

To: All Members of the EXECUTIVE

When calling please ask for:

Fiona Cameron, Interim Democratic Services
Manager

Legal and Democratic Services

E-mail: fiona.cameron@waverley.gov.uk

Direct line: 01483 523226

Calls may be recorded for training or monitoring

Date: 6 January 2023

Membership of the Executive

Cllr Paul Follows (Chair)
Cllr Peter Clark (Vice Chair)
Cllr Andy MacLeod
Cllr Penny Marriott
Cllr Mark Merryweather

Cllr Kika Mirylees
Cllr Nick Palmer
Cllr Paul Rivers
Cllr Liz Townsend
Cllr Steve Williams

Dear Councillors

A meeting of the EXECUTIVE will be held as follows:

DATE: TUESDAY, 17 JANUARY 2023

TIME: 6.00 PM

PLACE: COUNCIL CHAMBER, COUNCIL OFFICES, THE BURYS,
GODALMING

The Agenda for the Meeting is set out below.

Yours sincerely

STEPHEN RIX

Executive Head of Legal & Democratic Services (Interim) & Monitoring Officer

Agendas are available to download from Waverley's website (www.waverley.gov.uk/committees), where you can also subscribe to updates to receive information via email regarding arrangements for particular committee meetings.

Alternatively, agendas may be downloaded to a mobile device via the free Modern.Gov app, available for iPad, Android, Windows and Kindle Fire.

Most of our publications can be provided in alternative formats. For an audio version, large print, text only or a translated copy of this publication, please contact committees@waverley.gov.uk or call 01483 523351.

The meeting can be viewed remotely via Waverley Borough Council's [YouTube channel](#) or by visiting www.waverley.gov.uk/webcast .

NOTES FOR MEMBERS

Contact Officers are shown at the end of each report and members are welcome to raise questions, make observations etc. in advance of the meeting with the appropriate officer.

Prior to the commencement of the meeting, the Leader, Deputy Leader or an appropriate Portfolio Holder to respond to any informal questions from members of the public, for a maximum of 15 minutes.

[Questions will be taken in the order in which questioners register with the Democratic Services Officer prior to the start of question time. When read out, each question must be concluded within 2 minutes. In the event that it is not possible to give a verbal response, a written response will be provided following the meeting.]

AGENDA

1. **APOLOGIES FOR ABSENCE**

To receive apologies for absence.

2. **MINUTES**

To confirm the Minutes of the Meeting held on 29 November 2022.

3. **DECLARATIONS OF INTERESTS**

To receive from members, declarations of interest in relation to any items included on the agenda for this meeting, in accordance with the Waverley Code of Local Government Conduct.

4. **QUESTIONS FROM MEMBERS OF THE PUBLIC**

The Chairman to respond to any questions received from members of the public for which notice has been given in accordance with Procedure Rule 10.

The deadline for receipt of questions is 5pm on Tuesday 10 January 2023.

5. **QUESTIONS FROM MEMBERS OF THE COUNCIL**

The Chairman to respond to any questions received from Members in accordance with Procedure Rule 11.

The deadline for receipt of questions is 5pm on Tuesday 10 January 2023.

The following question has been received from Cllr Jenny Else, Elstead & Thursley Ward:

“As you are aware, Waverley Borough Council have a duty, as responsible landlords, to ensure that their properties are fit for habitation.

My questions to the Executive are:

- When was the last full condition survey of Waverley’s dwellings in Westhill, Elstead carried out?
- Who carried it out?
- What measures were recommended?
- What works have been programmed to execute any recommendations?
- What progress has been achieved?
- How do these properties rate under the HHSRS and the EPC?
- Why are there properties with roofs still unfelted and poorly insulated in our ownership in 2023?
- How does this correlate to WBC’s commitment to carbon neutrality?”

6. LEADER'S AND PORTFOLIO HOLDERS' UPDATES

7. SUSTAINABLE PROCUREMENT POLICY (Pages 7 - 18)

[Portfolio Holder: Portfolio Holder for Finance, Assets & Commercial Services]

Following the last procurement audit, an audit recommendation was made that a procurement strategy should be drafted to ensure officers are procuring in a manner which supports the corporate strategy. Additional procurement elements are intended to be built into the councils updated economic strategy policy.

The policy places a requirement, where appropriate and proportionate, on suppliers to meet various requirements, which broadly include reporting on, mitigating against, preventing and minimising negative impacts on the environment.

The policy also expands on officers’ obligations under The Public Services (Social Value) Act 2012 to consider the wider societal benefits which can be incorporated into their contracts as part of the procurement process.

Recommendation

That the Sustainable Procurement Policy be endorsed by the Executive and adopted.

8. UPDATE TO THE LOCAL PLANNING ENFORCEMENT PLAN (Pages 19 - 52)

[Portfolio Holder: Portfolio Holder for Enforcement, Operations and Brightwells, Portfolio Holder for Planning and Economic Development]

The updated Local Planning Enforcement Plan, set out at Annexe 1, sets out how the Council intends to respond to individual complaints about breaches of planning control, the process for investigating and recording complaints and the timescales involved. The overarching principle of this Plan is that the Council will provide a fair, proportionate, and consistent enforcement service to protect the environment of the Borough and the amenities of the people who live and work in Waverley.

Recommendation

It is recommended that the Executive, after considering the comments made by the Services Overview & Scrutiny Committee, agree to adopt the updated Local Planning Enforcement Plan.

9. LEISURE MANAGEMENT CONTRACT TENDER (Pages 53 - 56)
[Portfolio Holder: Portfolio Holder for Health, Wellbeing, Parks and Leisure]

This report provides an update on the current position of the Leisure Management Contract tender and to approve the award of the contract following completion of the procurement process.

Recommendation

It is recommended that the Executive:

1. Approve the award of the proposed contract to the top ranked bidder, following completion of the procurement process; and
2. Delegate authority to the Strategic Director for Transformation & Governance to complete all required contractual documentation and approve execution of the contract documentation.

10. HOUSING REVENUE ACCOUNT BUDGETARY REQUEST - CARBON MONOXIDE ALARM INSTALLATIONS (Pages 57 - 60)
[Portfolio Holder: Portfolio Holder for Housing (Operations)]

To request that Executive acknowledges and approves several budgetary increases and changes that have been unforeseen and unavoidable during the current financial year.

Recommendation

That the Executive approves a virement of £125,000 from the Stock Survey Budget to fund the carbon monoxide alarm installations.

11. HRA AFFORDABLE HOUSING - OCKFORD RIDGE - SALE OF 3 SHARED OWNERSHIP HOMES (Pages 61 - 66)
[Portfolio Holder: Portfolio Holder for Housing (Delivery)]

This report

- provides members with an overview of the delivery of homes at Laurel Close, Ockford Ridge, Godalming and details of three homes which are

- in a position to be sold as affordable shared ownership.
- Seeks Executive approval to the recommendation to sell the affordable shared ownership homes delivered to support meeting the need for affordable housing for those of all income levels.

Recommendation

It is recommended that

- Executive consider this report and information provided in Exempt Annexe 1 and approve the sale of the three shared ownership homes at Laurel Close, Ockford Ridge, Godalming, giving the Executive Head of Legal & Democratic Services authority to approve the final form of the agreements.
- Executive approve delegated authority for Head of Housing Services in consultation with Portfolio Holders for Housing (Delivery and Operations) to approve the future sale of percentages shares.

12. PRIVATE SECTOR HOUSING ENFORCEMENT POLICY (Pages 67 - 108)
 [Portfolio Holder: Portfolio Holder for Housing (Operations), Portfolio Holder for Enforcement, Operations and Brightwells]

To introduce a new enforcement policy specifically for the private sector housing team to incorporate the recent changes to legislation affecting the private rented sector and to propose a charging structure for financial penalties imposed as a result of formal action to improve housing standards.

Recommendation

That the new Private Sector Housing Enforcement Policy is adopted by the Council.

13. REVIEW OF EXECUTIVE WORKING GROUPS - CIL ADVISORY BOARD AND LANDLORD SERVICES ADVISORY BOARD (Pages 109 - 114)
 [Portfolio Holder: Leader of the Council and Portfolio Holder for Policy and Governance, Communications and Emergency Response]

This report seeks the Executive's agreement to changes to the Terms of Reference of the CIL Advisory Board and the Landlord Services Advisory Board.

Recommendation

It is recommended that:

1. With respect to the CIL Advisory Board, the quorum is revised to 2 Executive members and 2 non-Executive members.
2. With respect to the Landlord Services Advisory Board, the proposed changes to the membership and terms of reference are agreed, as set out in Annexe 1.

14. USE OF SPECIAL URGENCY PROCEDURES (Pages 115 - 118)
[Portfolio Holder: Leader of the Council and Portfolio Holder for Policy and Governance, Communications and Emergency Response]

This report provides an update to the Executive on the use of the procedure for taking an urgent key decision, in accordance with the provisions of Part 4.5, Paragraph 11.4 of the Council's Constitution.

Recommendation

That the Executive note the use of the urgency procedure for the taking of a key decision on 1, 29 and 30 November 2022.

15. EXCLUSION OF PRESS AND PUBLIC

To consider the following recommendation on the motion of the Chairman, if required:

Recommendation

That, pursuant to Procedure Rule 20, and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following item(s) on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during these items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972.

16. ANY OTHER ISSUES TO BE CONSIDERED IN EXEMPT SESSION

To consider matters (if any) relating to aspects of any reports on this agenda which, it is felt, may need to be considered in Exempt session.

**For further information or assistance, please telephone
Fiona Cameron, Interim Democratic Services Manager, on 01483
523226 or by email at fiona.cameron@waverley.gov.uk**

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

Sustainable Procurement Policy

Portfolio Holder: Cllr Mark Merryweather, Portfolio Holder for Finance, Assets & Commercial Services

Head of Service: Peter Vickers, Head of Finance and Property

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 Following the last procurement audit, an audit recommendation was made that a procurement strategy should be drafted to ensure officers are procuring in a manner which supports the corporate strategy. Additional procurement elements are intended to be built into the councils updated economic strategy policy.
- 1.2 Having reviewed the corporate strategy it was felt the only objective that the procurement function could adequately influence was the council's climate agenda.
- 1.3 As part of a working group comprised of other District and Borough officers, Orbis procurement and a wider array of stakeholders, the framework for the sustainable procurement policy was produced, to then be tailored to each specific councils' needs.
- 1.4 The policy places a requirement, where appropriate and proportionate, on suppliers to meet various requirements, which broadly include reporting on, mitigating against, preventing and minimising negative impacts on the environment.
- 1.5 The policy also expands on officers' obligations under The Public Services (Social Value) Act 2012 to consider the wider societal benefits which can be incorporated into their contracts as part of the procurement process.
- 1.6 Officers should be informed and aware of the cost implications of any additional requirements placed on bidders and ensure financial viability before commencing a procurement.

2. Recommendation

That the policy be endorsed by the Executive and adopted.

3. Reason for the recommendation

To adopt a sustainable procurement policy to reflect best practice in the industry and support the Council's corporate objectives.

4. Relationship to the Corporate Strategy and Service Plan

4.1 The policy directly supports the Council's corporate objectives.

5. Implications of decision

5.1 Resource (Finance, procurement, staffing, IT)

No direct financial implications arise from this report. Implementation of the policy will be achieved using current resources.

Through compliance with the CPR's Waverley will continue to seek achievement of value for money with public funds.

5.2 Risk management

5.3 Legal

The Council is required to secure best value and follow relevant legislation in undertaking procurement, ensuring open competitive approaches. However the Council is entitled through a number of enactments including the Public Services (Social Value) Act 2012 to take into account some factors which are not directly related to the straight delivery of the contract (eg wider than price and direct performance matters). Accordingly the proposed policy fits within this framework balancing the need to secure best value with the Councils wider aspirations and corporate framework.

5.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report.

5.5 Climate emergency declaration

Directly supports the councils climate ambitions.

6. Consultation and engagement

6.1 Input sought from all council services and external stakeholders

7. Other options considered

7.1 No other options considered

8. **Governance journey**

- 8.1 The policy has been via Executive Briefing, Climate Advisory Board and the Resources O&S.

Background Papers

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

CONTACT OFFICER:

Name: Patrick Tuite

Position: Procurement Officer

Telephone: 0148 3523149

Email: Patrick.tuite@waverley.gov.uk

Agreed and signed off by: 27.10.2022

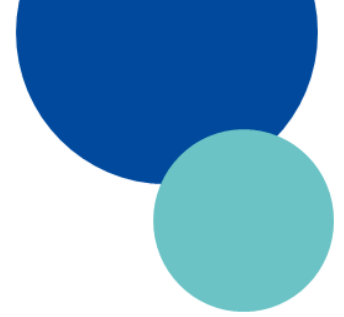
Legal Services:

Head of Finance:

Strategic Director:

Portfolio Holder:

This page is intentionally left blank



Waverley Borough Council
**Sustainable Procurement
Policy**

Latest version number: 0.1
Latest publication date: XX.XX.XX



Document Information & Governance

Approval & Publication:

Approving Body	Approval route requirement	Publication Type	Publication requirement	Review frequency	Document owner	Next Review Date
		Internal/ external				

Version Control Information:

Version	Version Status	Date	Version Comment	Version Author
0.1	Draft	22/07/22	Initial draft with comments sought from all services	PT
0.1	Draft	06/10/22	Comments incorporated from Climate Advisory Board	PT
0.1	Draft	21/11/22	Comments incorporated from Resources O&S	PT

Contents

Document Information & Governance	2
Introduction	3
Background	3
Scope and Aims	4
Expectations	5
Climate Change Mitigation	5
Organisational culture and reporting	5
Sustainable Resource Use and Consumption	6
Protection and Restoration of Biodiversity	6
Social Value	6
Compliance	7
Definitions	8

Introduction

This document draws upon the work of

- a working group consisting of environmental and procurement officers from other District and Borough councils as well as Orbis Procurement (representing Surrey County Council, East Sussex County Council and Brighton & Hove City Council);
- scrutiny of ethical and sustainable procurement policies of other organisations;
- comments from members of the Waverley Borough Council Climate Emergency Board and others.

Sustainable procurement is the commissioning, purchase and management of goods, works and services in a way that reduces or negates negative impacts within the supply chain. This policy should be read in conjunction with the council's Strategic Response to the Climate Emergency - Carbon Neutrality Action Plan 2020 – 2030 and the councils Contract Procurement Rules.

Background

Over 300 councils in the UK have declared a climate emergency with the majority pledging to better the 2050 requirements set by the government. On 18 September 2019 Waverley Borough Council declared a climate emergency acknowledging the urgency to act and committed to becoming a carbon neutral council by April 2030.

Data released by [Oxygen Finance](#) in April 2022 stated that Nationally, Local Authority supply chains are responsible for over 10% of UK carbon emissions which equates to 43,666,540 tonnes of CO2 emitted during 2020/2021.

Local Authority supply chains are estimated to account for up to 96% of their total carbon footprint. Emissions (90% in Waverley's case) from goods, works and services procured by the council form part of the "scope 3" emissions and, where possible, we are seeking to decarbonise these in line with council specific carbon reduction targets.

The procurement of goods, works and services is an area within the councils influence which is capable of driving significant carbon reductions and improving the natural environment. Officers should refer to the councils Greenhouse Gas Emissions Annual Report to better understand the services which are significant contributors to the councils emissions.

The council is committed to ensuring their operations are environmentally sustainable and resilient to future change. The council recognises that a healthy and properly functioning environment is a foundation of a thriving economy, employment stability, prospering communities and personal wellbeing. The council is aware that their procurement of goods, works and services will have environmental implications, both in their respective local areas and around the planet and, as a result, the council is actively working to reduce and minimise these negative effects where possible.

This policy will set out the Councils' expectations of prospective suppliers in line with their own environmental commitments. In addition to this it will also establish how sustainable procurement is

broader than just environmental considerations and encompasses the benefits that can be achieved and supported by including social value in the councils award criteria, as defined in The Public Services (Social Value) Act 2012.

As a result of this policy, environmental and societal considerations will be built into the procurement and delivery of goods, works and services through specifications, tender questions, evaluation criteria, key performance indicators and clauses of contracts.

This policy will be reviewed by officers on an annual basis and updated as and when required.

Scope and Aims

The scope of this policy covers the councils expectations of prospective suppliers in procurement activities performed by the council including commissioning, procurement and contract management.

This policy aims to minimise negative and promote positive environmental and societal impacts, where possible, within the councils supply chain. This will be done by:

- Engaging with the market to identify opportunities and encourage innovative solutions;
- Evaluating social value and environmental implications and their relation to council targets in commissioning, design and procurement processes including qualification and evaluation of bidders;
- Building commitments and targets into relevant supplier contracts, these may include carbon focused outcomes that align with the councils' carbon targets for example;
 - Monitoring and measuring supplier performance against contractual environmental commitments; and
 - Seeking opportunities for continuous improvement with suppliers throughout the life cycle of the contract.

The measures referenced in this policy are not exhaustive and if officers are aware of subject specific measures that can be taken, these should be considered as part of the procurement process. The expectation is that this policy will be in addition sector specific best practice and all applicable legislation, including but not limited to suppliers obligations under the Modern Slavery Act 2015 and the Equality Act 2010.

Expectations

Where relevant, affordable and appropriate to the contract and decided on a case by case basis, the council expects prospective suppliers to:

Climate Change Mitigation

- Commit to mitigating impact on climate change throughout operations through carbon reduction initiatives as well as encourage and support this practice throughout their own supply chains, with the ultimate ambition to becoming a net zero carbon organisation by a defined date;
- Minimise the transport requirements associated with any contract through local sourcing and servicing, efficiency improvements or transport alternatives (such as using postal services, active transport or electric vehicles) to improve air quality and reduce air pollution and carbon impact of transport operations;
- Use and procure energy-efficient processes, products, buildings and services and source electricity from renewable energy sources, green energy tariffs and low carbon fuels;
- Ensure that goods, works and services take into account changing weather impacts as a result of climate change (such as severe storms, heat waves and flooding) to mitigate against future redundancy and ensure resilience;
- Seek opportunities to work with the council to improve mitigation efforts on environmental impacts;

Organisational culture and reporting

- Increase organisational understanding in the importance of the environment and approaches to minimise negative impacts through staff training and, where appropriate, supplier training;
- Meet requirements for environmental impact improvement and reporting (such as carbon and local air pollutant emission reduction) which have been built into the specification of contracts, where appropriate, and measure and report on these requirements throughout the contract lifetime, taking corrective and remedial actions if necessary;
- Provide requested information and details of environmental impacts (including carbon emissions scopes 1 and 2 with estimations on scope 3), corporate commitments and plans for improvement during the procurement process;
- Declare any related organisational Environment Agency enforcement actions, or actions taken by similar bodies, within the previous 3 years as a result of environmental incidents or breaches in environmental permits and any associated remedial actions;
- Explore the possibility of paying staff the Real Living Wage as defined by the Living Wage Foundation;

Sustainable Resource Use and Consumption

- Avoid and minimise consumption and waste through smart design and innovation where products, packaging and assets can be easily reused, repurposed, repaired or recycled (removing single-use plastics, where there are suitable alternatives) without jeopardising the quality of products or services provided;
- Treat and manage waste following all legal requirements and industry best practice throughout the supply chain;
- Adopt and promote circular economy principles throughout product life cycles with considerations to making and using products made from non-virgin, repurposed and local materials (where possible);
- Make, use and promote products made from natural, biodegradable and renewable materials where appropriate and avoid the use of toxic chemicals;
- Where possible and appropriate, avoid the use of materials which are scarce or at risk of becoming so and find sustainable alternatives;

Protection and Restoration of Biodiversity

- Avoid and minimise the use of products, chemicals and materials that cause habitat destruction and degradation (such as deforestation for palm oil), demonstrating industry certifications where appropriate;
- Commit to remove adverse effects on biodiversity and natural habitats, avoiding damage and achieving measurable, long-term and secured biodiversity net gain and restoring natural capital, when possible;
- Support and promote use of products, materials and services that protect and enhance native biodiversity;
- Implement measures to eliminate the escape of pollutants and waste, including litter, associated with service delivery;
- Determine and minimise the risk of negative water impact, with particular focus on water use, waste water and discharges into the water system;
- Have regard to the Clean Air Strategy For Waverley and priority actions needed to improve air quality throughout operations and supply chains;
- Continue to explore innovative solutions to reducing or negating environmental damage as well as promote environmental improvements during the lifetime of contracts.

