

Executive

Minutes of the meeting held on Wednesday 29 June 2016 at the Town Hall, Royal Leamington Spa, at 7.30 pm.

Present: Councillors Coker, Cross, Grainger, Phillips, Shilton and Whiting.

Also present: Councillor Barrott - Labour Group Observer, Councillor Boad - Chair of Overview & Scrutiny Committee, Councillor Mrs Falp - Whitnash Residents Association (Independent) Observer and Councillor Quinney - Chair of Finance & Audit Scrutiny Committee.

(Apologies of absence were received from Councillor Mobbs. In his absence the Deputy Leader, Councillor Coker, chaired the meeting).

16. **Declarations of Interest**

There were no declarations of interest.

17. **Minutes**

The minutes of the meeting held on 20 April 2016, were taken as read, subject to removing apologies from Councillor Phillips, and signed by the Chairman as a correct record.

Part 1

(Items on which a decision by Council is required)

18. **Warwick District Council Enforcement Policy Appendix: Regulatory (Food Safety, Health and Safety and Licensing)**

The Executive considered a report from Health & Community Protection that sought recommendation to Council for the adoption of an appendix to the Councils' enforcement policy, which addressed matters specific to the Regulatory Team within the Health and Community Protection Service Area.

Local Authorities had a statutory duty to have regard to the Regulators' Code in developing the principles and policies which guided their regulatory activities. The Local Government Ombudsman would use the Code as a point of reference when examining complaints about local regulatory services. The adoption of the Enforcement Policy appendix would mitigate against the risk of successful challenge to decisions.

The proposed appendix outlined the regulatory matters which were specific to the Regulatory Section of Health and Community Protection and were not covered in the main body of the WDC Enforcement Policy.

No alternative options were considered because adoption of the appendix would provide the Council with additional protection when undertaking its Regulatory activities.

Recommended to Council that it adopts Appendix 1 to the minutes as an Appendix to Warwick District Council's Enforcement Policy.

(The Portfolio Holder for this item was Councillor Grainger)
Forward Plan reference number 789

Part 2

(Items on which a decision by Council is not required)

19. **Renewal of the Fire Alarm Systems in Sheltered Housing Schemes**

The Executive considered a report from Housing & Property Services that requested additional resources to enable the replacement of the fire panel alarm systems at the Council's five sheltered housing schemes for older and/or vulnerable people.

The fire systems in the Council's five sheltered housing schemes had been in place since the properties were built over 30 years ago. In recognition of the age of these systems, £71,000 had been transferred from the Fire Risk budget to the Sheltered Schemes Fire alarm budget and earmarked to fund the system upgrades.

A re-organisation of the sheltered scheme contracts had been agreed between the service area and the Procurement Team. This would enable the previously separate contracts for; fire alarms; Lifeline call systems; automatic doors; and CCTV to be brought into a single contract. This would improve efficiency and maximise best value through an economy of scale. It was, therefore, decided to defer major works to the fire alarm systems until the new contractor was in place.

The new contract was put out to tender via a framework agreement in April 2015 which resulted in one tender for the contract. The evaluation process, which included a comprehensive benchmarking exercise, determined that the prices quoted were above market average, so the contract was not awarded. After consideration and liaison between the service area and the Procurement Team it was decided that the contract should be re-tendered, but with the works sub-divided into lots. This second procurement exercise was undertaken in July 2015 with the contracts being let in October 2015.

The newly appointed contractor was instructed to carry out an inspection of the systems at each scheme. The survey identified an unanticipated range of problems including that some sensors were not working and that many others were operating with too long a delay before triggering an alarm. After examination of the inspection results and discussions with the contractor it was determined that the existing systems could not be upgraded and that full replacement was the only viable option to ensure the future safety of the scheme's tenants.

Two options for replacement systems were considered, replacement with a like-for-like conventional system or replacement with an addressable system. Conventional systems would identify that a fire alarm had been activated at a scheme but not its exact location, whereas an addressable system

identified the precise location of the activated sensor. Advice from the Council's Building Control team and Health & Safety Officer was that an addressable system should be fitted.

Addressable systems were more expensive than conventional ones and the earmarked £71,000 would be insufficient to cover their installation. However, they had many advantages over conventional systems, which were detailed in the report.

The contract for the repair and maintenance of fire alarm systems provided for upgrades and new system installations, as well as repairs, under the Schedule of Rates (SORs) issued in the contract specification. This removed the need for a separate procurement exercise for the installation works and would allow the new systems to be in place by the end of the current financial year.

Having identified the deficiencies with the existing systems, the Council was mindful that the risks associated with these issues would not be fully addressed until the replacement installations were complete. To mitigate this risk, a range of revised management arrangements had been implemented.

