

Report to the Cabinet

Report reference: C-029-2015/16
Date of meeting: 8 October 2015



Portfolio: Environment

Subject: Creation of a new post: Water and Pollution Control Officer

Responsible Officer: Qasim (Kim) Durrani (01992 564055).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) To agree to create a permanent new post so that the Council can meet its statutory duties with regards to water quality and pollution control; and**
- (2) Subject to approval of Recommendation 1) above to agree to a growth bid in the Continuous Services Budget of £36,650 from April 2016 onwards; and**
- (3) Subject to approval of Recommendations 1 and 2) above to recommend a supplementary estimate in the sum of £10,000 for 2015/2016 to the Council for approval.**

Executive Summary: The Private Water Supplies Regulations 2009 (PWSR) were implemented to meet the UK's obligations under the revised European Union (EU) Directive 98/83EC. The regulations placed a number of additional statutory requirements on Local Authorities and consequently increased the burden on both staff and financial resources. At the time the PWSR were introduced it was decided by the Council to try and implement the new provisions within existing staff and budgetary resources. Despite the commitment and concerted effort made to try and get the work done, this has not been possible. The Council has been identified by the Drinking Water Inspectorate (DWI) for failing to meet its statutory obligations. The DWI has said, that in the event the EU fine the UK for failing to meet the relevant directive, it may look to the Local Authorities who have not met their obligations under the PWSR to cover the cost of any infraction. Officers have met with the DWI in order to discuss the challenges that the Council is faced with regards to the nature of the PWS within the district and to demonstrate its commitment and proposed remedial strategy to meet its obligations. If the Council is to meet its statutory duties with regards to private water supplies and other pollution related work and reduce the potential risk of both reputational and financial penalties, an additional member of staff is required.

Reasons for Proposed Decision:

There are serious public health and environmental issues posed by defective and sub standard private water supplies and drainage systems particularly on many horticultural sites within the district. The Council has not been able meet the requirements of the PWSR and therefore has failed in its statutory duties. It is not possible to absorb the work within existing resources. There is no non - statutory work being carried out that can be replaced with the statutory duties placed upon the Council by the PWSR.

Other Options for Action: - see paragraph 9 for further information.

1. To continue to try and absorb the work within existing resources;
2. To offer overtime to existing staff to carry out the work;
3. To continue with the existing arrangement of employing a temporary officer from an agency for 16 hours a week;
4. To employ an alternative temporary officer from an agency but increase the contract to 36 hours a week;
5. To commission a consultant to carry out all the initial risk assessments associated with private water supplies and then review the position; and
6. To employ an officer for a fixed term (3 years) and then review the position.

Report:

1. The PWSR 2009 placed a number of additional statutory requirements on Local Authorities with regards to the inspection and testing of private water supplies. This includes carrying out a risk assessment within 5 years (of the implementation of the regulations) and to regularly monitor all large supplies in accordance with specified frequencies to determine compliance with the standards. The process must be reviewed in light of any new circumstances and renewed every 5 years. The Council now has a duty to enforce and is statutorily obliged to submit a report to the DWI every year about the supplies and the work carried out.

2. At the time the PWSR were introduced it was decided to try and deliver the new provisions within existing staff and budgetary resources. Despite the commitment and concerted effort made to get the work done, conflicting priorities and workload issues have prevented any significant progress being made.

3. The Council has not been able to complete the required annual return to the DWI and has failed to carry out the necessary risk assessments within the 5 year time frame as specified in the regulations. Therefore the Council has been deemed to have failed its statutory obligations.

4. The approximate numbers of PWS (that now include Private Distribution Systems) in the district, based on current knowledge, can be seen in the table below:

Description of Supply	Statutory/discretionary service required under the regulations	Numbers
High risk private water supplies that need monitoring and risk assessments	Statutory	16 (but likely to include the additional horticultural nursery sites currently under investigation)
Single dwelling private water supplies	Discretionary - but statutory enforcement if found defective	33
Private Distribution Systems	Statutory	6 identified so far
Unknown private water supplies (predominantly suspected on horticultural nursery sites)	Currently unknown	Estimated 25

5. In October 2014 a temporary resource was secured from an Agency, for 16 hours a week, in order to assist with the work. Inspections carried out so far on the horticultural nurseries within the district have found families living in very poor conditions. It is known that these conditions exist on other horticultural nursery sites. Very challenging situations have been found not only with regards to living conditions but also with regards to the supply of drinking water (abstracted in most cases from private water supplies), foul and surface water disposal and a variety of pollution problems.

6. The conditions mentioned above pose a significant risk to human health and the environment. Statutory notices must be served in order to mitigate the risks and ensure compliance with the relevant legislation. The number of notices will be significant (given the multiple owners/occupiers on sites) and complex. The various issues will be very time consuming to resolve.

7. Officers invited representatives from the DWI to a meeting in order to discuss the problems found on these sites and to inform them as to what the Council is proposing to do in order to redress the situation. The DWI has said that the conditions of these private water supplies and pollution issues are some of the worse they have seen. The DWI has reinforced that fact that Local Authorities who are failing to properly implement the provisions of the PWSR run the risk of incurring penalties.

8. It is considered, not necessarily based on the number but because of the complex nature of the private water supplies within the district, that an additional full time, permanent, officer is required. This officer would also deal with the various pollution and environmental issues being found on these sites. It is currently envisaged that all of these issues will require the service of a range of statutory notices in order to affect the required level of compliance.

