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To: All Members of the Council

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Date: 5 December 2014

Dear Councillors

COUNCIL - 9 DECEMBER 2014

I refer to the agenda for the Council, on Tuesday, 9 December 2014 and now enclose the following item which was marked To Follow in your agenda papers:

8.a 2 December 2014 (herewith - coloured grey) (Pages 93 - 136)

Yours sincerely

Emma McQuillan
Democratic Services Manager



INVESTOR IN PEOPLE

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WAVERLEY BOROUGH COUNCIL

MINUTES OF THE EXECUTIVE - 2 DECEMBER 2014

SUBMITTED TO THE COUNCIL MEETING – 9 DECEMBER 2014

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Robert Knowles (Chairman)
Cllr Julia Potts (Vice Chairman)
Cllr Brian Adams
Cllr Carole King

Cllr Tom Martin
Cllr Donal O'Neill
Cllr Adam Taylor-Smith
Cllr Simon Thornton

Apologies

Cllr Stefan Reynolds and Cllr Keith Webster

Also Present

Councillor Mike Band, Councillor Patricia Ellis, Councillor Simon Inchbald, Councillor Diane James and Councillor Roger Steel

Prior to the start of the meeting, the Executive stood for a minute's silence in memory of Cllr Janet Somerville who had died at the weekend.

94. MINUTES (Agenda item 1)

The Minutes of the Meeting held on 4 November 2014 were confirmed as a correct record and signed.

95. APOLOGIES FOR ABSENCE (Agenda item 2)

Apologies for absence were received from Cllrs Stefan Reynolds and Keith Webster.

96. DECLARATIONS OF INTERESTS (Agenda item 3)

There were no declarations of interest raised under this heading.

97. QUESTIONS (Agenda item 4)

The Executive received a question from Mr Jerry Hyman in accordance with Procedure Rule 10:-

“The Council has made various claims regarding funding of the East Street scheme over the past decade, though the terms of possible funding and the design of the scheme have never been finalised.

We hear that another such claim is being made, and if the Due Diligence process has been completed and a firm agreement has indeed been reached then as a public project, there should be no honest reason not to publicise the funding institution concerned and the terms of the funding.

If there is a firm, signed commitment of funding, who is supplying that funding?"

The Leader of the Council responded as follows:-

"There is not a signed commitment of funding but Crest Nicholson are in discussions with a funder, the details of which are commercially sensitive".

PART I - RECOMMENDATIONS TO THE COUNCIL

Background Papers

Unless specified under an individual item, there are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to the reports in Part I of these minutes.

98. BUDGET MANAGEMENT REPORT (Agenda item 6)

[This item contains exempt information by virtue of which the public is likely to be excluded during the item to which the report relates, as specified in Paragraph 1 of the revised Part I of Schedule 12A to the Local Government Act 1972, namely:-

Information relating to the financial or business affairs of any particular person (including the authority holding that information)]

98.1 The Executive considered and noted the budget management report which provided a projection of the expenditure and income position for the 2014/15 budget compared with the approved budget for the General Fund and Housing Revenue Account. The Executive

RESOLVED that

1. the virement requests from the additional planning income be approved to cover additional legal fees of £20,000 and consultants costs of £10,000 within Development Control appeal costs, as detailed in paragraph 2.4 of the agenda report;
2. the employment of consultants be approved at an estimated cost of £15,000, to be met from the identified WTS surplus, to carry out a review of the service as detailed in paragraph 2.12 of the agenda report;
3. approval be given to slip the £35,000 capital provision for the Farnham Maltings from 2014-15 to 2015-16 as detailed in paragraph 3.2 of the agenda report;
4. the work for the properties in (Exempt) Annexes 6 and 7 attached to the agenda report be approved; and
5. the expenditure of £14,200 to be met from the HRA required to separate the two areas of ex-Rowland House/Rowleys

accommodation be approved, as detailed in paragraph 4.10 of the agenda report.

- 98.2 Throughout this financial year the toilets at Broadwater have been vandalised on several occasions taking the facilities out of use for the users of Broadwater Park. This park is one of Waverley's most prominent and well visited sites and it is felt that these facilities are needed to serve those visitors. To this end capital needs to be made available from this year's budget to allow for the toilets to be refurbished with vandal proof fittings in time for users of the park next spring, the budget sum identified for these works is £63,000.
- 98.3 The finance team has been under review to ensure that the service is resilient. It has a succession risk around key posts due to a number of staff approaching retirement. The recent retirement of a long-serving member of staff (post BD04) on part-time (15 hours) at band 5 has presented an opportunity to recruit a full-time accounting technician on band 8 at 37 hours. Post BD04 will provide technical accounting capacity to complete reconciliation and systems support work currently being covered by more senior accountants. The post can be funded from the existing budget. However, as there is an increase in establishment from 15 to 37 hours the Council is asked to approve this increase.
- 98.4 The Executive therefore also

RECOMMENDS that

- 47. the addition of £63,000 within the 2014-15 General Fund Capital Programme be approved for the refurbishment of Broadwater Toilets, as detailed in paragraph 98.2 above;**
- 48. the change in accountant post BD04 from 15 to 37 hours within existing budgets, as described in paragraph 98.3, be approved and the staffing establishment be amended accordingly; and**
- 49. the post of Temporary Elections Assistant (Post AI13) be made permanent because of the likely ongoing increase in workload resulting from the implementation of Individual Elector Registration and the combined elections to be held in May 2015, with the additional cost of £9,000 being met from government grant for Individual Elector Registration.**

[Reason: To provide an indication of the expenditure and income position for the 2014/15 budget compared with the approved budget for the General Fund and the Housing Revenue Account]

99. WAVERLEY INITIATIVES LIMITED (Agenda item 10)

- 99.1 Following the background work carried out on the viability of a Local Authority company and the Council's decision in July 2009 to incorporate Waverley Initiatives as a wholly-owned local authority company, the advantages that the Company appeared to offer are no longer relevant and

the Company has been dormant since soon after its creation. The Board of the Company has now reviewed the situation and agreed that it is now appropriate to wind the Company up and request Companies House to strike-off the Company as it no longer offers any advantages for the further provision of affordable housing in the Borough.

- 99.2 Soon after the establishment of Waverley Initiatives, the apparent advantages it gave to helping the Council provide social housing failed to materialise as a result of Government changes to regulations on void transfers. The HRA self-financing framework has also enabled Waverley to develop and deliver its own new affordable house building programme.
- 99.3 Since then the Company has been maintained as a dormant company and the appropriate returns made to Companies House. There has been no activity or spending under the Company's umbrella. The Board consists of three Councillors; the Leader and the Portfolio Holder for Housing and the former Portfolio holder for Finance. The Monitoring and Returning Officer is the Company Secretary.
- 99.4 The Companies Act provides for processes to wind-up the Company through asking Companies House to strike it off. There will be some small amount of staff time spent on the process and a fee of £20. After that the Company is removed from the Companies House Register.
- 99.5 In conclusion, the benefits that setting up Waverley Initiatives seemed to offer have not materialised and it is appropriate now to wind up the Company so that the Council is no longer responsible for maintaining it. Officers have researched whether setting up a similar company in the future could offer some benefits to the Council, and by using the existing company documents as a base, a new company could be established within a few months and at a cost of around £5,000 for external legal advice. The Executive now

RECOMMENDS that

50. Waverley Initiatives Limited be wound up; and

51. officers be asked to make the arrangements to achieve this and apply to Companies House for striking off the Company.

