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NOTICE OF EXECUTIVE DECISION TO BE MADE

The following Executive Decisions are due to be made by the LEADER on
TUESDAY, 28 APRIL 2020.

1. Environmental Health Noise Policy (Pages 3 - 22)
2. Housing Delivery Test 2018-19 (Pages 23 - 38)
3. Absence of Members of the Council (Pages 39 - 42)

Reports relating to the decision(s) to be taken are attached to this notice, unless they contain confidential or exempt information. A meeting will not necessarily take place when the decision is made. Please contact Democratic Services for more information.

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For publication

Environmental Health Noise Policy

Meeting:	Leader (Cabinet decision delegated to the Leader under the emergency arrangements approved by Standards and Audit Committee on 19 March, 2020 and enacted by the Chief Executive on 20 March, 2020)
Date:	28 April, 2020
Cabinet portfolio:	Health and Wellbeing
Report by:	Senior Environmental Health Officer

1.0 Purpose of report

1.1 To seek approval for the Environmental Health Noise Policy.

2.0 Recommendations

2.1 To approve the Environmental Health Policy in Appendix 1.

3.0 Background

3.1 Chesterfield Borough Council receive over 500 service requests about noise every year. In order to manage service requests in a fair, proportionate and consistent manner, the Chartered Institute of Environmental Health recommends that local

authorities have a transparent noise policy and procedures in place.

3.2 The noise policy in Appendix 1 sets out the Council's approach to service requests in the future and provides detail on when and how it will investigate noise complaints and what it can and cannot investigate.

3.3 The Council is committed to 'digital transformation' (moving customer contact onto web based and self-service platforms) and at the same time maximising the use of our resources. The Policy sets out what we need from our customers and what our customers can expect from us.

3.4 The Policy pulls together existing good practice and provides clear guidance for complainants, those subject to regulation, colleagues in other teams and other organisations.

3.5 The Policy sits alongside the 'Corporate Enforcement Policy'.

4.0 **Financial Implications**

4.1 There are no financial implications arising directly from this report.

5.0 **Legal Implications**

5.1 The absence of a Policy may subject the Council to a risk of legal challenge.

6.0 **Equalities Impact Assessment (EIA)**

6.1 A preliminary Equalities Impact Assessment has been completed and no group is anticipated to face a disproportionate negative impact.

7.0 **Risk Management**

- 7.1 The absence of a Policy may subject the Council to a risk of legal challenge.

Table 1 – risks with the absence of a Noise Policy

Risk	Likelihood	Impact	Mitigation Action	Revised Likelihood	Residual Impact
Absence of a Noise Policy may subject the Council to a risk of legal challenge.	Medium	High	Having a clear Noise Policy in place, available on our website.	Low	Low
Absence of a Noise Policy may subject the Council to a risk of formal complaint about service provision.	Medium	High	Having a clear Noise Policy in place, available on our website for service users to read.	Low	Low

8.0 **Recommendations**

- 8.1 To approve the Environmental Health Policy in Appendix 1.

9.0 **Reasons for recommendations**

- 9.1 To ensure the Council is compliant with current recommended guidance from the Chartered Institute of Environmental Health.
- 9.2 To provide information to our customers as part of the digital transformation project.

Decision information

Key decision number	950
Wards affected	All wards
Links to Council Plan priorities	To provide value for money services.

Document information

Report author	Contact number/email
Esther Thelwell, Senior Environmental Health Officer	01246 345767
Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
This must be made available to the public for up to 4 years.	
Appendices to the report	
Appendix 1	Noise Policy



Environmental Health Noise Policy

February 2020

Policy statement

Chesterfield Borough Council (the Council) has several statutory duties and discretionary powers in relation to the prevention and control of noise.

This Policy aims to help the public understand the key pieces of noise related legislation and how the Council will approach the investigation process.

The Council will undertake any enforcement action as necessary, in a reasonable, equitable and proportionate manner.

The Council's approach will be a balance between education and enforcement.

1. INTRODUCTION

This Policy sets out the Council's approach when investigating noise complaints and the appropriate use of relevant legislation. The aims of this Policy are to set out

- ✓ our approach to preventing unreasonable noise occurring;
- ✓ how we will deal with situations that occur; and
- ✓ how we will work with internal and external partners to tackle noise issues.

2. SCOPE OF THE POLICY

One of the functions of the Council is to act as a regulator and an enforcement agency for a range of legal duties and powers applied by Acts of Parliament and the Regulations and Orders made under them (including various byelaws). This Policy sets out our roles and responsibilities with specific regard to noise legislation, what residents/businesses can expect from us and what is expected of residents and business owners.

This document also sets out the approach to be followed by the authorised officers when making decisions in respect of the Council's compliance and enforcement activities specifically relating to noise legislation. The Council is committed to ensuring that all authorised officers will act in accordance with this Policy. This Policy is supported by the overarching 'Corporate Enforcement Policy'; a copy of this is available at <https://www.chesterfield.gov.uk/media/607926/corporate-enforcement-policy-2018.pdf>

2.1 The Council's Vision and Corporate Priorities

Excessive noise can cause stress, interfere with sleep and affect people's health and quality of life and the Council is committed to protect and improve the health of people living and working in the Borough.

We make a fundamental contribution to the maintenance and improvement of public health, safety, quality of life and wellbeing. The Council's vision is "*putting our communities first*" and we aim to achieve this by our corporate priorities which are:

- ✓ To make Chesterfield a thriving borough.
- ✓ To improve the quality of life for local people.

- ✓ To provide value for money services.