The existing systems were monitored by the Council's Lifeline control centre, which operated 24 hours a day, 365 days a year. If any alarm activation was detected, a protocol had been put in place with the Fire & Rescue Service to ensure that they would call out to the affected scheme as a priority. In addition, if there were no staff on site, the Control Centre would dispatch a minimum of two response officers to the scheme. Once on site they would ascertain if the activation was a false alarm or, in the event of fire, they would, if the Fire Service was not already on site, assess the need for an evacuation provided it was safe to do so.

An enhanced testing regime had been put in place as an interim measure, with a weekly test undertaken by staff and a full inspection by the contractor every three months. This was a blanket measure and was under review to determine if the contractor should inspect particular schemes more often.

Alternatively, the Council could install conventional systems but this had been discounted because the addressable systems would provide the greatest protection to the scheme residents and ensure compliance with good practice as well as relevant legislation and regulations.

The Finance & Audit Scrutiny Committee supported the recommendations and thanked the officers for a clear and concise report.

Resolved that

- (1) the £71,000 earmarked funding for the renewal of the fire alarm systems in the Council's five sheltered housing schemes is increased up to a maximum of £207,000 by reducing the contribution to the Housing Revenue Account Capital Investment Reserve during the financial year 2016-17; and

- (2) the revised management arrangements shall remain in place until the completion of the works, scheduled for no later than 31 March 2017, to ensure the continued safety of the tenants in the sheltered schemes.

(The Portfolio Holder for this item was Councillor Phillips)
Forward Plan reference number 784.

20. **Multi-Storey Car Park Condition Survey Report- Update**

The Executive considered a report from Neighbourhood Services that sought approval for funding of a project management resource, necessary to ensure that multiple car park projects could be delivered within appropriate timescales to minimise potential adverse impact on car park users, local businesses and the wider local economy.

The Council's Head Quarters (HQ) relocation project, which included the replacement of the Covent Garden Multi-Storey Car Park (MSCP), was approved in April 2016. Associated with that decision was the need to undertake essential works at Covent Garden MSCP to ensure it remained safe and fit for purpose until the site was re-developed.

The HQ relocation project would require a final decision to be made by Council in July 2017 and the Covent Garden MSCP would be closed shortly afterwards. The timescale for the redevelopment provided for development of a displacement strategy to ensure that there was no detrimental impact on town centre businesses and the local economy.

The report to Executive in April highlighted the need for essential repairs to Covent Garden car park to ensure that it could remain open until the date of its planned closure. If the essential repairs were not carried out, the Covent Garden MSCP would need to be closed with immediate effect, on health and safety grounds, because it carried a significant risk to human safety if left unrepaired.

The result of an unplanned closure of the car park would see a significant reduction in town centre parking capacity which could result in a major detrimental impact on the local businesses that relied on this car park for longer stay parking for their customers and staff. There was currently no other long stay car park that could accommodate the displacement of season ticket holders from Covent Garden MSCP if it were to close and no significant capacity existed to accommodate non-season ticket users within the town centre.

Whilst, additional car parking capacity could, potentially, be provided by adding a temporary deck to the Chandos Street surface car park this would take at least 12 months to be manufactured and constructed. However, sufficient time would be required to ensure a robust business case for this was developed. There was, therefore, no viable option that could be delivered in time to assist with replacement capacity within the town centre if the car park was to be closed.

The estimated maximum £300,000 cost of the essential repairs was considered to be the same as the loss of net income if the car park was closed immediately rather than as planned in late 2017. There was a strong business case to utilise the available funds in the Car Park Repairs and Maintenance Reserve to ensure the net income was maintained for a further year but, more importantly, to ensure the car park remained open for the benefit of the town and parking capacity was retained within the town centre until alternative arrangements were put in place.

Specialist structural engineers had advised that it would be prudent to tender for the work at Covent Garden and St Peter's MSCPs at the same time to minimise costs and benefit from scales of economy. In February 2016, the Executive agreed to fund £120,000 for repairs at St Peter's MSCP. If funding for Covent Garden MSCP was agreed, then a tender for both MSCPs could be submitted to the market place.

At the same meeting, the Executive had agreed that funding for future MSCP maintenance liabilities should come from the Car Park Repairs and Maintenance Reserve. Additional funds for this reserve had been agreed by Executive on 2 June 2016 when considering the Final Accounts report. It was, therefore, proposed that the estimated cost of undertaking the repairs be funded from this reserve.

In addition to the MSCP repair programme and consideration of the future of the Linen Street MSCP, there was range of other project work envisaged within a wider Car Parking strategy. This included; consideration of the future car parking provision within Leamington Old Town; the potential development of additional provision within Warwick; and the need for future renewal of the existing pay on foot and pay and display equipment. Existing officer resource within the Neighbourhood Services service area was not sufficient to deliver this project work at the same time. A dedicated project manager resource was therefore needed to ensure they were delivered to required standard and on acceptable timescales.