[Reason: To seek approval to strike-off the Company as it has been dormant since soon after its creation.]

100. ENFORCEMENT POLICY FOR REGULATORY SERVICES (Agenda item 11)

- 100.1 This report informs councillors about the progress on the introduction of the proposed Enforcement Policy for Regulatory Services following the consultation process.
- 100.2 The updated Enforcement Policy reflects current legislation, guidance and best practice. It helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. The policy sets out the approach to regulation across a wide

range of functions and service areas and explains the principles aimed at securing compliance. The emphasis is on advice and guidance, with escalation to formal enforcement sanctions dependant on each individual situation. The policy identifies and explains the sanctions that may be used by the Council.

100.3 To comply with the law and set out how we will enforce legislation, the Council must publish an enforcement policy. A new Regulators' Code came into effect on 6 April 2014 which replaces the previous Regulatory Compliance Code. Regulators whose functions are specified under the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Regulators must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators.

100.4 The areas of the Council's work in which regard must be had to the new Code are:

- Environmental Protection
- Food Safety
- Public Health
- Licensing
- Health and Safety
- Environmental Services (Fly Tipping, Littering, etc.)
- Private Sector Housing

100.5 The proposed enforcement policy sets out how the services responsible for ensuring compliance and its officers will conduct themselves and how other parties can expect to be treated as we discharge our key duties. An enforcement policy is required in order to guide those responsible for enforcement, and those who are regulated. Unjustified departure from an enforcement policy's provisions could be the subject of legal challenge.

100.6 The draft policy was taken to the Executive on 2 September and the Licensing and Regulatory Committee on 18 September. It received the support of both Committees. The formal public consultation on the policy opened on 3 September and closed on 15 October 2014. The consultation documents were made available on the Council website, on the homepage under 'Have your say/Consultations' with a link to the draft policy inviting response. No responses were received from the public as a result of the consultation.

100.7 The Licensing and Regulatory Committee requested clarification regarding some wording in respect of the cost of compliance. This has been incorporated into the revised policy document attached at [Annexe 1](#). Waverley Legal Services suggested the addition of financial penalties as an enforcement action. This action is included in the current Environmental Health Enforcement Policy. The suggestion has been incorporated into the revised policy document and the wording reflects the template enforcement policy included within the Toolkit produced by Better Regulation Delivery Office to accompany the Regulators Code.

100.8 The Executive now

RECOMMENDS that

- 52. the Waverley Borough Council Enforcement Policy for Regulatory Services, attached at Annexe 1, be approved to come into effect at the earliest opportunity.**

[Reason: To seek approval for the draft Waverley Borough Council Enforcement Policy for Regulatory Services]

101. WAVERLEY BOROUGH COUNCIL - REVIEW OF STREET TRADING POLICY
(Agenda item 12)

101.1 Street Trading is defined as the selling or exposing or offering for sale of any article (or living thing) in a street. Such activity may cause nuisance and may be controlled by local authorities. In 1991, Waverley Borough Council adopted powers under the Local Government (Miscellaneous Provisions) Act 1982, to control Street Trading by the designation of 'prohibited', 'licensed' and 'consent' streets.

101.2 In September 2009 the Council published the current "Street Trading In Waverley Policy" which covers general guidelines, applications, decision-making, appeals, fees and conditions. It should be reviewed if there are major changes to the street trading regime or after 5 years, whichever is sooner.

101.3 A 'Prohibited' street means a street in which street trading is prohibited. A 'Licensed' street means a street in which street trading is prohibited unless a licence has been granted by the Council. A 'Consent' street means a street in which street trading is prohibited unless the Council has given consent. A licensed street designation is appropriate for the more formalised, market type of trading in a street where the strict control of a limited amount of space is required. Currently there are no licensed street designations in Waverley; only Prohibited Streets and Consent Streets.

101.4 Designation of a street as a consent street covers a more infrequent type of trading. The Council is under no duty to grant consent to trade on a street which has been designated as a consent street. Neither is the Council required to specify grounds for refusal. Similarly, there is no right of appeal against the refusal of consent or the application of conditions attached to a consent. However, current good practice is for Street Trading Policies to include a hearing mechanism and for reasons to be given for any refusal.

101.5 The 'Consent' designation of a street is appropriate where it is necessary to limit the numbers and types of traders, their location along a street, their hours of operation and the measures they employ to remove their waste. These can all be specified as conditions to the Consent in a location.

101.6 A number of community-led locally organised events benefit from the existing regime – there are no proposals to alter this. For example, since 2009, Consents have been granted for events in Castle Street, Farnham, in High Street and Church Street, Godalming, in High Street and West Street,

Haslemere and on The Common, Cranleigh. Individuals may also apply for Consents, either for specific occasions or on an annual basis. There is currently one consent granted in Waverley to a sole-trader.

101.7 The main changes proposed in the draft policy document attached as Annexe 2 are:

- To introduce a procedure for varying Consents during their life
- To clarify the Council's approach to ensuring transparency in dealing with applications

101.8 Public Consultation took place for a six-week period ending on 12 September 2014. Consultees specifically included agencies and partners already involved in the Street Trading regime (for example, Police, Fire and Rescue, Highways, local chambers of commerce) and was published on the Council's website.

101.9 The Licensing and Regulatory Committee considered the report, draft policy and the following responses to the consultation:

a) – **response from individual of 11 August 2014**, requesting clarification on procedures for Charitable Street Collections, etc. This topic is not covered by Street Trading legislation – a response was issued on 29 August 2014 detailing the relevant procedures and code of practice. No further action required.

b) – **response from Godalming Town Council of 8 August 2014**, requesting that Bridge Street, Godalming be included in the list of consent streets which for some events would save closing the whole of the High Street as often.

c) **response from Cranleigh Parish Council of 12 September**, (i) - agreeing that prohibited streets in Cranleigh should be as per Appendix I of the Policy document and (ii) – supporting events that enhance the vibrancy and attractiveness of Cranleigh and therefore that the three consent streets listed should remain.

The Parish Council suggested that for clarity, Horseshoe Lane is included as a prohibited street and that the Bank Buildings and the roadway to the post office frontage are part of the consent designation for High Street. The Parish Council has received a reply confirming the Old Bank Buildings and Post Office situation (the areas to the front are part of the High Street consent designation) and that Horseshoe Lane is not designated at all, but that parts of it abutting The Common will be part of that designation as consent street.

d) **response from Cranleigh Chamber of Commerce of 12 September**, requesting that the list of consent streets for Cranleigh (High Street, The Common and Rowland Road) be redesignated as prohibited streets. This was responded to on 16 September, asking if the Chamber of Commerce wanted to submit supporting comments. Further details were received on 17 September and are summarised below:

“The chamber actively supports the businesses in Cranleigh who have permanent places of business and pay their rates and contribute to the life of the village that is uniquely Cranleigh. It has a history and a conservation area that is highly unique and we wish to protect our members from occasional traders who set up in competition on the streets and around the common, subject to agreement we realise, but they do not contribute effectively or financially to the life of Cranleigh—some of them actually contribute noise, pollution, litter and anti social behaviour directly or indirectly from their trading practices so we would recommend the change to prohibition in the remaining streets in Cranleigh to ensure our members have an unencumbered and level playing field to trade within.

