

# Executive Agenda



**Reigate & Banstead**  
**BOROUGH COUNCIL**  
Banstead | Horley | Redhill | Reigate

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4 September 2018

## To the Members of the EXECUTIVE

<b>Councillors:</b>	M. A. Brunt	Leader of the Council
	G. J. Knight	Deputy Leader, Housing and Benefits
	R. H. Ashford	Leisure and Wellbeing
	Mrs. N. J. Bramhall	Property and Acquisitions
	J. E. Durrant	Community Safety
	K. Foreman	Planning Policy
	A. C. J. Horwood	Neighbourhood Services
	E. Humphreys	Business and Economy
	T. Schofield	Finance

For a meeting of the **EXECUTIVE** to be held on **THURSDAY, 13 SEPTEMBER 2018** at **7.30 pm** in the New Council Chamber - Town Hall, Reigate.

John Jory  
Chief Executive

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Notice is given of the Executive's intention to hold part of its meeting on Thursday, 13 September 2018 in private for consideration of reports containing "exempt" information

1. **MINUTES** (Pages 7 - 14)

To confirm as a correct record the Minutes of the Executive meeting held on 19 July 2018.

2. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

3. **DECLARATIONS OF INTEREST**

To receive any declarations of interest.

4. **HOUSING ENFORCEMENT POLICY AND AMENDMENT TO THE OFFICER SCHEME OF DELEGATION** (Pages 15 - 60)

**Executive Member: Portfolio Holder for Community Safety**

To consider the Housing Enforcement Policy and amendments to the Officer Scheme of Delegation.

5. **FLATS RECYCLING SERVICE** (Pages 61 - 70)

**Executive Member: Portfolio Holder for Neighbourhood Services**

To consider the rollout of enhanced recycling services to flats across the Borough.

6. **QUARTERLY PERFORMANCE REPORT (Q1 2018/19)** (Pages 71 - 82)

**Executive Member: Portfolio Holder for Finance**

To consider the Performance Report for Quarter 1 (2018/19).

7. **UPDATE ON ACQUISITION OF FREEHOLD IN REDHILL**

(Pages 83 - 86)

**Executive Member: Portfolio Holder for Property and Acquisitions**

To consider an update on the acquisition of a property investment in Redhill.

8. **PROPERTY ACQUISITIONS**

**Executive Member: Portfolio Holder for Property and Acquisitions**

To consider any property acquisitions proposed.

9. **STATEMENTS**

To receive any statements from the Leader of the Council, Members of the Cabinet or the Chief Executive.

10. **ANY OTHER URGENT BUSINESS**

To consider any item(s) which, in the opinion of the Chairman, should be considered as a matter of urgency – Local Government Act 1972, Section 100B(4)(b).

(Note: Urgent business must be submitted in writing but may be supplemented by an oral report).

11. **EXEMPT BUSINESS**

RECOMMENDED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- (i) it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- (ii) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12. **UPDATE ON ACQUISITION OF FREEHOLD IN REDHILL (EXEMPT)** (Pages 87 - 96)

**Executive Member: Portfolio Holder for Property and Acquisitions**

To consider exempt information in relation to the acquisition of a property investment in Redhill.

13. **PROPERTY ACQUISITIONS (EXEMPT)**

**Executive Member: Portfolio Holder for Property and Acquisitions**

To consider exempt information in relation to these proposals.

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# Agenda Item 1

Executive  
19 July 2018

Minutes

## **BOROUGH OF REIGATE AND BANSTEAD**

### **EXECUTIVE**

Minutes of a meeting of the Executive held at the Town Hall, Reigate on 19 July 2018 at 7.30 pm.

Present: Councillors M. A. Brunt (Leader), R. H. Ashford, Mrs. N. J. Bramhall, J. E. Durrant, K. Foreman, A. C. J. Horwood, E. Humphreys and T. Schofield.

Also present: Councillors Mrs. R. Absalom, M. S. Blacker, Mrs. J. S. Bray, N. D. Harrison, S. McKenna, R. C. Newstead, M. J. Selby, B. A. Stead, Mrs. R. S. Turner and C. T. H. Whinney.

#### **128. MINUTES**

**RESOLVED** that the Minutes of the Executive meeting held on 21 June 2018 be approved as a correct record and signed.

#### **129. APOLOGIES FOR ABSENCE**

**Executive Member:** Councillor G.J. Knight.

#### **130. DECLARATIONS OF INTEREST**

None.

#### **131. CONSIDERATION OF THE REPORT FROM THE EXTERNAL AUDITORS ON THE 2017/18 FINANCIAL STATEMENTS (ISA 260)**

Councillor T. Schofield, Executive Member for Finance, presented the ISA 260 report from KPMG following their audit of the Council's 2017/18 accounts.

Councillor Schofield highlighted that the ISA 260 and Management Representation Letter had been published via an addendum to the agenda as soon as possible following completion of the audit.

It was noted that KPMG, the Council's external auditors, had undertaken a thorough audit which had included favourable references to the quality of the accounting statements and supporting working papers. Councillor Schofield expressed his pleasure that, once again, he was reporting that KPMG had issued an unqualified audit opinion on the accounts.

Councillor Schofield went on to explain that the report highlighted a balance of £612,000 of unadjusted audit differences. These transactions related to 2015/16 and comprised of payments to Surrey Pension Fund and the Ministry of Housing, Communities and Local Government totalling £600,000. It was explained that these payments were unmatched to the schedule of payments expected. Councillor Schofield highlighted that officers were working with each organisation to resolve these outstanding items and had prioritised changes in process to prevent a reoccurrence of this situation. The three remaining items, totalling £12,000 would be investigated and resolved thereafter and related to 2015/16 and 2016/17.

In response to questions about unadjusted audit differences, Councillor Schofield highlighted these items had previously been reviewed by audit and had been identified on bank statements at the time of identifying the reconciling item. It was explained that the difficulty in locating specific payments had been due to the lack of availability of online statements for the period and not having immediate access to historical records.

During the discussion a number of issues were considered in relation to: (a) bank reconciliation and (b) the process for valuing land, buildings and investment properties.

Joanne Lees from KPMG presented key findings from their audit report on the Council's 2017/18 accounts, including recommendations raised, and reiterated their unqualified opinion on the accounts.

In conclusion, Councillor Schofield referred to the Management Representation Letter which the Executive had been requested to agree for signature by the Leader. The Executive Member confirmed that this letter formed part of the usual audit process that provided assurances on matters required by auditing standards.

The Executive congratulated all involved for a positive report and thanked Joanne Lees from KPMG for attending the meeting, presenting her report and the conclusions of the audit.

**RESOLVED** that:

- (i) The report from the external auditors (ISA 260) on the 2017/18 audit be noted; and
- (ii) The Management Representation Letter be agreed and signed by the Leader.

**Reasons for decision:** The Executive is responsible for corporate governance. How the Council utilises and accounts for resources is intrinsic to good governance.

**Alternative option:** None.

## **132. STATEMENT OF ACCOUNTS FOR THE FINANCIAL YEAR 2017/18**

Councillor T. Schofield, Executive Member for Finance, reported on the Statement of Accounts for the financial year 2017/18 that had been prepared, audited and presented to the Executive as part of the Annual Financial Report. It was explained that a copy of the Annual Financial Report, incorporating the Statement, had been published in full via an addendum to the agenda.

It was noted that the foreword to the Statement of Accounts for 2017/18 provided a summary of the year's activity and explained how the Council had funded this activity. The Executive Member for Finance emphasised that the balance on the General Fund, and on other reserves, remained healthy. It was noted that this was the result of careful financial management against a backdrop of challenging economic conditions.

Councillor Schofield thanked the Member Panel for reviewing the Statements and Officers for their time and effort in preparing the Accounts.

**RESOLVED** that the Statement of Accounts for the year ended 31 March 2018 be approved.

**Reasons for decision:** The Code of Practice of Local Government Accounting recommends that the Statement of Accounts should be endorsed by the body within the Council that is responsible for overall corporate governance. Under the Council's Constitution this function has been delegated to the Executive.

**Alternative options:** None.

### **133. COMMUNITY INFRASTRUCTURE LEVY SPENDING UPDATE**

Councillor T. Schofield, Executive Member for Finance, introduced the report and explained that the Community Infrastructure Levy (CIL), a payment from developers, was used to contribute towards funding of infrastructure and to support the development of an area.

It was noted that the Council had been operating CIL for over two years and had collected over £1.15 million from developments across the borough. It was explained that this would increase over time with a greater proportion of developments being liable to pay CIL.

The Executive Member for Finance explained that CIL regulations required at least 15% of CIL collected in the borough to be spent in the area where development had taken place. It was highlighted that this portion of the CIL was referred to as the "CIL Local Fund". It was noted 5% of CIL funds were retained to cover administration costs, with the remainder (80%) of the CIL funds, the "CIL Strategic Fund" being allocated by the Council, through its 5-year Strategic Infrastructure Programme (SIP).

The Executive was informed that spending of the Local Fund, for areas with a local Town and Parish Council, was determined by Horley Town Council and Salfords and Sidlow Parish Council in accordance with CIL Regulations. It was noted that, outside of these local council areas, the identification of projects to be supported by the Local CIL Fund had to date been undertaken on a ward basis by ward councillors in consultation with the local community.

As set out in the report, Councillor Schofield explained why the governance arrangements for the Local CIL would benefit from streamlining to better reflect the impacts that developments had across wards. It was also highlighted that infrastructure could benefit residents in more than one ward.

Councillor Schofield went on to explain, following much consideration, that the proposals set out in the report recommended changing the governance for Local Fund spending from ward-based arrangements to a system of four Local Fund Area Advisory Panels. It was highlighted that this would allow more significant projects to be delivered, whilst retaining visibility of CIL spending within communities. It was also recognised that developments located close to a ward boundary could impact as much on a neighbouring ward as on the ward where the development was located, particularly for larger developments. In these instances, using administrative boundaries was not within the spirit of the regulations.

In response to questions, it was explained each Panel would be open to all ward councillors within the area and would be chaired by the Executive Member for Finance. It was noted that each of the four Advisory Panels would meet quarterly to confirm their priorities for the spending of Local CIL receipts from developments in that area. Councillor Schofield highlighted that Councillors would be kept informed, by a transparent standardised officer assessment, of projects suggested by councillors and communities. It was noted that the Area Advisory Panels would make recommendations on projects to support the Local Fund Project, with final authorisation to release funds resting with the Head of Places and Planning in accordance with the officer scheme of delegation.

During the discussion a range of issues were considered, including:

- Requirements set out in national regulations and guidance about how CIL should be applied, including spending of the Local Fund.
- The relationship between CIL and planning obligations.
- An update on projects supported to date, including the refurbishment of the kitchen at Lower Kingswood Church Hall.
- Lessons learnt from discussions about the proposed Eastgate scheme in Nork.
- The importance of having robust criteria to assess the relative merits of different projects and to decide which projects should be supported.
- The need for activities supported by Local CIL to demonstrate how they would support/benefit local communities and support development.
- The fact that all CIL spending, both Strategic and Local needed to be reported publically through the Council's Annual Monitoring Report.

In response to questions about delays in supporting local projects, it was explained that following initial work to collate project suggestions, a review had been undertaken. This was to ensure the process for assessing project and prioritising local CIL spending was robust and transparent. It was also noted, subject to agreement of the proposals set out in the report, that discussions with ward members would recommence as an interim arrangement until the Area Advisory Panels were established.

The Executive Member for Finance explained that, for logistical reasons, the new arrangements would be implemented in May 2019 to coincide with the introduction of new ward boundaries for the borough. It was noted that final ward groupings would be determined once the Boundary Commission had announced the outcome of its review.

In conclusion, it was suggested that the Executive Member for Finance should work with all Members to develop the process for how CIL funding would be prioritised and allocated. In response, the Leader of the Council moved an additional recommendation to ensure all Members could contribute to this process, which was agreed and it was therefore;

**RESOLVED** that:

1. The approach to the allocation and spending of the Community Infrastructure Levy Local Fund, set out in paragraphs 13-23 of the report, be endorsed and the Head of Places and Planning be authorised (in consultation with the relevant Portfolio Holder) to implement relevant arrangements and to review and revise these as appropriate.
2. The Executive Member for Finance be asked to work with all Members to contribute to the process for how Community Infrastructure Levy funding is prioritised and allocated, in accordance with 1. above.
3. The Strategic Infrastructure Programme (SIP) update be noted and the SIP amended to clarify that project amounts would be index linked (in accordance with paragraphs 24-32 of the report).

**Reasons for decision:** To provide a framework to better reflect the impact of CIL-liable developments on local communities and the shared use of infrastructure across wards. To keep the CIL contribution proportionally the same when a project is undertaken as when the bid for CIL funding was made, ensuring the relative value of the CIL contribution is not reduced over time.

**Alternative options:** The existing ward-based arrangement could be retained or different area based arrangement could be implemented. The SIP and local fund project bid sums do not have to be index-linked but this would risk insufficient funding for the delivery of the project.

**134. ACQUISITION OF FREEHOLD IN HORLEY**

Councillor Mrs N.J. Bramhall, Executive Member for Property and Acquisitions, introduced the report concerning the acquisition of land in Horley.

The Executive noted that full details of the Council's bid, the financial implications and address of the land had been provided in the exempt Part 2 section of the agenda, including additional information published via an addendum.

The Executive Member for Property and Acquisitions highlighted that the Council's Five Year Plan (2015-2020) identified property investment and development as one of its key objectives. As set out in the report, it was noted that this acquisition would provide the Council with a small revenue stream and would also provide greater control of a strategic land holding in Horley, which had the potential for future development.