The work that would be generated from the Linen Street MSCP project, on its own, was considerable and time critical. This one project would need to focus on the feasibility aspects, the development of the business case, managing the necessary communications with substantial numbers of stakeholders whilst maintaining the Council's capability to pursue its current level of aspiration.

It was, therefore, recommended that a maximum commitment of £105,000 was made from the Services Transformation Reserve to fund a temporary project management resource to work on the car park projects. This sum was equivalent to the annual cost of a grade B post for two years. This was considered a maximum figure as the grading for the post assessed by the HAY panel could evaluate the role between grades D to B.

The option of closing the Covent Garden MSCP with immediate affect to avoid the £300,000 expenditure on essential repairs had been discounted due to the impact on car parking capacity of the town centre and the inability to make any suitable alternative arrangements within a realistic timeframe.

The option of not funding the identified safety repairs to minimise costs, required acceptance of the risk that future incidents could occur in the final stages of the car parks life. However, due to the nature of the potential risk raised and after consulting with our Legal advisers this option had been discounted as there was a risk of corporate manslaughter if a fatal incident occurred after the Council had been given clear advice from a specialist company.

The option of not funding a project manager resource and continuing with the existing officer resource delivering the projects had also been discounted as there were too many detailed elements of each project that required significant time allocation which was not available within the current officer resource.

The Finance & Audit Scrutiny Committee supported the recommendations in the report but asked that the timeline for the tendering of the works, award of the contract, start of the works and completion of the works should be circulated to the Executive on 29 June 2016.

Councillor Shilton, informed the Executive that the timeline for the works, once funding was approved, would be; tender using Pick Everard framework with contract award by early July. Work starting as soon as contractor could be engaged but no later than end of September 2016. The works would take no more than three weeks and could be completed by closing off individual parking bays and relocating cars from floor to floor. Councillor Shilton explained that a contingency budget had been included within the project for some potential rebar work but this should not impact, significantly, on the time required to complete the works.

Councillor Shilton advised that the Project Manager would require specialist knowledge in car parking which no officer within the Council currently held. In addition, the cost of the role would be lower than that detailed in the report, with any residual budget being returned to the contingency budget.

Resolved

- (1) a maximum £300,000, be released from the Car Park Repairs and Maintenance Reserve, to fund essential repairs to the Covent Garden MSCP, with any unused budget allocation being returned to the Reserve; and
- (2) a maximum £105,000, be released from the Service Transformation Reserve to fund a temporary project manager post for two years to support the delivery of multiple car park projects, with any unused budget allocation being returned to the Reserve.

(The Portfolio Holder for this time was Councillor Shilton)
Forward Plan Reference number 796

21. **Business Plan Template for Major Grant Applications from Community Groups**

The Executive considered a report from Finance that sought approval to implement a standard business plan template as part of the major grants application process for community group organisations.

The Council had previously agreed major grants for community groups including St Chad's Community Centre, Barford King George's Playing Fields and Racing Club Warwick.

The previous approvals by Executive had been subject to a final business plan from the applicant being approved, under delegated authority, by the Chief Executive and appropriate Heads of Service.

Currently there was no standard business plan template; this led to varying degrees of quality and content in each business case. This in turn led to multiple draft versions for Council Officers to review and comment on before a final acceptable version was received and signed-off.

The introduction of a business plan template that covered specific key areas, provided a consistent approach and ensured that required information was captured, would save Council Officer time in having less versions to review and comment on and would better support the decision making process.

The standard business plan invariably would not capture every requirement, but depending on the nature of the project and the organisations, additional relevant information could be sought if it was not included within submitted business plans.

Warwickshire Community and Voluntary Action (WCAVA) had supported the use of the proposed template.

Alternatively, the Executive could choose not to approve the proposed template and allow organisations to continue to produce business plans in their own formats. This was not recommended because of the varying levels of quality and detail in submitted business plans which often led to delays in the decision making process and had previously consumed a considerable amount of Council Officer time reviewing multiple versions before a final acceptable version was approved.

The Executive could choose to amend or add to the items on the proposed business plan template.

Resolved that the proposed standard business plan template, as set out at Appendix 1 to the report, be approved, as a requirement for future major grant applications from community group organisations.

(The Portfolio Holder for this item was Councillor Whiting)

22. **Review of Street Trading Policy**

The Executive considered a report from Health & Community Protection that sought approval for public consultation on the draft Street Trading Policy that was appended to the report.

The report presented the revised draft policy document applicable to all Street Traders, in Warwick District. The review had taken place over the last two years and had taken into consideration local and national examples of best practice.