The Council's ethos in everything we do is centred around the following core values:

- Customer focused – delivering great customer service, meeting customer needs.
- Can do – striving to make a difference by adopting a positive attitude.
- One council, one team – proud of what we do, working together for the greater good.
- Honesty and respect – embracing diversity and treating everyone fairly.

Priorities for our regulatory and enforcement services include protecting and promoting the health and well-being of our communities to ensure they remain safe from harm and able to live healthy life styles.

The Environmental Protection team (part of the Health & Wellbeing group) is responsible for delivering the noise service. The main aims of this service are to:

- ✓ Meet our statutory obligations to investigate complaints of statutory noise nuisance.
- ✓ Help to protect residents and the environment from excessive noise.
- ✓ Help to protect the health of residents (mental health, stress and general wellbeing).
- ✓ Contribute to safer communities and reduce anti-social behaviour.

We work alongside colleagues in Community Safety, Licensing, Planning and Housing as well as other authorities such as Derbyshire County Council, and other organisations such as Registered Social Landlords and the Police to investigate complaints.

3. LEGISLATION

Noise is an inevitable consequence of a modern and vibrant society and can be described as “unwanted sound”. For some, noise is an unwanted intrusion that can adversely impact on their quality of life, affecting their health and wellbeing.

There is no right to absolute peace and quiet and people should tolerate the occasional disturbance from noise. Common sources of noise include loud music, barking dogs, construction/demolition activities and alarms on properties and vehicles.

There are several Acts and Regulations that aim to reduce and prevent noise issues causing disturbance:

Environmental Protection Act 1990

This is the key legislation relating to noise and ‘*statutory noise nuisance*’. This piece of legislation does not define a specific level of noise that is acceptable or unacceptable, nor does it give a right to silence within a property, but it does give local authorities a legal duty to investigate complaints and powers to deal with noise that is of such a level and frequency that it is deemed to be a ‘*statutory noise nuisance*’.

A '*statutory noise nuisance*' is not simply something that annoys you – it is something that causes a serious and unreasonable interference with your right to enjoy your property. We have a duty to take reasonable steps to investigate allegations and we also have to base our assessment of the issue on what the average person would find unacceptable; we cannot take into account individual sensitivities or personal circumstances related to ill health.

In determining whether a noise is a '*statutory noise nuisance*', several factors are taken into consideration including:

- Impact: how the noise affects you in your home.
- Frequency: i.e. how often does the noise occur.
- Duration of the noise: how long the noise is audible for.
- Time of day/night: audible noise at night time is more likely to impact on hours of sleep.
- Nature of the noise: whether the noise is an every day activity (e.g. using a vacuum cleaner), or if the noise is an inherent part of activity (such as noise from children playing in a school playground).
- Sensitivity of the complainant: statutory nuisance must be considered in the context of an average person, in a reasonable state of good health and having a normal pattern of everyday activity. Statutory nuisance cannot be used to make people do more than might reasonably be expected of them because someone else may be more sensitive than the average person, for example if a night-shift worker trying to sleep during the day.
- Public benefit: something might cause an inconvenience, but because it is essential to the wider public benefit it *may* be considered not to be a nuisance – for example temporary road works, harvesting of crops, sirens on emergency vehicles etc. Although best practice should be followed to minimise disturbance.
- Motive: if someone deliberately does something to cause annoyance then this could be a nuisance, for example deliberately slamming a door or banging on a wall.
- Best practicable means: only applicable to some types of statutory nuisance which occur on business premises; if a Company is doing all they reasonably can to prevent or counteract the effect of a nuisance then they will have a defence against any statutory nuisance action.

Where a local authority is satisfied that the noise gives rise to a '*statutory noise nuisance*', then it must serve an Abatement Notice on the person(s) responsible for the nuisance to effectively prohibit a recurrence. Failure to comply with the terms of an abatement notice is an offence which may result in prosecution in the magistrates' court. A successful conviction

may result in a fine (set by the Courts) and/or seizure of the noise equipment (i.e. TV, stereo etc.).

Should complainants wish to resolve the noise issue themselves without the support of the Council, action can be taken under Section 82 of the Environmental Protection Act 1990 (private action via the Magistrates Court). This process can be carried out without legal advice, but in most cases, we advise the affected party to speak to a solicitor, the Law Centre or Citizens Advice. Where this route is taken an information advice leaflet is available from the Council upon request.

Control of Pollution Act 1974

This piece of legislation sets out specific requirements in the management of noise from construction sites. We work with colleagues in the Derbyshire Building Control Partnership (building control) to ensure that all demolitions are considerate of their environmental surroundings and sensitivities, especially if nearby residential properties.

Licensing Act 2003

Under this legislation the Environmental Protection team is a 'responsible authority' and are consulted with regards to 'prevention of public nuisance'. We are consulted on all premises licence applications, minor variations etc. and alongside the Police we are the only responsible authority that can object to TENs (Temporary Event Notice applications).

The legislation also allows for a review of a premises licence on the grounds of 'prevention of public nuisance'. For example, the team could seek a review of a premises licence if a pub continually plays loud music and has not complied with any informal advice or formal action from environmental protection team and this could mean that their premises licence is revoked (withdrawn).

Anti-Social Behaviour, Crime & Policing Act 2014

In October 2014, the Anti-Social Behaviour, Crime and Policing Act 2014 came into force and made provisions for local authorities with regards to anti-social behaviour. Noise is a form of anti-social behaviour and can extend to include noise from people (such as excessive/unreasonable swearing, shouting and noise that doesn't meet the threshold of '*statutory noise nuisance*').