Certainly the area around the common actively affects the residents and we are mindful of their opinions of businesses which could again affect our relationship with them.”

101.10 The Committee considered those responses which related to the designation of streets and noted this had not formed part of the previous policy. The Committee agreed that the designation of streets should be kept as a separate issue in order that amendments could be made at any time without the need to go through a policy amendment procedure. Officers were therefore asked to instigate a review of the street trading designations in response to the representations received as part of the consultation. This is underway.

101.11 The Licensing and Regulatory Committee supported the revised policy and the Executive accordingly

RECOMMENDS that

53. the revised Street Trading Policy be adopted.

[Reason: To seek approval for the revised Street Trading Policy following a public consultation process.]

102. REVIEW OF PARLIAMENTARY POLLING DISTRICTS AND POLLING PLACES 2014 (Agenda item 14)

102.1 This item addresses outstanding enquiries relating to the Review of Parliamentary Polling Districts and Polling Places 2014. The Council at its meeting on 14 October 2014 agreed a small number of changes and this report puts forward further late requests for changes.

102.2 The Headteacher of Grayswood C of E Infant School, Lower Road has advised that the School is undergoing expansion and building work in 2015 which will reduce the school hall in size by half. Officers have made enquiries as to the availability and suitability of any other suitable venues.

102.3 Grayswood Village Hall, Grayswood Road, Grayswood has been visited and the ground floor hall has been assessed as a suitable polling station. The hall is situated on the village green, adjacent to Grayswood Road. The venue has 22 parking spaces and the lower floor of the hall is completely

accessible to wheelchair users. There are good facilities and the venue is in a good accessible location within the polling district. The Hall is however used by a nursery on weekdays. The nursery has been approached and has agreed to vacate the premises on polling day by having an away day. There is a longstanding booking each Thursday evening by a bridge club – the booking is made years in advance. The Village Hall's Committee has been asked if the bridge club could vacate the premises for polling day or use the upstairs room only and the Committee has agreed.

102.4 Representations have also been received regarding St. Peter's Primary School, Little Green Lane, Farnham and the school has asked if Waverley could find an alternative polling station. St. Peter's Primary School is currently used as a triple polling station. Wrecclesham Community Centre, Greenfield Lane, Farnham is situated just round the corner from St Peter's Primary School and is already a designated polling station. This venue already has 2192 BP Wrecclesham electors allocated to it and it would not be possible for the venue to accommodate the additional 1132 BK Boundstone and 2137 Shortheath electors from St. Peter's Primary School in addition.

102.5 The Leverton Hall is situated behind the Church in Beales Lane, Wrecclesham but is unsuitable. The hall provides a small room with disabled access through double doors and kitchen facilities. Parking is limited. This venue does not provide sufficient space to accommodate either a triple or a double polling station. Officers have been unable to identify any other suitable venues in the area.

102.6 The Executive therefore

RECOMMENDS that

54. Grayswood Village Hall, Haslemere be approved as a polling station venue as an alternative to Grayswood C of E Infant School; and

55. St. Peter's School be advised that it had not been possible to find a suitable alternative polling station and that accordingly the school would have to be used as a polling station.

[Reason: To seek approval for some outstanding enquiries relating to the Review of Parliamentary Polling Districts and Polling Places 2014]

103. JOINT PLANNING COMMITTEE - APPOINTMENT OF SUBSTITUTES (Agenda item 15)

103.1 In December 2007 the Council reviewed the structure of its Planning Committees and introduced the current arrangements of a Joint Planning Committee and four Area Planning Committees.

- 103.2 When the new structure was implemented in January 2008, the membership of the Joint Planning Committee consisted of the combined membership of the four Area Planning Committees, creating a total of 48 members. After a period of operation, and in the interest of improved efficiency in decision-making, the size of the Committee was subsequently reviewed in March 2011 when it was agreed to halve the representation from each Area Planning Committee to create a Joint Planning Committee of 23 members.
- 103.3 The Joint Planning Committee historically met on an ad hoc basis, but more recently has been scheduled into the calendar of meetings. However, following an amendment to the Council's constitution in February 2014 requiring planning applications that propose housing schemes with a net increase of more than 25 dwellings to be determined by the Joint Planning Committee and not the Area Planning Committee, the Joint Planning Committee has now been required to meet much more frequently.
- 103.4 Since the beginning of the current Council year, the Joint Planning Committee has met on 7 occasions, with further dates in the diary before the end of the calendar year. This is having an impact on the attendance levels at meetings, as set out below:-

Date of Meeting	Possible Attendance	Actual Attendance
28 May 2014	23	14
27 August 2014	23	14
22 September 2014	23	14
24 September 2014	23	15
28 October 2014	23	15
12 November 2014	23	17
17 November 2014	23	14

- 103.5 It is therefore proposed that substitute members are introduced onto the Joint Planning Committee to ensure that the Committee is well represented by members from across the Borough when dealing with large-scale planning applications, particularly when a number of apologies have been received. It is envisaged that the arrangements will maintain the political balance and the geographical spread on the Joint Planning Committee.
- 103.6 The suggested arrangements to be followed for the appointment of substitutes is set out below:-
1. all members of the Area Planning Committees who are not already members will be listed as substitutes of the Joint Planning Committee;
 2. upon receipt of any apology from a member of the Joint Planning Committee by 12 noon on the day of the meeting, substitute members will continue to be arranged by the Democratic Services Team;
 3. a substitute will be called from the same Area Planning Committee as the member giving their apology from the Joint Planning Committee; and

4. the substitute member must be from the same political group as the member giving the apology and in the event that no substitute is available, no substitution will be made for that member.

103.7 The Executive accordingly

RECOMMENDS that

- 56. substitute members be introduced for the Joint Planning Committee with effect from January 2015, to be arranged as set out in paragraph 103.6 above.**

[Reason: to seek approval to introduce substitute members onto the Joint Planning Committee with effect from January 2015]

PART II - MATTERS OF REPORT

The background papers relating to the following items are as set out in the reports included in the original agenda papers.

104. EXECUTIVE FORWARD PROGRAMME (Agenda item 5)

RESOLVED that the forward programme of key decisions for Waverley Borough Council be adopted.

105. TREASURY MANAGEMENT PERFORMANCE (Agenda item 7)

RESOLVED that

1. the Treasury Management Performance for 2014/15 to date be noted; and
2. the approach to Treasury Management activity be endorsed.

