



**PLEASE NOTE THAT PRAYERS WILL BE HELD AT 6.50PM BEFORE THE COMMENCEMENT OF THE BUSINESS OF THE COUNCIL.**

**THE MAYOR REQUESTS THAT ANY MEMBER WISHING TO PARTICIPATE IN PRAYERS BE IN ATTENDANCE BY NO LATER THAN 6.45PM.**

Dear Sir/Madam,

You are summoned to attend the meeting of the Borough Council of Newcastle-under-Lyme to be held in the **Queen Elizabeth II & Astley Rooms - Castle House, Barracks Road, Newcastle, Staffs. ST5 1BL** on **Wednesday, 10th April, 2024** at **7.00 pm**.

## **B U S I N E S S**

**1 APOLOGIES**

**2 DECLARATIONS OF INTEREST**

To receive declarations of interest from Members on items contained within this agenda.

**3 MINUTES OF A PREVIOUS MEETING (Pages 5 - 20)**

To consider the Minutes of the previous meeting(s)

**4 MAYOR'S ANNOUNCEMENTS**

**5 APPOINTMENT OF CHIEF EXECUTIVE (Pages 21 - 24)**

**6 ELECTIONS - SCALE OF FEES AND CHARGES (Pages 25 - 30)**

**7 WALLEYS QUARRY ODOUR UPDATE (To Follow)**

**8 CORPORATE ENFORCEMENT POLICY (Pages 31 - 56)**

**9 STATEMENT OF THE LEADER OF THE COUNCIL (To Follow)**

To receive a statement by the Leader of the Council on the activities and decisions of Cabinet and items included on the Forward Plan.

**10 REPORTS OF THE CHAIRS OF THE SCRUTINY COMMITTEES (To Follow)**

Chairs are requested to submit written reports to the Democratic Services Manager by (TWO DAYS BEFORE MEETING)

- a) Finance, Assets and Performance Scrutiny Committee
- b) Economy and Place Scrutiny Committee
- c) Health, Wellbeing and Environment Scrutiny Committee



## **NOTICE FOR COUNCILLORS**

### **1. Fire/Bomb Alerts**

In the event of the fire alarm sounding, leave the building immediately, following the fire exit signs.

Fire exits are to be found at the side of the room leading into Queens Gardens.

On exiting the building Members, Officers and the Public must assemble at the statue of Queen Victoria. DO NOT re-enter the building until advised to by the Controlling Officer.

### **2. Mobile Phones**

Please switch off all mobile phones before entering the Council Chamber.

### **3. Notice of Motion**

A Notice of Motion other than those listed in Procedure Rule 14 must reach the Chief Executive ten clear days before the relevant Meeting of the Council. Further information on Notices of Motion can be found in Section B5, Rule 4 of the Constitution of the Council.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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# Public Document Pack Agenda Item 3

Council - 14/02/24

## COUNCIL

Wednesday, 14th February, 2024

Time of Commencement: 7.00 pm

[View the agenda here](#)

[Watch the meeting here](#)

**Present:** Mayor - Councillor Simon White (Chair)

Councillors:	Adcock	Fox-Hewitt	Sweeney
	Allport	Hutchison	J Tagg
	Barker MBE	Johnson	S Tagg (Leader)
	Bettley-Smith	D Jones	J Waring
	Brockie	Lawley	P Waring
	Brown	Moss	Whieldon
	Bryan	Northcott	G White
	Crisp	Panter	Wilkes
	Fear	Parker	G Williams
	Gorton	Reece	J Williams
	Grocott	Richards	Wright
	Heesom	Skelding	
	Holland	Stubbs	

**Apologies:** Councillor(s) Beeston, Burnett-Faulkner, Dymond, Edginton-Plunkett, S Jones and Lewis

<b>Officers:</b>	Geoff Durham	Civic & Member Support Officer
	Martin Hamilton	Chief Executive
	Simon McEneny	Deputy Chief Executive
	Sarah Wilkes	Service Director - Finance / S151 Officer
	Georgina Evans-Stadward	Service Director - Strategy, People and Performance
	Nesta Barker	Service Director - Regulatory Services
	Anthony Harold	Service Director - Legal & Governance / Monitoring Officer
	Craig Jordan	Service Director - Planning

Also in attendance:

### 1. **TRIBUTES TO FORMER COUNCILLOR DAVID NIXON**

Members stood in silent in memory of former Councillor David Nixon.

Tributes were paid to David for his roles at the Borough Council.

[Watch the tributes here](#)

### 2. **DECLARATIONS OF INTEREST**

Cllr Jones declared being employed by Harper & Keele Veterinary School located next to Walleys Quarry.

**3. UPDATE ON THE ONGOING WORK ON ODOURS FROM WALLEYS QUARRY**

The Leader introduced the update report on Walleys Quarry expressing his sympathy for residents along with the dread and disappointment he shared with them in relation to the toxic smells coming from the site. The report was a comprehensive document that could be used for future public enquiry.