If another person's behaviour is persistent, unreasonable and negatively affects the quality of life of people and there is evidence to show this, the Council can take formal action by serving a Community Protection Notice (CPN) on the or the person(s) responsible for the noise issue. In addition to this, an Anti-Social Behaviour Injunction (ASBi) may also be considered to prevent someone from causing annoyance or nuisance in a council/tenanted

property. This is also a legal tool available to Registered Social Landlords, Derbyshire Police and Community Safety team.

Town and Country Planning Act 1990

The Environmental Protection team are consulted on planning applications and may make recommendations to control/minimise noise from a proposed development – these may be imposed as planning conditions should consent be granted for a planning application. Examples include specifying the hours which construction can take place for a new housing development or the maximum noise levels for air conditioning units at a business premises near residential properties.

Noise Act 1996

This legislation sets out specific limits for noise between the hours of 11pm and 7am from dwellings and licensed premises.

The Housing Act 1985

The Council is a 'social landlord' and under this legislation the Council's Housing team could end a tenancy where tenants have breached their tenancy agreement and/or because they have caused annoyance/disturbance/nuisance in the locality of their homes.

4. OUR APPROACH TO NOISE ISSUES

4.1 Prevention

Our aim is to prevent noise disturbance at the point of planning applications or premises license applications.

Where possible we will seek to resolve concerns with applicants. If this is not possible, we will seek to mitigate/reduce the noise impact by recommending the imposition of conditions to any planning consent or raising a representation in respect of a premises licence.

Officers from the team may be required to present evidence at relevant hearings or reviews.

4.2 Investigating complaints

Noise complaint investigation, by its very nature, can be complex and more often than not will take time to investigate, particularly where the noise is occurring intermittently. Gathering evidence and witnessing the noise complained about are an integral part of the investigation, both the complainant and the case officer have specific roles:

The complainant

Complainants will be expected to give their full name and address details. We cannot investigate anonymous complaints. All information provided will be stored in accordance with current data protection regulations. Due to the legal nature of noise investigation it is not possible to investigate without knowing who is affected.

Residents are advised to try to discuss the issue with their neighbour and try to resolve the issue informally. However, if this is not successful and the complainant seeks support from the Council, we ask all complainants to complete noise diary sheets to log each incident that causes disturbance and how it affects them in their home. Not providing this information will delay the progression of an investigation and it will lead to the case file being closed if this information is not provided.

An investigation may involve visits to the complainants' property to enable officers to witness the noise complained of and/or install noise monitoring equipment. Complainants who refuse these measures may prevent their complaint being progressed further and the case being closed.

Complainants will be required to keep a written log of all incident of noise disturbance throughout the duration of the investigation.

The case officer

Upon receipt of completed record sheets the case officer will determine whether there is enough valid evidence/written information to progress the investigation. As part of our investigations the case officer may write and or visit the neighbour allegedly causing the noise issue.

If the case officer cannot resolve the issue informally noise monitoring will be carried out; this will be either an officer carrying out monitoring from within the complainants' property and/or providing the complainant with noise monitoring equipment. The Council does not offer a reactive service or an out of hours service. However, case officers can make themselves available on an evening or weekend to monitor noise.

We may obtain independent evidence from housing officers and/or Police officers who have witnessed the noise disturbance.

When the noise monitoring has ceased, the case officer will determine whether the noise is deemed to be a '*statutory noise nuisance*' and what the next course of action will be, which could include, issuing a formal Notice, prosecution or seizure of equipment. The case officer will keep the complainant updated throughout the duration of the investigation.

Whilst this approach will be followed in the majority of cases, the Council reserves the right to vary its actions where appropriate. For example, if a noise source is constant rather than intermittent it might be possible to make an assessment of nuisance with only one visit.

Enforcement

When the case officer is satisfied that a significant noise disturbance or '*statutory noise nuisance*' exists or is likely to occur or recur, we will take the appropriate enforcement action and this will be in accordance with the [Council's Enforcement Policy](#).

In relation to noise, the following legal options are available:

- Service of a Statutory Notice.
If a *statutory noise nuisance* has been found to exist we have a legal duty to serve an 'Abatement Notice'.
- Warning/Fixed Penalty Notice.
This can be issued if noise levels exceed the permitted levels from a dwelling or licensed premise.

If the noise problem continues there are a range of options for more action:

- Issue a simple caution.
This may be issued following the service of a Statutory Notice and the admission of guilt for low-level offences.
- Seizure of noise making equipment.
This may occur where there has been a breach of the Abatement Notice. We have to get the approval of a local magistrate.
- Carry out works in default.
If necessary, we will undertake work to resolve ongoing nuisance, for example from audible alarms following service of Statutory Notice. We have to get the approval of a local magistrate.
- Seek a review of the Premises Licence.
This will be in accordance with the provisions of the Licensing Act 2003 on the grounds of prevention of public nuisance.
- Prosecution in a Magistrates Court.
We may consider prosecution if there has been a breach of a Statutory Notice.

- Issue Community Protection Warning (CPW) and a Community Protection Notice (CPN).
These can be issued should the noise be deemed meet the definition of anti-social behaviour and not 'statutory noise nuisance'. Failure to comply with a CPN can result in a financial penalty.
- Anti-Social Behaviour Injunction
These are civil injunctions aimed at tackling a range of anti-social behaviour and usually require the individual to take positive action to address the behaviour.
- County Court Injunction
This may be pursued for serious and persistent breaches of a Statutory Notice where proceedings in the Magistrates Court have failed to ensure compliance with a Statutory Notice.
- Possession Proceedings
Where there is evidence to demonstrate that a Council tenant has breached their tenancy agreement by causing annoyance and/or noise disturbance, Council's Housing/Estates and Neighbourhoods team, can apply for a 'notice seeking possession' or eviction proceedings.
- Taking your own action
Section 82 of the Environmental Protection Act 1990 makes provision for private individuals to take their own action in the Magistrates Court.

