

## ITEM 8: APPENDIX C

### WAVERLEY BOROUGH COUNCIL

### COMMUNITY O&S – 10 MARCH 2014

### EXECUTIVE – 1 APRIL 2014

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#### Title:

#### **ENVIRONMENTAL HEALTH ENFORCEMENT IN-DEPTH REVIEW: FINAL REPORT**

**[Portfolio Holder: Cllr Donal O’Neill]**

**[Wards Affected: All]**

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#### Summary and purpose:

At its meeting on 17 June 2013, the Community Overview & Scrutiny Committee identified Environmental Health Enforcement as an area to review. The Community Overview & Scrutiny Environmental Health Enforcement Sub-Committee subsequently met on three occasions to review the current Environmental Health Enforcement Policy and how it is applied.

In particular the Sub-Committee considered whether the current approach was reasonable and fair and consistently applied, how the current approach might be changed in future, and how to ensure councillors are better informed and engaged on matters of Environmental Health enforcement going forward.

The purpose of this report, which was considered by the Community Overview and Scrutiny Committee on 10 March 2014, is to inform the Executive of the findings arising from the review and the Committee’s observations and recommendations.

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#### How this report relates to the Council’s Corporate Priorities:

The development and application of an effective Environmental Health Enforcement Policy enables a risk-based approach to enforcement to be taken in order to target resources on the activities of those giving rise to the most serious risks to public health, safety and the environment and harm to the general and residential amenity.

Proportionate enforcement action reduces the inspection burden on compliant businesses and individuals, while maximising the effective use of resources. This relates in particular to the corporate priorities of **Leisure & Lives** and **Environment**, as well as **Value for Money**, through ensuring the Council provides customer-focused services at the best value for money.

#### Financial Implications:

There are no direct finance or resource implications associated with this report other than the Officer time involved in the review.

## **Legal Implications:**

The legal background to the current policy is dealt with in detail in the Enforcement Policy itself. The current policy was developed in accordance with the legislation and guidance existing at the time some of which has since been amended, for example an amended Code for Crown Prosecutors was issued in January 2013. The content of the Policy is revised and updated in the light of changes in legislation or codes of practice; it will be updated before April 2014 to reflect the new Regulators' Code,.

In considering approaches to obtaining evidence of nuisance/breaches of abatement notices, regard was given to the fact that evidence is likely to be challenged in court in the event of an appeal or prosecution. Such evidence must be sufficiently robust and impartial to withstand scrutiny and cross-examination. Doubts about the reliability, integrity or accuracy of evidence is likely to undermine the Council's case. For example evidence is unlikely to be credible/ persuasive if the witness giving such evidence is insufficiently qualified to do so.

In considering the question of whether a stepped approach to enforcement could be adopted, regard was given to the requirements of legislation and guidance, such as the requirement of the Code for Crown Prosecutors that each case must be considered on its own facts and merits. A policy should therefore be applied as a guide rather than a rule. The amended Code for Crown Prosecutors requires consideration to be given to whether prosecution is proportionate to the likely outcome, which can include consideration, amongst other factors, of the likely cost of proceedings.

It remains a fundamental requirement of the Code for Crown Prosecutors that prosecutors act fairly, independently and objectively and that they not be affected by improper or undue pressure from any source.

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## **Introduction**

1. At its meeting of 27 March 2012, the Executive considered and approved a report which proposed the adoption of a comprehensive Enforcement Policy for the Environmental Health Service.
2. The current Policy aims to provide improved clarity and transparency when dealing with Environmental Health enforcement matters and to act as a framework to ensure Waverley's enforcement activity:
  - i. Is fair, accountable, consistent, proportionate and transparent.
  - ii. Is an effective use of resources through risk-based methodology.
  - iii. Improves protection for the community and businesses.
  - iv. Reduces the regulatory burden on businesses.
  - v. Actively involves both business and community in the creation and review of the enforcement policy and methods.

3. The policy was developed in accordance current legislation and guidance, and a description of the range of actions that may be taken, including warnings, statutory notices and prosecution, and the circumstances under which such actions would be taken are set out in the Policy.