Councillor Mrs Bramhall explained heads of terms for the purchase were in the process of being agreed and highlighted that the report recommended that a delegation be put in place to allow variations to the agreed terms. It was noted that this was to allow for any necessary changes following the usual rigorous due diligence requirements.

In response to questions, Councillor Mrs Bramhall explained that ongoing discussions, with the vendor on terms, included two payments. It was highlighted that the first payment would be made unconditionally on signing the contract. The second payment, called overage, would become payable once Outline Planning Permission was obtained. As set out in the exempt Part 2 addendum, in order to provide the Council with sufficient flexibility to continue negotiations Councillor Mrs

Bramhall moved an additional recommendation to allow variations to the overage subject to contract. This was agreed and it was therefore;

**RESOLVED** that:

1. Subject to a satisfactory due diligence report being received, the Head of Property, in consultation with the Head of Finance and Executive Members for Property and Acquisitions and Finance be authorised to: (a) acquire the freehold referred to in the report and the addendum for investment purposes; and (b) agree any variations to heads of terms to the acquisition price further to external valuation advice and due diligence investigations.
2. The Head of Property be authorised to agree variations to the overage, subject to contract and due diligence, in consultation with the Leader of the Council, Deputy Leader of the Council, Executive Member for Finance and Executive Member for Property and Acquisitions.

**Reasons for decision:** To acquire, subject to the usual due diligence, property land in Horley to support the Council's 5 Year Plan objective to become financially self-sufficient.

**Alternative option:** Investigate alternative property acquisitions or do nothing.

### **135. ACQUISITION OF FREEHOLD IN REDHILL**

Councillor Mrs N.J. Bramhall, Executive Member for Property and Acquisitions, introduced the report concerning the acquisition of a property investment in Redhill. The Executive noted that full details of the Council's bid, the financial implications and address of the property had been set out in the exempt Part 2 section of the agenda.

The Executive Member for Property and Acquisitions highlighted that the Council's Five Year Plan (2015-2020) identified property investment and development as one of its key objectives. As set out in the report, it was noted this acquisition provided a long term strategic investment opportunity.

Councillor Mrs Bramhall explained that heads of terms for the purchase were in the process of being agreed and highlighted that the report recommended that a delegation be put in place to allow variations to the agreed terms. It was noted that this was to allow for any necessary changes following the usual rigorous due diligence requirements.

**RESOLVED** that subject to a satisfactory due diligence report being received, the Head of Property, in consultation with the Head of Finance and Executive Members for Property and Acquisitions and Finance, be authorised to: (a) acquire the Freehold referred to in the report for investment purposes; and (b) agree any variations to the heads of terms and to the acquisition price further to external valuation advice and due diligence investigations.

**Reasons for decision:** To acquire, subject to the usual due diligence, a freehold interest in Redhill to support the Council's 5 Year Plan objective to become financially self-sufficient.

**Alternative options:** Investigate alternative property acquisitions or do nothing.

**136. PROPERTY ACQUISITIONS**

There was no business to be considered under this agenda item.

**137. STATEMENTS**

None.

**138. ANY OTHER URGENT BUSINESS**

None.

**139. EXEMPT BUSINESS**

**RESOLVED** that members of the press and public be excluded from the meeting for the following items of business under Section 100A(4) of the Local Government Act 1972 on the grounds that: (i) it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and (ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

**140. ACQUISITION OF FREEHOLD IN HORLEY**

**RESOLVED** that the exempt information, set out in the report and the addendum, in relation to the acquisition of property land in Horley be noted.

**141. ACQUISITION OF FREEHOLD IN REDHILL**

**RESOLVED** that the exempt information in relation to the acquisition of a freehold interest in Redhill be noted.

**142. PROPERTY ACQUISITIONS**

There was no exempt business to be considered under this agenda item.

The Meeting closed at 8.48 pm

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# Agenda Item 4

Executive  
13<sup>th</sup> September 2018

Agenda Item: 4  
Housing Enforcement Policy and Amendment to the  
Officer Scheme of Delegation



**Reigate & Banstead**  
BOROUGH COUNCIL  
Banstead | Horley | Redhill | Reigate

<b>REPORT OF:</b>	Director of Place
<b>AUTHOR:</b>	Katie Jackson
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<b>TO:</b>	Executive
<b>DATE:</b>	13 <sup>th</sup> September 2018
<b>EXECUTIVE MEMBER:</b>	Councillor J Durrant

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>Housing Enforcement Policy and Amendment to the Officer Scheme of Delegation</b>
<b>RECOMMENDATIONS:</b> <b>(i) That the Housing Enforcement Policy provided as Annex 1 be approved.</b> <b>(ii) That additions to the Officer Scheme of Delegation contained within the Council's Constitution be approved, as set out in Annex 2 in relation to Section 5 (Housing and other Residential Accommodation).</b>	
<b>REASONS FOR RECOMMENDATIONS:</b> <p>A documented housing enforcement policy is required to ensure clear and consistent enforcement decisions are taken in relation to the enforcement of housing standards.</p> <p>The Officer Scheme of Delegation needs to be kept up-to-date and for that purpose it is necessary to add some newly introduced legislation to ensure that all necessary enforcement powers available under the legislation can be utilised.</p>	
<b>EXECUTIVE SUMMARY:</b> <p>A new Housing Enforcement Policy has been prepared to complement and sit alongside the existing Environmental Health and Licensing Enforcement Policy. This covers in more detail than is appropriate for the whole service policy, the options available for enforcement of housing standards, primarily in the private rented sector. These include a number of new powers to be used when regulating against criminal landlords and cover the licensing of Houses in Multiple Occupation (HMO's), the scope of which will be expanding in October 2018 to cover a greater number of properties.</p> <p>To enable the practical day-to-day functioning of a local authority, the council may delegate its powers, as it sees fit, to committees, officers and others.</p> <p>The council's Constitution contains an Officer Scheme of Delegation that documents which decisions are delegated and this report seeks to update that scheme, which is necessary</p>	

from time to time to incorporate new legislation and to reflect changes in the organisation of functions and services.

It is important that officers' delegated authority be very clearly documented and evidenced to ensure that enforcement action can be shown to be appropriately authorised. A number of additions are requested to the Council's Officer Scheme of Delegation, to allow new legislative provisions to be enforced where appropriate.

**Executive has authority to approve recommendation (i).  
Recommendation (ii) is subject to approval by Full Council.**

## **STATUTORY POWERS**

1. The Regulators' Code is a statutory Code of Practice introduced under Section 23 of the Legislative and Regulatory Reform Act 2006. Regulators covered by the code should have an adopted Enforcement Policy in place that incorporates the requirements of the code.
2. The Council is the enforcing authority for a wide variety of housing standards legislation, primarily aimed at securing standards in the private rented sector. This includes the Housing Act 2004 and regulations made under it, as well as the Housing and Planning Act 2016.
3. Section 37 of the Local Government Act 2000 requires the Council to prepare, keep up to date and publicise a Constitution. The Scheme of Delegation forms Section 3 of the Constitution. Power exists under section 101 of the Local Government Act 1972 to arrange for the discharge of their functions by officers of the authority.

## **BACKGROUND**

4. Having in place a documented enforcement policy demonstrates compliance with the Regulators Code, and serves to inform investigating officers and decision-makers of the framework in which they operate, in addition to providing information to those people and businesses which are regulated and those protected by regulation. While Environmental Health has for many years had a documented Enforcement Policy, it is considered necessary to implement a specific policy for the enforcement of housing standards to complement the main Policy.
5. This is due to the variety of options available for enforcement of housing standards, including a number of relatively recently introduced powers for Councils to use when regulating against criminal landlords. It is necessary to have a clearly stated policy on how these enforcement options, including both criminal and civil sanctions, will be applied and the factors that will be taken into consideration when enforcing this legislation.
6. It is also sought to amend the Council's Scheme of Officer Delegation to incorporate two additional new housing related powers, and to allow for the Housing Enforcement Policy to be updated and refreshed by the Head of Service with Responsibility for Environmental Health, to bring it in line with the main Environmental Health and Licensing Enforcement Policy.

## KEY INFORMATION

### Housing Enforcement Policy

7. The Environmental Health service has for many years had a documented Enforcement Policy, which is subject to regular review and update, and which sets out the general principles that the service follows when carrying out its enforcement function. While the Enforcement Policy covers housing enforcement work, it is by its nature a general and overarching document, and covers all of the services delivered by Environmental Health.
8. The enforcement of housing standards, primarily but not exclusively in the private rented sector, is governed by numerous legislative requirements. These include a number of relatively recently introduced powers for Councils to use when regulating against criminal landlords. It is necessary to have a clearly stated policy on how these enforcement options, including both criminal and civil sanctions, will be applied and the factors that will be taken into consideration when enforcing this legislation, and so a separate Housing Enforcement Policy has been prepared to complement the main Environmental Health and Licensing Enforcement Policy.
9. The Housing and Planning Act 2016 came into force in April 2017 and introduced a range of measures intended to crack down on 'rogue landlords' operating in the private rented sector. This included the power to impose a civil financial penalty on an individual or organisation as an alternative to prosecution for certain offences under the Housing Act 2004 and extension of the situations where rent repayment orders may be imposed. The statutory guidance on application of these powers requires local authorities to develop and document their policies on when to use civil penalties and when to use criminal sanctions such as prosecution. This policy fulfils this requirement, while recognising that all enforcement decisions must be made on a case by case basis.
10. It is also timely to introduce a Housing Enforcement Policy, as the extension of mandatory licensing of houses in multiple occupation (HMO's) comes into force on 1<sup>st</sup> October 2018. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 and the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018, both made under the Housing Act 2004, extend existing provisions for mandatory HMO's to bring smaller properties into scope.
11. Mandatory licensing of HMOs came into force in 2006 and originally applied to properties of three storeys or more, with five or more people making up two or more separate households living in them. The new provisions mean that properties used as HMOs in England which house five people or more in two or more separate households will now require a licence. In Reigate & Banstead, prior to October 2018 there are between 25 and 30 licensed HMOs, but using the new wider criteria the number of licensable HMOs is thought likely to increase to between 250 and 300 premises.
12. With the greater workload associated with the increased numbers of HMO's requiring licensing, it is appropriate to ensure that enforcement expectations are clearly set out. This allows for consistency of approach and allows members of the public, landlords and tenants to have realistic expectations of the way in which the Environmental Health service will deal with housing related matters.

### **Addition to the Scheme of Delegation of the Housing Enforcement Policy**

13. The Council's Scheme of Delegation contains delegated authority to the Head of Service with Responsibility for Environmental Health to: 'Refresh the Environmental Health Enforcement Policy regularly as and when new legislation comes into force, except when any significant variations of approach to regulation changes are proposed'. This allows for the necessary regular review and updating of the Policy, which is a live operational document.
14. As the Housing Enforcement Policy is a new policy document, it is appropriate to seek Executive approval at its initiation. However, once it has been adopted it will require regular review and updating, for example with changes in legislation and centrally issued guidance, which may affect levels of penalty charge available. It would be impractical to require to return the policy to Executive for operational updates of this nature and would impede the ability of the Council to enforce effectively.
15. It is proposed that the same level of delegated authority be applied to the Housing Enforcement Policy, to allow for the same degree of regular operational review, amendment and updating. Thus significant variations in approach would still require Executive oversight.

### **Addition to the Scheme of Delegation of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, made under the Energy Act 2011**

16. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018. Local authorities are the enforcing authority for these regulations.
17. Where the enforcing authority believes that a landlord may be in breach of the prohibition on letting a sub-standard property, a compliance notice may be served requiring information from that landlord to help them to decide whether there has been a breach. If the authority is satisfied that there is a breach of the requirements, they may impose a financial penalty, up to the maximum limits set by the Regulations. Alternatively, the authority may utilise a 'publication penalty', and publish some details of the landlord's breach on the publically accessible part of the PRS Exemptions Register, for at least 12 months.
18. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of a number of the Council's duties and powers to officers is recommended.

### **Addition to the Scheme of Delegation of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**

19. This Order made it a legal requirement for all lettings agents and property managers in England to join a Government-approved redress scheme, since October 2014. This is to enable all parties in the private rented sector access to an independent scheme if they need to complain about the service they have received, i.e. tenants, landlords, leaseholders and freeholders.

20. Local authorities are the enforcing authority for ensuring that letting agents and property managers have joined an approved scheme. If a local authority is satisfied that there is a breach of the requirement, they can impose a financial penalty of up to £5000.
21. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of a number of the Council's duties and powers to officers is recommended.

## OPTIONS

22. The following options may be considered:
  - a) Agree the recommendations to adopt the Housing Enforcement Policy and to add the legislation outlined above to the Council's Scheme of Delegation, as set out in the Annexes. **This is the recommended option.**
  - b) Make amendments to the Annexes and then agree the recommendations as set out in the revised Annexes.
  - c) Do not agree the recommendations. This will significantly hinder the Council's ability to utilise the new provisions, as set out below, and is therefore **not recommended**.
23. Having a documented Housing Enforcement Policy allows there to be a robust enforcement process and for all parties to have confidence in the decision making process around enforcement actions.
24. It is not possible for officers to act without correctly delegated powers. Therefore failure to have an up to date and correct scheme of delegation means that any actions relating to undelegated or improperly delegated matters must be approved by the full council (which clearly would not be practical). In addition, where action is taken but delegations are not satisfactory the council could incur substantial legal costs and be unable to undertake effective enforcement of relevant provisions.

## LEGAL IMPLICATIONS

25. There are significant legal implications for incorrect enforcement decisions, as the Council could be vulnerable to legal challenge and incur substantial legal costs in the event of incorrect process being followed.
26. There are also significant legal implications for not having an appropriately updated scheme of delegation. If enforcement action were to be taken but delegations were not satisfactory, the council could be vulnerable to legal challenge and incur substantial legal costs. Alternatively, the absence of appropriately delegated authority could impair our ability to appropriately enforce statutory provisions.