The review had addressed the concerns of officers, the general public and Councillors. It was proposed that a public consultation begin on the 8 July 2016 and conclude on the 19 August 2016. The policy would be made available on the Council website and each permit holder and stakeholders would be notified of the consultation.

The revised policy brought forward a number of changes that were summarised in Appendix 2 to report. There were three main changes in the Policy; it would enable short periods for trading licences rather than annual licences; it would introduce a requirement for each employee of touring permit holders to be DBS checked in addition to the permit holder; and it would introduce the requirement for photos of permit holders to be provided to aid with monitoring and compliance checks throughout the duration of the permit.

Alternatively, the current policy could remain in place without amendment or alteration. However, it was considered that the proposed document was reflective of best practice and would increase competitive trade at short events, increase income and raise the standards required of street traders within Warwick District Council.

Resolved that

- (1) the draft Street Trading Policy at Appendix 1 be approved for a six week public consultation; and
- (2) a report be submitted, later this year, summarising the consultation responses, along with any alterations suggested to the policy in response to the Executive seeking its recommendation of the final policy to Council for adoption.

The Portfolio Holder for this item was Councillor Grainger

23. Use of Delegated Powers: Electrical Repair & Maintenance Contract

The Executive considered a report from Housing & Property Services that informed them of the use of delegated powers to temporarily extend the electrical repair and maintenance contract by one month while the new contractor mobilised. The report examined the reasons for the delay that required the extension along with the lessons learned and the actions now required as a result.

Provision CE(4) of the Scheme of Delegation contained within the Council's Constitution provided for the Chief Executive (and in their absence the Deputies) to have authority to: *'deal with urgent items that occur between meetings, in consultation with the relevant Deputy Chief Executives, Heads of Service (if available) and Group Leaders (or in their absence Deputy Group Leaders) subject to the matter being reported to the Executive at its next meeting'*.

The electrical repair and maintenance contract covered the responsive repairs and periodic safety inspections that enabled the Council to discharge its statutory duties and health and safety responsibilities for its Housing Revenue Account (HRA) homes, leisure centres and all other corporate buildings. Executive had approved an exemption from the Code of Procurement Practice in March 2015 to allow the contract to be extended for 12 months. This exemption had been sought because of resource constraints and competing work commitments within both the Housing & Property and Finance service areas, which had prevented re-procurement before the contract expiry date of 31 March 2015.

That report asked Executive to note that *"an OJEU compliant procurement exercise has been commenced for the re-procurement of the electrical maintenance and repair contract, the programme for which allow [sic] for a new contract to commence on 31st March 2016'*. The report also stated that the *'Housing & Property Services and Financial Services teams have put in place actions to prevent – except in the most extraordinary of circumstances – such exemption requests being necessary in the future"*.

Despite these statements and the commencement of a procurement exercise which planned for the publication on 5 May 2015 of the necessary OJEU notice to allow the re-tendering process to commence, the notice was not published until 3 November 2015 and the contract award was not made until 15 March 2016. This meant that the incoming contractor had insufficient time to mobilise for a 31 March contract start date requiring the need for the use of CE(4) of the Scheme of Delegation.

The exercise of the delegated authority enabled a suitable agreement to be negotiated with the outgoing contractor to provide for them to undertake all necessary works to ensure that the Council was meeting its statutory responsibilities until such time as the incoming contractor had fully mobilised. However, the need to use the powers to grant a contract extension was deeply concerning and the Corporate Management Team initiated immediate investigatory action.

Through the Deputy Chief Executive (BH), the Internal Audit team were requested to undertake a fast-paced review of the procurement process to establish a timeline that would identify the reasons for the delay, that could be reported to Executive as part of the normal report automatically triggered by the use of CE(4). The timeline was set out at Appendix One to the report and the full Internal Audit report was set out in the confidential Appendix Two to the report (Minute 27). Appendix 2 was private and confidential because it contained information relating to the financial or business affairs of any particular person (including the authority holding that information).

A detailed examination of the delays and the reasons for them was included in the report 8 but, in summary, the main findings of the investigation were:

- The conduct and progress of this procurement process was in marked difference to others undertaken and successfully completed within the same period;
- There was a lack of ownership for, and responsibility taken within, the procurement process;
- There was a lack of understanding at a managerial level of the respective responsibilities at key stages in the process of the two service areas involved at key stages in the process;
- Communication between key staff within both service areas was poor;
- There was a lack of trust between some staff in the two service areas that fostered a defensive attitude that hindered communication, contributed to the lack of urgency to resolve issues, prevented effective corrective action being taken when delays occurred; and
- Capacity and staffing issues within both service areas contributed to the delays but would not, of themselves, have prevented action being taken that would have enabled the contract to be let earlier and without the need for the extension.

