

## APPENDIX

**Background**

There are three waste/recycling/treatment facilities based on Hallam Fields Industrial Estate in Ilkeston. All of these sites are regulated by the Environment Agency (EA) with permits detailing conditions of operation.

Due to the prevailing wind directions, the majority of residents affected by these premises are within Trowell and Stapleford although complaints are also generated from residents and businesses within Ilkeston.

Councils do have a duty to investigate statutory nuisance and this is determined at the point the complaint is experienced and not at the source – therefore we have a duty to investigate complaints from residents in Trowell and Stapleford, and Erewash BC would normally need to investigate the complaints from residents in Ilkeston.

Erewash Borough Council's Environmental Health Team are also based on Hallam Fields Industrial Estate but have not witnessed statutory nuisance at their location.

The collective impact of several premises would not support a statutory nuisance as the issue must be attributable to a specific premise. This is necessary as an abatement notice would be served on that premise and require them to take specific action to abate the nuisance. If a business is not individually creating a statutory nuisance, we are unable to take action against them and cannot take action against a number of businesses collectively.

Although local councils undertake investigations to determine if a 'statutory' nuisance exists, there are a number of issues that must be considered when a site has an EA issued permit. Compliance with a permit issued by the EA is likely to be considered a 'best practicable means' defence. In effect, this means if a business is following all the controls that they can reasonably be expected to implement then some level of emission such as dust or odour is accepted and therefore unlikely to be considered a statutory nuisance. Any complaints of emissions are more likely to be a breach of permit conditions and are a matter for the EA as the issuing and enforcing authority of the permit.

On this basis, complaints received by Broxtowe BC regarding EA permitted process are directed to the EA hotline for investigation as a potential breach of their permit conditions. Information on this is given on the GOV.UK website: <https://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints>

Some complaints in respect of the premises have been in respect of road noise from vehicles travelling to and from the site. Road traffic noise cannot be dealt with as a statutory nuisance.

It is understood that on average, approximately 50 complaints are received annually by the EA in relation to these premises and these are usually over the warmer summer months.

In 2020, it is understood that approximately 160 complaints were made to the EA. Unfortunately, many of the complaints do not specify which premises the odour or

dust are coming from. It is necessary to know specifically which premises is causing the issue and the complainant must be able to say with certainty that the issue is arising from that particular premises. This has generated a delay in action by the EA, as identifying the specific source of the issues raised takes considerable investigation.

Due to the increase in complaints and contact via local councillors, a meeting between officers of Broxtowe BC, Erewash Environmental Health and the EA was held in October 2020 to discuss and review action being undertaken. The EA confirmed that they are the most appropriate enforcing authority to deal with the complaints against these premises. This is on the basis that they have responsibility to ensure the sites they regulate are not causing a nuisance.

The EA confirmed the action they have already taken to deal with the impact on residents. The EA provided additional and significant resource into identifying the source of the complaints and deployed 'Odour Teams' to monitor issues. Even with this resource, due to the close proximity of several waste sites, it took some time to identify the source of the odour complaints. Despite some restrictions on access during the pandemic, the EA then instigated audits of the premises Odour Management Plan, establishing if any amendment was required. It is anticipated that this review will have been completed by early 2021, with a further EA audit to be undertaken in the spring to assess implementation before the warmer weather and associated impacts.

### **Summary**

The EA continues to investigate all of the concerns raised by the residents and are pursuing further action to improve the controls which are in place. The EA will be producing an update for local residents in due course and we will continue to liaise with the EA to review progress.