[Reason: To summarise Waverley's investment performance for the period 1 April 2014 to date]

106. SETTING OF COUNCIL TAX BASE AND BUSINESS RATE BASE FOR 2015/16
(Agenda item 8)

RESOLVED that

1. the council tax base for Waverley for the year 2015/16 be approved, as shown in Annexe 1; and
2. the business rate estimates for 2015/16 be approved, as set out in Annexe 2 to the agenda report, and authority be delegated to the Director of Finance and Resources, in conjunction with the Finance Portfolio Holder, to make any final changes necessary before the return is submitted to the Government on the 31 January 2015.

[Reason: To seek approval for the 2015/16 Council Tax base and Business Rate forecast]

107. SENIOR MANAGEMENT RESTRUCTURE - ONE YEAR ON (Agenda item 9)

RESOLVED that the report be noted.

108. WITLEY AND GODALMING CROWNPITS CONSERVATION AREA APPRAISALS
(Agenda item 13)

RESOLVED that the draft Conservation Area Appraisals for Witley and Godalming Crownpits be approved for the purposes of public consultation.

[Reason: to gain authorisation to undertake a formal public consultation on the draft Conservation Area Appraisals for the Conservation Areas of Witley and Godalming Crownpits]

109. REQUEST FOR OVERVIEW AND SCRUTINY SUB-COMMITTEE (Agenda item 16)

The Executive recognised that a Corporate Overview and Scrutiny Sub-Committee would be useful to investigate further the issue of PV Panels on Council Houses but

RESOLVED that, because of the time involved in conducting the work to investigate further the issues of PV Panels on Council Houses, the Sub-Committee should be formed in the next administration, after May 2015.

[Reason: to seek approval to establish a Sub-Committee to look into how the issue of PV Panels on Council houses could be progressed]

110. EXECUTIVE DIRECTOR'S ACTIONS (Agenda item 17)

The Executive noted the following actions taken by the Executive Director after consultation with the Chairman and Vice-Chairman since its last meeting:-

i. Service of Notices under Regulation 18 Private Water Supplies Regulations 2009 in Cases of Urgency

Until amendment of the Scheme of Delegation to include authorisation to serve notices under Regulation 18 Private Water Supplies Regulations 2009, to authorise Environmental Health Officers to exercise the power to serve notices under Regulation 18 Private Water Supplies Regulations 2009 on relevant persons in relation to private water supplies.

ii. Joint Investment Project: Dairy Crest Site, Weydon Lane, Farnham

To authorise officers to progress the proposal, as per the Council decision of 14 October 2014, resulting from detailed negotiations.

The meeting commenced at 6.45 pm and concluded at 7.14 pm

Chairman

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Waverley Borough Council Enforcement Policy for Regulatory Services

To be approved by Council 9 December 2014

Contents:

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2. [What is this policy for?](#)
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1. Introduction

Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, businesses and the environment. Decisions about enforcement action and in particular the decision to prosecute have serious implications for all involved. The Policy is applied to ensure that:

- Decisions about enforcement action are fair, proportionate and consistent.
- Officers apply current Government guidance and relevant Codes of Practice.
- Everyone understands the principles that are applied when enforcement action is considered.
- To make best use of resources enforcement is shared where there is complimentary role within the Council and with other agencies e.g. Police, Health and Safety Executive.

This Policy sets out what business and others can expect from Waverley Borough Council's Regulatory Services and its officers. It commits the Council to good enforcement policies and procedures. The Services covered by this policy and the contact details are set out in Appendix A. This policy does not cover Planning Enforcement.

This policy was developed in consultation with stakeholders from the business sector, private individuals and other interested parties. The Policy was available for a period of consultation on the Council's website prior to approval.

A Policy Consistent with Best Practice and Statutory Requirement

This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. This Policy has been developed with due regard to the following:

- **Principles of Good Regulation**

The Legislative and Regulatory Reform Act 2006, Part 2, requires The Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by the Services covered by this Policy.

We will exercise our regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

- **Regulators' Code**

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

- **Human Rights Act 1998**

The Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

- **Data Protection Act 1998**

Where there is a need for The Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

- **The Code for Crown Prosecutors**

When deciding whether to prosecute The Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- **Evidential Test - is there enough evidence against the defendant?**

When deciding whether there is enough evidence to prosecute, The Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

- **Public Interest Test - is it in the public interest for the case to be brought to court?**

The Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to the Council detailed in Section 6 of this Policy.

- **Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')**

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a Primary Authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

Targeted, Proportionate and Risk-based Enforcement

We will ensure that any action we require is proportionate to the risks. We will adopt a risk-assessment approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. We will take particular care to work with small businesses and with voluntary and community organisations, to help them meet their legal obligations without unnecessary expense. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

Publication

Following adoption this policy will be made available to all interested parties, including businesses and consumers. It will be published on the Council's website and in printed form.

The Council is committed to avoiding imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Details of the Council's accessibility statement can be found on the Council's website. www.waverley.gov.uk/accessibility

2. What is this policy for?

2.1 The primary function of local government regulatory activity is to protect the public, the environment and groups such as consumers, residents and tenants, workers and businesses. However, it is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that those subject to regulation and those on whose behalf enforcement is carried out are aware of the Council's policy on enforcement.

This document communicates The Council's policy in respect of its approach to dealing with non-compliance to:

- a) those affected by its activities; and
- b) officers of Regulatory Services covered by this policy (See Annexe A)

All authorised officers will be expected to act in accordance with the policy.

3. When does this policy apply?

3.1 The Council's Regulatory Services comprises of the following Teams:-

- The Environmental Health Service, which comprises of two teams:-
 - The Food, Health & Safety Team; covering food safety, health & safety at work, infectious disease control and special treatment registrations.
 - The Environmental Protection Team; covering statutory nuisances, contaminated land, air quality, water supplies, industrial installation pollution control, street trading consents, scrap metal licences, pest control, animal welfare licensing and control of stray dogs.
- The Private Sector Housing Team; covering housing conditions in private sector housing, illegal evictions and landlord harassment, licensing houses in multiple occupation and caravan site licensing.
- The Licensing Team; covering licences for alcohol, entertainment and late night refreshment, gambling, sex establishments. hackney carriage and private hire licensing.
- The Environmental Services Team, covering waste, fly tipping, dog fouling, litter and graffiti.

Enforcement includes council officers giving advice, carrying out visits and inspections, responding to complaints and service requests, assisting consumers and businesses to comply with statutory duties & licensing requirements and taking formal enforcement action where warranted against those who breach the law.

This Policy is supplemented where necessary by other documents, which set out in greater detail the specific policies, procedures and standards which apply to particular regulatory services. These include for example the [Licensing Policy](#) , The [Hackney Carriage and Private Hire Licensing Policy](#) , [The Food Sampling Policy](#). Copies of these documents are available on the Council's website www.waverley.gov.uk

Planning enforcement and benefit fraud enforcement are not covered by this enforcement policy but by the [Benefits Prosecution Policy](#) and the [Local Planning Enforcement Plan](#) which are available on the Council's website www.waverley.gov.uk

4. Our approach to dealing with non-compliance

A number of factors are considered when determining what enforcement action to take:

4.1 Explanation of the local authority's approach to dealing with non-compliance

In responding to non-compliance identified, officers shall clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Officers shall provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate.