The recommendations arising from the Internal Audit investigation were set out at Appendix Three to the report. The actions in response to these recommendations were already underway, along with two further actions approved by CMT.

The first additional issue was the need to ensure that the Council's organisational culture supported it being a learning organisation. It was inevitable that from time to time problems, occasionally significant, would occur and whilst the role of managers was to minimise the likelihood and impact of any such event it was equally important that they ensured all available learning was captured and understood and that appropriate actions were initiated. Therefore, whilst effective learning had been captured in this case, the defensive attitudes that characterised parts of the procurement process were still in evidence when the Deputy Chief Executive (BH) and the Audit and Risk Manager convened a meeting of key managers and staff from both service areas to discuss the draft Internal Audit report. CMT members had subsequently initiated discussions amongst the wider Senior Management Team to ensure that the appropriate learning environment was nurtured.

The second issue was that the basis for management decision-making in respect of the tender evaluation process should be subject to further examination than was possible within the limited remit of the initial investigation, including further consideration of any potential Employee Code of Conduct issues. CMT had, therefore, through the Deputy Chief Executive (BH), initiated a further Internal Audit investigation. This would focus on the events in the period after the tenders were returned up to the point of the tender award, including the tender evaluation and would also consider the apparent lack of contingency planning for potential mobilisation issues given the slippage in the procurement timetable up to that point. CMT would then consider the outcomes of this investigation and determine if any further management action was required.

In arriving at the decision to agree an extension, officers considered and rejected the following alternative options:

- To commence the new contract with the successful tenderer from the original 1 April 2016 contract commencement date and accept that a reduced service would be in place while the full contract team and working processes were mobilised. This option was explored with the incoming contractor but was discounted once the legalities of the TUPE process had been explored and it had been confirmed that they would not be able to secure sufficient resource within the available timescale to provide a level of service that would enable the council to meet its statutory obligations.
- To establish emergency service provisions using the contractual arrangements of other organisations while completing the mobilisation of the newly procured contract. This option was discounted because of the complexity and lack of available time needed to establish adequate agreements, supporting documentation and administration processes to support the ordering and control of works in the limited time period available.

The option of not initiating further investigatory action had been discounted by CMT given the potential significance of the issues.

The Finance & Audit Scrutiny Committee had significant concerns about this report and welcomed that a report would be brought back to them on 31 August 2016 on the further audit work and how the issues will be addressed. The Committee had concerns that the contents of the report regarding procurement appeared to repeat previous issues that had occurred and had not been learned from. The Committee were in agreement that the lack of learning could not continue. The Committee anticipated that the follow up report would be presented to the Executive so they could commit to supporting any proposals within it.

The Committee felt there was a need to address cultural and management issues around this matter and these should be considered as part of the report in August 2016.

The Executive thanked the Scrutiny Committee for their comments, recognising there was a need for training for Councillors in this area as well. They accepted that nobody would want this to be repeated and improvements needed to be considered. Therefore, while the primary response of taking the decision to extend the contract to protect residents was correct, there was a need for further investigations and reports back.

Resolved that

- (1) the use Chief Executive's delegated authority on 31 March 2016, under provision CE(4) of the Scheme of Delegation, following consultation with the Group Leaders, to agree an arrangement with the outgoing contractor to extend the electrical repair and maintenance contractor for one month until the incoming contractor had completed

mobilisation and could assume full responsibility for the contract on 1 May 2016, be noted;

- (2) the timeline for the re-procurement process, set out at Appendix One to the report be noted;
- (3) the Audit recommendations set out at Appendix Three, the summary of the main findings set out at paragraph 3.7 of the report, and the additional actions set out at paragraphs 3.9 – 3.11 of the report are noted, and a further report will be submitted to Finance & Audit Scrutiny Committee on 31 August 2016.

(The Portfolio Holders for this item were Councillors Phillips and Whiting)
Forward Plan reference Number 785

24. **Rural / Urban Capital Improvement Scheme (RUCIS) Award Amendment Request**

The Executive considered a report that sought approval for an amendment to the previously approved Rural/Urban Capital Improvement Scheme to Leamington Netball Club.

The Council operated a scheme to award Capital Improvement Grants to organisations in rural and urban areas. The proposed amended grant was in accordance with the Council's agreed scheme and would provide funding to help the project progress.

This project contributed to the Council's Sustainable Community Strategy; because without the netball club there would be fewer opportunities for the community to enjoy and participate in sporting activities which could potentially result in an increase in anti-social behaviour, an increase in obesity (particularly in children) and disengage and weaken the community. The project would provide disabled access to facilities and increase court usage thus providing increased opportunity for the community to participate in sporting activity and it would also improve safeguarding of under 16's players.