## FINANCIAL IMPLICATIONS

27. Failure to follow correct enforcement process and to make sound and consistent enforcement decisions could result in legal challenge and consequent substantial legal costs. The lack of a clear policy framework for making enforcement decisions could also result in missed opportunities to utilise regulatory powers such as civil financial penalties, rent repayment orders and penalty charge notices. This would

impair the Council's ability to recover the costs of enforcement from those who have breached legal requirements.

28. All income received from civil penalties or rent repayment orders can be retained by the local authority, provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector. Penalty charge notice income may also be retained by the local authority.
29. In view of the anticipated substantial increase in workload that the Environmental Health team will need to process due to the extension of mandatory HMO licensing, additional resources have been sought and agreed via CPDF funding. This is for one full-time equivalent housing enforcement/environmental health officer, for an initial period of six months.
30. During this initial period of implementation of the new requirements, the number of properties being identified for licensing and the on-going resource implications needed to process them will be monitored and evaluated. It is possible that this will require growth, which would be subject to the normal service and financial process. As the number of properties licensed increases, it is also expected that the internal systems used to process them will be further developed and modified, which will feed into the assessment of resource required once the initial identification and first round of licensing has been undertaken. HMO licence fees are set to fully recover the Council's costs involved in carrying out the licensing function.

### **EQUALITIES IMPLICATIONS**

31. An Equalities Impact Screening Assessment has been completed, and found that there are no significant equalities impacts. Indeed, having a clear policy in place for the enforcement of housing standards promotes positive outcomes for all groups, including those with protected characteristics. In some cases, vulnerable individuals may be at greater risk from poor housing conditions or the actions of 'rogue landlords', and enforcement action can be a positive tool to secure improvements in living conditions. Having a published enforcement policy may encourage vulnerable tenants to have more confidence in making complaints to the Council, as they have a better understanding of the likely outcomes, including protection against retaliatory eviction.

### **COMMUNICATION IMPLICATIONS**

32. In most cases where successful enforcement action is undertaken, there is liaison with the Communications Team, to discuss the merits of publishing the action, with a view to discouraging non-compliance among others. This might in future include reference to the use of new enforcement options, such as civil penalties or rent repayment orders.
33. The extension of mandatory HMO licensing is a significant change for landlords, and a communications plan has been developed with the Communications Team to publicise the changes and implications to landlords, tenants and members of the public.

## **RISK MANAGEMENT CONSIDERATIONS**

34. There are no significant risks associated with accepting the recommendations. There are substantial legal (and therefore financial) risks in not accepting the recommendations.

## **OTHER IMPLICATIONS**

35. None.

## **CONSULTATION**

36. None

## **POLICY FRAMEWORK**

37. There are no aspects of the policy framework that relate to this report.

## **Background Papers:**

1. Environmental Health and Licensing Enforcement Policy, July 2017  
[http://www.reigate-banstead.gov.uk/info/20054/health\\_and\\_safety/219/health\\_and\\_safety](http://www.reigate-banstead.gov.uk/info/20054/health_and_safety/219/health_and_safety)



## **REIGATE & BANSTEAD BOROUGH COUNCIL**

### **HOUSING ENFORCEMENT POLICY**

#### **Background**

This Housing Enforcement Policy should be read in conjunction with the main Environmental Health and Licensing Enforcement Policy. This additional policy covers in greater depth the issues and options available for enforcing housing legislation, than is appropriate for the general service policy regarding enforcement.

#### **Introduction**

Enforcement of housing standards, primarily in the private rented sector, is one of the statutory functions of the Environmental Health and Licensing Service ('Environmental Health'). The service seeks to minimise the risks to human health and the environment for the people of Reigate and Banstead from unsatisfactory housing conditions, with the ultimate aim of ensuring:

- (a) a private sector housing stock that is sound and whose condition does not endanger the health and well-being of its occupants or visitors.
- (b) rented housing that is properly managed and maintained

It is recognised that while there are many responsible landlords and letting agents, the Council has a vital role to play in tackling criminal and irresponsible landlords and preventing them from profiting from their non-compliance.

In order to regulate private sector housing, officers will conduct inspections of properties and investigate complaints of disrepair. This will be achieved by requesting information, carrying out inspections, processing licence applications, encouraging and promoting good practice, providing owners and landlords with advice and information, investigating possible offences and, where appropriate, taking enforcement action and prosecuting offenders.

#### **Aims and Principles Of The Housing Enforcement Policy**

The overall aim of the housing function is to raise standards in the private sector housing stock. This benefits the health and wellbeing of Reigate & Banstead Borough Council residents and helps maintain the housing stock for future generations.

The principles of the Housing Enforcement Policy are to ensure that:

- Tenants of private landlords and registered providers of social housing live in homes that are free of unacceptable hazards and risks to their health and safety;
- Houses in Multiple Occupation are safe, well managed and all relevant Management Regulations are adhered to;

- Licensable Houses in Multiple Occupation are licensed and licensing conditions are met;
- Privately owned property and land does not present a statutory nuisance to other land owners, is not detrimental to the amenity of the area, does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
- The Council meets its statutory obligations in relation to private housing.

This Enforcement Policy provides an overview of the broad principles and processes with which the Council will seek to comply when taking action to ensure that all private sector housing in the borough is healthy, well managed and safe. It should be read in conjunction with the Environmental Health and Licensing Enforcement Policy, which sets out how the Council will follow the principles of good enforcement.

### **Determining the Appropriate Action**

All types of enforcement action will be based upon an assessment of the risk to public health and the environment, caused by non-compliance with the legislation. Any enforcement action chosen by the officer will be governed by the principles of consistency, proportionality, fairness and transparency.

Where consideration is being given to a sanction for serious non-compliance, a Sanctions Panel will usually be convened to decide on the most appropriate action. The Panel will include the investigating officer/s for the case, the Environmental Health Team Leader and the Environmental Health Manager. A member of the Council's Legal Team may also be asked to participate.

In cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences the administration of a civil penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. A copy of this is attached as Appendix B to this Enforcement Policy. The Decision Matrix will be used in conjunction with a Sanctions Panel being convened.

A written record of the decision and factors considered in making it will be made and kept in the case file.

### **Authorised Officers**

All authorised officers of the Service will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so.

Action can only be taken by officers who are specifically authorised under the Council's Scheme of Officer Delegation. This will only be those who are competent by training, qualification and / or experience. Authorised officers will also have sufficient training and understanding of the team's procedures to ensure a

consistent approach to service delivery.

### **The Housing Health and Safety Rating System (HHSRS)**

The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause a risk to the health of the occupants, in relation to a particular hazard type. Hazards are categorised dependent on the degree of risk, into two types:

**Category 1 hazards** represent a serious danger to health and the Council has a *duty* to take appropriate action to see these hazards reduced.

**Category 2 hazards** represent a lesser danger and, although it has no duty to take action, the Council has *power* to reduce category 2 hazards through appropriate action.

Much of this enforcement policy relates to enforcement work under the Housing Act 2004. Other pieces of legislation will be used as appropriate and most of these are listed later in this document.

### **Inspection**

Dwellings may be inspected both reactively (in response to a request or complaint) and potentially proactively based on risk and intelligence. Where there is reason to believe a hazard may exist, but access 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 a property without prior notice and using force if necessary.

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, common parts and any gardens, garages and yards.

### **Tenure**

The Housing Health and Safety Rating System (HHSRS) outlined above applies to all tenures of housing. Furthermore, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Social Housing Provider. Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not usually able to do so.

For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

### **Owner-Occupiers**

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- Vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- Hazards that might reasonably affect persons other than the occupants
- Serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant social care authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

### **Social Landlords**

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes and Communities Agency (HCA). Housing Providers normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against Housing Providers unless:

- It is satisfied that the problem in question has been properly reported to the Housing Provider and
- The Housing Provider has then failed to take appropriate action

If the Council determines that it is appropriate to take action, it will then normally notify the Housing Provider that a complaint has been received and/or a hazard identified and seek the Housing Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action and will then determine which of the available enforcement options is the most appropriate, considering the facts of the case.

### **Private Landlords**

The Council will have regard to the principles of statutory guidance and relevant guidance from the First-Tier Tribunal (Property Chamber) ('FTT') decisions and will seek to proceed in accordance with the Enforcement Options set out below in this policy.

Landlords are expected to either:

- Provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or

- To ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council

The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

### **Shared Enforcement Responsibilities**

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies, for example Surrey Fire and Rescue Service. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

### **Prior to Enforcement**

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues require 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 the problem. Copies of correspondence between the landlord and tenant should be provided for officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment / threatened eviction / poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g., where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord / managing agent;

Tenants are responsible for keeping officers informed of any contact they have with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking.

### **Enforcement Options**

Once a property has been inspected and assessed, Officers will calculate the hazards found and consider what action to take. In deciding the most appropriate type of action to be taken, the property will be assessed according to:

- the number and type of category 1 and 2 hazards
- the vulnerability and personal circumstances of the current occupiers
- In the case of HMOs, whether they are licensable or not, the number of households in residence, any overcrowding, poor management and/or risk from fire.

The actions can be broken down into 'informal' and 'formal' action (see below).

### **(a) No Action**

Where no action is possible or the general principles for enforcement action lead the officer to determine that no action should be taken by the Authority, customers will be given advice on ways that they can deal with the matter themselves by taking their own legal action or other means. These include:

- Referral to Thames Water in the case of Public Sewers
- Referral to a solicitor in relation to potential action under section 11 of the Landlord and Tenant Act 1985.

In cases that fall outside our legislative remit no other action will be taken.

### **(b) Informal Action**

Informal action includes offering advice, or sending a written request for action.

Officers will usually attempt to make contact with the person(s) responsible for remedying actionable defects before taking formal action. The extent and significance of a defect will be explained, as will the remedy the Council considers appropriate. If suitable alternative remedies are proposed, they will be considered.

However, it should be noted that in view of the provisions enacted by the Deregulation Act 2015 governing retaliatory eviction of tenants who have made complaints about their accommodation, where a landlord has been made aware of deficiencies by a tenant, and his inadequate response or failure to respond results in the involvement of the Council, in most cases the Council will not take informal action in respect of Category 1 hazards identified under the Housing Act 2004.

In the event that informal action is deemed appropriate, Officers will write to the owner, managing agent or landlord 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. If an informal approach does not result in the hazard being appropriately remedied, formal action will be taken.

### **(c) Formal Action**

As stated above, in most cases the Council will proceed straight to formal action without an informal stage, where Category 1 Hazards are present. This is to ensure tenants receive the protection from retaliatory eviction provided by the Deregulation Act 2015. This protection applies when a tenant has made a genuine complaint about the condition of their property that has not been addressed by their landlord, and their complaint has been verified by a local authority inspection, who then serves either an improvement notice or a notice of emergency remedial action. Under these circumstances, a landlord cannot evict that tenant for 6 months using the 'no-fault'

eviction procedure (a section 21 eviction).

In some cases legislation also requires formal action to be taken straight away and there will also be times when officers consider that the risk to the occupant is high enough to warrant formal action without an informal stage. Factors include whether the current occupants are vulnerable or where the property poses an imminent risk to health or safety.

The Council will then proceed with formal action by taking the most appropriate enforcement action in accordance with this Policy.

### **Statutory Notices**

Formal action will usually involve the serving of statutory notices. Most notices served require the recipient to commence and complete remedial works within specified time limits.

Under the Housing Acts, the following enforcement actions are available to the Council when considering the most appropriate course of action:

- Serve an **Improvement Notice** or **Suspended Improvement Notice**;
- Make a **Prohibition Order** or **Suspended Prohibition Order**;
- Serve a **Hazard Awareness Notice**;
- Make a **Demolition Order**;
- Declare a **Clearance Area**;
- Make an **Interim or Final Empty Dwelling Management Order**
- Take **Emergency Remedial Action** (Category 1 Hazards only);
- Make an **Emergency Prohibition Order** (Category 1 Hazards only);
- Serve an **Overcrowding Notice**.

Officers will use the Housing Health and Safety Rating System Enforcement Guidance (published by the ODPM, February 2006) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7853/safetyratingsystem.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf)) in determining the most appropriate course of action from the above list and will adhere to the relevant consultation requirements set out on the legislation for taking into account the views of occupiers and owners and other stakeholders.

Housing Act 2004 Notices and Orders come complete with a 'Statement of Reasons' explaining why one type of enforcement action was taken rather than another. Officers will be willing to discuss the works specified in the notice, the reason for serving the notice and any alternative remedy the recipient may propose.

Certain Notices can be suspended, such that a specified time period elapses or specified events occur (or do *not* occur) before the suspended notice comes into operation.

Not more than one course of action can be taken at a time for the same hazard (unless it is an emergency action) but alternative action can follow if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for category 2 hazards.

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.

There are statutory rights of appeal against Notices, Orders and associated decisions made by the Council. Appeals against enforcement action are made to the First Tier Tribunal (FTT). The FTT may confirm, quash or vary a Notice, Order or decision. Details of these rights and information on making an appeal are contained in the Notices/ Orders.

Legislation permits the imposition of charges for certain formal enforcement actions that the Council can take. It is not currently the policy of the Council to impose these charges e.g. for the service of Improvement Notices, but this will be kept under review and may be revised in future.

### **Enforcement Action Thresholds**

The Council uses the following threshold values to guide decisions as to the initial enforcement expectation, depending on the hazard score. These are internal guidelines only and are not based in legislation or statutory guidance.