Closure of investigations

We recognise that the closure of a case is significant to the complainant and will handle it in a consistent and sensitive manner. In all cases, we will send a letter or email to the complainant to close the current investigations when formal monitoring has been undertaken.

We will not send a letter or email in the following situations:

- The complaint is withdrawn.
- Diary sheets are not completed and returned within the timescales as requested.
- The complaint has been on the waiting list for noise monitoring for more than 4 weeks, but no further complaints have been received.
- Informal action has been taken and the nuisance has abated for 4 weeks.
- Formal action has been taken and the nuisance has abated for 4 weeks.
- Improper action by the complainant (e.g. proven fabrication of evidence).

- Investigation or effective action is not practical.
- Conditions of a consent, licence or permission have been complied with.

Further investigations

The case file will not be re-opened, or the complaint re-investigated until either 6 months has passed (from when the case has closed) or there has been a significant change in the circumstances, either with the frequency, intensity or duration of the noise issue.

5. PARTNERSHIP WORKING

Officers from the Environmental Protection team work in close partnership with other teams within the Council for example, Housing Services, Planning Services, Licensing team and Community Safety Partnership, as well as external agencies, to proactively investigate and manage unreasonable noise.

Other partners include Derbyshire Police, Registered Social Landlords, Action Housing, Derbyshire County Council (adult and children's services), Youth Engagement Services, Victim Services and, Derbyshire Tinnitus Association and Environment Agency.

6. EDUCATION and INFORMATION

DEFRA (Department for the Environment, Food and Rural Affairs) and CIEH (Chartered Institute of Environmental Health) recognise the importance of public education on issues relating to noise.

Officers from the Environmental Protection team are involved with several initiatives with the aim of preventing and mitigating noise issues:

- ✓ We attend community events throughout the year to provide advice and guidance.
- ✓ Information is available on our website.
- ✓ Promote local and national campaigns (e.g. Noise Action Week).
- ✓ Factsheets available upon request.
- ✓ Officers are available to speak with to discuss residents' concerns.
- ✓ Work with youth groups/schools.
- ✓ Attend stakeholder meetings (e.g. Safer Neighbourhoods Team meeting).
- ✓ Present information to stakeholders and elected Members.

Where possible, prevention and education precede legal action.

7. COMMENTS AND COMPLAINTS

7.1 Unreasonable complaints and unreasonably persistent complaints

The Council recognises that there are a small number of individuals who make unreasonable complaints or who are unreasonably persistent complainants. This is defined

as "those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's complaints".

An unreasonable or unreasonably persistent complainant would normally be identified as a result of repeated and obsessive pursuit of either:

- Unreasonable complaints and/or unreasonable outcomes repeatedly requested; and
or
- Reasonable complaints in an unreasonable manner, including abusive or threatening language and/or behaviour.

Those complaints classified as unreasonable or unreasonably persistent will be handled in accordance with the Council's policy and procedure on the management of unreasonable complaints or customers.

8.2 Dissatisfied complainant

Under the Equality Act 2010 and Human Rights Act 1998 the Council will have due regard to the equalities and human rights implications of their activities and decision making while investigating complaints. We will deal with all complaints impartially and will be fair to all parties. We will not gather evidence or information that is not relevant to the investigation.

We will not disclose personal information unless it is strictly necessary (i.e. with a partner agency) and only with informed permission from the person involved.

In all cases, the Council will attempt to resolve the complaint as quickly as possible, but complainants should be aware that complicated complaints might require a considerable amount of time to investigate. For this reason, a timescale for the completion of complaints is not specified.

Should you feel dissatisfied with the service you have received or with the conduct of officers should be made via Chesterfield Borough Council's [complaints procedure](#).

9.3 Complaints and appeals

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We are constantly looking for feedback on our services. We welcome any feedback that that will assist us in improving our services.

Whether you wish to make a comment, complaint or a compliment you are encouraged to do so by either: -

- In person:** Informing a member of our staff,
Customer Service Centre, 85 New Square, Chesterfield, S40 1SN
- Telephone:** 01246 345345
- Text:** 07960 910 264
- By post:** Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield. S40 1LP
- Online:** www.chesterfield.gov.uk
- Social media:** Facebook, Twitter

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats and have access to translation and interpretation services.

10. SERVICE DELIVERY STANDARDS, QUALITY AND PERFORMANCE MONITORING

10.1 Skills, competencies and experience of regulatory officers

The Council will ensure that all authorised officers are equipped with the appropriate level of skills, competencies and experience commensurate with their role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training and development to meet statutory codes of practice will always be offered.

Staff training and development will be maintained by using methods such as the Regulators Development Needs Analysis (RDNA) and Guide for Regulators Information Point (GRIP), CPD, development opportunities, appraisals, feedback, personal learning plan, mentoring/shadowing, secondment, peer review and challenge (both receiving and supporting).

10.2 Service and quality standards

Chesterfield Borough Council will always strive to meet the highest standards in undertaking enforcement action. The following service standards will be applied:

- ✓ officers will clearly identify themselves and carry the appropriate ID cards and any necessary authorisations.
- ✓ Officers will be professional, courteous and helpful in their conduct, during work on enforcement issues and will work with individuals, groups and businesses to promote compliance.
- ✓ Officers will provide assistance where appropriate and advice will be given to assist in compliance before formal action is instigated, except in those circumstances where

the breach of legislation is sufficiently serious to warrant formal action or is punishable by the issuing of a fixed penalty notice.

