand deposited over gardens and cars, being unable to sit in their gardens and disturbed sleep. Many report what they describe as 'obnoxious smells' and those that suffer from breathing problems of the worsening of their conditions and worries about the longer term impact on their health.

### **Conclusions**

41. It is clear to me that the foundry has been a source of considerable annoyance to local residents over a number of years and the Council has accepted that there has been ongoing disturbance caused by noise, odour and particulate emissions. So there is a clear injustice here. On the basis of the evidence I have seen, I have to decide if there was fault on the part of the Council in handling these matters which contributed to that injustice.
42. The prime responsibility for disturbance lies with the foundry operators and regulations are in place to protect the environment for people living in the locality. However, there is a duty on the Council to monitor and enforce regulations appropriately and quickly. This is a duty that I would expect Council officers and members to take seriously given the particular role of the Council in ensuring community well-being.
43. As set out in paragraph 3 of this report, an activity such as a foundry requires a permit to operate, which controls emissions to air, including odour and noise. It is the duty of the foundry operator to apply for the appropriate permit. It is the duty

of the Council to properly consider the application, in good time, and decide whether to grant or refuse it. If the application is granted, appropriate conditions should be included to ensure that there is no unreasonable disturbance to local residents. If the permit is refused then the activity may no longer continue.


44. I have considered the history of the operation of the foundry since March 2007 and am satisfied that the Council was taking appropriate actions swiftly and properly in relation to statutory nuisance until the end of 2007.
45. It took from March 2007, when the permit application was put in, to May 2010, to issue it with appropriate conditions. This was a period of just over three years, during which residents were exposed to environmental disturbance. I have to consider whether there was unreasonable delay in issuing the permit.
46. Following receipt of the permit application it took the Council over a year to appoint consultants to advise them on the application, in May 2008, and then over a further year to formally take the decision to grant the permit, in June 2009. It then took nearly a further year for consultants to complete drafting the conditions which needed to be applied, before the permit was issued in May 2010. I do not criticise the Council for their actions after May 2010 where appropriate monitoring was conducted to enforce the permit conditions and a prosecution was being prepared even after the foundry had given notice of closure.
47. I accept that throughout this period the Council had to take account of the best use of resources in deciding which course of action to take and also the most viable option to achieve a successful outcome. But this meant that no action was taken to control the ongoing disturbance generated by the foundry. The Council's legal officer considered that if the necessary evidence of ongoing breaches of the abatement notice had been gathered then it would have been possible for the Council to bring a prosecution from January 2008 and for the entire period during which the permit application was being considered. I note the Council's comments at paragraph 38 above but I consider it is likely that a successful prosecution could have improved conditions for residents at a much earlier date. And it may well have been possible to serve further abatement notices in respect of smell and particulate fallout and to prosecute for breaches. Such action would have increased the pressure on the foundry to ensure the operation did not cause disturbance and to consider whether it could operate in that location.
48. I have concerns with the decision-making process to grant the permit, which I believe contributed to the delay. The Council was entitled to grant or refuse the permit. I accept that the decision-makers wished to take into account the local economic context and I have no grounds to criticise the decision itself. However, guidance says that a permit application must be refused if it is considered that the environmental impact from the activity would be unacceptable or that an operator would be unable to comply with any condition that is likely to be set within the permit. This was the professional advice of officers and external consultants informing the decision-making process. It seems that the decision to grant the

permit necessitated complex drafting of conditions which understandably took some further time. Events after May 2010 supported the professional view as the business was unable to comply with conditions and eventually closed.

49. I have also noted that the delegated procedure for taking the decision about the permit, which the Council was entitled to do under its scheme of delegation, lacked transparency and meant that local residents, who had submitted two petitions to the consultation exercise, lost an opportunity to make representations in public to a committee of local councillors.
50. I recognise that some of the delay in this process was due to the decision-making in respect of the permit which I refer to in paragraph 48 above but for the reasons given in paragraphs 46 to 49 I conclude that there has been maladministration by the Council in the time taken to issue the permit and its failure to properly consider how it could control nuisance from the site.
51. This leaves the complainants uncertain as to whether the operations at the foundry might have ceased at an earlier date or the disturbances been controlled sooner had there been no maladministration.

#### **Remedy**

52. Mr A complained on behalf of local residents. I have considered the circumstances of those living in the vicinity of the foundry and taken into account descriptions from local residents referred to in paragraph 40 above. I conclude that many households have been caused unnecessary disturbance but I consider those closest to the site will have been most affected. I have considered a plan of the site and the houses closest to it and have identified 27 properties which I consider likely to have been most affected by disturbance from the site. I consider that each of these households should receive a payment of £250 to remedy the uncertainty and loss of amenity and distress caused. The Council should also pay Mr A £250 for his time and trouble in pursuing the complaint.
53. The Council has agreed to implement my recommendations and I am grateful for its willingness to make amends. I have nevertheless completed my investigation and made public my findings, as I consider this to be in the public interest.



**Dr Jane Martin**  
**Local Government Ombudsman**  
**The Oaks No 2**  
**Westwood Way**  
**Westwood Business Park**  
**Coventry CV4 8JB**

**20 March 2012**