Social Value

Waverley officers should ensure social value is considered when procuring contracts. The Public Services (Social Value) Act 2012 requires public authorities to have regard to economic, social and environmental well-being in connection with public services contracts, however this requirement should also be considered for works and supply contracts. Where appropriate, social value should form part of the award criteria and be evaluated alongside the other qualitative responses.

Where social value is to be built into a procurement, they should have its own tailored social value question, specific to the nature of the contract, however, examples of social value topics can include;

- The creation of local employment opportunities
- Initiatives involving local residents or institutions such as schools
- Organising or sponsoring community events
- Improving supplier diversity, innovation and resilience
- The delivery of skills based training

Compliance

Prospective suppliers may be asked to provide evidence of environmental initiatives, credentials, industry certifications, plans or commitments at the tender stage (environmental obligations and related KPI's will be contained clearly in the tender documentation) and contract delivery stages. Depending on the procurement, failure to provide these may result in lost scoring opportunities or exclusion from prequalification or tender. Where bidders make commitments as part of their tender response, such as the delivery of apprenticeships, evidence should be provided to ensure that they are delivered.

The council recognise that not all suppliers will currently be able to provide data, credentials, plans or commitments to environmental initiatives due to multiple reasons, such as organisational maturity or size. As a result, the council will aim to work collaboratively with these organisations to understand what options could be taken to support the supplier and improve any environmental considerations, both during the tender process and progressing through the lifetime of contracts.

Where it is decided that the council will work with a provider to assist in implementing environmental changes to the service, methods for how the council will do this will be included in the tender documentation. However, the council will look to gradually increase and improve environmental considerations in future procurement activity as suppliers and sectors grow in environmental maturity.

The council will aim to set performance measures that are proportional and relevant to the contract. Suppliers are expected to meet all performance measures which are built into the contract and will be required to evidence progress on their environmental commitments, which may include reporting on information from other parties in their supply chain (scope 3 emissions and material sources for example). If there is continued or significant failure to meet performance measures and sustainability obligations, remedial actions may need to be taken. This may include, but is not limited to, requests for approved carbon offset project payments, payment reductions, or lastly, contract termination.

In the unlikely event of any significant environmental incident in the supply chain, the supplier is obligated to inform the council as soon as possible. If a supplier is responsible for significant environmental damage (such as a chemical spill or illegal dumping) due to negligence or disregard within their operations, the council will take remedial actions and may seek remedies for incurred costs and retain the right to terminate the contract with the offending supplier if necessary.

Suppliers are encouraged to raise any environmental concerns, feedback or improvement opportunities they have identified with the council. Where viable, the relevant council will seek to explore and action environmental improvement opportunities with suppliers.

Definitions

Biodiversity – Biodiversity describes the variety of all life on Earth, in all its forms, interactions and interconnectedness. It incorporates all habitats and species, both rare and common, and includes genetic diversity within species.

Circular Economy – A model of production and consumption, which involves sharing, leasing, reusing, repairing, refurbishing and recycling existing materials and products as long as possible. In this way, the life cycle of products is extended, to be considered alongside whole life costing.

Climate Emergency – A declaration made by an organisation committing it to take urgent action to reduce greenhouse gas emissions and detrimental actions affecting the stability of the climate. Without action to help mitigate and reverse the effects of climate change, the impacts will be felt across the country, which will affect our services and our most vulnerable residents.

Environment Agency Enforcement Actions – Formal cautions and prosecutions carried out by the Environment Agency to enforce laws and permits that protect the environment.

Environmental Maturity – An organisation's ability to implement more ambitious, complex, robust and resilient environmentally conscious practices. Maturity differs among organisations and industries because of the unique obstacles they each must overcome.

Greenhouse Gases – A gas that contributes to the greenhouse effect and climate change by absorbing infrared radiation. Carbon dioxide, methane, nitrous oxide and chlorofluorocarbons are examples of greenhouse gases. For simplicity in this policy, we use the term 'carbon' as shorthand for all greenhouse gases.

Net Zero – Achieving a balance between the carbon emitted into the atmosphere, and the carbon removed from it. This balance will happen when the amount of carbon we add to the atmosphere is no more than the amount removed.

Scope 1 Carbon Emissions – Those emissions that an organisation makes directly. For example, emissions from fuel that is directly used while running boilers and vehicles.

Scope 2 Carbon Emissions – Emissions coming indirectly from an organisation. This is mainly the generation and distribution of electricity the organisation buys from the National Grid.

Scope 3 Carbon Emissions – Emissions associated with the goods, works and services that are produced elsewhere but consumed by the organisation. This category includes all the emissions the organisation is indirectly responsible for, up and down its supply chain.

Significant Environmental Incident – An event that would need to be reported to the Environment Agency, or similar national body, or where damage is of a nature or quantity which poses a threat to the health or safety of humans, animals or vegetation that is not expected to dissipate within twenty-four hours either naturally or by human intervention.

Social Value – Defined by the Public Services (Social Value) Act 2012 as anything that may improve the economic, social and environmental well-being of the relevant area.

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

Update to the Local Planning Enforcement Plan

Portfolio Holder: Councillor Andy MacLeod (Enforcement, Operations and Brightwells)
Councillor Liz Townsend (Planning and Economic Development)

Head of Service: Gilian McInnes

Key decision: Yes

Access: Public

1. Purpose and summary

- 1.1 The updated Local Planning Enforcement Plan, set out at Annexe 1, sets out how the Council intends to respond to individual complaints about breaches of planning control, the process for investigating and recording complaints and the timescales involved. The overarching principle of this Plan is that the Council will provide a fair, proportionate, and consistent enforcement service to protect the environment of the Borough and the amenities of the people who live and work in Waverley.

2. Recommendation

It is recommended that the Executive, after considering the comments made by the Services Overview & Scrutiny Committee, agree to adopt the updated Local Planning Enforcement Plan.

3. Reason for the recommendation

The National Planning Policy Framework 2021 (“NPPF”) states, at Paragraph 59, that:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. **This should set out how they will monitor the implementation of planning permission, investigate alleged cases of unauthorised development, and take action where appropriate.**”

4. Background

4.1 The current Local Planning Enforcement Plan was adopted in June 2013. This is set out at Annexe 2 to this report. Since its adoption, there have been various updates to the NPPF, and Local Plan (Part 1) has been published. There have also been a number of organisational changes, a new Corporate Strategy and the declaration of a climate emergency. It is therefore necessary to update the Plan to reflect these changes and also the Council's corporate priorities, in order that the Council's Planning Enforcement function can deliver upon these priorities

4.2 The updated Plan at Annexe 1 seeks firstly to bring up to date the original plan by deleting references to out of date documents (such as older versions of the NPPF and a previous Corporate Strategy) and replacing them with references to up to date documents, namely:

- NPPF 2021
- Local Plan (Part 1) 2018
- Waverley Borough Council Corporate Strategy 2020-2025
- Town and Country Planning (General Permitted Development) Order 2015

In updating the Plan to include these central documents, the underpinnings of the Plan will be properly aligned with current Council priorities and objectives.

4.3 Secondly, the updated Plan seeks to provide more detailed information in relation to the Council's enforcement procedures, with an emphasis on putting its limited resources to the best and most effective use through the consistent application of the principles contained within the Plan with the aim of protecting the Borough and its residents from harmful development. It is intended that this updated Plan will be able to better manage the public's understandably high expectations of what the planning enforcement function is able to deliver, and the timeframes associated with certain types of enforcement action.

4.4 Thirdly, the updated Plan provides some accountability to the public which the current Plan does not. It refers the reader to the publication of the Council's quarterly performance report (where the Enforcement Team's performance is detailed) and explains that members of the public can attend the O&S and Executive Committee meetings where this report is discussed.

4.5 Finally, it proposes that the Plan is reviewed and refreshed every two years (or when new legislation comes into force) in view of changes to legislation and priorities.

5. Relationship to the Corporate Strategy and Service Plan

5.1 This updated Plan will seek to promote effective development management, a sense of responsibility and the health and wellbeing of our communities in accordance with the Corporate Strategy and the Service Plan for Planning Development.

6. Implications of decision

6.1 **Resource (Finance, procurement, staffing, IT)**

There are no direct financial implications arising as a result of this report.

6.2 Risk management

Through comments and recommendations from this Committee and an Executive resolution to adopt the updated Plan, the risk of challenges in relation to consistency of approach to planning enforcement matters will be reduced.

6.3 Legal

The Local Planning Enforcement Plan will guide and inform the Council's approach to undertaking planning enforcement in Waverley, and its adoption will assist in ensuring that the Council is able to demonstrate a consistent basis to decisions made in respect of all Planning Enforcement cases.

6.4 Equality, diversity and inclusion

An Equality Impact Assessment has been carried out on the Plan and this has raised no issues or concerns regarding any disproportionate impact on protected characteristic groups or additional groups listed in the impact. Where human rights and the Public Sector Equality Duty (s149 of the Equality Act 2010) become relevant, these will be addressed on a case by case basis, having regard to all relevant legislation.

6.5 Climate emergency declaration

The updated Plan will be aligned with the Council's Corporate Strategy 2020-2025 and its environmental and sustainability objectives that have arisen through the Council's declaration of a climate emergency in 2019. Through effective planning enforcement, the Council will be able to respond consistently and appropriately to harmful, unsustainable development.

7. Consultation and engagement

- 7.1 The updated Plan has been reviewed by the Portfolio Holder for Enforcement, Operations and Brightwells, Councillor Andy MacLeod, and the Portfolio Holder for Planning and Economic Development, Councillor Liz Townsend. It has been subject to the normal internal checks at Head of Service/Director level and with Finance and Legal prior to being presented to this meeting.

The updated Plan was scrutinised by Services Overview and Scrutiny at their meeting on 22 November 2022. This Committee made a number of recommendations:

- (i) That this document is restructured so that standard practice is followed such that there is a policy setting out high level objectives and principles, followed by a plan setting out how this will be implemented.**

Officer comment: The format of the Enforcement Plan is similar to those of other Local Planning Authorities. A policy-like statement could be added at the beginning of the Plan, such as:

'To assess breaches of planning control in a timely manner, to determine appropriate action, and assess whether it is proportionate to undertake formal enforcement proceedings.'

Officers do, however, have concerns in relation to such an addition; this is not a policy document and has not been the subject of any public engagement or public consultation. It is therefore recommended that this amendment is not carried forward into the Plan.

(ii) Include more information on the steps prior to issuing a notice

Officer comment: Investigations can vary significantly from case to case, depending upon the issues that arise. The flow chart at Appendix 1 to the Plan does however clearly set out the decision-making process. For this reason, it is recommended that this amendment is not carried forward into the Plan.

(iii) Complete an exercise benchmarking the workload of planning enforcement officers at Waverley with neighbouring authorities

Officer comment: This is a separate piece of work to the Enforcement Plan and would take a number of weeks to complete. The reality is that most local planning authorities are struggling with enforcement caseloads and the majority experienced an increase in the number of complaints received during the Covid pandemic. Enforcement posts, as with planning officer posts, are presently difficult to fill.

8. Other options considered

- 8.1 Do nothing – this would mean that references within the Plan would remain out of date and not reflect current corporate priorities. It would be at odds with the Corporate Strategy and Service Plans and would not reference the most up to date legislation and practice guidance. This, in turn, would reduce credibility and confidence in the planning enforcement process.
- 8.2 Delete the Local Planning Enforcement Plan – the risk of not having an adopted enforcement policy is that enforcement action could be open to challenge, particularly in the case of prosecutions or other legal action, on the basis of the Council being unable to document a consistent approach to decision making in respect of planning enforcement matters. This would also be at odds with National Planning Policy Guidance that emphasises the importance of local enforcement plans.

9. Governance journey

- 9.1 The Overview & Scrutiny Committee for Services considered the Plan at its meeting on 22 November 2022 and made comments that have been addressed within this report.

Annexes:

Annexe 1 – Proposed updated Local Planning Enforcement Plan

Annexe 2 – current, adopted Local Planning Enforcement Plan (June 2013)

Background Papers

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

CONTACT OFFICER:

Name: Beth Howland-Smith

Position: Development Lead – Applications & Enforcement

Telephone: 01483 523114

Email: beth.howland-smith@waverley.gov.uk

Agreed and signed off by:

Legal Services: Lewis Jones date 16/12/2022

Head of Finance: Candice Keet date 20/12/2022

Strategic Director: Dawn Hudd Date 16/12/2022

Portfolio Holder: Councillor Liz Townsend, date 20/12/2022 and
Councillor Andy MacLeod date 16/12/2022

This page is intentionally left blank



Waverley Borough Council

Local Planning Enforcement Plan

(_____ 2023)

Original Plan: Executive: Mar 2013	Updated: Services O&S: Nov 2022 Executive: Jan 2023	Next Review: 2025 or sooner if material change in legislation
----------------------------------------------	------------------------------------------------------------------	----------------------------------------------------------------------------

Contents

1. Introduction
2. A proportionate response
3. Investigating an alleged breach of planning control
4. Monitoring the implementation of planning permissions
5. How to report a suspected breach of planning control
6. The investigation process
7. Progress on enforcement cases
8. Enforcement tools available to the Council
9. Monitoring planning enforcement performance
10. Updating the Local Planning Enforcement Plan

1. Introduction

Waverley Borough Council has responsibility for investigating breaches of planning control and this Plan is intended to set out how we operate this function, the priorities we have set for undertaking investigation into alleged breaches and the various tools at the Council's disposal.

The Planning enforcement function contributes to the Council's overall vision in the [Waverley Borough Council Corporate Strategy 2020-25](#), as set out below:

“Our vision is that Waverley will be environmentally, economically and financially sustainable with healthy inclusive communities and housing available for all who need it.”

The Corporate Strategy notes that the Council will, amongst other aims, promote:

- effective strategic planning and development management which supports the planning and infrastructure needs of local communities
- a sense of responsibility by all for our environment, promoting biodiversity, championing the green economy and protecting our planet
- the health and wellbeing of our communities.

With this in mind, whilst planning enforcement is not a statutory function of the Council, Waverley takes breaches of planning control very seriously and it is our policy to exercise powers appropriately and rigorously to seek to ensure development takes place in accordance with approvals and that any allegations of potential planning breaches are properly investigated and appropriate, reasonable and proportionate action is taken, where necessary, when it is deemed expedient and in the public interest to do so.

Dealing appropriately with breaches of planning control and ensuring compliance is essential to ensure that the planning process as a whole remains credible.

The Waverley Local Planning Enforcement Plan identifies local priorities for enforcement action in order that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten protected features, the quality of the natural and built environment, or the amenities of Borough residents. This Plan has been devised in accordance with the advice contained within the [National Planning Policy Framework](#) (NPPF) (July 2021) which states:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they

will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.” (Paragraph 59)

The planning system operates to regulate development and the use of land having regard to the development plan and other material planning considerations. As set out in the NPPF, the effective and proper enforcement of planning control is essential to public confidence in the planning system and our aim is to protect the interests of our environment, residents, visitors, and businesses from potentially harmful effects of unauthorised development.

It should, however, be noted that planning enforcement is not a punitive measure, the main purpose of the system is to remedy breaches, not to simply punish those responsible for a breach of planning control.

It is an important principle of the planning system that the use of planning enforcement action is a discretionary power, and the Council should act proportionately in responding to suspected breaches of planning control, as set out in paragraph 59 of the NPPF and discussed in Section 2 of this Plan (below).

The aim of this document is to set out the Council’s specific plan for the enforcement of planning control. This will ensure that councillors and officers, external agencies and our residents and businesses are aware of our general approach to planning enforcement and what we consider to be a priority in this regard. The Plan is also intended to manage the community’s expectations as to when, and how quickly, we will act to a complaint of an alleged planning breach and what level of service they can expect from the Council.

What is a planning breach?

The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990 (as amended) (TCPA). The TCPA states that planning permission is required for development. Section 55 defines development as:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

A breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

The majority of planning enforcement investigations therefore involve one of the following alleged breaches:

- development (either operational development, such as building a structure, or a material change in use of land) without planning permission (including permission granted through permitted development);
- development that has not been carried out in accordance with an approved planning permission; or
- non-compliance with a condition or legal agreement attached to a permission.

Generally, it is not illegal to carry out development without planning permission. However, carrying out development without the necessary permissions can have significant impacts on the ability to sell a property or land and can result in formal enforcement potentially leading to prosecution, demolition, or even imprisonment.

The basic principle of planning law is that it is generally not an offence to carry out works without planning permission. Whilst such development remains unauthorised, unless regularised, local planning authorities must consider the expediency of taking action whilst having regard to the development plan and any other material planning considerations. A criminal offence will only arise in relation to the above matters when a statutory notice has been issued and the owner or occupier has failed to comply – or in certain specific cases, such as unauthorised works to a tree that is the subject of a Tree Preservation Order, works to a listed building without the necessary consent, or the display of an unauthorised advertisement(s).

What is not a breach of planning control?

Councils can receive complaints in relation to matters that are not breaches of planning control. Often there is other legislation that covers and controls the matter and the issue does not relate to 'development' (as defined in the previous section).

The following are some examples of cases which the planning enforcement service does not cover:

- Neighbour nuisance, boundary and land ownership disputes – these are civil matters. Further advice should be obtained from an independent legal advisor

- solicitor or the Citizens Advice Bureau;
- Use of/or development on the highway, footway or verge that is covered by highway legislation – please contact Surrey County Council;
 - Dangerous structures – please contact our Building Control service;
 - Fly tipping;
 - Any matter covered by other legislation, such as noise and smell, and enforced by other Council services or external agencies and organisations.

What is this Plan for?

This Plan will provide clarity on the following:

- The definition of a 'proportionate response' when investigating an alleged breach of planning control.
- How we will manage enforcement proactively in a way that is appropriate to the borough.
- How we investigate alleged breaches of planning control.
- How we will monitor implementation of planning permissions.
- Set out the powers available to us where it is considered appropriate to take action.