This paragraph does not apply where the Officer can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

Where there is a wider regulatory interest, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the Council boundaries, or involves enforcement by one or more local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

If the matter relates to a business that has a registered Primary Authority Partnership under the Regulatory Reform Act 2006, the Council will, where required, comply with the agreement provisions for enforcement and notify the Primary Authority of the enforcement action that it proposes to take. The Council may also under the Act refer the matter to the relevant enforcement body if appropriate.

The Council will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

The Council's constitution sets out the Council's [Scheme of Delegation](#). This is available on the Council's website. Delegated authority has been given to authorised officers to act in varying capacity according to their professional background and seniority. Delegated authority is exercised within a decision making process that is managed to ensure that the most appropriate action is taken, based upon professional judgement, legal guidelines, statutory codes of practice and priorities set by the Council and/or Central Government.

The Council will manage enforcement in relation to premises in which it may have an interest to ensure that decisions are free from any conflict of interest. The Council:

- Have arrangements in place to pro-actively identify and resolve potential conflicts of interest. For example, considering whether steps can be taken to manage any conflict of interest whilst remaining the enforcing authority or whether, for example, health and safety responsibilities should be passed to the HSE;
- has plans and contingencies in place for dealing with exceptional circumstances where a conflict of interest comes to light after an incident has occurred;
- Carries out its enforcement policy and practice in exactly the same way that it does for all other premises and duty holders.
- Officers will carry out enforcement responsibilities fairly and objectively. Details of the [Council's Equalities Objectives](#) can be found on our website
- Where appropriate the Council will publicise details of any convictions which could serve to draw attention to the need to comply with the law or deter others. Where relevant the media will also be provided with factual information about convictions by the courts.

4.2 Helping Businesses and Others to Compliance – Supporting Economic Progress

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses it is assessed to avoid duplication of requests and amended where necessary. We aim to seek feedback on the forms we use to collect information from business.

Whenever practicable we will promote positive incentives for businesses that comply, such as the Food Hygiene Rating Scheme. We will, where practicable and appropriate, provide feedback to business when there are changes in business risk ratings as a result of their performance.

Helpfulness through Clear Accessible Guidance

We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time', and that therefore our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance.

We will provide a courteous and efficient service and our staff will identify themselves by name and carry a photograph identification card.

We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. Those regulated can request advice on non-compliance without directly triggering enforcement action, where they show a willingness to resolve the non-compliance.

All requests for service, including applications for approval of establishments, licences, registrations, etc., will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We will:

- Give clear and simple advice and confirm in writing, if requested, explaining what you must do to comply with the law, and the recommended best practice.
- Minimise the cost of compliance wherever possible.
- Give you a reasonable time to comply, unless immediate action is necessary in the interest of health, safety, the environment, or to prevent evidence being lost.
- Maintain confidentiality, except where we have a legal obligation to disclose information.
- We will deal firmly with those that deliberately or persistently fail to comply.

4.3 Explanation of the factors that influence the local authority's response to breaches of the rules:

To ensure we take proportionate action and targeted at cases requiring action, the following factors will be taken into consideration:

- a. The seriousness of any alleged breach.
- b. Risks to public health.
- c. Risks to the safety of individuals or groups.
- d. Risks to the environment, animals and their habitats, air and water and land contamination.
- e. The previous history of the individual (in accordance with the Rehabilitation of Offenders act 1974), group or business, and where relevant, confidence in management.
- f. Any action taken by the responsible person/organisation, to resolve the situation.
- g. The courses of action that will best serve the community, and protect them or the environment.
- h. Whether the Council has a duty or discretionary power to take action.
- i. Where the business has a Primary Authority Partnership, the Primary Authority may in some circumstances prevent proposed enforcement action.
- j. Consideration will be given to proportionate approaches based on relevant factors such as business size and capacity.

5. Conduct of investigations

5.1 Explanation of the processes for investigating alleged breaches

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to The Council:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Powers used by authorised officers.

Authorised officers have powers *including* the power to:

- enter premises (in some circumstances they must first obtain a warrant of entry);
- take samples and photographs, and inspect records
- write informally asking the proprietor to put right any problems they find – where breaches of the law are identified, which must be put right, they may serve an Improvement Notice
- detain or seize equipment
- in serious cases they may decide to recommend a prosecution (if the prosecution is successful, the Court may impose prohibitions on processes and the use of premises and equipment, impose fines and possibly imprisonment for serious offences)
- if there is an imminent risk to the public or employees, inspectors can serve a Prohibition Notice that forbids the use of part or all of a premises or equipment
- Carry out Emergency Remedial Action or serve an Emergency Prohibition Order in situations where a housing hazard presents an imminent risk of serious harm to the occupiers
- Obstruction of an officer in the exercise of his/her powers can amount to an offence. Officers may attend premises accompanied by police officers if there is reason to require their presence. Police officers may exercise powers of arrest, for example if violence is used/threatened against a council officer.

- Issue a Closure Notice - an authorised officer may issue a closure notice under the terms of section 19 of the Criminal Justice and Police Act 2001.

Seizure of Equipment and Other Items. Some legislation enables authorised officers to seize equipment or other items including faulty, dangerous items, unwholesome or contaminated or food, equipment responsible for causing a noise nuisance. This is to prevent them causing harm or a nuisance. Some items may be seized for evidential purposes.

Details of interview procedures. All formal interviews will match national legal standards, known as 'PACE', (the Police and Criminal Evidence Act). The PACE Code of Practice sets an individuals rights and what the interviewer must and must not do to ensure that interview under caution is fair. If an interview doesn't meet these standards it may be that the interview record can't be used in court.

5.2 Progress of investigations

We will keep those who are the subject of investigation, and witnesses, informed of the progress of investigations, unless to do so would be likely to defeat the purpose of proposed enforcement action or the situation is so serious that immediate action is required to prevent/respond to a serious breach.

6. Decisions on enforcement action

6.1 Enforcement Actions available to The Council in Respect of Criminal and Civil breaches

There are a number of potential enforcement options. The level of the action taken can vary from no action through to proceedings in Court. Examples of main types of action that can be considered are shown below:

- A. Compliance Advice, Guidance and Support
- B. Voluntary Undertakings
- C. Statutory (Legal) Notices
- D. Financial penalties
- E. Injunctive Actions, Enforcement Orders etc.
- F. Simple Caution
- G. Prosecution
- H. Refusal/Suspension/Revocation of Licences

A. Compliance Advice, Guidance and Support

The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-

occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council recognises that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and The Council will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, The Council recognises that there is likely to be an ongoing need for compliance advice and support, to prevent further breaches.

B. Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

C. Statutory (Legal) Notices

In respect of many breaches The Council has powers to issue statutory notices. These include: 'Stop Notices', 'Overcrowding Notices', 'Prohibition Notices', 'Emergency Prohibition Notices', and 'Improvement Notices'. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

D. Financial penalties

Waverley Borough Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal record. If a fixed penalty is not paid, Waverley Borough Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach Waverley Borough Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

Waverley Borough Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at Waverley Borough Council's discretion. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

E. Injunctive Actions, Enforcement Orders etc.

In some circumstances The Council may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The Council is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, The Council will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

In some circumstances, The Council has a duty under the Housing Act 2004 to make a Management Order to take over the management of a House in Multiple Occupation (HMO), for example where it is required to be licensed but where there is no reasonable prospect of its being licensed in the near future or where it is necessary to protect the health and safety of the occupiers or others in the vicinity of the property. In some circumstances the Council has a power to make a Management Order, rather than a duty, including the power to take over the management of other properties in certain circumstances.