The abatement notice had been pursued by officers within the legal framework thanks to the funds allocated through Council decisions and everything within the Council's powers was being done to address the problem. It was felt that other institutions could do more. The Labour Party had brought forward a motion to request the suspension of activities on the site. An amendment was proposed to go further and ask for the full closure of the site by the Environment Agency – a simple suspension not appearing sufficient enough given the three years already allocated to tackle the problem.

A letter had been addressed to both the Secretary of State and the Prime Minister calling for a public enquiry. The proposals put forward by the Labour group would be discussed and amended during the meeting.

The Leader's recommendation for a closure of the site was supported by the Portfolio Holder for Strategic Planning Cllr Fear.

Members commented as follows:

- Cllr Stubbs wished the Council to show solidarity for residents and for the regulatory agencies to be held responsible for environmental justice, environmental protection being not an aspiration but a legal imperative.
- Cllr Brown warned against the perception of leniency of the Environment Agency if not enforcing regulations and not imposing penalties in case of non-compliance. Other operators may as a result choose to take risks and prioritise short term savings over compliance to regulations, driving compliant operators out of the market and leading to a normalisation of non-compliance. Cllr Brown wished to know if the Council had reached out to the Environment Agency to warn against the national consequences.
- Cllr Jones thanked officers for the reports and wished for the raw figures to be reviewed and notably those pertaining to the odours as recorded on 25<sup>th</sup> and 26<sup>th</sup> November as well as 13<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> December 2023. The health consequences were dramatic meeting the definitions of environmental harm.
- Cllr Bettley-Smith agreed with Cllr Jones and reiterated the risks of long term consequences on health of low level exposure to a

poisonous gas such as hydrogen sulphide. Cllr Bettley-Smith wished to support a public inquiry into the failure of the Environment Agency.

- Cllr G White commented that his ward was also impacted although not right next to the quarry and wished to support all punitive measures including the closure of the site.
- Cllr Brockie enquired about the removal of one of the monitoring stations from Silverdale pumping station and when the construction works would be complete so that it could go back to its initial location.
- Cllr Richards raised the issue of education providers such as schools and universities not being able to provide an adequate environment to pupils and students. Two primary schools had to be evacuated as a result of the odours which impact on learning and education was to be added to the health hazard. Cllr Richards asked if contact had been made with the County Council or education providers to mitigate the impact of lost days of learning.
- Cllr Lawley asked about the suitability of restoration plans to ensure the gases would be contained once the site would be closed.
- Cllr Reese warned against reporting fatigue detrimental to organisations and leading to feeling of overwhelm and burnout which may be experienced by residents when reporting complaints and not hearing back from the Environment Agency.
- Cllr Holland expressed his support to the various ways suggested for people to be held accountable, the first step being to close the site and cap it off.
- Cllr G Williams wondered if the Council acceptance of the settlement agreement hadn't been a mistake given that no progress had been made in preventing the unacceptable levels of gas emission.
- Cllr Wright asked if the Council had been in contact with the Health Protection Agency in relation to the increase of mental health issues arising from the odours and the strain it put on already overburdened mental health services.
- The Deputy Leader re-iterated the imperative reminded by Cllr Holland to close the site as a first step.
- Cllr Grocott also supported the need to close the site to start with and asked if workplace monitoring and health assessments had been carried out for employees of the Council working in immediate vicinity of the site.

## **Council - 14/02/24**

- Cllr Moss questioned the efficiency of posi-shell in tackling odours and wondered why the Environment Agency had not requested that odour shells be used instead.
- Cllr Whieldon underlined that the only one in a position to take action now was the Environment Agency who was hiding behind false readings.
- Cllr J Williams commented on the compliance classification schemes used by regulatory agencies and based on which Walleys Quarry should be closed.
- Cllr Adcock said the situation was deteriorating rapidly and the regulator seemed to have lost control over the odour emissions which were devastating for both physical and mental health as well as education. Support was expressed for both the closure of the site and a public enquiry into the failings of the Environment Agency.
- Cllr Grocott asked when the independent peer review sourced out by the Environment Agency and that was expected by the end of January would be available to the public.
- Cllr Panter expressed his support to Cllrs Jones, Adcock and Bettley-Smith comments on the medical consequences of the gas emissions.

The Leader welcomed the comments raised by members and said that he was disheartened by how the situation had evolved since November.

Responding to members' questions the Leader stated the following:

- About the posi-shell, this seemed to have failed miserably and the capping plans were to put a membrane across the site and add soil on top. The gas emissions would then need to be managed for the next 40 years after closure.
- The third monitoring station removed at Silverdale, this had been discussed at Cabinet meeting and officers were chasing the Environment Agency for it to be re-installed so that there would be again three monitoring stations switched on and calibrated.
- About the effect on schools, this had been raised in the letter to the Secretary of State by Newcastle's MP.
- About calls to the Environment Agency and make sure they were connected, this was also taken up by officers.

Members would be asked to vote on the motion put forward by the Labour Group to request the suspension of activity and amendment suggested to go further and ask for a full closure of the site along with a public enquiry on how things had been handled by the Environment Agency.