The primary function of enforcement action is to protect the environment in the public interest. To do this, we must be consistent and act proportionately.

2. A proportionate response

Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, and the Localism Act 2011.

The Council has responsibility for taking whatever enforcement action may be necessary and available to it, in the public interest, in its administrative areas. Alleged breaches of planning control can be tackled in a range of ways, but councils must act in a proportionate manner.

This Plan defines the appropriate form of response to various breaches of planning control and how we respond. This is determined by the guiding principle that the response to a breach of planning control should be proportionate to the harm it causes. It is never considered a sensible use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of conditions. In all cases, enforcement action should not be viewed as punishment, but what is necessary, in order to protect both the built and natural environment, taking into consideration matters such as visual and residential amenities.

A planning application is the most appropriate way to consider the merits of proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore fitting to apply the same approach to development already carried out and for the Council to encourage the submission of retrospective planning applications where they are considered likely to be acceptable.

The exception is where the Council considers there is no real prospect of planning permission being granted. In these instances, we will proceed to enforcement action as a matter of course, where negotiations to remedy the harm being caused have taken place and have not been successful.

However, any developer still has the right to apply for planning permission and if they do, the Council must deal with the application fairly before proceeding with any necessary enforcement action. In all cases, the Council will judge the planning merits of the development, and not how that development came about.

There are three priority levels of enforcement cases:

Priority One – Major – First contact or site visit within 1 working day from receipt of complaint – such as:

- works that the Executive Head of Planning Development considers are irreversible or irreplaceable or constitute a serious breach;
- unauthorised works to a Listed Building;
- unauthorised works to trees either protected by a TPO or located within Conservation Area;
- non-compliance with outstanding ‘live’ Enforcement Notices.

Priority Two – Medium – First contact or site visit within 5 working days from receipt of complaint – such as:

- development causing serious harm to the amenities of neighbours or to the environment;
- unsightly buildings or untidy land that are causing serious harm to the amenity of neighbours or to the environment;
- development being built not in accordance with the approved plans or material breaches of conditions, during the construction process.
- alleged breaches of Article 4 Directions;

Priority Three – Low – First contact or site visit within 10 working days from receipt of complaint – such as:

Any other allegations which have not been classified as high or medium priority, including (but not limited to):

- advertisements;

- businesses being operated from home;
- means of enclosure (gates, fences, walls);
- satellite dishes;
- new accesses;
- sheds/outbuildings;
- high hedge complaints; and
- any other alleged unauthorised development or activity having limited impact on residential amenity.

The case officer will then make an assessment, in relation to planning legislation, local policy and evidence of whether a breach of planning control has taken place. At this stage, we will notify the complainant of the proposed action to be taken.

3. Investigating an alleged breach of planning control

The power to take enforcement action is entirely discretionary and comes from section 172 of the Town and Country Planning Act 1990.

We will follow the relevant legislation and consider the harm created when undertaking enforcement action and whether it is appropriate to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code for Practice for Crown Prosecutors, the general principles of which are a two-stage test: the evidential and public interest tests.

In considering whether or not it is appropriate to take enforcement action, we will have regard to the Government guidance [enforcement and post-permission matters](#) within the Government's [planning practice guidance](#), the policies in the [National Planning Policy Framework](#), the [Waverley Borough Local Plan Part 1 2018](#), [draft Waverley Borough Local Plan Part 2](#) (and the subsequent adopted Plan), a relevant, made [Neighbourhood Plan](#), the saved policies in [Waverley Borough Local Plan 2002](#), and any updated relevant Council policies, together with any relevant material considerations.

The key consideration will be whether the breach of control would unacceptably affect public amenity, the environment, or the existing use of land and buildings meriting protection in the public interest.

The Council will work within the legal framework, having full regard to legislation, relevant case law and planning appeal decisions. It will also take into account other legislation that impact on enforcement work, such as:

- The Human Rights Act 1998;
- Public Sector Equality Duty under s149 of Equality Act 2010;
- The Criminal Procedure and Investigations Act 1996 (CPIA);
- The Police and Criminal Evidence Act 1984 (PACE); and
- The Regulation of Investigatory Powers Act 2000 (RIPA)

These require that a thorough investigation of the full facts and circumstances surrounding a breach is carried out prior to taking formal action.

More than half of complaints currently received are found not to be breaches of planning control and some complaints made relate to minor breaches and can arise from an understandable lack of awareness of planning controls or misunderstandings over what is taking place and can be exacerbated by existing neighbour disputes.

Whilst the Council is committed to investigating complaints, its resources must be used appropriately to (a) allow us to concentrate on serious breaches; and (b) avoid the Council being brought into disrepute through abuse of its enforcement powers. Initiating enforcement action when a matter can be resolved through a retrospective application and the imposition of necessary conditions would be seen as unreasonable behaviour by appeal inspectors and the courts and could lead to an award of costs against the Council. To maintain focus on agreed priorities, the Council may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or that are motivated by disputes between individuals or businesses. An explanation of the breaches that can/cannot be investigated together with other useful links can be found on our [Planning Enforcement web page](#).

Time limits for taking formal action

Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council is unable to legally serve a notice after four years where the breach of planning control relates to material operational development (e.g. extensions to dwellings, new buildings and laying hardstanding); or the material change of use of any building to a single dwellinghouse. Other unauthorised changes of use of land and buildings and breaches of conditions are currently subject to a ten year time limit for enforcement, before they are deemed 'lawful' and gain immunity from formal enforcement action.

The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after the relevant four/ten-year period to seek to regularise the situation. This involves providing sufficient evidence to demonstrate that, on the balance of probabilities, the breach of planning control has occurred for the relevant time period and has obtained immunity.

Serving an enforcement notice in respect of a particular development stops the clock in relation to the time limits outlined. Therefore, where the Council feels a breach may be getting close to the relevant four/ten-year time limit (as applicable to the nature of the development) we may seek to take urgent enforcement action to seek to prevent the development from becoming 'lawful' and, therefore, immune from action.

Failure to comply with formal notices

Where a notice has been served and has not been complied with, there are three main options available to the Council to attempt to resolve the breach should it be considered expedient and in the public interest.

Prosecution

We will consider commencing a prosecution in the Courts against any person who fails to comply with the requirement(s) of any of the following notices where the date for compliance has passed and the requirements have not been adhered to:

- Enforcement Notice
- Listed Building Enforcement Notice
- Planning Contravention Notice
- Breach of Condition Notice
- Section 215 Notice
- Stop Notice

Further information about each of the above remedies can be found in Section 8 of this Local Planning Enforcement Plan.

Before formally commencing legal action, which can be costly and resource/time intensive, we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that legal proceedings are in the public interest.

Direct action

Where any steps required by an Enforcement Notice or Section 215 (untidy site) Notice have not been taken within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers under section 178 and section 219 of the Town and Country Planning Act (as amended) respectively to:

- enter the land and take the steps to remedy the harm; and
- recover from the person who is the owner of the land any expenses reasonably incurred by the Council in doing so.

Injunction

Where the special circumstances of the case suggest direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an injunction under section 187B of the Town and Country Planning Act (as amended).

4. Monitoring the implementation of planning permissions

Whilst the Council does not have the resources to monitor all approved development schemes in the Borough, it will proactively monitor major development sites where appropriate and resources permitting. However, we are also reliant on the vigilance and support of our local communities to help us identify potential breaches. The majority of complaints received are reported by members of the public and need to be investigated reactively. Each valid complaint will result in a complaint file being set up according to priority level and investigated within the relevant timescales. The complainant will be updated on progress and the outcome of the investigation.

5. How to report a suspected breach of planning control

Our [Planning Enforcement web page](#) gives more information of planning enforcement and breaches of planning control. The best way to report a breach is to use our [online form](#). Sufficient details of the site/development in question must be provided to enable us to properly investigate the alleged breach and you may be asked to provide further information.

We are not able to accept anonymous complaints or reports as we need complainants' details to assess the harm, provide updates and request further information.

Complainants' details are kept confidential, although in some circumstances it may be necessary for the complainant to come forward to support the enforcement action upon the service of a notice, appeal, or prosecution.

6. The Investigation Process

The investigations process and the consequential action are shown in the flow diagram in Appendix 1.

Notices issued can be viewed on our [Planning Enforcement Register](#)

7. Progress on enforcement cases

We will make every effort to keep interested parties regularly updated on progress of our investigations. In some circumstances, such as prosecution cases, it may not be possible to give full details for confidentiality reasons.

8. Enforcement tools available to the Council

The following section sets out the various tools that are available to the Council to deal with alleged unauthorised development. In accordance with the need for a proportionate approach, which tool (if any) will be used in each individual case will depend on the circumstances and the level of harm identified.

Planning Contravention Notice (PCN)

This is used to obtain information about alleged unauthorised development and it can be used to invite discussion on how any suspected breach of control may be remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. Failure to respond to a PCN, or the provision of false information, are criminal offences carrying a maximum fine of £1,000 and £5,000 respectively.

Enforcement Notice (EN)

The Council may issue an Enforcement Notice where it considers that there has been a breach of planning control and it is appropriate to issue the Notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service), the steps to be taken and the compliance period (which will be a timeframe within which it is considered reasonable to remedy the specific breach). There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN's requirements until the appeal is determined.

Breach of Condition Notice (BCN)

This is used to secure compliance with planning conditions and takes effect no less than 28 days after service. It must specify the steps that the Council considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN and a failure to comply with it is a criminal offence carrying a maximum fine of £2,500 (December 2022).

Stop Notice (SN)

A Stop Notice can only be served on land where an Enforcement Notice has been served and is used as an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the Enforcement Notice is quashed on appeal or the Notices have to be withdrawn.

Temporary Stop Notice (TSN)

This is used where the Council considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This Notice differs from the normal Stop Notice powers because it does not have to wait for an Enforcement Notice to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach and can be served on any person carrying out the activity, and must be displayed on the site. The TSN is only in effect for 28 days, during which the time the Council must decide whether it is appropriate to serve an Enforcement Notice. TSNs have been used successfully to stop work on development sites when

important pre-commencement planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land, or tree protection.

Prosecution

Some breaches of planning control are criminal offences, such as the carrying out of unauthorised works to a listed building or a protected tree, or the display of unauthorised advertisements. It is also an offence not to comply with the requirements of a Breach of Condition Notice, an Enforcement Notice, a Stop Notice, a Temporary Stop Notice, or a Planning Contravention Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine for most of these offences if found guilty in the Magistrates' Court is £20,000 (December 2022) and unlimited if found guilty in the Crown Court. However, maximum fines are less for illegal advertisements, BCNs and failure to complete and return a PCN, which requires the provision of accurate and truthful information to the Council.

Injunction

Section 187B(1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Applications for an injunction from the courts may be made when it is necessary or appropriate for any actual or apprehended breach of planning control to be restrained, whether or not the Council has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a court order is a contempt of court and can result in imprisonment.

Section 215 Notice (untidy site)

This Notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The Notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation

There is a right of appeal against the Notice to the Magistrates' Court. If the Notice is not complied with, the Council can enter the land and carry out the steps in default and recover its reasonable costs incurred by doing so.

Listed Building Enforcement Notice

This Enforcement Notice applies to listed buildings and is similar with an Enforcement Notice in most respects. It can require the removal of any unauthorised works or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a Notice to the Planning Inspectorate.

Conservation Area Enforcement Notice

This type of Enforcement Notice is used in Conservation Areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation

Areas) Act 1990. An example of this would be the unauthorised demolition of a building or a wall in a Conservation Area, and the requirement of the Notice would be to rebuild it. There is a right of appeal against such a Notice to the Planning Inspectorate.

Default Powers (“Direct Action”)

Section 178 enables the Council to take direct action where, on expiry of the Enforcement Notice compliance period, the required steps have not been taken, by carrying out “default” action directly and then recovering its reasonable expenses from the landowner or through placing a charge on the land. This power relates to Enforcement Notices and untidy land Notices served under section 215 of the 1990 Act (as amended).

Article 4 Directions

These are used to remove “permitted development” rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, when open land is being sold off as speculative building plots. The direction is provisional for six months and must be confirmed by the Secretary of State in order to become permanent. It means that planning permission would have to be granted by the Council in order to carry out the development.

In the 2021 update to the National Planning Policy Framework (NPPF) the government has made it clear that the use of Article 4 directions to remove national permitted development rights should, in all cases, be based on robust evidence, and apply to the smallest geographical area possible (NPPF paragraph 53).

Section 225 Powers

Section 225 enables the Council to remove or obliterate placards and posters that are being displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). A notice period of no less than two days must be afforded to the advertiser prior to exercising this power in order to allow for voluntary compliance.

Discontinuance Notice

This Notice requires the removal of an advertisement displayed with the benefit of deemed advertisement consent (i.e. an advertisement that would not normally require consent from the Council to be displayed). A Discontinuance Notice is a useful tool in preventing the display of advertisements where they adversely affect the setting or character of listed buildings or Conservation Areas.

Confiscation under the Proceeds of Crime Act 2002

If an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002. Confiscation proceedings can only be brought alongside a related criminal prosecution. By way of an example, confiscation proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control.

The Council can consider whether, on the facts known to it, the perpetrator is likely to have benefited from their criminal conduct. If the perpetrator is and has been making money as a result of their planning breaches, and continues in breach, a confiscation order may be appropriate.

Localism Act 2011

In April 2012, additional enforcement powers were introduced through the Localism Act 2011. These powers include:

Section 70C

The Council may decline to determine a retrospective planning application for development which is subject of an Enforcement Notice served after 6 April 2012.

Section 171B – Planning Enforcement Order

The Council may apply to the Magistrates' Court for a Planning Enforcement Order (PEO) if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from enforcement action where it has been deliberately concealed. However, it should be noted that there is a very high bar that needs to be reached to demonstrate deliberate concealment and significant cost implications to the Council should a PEO be quashed or withdrawn, so the use of this power must be very carefully considered and applied.

Section 225A – Removal Notices

Section 225A allows the Council to remove and dispose of any display structure within the Borough which, in the Council's opinion, is being used for the display of advertisement in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). This power is exercised once the Council has served a Removal Notice upon the person/s who appear to be responsible for the structure. There is a right of appeal against this Notice to the Magistrates' Court.

9. Monitoring Planning Enforcement Performance

The Council publishes reports on the performance of the Planning Enforcement Service, including the percentage of complaints investigated within agreed

timescales, on a quarterly basis on our website and also through the Overview & Scrutiny Committee (Services) and Executive Committee meetings, which are open to members of the public. We will also report this information to the Planning Committees on a quarterly basis, to inform councillors of progress on meeting the Council's targets as set out in the Corporate Performance Report and to provide updates on significant enforcement cases and controversial sites.

10. Updating the Local Planning Enforcement Plan

Legislation and priorities change over time, so it is recommended that this Plan is reviewed and updated every two years, or as and when relevant new legislation is enacted. It should be noted that the Regeneration and Levelling-Up Bill 2022, proposes some significant changes to the enforcement powers available to local authorities, most notably in respect of the time limit for operational development to become lawful, which is set to increase from 4 years to 10 years. The provisions of this Bill are still going through Parliament, but the Local Planning Enforcement Plan will need to be updated if/once this becomes law.

This page is intentionally left blank



Waverley Borough Council

Local Planning Enforcement Plan

(June 2013)

1. Introduction

Waverley Borough Council has responsibility for investigating breaches of planning control. This Waverley Borough Council Local Enforcement Plan identifies local priorities for enforcement action in order that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of the local environment or the amenities of Borough residents.

This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

This Plan will therefore provide clarity on the following:

- The definition of a 'proportionate response' when investigating an alleged breach of planning control.
- How we will manage enforcement proactively in a way that is appropriate to the Borough.
- How we investigate alleged breaches of planning control.
- How we will monitor implementation of planning permissions.
- Set out the powers available to us where it is considered appropriate to take action.

The Waverley Borough Council Corporate Plan 2012-2015 sets out the corporate priorities of the Council over the three-year period. One of the priorities is to protect and enhance the area's unique mix of rural and urban communities throughout our towns, villages and hamlets.

The primary function of enforcement action is to protect the environment in the public interest. To do this we must be consistent and act proportionately.

2. A proportionate response

Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, and the Localism Act 2011.

This Plan defines the appropriate form of response to various breaches of planning control. This is determined by the guiding principle that the response to a breach of planning control should be proportionate to the harm it causes. It is never considered a wise use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of conditions. In all cases, enforcement action should not be viewed as punishment, but what is necessary in order to protect the built environment.

A planning application is the most appropriate way to consider the merits of proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore logical to apply the same approach to development already carried out and for the Council to encourage the submission of retrospective planning applications where they are considered likely to be acceptable.

The exception is where the Council considers there is no real prospect of planning permission being granted. In these cases we will proceed to enforcement action as a matter of course, where negotiations to remedy the harm being caused are not successful.

However, any developer still has the right to apply for planning permission and if they do, the Council must deal with the application fairly before proceeding with any necessary enforcement action. In all cases, the Council will judge the Planning merits of the development, and not how that development came about.

There are three priority levels of enforcement cases:

- **Priority One – Major – First contact or site visit within 1 working day from receipt of complaint**

Works that are irreversible or irreplaceable or constitute a serious breach;
Unauthorised works to a Listed Building;
Breaches of Article 4 Directions;
Unauthorised works to trees protected by a TPO or within a Conservation Area;
Non-compliance with Enforcement Notices.

- **Priority Two – Medium – First contact or site visit within 5 working days from receipt of complaint**

Unauthorised activities that cause harm to residential amenity e.g. car businesses;
Unauthorised change of use and development;
Unauthorised breach of conditions and not built in accordance with approved plans;
Unauthorised adverts including fly posting and 'A boards'.

- **Priority Three – Low – First contact or site visit within 10 working days from receipt of complaint**

Unauthorised sheds;
Unauthorised means of enclosure;
Unauthorised accesses;
Unauthorised satellite dishes;
Unauthorised minor operations;
Any low impact on residential amenity.

The case officer will then make an assessment, in relation to planning legislation, of whether a breach of planning control has taken place. At this stage, we will notify the enquirer of the proposed action to be taken.

3. Investigating an alleged breach of planning control

The power to take enforcement action is entirely discretionary and comes from section 172 of the Town and Country Planning Act 1990.

We will follow the relevant legislation and consider the harm created when undertaking enforcement action and when deciding whether it is appropriate to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code for Practice for Crown Prosecutors, the general principles of which are a two-stage test: the evidential and public interest tests.

In considering whether or not it is appropriate to take enforcement action, we will have regard to the guidance within Government Circular 10/97, the policies in the Development Plan (the South East Plan 2009 and the Waverley Borough Council Local Plan) and any relevant material considerations. The key consideration will be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

The Council will work within the legal framework, having full regard to legislation, relevant case law and planning appeal decisions. It will also take into account other legislation that impact on enforcement work, such as:

- The Human Rights Act 1998;
- The Criminal Procedure and Investigations Act 1996 (CPIA);
- The Police and Criminal Evidence Act 1984 (PACE); and
- The Regulation of Investigatory Powers Act 2000 (RIPA)

These require that a thorough investigation of the full facts and circumstances surrounding a breach is carried out prior to taking formal action.