9. There are a range of other options for action with regard to how best to secure this additional resource:-

(i) It is not possible to absorb the work within existing staffing resources as there is just not the capacity;

(ii) The work cannot be carried out on overtime. There is just too much to do. Visits and sampling need to be carried out in the day time and on a weekday. In the vast majority of cases two officers are required to be on site. The work is complex and the expertise required to carry out the work is currently very limited within the Council;

(iii) Significant progress, in order to satisfy the DWI's requirements, will not be made by continuing to employ the existing 'experienced' temporary officer from an Agency as he is only able to work for 16 hours a week;

(iv) Consideration could be given to employ an alternative officer from an Agency who is able to work 36 hours a week. However, experience to date has shown a shortage in qualified and experienced people in this particular field. It is not considered sensible to employ a person, long term, through an Agency. This could make effective enforcement difficult. In addition the expertise gained about the sites and the work will not be retained within the Council;

(v) The Council could look to commission consultants to carry out all the initial risk assessments. However, experience to date has shown a shortage in qualified and experienced people able to do the work. Consultants will be very expensive and it is currently considered that this will not offer 'best value for money'. In addition the expertise gained about the sites and the work will not be retained within the Council. Given the complex nature of the sites and condition of supplies found to date on the horticultural sites within the district, officers are currently not confident that consultants will take the time to do the job properly.

As there is now a statutory duty to enforce, it is considered that there is a potential for the Council's enforcement role to be compromised if consultants were employed to do the work. This could ultimately result in further costs if appeals against notices are successful and/or further work needs to be carried out by officers in order to be confident in the systems before serving notices;

(vi) To employ an officer for a fixed term (3 years) and then review the position. It is considered that if the post is for a restricted period it will not attract the right person for the job. In order for a person to become fully competent in the work a lot of investment, in terms of officer time and 'on the job' experience, will be required. On many of the horticultural sites, in addition to the very poor condition of the water supplies, it is apparent that the lack of/condition of the foul drainage systems also pose serious public health and environmental risks. Therefore it is strongly considered that there is a need for the Council to invest in a permanent resource, as taking on an officer on a fixed term contract is not considered affective in the longer term.

10. It should be recognised that there is a significant amount of immediate and on going work associated with implementing the provisions of the PWSR. Also additional resources are required in order to tackle the pollution related problems being found on many sites within the district. The work is complex, very time consuming and difficult to effectively deliver. The Council has to date been unable to meet its statutory duties relating to these two areas of work and is at risk of incurring both reputational and financial penalties. Therefore it is proposed that a new Water and Pollution Officer post be created. **(Recommendation 1)**

11. In order to fund the post in the long term an increase in the Continuous Services Budget of £36,650 in total from April 2016 onwards is sought. **(Recommendation 2)**

12. In order to fund the new post from January 2016 to April 2016, a supplementary estimate of £10,000 will be required for 2015/2016. **(Recommendation 3)**

Resources

Employment of the current temporary agency officer (16 hours a week) is being funded from existing resources. The money is being vired from the contaminated land work budget but this is not sustainable in the longer term.

Sampling costs can be met from existing budgets.

A new job description has been evaluated for Water and Pollution Control Officer resulting in grade 7. Therefore a CSB growth of £36,650 will be required from April 2016 onwards.

A Supplementary Estimate of approximately £10,000 will be required from 1st January 2016 to fund the new post, depending on the time taken in the recruitment process.

Legal and Governance Implications:

Water Industry Act 1991

Private Water Supply (England) Regulations 2009

Building Act 1984

Public Health Acts

Land Drainage Acts

Environment Protection Act 1990

Epping Forest District Council's Land Drainage Byelaws

Safer, Cleaner and Greener Implications:

Pollution of the land, water and air are inherent issues that need to be addressed to ensure the district is greener and sustainable. It is essential to ensure that drinking water and

drainage systems are fit for use in order to keep the residents of the district safe and healthy.

Consultation Undertaken:

Assistant Director - Human Resources

Background Papers:

ENV-010-2009/10

C-038-2010/11

ENV-002-2014/15

Impact Assessments:

Risk Management

The inability to implement the requirements of the Private Water Supply Regulations 2009 within existing resources and the associated risks have been a 'rolling' item in the Environment and Street Scenes Business Plan (now the Neighbourhoods Directorate) since 2010. However, it was not until recently, when inspections started on the horticultural sites within the district, that the extent and seriousness of conditions relating to housing, water supplies and drainage have been realised.

The Council has not been able meet the requirements of the PWSR and therefore has failed in its statutory obligations. The Council has been identified in the DWI Annual Drinking Water Reports. The DWI has said, that in the event the European Union fine the UK for failing to meet the relevant directive, it may look to the Local Authorities who have not met their obligations under the PWSR to cover the cost of any infraction.

There are serious public health and environmental issues posed by the conditions found on the nursery sites and potentially from all private water supplies. If the Council does not address these it runs the risk of inciting both reputational and financial penalties. The conditions have the potential to cause an outbreak of waterborne diseases. There are vulnerable families, including children, now living on the nursery sites.

If adequate staff resources are not secured the current action in the Neighbourhoods Action Plan 2015/16, relating to the inability of the Council to properly implement the provisions of the legislation, will have to be escalated.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

This report relates to securing the required resources to ensure that the Council is able to deliver its statutory obligations in regards to private water supplies. The application of the legislation has to be applied equally across all groups of people. In this respect the subject has no potential to affect or discriminate against group of people.

Ensuring that defective private water supplies and drainage systems, that are being found on many of the horticultural nursery sites within the district, are up to standard will improve the living and environmental conditions of vulnerable groups of people including children and migrant workers.