	<b>Vulnerable age group in occupation</b>	<b>No vulnerable age group in occupation</b>
<b>Category 1 Hazard</b>		
Score >1000	Formal action / improvement notice	Formal action / improvement notice
<b>Category 2 Hazard</b>		
Score 500-999	Formal action / Hazard awareness notice	Formal action / Hazard awareness notice
Score <500	No Action	No Action

In exceptional circumstances however, all types of enforcement action will be considered.

Where the hazard score results in no action, the occupier or tenant will be advised of any other action that may be available to them to deal with the issues that are of concern to them. Such advice will be confirmed by letter and may be copied to the owner for information.

### **Types of Statutory Notices**

#### **(a) Improvement Notices**

In the vast majority of cases properties are in such a condition that they can be repaired or improved rather than demolished or closed and so improvement

notices are likely to be a common type of enforcement for category 1 hazards. The service of a notice will seek to reduce a category 1 hazard to a category 2 hazard or else to remove it entirely.

An improvement notice will specify the following information:

- which category of hazard it relates to
- the nature of the hazard and the premises / property on which it exists;
- the deficiency giving rise to the hazard;
- the premises and nature of remedial action required;
- the date by which remedial action is to be started, (not less than 28 days);
- the period in which the remedial action is to be completed;
- notes in respect of the right of appeal.

An improvement notice will be revoked when it is complied with and may be varied by agreement.

**(b) Suspension of an Improvement Notice (or a prohibition order see below)**

An improvement notice would normally become operative 21 days after service and a prohibition order after 28 days. However both may be suspended. The notice may specify an event that triggers the end of the suspension, such as:

- non-compliance with an undertaking
- a change of occupancy

Suspension may also be appropriate where the hazard is not sufficiently minor to be addressed by a hazard awareness notice but the current occupiers are not members of a vulnerable age group. Consideration will also be given to the turnover of tenants at the property. Typically the activation of a suspended notice would be a change of occupancy, where an occupier is replaced by one who is of the vulnerable age group. The notice will require the owner or landlord to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

Consideration will be given to any request by the tenant to suspend the notice or replace the action by the issue of a hazard awareness notice where the works are likely to affect that tenants' health. All suspended notices and orders will be reviewed every 12 months or earlier as deemed to be appropriate.

**(c) Prohibition Orders**

A prohibition order may be used for either a category 1 or 2 hazard. It may prohibit the use of a part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

A prohibition order will specify the following:

- whether it relates to a category 1 or 2 hazard;
- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises and prohibitions which are imposed;
- any remedial action that would result in the order being revoked. (An order becomes operative 28 days after it is made);
- notes in respect of the right of appeal.

A prohibition order will be revoked if the Council is satisfied that the hazard to which it relates no longer exists.

This action will only be used in exceptional circumstances and may include the following:

- where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons e.g. where the remedial works cannot be undertaken with the tenant in occupation;
- to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs;
- to control the number of persons who occupy a dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or cooking facilities).
- to prohibit the use of the dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others: The specific group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;
- in an HMO, to prohibit the use of specified dwelling units or of common parts.

Regard will be had to the following matters when considering serving a prohibition order:

- the risk of exclusion of vulnerable people from the accommodation;
- whether the building is listed;
- the position of the premises in relation to neighbouring buildings;
- irrespective of any proposals the owner may have, the potential alternative uses of the premises
- any conservation or renewal area and any general proposals for the area
- the effect of complete prohibition on the well-being of the local community and the appearance of the locality
- the availability of local accommodation for re-housing any displaced occupants
- whether it is appropriate to offer financial advice or assistance

#### **(d) Hazard Awareness Notice**

Category 2 hazards i.e. a score of 500 or more will usually result in a hazard awareness notice (HAN) being served. This will draw the attention of the person responsible to the desirability of remedial action. There will be no requirement to carry out the recommended works. No informal action will be taken prior to the issue of a HAN.

A hazard awareness notice will specify:

- the nature of the hazard and the premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises on which the deficiency exists;
- the reasons for deciding to serve the notice, including the reasons for deciding that serving the notice is the most appropriate course of action;

- the details of any remedial action, which the Council considers, would be practical and appropriate to take.

The advisory nature of the notice may result in monitoring of any premises to ascertain if works have been undertaken. The service of a hazard awareness notice will not prevent further formal action.

### **(e) Emergency Remedial Action/ Emergency Prohibition Order**

The Council has the discretion to take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers of those or other residential premises. This action will only be taken in exceptional circumstances and will require the following:

- the existence of a category 1 hazard
- that the hazard presents an imminent risk of serious harm to the health and safety of the occupiers
- that no management order is in force in respect of the premises.

The Council can take remedial action to remove the hazard and recover reasonable expenses, or prohibit the use of all or part of the property. There are appeal provisions but any appeal will not prevent any remedial works being undertaken or prohibition order being made.

A notice will be served within seven days of remedial action being started. This will state:

- the nature of the hazard and the premises / property which it exists;
- the deficiency giving rise to the hazard
- the premises and nature of remedial action required;
- the power under which the remedial action has been (or is to be) taken;
- the date when the remedial action was (or is to be), started.
- notes in respect of right of appeal

### **(f) Demolition**

Where a Demolition Order is used, the Council will assist in the re-housing of the occupants who are displaced. The Council will consider the following matters in reaching a decision on making a demolition order:

- the availability of local accommodation for re-housing occupants
- the demand for, and the sustainability of the current accommodation if the hazard were remedied;
- the prospective use of the cleared site;
- the local environment, the suitability of the area for continued residential use and the impact on the area of the cleared site.

A demolition order may be replaced with a prohibition order if proposals are submitted for the use of the premises for use other than human habitation.

### **(g) Clearance Areas**

Clearance is unlikely to be the most viable option in most cases. However the following matters would be taken into account in reaching a decision on the most

appropriate action.

- the likely long term demand for residential accommodation;
- the degree of concentration of dwellings containing serious intractable hazards;
- the density of buildings and street pattern around which they are arranged;
- the overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands;
- the proportion of dwellings free of hazards and other, non-residential, premises in sound condition which would also need to be cleared to arrive at a suitable site;
- whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners;
- the existence of any listed buildings;
- the results of statutory consultation;
- the arrangements necessary for re-housing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- the impact of clearance on, and the scope for relocating, commercial premises;
- the suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such use would attract private investment into the area.

### **Houses in Multiple Occupation (HMO)**

HMOs are higher risk than single family homes, and so the conditions, facilities and management are more closely regulated. Some HMOs are subject to mandatory HMO licensing.

From October 2018 HMO licences are required for all HMOs that are occupied by 5 or more persons forming more than one household who are sharing facilities. Until this date, mandatory licences have only been required for HMOs meeting the above criteria and being of three or more storeys.

In Reigate & Banstead, prior to October 2018 there were between 25 and 30 licensed HMOs, but using the new wider criteria the number of licensable HMOs is thought likely to increase to between 250 and 300 premises.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is the owner, or the person who lets the property out and collects rents. Prospective HMO licence-holders must complete an application form, supply various documents and pay their licence fee. Inspections are usually undertaken as part of the application process but may happen at any time during the lifetime of the licence. Licences are issued by the local authority and conditions may be attached to the licence (including the maximum permitted number of occupants and households that can occupy the property). Works may be required to meet minimum standards prior to the licence being issued.

Licences are issued for a five-year period and a new licence must be applied for before the end of that period. The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

The Council charges for HMO Licences are set out in the Statement of Fees and Charges. HMO licence fees are set to fully recover the Council's costs involved in carrying out the licensing function.

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

Where an unlicensed HMO is identified by the Council or via other intelligence, the Council will assess whether there are good reasons why an application has not been received. If there are no good reasons, the Council will look to take formal proceedings with a view to prosecution in the courts or by way of issuing a Civil Penalty. During the first 6 months following the extension of mandatory HMO licensing in October 2018, there will be a 'grace period' where enforcement action regarding the need to apply for a licence will not be instigated for HMO's that have newly come into scope for licensing, provided that the landlord fully cooperates with the Council once the requirement for a licence has been communicated to them.

If a landlord of an unlicensed HMO approaches the Council for licensing and the landlord fully cooperates with the Council, including addressing any management, safety or amenity issue within an agreed timescale, the Council would not normally take enforcement action in respect of their not previously having applied for a licence.

### **Management Regulations**

All identified hazards and breaches of the relevant HMO Management 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.

The Council is under a duty to make an interim management order where an HMO is required to be licensed and they consider that either –

- That there is no reasonable prospect of it being licensed in the near future, or
- That the health and safety of the occupants requires protecting.

The making of such an order, agreed by the FTT, would effectively result in the Council taking over the management of the property. The Council may also then apply for a Rent Repayment Order.

### **Temporary Exemption Notice**

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that he / she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

### **HMO declaration**

In circumstances where an application for a licence has not been received because the owner of an HMO disagrees with the Councils assertion that a certain building is an HMO, then the Council will make an HMO declaration. This has the effect of formalising the Councils' decision. An owner may appeal this decision to the FTT. The decision of the FTT is final.

### **Management of Houses in Multiple Occupation**

There are prescribed standards of management in respect of all HMOs and non-compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006 (regulations made under section 234 of the Housing Act 2004), is an immediate offence. Although no enforcement notices can be served, an informal letter to the landlord will normally be made to try to ensure compliance before deciding on prosecution as a course of action.

### **Sanctions for Non-Compliance for all types of Housing Legislation**

If a Notice or Order is complied with or amendments are required to the Notice as a result of new information, a 'Revocation Notice' will be served confirming that the original Notice or Order has been revoked.

However, if the Notice is not complied with, the following sanctions will usually be considered:

- issuing a financial penalty
- Rent Repayment Order
- prosecution
- formal caution
- Banning Order
- Making an entry in the Rogue Landlords Database
- carrying out the works in default;
- carry out works in default and issuing a civil penalty, prosecution or formal caution

### **Financial Penalties**

Since 6 April 2017, local housing authorities have had the power to impose civil (financial) penalties of up to £30,000 on individuals and organisations as an alternative to prosecution, to use robustly as a way of clamping down on criminal landlords.

The statutory guidance recommends that the actual amount of financial penalty imposed should reflect the severity of the offence and consider the landlord's previous record of offending. Fundamentally, civil penalties will be set such that it costs less to comply with the legislation and standards than the cost of not complying.

The statutory guidance recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

- The severity of the offence

- The culpability and track record of the offender
- The harm caused to the tenant
- The punishment of the offender
- Whether it will deter the offender from repeating the offence
- Whether it will deter others from committing the offence
- Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

The factors used by the Sanctions Panel in determining a penalty are outlined in Appendix A of this policy.

The Housing and Planning Act 2016 section 126 and Schedule 9 enables the Council to impose a civil penalty as an alternative to prosecution for certain housing offences:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of HMOs
- Section 95 – Offences in relation to selective and additional licensing of houses under Part 3 of the Act
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with HMO Management Regulations

Civil penalties can only be used as an alternative to prosecution. Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

Where the Council is in a position to prosecute a letting agent and landlord for failing to obtain a licence for a licensable HMO, it has the option of imposing a (civil) financial penalty on the letting agent and the landlord as an alternative to prosecution. Where the letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them at different levels, depending on the circumstances of the case.

Where a civil penalty is imposed and an appeal is subsequently made to the FTT, the Council will need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

As the Council is allowed to retain the income it receives from civil penalties, this course of action will also provide the Council with the opportunity to increase its housing enforcement activity within the borough.

### **Rent Repayment Orders**

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent, capped at 12 months.

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of HMOs.

Rent repayment orders have since been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below:

- 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)
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016 (from April 2018);
- 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)

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, the rent would be repaid in equivalent proportions.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

### **Prosecution**

In cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences the administration of a civil penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. A copy of this is attached as Appendix B to this Enforcement Policy. The Decision Matrix will be used in conjunction with a Sanctions Panel being convened.

Where an officer believes that an offence has been committed and a prosecution is appropriate, The Environmental Health Manager must be consulted and give their agreement to the proposed course of action.

The decision to prosecute does not preclude the issue of legal notices as well. Prosecutions have a preventative role in drawing attention to the need for compliance and the maintenance of good standards.

The Council will apply the principles of the Criminal Procedures & Investigations Act 199 and Crown Prosecutors statutory Code of Practice, as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

In deciding whether to prosecute or not, we will consider the following matters, as listed in the main Environmental Health and Licensing Enforcement Policy: -

The gravity of the offence/s, for example whether: -

- there has been blatant disregard for the law, deliberate intent or negligence
- there are persistent poor standards and malpractice
- there has been an injury or a case of ill health as a result of a substantial legal contravention
- a particular contravention has caused serious public alarm
- those affected are particularly vulnerable

The general record and approach of the offender, for example: -

- repeated breaches of legal requirements or license conditions or various breaches of a multiple concern and, where it appears that an individual or a company is neither willing nor able to deal adequately with these
- failure to comply with statutory notices where matters of significant concern are persistent rather than transitory
- previous convictions or cautions which are relevant to the offence.

### **Simple Caution where an offence is admitted: -**

This procedure is an alternative to taking action in the Courts. Should a further offence be committed, it may be cited in any subsequent Court proceedings. A Simple Caution is a serious matter and it is recorded by the Council and where applicable on the Police National Computer. Cautioning is recognised as an important way of keeping offenders out of Court and in many circumstances reducing the risk that they will re-offend.

In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance April 2013 – Simple Cautions for Adult Offenders, as well as the Environmental Health Enforcement Decision Matrix and Sanctions Panel, as described above.

The caution will be administered by a Senior Officer who has been designated a 'Cautioning Officer' (e.g. the Environmental Health Manager).