More than half of complaints made are found not to be in breach of planning control. These are a significant drain on resources, as a site inspection and investigation are required, as well as having to advise the interested parties. The majority of complaints made relate to minor or trivial breaches and often arise from a lack of awareness of planning controls or misunderstandings over what is taking place, and may be exacerbated by neighbour disputes.

Whilst the Council is committed to investigating complaints, its resources must be used appropriately to (a) allow us to concentrate on serious breaches; and (b) avoid the Council coming into disrepute through abuse of its enforcement powers. Initiating enforcement action when a matter can be resolved through a retrospective application and the imposition of necessary conditions would be seen as unreasonable behaviour by appeal inspectors and the courts, and could lead to an award of costs against the Council. In order to maintain focus on agreed priorities, the Council may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or that are motivated by disputes between individuals or businesses.

4. Monitoring the implementation of planning permission

Whilst the Council does not have the resources to monitor all approved development schemes in the Borough, it will proactively monitor major development sites where appropriate.

The vast majority of complaints received are reported by members of the public and need to be investigated reactively. Each valid complaint will result in a complaint file being set up according to its priority level and investigated within the relevant timescales. The complainant will be updated on the progress and outcome of the investigation.

5. Enforcement tools available

Planning Contravention Notice (PCN)

This is used to obtain information about alleged unauthorised development and it can be used to invite discussion on how any suspected breach of control may be

remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. Failure to respond to a PCN, or the provision of false information, are criminal offences carrying a maximum fine of £1,000 and £5,000 respectively.

Enforcement Notice (EN)

The Council may issue an Enforcement Notice where it considers that there has been a breach of planning control and it is appropriate to issue the Notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service,) the steps to be taken and the compliance period. There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN's requirements until the appeal is determined.

Breach of Condition Notice (BCN)

This is used to secure compliance with planning conditions and takes effect no less than 28 days after service. It must specify the steps that the Council considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN and a failure to comply with it is a criminal offence carrying a maximum fine of £2,500 (May 2013).

Stop Notice (SN)

A Stop Notice can only be served on land where an Enforcement Notice has been served and is used as an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the Enforcement Notice is quashed on appeal or the Notices have to be withdrawn.

Temporary Stop Notice (TSN)

This is used where the Council considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This Notice differs from the normal Stop Notice powers because it does not have to wait for an Enforcement Notice to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach, and can be served on any person carrying out the activity, and must be displayed on the site. The TSN is only in effect for 28 days, during which the time the Council must decide whether it is appropriate to serve an Enforcement Notice. TSNs have been used successfully to stop work on development sites when important pre-commencement planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land or tree protection.

Prosecution

Some breaches of planning control are criminal offences, such as the carrying out of unauthorised works to a listed building or a protected tree, or the display of unauthorised advertisements. It is also an offence not to comply with the requirements of a Breach of Condition Notice, an Enforcement Notice, a Stop Notice, a Temporary Stop Notice or a Planning Contravention Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine for most of these offences if found guilty in the Magistrates' Court is £20,000 (May 2013) (unlimited if found guilty in the Crown Court). However, maximum fines are less for illegal advertisements, BCNs and failure to complete and return a PCN.

Injunction

Section 187B(1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Applications for an injunction from the courts may be made when it is necessary or appropriate for any actual or apprehended breach of planning control to be restrained, whether or not the Council has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a court order is a contempt of court and can result in imprisonment.

Section 215 Notice (untidy land)

This Notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The Notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation.

There is a right of appeal against the Notice to the Magistrates' Court. If the Notice is not complied with, the Council can enter the land and carry out the steps in default.

Listed Building Enforcement Notice

This Enforcement Notice applies to listed buildings and is similar to an Enforcement Notice in most respects. It can require the removal of any unauthorised works or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a Notice to the Planning Inspectorate.

Conservation Area Enforcement Notice

This type of Enforcement Notice is used in Conservation Areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990. An example of this would be the unauthorised demolition of a building or a wall in a Conservation Area, and the requirement of the Notice would be to rebuild it. There is a right of appeal against such a Notice to the Planning Inspectorate.

Default Powers ("Direct Action")

Section 178 enables the Council to take direct action where, on expiry of the

Enforcement Notice compliance period, the required steps have not been taken, by carrying out “default” action and recovering its reasonable expenses from the owner. This power relates to Enforcement Notices and untidy land Notices served under section 215 of the 1990 Act (as amended).

Article 4 Directions

These are used to remove “permitted development” rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, when open land is being sold off as speculative building plots. The direction is provisional for six months and has to be confirmed by the Secretary of State in order to become permanent. It means that planning permission would have to be granted by the Council in order to carry out the development.

Section 225 Powers

Section 225 enables the Council to remove or obliterate placards and posters that are being displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). A notice period of no less than two days must be afforded to the advertiser prior to exercising this power in order to allow for voluntary compliance.

Discontinuance Notice

This Notice requires the removal of an advertisement displayed with the benefit of deemed advertisement consent (i.e. an advertisement that would not normally require consent from the Council to be displayed). A Discontinuance Notice is a useful tool in preventing the display of advertisements where they adversely affect the setting or character of listed buildings or Conservation Areas.

Confiscation under the Proceeds of Crime Act 2002

If an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002. Confiscation proceedings can only be brought alongside a related criminal prosecution.

By way of an example, confiscation proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control. The Council can consider whether, on the facts known to it, the perpetrator is likely to have benefited from their criminal conduct. If the perpetrator is and has been making money as a result of their planning breaches, and continues in breach, a confiscation order may well be appropriate.

Localism Act 2011

In April 2012, new enforcement powers were introduced through the Localism Act 2011. These powers include:

Section 70C

The Council may decline to determine a retrospective planning application for development which is subject of an Enforcement Notice served after 6 April 2012

Section 171B – Planning Enforcement Order

The Council may apply to the Magistrates' Court for a Planning Enforcement Order if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from enforcement action where it has been deliberately concealed.

Section 225A – Removal Notices

Section 225A allows the Council to remove and dispose of any display structure within the Borough which, in the Council's opinion, is being used for the display of advertisement in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). This power is exercised once the Council has served a Removal Notice upon the persons who appear to be responsible for the structure. There is a right of appeal against this Notice to the Magistrates' Court.

6. Monitoring Performance.

The Council publishes reports on the performance of the Planning Enforcement Service on a quarterly basis on our website. We also report the same information to the four Area Planning Committees on a quarterly basis to inform councillors of progress on meeting the Council's target and on main enforcement cases and sites.

This Plan will be reviewed in May 2014.

This page is intentionally left blank

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

LEISURE MANAGEMENT CONTRACT TENDER

Portfolio Holder: Cllr Kika Mirylees – Health, Wellbeing, Parks and Leisure

Head of Service: Kelvin Mills, Executive Head of Commercial Services

Key decision: Yes

Access: Public

1. Purpose and summary

- 1.1 This report provides an update on the current position of the Leisure Management Contract tender and to approve the award of the contract following completion of the procurement process.

2. Recommendations

It is recommended that the Executive:

1. Approve the award of the proposed contract to the top ranked bidder, following completion of the procurement process; and
2. Delegate authority to the Strategic Director for Transformation & Governance to complete all required contractual documentation and approve execution of the contract documentation.

3. Reason for the recommendation

Leisure Management Contract position

- 3.1 The current 15 year leisure management contract, for our five leisure centres, expires on 30 June 2023 and the Council needs a new contractual arrangement to be in place for the 1 July 2023.
- 3.2 A Leisure Management Contract tender Project Working Group (PWG) has been working together to ensure that all aspects of the business are involved and duly considered in the tender process.
- 3.3 The PWG have been working with appointed consultants, SLC, to progress in accordance with the procurement timetable and ensure that each stage is completed accordingly.

3.4 The PWG are on target, with the next stages detailed below.

Next stage/activity		Target date
8	Bidder Negotiation Meetings	Dec 2022 – complete
9	Invitation to Submit Revised Tenders (ISRT)	Jan 2023
10	ISRT submission deadline	Feb 2023
11	Evaluation of Revised Tenders	Feb – Mar 2023
12	Notification of outcome to bidders	Apr 2023
13	Standstill period	Apr 2023
14	Finalise Contract Award	Apr 2023
15	Mobilisation Period	May – Jun 2023
16	Contract start date	1 Jul 2023

4. **Background**

Leisure Management Contract specification

3.5 As per the programme, the PWG have made the necessary amendments to the Sport England Contract template and developed a Services Specification to ensure that it meets our corporate priorities, processes and policies.

3.6 The Services Specification sets out the required performance standards and reporting requirements that the operator shall meet for the operation of the services and facilities throughout the Contract period.

3.7 The Specification outline includes;

- i. General core requirements – Strategic Objectives and Contribution to wider Strategic Priorities, Facility Management, Leisure Investment, Utilities and Environmental and Energy Management
- ii. Service Requirements – the Active Communities Programme, pricing, staffing and Health & Safety
- iii. Asset Management - Capital and Revenue Funding (Existing Facilities and new Cranleigh Leisure Centre), Building Maintenance, Climate Emergency, Environmental and Energy Management
- iv. Performance Management and reporting – Planning to Improve (Service Planning) and Meetings and Reporting
- v. Key Performance Indicators – a comprehensive set of criteria developed by the PWG to measure performance against our Contract strategic objectives.

5.0 **Relationship to the Corporate Strategy and Service Plan**

5.1 The Leisure Management Contract directly links with Waverley’s Corporate Strategy 2020-25 and our strategic priorities:

- Supporting a strong, resilient local economy
- Taking action on Climate Emergency and protecting the environment
- Effective strategic planning and development management to meet the needs of our communities
- Improving the health and wellbeing of our residents and communities

5.2 The provision of quality leisure facilities will directly facilitate the Council’s vision to promote:

- high quality public services accessible for all
- a financially sound Waverley, with infrastructure and resilient services fit for the future
- a strong, resilient local economy, supporting local businesses and employment
- effective strategic planning and development management which supports the planning and infrastructure needs of local communities
- a sense of responsibility by all for our environment, promoting biodiversity, championing the green economy and protecting our planet
- the health and wellbeing of our communities.

5.3 Future investment in leisure facilities is based on a robust feasibility assessment that offers value for money to the Council. External funding and developer contributions will be sought to support funding of any capital cost.

6. Implications of decision(s)

6.1 Resource (Finance, procurement, staffing, IT)

The current Leisure Management Contract is budgeted to create an annual revenue stream into the Council of £530k excluding the Edge which will not be included in the new contract.

The new contract procurement is not yet complete, so the contract value is not yet known, however it is expected to deliver an annual income to the council.

Additional staff capacity is required within the Leisure and Legal teams to manage this project and has been put in place. As such external solicitors have been appointed to provide legal support with the procurement process. Leisure support has been provided internally.

6.2 Risk management

A comprehensive Risk Log is in place, which is being monitored by the PWG and Leisure Investment Project Board. In addition, there is a detailed Contract Risk Matrix that has been agreed by Project Board and shared with the bidders.

6.3 Legal

The current leisure management contract expires on 30 June 2023, with no provision or ability for a further extension. The procurement process will comply with UK procurement legislation and the Council's procurement procedure rules. External solicitors are assisting with the procurement.

6.4 Equality, diversity and inclusion

There are no Equality and Diversity implications associated to the matters raised in this report.

6.5 Climate emergency declaration

The new Leisure Management Contract provides the opportunity to make carbon reduction an integral part of the delivery specification in line with the Council's commitment to become net zero carbon by 2030.

As part of the specification for the new Contract, energy performance indicators have been considered and will act as an incentive for the contractor to actively

drive energy consumption down. The new operator will be required to produce decarbonisation plans for each site within six months of the contract.

7. Consultation and engagement

7.1 Key stakeholders will continue to be involved at all relevant stages of the project moving forwards.

8. Other options considered

8.1 All options considered have been incorporated into the report above.

9. Governance journey

9.1 The Leisure Management Contract Task and Finish update report went to Overview & Scrutiny Committee (Services) on Tuesday 21 June to note.

9.2 The Overview & Scrutiny Task Group were issued the Service Specification and KPI elements of the contract for comment on Thursday 23 June 2022.

9.3 Formal Executive approval is being sought in advance of the tender outcome being known, so as to not delay the contract award and already compressed mobilisation period.

Annexes

There are no annexes.

Background Papers

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

CONTACT OFFICER:

Name: Patrick Tuite
Position: Procurement Officer
Telephone: 01483 523149
Email: patrick.tuite@waverley.gov.uk

Name: Tamsin McLeod
Position: Leisure Services Manager
Telephone: 01483 523423
Email: tamsin.mcleod@waverley.gov.uk

Agreed and signed off by:

Legal Services: Stephen Rix, Executive Head of Legal & Democratic Services (Interim) & Monitoring Officer, 20/12/22

Head of Finance: Rosie Plaistowe, Financial Services Manager, 05/01/23

Strategic Director: Ian Doyle, Joint Strategic Director for Transformation & Governance 05/01/23

Portfolio Holder: Kika Mirylees, Health, Wellbeing, Parks and Leisure, 05/01/23

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

HOUSING REVENUE ACCOUNT BUDGET REQUEST

Portfolio Holder: Cllr Paul Rivers, Portfolio Holder for Housing and Community Safety

Head of Service: Andrew Smith Executive Head of Housing

Key decision: Yes

Access: **Public**

1. Purpose and summary

To request that Executive acknowledges and approves several budgetary increases and changes that have been unforeseen and unavoidable during the current financial year

2. Recommendation

That Executive approves a virement of £125,000 from the Stock Survey budget to fund this programme of works.

4. Background

4.1 Central Government has revised the regulations which place an obligation on private landlords to have smoke and carbon monoxide alarms fitted in rental properties to extend to social landlords.

4.2 As of 1st October 2022 carbon monoxide alarms are to be now required where there is any fitted combustion appliance, other than a gas cooker.

4.3 This means gas, oil-fired, solid fuel, and open flued appliances, which previously did not legislatively require a CO alarm, will now need one. As a result, a CO alarm will be required unless a property has entirely electric heating. The CO alarm can be battery operated or hard wired to the mains electric.

4.4 This regulatory change impacts most general needs homes within the HRA Housing Asset Stock portfolio.

4.5 The Council currently does not meet full compliance with the regulation,

however a robust delivery plan is in place to meet requirements

- 4.5 To prioritise delivery and compliance with the new regulation the Property Service Compliance Team have been working with their finance colleagues and the electrical testing contractor to develop a programme of works, and delivery costs in order to meet the regulatory requirements.
- 4.6 Works have been on site since October 2022 and to date, 10% of the project has been delivered which equates to 435 installations out of 4288 with spend amounting to £28,275. It is anticipated that the project will run until August 2023 a period of 43 weeks with an installation rate of approximately 100 monitors per week.
- 4.7 The total delivery costs of the works are £289,372 and the project will cross the financial years 2022/23 and 2023/24.
- 4.8 An initial sum of £80,000 was identified in the Core capital work from underspend and savings in the 2022/23 programme delivery. This figure covers the first initial 3 months of delivery.
- 4.9 An additional sum of £125,000 is now being requested to be vired to supplement the remainder of the project delivery for the financial year 2022/23 to manage this unavoidable growth. The remainder of the project will be funded in the 2023/24 budget and will be included in the Core Capital budget setting process.

5. **Relationship to the Corporate Strategy and Service Plan**

The report supports the Council's Corporate commitment to promote "*Good quality housing for all income levels and age groups*"

6. **Implications of decision**

6.1 **Resource (Finance, procurement, staffing, IT)**

The additional £125k capital budget required will be funded from savings within the core capital budgets. The Stock Survey budget of £300k is expected to underspend by £250k this financial year. It is proposed that the £125k budget required is vired from this saving.

6.2 **Risk management**

Risks for the service are classified as Financial, Legal/Regulatory, Safety, Service Delivery or Reputational. The Corporate Risk Register reports, manages and mitigates risks to the HRA.

6.3 **Legal**

The Council has an obligation as landlord to maintain properties owned by it to an appropriate standard, in respect of the recent changes in respect of the installation of Carbon Monoxide monitors the Council is obliged to make appropriate arrangements to fulfil this requirement. It is open for the Council to reallocate budgets to ensure resources are available to meet its commitments.

6.4 Equality, diversity and inclusion
NA

6.5 Climate emergency declaration
NA

7. Consultation and engagement

7.1 The Portfolio Holder for Housing Operations has been updated

8. Other options considered

8.1 This is a regulatory requirement and therefore the option to do nothing or delay this work is not feasible

9. Governance journey

9.1 The report has been shared with the Corporate Management Board and will go forward to the Executive for a decision.

Annexes: NA

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

CONTACT OFFICER:

Name: Heather Rigg
Position: Property Services Manager
Telephone: 01483 523363
Email: heather.rigg@waverley.gov.uk

Agreed and signed off by:
Legal Services: Ian Hunt
Head of Finance: Candice Keet
Strategic Director: Annie Righton

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

HRA Affordable Housing – Ockford Ridge
Sale of 3 Shared Ownership Homes

Portfolio Holders: Cllr Nick Palmer, Portfolio Holder for Housing (Delivery)
Cllr Paul Rivers, Portfolio Holder for Housing (Operations)

Head of Service: Andrew Smith, Executive Head of Housing

Key decision: Yes

Access: Part Exempt

Note pursuant to Section 100B(5) of the Local Government Act 1972

This report 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 3 of 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).

1. Purpose and summary

1.1 This report

- provides members with an overview of the delivery of homes at Laurel Close, Ockford Ridge, Godalming and details of three homes which are in a position to be sold as affordable shared ownership.
- Seeks Executive approval to the recommendation to sell the affordable shared ownership homes delivered to support meeting the need for affordable housing for those of all income levels.

2. Recommendation

It is recommended that

- Executive consider this report and information provided in Exempt Annex 1 and approve the sale of the three shared ownership homes at Laurel Close, Ockford Ridge, Godalming, giving the Executive Head of Legal & Democratic Services authority to approve the final form of the agreements.
- Executive approve delegated authority for Head of Housing Services in consultation with Portfolio Holders for Housing (Delivery and Operations) to approve the future sale of percentages shares.

3. Reason for the recommendation

The Waverley [Corporate Strategy 2020 – 2025](#) sets out the Vision and Strategic Priorities for the Council. One of the strategic priorities is to ‘provide good quality housing for all income levels.’

[Build More, Build Better, Build for Life Affordable Homes Delivery Strategy 2022 – 2025](#) sets out the Council’s commitment to build homes to buy or rent for households from all income levels. The strategy has been supported by evidence studies including the [Waverley Housing Affordability Study 2021](#).

The delivery and sale of the shared ownership homes at Laurel Close meets these priorities and commitments.