The original RUCIS grant award (number 208) agreed by the Executive in February 2016 was for 42% of the total project costs, up to a maximum of £30,000 including VAT subject to receipt of written confirmation from BiffaAward (or an alternative grant provider) to approve a capital grant of £30,000.

In March 2016, BiffaAward declined Leamington Netball Club's £30,000 grant application due to their scheme being oversubscribed with applications totalling more than the budget for that tranche of funding; this had therefore left a shortfall in the project budget.

As a result Leamington Netball Club completed further fundraising and reviewed their project plans; some areas had been amended, some items were no longer required and some work was now going to be completed free

of charge by a local contractor (ICM Ltd) as a contribution to the local community, for which a schedule of works had been provided to the Council.

A revised quote had been received from the main contractors, Warwick Buildings, confirming the new £60,013 project cost, a reduction from the original £72,102 quote.

Leamington Netball Club had committed £28,013 to the project from their cash reserves; an increase of £17,911 from the initial £10,102 contribution. Recent bank statements and a breakdown of fundraising activities had been provided to evidence these funds.

Leamington Netball Club wished to retain the RUCIS grant award of up to a maximum of £30,000 which, if agreed, would increase the percentage contribution to the overall project costs from 42% to 50%; this remained within the scheme criteria.

The Royal Leamington Spa Town Council contribution, of £2,000, along with the club's increased contribution and a RUCIS award, from this Council, increased to 50% of the total project costs would ensure there was sufficient budget to deliver the project with all the outcomes / benefits noted in the original application that was previously agreed by the Executive on 10 February 2016.

The Council had only a specific capital budget to provide grants of this nature and therefore there were no alternative sources of funding if the Council was to provide funding for Rural/Urban Capital Improvement Schemes. However, the Executive could choose not to approve the grant funding, or to vary the amount awarded.

Resolved that the RUCIS award from the rural cost centre budget for Leamington Netball Club, be amended; to 50% of the total project costs, up to a maximum of £30,000 including vat, as detailed within the report and supported by Appendix 1 to the report.

(The Portfolio Holder for this item was Councillor Whiting)
Forward Plan Reference Number 761

25. **Public and Press**

Resolved that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following three items by reason of the likely disclosure of exempt information within the paragraphs of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006, as set out below.

Minute No.	Para Nos.	Reason
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29	1	Information relating to an Individual
29	2	Information which is likely to reveal the identity of an individual
26, 27 & 30	3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)

(The minutes of the following 3 items will be included within the confidential minutes of the meeting)

26. **Housing Benefits and Council Tax Reduction**

The recommendations in report from Finance were approved.

27. **Agenda Item 8 - Private & Confidential Appendix 2**

The contents of the Appendix was noted.

28. **Service Re-design Update**

The recommendations in the report from Development Services were approved.

29. **Minutes**

The confidential minutes of the meeting held on 20 April 2016, were taken as read, subject to removing apologies from Councillor Phillips, and signed by the Chairman as a correct record.

(The meeting ended at 8.22pm)

Appendix 1:

WARWICK DISTRICT COUNCIL'S

ENFORCEMENT POLICY

REGULATORY SERVICE (Food Safety, Occupational Safety and Health and Licensing) APPENDIX

1. Introduction

- 1.1 This Regulatory Service Appendix is intended to be read in conjunction with Warwick District Council's published [Enforcement Policy](#). It will provide specific details that relate to the enforcement of matters with respect to food safety, occupational safety and health and licensing.

2. Background

- 2.1 As a **food authority** in the terms of the [Food Safety Act 1990](#), Warwick District Council has a duty to enforce food safety legislation, and a responsibility to follow associated [Codes of Practice](#) under the Act. It is required to enforce the legislation in pursuit of the particular interests of consumers within the authority's area including members of the public, employees and business owners by:
- § protecting public health, and
 - § ensuring a fair trading environment for local businesses.
- 2.2 Hygiene inspections are targeted in accordance with the risk assessment parameters set by the Food Standards Agency and the corresponding inspection frequencies.
- 2.3 The Council has a shared enforcement role with the County Council in respect of food labelling requirements. This situation is managed by case by case communication between the two authorities and by regular meetings of the Warwickshire & Coventry Food Liaison Group.
- 2.4 Food safety and quality is determined on inspection or sampling and by the investigation of complaints made to the Department.
- 2.5 Local authorities have statutory responsibilities to make adequate arrangements for the enforcement of **health and safety** law in relation to specified work activities- including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises. Health and Safety Executive (HSE) inspectors also enforce health and safety law in workplaces allocated to them.
- 2.6. The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare. In allocating resources, enforcing authorities should have regard to the principles set out below, the objectives published

in the [National Enforcement Code](#), and the need to maintain a balance between enforcement and other activities, including inspection.