### **Banning Orders**

Since April 2018 local authorities have had the ability to apply to the First Tier Tribunal (FTT) to request a banning order against landlords or letting agents who have been convicted of a banning order offence. This has the effect of banning a landlord or letting agent from letting housing, engaging in letting agency or property management work, and/or from holding an HMO licence. Banning orders are for a minimum of 12 months and it is a criminal offence to breach one.

An application can only be made against a landlord or letting agent following their conviction by the authority for a specified banning order offence. The relevant offences are listed in the legislation, but include:

- Unlawful eviction and harassment of occupier
- Using violence to secure entry
- Failure to comply with an Improvement Notice

- Failure to comply with a Prohibition Order
- Certain offences in relation to HMO's
- Serious criminal offences, committed against the tenant or related to the housing in question, and subject to sentencing in the Crown Court.

In considering whether to apply for a banning order, the following factors will be considered:

- The seriousness of the offence – the more severe the sentence, the more appropriate a banning order.
- Previous convictions or entries on the Rogue Landlords Database – a longer ban may be appropriate if there is such a history.
- The likely effect of the banning order including the harm caused to the tenant, punishment of the offender and likely deterrent effect on recurrence or others.

### **Rogue Landlords database**

This is a relatively new tool introduced by government to assist housing authorities in England to keep track of criminal landlords and letting agents. Designated users within local housing authorities can view all entries, including those made by other local authorities.

The process of making an entry in the database is governed by statutory guidance. An entry *must* be made when a person or organisation has received a banning order, and *may* be made where:

- A person or organisation is convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent
- A person or organisation has received two or more financial penalties in respect of banning order offences within a period of 12 months, committed at a time when the person was a residential landlord or property agent.

Before an entry in the database is made, a decision notice must be issued to the offender, specifying the period for which an entry will be maintained, which will be at least two years. The decision notice must be served within 6 months of the conviction for a banning order offence or receipt of a second civil financial penalty.

In considering whether to make an entry and the length, the following factors will be considered:

- The severity of the offence
- Mitigating factors, such as health issues or bereavement
- Culpability and serial offending
- Likely deterrent effect on the offender and on others

### **Works in Default**

The Council has powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works by formal Notice or Order, but has failed to either start works or make adequate progress.

Works in default will generally be limited to situations where there is a strong public health imperative to complete works to resolve a serious legal contravention. This is generally likely to be limited to scenarios involving filthy and verminous properties. It is

not the Council's general policy to undertake works in default action in respect of housing disrepair matters, but all works in default will be considered on a case by case basis.

In determining if work in default is appropriate, Officers will consider the following:

- the effects of not carrying out the work on the health, safety and wellbeing of the occupant/s of the property concerned;
- the wishes of the occupier/s
- the reason/s for the work not being carried out in the first place
- the costs and complexity of carrying out the works in default.

In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of its contractors or agents employed to carry out the works.

Works in Default costs will be fully recoverable, including the Council's full administrative costs. Interest may be chargeable until the amount is repaid.

The charges levied for the works and the associated costs will become a legal charge on the property until it is paid in full. In some cases, interest is also charged on the unpaid charges. The debt will be pursued. An enforced sale of the property may be considered should this be deemed appropriate.

In some cases, it may be appropriate to impose two sanctions for example, carrying out work in default and also issuing a civil penalty or prosecuting the offender.

## **Other Enforcement Options**

### **Proceeds of Crime**

In certain cases, a financial investigation may be undertaken by the Council's Accredited Financial Investigator, to determine if action under the Proceeds of Crime Act 2002 is appropriate following prosecution. The findings of a financial investigation may also be used to inform the decision on whether to pursue enforcement of certain Housing Act 2004 offences by means of prosecution or by means of civil penalties, as well as the level of civil penalty to be applied.

### **Interim Management Order and Final Management Order**

Where there is no prospect of an HMO being licensed or the health and safety condition is satisfied, the Council is required to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for the running of the property and collecting rents for up to one year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

The Council will only use these powers in exceptional circumstances. These orders can only be made with the authorisation of the First Tier Tribunal.

### **The Council may also**

- Refuse a licence
- Revoke a licence

- Vary a licence
- Refuse to vary a licence

### **Interim and Final Empty Dwelling Management Order**

Where property has been left empty for at least 6 months the Council has the power to ask the First Tier Tribunal for approval to issue an interim Empty Dwelling Management Order (EDMO). This gives the Council the power to take over the management of the house and seek to ensure it becomes occupied. The Council is required to engage with the owner to try and reach a solution before applying for such an order, which may last up to 1 year. This interim order may then be made final with the approval of the First Tier Tribunal if a solution has not been found in the first year. This final EDMO can last up to 7 years. These powers will only be considered in very exceptional circumstances.

### **Compulsory Purchase Order**

This option is only taken up in exceptional circumstances, for example;-

- Where the property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties; or
- Where the property appears to be abandoned and the owner cannot be traced; or
- Where all other avenues for bringing the property back to a useful life have been exhausted; or
- Where the property is suitable for immediate residential use, but is not likely to be occupied for residential purposes unless bought by the Council.

The making of a CPO has to be agreed by the relevant Portfolio holder, by the Executive and full Council. The Ministry for Housing, Communities and Local Government must then approve it before it can be made.

### **Vacated properties with Statutory Notice**

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether the impact of any hazard has diminished, and whether notices or orders may be varied, suspended or revoked.

### **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 monetary penalty of an amount determined by the Council.

The expectation in Government guidance is that a monetary penalty of £5,000 should

be considered the norm and the penalty must not exceed this amount. A lower penalty should 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.

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a 'remedial notice'. Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge.

The legislation requires the Council to have in place a Statement of Principles regarding their use. This is provided at Appendix C of this policy and includes details of the penalty charges for non-compliance.

### **Other Housing Related Legislation Enforced by Environmental Health**

#### **Environmental Protection Act 1990 and other legislation**

The Environmental Protection Act 1990 defines statutory nuisance, and gives the Council power to serve an Abatement Notice requiring the owner to remedy a building that is so far defective as to be prejudicial to the health of its occupier or a nuisance. Examples of such nuisances could include rainwater penetration through defective roof or windows, rising or penetrating dampness and condensation, defective (rotten) timber flooring, elements exhibiting structural failure e.g. ceilings, and dangerous fixtures and fittings.

#### **Public Health Act 1936**

Though much of this Act has been repealed or its provisions resurrected in other legislation, it still 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 statutory nuisance provisions, (now in the Environmental Protection Act) to tents, vans, sheds (agricultural/migrant worker type accommodation) or canal boats used as dwellings.

#### **Public Health Act 1961**

This Act still 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 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**

Although primarily concerned with ensuring the safety of new buildings through the application of Building Regulations, the Building Act 1984 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 major repairs to drainage systems and to deal with ruinous or dilapidated buildings including empty homes.

### **Prevention of Damage by Pests Act 1949**

Notice can be served where steps should be taken for the destruction of rats or mice on the land or to keep the land free from rats and mice. Notice may be served on the owner or occupier of the land or property requiring works to clear, proof or treat the land from existing or likely pest infestations.

### **Caravan Sites and Control of Development Act 1960**

This Act contains provisions to prevent land being used as a caravan site without a license and to ensure the conditions and amenities on any site are provided and maintained in a safe condition.

### **Mobile Homes Act 2013**

This Act enables the Council to set and enforce site license conditions.

### **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

These Regulations establish a minimum energy efficiency standard for domestic privately rented property, effecting new tenancies from 1 April 2018. Where the Council believes that a landlord may be in breach of the prohibition on letting a sub-standard property, a compliance notice may be served requiring information from that landlord to help them to decide whether there has been a breach.

If the Council is satisfied that there is a breach of the requirements, a financial penalty may be imposed, up to the maximum limits set by the Regulations. Alternatively, the Council may utilise a 'publication penalty', and publish some details of the landlord's breach on the publically accessible part of the PRS Exemptions Register, for at least 12 months.

### **Publicity**

The Council may publicise successful enforcement outcomes against businesses, licensees and individuals for housing and environmental health offences. Names of

companies and individuals convicted of environmental health offences may be published on the Council's website. Cases subject to appeal will not be published, to account for the appeals process a period of 10 weeks will be allowed to elapse following conviction before a case is added. Where the Council is notified of an appeal outside this time period, the case will be removed from the site.

## **Review of the Policy**

This enforcement policy will be regularly reviewed either annually, or as necessary due to changes in legislation or new guidance from the Government, the Council or appropriate professional bodies.

## **Complaints**

The Environmental Health service subscribes to the Council's Corporate Complaints and Appeals Procedure. In addition, statutory Appeal rights exist where Notices are served or charges levied and these are set out in the legislation.

If you do not agree with any action taken by an officer you should contact the Environmental Health Manager whose details are given below.

If you feel we have given an unsatisfactory service contrary to these criteria, you can complain direct to:

**Environmental Health Manager  
Reigate & Banstead Borough Council  
Town Hall, Castlefield Road,  
Reigate, Surrey RH2 0SH  
E-mail: [Katie.jackson@reigate-banstead.gov.uk](mailto:Katie.jackson@reigate-banstead.gov.uk)  
<http://www.reigate-banstead.gov.uk/>  
Tel. No. 01737 276309**

**This Enforcement Policy supersedes and replaces all earlier housing enforcement policies relating to Reigate & Banstead Borough Council Environmental Health Services.  
July 2018**

## **Appendix A: Factors taken into account when deciding the level of civil penalty**

The financial penalty for each case will be agreed by a Sanctions Panel. The Panel will include the investigating officer/s for the case, the Environmental Health Team Leader and the Environmental Health Manager. A member of the Council's Legal Team may also be asked to participate.

In order to ensure that the civil penalty is set at an appropriate level, the panel will consider the following factors the Government has identified in its statutory guidance as being pertinent:

- a. The severity of the offence**
- b. The culpability/ responsibility and track record of the offender**
- c. The harm caused to the tenant**
- d. The punishment of the offender**
- e. Whether it will deter the offender from repeating the offence**
- f. Whether it will deter others from committing the offence**
- g. Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence.**

The final factor is the overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that **the civil penalty that is set removes the financial benefit that has been gained from committing the offence.**

When setting a civil penalty, the panel will also 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.

### **The costs of investigating, determining and applying a civil penalty**

In keeping with the key principle of ensuring that the costs of enforcement are borne by the offender (rather than by good, responsible landlords), the costs associated with investigating, determining and applying a civil penalty will be reflected in the level of civil penalty that is imposed.

Cases that result in the Council issuing civil penalties clearly entail investigative and preparation costs and may involve costs in defending an appeal. These costs, comprising resources and officer time, will be built into the civil penalty charge.

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

## Investigative charges

Investigative 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. There will only be one set of investigatory charges for each investigation/ operation undertaken by the Council.

## Punitive charges

The guiding principle here is to ensure that the offender does not benefit as a result of committing an 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 Council has created a table of punitive charges (based on Culpability and Harm) that the Sanctions Panel will refer to when determining the level of civil penalty that should be imposed:

		CULPABILITY			
		Low	Medium	High	Very High
H	Low	£2,000	£3,000	£4,000	£5,000
A	Medium	£3,000	£6,000	£8,000	£10,000
R	High	£4,000	£8,000	£12,000	£18,000
M	Very High	£5,000	£10,000	£18,000	£27,000

Government Guidance recommends that 'the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending'.

Aggravating factors in the case will increase the initial amount and, equally, any mitigating factors will reduce the initial amount. Relevant aggravating factors might be previous history of non-compliance, poor or no explanation offered, or blatant failure to control the circumstances leading to the offence.

## 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 panel 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.

In certain cases, a financial investigation may be undertaken by the Council's Accredited Financial Investigator, to assist in determining the level of civil penalty to be applied.

## Appendix B: Environmental Health Enforcement Decision Matrix

The Environmental Health and Licensing Enforcement Policy and its complementary Housing Enforcement Policy requires that in cases where consideration is being given to prosecution or administration of a Simple Caution, or in the case of certain specified Housing Act 2004 offences, the administration of a civil penalty, the Environmental Health Enforcement Decision Matrix will be used to help reach a conclusion. In the case of certain housing offences, this will be done in conjunction with a Sanctions Panel being convened, as described in the Housing Enforcement Policy.

### Prosecution / Simple Caution/ Civil Penalties Verification Scoring Scheme

Name and address of premises or alleged offender:

.....

#### Part One

Criterion	Score	Total
<b>Risk to Health or Safety</b>		
No risk to health safety or animal welfare	1	
Risk to health or safety possible, but unlikely	10	
Cause minor ill effect, potential for more serious effect in more vulnerable groups or Significant breaches of legislation/failure to return requisition	15	
Identified or potential serious risk to health safety or animal welfare	20	
<b>Previous History</b>		
No previous history with the Local Authority	0	
Have reacted to previous advice, change usually effective	4	
Do not react to advice, change not always effective, confidence in management is moderate	8	
Compliance with advice is low, confidence in management /licensee is low	12	
Failure to respond to previous advice	16	
<b>Ability of Witnesses</b>		
Witnesses would rather not attend court but might be persuaded	1	
Witness would require witness summons to attend	2	
Witness willing to attend but may not be effective under cross examination	3	
Witness willing to attend and will be effective	4	
<b>Willingness to prevent recurrence</b>		
Steps taken to prevent recurrence, confidence that these steps will be effective	2	
Steps taken to prevent recurrence, doubts that these will be effective	4	
Steps promised to prevent recurrence but confidence is low that promise will be fulfilled	6	
Not willing to prevent recurrence, no confidence that the person/proprietor/licensee is capable of preventing recurrence	8	
<b>Probable public benefit</b>		
Penalty/publicity will have very limited value	1	
Penalty/publicity will ensure improvement in the case in question	2	
Penalty/publicity will prevent other similar offences	3	
<b>Explanation offered by defendant</b>		
Explanation appears satisfactory, factors appear to have been beyond defendant's control	3	
Explanation shows that prevention was possible but that necessary steps had not been taken	6	
Explanation poor, blatant failure to control circumstances leading to offence	9	
No explanation offered, wilful disregard for public health	12	
	<b>Total</b>	

Officer to apply one score from each section. The total score will help determine the course of action to be taken:

<b>Decision:</b>	<b>Score:</b>
Take action within the Enforcement Policy	0-23
Proceed to Prosecution / Simple Caution / Civil Penalty	24-63

**Recommendation of Investigating Officer**

Signed \_\_\_\_\_ Date \_\_\_\_\_

**Part 2**

**Prosecute / Simple Caution / Civil Penalty Decision Matrix**

The decision to prosecute, issue a civil penalty or to offer a simple caution should be made using the following two-stage process. Tick the appropriate response to each criterion and total the number of ticks in each column. The total number of ticks will influence the decision.