4. Background

- 4.1 The Affordable Homes Delivery Strategy 2022 – 2025, Build Better Action Plan states that the Council will work closely with developers and Affordable Housing providers to ensure that the location, type, tenure, and design of new affordable homes meets need and the recommended tenure split as set out in latest evidence. This evidence is provided in the Housing Affordability Study 2021. The study confirms that the council currently seeks a split of 70:30 between rented homes and affordable home ownership which includes First Homes, shared equity and shared ownership. Of the affordable home ownership options, shared ownership remains the most affordable option for those who wish to purchase a property but cannot afford full home ownership as it allows an initial percentage share of the property to be purchased while the council retains the other share. Further shares can be purchased in the future, which is known as ‘staircasing’, reducing the percentage share owned by the council.
- 4.2 Laurel Close, Ockford Ridge (Site B) was one of four sites which formed part of the masterplan, with hybrid planning consent granted in 2014. Two sites have already been delivered and Laurel Close is the latest phase of homes to be completed. The new development at Laurel Close delivered 17 new affordable homes, 14 for rent and 3 shared ownership (2 x 3 bed and 1 x 2 bed).
- 4.3 An independent valuation report was prepared by Brett Gardener to facilitate marketing the homes and setting of rents based on 2.75% of unsold equity of the shared ownership homes.
- 4.4 All the rented homes are now tenanted and the three shared ownership homes have been marketed to those who have expressed an interest in the Council’s Shared Ownership properties and joined our register.
- 4.5 Those who expressed an interest in purchasing a two or three bedroom shared ownership home in the Godalming area were contacted in order of the date of their registration and notified of the availability of these homes.
- 4.6 Affordability checks have been completed and purchasers have been identified for all three shared ownership homes. The properties have been viewed and the initial non-refundable holding deposits taken.

- 4.7 Solicitors have been appointed to act on behalf of the Council to prepare the sale and lease documents and are in a position to progress subject to approval.
- 4.8 Purchasers will instruct their own solicitors to liaise with the solicitors acting on behalf of the Council regarding the sale / purchase of the property.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 Affordable housing is central to community wellbeing. It is consistent with the Council's Corporate Strategy 2020 – 2025, strategic priority to deliver 'good quality housing for all income levels and age groups' and 'Effective strategic planning and development management to meet the needs of our communities.'

As set out in the Build More, Build Better, Build for Life, Affordable Homes Delivery Strategy 2022-2025, the Council is committed to build homes to buy or rent for households from all income levels. The strategy sets out priorities and objectives for the development of new affordable homes by the Council and our partners for the next 3 years.

6. Implications of decision

6.1 Resource

Drafted by: Candice Keet, Senior Accountant

The capital receipt received from the sale of the shared ownership properties will be used to finance the Ockford Ridge development.

6.2 Risk management

Preparation of the appropriate contract documents will mitigate risk.

6.3 Legal

Drafted by: Ian Hunt; Interim Deputy Borough Solicitor

The Council has the relevant legal powers under the Housing Acts to sell shared ownership properties. The legislation secures the framework that the Council and the part owner have with each other to ensure that the respective rights and responsibilities are secured.

The Council in determining sale values must have regard to its best value duties, and can manage this through the obtaining of appropriate valuation and related guidance.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity, or inclusion implications in this report. Equality impact assessments are carried out, when necessary, across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010.

6.5 Climate emergency declaration

The New Build contribution to the Council's environmental and sustainability objectives include working with consultants to develop climate positive design and developing carbon off-set opportunities in materials used in construction.

The homes delivered at Laurel Close were net zero in operation, achieving an Environmental Rating of 99 out of 100.

The Housing Development Team work with other teams to identify ways the delivery of the Council's new build and regeneration programme can support delivery of other elements of the Council's Climate Change and Sustainability Strategy and Strategic Carbon Neutrality Action Plan.

7. Other options considered

- 7.1 Cease delivery and sale of shared ownership homes, however this does not meet the priorities set out in the Waverley Corporate Strategy or commitments of the Affordable Homes Delivery Strategy.

8. Governance journey

- 8.1 Executive on 17 January 2023.

Annexes:

Exempt Annexe 1 – Shared Ownership Homes – Laurel Close

Background Papers

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

CONTACT OFFICER:

Name: Louisa Blundell

Position: Housing Development Manager

Telephone: 01483 523205

Email: louisa.blundell@waverley.gov.uk

Agreed and signed off by:

Legal Services: Ian Hunt

Finance: Candice Keet

Strategic Director: Annie Righton

Portfolio Holder: Councillor Palmer

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

Private Sector Housing Enforcement Policy

Portfolio Holder: Cllr Paul Rivers, Co-Portfolio Holder for Housing (Operations)
Cllr Andy Mcleod, Portfolio Holder for Enforcement, Operations
and Brightwells

Head of Service: Richard Homewood, Executive Head of Regulatory Services

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 To introduce a new enforcement policy specifically for the private sector housing team to incorporate the recent changes to legislation affecting the private rented sector and to propose a charging structure for financial penalties imposed as a result of formal action to improve housing standards.

2. Recommendation

That the new Private Sector Housing Enforcement Policy is adopted by the Council.

3. Reason for the recommendation.

To ensure the Council has the necessary tools to improve conditions for tenants in the private rented sector.

4. Background

- 4.1 In 2007 the Council formally adopted an enforcement policy to provide guidance on its enforcement work in private sector housing as a result of a range of new powers introduced under the Housing Act 2004. This policy has not changed since then but was supplemented by the Council's Enforcement Policy for Regulatory Services in 2014.

4.2 Since 2014 there has been a raft of new legislative powers to improve conditions in the private rented sector and drive out “rogue landlords”, notably the Housing and Planning Act 2016. This Act introduced the following powers:

- Financial penalty as alternative to prosecution
- Extension of Rent Repayment Orders to other offences
- Banning Orders for serious offences
- Central database of rogue landlords
- Electrical safety standards for all private rented properties

4.3 A new enforcement policy has been drawn up specifically to deal with the work carried out by the Private Sector Housing Team. This policy incorporates a charging structure to determine the level of financial penalty to be applied under the Housing Act 2004, a Statement of Principles for the penalty under the Smoke and Carbon Monoxide Regulations 2015 and the penalty levels under the Minimum Energy Efficiency Standard. It is intended that this policy will supplement the existing Council Policy for Regulatory Services, which sets out the broad principles of good regulation and the various codes and legislation that provide best practice.

Financial Penalties

4.4 The Act amends the Housing Act 2004 to allow the Council to impose a financial penalty (“a civil penalty”), where it is satisfied, beyond reasonable doubt that a landlord has committed a relevant offence under the Housing Act 2004.

4.5 The list of relevant offences includes:

- Failure to comply with an Improvement Notice
- Offences relating to the licensing of Houses in Multiple Occupation
- Breach of an Overcrowding Notice
- Breach of HMO Management Regulations
- Breach of a Banning Order

4.6 The charging of a civil penalty is an alternative to prosecution, which is often time consuming and expensive. A civil penalty is intended to act as a punishment and a deterrent against non-compliance.

4.7 The Act requires the Council to develop its own policy on determining the appropriate level of civil penalty in each case. Under the guidance issued to local authorities in April 2017 “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities” the civil penalties charging structure should take into account the following:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences

- Removing any financial benefit the offender may have obtained from committing the offence.

4.8 Where the person fails to pay the civil penalty, the Council may recover it as if it were an order of the County Court.

Rent Repayment Orders

4.9 Rent Repayment Orders were introduced under the Housing Act 2004 to cover situations where the landlord of a licensable property had failed to obtain a licence. The Housing and Planning Act 2016 has extended the range of offences where Rent Repayment Orders can be applied to include the following situations:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Offences in relation to licensing of HMOs under Part 2 of the Act
- Illegal eviction or harassment of tenants
- Using violence to secure entry to a property
- Breach of a Banning Order.

4.10 A local housing authority can impose a civil penalty and also apply for a Rent Repayment Order for certain offences e.g. both sanctions are available for a failure to comply with an Improvement Notice and failure to obtain an HMO Licence.

4.11 Either the Council or a tenant can make an application to the First-tier Property Tribunal and tenants no longer need to wait for a conviction before making an application for a Rent Repayment Order. If approved up to 12 months rent can be reclaimed. Where the rent was paid through housing benefit or universal credit payments and a Rent Repayment Order is granted, the money will be returned to the Council. Where the person fails to pay the Rent Repayment Order, the Council may recover it as if it were an order of the County Court.

4.12 The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 enable Local Authorities to use the money received from civil penalties and Rent Repayment Orders for private sector housing enforcement work.

Banning Orders

4.13 Under the Housing and Planning Act 2016 the Council can apply to the First-tier Tribunal for a Banning Order against a residential landlord or property agent for a wide range of housing offences. This Order prevents the landlord or agent from letting or managing properties for at least 12 months. Breaching a Banning Order is an offence subject to either prosecution or a civil penalty.

4.14 Once a Banning Order has been made, the Council must place the person on the new database of rogue landlords. The Council may also make an entry on the database for a person who has been convicted of one or more of the Banning Order offences or has received two or more financial penalties in respect of a Banning Order offence.

Electrical Safety Standards

- 4.15 Since April 2021 all landlords of privately rented residential properties must make sure that the electrical installations in their properties are inspected and tested by a qualified electrician at least every 5 years. They must also provide copies of the reports to tenants and the Council if requested and carry out any remedial works. Where a landlord is in breach of the Regulations, the Council must serve a Remedial Notice requiring the works to be carried out and it can also take urgent remedial action itself where necessary. If the landlord does not comply with the notice, it can arrange the work itself with the tenant's consent. The Council can recover the costs of taking remedial action from the landlord and it can issue a financial penalty of up to £30,000 under the policy mentioned above.

Other recent provisions

- 4.16 Under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) Order 2014 it is a legal requirement for lettings agents and property managers to join a government approved redress scheme. Failure to do so is an offence and the Council may serve notice requiring the payment of a financial penalty of up to £5,000. Further penalties may be imposed if they continue to fail to join a scheme.
- 4.17 Under the Smoke and Carbon Monoxide Alarm Regulations 2015 it is a legal requirement for landlords to ensure that there is a working smoke alarm on each floor of any privately rented property and a carbon monoxide alarm installed in any room used as living accommodation and containing a fixed combustion appliance. Where a landlord is in breach of the Regulations, the Council must serve a Remedial Notice requiring the works to be carried out. If the landlord does not comply with the notice, the Council must carry out the remedial work. It can recover the costs of taking remedial action from the landlord and require the landlord to pay a penalty charge of up to £5,000 determined in accordance with its Statement of Principles.
- 4.18 Under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 landlords must not let out properties with an EPC rating below E unless a valid exemption is in place. Where the Council believes that a landlord is in breach of the Regulations, it may serve a Compliance Notice on the landlord requiring information to help it decide whether there has been a breach. If the Council is satisfied there has been a breach of the Regulations it can issue a financial penalty. The maximum level of penalty varies with the type of breach under the Regulations, up to a maximum amount of £5,000 per property.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 The adoption of this policy will contribute to the strategic priorities of improving the health and well-being of our residents and communities and ensuring good quality housing for all income levels and age groups.

6. Implications of decision

- 6.1 **Resource (Finance, procurement, staffing, IT)**

The charging of penalties helps recover the revenue costs of the private sector housing service, which in turn helps to support the General Fund revenue budget.

Through civil penalties, there is likely to be reduced costs comparatively to prosecution, therefore enables the service to minimise costs.

It is likely some penalties will be unrecoverable, therefore an impairment allowance will be required for non-collectable penalties.

6.2 Risk Management Implications:

The application of civil penalties is likely to be quicker and cheaper than prosecution and the Council will retain the penalty. However, the same standard of proof is required as for prosecution and the landlord can appeal to the First-tier Tribunal who can confirm or vary the size of the penalty. There is also a risk that the Council does not receive any money if the landlord refuses to pay.

6.3 Legal Implications:

An agreed enforcement policy will give the Council a policy against which all cases can be assessed before and while any enforcement action is taken, in order to ensure consistency of approach to cases and to support the Council should there be any challenge to the Council's use of its enforcement powers.

6.4 Equality, diversity and inclusion

"There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary, across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010."

6.5 Climate emergency declaration

The proposed enforcement policy will ensure that private sector rented housing is maintained to an appropriate standard including the heating and lighting in support of reducing energy consumption. .

7. Consultation and engagement

7.1 Consultation with Landlords and tenants groups,

8. Other options considered

8.1 Doing nothing is not an option

8.2 Having a clearly defined and set out policy is key to delivering the councils strategic objectives in respect of good quality housing for all.

9. Governance journey

- 9.1 Corporate Management Board - 29 November 2022
Executive Briefing – 3 January 2023
Executive – 17 January 2023
Council for adoption – 21 February 2023

Annexes:

Annexe 1 – Draft Private Sector Housing Enforcement Policy

Background Papers

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

CONTACT OFFICER:

Name: Simon Brisk
Position: Private Sector Housing Manager
Telephone: 01483 523421
Email: Simon.brisk@waverley.gov.uk

Name: Richard Homewood
Position: Executive Head of Regulatory Services
Telephone: 01483 523411
Email: Richard.homewood@waverley.gov.uk

Agreed and signed off by:
Legal Services: 17 November 2022
Head of Finance: 17 November 2022
Strategic Director: 17 November 2022
Portfolio Holder: 3 January 2023



Waverley Borough Council
**Private Sector Housing
Enforcement Policy**
DRAFT

Latest version number: V.02
Latest publication date: November 2022
Lead Officer / Team: Private Sector Housing Manager

1. Document Information & Governance

Approval & Publication:

Approving Body	Approval route requirement	Publication Type	Publication requirement	Review frequency	Document owner	Next Review Date
<i>e.g. Executive, Council,</i>		<i>Internal/ external</i>	<i>Required by x legislation</i>	<i>e.g. Annual</i>		
<i>E.g. Management Board</i>	<i>There are no legal or constitutional requirements for approval</i>	<i>Internal</i>	<i>There are no legal or constitutional requirements for publication</i>			

Version Control Information:

[Please ensure changes to your document are recorded in the Version Control History section below. As a guide versions 0.1, 0.2, etc. are used until document is published when it becomes V1. The v2, v3, v4 would indicate new versions following a review and v1.1, v2.1, would indicate in year smaller corrections to the document] – remove.

Version	Version Status (Draft, Approved /Published Internally or Externally)	Date	Version Comment	Version Author
V0.1	Draft	05/01/2022	Creation of the document	Simon Brisk
V0.2	Amended Draft	17/11/22	Minor layout amendments	Simon Brisk
V0.3	Approved Draft		Approved by Management Board	
V0.4	Final Approval		Approved by the Executive	
V1	Published		1 st Publication	
V1.1	Draft		In year corrections	
V1.2	Final Approved & Re-Publication		In year correction approval by Management Board	
V2			Full Annual review	

Impact Assessments and Consideration:

Impact Assessment Type	Required / Not Required	Date Completed	Impact Assessments and Considerations Comment	Assessment Owner
Equality Impact Assessment				
Data Protection Impact Assessment				
Climate Change				

2. Contents

1. Document Information & Governance	2
Approval & Publication:	2
Version Control Information:	2
Impact Assessments and Consideration:	2
2. Contents.....	3
3. Introduction	5
4. Identifying The Need For Action.....	5
5. Requiring Information.....	6
6. Powers Of Entry	6
7. Inspections.....	7
8. Informal Action	7
9. Formal Action.....	8
10. Serving A Statutory Notice or Order	9
11. Housing Act 2004	9
12. Emergency Measures.....	11
13. Works in Default	11
14. Rent Repayment Orders.....	12
15. Formal Cautions	13
16. Prosecution	13
17. Civil Penalties.....	14
18. Banning Orders	15
19. Database of Rogue Landlords and Property Agents	16
20. Houses in Multiple Occupation (HMOs).....	17
21. Overcrowding	18
22. The Redress Scheme.....	19
23. Smoke and Carbon Monoxide Alarm Regulations 2015	19
24. Minimum Energy Efficiency Standard (MEES)	20
25. Electrical Safety Standards	20
26. Other Legislation Enforced by Private Sector Housing.....	20
27. Rented Properties	22
28. Owner Occupiers.....	23
29. Empty Dwellings	23
30. Mobile Homes, Caravan Sites and Camping Sites.....	24

31. Charges for Enforcement Action 25

32. Recovery of Debts 26

33. Complaints 26

Appendix 1: Civil Penalties under the Housing and Planning Act 2016..... 27

Appendix 2: Statement of Principles for determining financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 31

Appendix 3: Financial penalties under the Minimum Energy Efficiency Standard 35

DRAFT

3. Introduction

The aim of this policy is to set out how the Council will deal with housing defects and other issues in private sector dwellings in the Borough and how it uses its enforcement duties and powers. It also provides a background to the legislation and guidance on which it is based. It should be read in conjunction with the Waverley Borough Council Enforcement Policy for Regulatory Services, which provides a summary of the Council's enforcement powers and the principles of application.

This policy sets out what owners, landlords, managing agents and tenants of residential properties can expect from the Council's Private Sector Housing (PSH) Team when regulating standards. The policy will ensure consistency of approach among Council Officers whilst allowing members of the public to know what to expect from the service.

The PSH Team is part of the Council's Strategic Housing and Delivery Service and aims to protect the health and wellbeing of our residents by ensuring that their homes are properly maintained, safe and suitable for occupation.

Our aim is to raise standards in the Borough, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if it is not possible to achieve improvements through informal means, then enforcement action may be necessary to protect the public and the environment.

In order to regulate private sector housing, the PSH Team will conduct pro-active and re-active property inspections, routinely respond to requests for visits and investigate complaints of disrepair, overcrowding and other housing hazards. The PSH team will request information, carry out inspections, process licence applications, encourage and promote good practice, provide owners and landlords with advice and information, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.

4. Identifying The Need For Action

Enforcement action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures could lead to effective resolution. We will apply the enforcement policy in every case and make a decision about whether to proceed to formal enforcement action having considered the individual circumstances. In making our decision we will consider relevant factors such as the harm caused or potential for harm to be caused to individuals, the public and the environment.

We will only depart from this policy if there are exceptional circumstances, which will be properly documented. In these situations the Head of Service must approve the enforcement action in consultation with the Borough Solicitor.

5. Requiring Information

Authorised Officers have the power to require:

- Any person with an interest in a property to provide details about its ownership and occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
- Electrical and gas safety certificates in relation to Houses in Multiple Occupation under Section 234 of the Housing Act 2004;
- Documents to enable them to carry out their powers and duties under Section 235 of the Housing Act 2004;
- Specified information for the purpose of deciding whether to apply for a Banning Order against the person under Section 19 of the Housing and Planning Act 2016;
- Specified information for the purpose of deciding whether to make an entry in the database of rogue landlords and property agents or to keep an entry up-to-date under Section 35 of the Housing and Planning Act 2016.

Officers will routinely use these powers and it is an offence not to produce the required information as requested or to provide false or misleading information. To address non-compliance, formal action will be considered such as a simple caution, financial penalty or prosecution (see below).

For specific housing purposes the Authority also has the power to:

- Obtain and use Housing Benefit and Council Tax information under Section 237 of the Housing Act 2004;
- Request and use tenancy deposit information under Section 212A of the Housing Act 2004; and
- Access and use information contained within the database of rogue landlords and property agents under Section 39 of the Housing and Planning Act 2016.

6. Powers Of Entry

Entry to a property is usually required to enable the PSH Team to carry out its statutory functions. Officers will normally make an appointment to visit in the first instance and will give at least 24 hours' notice to both the occupiers and owners of our intention to enter properties to inspect them. Officers will carry written authorisation to carry out inspections.