2.7 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. The decision-making process which inspectors will follow when deciding on enforcement action will be set down in writing, and made publicly available. The judgements will be made in accordance with the principles of Philip Hampton's report '[Reducing administrative burdens: Effective Inspection and Enforcement](#)'.

2.8 The **Licensing** function of the Regulatory Team covers the following areas:-

- Licensing Act 2003
- Gambling Act 2006
- Sexual Entertainment Venues
- Private Hire driver, vehicle and operator's licences
- Hackney Carriage driver and vehicle licences
- Street Trading Consents
- Small lotteries
- Street Collections
- House to House collections
- Scrap Metal Dealers

2.9 This policy should be read in conjunction with codes of practice and guidance issued by the following:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [Local Authorities Regulators of Regulatory Services \(LACORS\)](#); [HSE](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).

2.10 All actions will be taken only by duly authorised officers in accordance with the [Council's Scheme of Delegation](#).

3. Enforcement Options

3.1 In making a choice of action, the appropriate subject guidance below will be followed:- Food Safety Act 1990 [Code of Practice](#); [Approved Codes of Practice \(ACOPs\)](#); [Local Authorities Regulators of Regulatory Services \(LACORS\)](#); [HSE](#) and [HELA guidance](#); [Home Office](#), [Institute of Licensing](#), [National Association of Licensing Officers](#) and [Gambling Commission](#).

3.2 Any significant choice of action which might be considered to be inconsistent with such guidance, advice and views will be made in consultation with the Warwickshire & Coventry Food, Safety and Licensing Liaison Group, LACORS, the Food Standards Agency, HSE and the Primary Authority. It is recognised, however, that only the Courts can make decisions on matters of legal judgement.

3.3 In most instances no action will be taken where the offending circumstance has been occasioned by inadvertence and is proactively in the process of being remedied, however, each case will be considered individually.

4. Informal Action

4.1 Informal action is the issue of verbal advice (always confirmed in writing on the visit report or by letter), written advice with no date for action requested, written advice with a date specified for completion, and written warnings that future offences may result in prosecution.

4.2 Recommendations are necessary in order to assist the duty holder in taking all reasonable precautions and exercising all due diligence to avoid offences. Such recommendations will be clearly differentiated from legal requirements which will be identified by statute and regulation or section number.

4.3 Action Plans including timescales for completion are agreed by all parties including where necessary, the Licence Holder, Designated Premises Supervisor and other relevant Responsible Authorities (i.e. Police, WDC Environmental Health Officers and Planning Officers).

5. Statutory Notices

5.1 **Food - Hygiene Improvement Notices** will be served by authorised Inspectors and Officers in circumstances related to risk to health, in accord with [Code of Practice](#) and [Local Authorities Regulators of Regulatory Services \(LACORS\)](#) guidance, in one or more of the following circumstances:

- i. There are such significant contraventions of the legislation that it is anticipated that a prosecution would be successful in the Magistrates' Court if the evidence were placed before them.
- ii. There is a justifiable lack of confidence in the duty holder to respond to an informal approach.
- iii. There is a history of non-compliance with informal action.
- iv. Standards are generally poor with little duty holder awareness of statutory requirements.
- v. The consequences of non-compliance could have negative implications for public health or fair trading.
- vi. Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy continuing contraventions.

5.2 The time limit for compliance with the requirements of the notice will be made clear verbally with the duty holder, or appropriately negotiated. Regard will be had in the negotiations to consistency and feasibility. The duty holder will be advised that any unforeseen circumstances which arise in the time period, which may cause it to overrun, must be drawn immediately to the attention of the Food Safety Team. On written application, the originating

officer will have regard to the following criteria in granting an extension of the time period, or otherwise:

- i. The risk to public health associated with the fault if an extension was granted;
- ii. The reason for the request;
- iii. The remedy involved;
- iv. The past record of compliance of the duty holder; and
- v. Any temporary action which the duty holder proposes to take to remedy the defect.

5.3 As a rule, failure to comply with a Hygiene Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.4 **Food - Hygiene Emergency Prohibition Notices** will be served by authorised Environmental Health Officers in one or more of the following circumstances:

- i. He/she is satisfied that there is an imminent risk of injury to health.
- ii. Not taking immediate and decisive action to protect public health is unjustifiable.
- iii. There is no confidence in the integrity of an offer made by a duty holder to close the premises voluntarily and to keep the premises closed until the risk is removed.

5.5 **Occupational Safety and Health – Improvement Notices**

- i. Paragraphs 5.1 I – vi and 5.2, apply.
- ii. As a rule, failure to comply with an Improvement Notice will be reported for prosecution. Only unavoidable circumstances, or mitigating information coming to light concerning factors outside the control of the duty holder, will justify a variation of this policy.