Stage 1

Criterion	Civil Penalty or prosecute	Offer Caution
Is the offence serious?	Yes	No
Is the offender old or infirm?	No	Yes
Has the offender a previous history of offending	Yes	No
Is the offender willing to prevent a recurrence of the problem?	No	Yes
Would a prosecution be in the public interest?	Yes	No
Has the offender offered a reasonable explanation?	No	Yes

Stage 2

Is the use of a simple caution appropriate given the circumstances of the case?  
No/Yes

**Recommendation of Investigating Officer/Sanctions Panel:**

Prosecute / Simple Caution / Civil Penalty

Signed \_\_\_\_\_ Date \_\_\_\_\_

Further to the outcome decided above additional factors should be considered in all cases. This is because the standard of evidence required for issue of a civil penalty is ‘beyond reasonable doubt’, as is required for all prosecutions and simple cautions. An assessment of the Full code Test described in the Crown Prosecution Service Code for Crown Prosecutors 2013 follows on page 3.

Guidance on the code can be found here:

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

## **The Full Code Test**

The Full Code Test has two stages: **(i) the evidential stage**; followed by **(ii) the public interest stage**.

In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.

Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test.

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. **A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.**

The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

### **(I) THE EVIDENTIAL STAGE**

When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

#### **Is there sufficient evidence to provide a realistic prospect of conviction?**

#### **Can the evidence be used in court?**

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

1. the likelihood of that evidence being held as inadmissible by the court;  
and
2. the importance of that evidence in relation to the evidence as a whole

#### **Is the evidence reliable?**

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

**Is the evidence credible?**

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

Outcome of evidence test? **Pass** – Continue to next stage

**(II) THE PUBLIC INTEREST STAGE.**

1. How serious is the offence?
2. What is the level of culpability of the suspect?
3. What are the circumstances of and the harm caused to the victim?
4. Was the suspect under the age of 18 at the time of the offence?
5. What is the impact on the community?
6. Is prosecution a proportionate response?
7. Other considerations unique to this case?

**Possible defences and mitigating circumstances**

The code states that; 'When deciding the public interest, prosecutors should consider each of the questions set out above so as to identify and determine the relevant public interest factors tending for and against prosecution.'

Taking into account all the information from the evidence and public interest tests I am of the opinion that the facts tend for/against prosecution.

**Decision of Environmental Health Manager**

I Agree / Disagree the decision to take formal action and prosecute the defendant/ issue a civil penalty (delete as appropriate).

Signed \_\_\_\_\_

Date \_\_\_\_\_

## **Appendix C: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – Statement of Principles**

### **Introduction**

Since the 1st October 2015, a “relevant landlord” of a “specified tenancy” of residential premises must ensure during any period on or after 1<sup>st</sup> October 2015 when the premises are occupied under the tenancy that:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. 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.

### **Enforcement**

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no or insufficient numbers 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 or licence.

The Local Authority must serve on the Landlord in a method prescribed by the Regulations, a Remedial Notice, detailing the actions the landlord must take to comply with the Regulations. If after 28 days the Landlord has not complied with the Remedial Notice, the Local Authority may issue a penalty charge levied through a Penalty Charge Notice (PCN).

Where the Local Authority is satisfied that the Landlord is either unable or unwilling to carry out the work it must also undertake works in default in the manner specified in the Regulation. As the Act does not stipulate the type of detector and alarm, where works in default are taken, it has been determined that the Local Authority will install a battery operated smoke detector and alarm at every storey of the residential accommodation.

This may only provide a temporary solution if the property is deemed high risk due to:

- The mode of occupancy e.g. it is an HMO or building converted into one or more flats, and/or;
- It has an unsafe internal layout e.g. a fire escape route passes through a high-risk room, such as a living room or kitchen, and/or;
- It is 3 or more storeys in height.

In these circumstances, consultation with Surrey Fire and Rescue Service will be undertaken to consider the adequacy of the type and coverage of the smoke alarm

system, fire escape routes including escape windows and structural fire separation e.g. fire doors, walls and ceilings.

Any further works required to address serious fire safety hazards in residential property will be enforced using the Housing Act 2004, in accordance with this Housing Enforcement Policy.

In the circumstances where a Carbon Monoxide detector and alarm is required it will install a Battery powered CO detector with a 10 year sealed lithium battery that is CE marked and Kite marked to BS EN 50291-1 and BS EN 50291-2.

### **Principles to be followed in determining the amount of a Penalty Charge**

The Authority considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first offence only; and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, administration fee and a fine. This is reflected in the calculation of the first time offence charge.

The Legislation allows the Local Authority to set PCN levels up to a maximum of £5,000.

Having considered proportionality, the Housing Enforcement Policy and the interests of better regulation, repeat offences will attract a higher penalty in light of an offenders continuing disregard for the legal requirements and tenant safety.

### **Level of penalty Charge**

The penalty charge shall be set at £2,500 for the first offence but will be reduced to £2,000 if paid within a fourteen (14) day period from the date of service. This will be reflected in the fixed penalty notice as a works in default element plus the level of fine on top.

<b>Offence</b>	<b>Level of FPN</b>	<b>Reduction</b>
First offence	£2,500	£500
Second and subsequent offence	£5,000	None

No discount will be given for prompt payment after the first occasion.

### **Recovery of Penalty Charge**

The local housing authority may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

### **Appeals in relation to a penalty charge notice**

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice.

A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the local housing authority's decision.



**HOUSING ENFORCEMENT POLICY AND AMENDMENT TO THE OFFICER SCHEME OF DELEGATION**

The table in this Annex presents proposed changes to Schedule 3b of the Council's Constitution - The Officer Scheme of Delegation.

The table includes all columns in the current scheme of delegation and a further column to explain the reason that it is proposed to make an amendment. The final column will not be included in the new scheme of delegation - it is simply for explanation.

The paragraph number is labelled 'New', as these are for wholly new delegations. These numbers will be changed once the revisions are incorporated, to enable fully sequential numbering.

13 September 2018

Housing Enforcement Policy and Amendment to the Officer Scheme of Delegation

Paragraphs to be added or amended in relation to Section 5 (Housing and other Residential Accommodation)

Section of the Scheme of Delegation	Delegated function	Act(s)	Officer(s)	Consultation Required with	Non-Executive/ Executive Function	Change and reason change is being proposed
New paragraph in Section 5	Refresh the Housing Enforcement Policy regularly as and when new legislation comes into force, except when any significant variations of approach to regulation changes are proposed.	Legislative and Regulatory Reform Act 2006	HoS with responsibility for Environmental Health	-	Non-Executive	Addition of new policy, to match delegation in place for Environmental Health Enforcement Policy
New paragraph in Section 5	Exercise the Council's powers, duties and functions in relation to the enforcement of the Energy Performance Certificate (EPC) requirements.	Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.

13 September 2018

Housing Enforcement Policy and Amendment to the Officer Scheme of Delegation

Section of the Scheme of Delegation	Delegated function	Act(s)	Officer(s)	Consultation Required with	Non-Executive/ Executive Function	Change and reason change is being proposed
New paragraph in Section 5	Exercise the Council's powers, duties and functions in relation to the enforcement of the requirement to belong to an approved scheme.	Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.

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# Agenda Item 5

Executive  
13 September 2018

Agenda Item: 5  
Flats Recycling Service



<b>REPORT OF:</b>	STRATEGIC HEAD OF NEIGHBOURHOOD SERVICES
<b>AUTHOR:</b>	Morag Williams
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	13 SEPTEMBER 2018
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR A. HORWOOD

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>FLATS RECYCLING SERVICE</b>
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**RECOMMENDATIONS:**

- (i) To note the overall success of the rollout of the enhanced kerbside recycling scheme agreed by the Executive in December 2010
- (ii) To reaffirm the Council's continued support for the rollout of enhanced recycling services to flats in the borough;
- (iii) To delegate authority to the Strategic Head of Neighbourhood Services, in consultation with the Portfolio Holder for Neighbourhood Services to roll out Phase 1 and plan for, and roll out Phase 2.
- (iv) To note that providing kerbside recycling for the remaining properties will be reviewed once long-term waste disposal arrangements have been agreed with Surrey County Council, recognising that a roll-out will be challenging and may not prove cost effective.

**REASONS FOR RECOMMENDATIONS:**

There are around 10,400 flats in the Borough that currently do not have access to our full kerbside recycling service.

Delivering the council commitment made in 2010, to provide kerbside recycling services to all households to achieve the governments recycling targets.

The implementation of enhanced recycling services to flats will increase recycling rates and reduce the amount of residual waste sent for disposal. We anticipate an increase of 0.5% following phase 1, and a further 0.5% following phase 2. With the additional 1% potentially from remaining flats. This will prove more challenging due to the nature of adaptations that are required to the properties that fall within this group. Capital outlay will be required by managing agents/landlords/RSL's, which is out with the Council's control.

### **EXECUTIVE SUMMARY:**

In 2012 a comprehensive recycling service was introduced to 45,000 homes within the Borough; since that time 3,800 flats (total flats in the Borough = 14,200) have been provided with full kerbside recycling services.

Currently there are 10,400 flats which have limited access to recycling. This means that residents are obliged to dispose of some materials (including glass and plastics) as residual waste or via our 'bring sites' or Community Recycling Centres.

The purpose of this report is to reaffirm the Executive's commitment to implement an enhanced recycling service for 1,873 flats principally located in Redhill and Reigate. Furthermore, agreement is sought to plan the introduction of services to an additional 2,300 flats in other parts of the Borough.

We would like to highlight the challenges that are likely in rolling out the service to the remaining flats in the borough which include capacity issues, expenditure required by Managing Agents/Landlords in adapting their properties to accommodate bin stores and also the lack of agreement for future waste disposal arrangements and associated financial transactions between the Borough & the County post 2020.

This report details the location and numbers of flats still to receive kerbside recycling, the resources required to introduce the service and the likely recycling yield.

Funding is required to provide new bins and containers for flats. The report also addresses increased revenue costs associated with additional collection vehicles and crews.

Enhanced recycling services will further improve recycling rates and reduce the amount of residual waste sent for disposal. This will help us to achieve recycling targets as described in Surrey Waste Partnership's Joint Waste Management Strategy (JWMS), of which the Borough is a signatory (see supporting documents).

**Executive has authority to approve the above recommendations.**

### **STATUTORY POWERS**

1. Reigate and Banstead Borough Council is a statutory Waste Collection Authority. This means that we have a duty to collect household waste from our residents.
2. The Environmental Protection Act 1990 describes the duties of a Waste Collection Authority. S.48 makes provision for Waste Collection Authorities to retain waste for the purposes of recycling.

### **BACKGROUND**

3. The decision was made by the Executive in December 2010 to proceed with the implementation of kerbside recycling to households within the borough. The aim was to increase recycling figures from 37% to the national target of 50% by 2015. Our rate is currently 55%, (ranking us 36<sup>th</sup> of 350 local authorities nationally). Notwithstanding the risk of contamination (see below) it is estimated that we may be

able to increase this percentage to between 56% and 58% by introducing the service to flats.

4. The Council's enhanced kerbside recycling service was introduced in 2012 and has been successful, resulting in increased recycling rates. However, it is not currently provided to 10,400 flats whose residents receive a more limited service. The initial roll out of the service was delivered to houses with a small number of flats gradually being brought on service. The previous political administration wished to wait until the outcome of the Surrey County Council/Surrey Waste Partnerships/RBBC future financial arrangements to be confirmed before delivering the service to the other properties in the borough.
5. The purpose of this report is to provide an update on progress to date and to reaffirm the council's commitment to rolling out to flats.

## **KEY INFORMATION**

### **Implementing Kerbside Recycling to Flats**

6. Flats presently receive weekly waste collections. Around 99% of flats have access to paper & cardboard recycling and 77% have the ability to recycle tins and cans. We are therefore unlikely to see an increase in the volume of paper & cardboard collected and therefore no significant increase in income from this recyclate, however, it is anticipated that the recycling rate will increase by around 2% or 1500 tonnes pa if all flats included in phase 1-3 are provided with the new service.
7. The enhanced kerbside collection service, we are looking to implement, sees food, paper, card and cardboard collected weekly. Whilst dry mixed recycling (DMR = glass, plastics and cans) and residual waste is collected on alternate weeks (fortnightly).
8. Survey work undertaken in 2015 and subsequent assessments suggest that flats that do not currently receive the enhanced kerbside recycling service fall into three groups :-
  - a. 1,873 flats that are almost ready to receive an enhanced kerbside recycling service, requiring only minimal alteration to existing waste provisions.
  - b. 2,300 flats that need managing agent/landlord consultation in order that we can agree minor improvements to access and storage areas before a service can be introduced.
  - c. 6,200 flats that need major adjustments and/or significant investment by managing agent/landlord, before they can be included in an enhanced kerbside recycling service.
9. Phase 1 of the introduction of enhanced kerbside recycling focuses on the 1,873 flats identified in para 4a above. A three month mobilisation period would be required to plan the new service. During this time each site would be assessed and assigned to a collection round. After planning and following communications and consultation with residents, new recycling bins would be delivered. Regular collections will commence after bin delivery. It is anticipated that, on completion of planning, a period of 20 weeks would be required to oversee the inclusion of all flats in Phase 1.