Powers of entry will allow officers, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take other people with them, take appropriate equipment or materials with them and take measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The PSH Team will exercise its statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related legislation or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person or to protect the environment without avoidable delay;
- To determine if a property is a House in Multiple Occupation (HMO) requiring a licence;
- To check whether the owner has failed to comply with the conditions of a HMO licence or has breached the HMO Management Regulations;
- Joint working with other agencies such as the Police, Immigration Enforcement or Fire Service.

The PSH Team may apply to the Magistrates Court/Justice of the Peace for a Warrant to Enter Premises if entry has been refused or refusal is reasonably anticipated, or giving notice would defeat the purpose of the visit, or the premises are unoccupied and immediate access is necessary. Before applying for a warrant we will consider all the circumstances of the case and ensure that a warrant is a proportionate and reasonable action. A warrant under this section includes the power to enter by force, if necessary. Obstructing an authorised officer from entering a premises in accordance with their powers is an offence and could result in prosecution.

7. Inspections

Dwellings are inspected both reactively (in response to a request or complaint) and proactively based on risk and intelligence.

Where there is reason to believe a hazard may exist but access to the property is denied or prior warning would defeat the purpose of the inspection, the Council can apply to the Magistrates Court to obtain a warrant to enter the property without prior notice.

The inspection may be limited to that part of the property where the Officer has reason to believe there may be a problem but may extend to the whole of the property, including the common parts and any gardens, garages and yards.

Once a property has been inspected, the Officer will assess any hazards found and consider what action to take. The actions can be broken down into “informal” and “formal” action.

8. Informal Action

Informal action will generally be considered as the first step unless the problem is of a serious nature and there is an imminent risk to health and safety. In most circumstances tenants will be advised to contact the landlord about the problem first if they have not already done so.

Informal action may include provision of advice and information and issuing verbal or written requests for action.

The PSH Team will aim to write to the owner, managing agent or landlord within 10 days of the inspection outlining the nature of the problem/s identified and requesting confirmation of the remedial action to be taken to remedy the hazard or defect and when this will happen.

Action taken by the owner or landlord will be monitored and if necessary follow up letters, emails and telephone calls will be used in an effort to ensure the remedial works are carried out informally. A re-inspection will normally be carried out to confirm that the identified faults have been corrected.

In some cases the Officer may decide to take no action, for example where the nature of the defect is negligible or where the occupiers would prefer that the Council does not take any action at that time.

Circumstances in which informal action is likely to be appropriate include situations where:-

- The act or omission is not serious enough to warrant immediate formal action;
- The individual or company's past history suggests informal action will achieve compliance;
- The Officer's confidence in the management of the property or premises is high;
- Standards are generally good suggesting a high level of awareness of statutory responsibilities;
- The time period allowed to seek compliance does not present a significant risk to public health.

9. Formal Action

Formal action will be considered where the informal approach has not been successful in ensuring compliance or in situations where Officers consider that the risk to the health and safety of the occupiers is high enough to warrant formal action without an informal stage.

Some legislation requires formal action to be taken straight away, for example illegal eviction or a breach of the HMO Management Regulations.

Where formal action is considered necessary, the Council has a range of options available including:

- serving a statutory Notice or Order;
- taking emergency action;
- carrying out works in default of a statutory notice;
- applying for a Rent Repayment Order;
- issuing a formal caution;
- prosecution;
- issuing a civil penalty;
- applying for a Banning Order.

Where practicable decisions to serve formal enforcement Notices and Orders will be taken by the Case Officer in consultation with the Private Sector Housing Manager.

Before making a decision to take formal action, Officers will have regard to:-

- The seriousness of the hazard and whether it poses an imminent risk to health or safety;
- The tenure of the occupier;

- Whether the Council has a duty or a discretionary power to take action;
- Whether the occupiers or visitors are in a vulnerable group with respect to the hazard;
- Whether or not the occupancy is likely to change;
- The owner's ability or willingness to undertake remedial action;
- The owner's past history in terms of compliance;
- The officers' confidence in the management of the property;
- The likely effectiveness of the various enforcement options; and
- The views of the owners and occupiers.

There are statutory rights of appeal against Notices, Orders, financial penalties and associated decisions made by the Council. These appeals will normally be made to the local First-tier Tribunal (FTT) who may confirm, quash or vary the decision. Details of these rights and information on making an appeal will be provided by the Council when the action is taken.

10. Serving A Statutory Notice or Order

Formal action will usually involve the service of a statutory Notice or Order. Most Notices require the recipient to commence and complete remedial works within specified time limits.

The recipient of the Notice or Order will be informed of the reason that the action is being taken and the Notice or Order will clearly state the required actions to be taken, the timescales in which they should be completed and the potential penalty for non-compliance with the requirements of the Notice or Order.

11. Housing Act 2004

The Housing Act 2004 is the main piece of legislation enforced by the PSH team. The Act and secondary legislation covers key areas of the team's work such as regulating housing conditions and HMO licensing.

Part 1 of The Housing Act 2004 is concerned with assessing housing conditions and reducing health and safety hazards using the Housing Health and Safety Rating System (HHSRS). The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. Guidance about inspections and assessment of hazards is provided in the [HHSRS Operating Guidance](#).

There are two categories of possible hazards:

- **Category 1 hazards** represent a serious risk to health and safety and the Council has a duty to take appropriate action to see these hazards reduced;
- **Category 2 hazards** represent a less serious risk and, although it does not have a duty to take action, the Council has the power to take appropriate action to reduce these hazards.

Where a category 2 hazard is present the Council will take enforcement action where it is considered appropriate to the particular circumstances of the case. The following circumstances will be considered when deciding whether to take enforcement action in relation to Category 2 hazards:

- A sufficiently high Category 2 hazard exists in addition to one or more Category 1 hazards;
- Where a member of the vulnerable age group for the specific hazard is present who would derive benefit from having the Category 2 hazard addressed;
- Where the cumulative effect from multiple Category 2 hazards creates a more serious situation;
- Where specific local hazards have been identified and targeted for action.

The following options are available to the Council under Part 1 of the Act when considering the most appropriate course of action:

- Serving a **Hazard Awareness Notice** to formally notify the owner that a hazard has been identified;
- Serving an **Improvement Notice** to require remedial works;
- Making a **Prohibition Order** to prevent the use of all or part of the dwelling or to restrict occupation by particular numbers or descriptions of people;
- Taking **Emergency Remedial Action**;
- Making an **Emergency Prohibition Order**;
- Making a **Demolition Order** under the Housing Act 1985;
- Declaring a **Clearance Area** under the Housing Act 1985.

Officers will use the [Housing Health and Safety Rating System Enforcement Guidance](#), published by the ODPM in February 2006, to determine the most appropriate course of action from the above list and will adhere to the relevant consultation requirements set out in the legislation for taking into account the views of occupiers, owners and other stakeholders. Regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

In the case of fire hazards, the Council has a duty to consult with Surrey Fire and Rescue Service, so far as it is practicable to do so, before taking enforcement action.

Housing Act 2004 Notices and Orders will be accompanied by a "Statement of Reasons" explaining why one type of enforcement action was taken rather than another.

Improvement Notices and Prohibition Orders can be suspended, such that a specified time period elapses or specified event occurs (e.g. a change of occupancy) before the suspended Notice or Order comes into operation.

Where a Notice is served and there is a change in ownership of the property, the Notice can be enforced on the new owner or recipient. However, any outstanding liabilities such as fines or costs remain with the original owner or recipient of the notice.

Charges will be made for certain formal enforcement action that the Council takes under the Housing Act 2004.

If a Notice or Order under the Housing Act 2004 is complied with or amendments are required as a result of new information, a “Revocation Notice” will be served confirming that the original Notice or Order has been withdrawn.

Failure to comply with the Notice or Order is a criminal offence and the following sanctions will usually be considered:

- Carrying out works in default;
- Applying for a Rent Repayment Order;
- Formal caution;
- Prosecution;
- Civil penalty.

12. Emergency Measures

Where the Council is satisfied that a category 1 hazard presents an imminent risk of serious harm to the health and safety of occupiers or visitors of a premises, it can take emergency measures. This includes taking Emergency Remedial Action to reduce the hazard to an acceptable level or serving an Emergency Prohibition Order to prevent occupation of the premises (or part of the premises) with immediate effect.

The Council may take emergency action in addition to other enforcement action in respect of the property.

13. Works in Default

The Council will consider carrying out works in default or remedial action where the legislation allows. It will typically be appropriate:

- Where actions have been required by a Notice and have not been completed within the agreed timescale or reasonable progress has not been made towards their completion; or
- Where Emergency Remedial action is taken under the Housing Act 2004.

In these cases, the Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works from the property owner, including any additional costs such as a warrant of entry and any administrative costs. In some cases interest may be also be chargeable.

Any charges for works in default will be made in line with our published fees and charges. The Council’s charges are reviewed annually and agreed formally by the Council.

Any unpaid charges for the works and associated costs will be placed as a land charge on the property. This means that when the property is sold any outstanding debt has to be repaid including any interest accrued on the initial charge.

In determining whether works in default or emergency remedial action is appropriate, Officers will consider the following:

- the effects of not carrying out the work on the health, safety and wellbeing of the occupiers of the property concerned;
- Any urgency for the works to be undertaken;
- the wishes of the occupiers;
- the reason/s for the work not being carried out in the first place;
- the costs and complexity of carrying out the works.

The Council may also consider prosecution or a civil penalty in addition to carrying out works in default. The Council may also pursue enforced sale of a property where the legislation allows.

14. Rent Repayment Orders

A Rent Repayment Order (RRO) is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent, capped at a maximum of 12 months.

The offences for which an application for a RRO can be made are:

- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)
- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (under section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (under section 95 of the Housing Act 2004)
- Breach of a Banning Order (under section 21 of the Housing and Planning Act 2016)

The Council can prosecute and also apply to the First-tier Tribunal for a RRO. Where the landlord has been convicted of the offence, the First-tier Tribunal must award the RRO and must require that the amount to be repaid is the maximum it has the power to order.

There does not have to be a conviction but in order for the Tribunal to issue a RRO, it will need to be satisfied beyond reasonable doubt that one of the offences listed above has been committed.

We will always consider applying for a RRO where a landlord has been convicted of one of the above offences and at least one of the tenants affected was in receipt of housing benefit or universal credit. We will also consider applying for a RRO where a landlord has been issued with a civil penalty for one of the above offences.

We will have regard to [Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#) and we will notify the landlord if we intend to apply for a RRO and consider any representation received.

The Council is allowed to retain the income it receives from rent repayment orders. This income will be used to increase our housing enforcement activity within the Borough.

The Council will also offer advice, guidance and support to assist tenants who are not in receipt of housing benefit or universal credit to apply for a RRO in the circumstances above.

15. Formal Cautions

Where someone has committed an offence and fully accepts responsibility for the offence, Officers may offer a formal caution where there is sufficient evidence to warrant a prosecution but it is not in the public interest to do so.

Formal cautions may be considered where:

- The defendant has admitted their guilt;
- The defendant has not committed the same type of offence previously;
- There is no record of any offences by the defendant within the previous two years;
- The defendant understands the significance of the caution and agrees to be given a formal caution; and
- The defendant agrees for the facts of the case being made public by means of the Council's website and media releases.

If the defendant agrees to receive a formal caution, the Council will seek to recover the costs of the investigation as part of the formal caution process.

The decision to offer a formal caution must be authorised by the Head of Service, in consultation with the Private Sector Housing Manager and the Borough Solicitor.

A record of the caution is kept by the Council and it may subsequently influence a decision to instigate prosecution proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

16. Prosecution

The Council will only proceed with a prosecution where there is sufficient and reliable evidence that an offence has been committed and it is in the public interest to do so.

Each case that the PSH Team deals with is unique and must be considered on its own facts. However, there are several factors that, if present, would make prosecution more likely to be considered:

- It is not appropriate to issue a civil penalty or formal caution or the offender has refused to accept a formal caution;
- The offender has provided false information;

- Obstruction or assault is involved;
- The offence was motivated by discrimination;
- The victim of the offence is vulnerable;
- Actual harm has occurred or the occupiers have been placed at serious risk of harm;
- The offender has committed similar offences in the past, whether in Waverley or in other local authority areas;
- Poor attitude of the offender towards the offence;
- The offence was a deliberate action carried out to make financial gain;
- The offender is operating a relevant business and should be aware of their legal obligations;
- The likelihood of a significant sentence;
- The need to deter others from committing the same offence.

Officers will generally warn the persons accused that their actions, or lack of action, has made them liable before considering a prosecution against them. However Officers may pursue prosecution without prior warning in exceptional cases, for example where there is a serious risk to health and safety or the environment.

The decision to prosecute must be authorised by the Head of Service, in consultation with the Private Sector Housing Manager and the Borough Solicitor. In deciding to proceed with a prosecution, regard will be made to the [Code for Crown Prosecutors](#).

Where the Council takes prosecution proceedings, it will seek to recover its full costs of the proceedings. This is likely to include the Officers' time in preparing the case as well as all legal costs associated with bringing the case to court.

The Council will also consider taking proceedings under the Proceeds of Crime Act 2002 following a successful prosecution.

17. Civil Penalties

The Housing and Planning Act 2016 enables the Council to impose a civil penalty of up to £30,000 as an alternative to prosecution for the following offences:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004)
- Contravention of an Overcrowding Notice (section 139 of the Housing Act 2004)
- Failure to comply with the HMO Management Regulations (section 234 of the Housing Act 2004)
- Breach of a Banning Order (section 21 of the Housing and Planning Act 2016).

Only one civil penalty can be issued (as an alternative to prosecution) for each of the offences listed above except for breaches of the HMO Management Regulations, for which a civil penalty can be issued for **each** separate breach.

The same burden of proof is required as with a criminal prosecution, meaning that the offence must be proved within reasonable doubt. The difference with this sanction is that the judgement is made by the local housing authority rather than the Court.

The Council will normally consider using its powers to issue a civil penalty in the first instance. However we will seek alternative measures, such as formal cautions or prosecution, in cases of repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

The Council's use of civil penalties will be in line with statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016. Further information can be downloaded at [Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#).

The Council is allowed to retain the income it receives from civil penalties. This income will be used to increase our housing enforcement activity within the Borough.

The factors used by the Council to decide on the level of the civil penalty are outlined in Appendix 1 of this policy.

18. Banning Orders

The Housing and Planning Act 2016 also enables the Council to apply to the First-tier Tribunal for a Banning Order against a residential landlord or a property agent who has been convicted of a Banning Order offence.

A Banning Order bans a landlord or property agent from letting properties or engaging in letting agency or property management work in England for a defined period of time, which is at least 12 months.

Housing related offences regarded as Banning Order offences include:

- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)
- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Offences in relation to licensing of Houses in Multiple Occupation (under section 72 of the Housing Act 2004)
- Offences in relation to licensing of houses under Part 3 of the Act (under section 95 of the Housing Act 2004)
- Contravention of an Overcrowding Notice (section 139 of the Housing Act 2004)
- Supply of false or misleading information (section 238 of the Housing Act 2004)
- An offence under the Health and Safety at Work etc. Act 1974 where a person contravenes the Gas Safety (Installation and Use) Regulations 1998.

Banning Orders are reserved for the most serious offenders who flout their legal obligations and rent out substandard accommodation and will be decided on a case by case basis.

In deciding whether to apply for a Banning Order and how long to recommend the ban for, we will have regard to [Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#) and specifically we will consider:

- the seriousness of the offence and the sentence imposed by the Court; and
- the previous history of the offender especially in relation to other Banning Order offences.

We will also take into account the likely effect of the ban on the person and anyone else who may be affected, including:

- the harm or potential harm to the tenant, specifically in relation to vulnerable people (Banning Order offences more directly related to health and safety of tenants will be considered more harmful);
- punishment of the offender, ensuring any ban is proportionate and also reflects the severity of the offence; and
- deterrence of the offender and others from committing similar offences by recommending a sufficiently long enough ban.

Breaching a Banning Order is an offence, subject to either prosecution in the magistrate's court or a civil penalty. We will consider prosecuting or issuing a civil penalty to any landlord found to be breaching a Banning Order in our area.

19. Database of Rogue Landlords and Property Agents

The Council must place a person on the database if it has successfully made a Banning Order application. The landlord will remain on the database for the period that the Banning Order has effect.

We will consider if it is appropriate to make an entry on to the database of rogue landlords and property agents when a landlord has been convicted of a Banning Order offence or received two or more civil penalties over a 12 month period.

In deciding whether to make an entry on the database, and the period of time that a landlord or property agent should stay on the database, we will have regard to the [database of rogue landlords and property agents under the Housing and Planning Act 2016 - Statutory guidance for Local Housing Authorities](#). We will consider the severity of the offence, any mitigating factors, any history of compliance or non-compliance and the deterrence effect on the offender and others from committing similar offences.

Before being placed on the database a decision notice will be served on the landlord or property agent specifying the length of time they will be maintained on the database and right of appeal. The minimum period is two years.

20. Houses in Multiple Occupation (HMOs)

As HMOs are considered a higher risk than single family homes, the conditions, facilities and management are more closely regulated.

Under Part 2 of the Housing Act 2004, an HMO licence is required for all rented properties that are occupied by 5 or more persons forming more than one household and where two or more of the households share facilities.

The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupiers, including the size of the rooms and the adequacy of the amenities. When assessing the maximum number of occupiers in the property, reference will be made to the prescribed standards under the Act and to the [Waverley Standards for Houses in Multiple Occupation](#).

All licences are issued with conditions that have to be complied with during the period of the licence. These will include the maximum permitted number of occupiers and households.

A fee will be charged for all licence applications as detailed in our published fees and charges.

Licences are normally issued for five years and a new licence must be applied for before the end of the licence period. However, licences may be issued for a shorter period depending on the circumstances of the case. For example, the duration of the licence may be shortened where the Council is satisfied that the property should have already been licensed or there is concern about the management of the property. No reduction in fee will apply.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person in accordance with the Housing Act 2004. The Council will specify the information required as part of this process and may require additional checks, such as a Disclosure and Barring Service (DBS) check, where considered appropriate. A person's fit and proper status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or as a result of any other factor deemed relevant by the Council.

When issuing a licence, the PSH team will provide an opportunity for interested parties to make representation regarding decisions made and the conditions applied. If an agreement cannot be reached there is a right of appeal to the First-tier Tribunal. Details of how to appeal will always be provided.

It is a criminal offence if a person controlling or managing an HMO does not have the required license. Failure to comply with any of the conditions attached to a license is also an offence. In cases where a licensable HMO property is found to be operating without a license or license conditions are not met, enforcement action will be considered in accordance with this policy.

Informal action will be taken in respect of minor breaches of license conditions so long as the breaches have not significantly affected a person's health, safety or welfare. Formal action will be considered where there has been a failure to license the property or where there have been serious and/or persistent breaches of license conditions. Consideration will also be given whether to revoke the license. The license can be revoked if the licensee or the manager is no longer a fit and proper person to own or manage the HMO.

Where landlords have been prosecuted for operating an unlicensed HMO, the Council will use Rent Repayment Orders to claim back any Housing Benefit paid whilst the HMO was unlicensed and provide tenants with information and advice on how they can claim back rent they have paid.