5.6 **Occupational Safety and Health – Prohibition Notices** will be served by authorised Environmental Health Officers when there is a requirement to stop work to prevent serious personal injury.

- i. Prohibition Notices will be issued to have immediate or deferred effect.
- ii. There does not have to be a breach of any statutory requirements before a prohibition notice is issued, but an officer who thinks there has been will specify it in the prohibition Notice.

5.7 Primary, Home and originating authorities will be notified of any statutory notices served.

6. Prosecution

6.1 The decision to prosecute rests with the Council and/or Duly Appointed Inspector (in the case of Health & Safety cases) and is delegated to the Head of Health and Community Protection in consultation with the appropriate elected Member. See [Warwick District Council's Scheme of Delegations](#).

6.2 The recommendation to prosecute, based on the available evidence and professional judgement, comes from the Regulatory Manager by way of formal report to the Head of Health and Community Protection and in consultation with a Solicitor of the Legal Services Unit.

6.3 Prosecutions will be related to risk and will not be used as a punitive response to minor breaches of legislation.

6.4 The objectives of any prosecution must be:

- i. To concentrate the mind of the duty holder on the necessity to be duly diligent and to take all reasonable precautions to ensure food safety and hygiene;
- ii. To demonstrate to the public that their interests are being protected; and
- iii. To demonstrate to other duty holders that the law is being evenly applied.
- iv. To enable the Courts to decide the appropriate punishment.

6.5 **Before deciding whether a prosecution should be taken one or more of the following factors will be considered:**

- i. The seriousness of the alleged offence.
- ii. Whether death or personal injury resulted from the alleged offence.
- iii. The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- ii. The previous history of the party concerned.
- iii. The likelihood of the defendant being able to establish a due diligence defence (food safety only).
- iv. The availability of any important witnesses and their willingness to cooperate.
- v. The willingness of the party to prevent a recurrence of the problem.

- vi. The probable public benefit of a prosecution, the importance of the case (eg. whether it might establish a legal precedent) and satisfaction of the tests in the [Code for Crown Prosecutors](#).
- vii. Whether other action, such as issuing a simple caution in accordance with [Home Office Circular 16/2008](#), or a Hygiene Improvement Notice (H.I.N.), Improvement Notice (I.N.) or imposing a prohibition, would be more appropriate or effective.
- viii. Any explanation offered by the affected company.
- vix. False information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a significant risk.
- x. Inspectors have been intentionally obstructed in the lawful course of their duties.

These considerations will be detailed in all reports recommending prosecution.

- 6.6 Before a decision is made to prosecute, the duty holder will be invited to an interview under the [Police and Criminal Evidence Act 1984](#) in order to make representations before a decision is made as to the appropriate course of action to be taken. The duty holder will have an opportunity to be accompanied by a legal representative at the interview. This is the duty holder's opportunity to present any facts or views he considers pertinent to the decision-making process.
- 6.7 The circumstances where prosecution is warranted are one or more of the following:
- i. The offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk, or fair trading is prejudiced.
 - ii. The offence involves a failure to correct an identified serious potential risk to food safety having been given a reasonable opportunity to comply with requirements.
 - iii. The offence involves a failure to comply with a statutory notice.
 - iv. There is a history of similar offences.
- 6.8 If it is then considered by the Regulatory Manager that prosecution is appropriate the file of evidence will be presented to the Head of Health and Community Protection with a Report by the Regulatory Manager recommending prosecution. If the Head of Health and Community Protection agrees with the recommendation in the report, it will be presented to the Council's Solicitor for review, and, if the evidence is considered sufficient for there to be a realistic prospect of conviction, and the public interest test is

satisfied, then legal proceedings will normally be instigated.

- 6.9 Where there is a risk of injury to health the Solicitor will, in the course of the hearing, draw the Court's attention to its duty to impose a Prohibition Order.
- 6.10 Primary, Home and originating authorities will be notified of the results of prosecutions.

7. Simple Cautions

- 7.1 Simple Cautions in accordance with [Home Office Circular 16/2008](#) will only be issued by the Council in the following circumstances:
 - i. There is evidence sufficient to give a realistic prospect of conviction;
 - ii. The duty holder admits the offence;
 - iii. The duty holder understands the significance of the simple caution and gives informed consent; and
- 7.2 If a duty holder refuses the offer of a Simple Caution then a prosecution will be instituted.
- 7.3 Primary, Home and originating authorities will be notified of Simple Cautions issued. The Caution will be cited in any subsequent proceedings as a previous offence.

8. Revocation of Approvals/Licenses/Permits/Consents & Registrations

- 8.1 Premises, people and vehicles can be approved and/or licensed by the Council. The Council will exercise its power of revocation, suspension or refusal to grant in the circumstances dictated by the appropriate regulations, and where it has not been possible to secure compliance by less draconian means.