10. Phase 2 involves detailed planning of enhanced services for flats identified in para 8b above. Site visits undertaken by a Flats Recycling Officer would identify alterations required to access routes and bin stores as well as the number of bins required at each site. Consultation with residents and freeholders would be included at this stage.
11. Remaining flats are identified at para 8c above. This report recommends that until future waste disposal arrangements and associated financial transactions have been agreed between this Authority and Surrey County Council no decision should be made to include these flats in the enhanced recycling service at the present time.

### **TIMEFRAMES**

12. Phase 1: Planning September to October 2018. Implementation will take place between October 2018 and April 2019.
13. Phase 2: On completion of Phase 1 planning for Phase 2 would take place between May and November 2019.
14. Remaining flats: To be considered on conclusion of agreements between this Authority and Surrey County Council.

### **OPTIONS**

15. Option 1 – Don't continue with the roll out of kerbside recycling to flats
16. Option 2- The executive is asked to recommend proceeding with Phase 1 & 2 (in section 12 & 13 above) roll out of the kerbside recycling service to approximately 4000 flats by the end of 2020
17. Option 3 – Commence work on remaining flats following phase 1 & 2, this option is not recommended
18. The Executive could choose to implement enhanced services to all flats more quickly but this would require significant additional resource.

### **LEGAL IMPLICATIONS**

19. Section 46 Notifications under the Environmental Protection Act 1990:
20. Section 46 Notice will need to be served on householders. This notice advises the householder about waste receptacles and their use.
21. The local authority can provide the waste receptacles free of charge or make a reasonable charge or request that the householder provides the waste receptacle. The local authority can determine the type and size of waste receptacle. The householder has a right of appeal to the Magistrates Court to challenge the requirement on the householder to provide a waste receptacle on the grounds that the requirement is unreasonable or that there is already adequate provision for a waste receptacle.

22. The section 46 Notice can also indicate steps which the householder needs to take to facilitate the waste collection for example where the waste receptacles need to be placed for collection.
23. Provided the section 46 Notice is properly served and effective, the householder can be subject to prosecution if for example waste is not placed in the receptacles as specified or failure to have an adequate waste receptacle as required by the section 46 Notice. If successfully convicted the householder is liable to pay a Fine. The maximum Fine for these offences is "level 3 on the standard scale", which is currently £1000.
24. There are no significant legal implications. The commitment to enhance recycling opportunities will support the Borough to meet the legislative requirements relating to waste collection and relevant recycling targets.

### **FINANCIAL IMPLICATIONS**

25. Phase 1: Cost £85k. This is the pro-rata cost of crew and vehicle required plus additional administration and communications cost and the purchase and delivery of containers. We are asking for £51k from the Corporate Plan Delivery Fund to cover the cost of the bins required and the balance of the £85k will be delivered through the existing revenue budget.
26. Phase 2: Cost £129k. This is the pro-rata cost of crew and vehicle required plus the reinstatement of a Flats Recycling Officer, additional administration and communications, cost and the purchase and delivery of containers. We will require additional revenue and capital funding which due to the roll out programme being in 2019/20 will be sought through the service and financial planning process.
27. Remaining flats: Await decision with regards to implementation after Phase 2 completed and our financial arrangement with SWP post 20/21 is agreed.
28. At the commencement of any future phased roll-out, one additional 'twin pack' vehicle (26t refuse collection vehicle with two chambers) will be required, either at a capital cost of £180k or a short-term hire cost of £1,100 per week.
29. The widely reported Chinese import ban has led to greatly reduced income from recyclates and the introduction of recycling to flats is unlikely to generate further income for the Borough. Our financial arrangements post 20/21, with SWP, are not yet agreed and therefore it is possible that implementing the recycling service to additional flats would benefit SCC rather than RBBC in the future.
30. Although there is no direct financial advantage most (although not all) residents of flats are keen to recycle. The provision of enhanced services will be well received and affords the opportunity for residents to recycle more waste, including glass, plastic bottles, pots, tubs and trays and food, which is of environmental benefit.

### **EQUALITIES IMPLICATIONS**

31. An Equalities Impact Screening Assessment has been completed and found there are no equalities implications arising from this report. This is because we are providing additional bins to enable residents to recycle more; we are not changing the location of the bins or making recycling compulsory. Although we offer an assisted collection from houses in the borough we are not able to provide this service

to flats as this would involve bringing waste from the resident's property to the bin. We do not offer a service to enter resident's homes.

### **COMMUNICATION IMPLICATIONS**

32. A communication plan has been used in the introduction of kerbside recycling services since 2012. Residents will receive written communication explaining their new service and this includes dates of planned collections for each waste commodity.
33. Information about our recycling service is available on our website including detailed information about which materials can be recycled and how to separate recycling from residual waste
34. We use Social media regularly to update residents about our waste services and planned dates of waste collections.
35. Problems with bin collections can be reported online or via our Customer contact team.

### **RISK MANAGEMENT CONSIDERATIONS**

36. We know that the introduction of communal recycling services in flats runs the risk of an increase in contamination (residual waste being placed in recycling bins). Contaminated material will be rejected at Materials Processing Facilities (MRF) and the cost of transportation and disposal will be borne by RBBC. Typically, a 22 tonne load of contaminated material sent for disposal will cost RBBC £2,500. Income from material will be lost, no recycling credit is payable and the tonnage cannot be counted towards our recycling percentages.
37. There are ways to mitigate the contamination risk, such as the use of 'aperture and locking' bins<sup>1</sup>. Discussions have also been commenced with Raven Housing Trust and other Registered Social Landlords about the principle of introducing secure local recycling areas. Whilst this would create considerable savings for the landlord (compared to more intensive modifications) it would still require a modest amount of funding from the managing agent/landlord, which is not always readily available.
38. Deferring remaining flats until we have agreed financial transactions with Surrey Waste Partnership/Surrey County Council post 2020.
39. Income from recycling is subject to prevailing market conditions and the risk of any market decrease is borne by the borough as we retain control of material collected for the purposes of recycling.

### **CONSULTATION**

40. This report follows on from the consultations that took place prior to the introduction of the new kerbside recycling service in 2012.
41. The Leader of the Council, Deputy Leader of the Council and Portfolio Holders for Neighbourhood Services have been consulted about the Flats Roll out.

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<sup>1</sup> Locked bin lids with an aperture through which to 'post' recycling. This prevents bags of refuse being placed in the bin.

## **POLICY FRAMEWORK**

42. The Council's Five Year Plan was adopted in late 2014 and covers the period 2015-2020. Whilst it does not include a specific priority in relation to waste, the Plan vision includes that we will deliver quality services and support, provide value for money and respond to the needs and demands of our residents.
43. The phased flats recycling roll out outlined in this paper reflects our ambition to move towards a situation where all residents receive the highest quality recycling service; recognising that given the financial constraints that the Council is faced with, securing 100% coverage may not be financially viable in the short to medium term.

### **Background Papers:**

1. Five Year Plan: [http://www.reigate-banstead.gov.uk/info/20205/plans\\_and\\_policies/280/our\\_5\\_year\\_plan](http://www.reigate-banstead.gov.uk/info/20205/plans_and_policies/280/our_5_year_plan)
2. Surrey Waste Partnership's Joint Waste Management Strategy (JWMS) [https://www.surreywastepartnership.org.uk/\\_data/assets/pdf\\_file/0004/76387/JMWMMS\\_Rev2\\_v6\\_STRATEGY.pdf](https://www.surreywastepartnership.org.uk/_data/assets/pdf_file/0004/76387/JMWMMS_Rev2_v6_STRATEGY.pdf)



## Annex 1

### The Location of Flats in Phase 1, Phase 2 and remaining flats.

The location of flats in Phase 1 is shown in the table below:-

Ward	No. of flats Phase 1
Earlswood Whitebushes	193
Meadvale St Johns	128
Redhill East	766
Redhill West	382
Reigate Central	141
Reigate Hill	263
Total	1873

The location of flats in Phase 2 is shown in the table below:-

Ward	No. of flats Phase 2
Banstead Village	126
Chipstead Hooley Woodmansterne	149
Earlswood Whitebushes	192
Horley Central	266
Horley East	12
Horley West	73
Kingswood Burgh Heath	120
Meadvale St Johns	70
Merstham	152
Nork	33
Preston	126
Redhill East	322
Redhill West	176
Reigate Central	176
Reigate Hill	104
Salfords & Sidlow	11
South Park Woodhatch	96
Tadworth Walton	40
Tattenhams	56
Total	2300

The location of remaining flats is shown in the table below:-

Ward	No. of flats
Banstead Village	533
Chipstead Hooley Woodmansterne	112
Earlswood Whitebushes	436
Horley Central	517
Horley East	69
Horley West	139
Kingswood Burgh Heath	87
Meadvale St Johns	313
Merstham	222
Nork	200
Preston	120
Redhill East	592
Redhill West	790
Reigate Central	718
Reigate Hill	549
Salfords & Sidlow	15
South Park Woodhatch	275
Tadworth Walton	273
Tattenhams	240
Total	6200

# Agenda Item 6

Executive  
13 September 2018

Agenda Item: 6  
Quarterly Performance Report (Q1 2018-19)



**Reigate & Banstead**  
BOROUGH COUNCIL  
Banstead | Horley | Redhill | Reigate

<b>REPORT OF:</b>	DIRECTOR OF FINANCE AND ORGANISATION
<b>AUTHORS:</b>	Luke Harvey
<b>TELEPHONE:</b>	01737 276 519
<b>E-MAIL:</b>	Luke.Harvey@reigate-banstead.gov.uk
<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	13 September 2018
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR SCHOFIELD

<b>KEY DECISION REQUIRED:</b>	NO
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>QUARTERLY PERFORMANCE REPORT (Q1 2018-19)</b>
<b>RECOMMENDATION:</b> To note the performance outlined in the attached report.	
<b>REASONS FOR RECOMMENDATIONS:</b> To consider performance for the first quarter of the financial year 2018-19.	
<b>EXECUTIVE SUMMARY:</b> The attached report provides the headline issues in relation to the Council's overall performance for Quarter 1.  The attached report ( <b>Annex 1</b> ) was considered by the Overview and Scrutiny Committee on 6 September 2018.	

<b>Executive has authority to approve the above recommendation.</b>
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<b>Subject:</b>	<b>Quarterly Performance Report (Q1 – April to June 2018)</b>
<b>Officer:</b>	Jocelyn Convey
<b>To:</b>	Overview and Scrutiny Committee, 6 September 2018
<b>Purpose:</b>	To consider the key service performance for the first quarter of the year 2018-19.

## Introduction

This report provides the headline issues on major variances in relation to the Council's overall performance for Quarter 1.

The detailed information showing all performance is available for Members to review at the eMembers room.

The headline performance information is set out in the following Annexes:

Key Performance Indicators	Section 1
Revenue Budget Monitoring	Section 2
Capital Budget Monitoring	Section 3
Risk Management	Section 4
Internal audit	Section 5

## Recommendation

The Committee is requested to review the performance update, consider any advance questions received in relation to strategic issues and make any observations to the Executive.

## Section 1

### KEY PERFORMANCE INDICATORS

#### Headline Information

Of the 14 Key Performance Indicators reported this quarter, 8 are on target or within the agreed tolerance. The data for KPI 14 (recycling rate) is available retrospectively, with Q1 data available in Q2. As such, performance for Q4 2017/18 is reported this quarter, and is in excess of the target set.

KPIs 4-8 are contextual homelessness indicators introduced to reflect the changes required by the Homelessness Reduction Act (2017). As the impact of the new legislation is uncertain, no target has been set for these indicators this year. Performance this year will therefore inform targets for next year.

#### Major variances (those off target)

KPI 3 - Number of affordable homes	
Target	Actual
25	8

#### Management comments/actions:

Although the status for this indicator is red, achieving this target falls outside the control of the Council, instead being dependent on the performance of private developers.

Total number of affordable dwellings under construction: 69

Number of affordable dwellings commenced in Q4: 15.