- ✓ Fairness in appropriate cases – adequate opportunity will be given to rectify the non-compliance before formal proceedings are commenced.
- ✓ Matters relating to enforcement will be dealt with promptly.

11. OTHER SUPPORTING DOCUMENTS

This Policy links with other corporate documents, including

Corporate Enforcement Policy, a copy is available here:

<https://www.chesterfield.gov.uk/media/607926/corporate-enforcement-policy-2018.pdf>

Corporate Anti-social Behaviour Policy, a copy is available here:

<https://www.chesterfield.gov.uk/media/865330/chesterfield-borough-council-anti-social-behaviour-policy-5-february-2019.pdf>

Housing Services Anti-Social Behaviour Policy, a copy is available here:

<https://www.chesterfield.gov.uk/media/865336/housing-services-anti-social-behaviour-policy-5-february-2019.pdf>

National guidance includes the Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide, a copy is available here:

<https://khub.net/documents/6197021/0/Neighbourhood+Noise+Policies+and+Practice+for+Local+Authorities+-+A+Management+Guide.pdf/4fcc80f4-23ad-4feb-a478-ebb06039bf38?version=1.0&download=true>

12. REVIEW OF THIS POLICY

This Policy has regard to current legislation, centrally issued guidance and best working practice at the time of preparation.

This Policy will be reviewed every two years or in line with changes in relevant legislation, changes in centrally issued guidance or when working practices identifies working areas for procedural improvement.

13. POLICY DETAILS

Document:	Noise Policy
Owner:	Environmental Health/Environmental Protection
Author:	Esther Thelwell
Agreed by:	
Date:	February 2020
Version	DRAFT
Status:	DRAFT
Location of electronic file:	
Location on CBC website:	

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For publication

Response to the Housing Delivery Test 2018/19 (EG000)

Meeting:	Leader (Cabinet decision delegated to the Leader under the emergency arrangements approved by Standards and Audit Committee on 19 March, 2020 and enacted by the Chief Executive on 20 March, 2020)
Date:	28 April, 2020
Cabinet portfolio:	Economic Growth
Report by:	Strategic Planning & Key Sites Manager

For publication

1.0 Purpose of report

- 1.1 To inform members of the results of the government's Housing Delivery Test for the 2018/19 monitoring period as they apply to Chesterfield and to set out the arrangements that must be put in place in response.

2.0 Recommendations

- 2.1 That Cabinet note the results of the Housing Delivery Test.

2.2 That Cabinet authorise the Strategic Planning and Key Sites Manager, in consultation with the Cabinet Member for Economic Growth and Assistant Director - Economic Growth, to prepare and adopt a Housing Delivery Action Plan as required by the National Planning Practice Guidance.

3.0 **Background**

3.1 The government introduced the Housing Delivery Test (HDT) through the National Planning Policy Framework (NPPF) in July 2018 (last update in February 2019). The Test compares the net homes delivered in the borough over a three year period to the homes that should have built over the same period (their housing requirement), with a sliding scale of penalties in place for authorities where housing delivery does not meet the required level:

- Delivery is below 95% - the council must prepare an Action Plan setting out how it will increase housebuilding
- Delivery is below 85% - the council must add an additional 20% to the housing target set out in the council's five-year supply of deliverable housing sites
- Delivery is below 45% (rising to 75% in 2020) – the presumption in favour of sustainable development* applies, regardless of whether the council can demonstrate a five-year supply of deliverable housing sites.

* In this situation, even the policies of a recently adopted Local Plan that are relevant to determining a planning application can be considered 'out of date', and are therefore given less weight in decision making, weakening the council's control over where new development can be located.

3.2 The Housing Delivery Test measurement is supposed to be published annually by the Ministry of Housing, Communities and Local Government (MHCLG). The Test results for the

November 2019 were delayed due to purdah for the General Election and instead were published 13th February 2020.

3.3 The latest Housing Delivery Test results covers the three financial years prior to the 2018/19, 2017/18 and 2016/17.

4.0 **Results of the Housing Delivery Test and Implications**

4.1 *The result for Chesterfield demonstrates delivery at 65% of the required target. This is a small drop on the previous result (66%), although this partly reflects an increase in the total requirement from the previous monitoring period.*

	Year			Total
	2016/17	2017/18	2018/19	
Homes required	220	227	247	694
Homes delivered	130	110	212	452
Delivery Measurement				65%

4.2 The council is therefore now required to respond in two ways:

- Apply a 20% buffer to the five-year housing supply
- Prepare an Action Plan within 6 months to assess the causes of under-delivery and identify actions to increase delivery in future years

5.0 **Applying a 20% Buffer**

5.1 The NPPF requires that councils "*identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement*"¹.

5.2 The council has been applying a 20% buffer to its five-year housing supply since the requirement was originally

¹ Para 73, National Planning Policy Framework, CLG February 2019

introduced in the 2012 NPPF to respond to 'persistent under delivery'. The HDT simply clarifies what is meant by 'persistent underdelivery'.

5.3 The council's latest five-year housing supply statement (published in April 2019) demonstrated that the council had a five-year supply of deliverable housing sites with the required buffer. The five-year supply for the 2020/21 period will be established by adoption of the new Local Plan, which is expected to be adopted by July 2020. The new Local Plan has already allowed for a minimum 20% buffer in demonstrating it has sufficient supply of housing.