Management Regulations

The HMO Management Regulations impose duties on managers of HMOs to maintain them in good repair and working order, whether or not they are subject to licensing. All identified hazards and breaches of the regulations in any HMO, whether licensable or not, will be dealt with in accordance with the enforcement approach set out in the main body of this policy.

Management Orders

These powers will only be used as a last resort where other attempts to ensure the health, safety or welfare of occupiers have not been successful. The Council has a duty to make an Interim Management Order (IMO) where there is no realistic prospect of an HMO licence being granted. Effectively the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses.

Following an IMO the Council can apply for a Final Management Order (FMO) to be approved, which can last for up to five years. The Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupiers need to be protected, the Council may apply to the First-tier Tribunal for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme. The Council may also make an IMO for properties where a Banning Order has been made.

21. Overcrowding

The Council will investigate complaints from tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where the overcrowding is legitimately impacting on neighbours' health, safety or wellbeing.

Where the property is occupied by a single household an assessment of the hazard will be made using the HHSRS and appropriate action taken under Part 1 of the Housing Act 2004 where necessary.

Where the property concerned is a non-licensable HMO and does not meet the standards for room sizes, an Overcrowding Notice may be served under Part 4 of the Act to reduce the number of occupiers or to prevent new residents from taking up occupation.

Before taking enforcement action we will take into account the views of the owners, occupiers and (where appropriate) the views of parents, guardians or carers.

We will work with the Council's Housing Options team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.

22. The Redress Scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 introduced a requirement for [letting agents and property managers to belong to an approved redress scheme](#). The redress scheme must be approved by Government or designated as a Government administered redress scheme.

Where the Council is aware of an offence, it is required to take enforcement action relating to activities undertaken within the borough and may serve a Notice on the perpetrator requiring the payment of a financial penalty of an amount determined by the Council.

The financial penalty will normally be £5,000, which is the maximum amount under the Order. A lower penalty will only be charged if the Council is satisfied there are extenuating circumstances.

Where a Notice is served requiring a monetary penalty, there is a right to appeal at the First-tier Tribunal and the Notice is suspended until the appeal is determined or withdrawn.

Where the monetary penalty is not paid, the Council may recover the penalty through a Court order.

23. Smoke and Carbon Monoxide Alarm Regulations 2015

[The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#) introduced the following requirements for landlords during any period when their property is occupied under a tenancy:

- i. a smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- ii. a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and contains a ~~solid fuel burning~~ fixed combustion appliance (not including gas cookers); and
- iii. the landlord must ensure that each prescribed alarm is in proper working order at the start of any new tenancy; and
- iv. from October 2022 ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty.

Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties under the Regulations, we are required to serve a Remedial Notice detailing the actions to be taken to comply with the Regulations. This Notice allows 28 days to complete the works.

If the Council is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the Remedial Notice, the Council must (if the occupier consents) arrange for the remedial action to be carried out.

The Council will also require the landlord to pay a penalty charge (maximum £5,000) if we are satisfied that the landlord has failed to comply with the Remedial Notice within the time allowed. The amount of the penalty charge will be in accordance with our Statement of Principles, which is set out in Appendix 2.

24. Minimum Energy Efficiency Standard (MEES)

[The Energy Efficiency \(Private Rented Property\) Regulations 2015](#) established a minimum energy efficiency standard for domestic privately rented properties. Since 1 April 2020 landlords must not let out properties covered by the Regulations with an EPC rating below E unless a valid exemption is in place. Where a valid exemption applies the landlord must register it on the national Private Rented Sector Exemptions Register.

Where the Council believes that a landlord may be in breach of the Regulations, we will serve a Compliance Notice requiring information from that landlord to help us decide whether there has been a breach. If we are satisfied that there has been a breach of the Regulations, we may issue a financial penalty. We may also publish details of the landlord's breach on the publicly accessible part of the PRS Exemptions Register for at least 12 months.

The maximum level of penalty varies on the type of breach under the Regulations. These are set out in Appendix 3.

25. Electrical Safety Standards

[The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#) made it compulsory for landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years.

Landlords have to provide a copy of the electrical safety report to their tenants and to the Council if requested. If the report requires remedial work or further investigation, landlords must provide written confirmation that the work has been carried out to their tenant and to the Council within 28 days of completing the work.

If the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties in the Regulations, we must serve a Remedial Notice on the landlord requiring remedial action. If the landlord does not comply with the Notice, we may (with the tenant's consent) arrange for the remedial action to be carried out. We may also take urgent remedial action where considered necessary.

The Council will recover the costs of taking remedial action from the landlord and we may impose a financial penalty of up to £30,000 on landlords who are in breach of their duties. The level of the penalty will be determined using the factors outlined in Appendix 1. There is a right of appeal to the First Tier tribunal.

26. Other Legislation Enforced by Private Sector Housing

The Private Sector Housing Team has a wide range of delegated powers covering multiple pieces of legislation. This allows the team to have a holistic and comprehensive approach to regulating the private housing sector in Waverley to keep residents safe and well. In all cases where the Council can require works by notice, we also have the power to carry out the works in default if the owner does not complete them and to charge for the works and our time. Other legislation enforced by the PSH Team in accordance with this policy includes but is not limited to:

Environmental Protection Act 1990

The Environmental Protection Act 1990 defines statutory nuisance and provides the Council with a duty to serve an Abatement Notice requiring the owner to remedy a building defect that is prejudicial to the health of the occupiers or a nuisance to neighbouring residents. Examples of such nuisances include unchecked gas appliances causing risk of carbon monoxide poisoning, rainwater penetration through defective roof or windows and condensation resulting in mould growth.

Public Health Act 1936

This Act provides the Council with power to require by notice the repair of defective sanitary facilities and the clearance, cleansing and, if necessary, fumigation of premises that are filthy and verminous. It also extends the statutory nuisance provisions to tents, vans, sheds (including agricultural/migrant worker type accommodation) or canal boats used as dwellings.

Public Health Act 1961

This Act provides the Council with power to require by notice the unblocking of stopped-up drains or minor repairs to private drains. At the request of an owner, the Council may undertake the repair of a private drain and recover its costs from the owner.

Local Government (Miscellaneous Provisions) Act 1976

This Act gives the Council powers to require details of the ownership of buildings and land, to intervene to bring about the restoration of disconnected services (electricity, gas, or water) and to secure the unblocking of stopped up private drains in shared use.

Local Government (Miscellaneous Provisions) Act 1982

This Act gives the Council power to require the making secure, by boarding up or otherwise, of empty buildings (including houses) to prevent unauthorised entry and/or where the building is likely to become a danger to the public.

Building Act 1984

This Act includes powers for the Council to adopt an accelerated procedure for dealing with defects in buildings that amount to statutory nuisances (see EPA 1990 above), to require repairs to drainage systems and to deal with ruinous or dilapidated buildings including empty homes.

Prevention of Damage by Pests Act 1949

The Council may serve notice on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely infestations of rats and mice.

Protection from Eviction Act 1977

This Act makes it an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy. The Act also makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her;
- or

- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;
- It is an offence to do either of the things described above intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home.

We will investigate cases of harassment and illegal eviction (actual or threatened) and in most cases the aim will be to maintain the occupier's residence in the property in peace and comfort through facilitating negotiation and conciliation between the occupier and landlord. Where this is not possible we will consider prosecution of the landlord.

Protection from Harassment Act 1997

This Act creates four criminal offences: harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction. The PSH Team will enforce the provisions of the Act alongside the Housing Options team and Legal Services.

27. Rented Properties

Before considering any action in respect of a tenanted property, the tenant/s will normally be expected to have first contacted their landlord or managing agent about the problem in writing. This applies to both private and social housing tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of a problem. Copies of correspondence between landlord and tenant, unless confidential, may be required by the PSH team before any action is taken.

There are some circumstances in which this prior contact may not be appropriate, for example:

- Where the matter appears to present an imminent risk to the health and safety of the occupiers and they have been unable to reach the landlord/managing agent;
- Where there is a history of harassment, threatened eviction or poor management.
- Where the tenant is old and frail or otherwise vulnerable;
- Where the tenant's first language is not English and this is likely to cause difficulty in communicating with the landlord;
- Where the tenant could not be expected to contact their landlord/managing agent for some other reason.

Where landlords are taking action within a reasonable timeframe, the Council will not seek to interfere with this process.

Tenants are expected to:

- Allow reasonable access to their landlord, managing agent or contractor to arrange or carry out works;
- Keep prearranged appointments or give sufficient notice of cancellation;
- Be courteous and non-threatening to our officers;

- Provide information in a timely manner when requested;
- Keep officers informed of any contact they have had with their landlord etc. which may affect the action the Council take.

Where it appears to the Officer that the problems have arisen through the lifestyle or actions of the tenants or that the tenants have not allowed the landlord to carry out the repairs, then advice will be given to the complainant and it may be appropriate that no further action is taken.

28. Owner Occupiers

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupiers or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.

Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action. However, all Housing Act 2004 Part 1 enforcement options are available to the Council and will be considered.

Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:

- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect other people e.g. other occupiers, visitors, neighbours;
- Serious risk of life-threatening harm e.g. electrical hazards.

Where the condition of one property is affecting the occupier of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure.

We will always consider the most appropriate option dependent on the circumstances of the case and will make the owner aware of any suitable financial assistance available from the Council.

29. Empty Dwellings

Empty and derelict properties can blight an area, encourage crime, drug use, vermin and vandalism and may cause a nuisance. Such properties are unacceptable in an area of high housing demand such as Waverley.

The PSH team regularly review and monitor dwellings in the Borough which have been empty for a long period of time (usually in excess of 6 months). Officers will seek to identify the owner of the empty property and will attempt to work with them to bring the property back into use. Wherever possible we will assist and encourage owners to access financial assistance where it is available to help return the property back to use.

PSH Officers will work jointly with the Council Tax Team to encourage empty homes back into use and maximise Council income

In cases where a long-term empty property is not being brought back into use despite informal action, formal enforcement action may be considered including:

- Service of a section 11 or section 12 Housing Act 2004 Improvement Notice
- Service of an Empty Dwelling Management Order (EDMO) under Part 4 of the Housing Act 2004 allowing the Council to take over management of the property to facilitate it being brought back into use
- Service of a section 29 notice under the Local Government (Miscellaneous Provisions) Act 1982 to require works to prevent unauthorised entry
- Service of a section 77 or section 78 notice under the Building Act 1984 to require the owner to make the property safe or allow the Council to take emergency action to make the building safe where a building is dangerous, dilapidated or emergency works are required
- Service of section 79 Building Act 1984 notice to require the owner to take steps to address a ruinous or dilapidated property which is adversely affecting the amenity of the neighbourhood
- Service of a section 215 Town and Country Planning Act 1990 notice to require the owner to address unsightly land or external appearance of the property
- Service of a section 80 notice under the Environmental Protection Act 1990 to abate or prevent a statutory nuisance.
- Service of a Demolition Order under section 265 of the Housing Act 1985 to require demolition of an unfit property which is not economically repairable
- Make use of the enforced sale procedure under the Law and Property Act 1925 to force the owner to sell the property where there is an outstanding debt to the Council
- Service of a Compulsory Purchase Orders (CPO) under section 17 of the Housing Act 1985 to allow the Council to acquire under-used or ineffectively used properties to increase the number of houses available or improve the quality of the housing stock.

CPOs are considered the final sanction available to the Council to improve substandard private sector housing where persuasion or statutory notices have failed. CPOs can be used to return long-term empty properties, often causing blight on the environment, to residential use.

Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate formal action will be considered depending on the circumstances of each case.

30. Mobile Homes, Caravan Sites and Camping Sites

The PSH Team's main involvement with caravan (including mobile home) sites is the duty to licence applicable sites (holiday and residential) under the Caravan Sites and Control of Development Act 1960.

We will also licence applicable camping sites under the Public Health Act 1936. If the land is to be used as a camping site by the public for more than 42 days consecutively - or 60 days in a year - a licence is required. There are exceptions for organisations that hold camping exemption certificates.

We will normally issue a licence unless the site does not have the correct planning permission, planning permission is to expire within 6 months or the applicant has had a site licence revoked in the previous three years.

Where a caravan site is operating without a site licence application having been made, and the site is not exempt from the requirement for a caravan site licence, the Council will consider prosecution of the site owner if informal attempts to secure compliance have been unsuccessful. Complaints about unlicensed sites will be investigated in conjunction with the Council's Planning Department.

Licences are issued with conditions to ensure the health, safety and welfare of the residents. Most site licence conditions will be in accordance with the published model standards. However we may include additional conditions specific to the site where considered necessary.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Appropriate enforcement action will be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare.

The Mobile Homes Act 2013 introduced the power to serve a Compliance Notice in respect of breaches of site licence conditions in relevant protected sites in the first instance unless any of the factors for prosecution are relevant and immediate prosecution is considered necessary. Where a Compliance Notice is served and the works are not carried out, the Council may prosecute the site owner and/or carry out the works in default.

The Council may also take emergency action to rectify a breach in a site licence condition, in a relevant protected site, which results in an imminent risk of serious harm to anyone on the site.

The Council can also reclaim its expenses for carrying out works in default and for administrative costs in determining what action to take and serving enforcement notices.

31. Charges for Enforcement Action

The Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering expenses incurred in respect of certain enforcement action.

The Council will normally charge for the administration costs in respect of the following actions:

- Improvement Notice
- Prohibition Order
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order.

The amount of expenses charged will take into account the time spent by Officers in carrying out investigations and inspections, assessing the housing hazards, the subsequent consideration of any action to be taken, consultations and the drafting and serving of the Notice or Order.

The person upon whom the Notice or Order is served will be responsible for paying the expenses incurred by the Council in taking the action.

The fees and charges levied by Waverley Borough Council for enforcement action will be made in line with our published fees and charges, which are reviewed annually.

In certain cases, this charge can be varied or withdrawn at the discretion of the Private Sector Housing Manager e.g. where the works on the Notice have been completed within the time period allowed.

Where charges for enforcement action are lawfully incurred and levied they will be registered as a local land charge. This means that when the property is sold any outstanding debt has to be repaid including any interest accrued on the initial charge.

32. Recovery of Debts

We will pursue all debts owed as a result of enforcement charges or charges for carrying out works in default and ancillary costs, unpaid invoices or unpaid financial penalties.

We will also consider the following measures where the legislation allows and it is appropriate to do so:

- Registering a Local Land Charge on the property where the responsible person is unable to settle the debt or cannot be traced;
- Require that the rent is paid to the Council instead of the landlord until the debt is repaid. This would be considered where the property is rented and there are no or low mortgage repayments;
- Enforce the sale of the property to recover costs or the money owed in the relevant Court, including the County Court. This would be considered where the property is empty or is rented but with multiple debts already registered.

33. Complaints

Statutory appeal rights exist where Notices are served or charges levied and these are set out in the legislation. Where enforcement action is taken, detailed information will be provided regarding the statutory rights of appeal.

If you are dissatisfied with any aspect of the service provided by the PSH Team, please contact us in the first instance using the contact details below. If you are still not happy with the outcome of this approach you can make a complaint via the Council's Complaints Procedure, which is available on the Council's website or on request.

You can contact the Private Sector Housing Team:

- By telephone on 01483 523421
- By email at privatesectorhousing@waverley.gov.uk
- By writing to Private Sector Housing, Waverley Borough Council, The Burys, Godalming, Surrey GU7 1HR.

Appendix 1: Civil Penalties under the Housing and Planning Act 2016

The civil penalties charging structure has been developed in accordance with the guidance issued to local authorities by the Department for Communities and Local Government in “Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.

The Guidance recommends that the following factors should be taken into account:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained from committing the offence.

Determining the severity of offence

There are three levels of culpability:

- **Deliberate** – An intentional breach by a landlord or property agent or flagrant disregard of the law. For example failure to comply with an Improvement Notice.
- **Reckless** – An actual foresight of, or willful blindness to, the risk of offending but deciding to take the risk nevertheless. For example failure to comply with a strict liability in the HMO Regulations.
- **Negligent** – The failure of the landlord or property agent to take action to avoid the offence but should have been aware of the risk involved. For example partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.

Determining the harm to tenants

There are three levels of severity:

- **Level 1 (major impact)** – Serious and substantial risk, including imminent risk, to the health and safety of vulnerable groups, with potentially life threatening results or loss of limbs. Housing hazards that may present such a risk include carbon monoxide exposure, fire and electrical hazards, risk of explosion or structural collapse and exposure to asbestos or radiation. This is not an exhaustive list and it also includes property management failings that could lead to a major risk to the occupiers, neighbours or community and/or intentional discrimination.
- **Level 2 (moderate impact)** – Moderate risk to the health and safety of occupiers and/or immediate neighbours, leading to injury or disease requiring prolonged treatment and/or hospital admission. Housing hazards that may present such a risk include risk of falls on stairs or between levels, collision and entrapment and any other hazards or management issues that could lead to a risk to the occupiers including vulnerable groups.

- **Level 3 (minor impact)** – Risk of injury or disease to the occupiers resulting in treatment at the doctor's. Housing hazards that may present such a risk include damp and mould, hygiene and sanitation defects and any other hazards or management issues that could lead to a risk to the occupiers.

Determining the charge

The final civil penalty amount is made up of two main financial elements – the **investigative** charge and the **punitive** charge. There may also be a third financial element imposed if the Council successfully defends an appeal to the First-tier Tribunal.

When setting a civil penalty, the Council will take into account the cost of investigating the offence/s and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal. These costs will be calculated for each of the offences that are covered by civil penalties by considering the number of hours taken to complete the work, the hourly rate of the Officers involved and the service on-costs. If an investigation leads to more than one civil penalty being imposed, the initial fixed investigatory costs will be divided equally and added to each civil penalty.

The guiding principle to the punitive charge is to ensure that, after all the other factors have been considered and applied, the civil penalty that is set removes the financial benefit that has been gained from committing the offence i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

In order to ensure that the punitive charge is set at an appropriate level, the Council will complete its investigation and consider all of its findings against the factors identified in the statutory guidance.

The maximum level of fine permitted under the legislation is £30,000. The tables below provide an indication of the level of fine that is likely to be appropriate.

Factor	Score 10	Score 20	Score 30	Score
Severity of Offence - score should reflect severity of offence and whether actions were deliberate	Negligent – isolated incident, due to lack of awareness, possibly some effort made to remove risk	Reckless – knowingly committed offence without regard to consequences	Deliberate – intentional breach or flagrant disregard of law	
Track Record of Offender - previous history of offending and/or willingness to comply	No previous history of non-compliance	Some low level previous history	Previous history of non-compliance & enforcement action	

Harm to Tenants - impact on tenants, vulnerable groups, discrimination	Minor risk of harm to tenants. No vulnerable groups affected.	Moderate risk of harm. Vulnerable group may be affected. Possible discrimination.	Major risk of harm with vulnerable group affected or intentional discrimination.	
Deter & Prevent - level of penalty required to prevent reoffending	Penalty will prevent reoccurrence	Penalty likely to deter repeat offending	Repeat offending likely unless penalty is very high	
Removal of Financial Benefit - level of financial benefit gained from offence, including asset values and rental income	Small or no financial gain from non-compliance	Moderate financial gain from non-compliance, moderate assets & income	High financial gain, significant assets & income	
			Total Score	

Score	Fee
50-60	£1,000
61-70	£5,000
71-80	£10,000
81-90	£15,000
91-100	£20,000
101-150	£30,000

Defence charges

A person who has been issued with a civil penalty has a right of appeal to the First-tier Tribunal and this will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued.