The Council has powers to charge for administration and other expenses involved with investigation and serving some notices, for example an enforcement notice under the Housing Act 2004.

F. Simple Caution

The Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, The Council is likely to consider prosecution.

A simple caution will appear on the offender's criminal record. It is likely to influence how The Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.

Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

G. Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute The Council has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

Prosecution will only be considered where The Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, The Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- a) the seriousness of the offence;
- b) the risks to public health;
- c) the risks to the safety of individuals or groups;
- d) the risks to the environment, animals and their habitats, air and water and land contamination;
- e) the previous history of the individual, group or business and, where relevant, confidence in management;
- f) the level of culpability of the offender
- g) any action taken by the responsible person/organisation to resolve the situation;
- h) the circumstances of and the harm caused to the victim
- i) the impact on the community
- j) the courses of action that will best serve the community, and protect them or the environment;
- k) whether prosecution is proportionate to the likely outcome;
- l) in the unlikely event of the offender being under 18, the specific youth considerations outlined in the Code for Crown Prosecutors;
- m) Whether sources of information require protecting.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors.

H. Refusal/Suspension/Revocation of Licences

The Council issues a number of licences and permits. The Council also has a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, The Council may take previous breaches and enforcement action into account.

6.2 Explanation of how decisions are made on enforcement action

Our aim is to ensure that any necessary enforcement action is in line with the findings of the Macrory Review, enforcement actions will be taken in order to:

- a) aim to change the behaviour of the offender;
- b) aim to eliminate any financial gain or benefit from non-compliance;
- c) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- d) be proportionate to the nature of the offence and the harm caused;
- e) aim to restore the harm caused by regulatory non-compliance, where appropriate; and,
- f) Aim to deter future non-compliance.

Where appropriate, decisions about enforcement may involve consultation between or approval from:

- Investigating officer(s)
- Service/Team Manager
- Heads of Service
- Corporate Management Team
- Council solicitor(s)

Decision making models may be consulted when making a decision as to the most appropriate action e.g. HSE's Enforcement Management Model. Decision making will include considering risk.

Each case will be kept under review to ensure that the appropriate level of enforcement action is taken. Written records will be kept which explain why a particular course of action has been taken. These records will refer, as necessary, to this policy.

6.3 Explanation of how decisions are communicated to those affected

The Council is committed to provide a timely explanation in writing of any rights to representation or rights to appeal, and practical information on the process involved.

7. Review of this policy

This Policy will be reviewed in the light of experience and in light of any relevant legislative changes by the relevant Service Managers. Where changes are required these will be referred through the appropriate management process.

To ensure this policy continues to be suitable for business and community of Waverley, it will be necessary to review its effectiveness periodically.

It is essential to gain feedback from those who have been subject to enforcement action and where appropriate, the business or community affected by an infringement. Ongoing feedback shall be used and complaints data will be collated.

Feedback will be sought from the wider community, and from businesses through the Waverley Business Forum. Awareness of the policy, within the business community, will be assessed as part of this feedback process.

8. Comments and Complaints

Details of processes for complaints and appeals

We want to resolve your complaint as soon as possible. If you have a problem with a Council Service, please talk to the member of staff or contact the Manager of the Service concerned (for contact details please see Appendix A). They may be able to resolve the issue straight away.

If you are unsatisfied with the service from the Council you can make a complaint via [the Council's Complaints Procedure](#) available on the Council Website or on request.

If it is not possible to speak to a member of staff or you prefer to contact us in a different way, you may do so:

By phone. See Appendix A for direct contact numbers of services covered by this policy or call 01483 523333.

In person. You can call into the office during working hours. Waverley Borough Council, The Burys, Godalming, Surrey, GU7 1HR.

By email. See Appendix A for email addresses of Service Managers.

Online Complaints Form on our website [on line complaints form](#)
www.waverley.gov.uk

By letter. You can write to the service concerned at Waverley Borough Council, The Burys, Godalming, Surrey, GU7 1HR.

Where enforcement notices are served, detailed information will be provided to the person concerned regarding their statutory rights of appeal. The information will include, where appropriate, the necessary forms.

If you feel that the Council has failed to act in accordance with the Regulators Code the Council's Complaints Procedure detailed above should be used.

What do I do if I am still unhappy?

If you remain unhappy after the final stage of Waverley's complaints procedure, you can take your complaint to an ombudsman.

Housing complaints

If your complaint concerns a housing matter, you can make your complaint to the Housing Ombudsman.

Contact details for the Housing Ombudsman are:

Housing Ombudsman Service
81 The Aldwych
London
WC2B 4HN

Tel: 0300 111 3000

Email: info@housing-ombudsman.org.uk

All other complaints

You can complain to the Local Government Ombudsman.

Contact details for the Local Government Ombudsman:

PO Box 4771
Coventry
CV4 0EH

Text 'call back' to: 0762 480 3014

Tel: 0300 061 0614

Please note that before raising your concerns with the Local Government Ombudsman or the Housing Ombudsman, you should give Waverley a chance to resolve your complaint.

**This Enforcement Policy supersedes and replaces
all earlier enforcement policies relating to
Waverley Borough Council Regulatory Services.**

Appendix A: Teams Responsible for the Council Services Covered by this Enforcement Policy

Environmental Health (Food, Health & Safety, Environmental Protection, Pest Control)

Victoria Buckroyd, Environmental Health Manager

Telephone 01483 523393

Email environmentalhealth@waverley.gov.uk

Environmental Services (Waste & recycling, parking)

Jennifer Carson, Environmental Services Manager

Telephone 01483 523397

Email Jennifer.carson@waverley.gov.uk

Licensing

Emma McQuillan, Democratic Services Manager

Telephone 01483 523351

Email emma.mcquillan@waverley.gov.uk

Private Sector Housing

Simon Brisk, Private Sector Housing Manager

Telephone 01483 523421

Email simon.brisk@waverley.gov.uk



STREET TRADING IN WAVERLEY POLICY

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1. General Guidelines

- 1.1. This Policy will guide the Council when it considers applications under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. The Council has adopted this legislation and streets have been determined as either 'consent' or 'prohibited' (Appendix I); also available on the Council's website. This means that anyone who wishes to trade on a consent street (which includes a road, footway or other area to which the public have access without payment) must hold a street trading consent. The definition does not include buildings themselves or commercial premises.
- 1.2. The aim of the Street Trading in Waverley Policy (the Policy) is to prevent obstruction of the streets of the Borough and ensure the safety of persons using them. In doing so, it recognises the importance of local businesses to the local economy and that occasional, community-run events and those of a similar nature, are important factors in the life of Waverley. The Policy also seeks to ensure that activities do not cause nuisance or annoyance to the people of the area.
- 1.3. To help deal with applications quickly and to allow applicants to know at an early stage whether their application is likely to be supported Waverley Borough Council has adopted this policy. The Council aims to provide a clear, consistent service for users.
- 1.4. For clarification:
 - Land adjacent to the street may also be included according to local circumstances
 - There are some exemptions from requiring a consent to trade (for example newspaper vendors and 'Big Issue' sellers)
 - Street Trading is defined as "the selling or exposing or offering for sale of any article (or living thing) in a street", and
 - any queries regarding the above can be dealt with by the Environmental Health service on a case by case basis.
- 1.5. Schedule 1 of the policy deals with applications from individuals. Certain community-run events, charitable events or those of a similar nature are the subject of special provisions in Schedule 2 of the Policy.