6.0 **Preparing the Action Plan**

6.1 The Council must also prepare an updated Housing Delivery Action Plan. One was prepared in response to the 2017/18 results, and progress against its actions is set out in Appendix 1. The NPPF requires that the Action plan identify the reasons for under-delivery, explore ways to reduce the risk of further under-delivery and set out measures the authority intends to take to improve levels of delivery. The council has six months from publication of the HDT results to prepare and adopt the Action Plan. The Action Plan must therefore be in place on or before the 13th August 2020.

6.2 The local planning authority is responsible for producing the action plan, involving relevant stakeholders in the process. It is for the local planning authority to decide which stakeholders to involve, although representatives of those with an impact on the rate of delivery should be included, such as:

- small and large developers;
- land promoters;
- private and public landowners;
- infrastructure providers (such as utility providers,
- highways, etc);

- upper tier authorities (county councils) in two-tier areas;
- neighbouring authorities with adjoining or cross-boundary sites.

6.3 Due to the delay by the government in publishing the HDT results, the Action Plan is unlikely to be in place in time to have any impact on the next Test, which will cover the 12-month period ending on 31st March 2020. The Action Plan will therefore look ahead to delivery over three year monitoring period starting 1st April 2020.

Housing Delivery Test 2019/20

6.4 The Council’s Housing Target for the 2019/20 period will be based upon the Local Housing Need methodology set out in the NPPF. This give a target of 240 net new dwellings per annum and total target for the next Test of 714 net new dwellings.

6.5 A total of 322 net new dwellings were complete in the 2017/19 period, leaving a target of **392** net new dwellings to be complete in the 2019/20 financial year to fully meet the target. A minimum of **216** net new dwellings would have to be delivered to avoid the most sever sanction.

	Year			Total
	2017/18	2018/19	2019/20	
Homes required	227	247	240	714
Homes delivered	110	212	NA	NA
Delivery Measurement				

6.6 The Strategic Planning Team undertakes annual monitoring of all housing sites annually. The next full monitoring exercise will start on 1st April 2020. However ongoing monitoring of

key sites suggests that the most likely result next year is to continue to provide a 20% buffer on housing supply. However, as this buffer has already been factored into the emerging Local Plan for the 2020/21 year, the result will have little impact.

Impact of Covid-19

- 6.7 Due to the current lockdown, the Strategic Planning Team is unable to undertake site visits to monitor housing completions for the 19/20 monitoring period. An estimate of delivery is being prepared from a variety of sources including Building Control Completion Notices, Council Tax records, Community Infrastructure Levy Notices, and telephone conversations with developers.
- 6.8 The lockdown is also likely to have a significant impact on delivery in the next monitoring period (2020/21), with most housebuilder now off site. Predictions range from a three to six month freeze on most sites, with reduced demand once construction resumes. This would have a significant impact on the council's HDT results. At this time Officers are seeking further clarification from the CLG on how the next HDT results will take the impact of Covid-19 measures into account, but no guidance has been received to date.
- 6.9 As the next HDT results (to be published in November 2020) will cover the 2019/20 monitoring period, any impact of Covid 19 will be seen in the results of the future HDT to be published in November 2021.

7.0 Communications

- 7.1 Preparing the Action Plan is a requirement of national planning policy. Engagement with developers and landowners will be undertaken through the mechanisms already established for the Local Plan and housing monitoring processes.

8.0 **Human Resources/People Management and Financial Implications**

8.1 Preparation of the Action Plan will be undertaken within existing staffing arrangements and within the existing Strategic Planning Team budget.

9.0 **Legal**

9.1 It is a requirement of national planning policy that the action plan be prepared. It will be prepared in accordance with guidance set out in the National Planning Practice Guidance (NPPG).

10.0 **Information assurance and data protection**

10.1 The Strategic Planning Team already maintains a database of relevant contacts for Strategic Planning purposes that is held in accordance with GDPR requirements. This will be used for the purposes of identifying and involving relevant stakeholders.

11.0 **Consultation and community engagement**

11.1 The guidance on preparing the action plan recommends involving stakeholders in the process. Relevant representations have already been made on this issue through the Examination in Public (EIP) of consultation on the submission version of the Local Plan. Hearings into the Plan were held in October/November 2019 and consultation on modifications has just ended. Any further consultation with stakeholders is expected to be targeted involvement through individual meetings or workshops rather than a more general consultation process with the community.

12.0 **Equality, diversity and human rights**

12.1 A process of Equalities Impact Assessment has already been undertaken on the council's proposed housing targets through the assessment of the Submission version of the Local Plan. The Action Plan would be intended to support the delivery of these targets. A preliminary EIA assessment has been undertaken.

13.0 Risk Management

13.1 It should be noted that the 2019/20 monitoring period for the next Housing Delivery Test ends on March 31st, 2020. There are therefore few practical mitigating measures that can be taken to influence the result that have not already been taken.

Description of the Risk	Impact	Likelihood	Mitigating Action	Impact	Likelihood
Failing the 2019/20 HDT below 75%	High	Low	As per previous Action Plan. No further mitigating action possible as this period ends March 31 st 2020	Low	None
Failing the 2019/20 HDT below 85%	Low	Med	The emerging Local Plan incorporates a minimum 20% buffer	Low	Med
Failing the 2019/20 HDT below 95%	Low	High	Prepare Action Plan	Low	High
Impact of Covid-19 Social Distancing Measures	High	High	Clarification sought and lobbying of CLG to provide	Low	High

			guidance and take into account impact in publication of future HDT results.		
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14.0 Alternative options and reasons for rejection

14.1 The application of a 20% buffer to the council’s five-year housing requirement and preparation of an action plan are a requirement of national policy and guidance. No alternatives have therefore been considered.