The Council intends to defend its decision to issue civil penalties rigorously and this may involve both Officer time and additional legal support.

The Council will robustly seek to recover its legal costs in the event that it is required to defend its decision at a Tribunal. Therefore, each civil penalty notice that is unsuccessfully appealed will have the penalty increased appropriately for each person who has incurred the civil penalty.

Financial means to pay a financial penalty

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.

It is for the offender to disclose to the Council such data relevant to their financial position as will enable the Council to assess what s/he can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender's financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.

As some landlords will own more than one property, it is likely they will have assets they can sell or borrow against. After taking account of any mortgages on the property, the Council will determine the amount of equity that could be released from the property. If an offender claims that they are unable to pay a financial penalty and shows that they have only a low income, consideration will be given to whether any of the properties can be sold or refinanced.

DRAFT

Appendix 2: Statement of Principles for determining financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Summary

This statement sets out the principles that Waverley Borough Council (the Council) will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) requires landlords who let properties under a tenancy to provide and undertake the following:

- a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- a carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a ~~solid fuel burning~~ fixed combustion appliance (excluding gas cookers); and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy;
- ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty

Note: The Regulations do not apply to registered providers of social housing, licensed houses in multiple occupation, live-in landlords, leases of seven or more years, student halls of residence, hostels and refuges or NHS accommodation.

Enforcement

Where the Council has reasonable grounds to believe that:

- there are no or an insufficient number of smoke alarms or Carbon Monoxide detectors in the property as required by the regulations: or
- the smoke alarms or Carbon Monoxide detectors were not working at the start of a tenancy of licence

Then we must serve on the landlord (this may include the letting agent if they are the immediate landlord) a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. It is a statutory duty on the Council to serve the Remedial Notice.

If the Council is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with the Remedial Notice within 28 days, we must arrange for remedial action to be taken (where the occupier consents).

Under Regulation 8, the Council may also require the landlord to pay a penalty charge if the Council is satisfied on the balance of probabilities that the landlord on whom it has served a Remedial Notice has failed to take the remedial action specified in the notice within the period specified.

Background

Regulation 13 requires the Council to prepare and publish a statement of principles, which it proposes to follow in determining the amount of a penalty charge.

Where a penalty charge is made, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

The aim of financial penalties will be to:

- deter non-compliance;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- reimburse the costs incurred by the Council in undertaking works in default.

Criteria for Imposing a Financial Penalty

In considering whether to impose a financial penalty, the Council will look at the evidence concerning the breach of the Remedial Notice. This could be obtained from a property inspection or from information provided by the tenant or agent that no remedial action has been taken.

Landlords need to take steps to demonstrate that they have complied with the Regulations e.g. by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords should also take steps to demonstrate that they have met the requirement to test alarms at the start of the tenancy. For example this can be achieved by tenants signing an inventory form to confirm they were tested and were in working order at the start of the tenancy.

A financial penalty charge will be considered appropriate if the Council is satisfied that the landlord, who had been served with a Remedial Notice, had failed to take the remedial action specified within the time period specified.

Procedure for Charging a Financial Penalty

Under the Regulations, the Council is required to follow a number of procedural steps before requiring a financial penalty to be paid.

The penalty can only be charged where a Remedial Notice has been served, which will give 28 days to take action (for example, to install alarms).

The Council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a Penalty Charge Notice setting out the following:

- the reasons for the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

The Financial Penalty

Fire and carbon monoxide are two of the 29 hazards prescribed under the Housing Health and Safety Rating System and often result in death or serious injury. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety. Carbon monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The provision of smoke and carbon monoxide alarms does not place an excessive financial burden on a landlord. The cost of the alarms is low and they can be installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or carbon monoxide poisoning event far outweigh the cost of installing alarms.

Regulation 8(2) states the penalty charge must not exceed £5,000.

The Council has determined that the standard charge for non-compliance will be the maximum £5,000. However a reduction of 50% will apply in respect of a landlord who has not previously received a penalty charge under this legislation and who makes the payment within 14 days of service of the Penalty Charge Notice.

In determining this level of penalty charge, the Council has considered the following factors:

- The penalty needs to be at a level which is significant enough to deter non-compliance;
- The cost of compliance with the Regulations is minimal;
- The consequences of non-compliance can be serious or fatal for tenants;
- The landlord should already have complied with the requirements of the Regulations prior to service of the Remedial Notice;
- The landlord will have been given the opportunity to comply with the Regulations following service of the Remedial Notice;
- There is a defence under the Regulations that the landlord has taken all reasonable steps to comply with the duty.

The Regulations state that the period specified for payment of the charge must be not less than 28 days beginning with the day on which the Penalty Charge Notice is served.

The Council may, in exceptional circumstances, exercise discretion where the landlord gives written notice to the Council that the landlord wishes the authority to review the Penalty Charge Notice. This request must be made within 28 days beginning on the day on which the Penalty Charge Notice was served.

In conducting the review, we will consider any representations made by the landlord and serve notice of our decision whether to confirm, vary or withdraw the Penalty Charge to the landlord.

A landlord who is served with a notice confirming or varying the Penalty Charge Notice may appeal the Council's decision to the First-tier Tribunal.

DRAFT

Appendix 3: Financial penalties under the Minimum Energy Efficiency Standard

Maximum Penalties

Where the Council decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty up to the maximum limits set by the Regulations. The maximum penalties are as follows:

- Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the local authority may impose a financial penalty of up to £2,000 and may impose a publication penalty;
- Where the landlord has let a sub-standard property in breach of the Regulations for a period of 3 months or more, the local authority may impose a financial penalty of up to £4,000 and may impose a publication penalty;
- Where the landlord has registered false or misleading information on the PRS Exemptions Register, the local authority may impose a financial penalty of up to £1,000 and may impose a publication penalty;
- Where the landlord has failed to comply with the Compliance Notice, the local authority may impose a financial penalty of up to £2,000 and may impose a publication penalty.

The maximum amount that the Council can charge per property is £5,000.

Determination of appropriate penalty

The proportion of the maximum penalty we will apply will be in accordance with the matrix below:

	Low culpability	High culpability
Low harm	25%	50%
High harm	50%	100%

Factors affecting culpability

High – Landlord has a previous history of non-compliance with housing related regulatory requirements and/or landlord has failed to comply with requests to comply with these Regulations. Landlord knowingly or recklessly supplies incorrect information.

Low – First offence under these Regulations, no previous history of non-compliance with housing related regulatory requirements. Complex issues partially out of control of landlord have led to non-compliance.

Factors affecting harm

High – Very low EPC score. Vulnerable tenants occupying property for an extended period of time since non-compliance.

Low – No vulnerable tenants. Higher EPC score close to minimum accepted EPC rating.

This page is intentionally left blank

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

**Review of Executive Working Groups –
CIL Advisory Board and Landlord Services Advisory Board**

Portfolio Holder: Cllr Paul Follows

Head of Service: Stephen Rix, Interim Executive Head of Legal & Democratic Services (Monitoring Officer)

Key decision: No

Access: Public

1. Purpose and summary

- 1.1 This report seeks the Executive's agreement to changes to the Terms of Reference of the CIL Advisory Board and the Landlord Services Advisory Board.

2. Recommendation

It is recommended that:

1. With respect to the CIL Advisory Board, the quorum is revised to 2 Executive members and 2 non-Executive members.
2. With respect to the Landlord Services Advisory Board, the proposed changes to the membership and terms of reference are agreed, as set out in Annexe 1.

3. Reason for the recommendation

1. To enable the scheduled CIL Advisory Board meetings to proceed in January.
2. To update the Landlord Services Advisory Board terms of reference following the 12-month review

4. Background

- 4.1 The Executive has appointed the following Executive Working Groups:
- CIL Advisory Board
 - Landlord Services Advisory Board
 - Climate Emergency Governance Board
 - Dunsfold Park Garden Village Governance Board
 - Farnham Infrastructure Programme Working Group
 - Property Investment Advisory Board
 - Cost of Living Working Group

- 4.2 This report relates to the terms of reference of the CIL Advisory Board and the Landlord Services Advisory Board.
- 4.3 The membership and terms of reference of all the Executive Working Groups will be reviewed in June 2023, following the local elections in May 2023 and the appointment of the new Executive.

CIL Advisory Board membership (CIL AB)

- 4.4 The CIL Advisory Board was originally established by Council in December 2018 as part of the approval of the CIL governance arrangements. The membership was described as a total of 7 members, comprising 3 Executive members (PFHs for Finance, Operational and Enforcement Services, and Economic & Community Development) and 4 non-Executive members. The quorum was set at 5, comprising 2 Executive members and 3 non-Executive members.
- 4.5 In October 2019, the CIL Advisory Board has reviewed its arrangements and for practical reasons has suggested that the quorum should be revised to 2 Executive members and 2 non-Executive members. This will assist with scheduling meetings of the Board.

Landlord Services Advisory Board (LSAB) (Terms of Reference at Annexe 1)

- 4.6 The LSAB was established as an Executive Working Group in October 2021 (Terms of Reference attached) and has been meeting regularly since December 2021. The LSAB is chaired by the Co-Portfolio Holders for Housing who have been given delegated authority to make Executive decisions in relation to Housing issues. The LSAB itself does not have decision-making powers and advises the Co-PFHs and the Executive.
- 4.7 Following a recent 12-month review of the LSAB, a number of changes to the Terms of Reference of the LSAB have been proposed (see Annexe 1). These include some changes to the membership and meeting arrangements: to remove the need for the non-Executive members to be politically balanced, to establish the Tenants Panel Chair as Vice-Chair of the LSAB, and to allow for substitutes.
- 4.8 The Tenants Panel members have provided feedback on their experience of being part of the LSAB and have been pleased with the format of the Board and feel that they are being listened to. They feel the Board is informal and approachable, but also like the formality of meeting in the Council Chamber rather than Committee Room 1.
- 4.9 The next meeting of the LSAB is on 26 January 2023.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 Ensuring that the Executive Working Groups have robust Terms of Reference supports the principles of good governance and open and transparent decision-making.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)
There financial implications to the proposed changes to the terms of reference.

6.2 Risk management
N/A

6.3 Legal
There are no legal implications to the proposed changes.

6.4 Equality, diversity and inclusion
N/A

6.5 Climate emergency declaration
N/A

7. Consultation and engagement

7.1 The proposals put forward in this report have come from the CIL Advisory Board and the Landlord Services Advisory Board.

8. Other options considered

8.1 CIL AB – leaving the membership as currently described will mean that scheduling meetings relies on all the non-Executive members being able to attend and may result in a meeting being cancelled at short notice.

8.2 LSAB – leaving the TOR as currently described will mean that meetings continue as they have been running for the last 12 months.

9. Governance journey

9.1 Executive - 17 January 2023

Annexes:

Annexe 1 –

Background Papers

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

CONTACT OFFICER:

Name: Fiona Cameron
Position: Interim Democratic Services Manager
Telephone: 0148 3523226
Email: fiona.cameron@waverley.gov.uk

This page is intentionally left blank

Landlord Services Advisory Board Terms of Reference

The Council established a Landlord Services Advisory Board, in October 2021, under the Executive Working Group protocol to promote tenant and leaseholder engagement in decisions relating to the Council's housing stock and to provide assurance of the Council's commitment to the Charter for Social Housing Residents.

The Board will consist of:

- The Executive Co-Portfolio Holder with responsibility for Housing (Operations) (Chairman)
Four Waverley tenant members (one may be a leaseholder) including the Tenants Panel Chair (Vice Chairman)
- Four non-Executive members ~~(politically balanced where possible)~~
Four Waverley tenant members (one may be a leaseholder).
~~The Vice Chairman will be elected from the tenant members.~~

Tenant members of the Board will be selected from existing engaged tenants and leaseholders (via an application and interview process on an annual basis or as vacancies arise). If there are more volunteers than positions the Chairman and Vice-Chairman of the Board will select members.

Non-Executive members of the Board will be appointed by Co-Portfolio Holder for Housing and/or Leader of the Council.

Substitutes are ~~not~~ permitted for Tenant and non-Executive Board members.

The Board will normally meet once a month, except the months of August and December and will be held in Surrey term time. The Chairman may reschedule or call ad hoc meetings as required.

Meetings of the Board will normally meet in public and attendance by tenants, leaseholders and members is encouraged.

Specific terms of reference

The Landlord Services Advisory Board will receive reports on matters relating to the Council's landlord functions. These will include:

- The HRA Business Plan and budget, the Housing Delivery Programme, and the Housing Service Plan
- Other matters relating to the delivery of the housing landlord function, with an emphasis on meeting the requirements of the Charter for Social Housing Residents
- Reviews of existing policies or the introduction of new policies relating to or affecting Council's tenancies
- Matters relating to tenant scrutiny and challenge as part of delivering co-regulation of the housing landlord service
- Performance of the housing landlord function

The scheme of delegation identifies the decision making remit and responsibilities of the Co-Portfolio Holder for Housing and the Board.

Formatted: Font: 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Normal, No bullets or numbering

Where those reports relate to items which will be submitted to the Council's Executive or to the Co-Portfolio Holders for Housing exercising their delegated authority, the comments and recommendations of the Landlord Services Advisory Board will be submitted to the Executive or Co-Portfolio Holders for Housing with the officer report.

~~The Landlord Services Advisory Board has an advisory role only and cannot itself take decisions.~~

Revision	Date	Originator	Comments	Approved
1	September 2021	Fiona Cameron	First draft	Council 19 Oct 2021
2	July 2022	Louise Fleming	Updated to reflect changes to membership and frequency	Cllr Rivers 28 July 2022
3	December 2022	Annalisa Howson	Updated to reflect the confirmation of Vice Chairman, appointment of non-Executive members, timing of meetings and proposed amendments to decision making.	

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

JANUARY 2023

Title:

USE OF URGENCY PROCEDURE FOR A KEY DECISION

Portfolio Holder: Cllr Paul Follows, Leader of the Council

Head of Service: Stephen Rix, Interim Executive Head of Legal and Democratic Services (Monitoring Officer)

Key decision: No

Access: Public

1. Purpose and summary

1.1 This report provides an update to the Executive on the use of the procedure for taking an urgent key decision, in accordance with the provisions of Part 4.5, Paragraph 11.4 of the Council's Constitution.

2. Recommendation

That the Executive note the use of the urgency procedure for the taking of a key decision on 1, 29 and 30 November 2022.

3. Reason for the recommendation

3.1 The Council's Constitution makes provision for the taking of an urgent decision at Paragraph 11.4 of Part 4.5 (Overview and Scrutiny Procedure Rules).

3.2 Paragraph 11.4 requires that any decisions taken under the urgency procedure will be reported to the next available Council meeting together with the reasons for urgency and this was done at the Council meeting on 13 December 2022.

3.3. In addition, the Leader requested it is reported to the next available Executive meeting.

4. Background

4.1 In accordance with Paragraph 11.4 of Part 4.5 of the Constitution, a decision was taken at the meeting of the Executive on 1 November 2022 to purchase the freehold at 1-32 Wyatts Close, Godalming before the purchase deadline of 7 November. Due to a misunderstanding that the necessary approval had been secured due to the budget being made available, the item had not been placed on the Executive Forward Plan the requisite 28 days before the decision was taken.

- 4.2 As per paragraph 11.4 of the Overview and Scrutiny Procedure Rules, this was considered to be an urgent decision, and therefore was not subject to call in by the relevant overview and scrutiny committee. This was because the time it would take to allow any call in to be made and dealt with would clearly exceed the legal deadline of 7 November. Given this, it was considered that a delay caused by the application of the call-in process would seriously prejudice the Council's and the public's interests in this matter. As per the arrangements set out in paragraph 11.4 of the Overview and Scrutiny Procedure rules, the Mayor's agreement to this approach being taken was sought and obtained.
- 4.3 In accordance with Paragraph 11.4 of Part 4.5 of the Constitution, a decision was taken at the meeting of the Executive on 29 November 2022 to agree an addendum to the Discretionary Energy Rebate Scheme under the eligibility criteria to award to any pensioners who were in receipt of Council Tax Support without the need for an application process. The scheme closed on 30 November, at which point the Council was required to return any unspent funds to the Government. The decision enabled a significant part of the unspent fund to be allocated to residents.
- 4.4 As per paragraph 11.4 of the Overview and Scrutiny Procedure Rules, this was considered to be an urgent decision, and therefore was not subject to call in by the relevant overview and scrutiny committee. This was because the time it would take to allow any call in to be made and dealt with would clearly exceed the deadline of 30 November. Given this, it was considered that a delay caused by the application of the call-in process would seriously prejudice the Council's and the public's interests in this matter. As per the arrangements set out in paragraph 11.4 of the Overview and Scrutiny Procedure rules, the Mayor's agreement to this approach being taken was sought and obtained.
- 4.5 In accordance with Paragraph 11.4 of Part 4.5 of the Constitution, a decision was taken by the Co-Portfolio Holder for Housing, under his delegated authority at on 30 November 2022 to award an interim domestic gas contract for the Housing Service. Due to a misunderstanding that the necessary approval had been secured due to the budget being made available, the item had not been placed on the Executive Forward Plan the requisite 28 days before the decision was taken.
- 4.6 As per paragraph 11.4 of the Overview and Scrutiny Procedure Rules, this was considered to be an urgent decision, a meeting was called on 30 November 2022 under the Special Urgency procedures, and therefore was not subject to call in by the relevant overview and scrutiny committee. This is because the time it would take to allow any call in to be made and dealt with would clearly exceed the deadline of 30 November. Given this, it was considered that a delay caused by the application of the call-in process would seriously prejudice the Council's and the public's interests in this matter. As per the arrangements set out in paragraph 11.4 of the Overview and Scrutiny Procedure rules, the Mayor's agreement to this approach being taken was sought and obtained.
- 4.7 The decisions taken by the Executive and the Co-Portfolio Holder for Housing on 1, 29 and 30 November 2022 are set out at item 9 on this agenda.

5. Relationship to the Corporate Strategy and Service Plan

5.1 This report supports the Corporate Strategy priority for open, transparent and participative governance.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no resource implications arising from this report.

6.2 Risk management

There are no risk management implications arising from this report.

6.3 Legal

There are no direct legal implications arising from this report.

6.4 Equality, diversity and inclusion

There are no equality, diversity and inclusion implications arising from this report.

6.5 Climate emergency declaration

There are no climate emergency implications arising from this report.

7. Consultation and engagement

7.1 None for the purposes of this report.

8. Other options considered

8.1 None for the purposes of this report.

9. Governance journey

9.1 Council, 13 December 2022.

Background Papers

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

CONTACT OFFICER:

Name: Louise Fleming

Position: Democratic Services and Business Support Team Manager (Deputy Monitoring Officer)

Telephone: 0148 3523517

Email: louise.fleming@waverley.gov.uk

This page is intentionally left blank