2. Schedule 1 – Individual Applicants

- 2.1 Waverley's Licensing and Regulatory Committee is made up of 12 Members of the Council. Applications for street trading consents that fall within this policy are delegated to the Environmental Health Manager. Applications that fall outside this policy or those which attract relevant objections will be determined by the Licensing & Regulatory Committee. A relevant objection is one made by a person, business or body that is likely to be directly affected by a successful application. In addition, the objection must not be vexatious or frivolous and should concern itself

only with matters likely to be affected by a successful application. The Head of Policy and Governance will determine whether an objection is relevant according to its merit and any benefit of doubt will be given to the objector.

- 2.2 The police, highways authority and fire service are always consulted over any application and a 28 day consultation period will normally be allowed. Wherever possible, local Ward Councillors, Chambers of Commerce and Town or Parish Councils, together with any relevant Portfolio Holder or Committee Chairman, will also be notified of an application – public notification will be achieved through the Council’s webpages.
- 2.3 Where an applicant has not given sufficient notice, consent will not normally be granted unless agreed by the Head of Service, Executive Director and Chairman of the Licensing & Regulatory Committee on receipt of satisfactory responses from the police, fire and highways authorities.
- 2.4 In considering any application for the grant or renewal of a street trading consent the following issues will be taken into account before determination:
 - 2.4.1 *Public order*
Whether the street trading activity or activities represent, or are likely to represent, a substantial risk to public order
 - 2.4.2 *Public nuisance*
Whether the street trading activity or activities represent, or are likely to represent, a substantial risk of nuisance to the public from noise or misbehaviour. Particular regard to this will be had in respect of consents in predominantly residential areas and due regard will be had to the character of the neighbourhood.
 - 2.4.3 *Public safety*
Whether the location of the street trading activity or activities represent, or are likely to represent, a substantial risk to the public from the point of view of obstruction, fire hazards or unhygienic conditions, or danger that may occur when a trader is accessing the site.
 - 2.4.4 *Needs of the area*
An applicant for the new grant of a Schedule 1 street trading consent shall provide a copy of a map or plan showing all streets and other public areas within a radius of half a mile (800 metres) from the proposed location of the site. The map or plan shall be a proper Ordnance Survey map, or of equivalent or similar standard, to a scale of 1:5000. It shall clearly indicate the position of the proposed site and indicate the locations of other street traders and outlets already trading in similar commodities

to those proposed for sale. The applicant must deliver notices to traders and premises thus identified and to the nearest six premises (being residential, commercial or otherwise) to the proposed site giving details of the application.

- 2.5 In determining an application the sufficiency of other trading outlets to serve the needs of an area will always be considered. A new consent is unlikely to be granted where it is considered that adequate like provision already exists. For special events falling under schedule 2 of this policy the needs test may be exempted where appropriate.

3. Schedule 2 - Community and similar events

- 3.1 At such special events the Council will issue one Consent to the person organising the community or similar event, either on an annual basis for multi-use sites or on an occasional basis for single-use events. This policy is aimed at promoting and supporting such events and encouraging traders to attend. A schedule 2 event can include a street or series of linked streets under one Consent.
- 3.2 The Consent will relate to the duration of the special event and may include specific conditions, in addition to Standard Consent Conditions, according to the individual merits of the event. Where fees are at the discretion of Local Authority, such as for Street Trading Consents, the Council is able to recover the costs associated with the authorisation scheme as long as they are reasonable, proportionate and do not exceed the cost of the procedures. In arriving at fees, the Council may charge a lesser amount – Waverley reduces the charges for Schedule 2 applications in order to promote and support such activities.
- 3.3 Community and similar events will normally be organised by a Town or Parish Council, Waverley Borough Council or by a recognised group or charity with aims of engaging with and providing support to the local community. Each special event application will be judged according to its merit and any applications which fall outside this policy, or those that attract relevant objections (see Schedule 1) will be determined by the relevant Sub-committee.
- 3.4 Special event applications would typically, but not exclusively, include:
- Local Charity events
 - Community fairs and craft events
 - International markets
 - Events celebrating local anniversaries

4. General information – in all cases

4.1 Decisions

4.11 Following the determination of an application the Council will notify the applicant of the decision. Determinations made at Committee will be confirmed in writing and published on the Council's webpages.

4.2 Renewals

4.2.1 Consents are normally issued for a set date or dates, or a period of up to one year. Applicants who wish to continue trading should submit renewal applications at least one month prior to expiry of any current Consent. Renewals are normally allowed but further consultations may be needed if there are causes for concern or if the Consent operation has been the subject of complaint.

4.3 Variations

4.3.1 Holders of a Consent may wish, from time to time, to vary it - for example by requesting a change of trading hours. Consents will specify the location or area to which they apply – a request to vary this will be treated as a new application for the new location.

4.4 Fees

4.4.1 An annual fee is payable for Street Trading Consents and payment should be made on application. A full refund is given should an application be refused. Fees are reviewed annually and published on the Council's website.

4.5 Conditions

4.5.1 Consents will carry Standard Consent Conditions (Appendix II) in all cases in order to promote public safety and avoid obstructions, nuisance and annoyance. Other conditions may be attached to a Consent and will be relevant to the category of Consent issued and the nature of the local environment. A pool of typical conditions, relating to operating hours, sites, locations, goods offered, safety, refuse collection, etc. is shown at Appendix III. A Consent may also attract conditions in addition to or instead of those found in the pool of conditions according to its individual merit.

4.6 Appeals

4.6.1 The governing legislation does not allow for appeals and grounds for refusal need not be given. However, in order to ensure the process is open, fair and transparent, if an application is refused reasons will be given. Officers will refer applications to the Licensing & Regulatory Committee if not minded to grant the application.

4.7 Enforcement

- a. The Council's Environmental Health Service aims to work closely with other enforcement authorities and agencies
- b. Obtaining a Consent does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Planning controls, and organisers should ensure all such permissions, etc. are in place.
- c. Where street trading activities are conducted without appropriate Consents the Council will look to gather evidence and take appropriate enforcement action in accordance with its Enforcement Policy
- d. If the Council feels there is an issue with public order or threat to public safety in any particular instance it will call for assistance from Surrey police
- e. The Council may call for assistance from appropriate CCTV recordings when dealing with such issues
- f. The Council will enforce the provisions of all appropriate legislation and will ask persons causing a nuisance to cease the activity that they are conducting and leave the area.
- g. Enforcement decisions will be made on a case by case basis in light of the Council's Enforcement Policy.