15.0 Recommendations

15.1 That Cabinet note the results of the Housing Delivery Test.

15.2 That Cabinet authorise the Strategic Planning Manager, in consultation with the Cabinet Member for Economic Growth and Assistant Director of Economic Growth, to prepare and adopt a Housing Delivery Action Plan as required by the National Planning Practice Guidance.

16.0 Reasons for recommendations

16.1 In order to comply with the requirements of national planning policy and guidance.

Glossary of Terms	
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
MHCLG	Ministry of Housing, Communities and Local Government
Five Year Housing Supply	Requirement in the NPPF that Local Planning Authorities demonstrate annually a sufficient supply of deliverable housing sites for five years, measured against housing need (OAN)
OAN	Objectively Assessed Housing Need
LHN	Local Housing Needs methodology. The method used to calculate the number of new dwellings that must be built in the borough every year to meet the OAN

Decision information

Key decision number	Non-key 167
Wards affected	All
Links to Council Plan priorities	<p>to make Chesterfield a thriving borough</p> <ul style="list-style-type: none"> • To make sure that local people benefit from growth in Chesterfield Borough • To continue delivering regeneration projects that will make Chesterfield Borough a better place to improve the quality of life for local people • To increase the supply and quality of housing in Chesterfield Borough to meet current and future needs

Document information

Report author		Contact number/email
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Background documents These are unpublished works which have been relied on to a material extent when the report was prepared.		
<i>This must be made available to the public for up to 4 years.</i>		
Appendices to the report		
Appendix 1	Progress against actions – Housing Delivery Action Plan 2019	

APPENDIX 1

Progress against actions – Housing Delivery Action Plan 2019

Identifying an Appropriate Mix of Sites			
Issue	Short–Medium Term Actions	Long Term Actions	Progress
Ensuring an appropriate mix of greenfield and brownfield sites are available to developers, along with a mix of site sizes appropriate to a range of housebuilders.	<ul style="list-style-type: none"> The Council will seek to adopt the new Local Plan by early 2020 to enable the delivery of homes which will meet the Objectively Assessed Need for housing. A number of large greenfield sites are set to be allocated. The plan also seeks to enable the delivery of affordable and accessible housing within the borough to help meet local needs. 	Look to allocate more greenfield sites should the Council continue to suffer from low housing delivery rates.	Local Plan on track to be adopted July 2020.
Facilitating investment on surplus land owned by the Council.	<ul style="list-style-type: none"> The Council will continue to review sites in its ownership and seek opportunities for sustainable new housing sites. The results and recommendations of the Public Open Space Study is being reviewed by the council with a view to identifying sites for potential disposal. 	<p>Consider establishing a housing company to maximise housing delivery</p> <p>Explore opportunities for the Council to work with SME builders on brining sites forward.</p>	<p>Progressing development opportunities including Linacre and various HRA sites.</p> <p>Review of POS sites ongoing.</p>

Ensuring sufficient sites are available that will cater for specific tenures of housing e.g. self-build, social, private rented.	<ul style="list-style-type: none"> Currently the Council's self-build register is purely a record of interest. It would be beneficial to make more of the register by maintaining and sharing a list of self/custom build opportunities to members of the register periodically. 	Should demand necessitate it, the council could look into securing self-build plots within larger housing schemes.	<p>GPDR concerns have limited ability to make further use of register data. Persons on the register are to be contacted regarding potential use of data.</p> <p>Evidence of demand does not suggest need for policy of securing self-build plots – The council is meeting its Duty under the Self-build and Custom Housebuilding Act 2015 to grant sufficient suitable planning permissions.</p>
Understanding the mismatch between land values and house values in the borough.	<ul style="list-style-type: none"> A whole plan viability assessment has been undertaken. Further investigation will be required over the 2019-20 time period. 	CPO on sites which are holding back development of housing.	While plan viability assessment undertaken and assessed through Local Plan hearings. Future planning policies have been set at a viable level.
Reducing Barriers to Site Development			
Issue	Short–Medium Term Actions	Long Term Actions	
Addressing marginal viability in parts of the borough (particularly the East).	<ul style="list-style-type: none"> The Council has undertaken a whole plan viability study. The CIL charging schedule will be reviewed 2019-20 to identify if a revised schedule should be prepared. A revised instalments policy will be put in place by end of 2019. 	Altering CIL rates in line with any new evidence and recommendations.	<p>A review of the CIL charging schedule is to be undertaken in 2020-21 following adoption of the Local Plan.</p> <p>Revised CIL instalments policy adopted.</p>
Developing a better understanding of barriers to development within the borough.	<ul style="list-style-type: none"> More frequent updates on larger development sites will be obtained so that the Council is able to identify any barriers to progression early on in the process. This will also enable the Council to understand the 	The organisation of a housing stakeholder event to develop enhanced relationships with housebuilders, agents and developers in the surrounding area.	The Housing Delivery Manager has developed a programme of regular updates with key developers to monitor progress.