### **In Depth Review**

4. At its meeting on 17 June 2013, the Community Overview & Scrutiny Committee identified enforcement in Environmental Health as an area to review. An Environmental Health Enforcement Sub-Committee was subsequently formed and has now met on three occasions to consider a range of issues and questions, as identified below:
  - a) What sanctions are available to the Council when carrying out enforcement activities?
  - b) Since its adoption in 2012 has the Environmental Health Service Enforcement Policy been consistently and appropriately applied by Environmental Health staff?
  - c) Is the Council's current approach to the enforcement of remedies for environmental health issues effective and proportionate (giving sufficient protection to both the complainant(s) and the alleged perpetrator)?
  - d) Is the Council's current Enforcement Policy consistent with those of other, similar Local Authorities?
  - e) Could a 'stepped' enforcement approach be adopted by the Council on environmental health matters (where, for example, a more robust approach might be taken at an earlier stage in severe cases)- and is there scope, within the parameters defined by the various codes of practice and local and national legislation, for such an approach to be adopted?
  - f) If this is possible and practicable, how might such an approach work whilst still ensuring consistency? How is a 'severe' case defined? How are factors such as frequency of occurrence to be weighed against the severity of individual events?
  - g) Is the Council's current approach to obtaining evidence of nuisances or breaches of abatement notices adequate? Are alternative approaches to evidence-gathering available and, if so, would the evidence gathered be capable of withstanding challenge?
  - h) Does the current approach ensure sufficient use is made of the local knowledge and capacity of Ward Members? How can Members be more involved in the enforcement process?
5. The notes of the meetings of the Sub Committee, detailing the discussions that took place, have been presented to Community Overview and Scrutiny Committee as the meetings have taken place.

### **Conclusions**

6. Having received a detailed presentation on the range of functions carried out by the Environmental Health team and with a better understanding of the existing Enforcement Policy, the Sub-Committee asked a range of probing questions, challenging officers on the services' current approach to

enforcement. The Sub-Committee concluded that the Environmental Health Service was multi-faceted and far-reaching in its role, and that the team already benefited from very good processes and strong staff leadership; and that it did a very good job, applying the enforcement policy rigorously and consistently.

7. The Sub-Committee felt that it would be very helpful for all Members to have a much broader understanding of the Environmental Health service and what it does, and suggested that a briefing should be arranged for all Councillors, to provide a detailed look at the work of the team.
8. Whilst it was acknowledged that there were significant challenges associated with involving Ward Members in the enforcement process and decision-making surrounding it (as this needs to be carried out by qualified and experienced Environmental Health professionals), it was nonetheless felt that more could be done to engage and inform Members about issues in their ward. It was acknowledged that Ward Members need to be sufficiently up-to-date and informed to be able to deal with enquiries and requests for support from their constituents.
9. To this end, it was felt it would be helpful for criteria to be established for informing Ward Members at an early stage of issues in their Wards. It was noted that sensitivities would exist around some investigations (officers would have to be careful not to divulge any information that could prejudice a prosecution), and there was a need to be mindful of data protection issues (information divulged to Ward Members should not be shared with residents or other Councillors). The Sub-Committee asked officers to make it clear on any information provided to Ward Members that it should be kept confidential. If a Member did receive specific queries from a resident relating to confidential information then they should be directed to officers who would advise them accordingly.
10. The content of the Waverley Enforcement Policy is revised and updated, as necessary, in the light of any relevant changes in legislation or updated codes of practice. The current enforcement policy will be revised and updated before April 2014 to reflect the new Regulators' Code recently published by the Department for Business Innovation & Skills and the Better Regulation Delivery Office.
11. In conclusion, the Sub-Committee agreed that:
  - a) There should be annual briefings for all councillors on the work of Environmental Health'
  - b) a template document should be produced which would be used to inform individual Ward Members of specific issues in their wards on a quarterly basis if they fulfil one of the following criteria:
    - (i) those generating large numbers of complaints
    - (ii) those likely to lead to adverse publicity
    - (iii) where a large-scale nuisance might be predicted
    - (iv) updates relating to on-going issues that meet the above criteria;and

- c) a new heading of 'Environmental Health' should be added to the Community Overview & Scrutiny Committee's Work Programme in future, to provide all Members with a general overview of the cases that had been notified to Ward Members.

### **Recommendation**

That the Executive receives the findings of the in-depth review and approves:-

1. a template document being devised and communication process established to inform Ward Members of issues in their Ward;
2. the following criteria as triggers for informing Ward Councillors of Environmental Health cases within their wards:
  - (i) those generating large numbers of complaints
  - (ii) those likely to lead to adverse publicity
  - (iii) where a large-scale nuisance might be predicted
  - (iv) updates relating to on-going issues that meet one of the above criteria.
3. the addition of an item on the Community O&S work programme to provide all Members with a general overview of cases that meet the 'trigger criteria' that Environmental Health is dealing with;
4. the arrangement of an all Member briefing to inform Councillors about the various areas work of the Environmental Health Service undertakes and the critical path for resolving a complaint including what Members' role within the enforcement process is; and
5. a review of these arrangements taking place in six months time.

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### **Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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