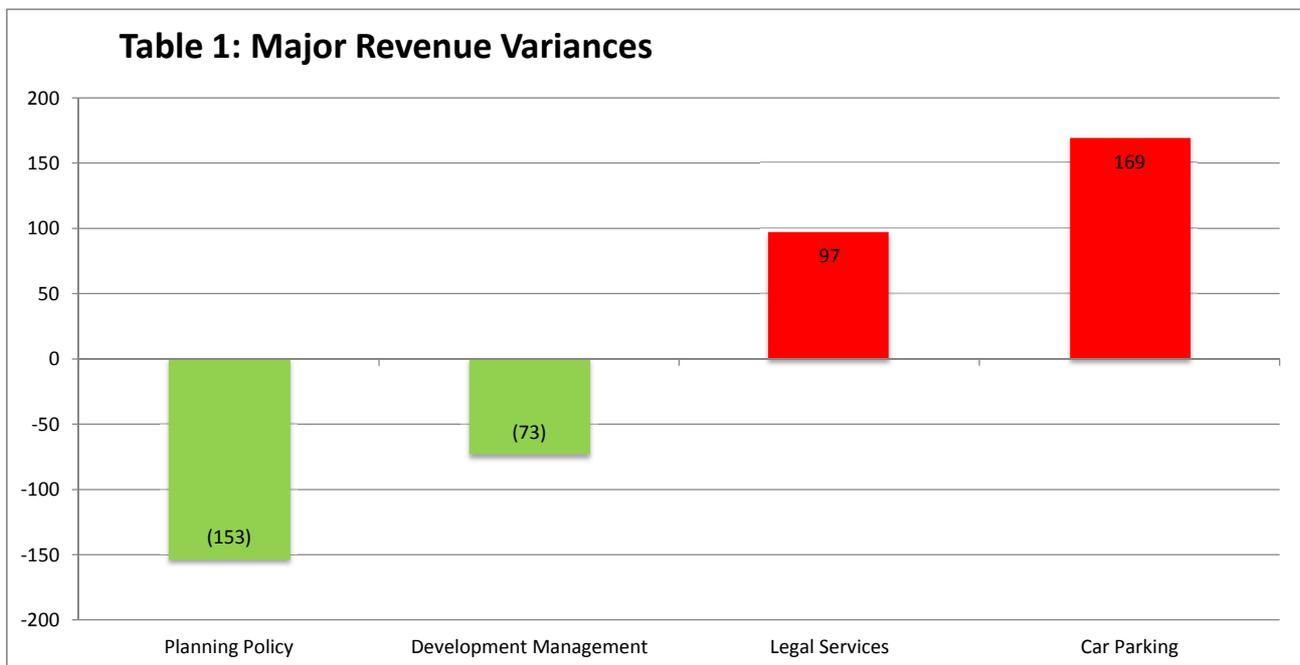
#### eMembers room information

A copy of the full schedule can be found in the eMembers room.

**REVENUE BUDGET MONITORING**

Reconciliation of Original Budget to Management Budget for 2018-19			
		£'000	£'000
Original Budget			15,494.5
Transfers from Reserves:			
	Corporate Plan Delivery Fund	1,653.1	
	Allocation of CIL funds	100.1	
			<u>1,753.2</u>
Management Budget			<u><u>17,247.7</u></u>

Headline Revenue Budget information 2018-19		£'000
Management Budget		17,247.7
Forecast Year End Outturn		17,344.5
Projected overspend		96.8 (or 0.6% of the budget)



**Major Variances**

**Planning Policy:**

Forecast underspend relates to posts created in the business plan that are currently vacant, mainly pending work programming, in line with Corporate Priorities.

**Development Management:**

Income from planning fees continues to remain buoyant with a surplus over the budget being forecast at this stage.

**Legal Services:**

Legal overspend of £70k relates to a reliance on locum staff and external advice to deliver the service. Land charges income still under recovered against budget by £27k.

**Car Parking:**

In 2017-18 parking ticket receipts (PCN) were lower than budget levels and the profile of receipts in 2018-19 so far, is similar. In addition there has been the loss of the contract fee for providing Tandridge DC with their off-street enforcement. A growth bid for this loss of income from TDC will be requested in the 2019/20 budget setting round.

### **eMembers Room Information**

Further information has been provided in the eMembers' room to support the Committee's consideration of the monitoring report as follows:

- Impact on Reserves
- Budget Monitoring Summary
- Key Variances

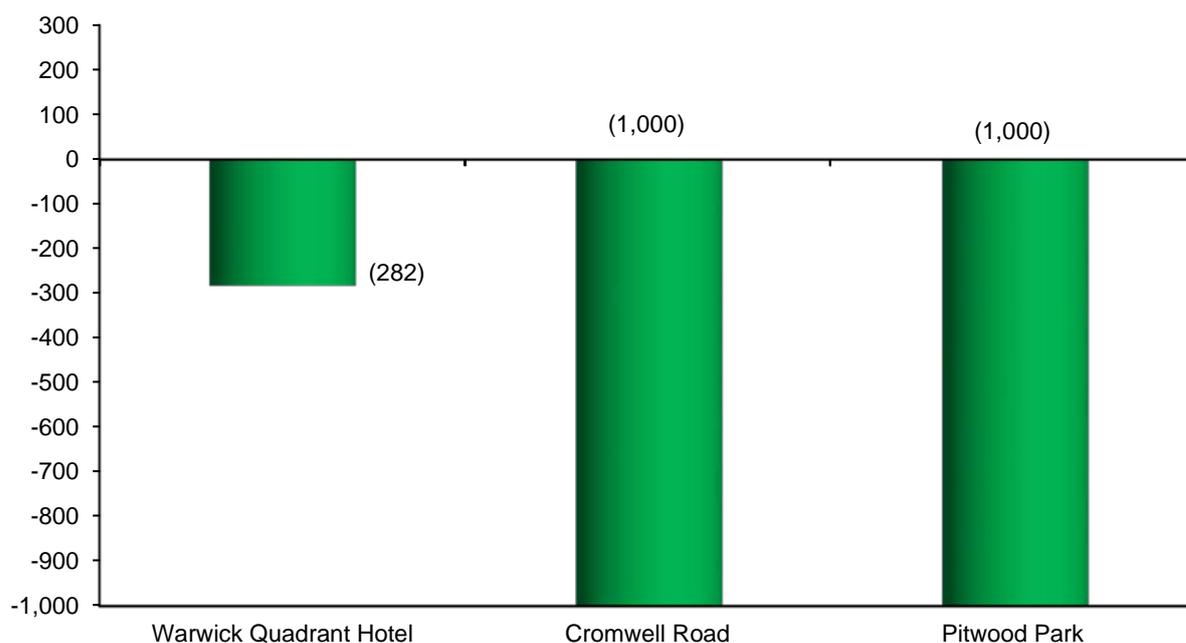
**CAPITAL BUDGET MONITORING**

**Section 3**

**Headline Capital Budget Information, Quarter 1 2018/19**

Current Budget:	£11,769,200	
Forecast Expenditure:	£8,687,200	
Projected Underspend:	£3,082,000	(or 26.19% of budget)

**Table 1: Major Capital Variances (£000)**



**Major Variances**

**Warwick Quadrant Hotel:** £282k is currently being reported as an anticipated underspend; following the expected completion of all snagging in 2018/19.

**Cromwell Road:** Planning decision due to be made 5<sup>th</sup> September 2018 at which point the design team will be selected. Demolition of the buildings is expected to be carried out in December 2018 and the construction tender to be finalised by February 2019. Start on site is planned for Q1 2019/20 therefore the budget will be re-profiled to the next financial year.

**Pitwood Park:** Planning, demolition, design team selection and start on site is expected to follow the same time scales as Cromwell Road (above). However, the V&A have shown interest in the door panels and some other structural items and intend to visit the site prior to demolition to salvage these items. It is not expected to cause any delay in the demolition of the existing building or have an impact on the next stage of the development. Start on site is scheduled to commence in Q1 2019/20, as such the budget will be profiled to the next financial year.

### **eMembers Room Information**

Further information has been provided in the eMembers' room to support the Committee's consideration of the monitoring report as follows:

- Reconciliation of Capital Programme to Approved Budget
- Budget Monitoring Summary

## **Section 4**

### **RISK MANAGEMENT**

A risk management update is not provided in this quarter.

No new strategic risks were identified in Q1.

**Section 5**

**INTERNAL AUDIT**

**Background**

The annual Audit Plan is agreed by the Overview and Scrutiny Committee.

**SCORING**

<p><b>RED</b></p>	<p>Taking account of the issues identified, the Authority cannot take assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied or effective.</p> <p>Urgent action is needed to strengthen the control framework to manage the identified risk(s).</p>
<p><b>AMBER/ RED</b></p>	<p>Taking account of the issues identified, the Authority can take partial assurance that the controls to manage this risk are suitably designed and consistently applied. Action is needed to strengthen the control framework to manage the identified risk(s).</p>
<p><b>AMBER/ GREEN</b></p>	<p>Taking account of the issues identified, the Authority can take reasonable assurance that the controls in place to manage this risk are suitably designed and consistently applied.</p> <p>However, we have identified issues that need to be addressed in order to ensure that the control framework is effective in managing the identified risk(s).</p>
<p><b>GREEN</b></p>	<p>Taking account of the issues identified, the Authority can take substantial assurance that the controls upon which the organisation relies to manage the identified risk(s) are suitably designed, consistently applied and operating effectively.</p>

**Headline Information**

**During the last quarter the following 2 internal audits have been completed:**

<b>Name of Audit</b>	<b>score</b>
<b>Dog Warden</b>	<b>Amber / Green</b>
<b>Property Maintenance</b>	<b>Green</b>

**Recommendations with a high priority**

None

**Management action**

N/A

**eMembers room information**

Copies of the individual audit reports are available on eMembers



# Agenda Item 7

Executive  
13 September 2018

Agenda Item: 7  
Update on Acquisition of Freehold in Redhill



<b>REPORT OF:</b>	STRATEGIC HEAD OF ACQUISITIONS
<b>AUTHOR:</b>	Coralie Holman
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	13 SEPTEMBER 2018
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR MRS N. BRAMHALL

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	REDHILL

<b>SUBJECT:</b>	<b>UPDATE ON ACQUISITION OF FREEHOLD IN REDHILL</b>
<b>RECOMMENDATION:</b> Further to the Executive Approval in July 2018, proceed with the acquisition of the investment at the revised price noted within Part 2 of this report.	
<b>Reason for Recommendation:</b> To obtain Executive authority to proceed with this acquisition on revised terms to secure additional income needed to support the Council's 5 Year Plan.	
<b>EXECUTIVE SUMMARY</b> This report seeks authority to continue with the acquisition of the freehold interest of a building in Redhill on the revised terms noted within Part 2 of this report.	
<b>The Executive has authority to determine recommendation.</b>	

## STATUTORY POWERS

1. Section 2 of the *Local Government Act 2000* gives local authorities the power to do anything in the furtherance of the economic, social or environmental wellbeing of their area. The exercise of that power is specifically linked, in section 4 of the Act, to works required in furtherance of community and corporate plan objectives.
2. This acquisition is anticipated to provide financial enhancements to the well-being of the area for the reasons set out in the exempt Part 2 section of this report.
3. Whilst there is no statutory requirement to achieve best consideration on an acquisition, the Council's adopted Asset Management Plan and its medium term Financial Strategy require that any acquisitions made add to the value of the Council's existing asset portfolio and in turn the Council's income. These aspects are addressed in the exempt Part 2 section of the agenda. .

## BACKGROUND

4. Following Executive approval being obtained in July 2018, the owner of the subject property has advised the Council they require some amendments to the proposed terms of the sale.
5. As detailed in the earlier Executive report, this acquisition is a longer term strategic investment opportunity providing investment income for the Council, which is identified in the Councils corporate plan as a key objective.
6. Each investment is assessed on its own merits and whilst the vendor has advised the Council they require some changes to the original terms proposed it is still considered a purchase on the revised terms will provide the Council with a significant income stream.

## ISSUES

7. The purchase will remain subject to the usual due diligence in relation to the legal title, purchase price, surveys and environmental assessments.
8. The changes proposed to the agreed terms are still considered to provide the Council with a good acquisition opportunity on competitive terms with other comparable property transactions.

## OPTIONS

9. Complete the purchase of the Freehold Interest on the revised terms  
This is the recommended option.
10. Investigate alternative property acquisitions or joint venture on the purchase  
The property market continues to attract significant interest from investors. This option is not recommended as the acquisition is considered to offer an attractive prospect for investment income when assessed on the revised terms.
11. Do Nothing  
For the reasons set out in this and the earlier July 2018 Executive report this is not the recommended option.

## LEGAL IMPLICATIONS

12. In accordance with section 120 of the Local Government Act 1972 the Council has the power to acquire land by agreement for the benefit, improvement or development of its area.
13. There is no legal duty to consult the public on any commercial terms of the acquisition. These are matters for the authority. Executive is entitled to determine them at its discretion, notwithstanding any previous decisions it has made, having considered the contents of this report.
14. Although the Council is not under an explicit duty to acquire property at market value it still must have regard to its fiduciary duties to its Council tax payers and its best value duty.
15. Legal and valuation advice will be sought as necessary throughout the acquisition process.
16. The acquisition of land is exempt from the Contract Procedure Rules under paragraph (f) of Appendix A of on page 194 of the Constitution.

### **EQUALITIES IMPLICATIONS**

17. There are no equalities implications; this is the acquisition of a freehold building with occupational leases already in place.

### **COMMUNICATIONS IMPLICATIONS**

18. Until the Council has exchanged contracts on the acquisition there would be no plans to issue any communications. This is the procedure when confidential contract negotiations are being held by the Council on acquisitions.

### **RISK MANAGEMENT CONSIDERATIONS**

19. These have not changed from those noted in the July 2018 Executive report.

### **FINANCIAL IMPLICATIONS**

20. The purchase price and acquisition costs comprising stamp duty land tax, introducing agents fees, valuation advice, surveys and legal fees are set out in the Part 2 report.
21. There are no changes to the level of income the acquisition will provide or the companies who occupy the building.
22. The purchase remains within the capital budgets for property acquisition planned by the Council and there are no changes proposed to how the acquisition will be funded.

### **CONSULTATION**

23. The Leader of the Council, Deputy Leader of the Council and Portfolio Holders for Property and Regeneration and Finance have been consulted about the changes relating to this acquisition and have confirmed that they are content for the acquisition to proceed.

### **POLICY FRAMEWORK**

24. The acquisition still reflects the aim of the Council's Asset Management Plan to undertake acquisitions to produce a greater financial return than alternative investment options in accordance with the Council's medium-term financial strategy.

Background papers: None.

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