4.8 Review Procedures

4.8.1 This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of street trading generally or as a result of local considerations within Waverley. In any case, this Policy will be reviewed within five years of adoption.

NOTES

Human Rights

The Human Rights Act 1998 obliges the Council to comply with the provisions and protections of the European Convention on Human Rights. It is unlawful for a local authority to act in a way which interferes disproportionately with a convention right. The Sub-committee will have regard to the rights protected by the European Convention on Human Rights when exercising its licensing functions.

List of Prohibited and Consent Streets in Waverley

PROHIBITED STREETS

Farnham

Victoria Road

Union Road

East Street, from the traffic lights at its junction with South Street up to the east end of Dogflud Way (excluding the area immediately fronting Nos 1 – 6 Woolmead)

Dogflud Way

South Street

Bear Lane, from the traffic lights at its junction with South Street to the junction of Woolmead Road

Park Row

Woolmead Road

West Street, from The Borough to its junction with The Hart

A31 from Willey Mill through the Farnham Bypass to the Shepherd and Flock Roundabout

A31 from the Shepherd and Flock in an easterly direction to the Waverley Borough Council boundary

A325 Wrecclesham Road, from the Coxbridge Roundabout to the Railway Bridge

Odiham Road from the junction with Folly Hill to the county boundary

Tilford

Tilford Road between All Saints Church and the River Wey (South Branch)

Tilford Road (East Side of the Green) from its junction with Tilford Road to The Street

The Street between its junction with Tilford Road and Whitmead Lane

Godalming

Wharf Street, Godalming from its junction with High Street to its junction with Flambard Way

Woolsack Way

Farncombe Street, from its junction with St Johns Street to the junction of Nightingale Road

St Johns Street

Summers Road

Station Road, Farncombe

Cranleigh

Dewlands Lane

Ewhurst Road, from the junction of High Street to the junction of Mead Park Drive

Mead Road, from the junction of Ewhurst Road to the junction of Bridge Road Horsham Road to the Borough boundary

Overford Drive, from its junction with Horsham Road to the junction of Little Manor Gardens

Church Lane
Knowle Lane, from its junction with the High Street to the access at the rear of Stocklund Square
Victoria Road
St James's Place
Guildford Road from the roundabout junction of the B2128 and B2130 to the entrance to Manfield Park Industrial Estate
Elmbridge Road from the roundabout junction of the B2128 and B2130 to the entrance to Hewitts Industrial Estate
Park Drive to the junction with Cranbrook Terrace

CONSENT STREETS

Cranleigh

High Street
Rowland Road
The Common

Farnham

Castle Street
The Borough
Downing Street
Longbridge
West Street from its junction with The Hart, westward to its junction with Crondall Lane
Bear Lane, from its junction with Woolmead Road to its junction with High Park Road

Godalming

High Street
Church Street
Great George Street
Moss Lane
The whole of Crown Court
Queen Street
The whole of Angel Court

Haslemere

High Street
Shepherds Hill
Petworth Road, from its junction with the High Street to the junction of Swan Barn Road
Lower Street
Weyhill
St Christopher's Road
St Christopher's Green
Junction Place; Lion Lane, from its junction with Lion Green to the junction with Underwood Road
Lion Mead, from the junction of Lion Green to the junction of Mead Way

Kings Road from its junction with Lower Street to the junction with Courtshill
Road
Cedar Court
Tanners Lane from its junction with Lower Street to the junction with Oaklands
Sandrock
West Street
Well Lane
College Hill
Hill Road from its junction with Shepherds Hill to the junction with Park Road
Cobden Lane
Access road to High Street Car Park

Conditions

Standard Consent Conditions

(to be used on all Consents issued)

1. 'Consent Street' means a street in which street trading is prohibited without a Consent from Waverley Borough Council
2. 'Prohibited Street' means a street in which street trading is prohibited at all times
3. 'Street' includes any road, footway, lay-by or other open area to which the public have access without payment
4. 'Street Trading' means (generally) the selling, or exposing or offering for sale, any article in a street
5. The trader shall not cause any obstruction of the street or any danger to any persons or vehicles using the street
6. The trader shall not cause any nuisance or annoyance to any other person, whether that person is using the street or otherwise, or to the occupier of any building in proximity to the consent site
7. The council may at any time vary the conditions of a street trading consent or revoke the consent at any time
8. Public liability insurance providing cover to a minimum amount of 5 million pounds must be in place for the consent site and a certificate of this must be produced on request of an officer of Waverley Borough Council
9. An individual trader shall conspicuously display the council issued Consent at all times whilst trading; for special events, the Consent will be displayed in at least two conspicuous places – typically these shall be attached to the first and last stalls
10. The Consent holder must provide facilities for use by him/herself and customers to collect any waste, refuse or litter. The refuse storage must be of a substantial construction, waterproof and animal-proof. All must be removed from the trading location at the end of each day's trading and properly disposed of, or if the amount of waste and refuse warrants it, when the container is full – whichever is the sooner.
11. The Consent holder shall ensure that all adjacent areas (except the carriageway if open for vehicular use) to a distance of 10 metres be kept free of litter and refuse at all times whilst on site.

12. Authorised vehicles must be roadworthy, have current relevant documentation and internal and external appearance of vehicles &/or stalls shall be maintained in a clean, neat and tidy condition.
13. Any stall or vehicle used for street trading must be immediately removable at all times in the event of an emergency, or at any other time, be removed at the request of any officers of the emergency services or officer of the Council.
14. The name and address of the operator and other address at which the stall or authorised vehicle is normally kept or garaged must be conspicuously and legibly displayed upon it in a place where the public may readily view it.
15. No stall or vehicle shall remain situated for longer than one hour after the authorised trading time(s).
16. No Consent holder shall trade at his / her authorised location on dates when road closure directives are in place for special events otherwise than with the permission of the organisation applying for same.
17. The Consent is non-transferable.
18. Where a structure or vehicle is not removed at the end of trading, no additional permanent or semi-permanent additions or paving shall be erected or constructed adjacent to the structure or vehicle.
19. Failure to comply with any conditions attached to the Consent may result in the revocation of such consent.

Pool of Conditions

Conditions applicable to special Events / Markets, etc

The Consent holder shall keep records of each stallholder present, to include the stall's site, name (and company name), address, vehicle registration and contact telephone number. This must be produced on the request of an officer from the Council

Other Conditions

There shall be no available means of attracting attention for the purposes of trading or any stands or signs away from the consent site

The consent holder must not permit the sale of offensive weapons, including imitation firearms, firearms, airguns, swords and crossbows

The Consent does not imply or give any other permission, consent, licence or authorisation to trade in any other products other than those granted on application or renewal

The trader shall not exhibit on the site any advertising signs, posters or such like except as may be approved by the Council

No animal shall be present on any stall or vehicle

The trader is not permitted to hold any auction or like sale

The trader shall reimburse the Council's costs in repairing all damaged caused by the trader's occupation and use of the consent site

There shall be no discharge of waste water or other liquid waste onto the consent site or surrounding areas

No form of amplified music shall be permitted

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