	<p>characteristics of successful schemes.</p> <ul style="list-style-type: none"> • Where a site is likely to lapse the Council will speak with the applicant and determine a list of barriers to the progression of the scheme in the hope that there may be a solution to increase the likelihood of the development coming forward. • CBC will produce and distribute a survey to housing stakeholders. It is hoped that analysis of the responses may highlight any barriers to delivery in the borough. 		
<p>Securing funding for infrastructure that will provide additional expertise, support and capacity to drive forward the delivery of new homes.</p>	<ul style="list-style-type: none"> • The Economic Growth, Housing and Strategic Planning units will monitor infrastructure funding opportunities and bid for funding where appropriate. • The Council will seek to further enhance its relationship with the D2N2 and work collaboratively with the LEP on bids for funding which can facilitate housing growth. • The Council will continue to support the Housing Infrastructure Fund bid. 		<p>No further bidding opportunities identified for housing at this time.</p>
<p>Providing Certainty for Landowners and Developers</p>			

Issue	Short–Medium Term Actions	Long Term Actions	
Providing certainty around developable brownfield sites.	<ul style="list-style-type: none"> The Council's Brownfield Land register will be updated towards the end of 2019. The production of masterplans and development briefs would be helpful in guiding future development on larger and complex brownfield sites. These may increase interest in a particular development opportunity and enhance confidence amongst investors. 	Where appropriate the Council could grant 'Permission in Principle' to some sites.	Brownfield Register update. Work is underway on Masterplans for a number of development sites across the borough, including the Station/Spire Neighbourhood Area.
Marketing the existing opportunities within Chesterfield effectively.	<ul style="list-style-type: none"> The Housing Delivery Manager will work with the Economic Development team and Destination Chesterfield to promote key locations & sites, such as the sites allocated within the Local Plan to attract interest and investment in residential development. Opportunities within Chesterfield will be proactively marketed within a new Housing Stakeholder Consortium. A monthly report of validated and approved applications for dwellings could be shared with any interested parties such as developers and housebuilders in order to help identify opportunities. 	Development of a Housing Sites guide.	In progress.
Improvement of Planning Processes			

Issue	Short–Medium Term Actions	Long Term Actions	
Improving dialogue with land owners and developers to better understand what progress is being made on sites.	<ul style="list-style-type: none"> Feedback from the housebuilding sector will be sought by the Housing Delivery Manager to help the Council streamline its processes and ensure that the necessary information is provided in a helpful format. 	Implementation of Delivery at pace agreements (such as those pursued through Homes England model).	Feedback being sought through regular engagement with Housing Delivery Manager
Improvement of the Council's housebuilding monitoring data	<ul style="list-style-type: none"> Obtaining detailed permission data is crucial to understanding the level of housebuilding that may occur over the next few years. Data on developer type, contributions and the composition of dwellings on site will be recorded for all large sites from April 1st 2019 to enhance the Council's housing evidence log. 	Data to conform to Standard as set out by PAS.	To be implemented April 2020 following update of Idox system.
Ensuring that the planning application process is efficient and effective.	<ul style="list-style-type: none"> The Council will develop a validation checklist to ensure that the requirements of each application are transparent and easy to find. The planning teams will continue to respond to pre-application advice requests in a swift and helpful manner. 	Target timescales for pre-application advice.	Validation checklist prepared in draft and will be subject to wider consultation and adoption in 2020-21

For publication

Absence of Members of the Council (GV060)

Meeting:	Leader (Cabinet decision delegated to the Leader under the emergency arrangements approved by Standards and Audit Committee on 19 March, 2020 and enacted by the Chief Executive on 20 March, 2020)
Date:	28 April, 2020
Cabinet portfolio:	Governance
Report by:	Senior Democratic and Scrutiny Officer

For publication

1.0 Purpose of report

- 1.1 To enable the Cabinet to consider, for the purposes of Section 85(1) of the Local Government Act 1972, the matter of absence of Members of the Council from meetings of the Authority during the period of the coronavirus pandemic.

2.0 Recommendations

- 2.1 That, for the purposes of Section 85(1) of the Local Government Act, 1972, the reason for the absence from meetings of any councillor be approved and their continued

absence from meetings be authorised from 19th March 2020 through until the second meeting they are eligible to attend following resumption of member level committees (remotely or being physically present, whichever is the first to occur).

3.0 **Report details**

3.1 Section 85(1) of the Local Government Act 1972 provides that if a member of a local authority fails, throughout a period of six consecutive months from the date of their last attendance, to attend any meetings of the authority, they shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.

3.2 Section 85(2) of the 1972 Act states that attendance as a member:

- at a meeting of any committee or sub-committee of the authority;
- or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions;
- or as a representative of the authority at a meeting of any body of persons,

shall be deemed for the purposes of Section 85(1) to be attendance at a meeting of the authority.

3.3 The Council's constitution authorises the Cabinet to approve or otherwise for the purposes of Section 85(1) the reason(s) for the failure of any Member to attend meetings of this Authority.

3.4 No member level meetings, apart from Cabinet member meetings, have been held since a scheme of emergency delegations was approved by Standards and Audit Committee on 19th March in view of the Covid-19 situation. This means that members have not been able to attend meetings to count towards their six consecutive months.

3.5 The Council is working on phasing in remote meetings following the government making regulations removing the requirement for members to be physically present at meetings earlier this month. Subject to resolution of any outstanding ICT issues it is anticipated that remote meetings will gradually begin to be phased in from the end of April, but initially running in parallel with the emergency delegations scheme, until such time as the remote meeting system has been established and is operating effectively.

4.0 **Recommendations**

4.1 That, for the purposes of Section 85(1) of the Local Government Act, 1972, the reason for the absence from meetings of any councillor be approved and their continued absence from meetings be authorised from 19th March 2020 through until the second meeting they are eligible to attend following resumption of member level committees (remotely or with physically present, whichever is the first to occur).

5.0 **Reasons for recommendations**

5.1 To meet the requirements of Section 85(1) of the Local Government Act 1972.

Decision information

Key decision number	Non-key 168
Wards affected	All
Links to Council Plan priorities	All

Document information

Report author	Contact number/email
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