**Resolved:** That the content of the update report be noted and the amended motion be subject to a vote.

[Watch the debate here](#)

#### 4. **MOTIONS OF MEMBERS**

Cllr Jones presented the proposed motion of suspension of the operating license at Walleys Quarry and expressed his support towards amending the motion in favour of a full closure of the site. Cllr Jones moved the motion which was then seconded by Cllr Fox-Hewitt who summarised it as follows:

- that the Council be unequivocal that the people of Newcastle-under-Lyme were living with a significant Public Health Emergency;
- that the Council hear from residents and communities who had put them there to be their voice;
- that the Council demand that the site be closed as per the amendment and for the Environment agency to do their job and publish the data that it was charged with providing the people;
- that the Council use the process of a judicial review to force those charges towards protecting the health and security of citizens;
- that the Council agree to use its financial resources originating from people paying their council tax to that extent.

The Leader presented and moved the amendment to the motion. This was seconded by Cllr Holland who expressed the wish for the Council to speak with one voice.

Cllr Fox-Hewitt suggested changes to the wording of the amendment. Cllr Jones supported the suggestions. The Leader wished to stick with the amendment as presented to the Council and clarified the wording.

Cllrs Adcock, Bettley-Smith and Fear expressed their support to the amendment as drafted. Cllr Whieldon highlighted the importance of getting things right the first time to ensure success.

Cllr Jones drew members' attention to two red lines in the amendment:

- there was in his opinion no commitment to direct action;
- the legal support fund was one third of the original reserve of £1 million.

The Leader responded that once a closure notice was issued by the Environment Agency, a series of actions would follow that decision. The Walleys reserve, to support legal action, would be increased by a vote of Full Council if officers advised prosecuting the abatement notice.

The Leader moved the amendment as drafted.

The Mayor stated that the proposed amendment had been moved, seconded and debated and members were asked to vote on whether or not to amend the motion as proposed.

**Resolved:** That the amendment be carried.

(23 in favour, 16 against)

The Mayor invited members to debate on the amended motion.

Cllr Holland reminded members of the importance of being united.

The meeting was adjourned for two minutes following disturbance from the public. The Chief Executive then clarified that the debate and vote were now on the amended motion.

Cllrs J. Williams and Heesom encouraged members to set political differences aside to do what's best for residents. Cllr Moss reminded all of the health hazards related to hydrogen sulphides. Cllr Allport referred to the impact of the toxic odours on Council staff working in the vicinity of the site including sleep and mental health.

Cllr Jones expressed his disappointment at the way the amended motion was drafted whilst informing members that he would nonetheless vote in favour of it as the only way forward for residents.

Cllr Richards also supported the motion although wished to know what action would be taken to restore the site after closure.

Cllr Fear referred to paragraphs 8.1 and 8.3 of the report and shared his confidence that legal officers would let members know in case the judicial review process was not going anywhere.

The Leader concluded by reiterating his support with the amended motion which he wished to move forward.

- Resolved:**
1. That odours emanating from Walley's Quarry Landfill represents a significant public health emergency for the residents of the borough.
  2. That Full Council ask the relevant Scrutiny Committees to hold a public hearing, to receive impact statements from residents, stakeholders, including businesses, the operator, Staffordshire County Council, and local health bodies.
  3. That Council endorses the decision made by the Cabinet on 16th January to encourage the Environment Agency (EA) to consider a Closure Notice and formally resolves to call on the EA to go further than 'suspending the operator's licence' and issue a Closure Notice.
  4. That the Environment Agency be requested to publish immediately a full 365 days' air monitoring data set to examine impact against the chronic-term health guidelines where 1.4 ppb and 2µg/m<sup>3</sup> are applicable.
  5. That Council continues to focus its energies on resolving foul odour from Walleys Quarry Landfill within its Abatement Notice powers as a priority and asks the Monitoring Officer, with appropriate legal support, to assess the most effective route, including Judicial Review, to securing an end to the community's suffering.

6. That the Monitoring Officer's advice is referred to the relevant Scrutiny Committees for consideration prior to consideration by Cabinet and Full Council.

7. That Council endorses the Cabinet budget proposal to increase the Walleys Quarry Legal Action Reserve to £300,000, with any further expenditure being a Full Council decision at the appropriate time.

(37 in favour, 1 against)

[Watch the debate here](#)

**Mayor - Councillor Simon White  
Chair**

Meeting concluded at 9.21 pm

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## COUNCIL

Wednesday, 14th February, 2024  
Time of Commencement: 9.30 pm

[View the agenda here](#)

[Watch the meeting here](#)

**Present:** Mayor - Councillor Simon White (Chair)

Councillors:	Adcock	Fox-Hewitt	Stubbs
	Barker MBE	Hutchison	Sweeney
	Bettley-Smith	Johnson	J Tagg
	Brockie	D Jones	S Tagg (Leader)
	Brown	Lawley	J Waring
	Bryan	Moss	P Waring
	Crisp	Northcott	Whieldon
	Fear	Panter	G White
	Gorton	Parker	Wilkes
	Grocott	Reece	G Williams
	Heesom	Richards	J Williams
	Holland	Skelding	Wright

**Apologies:** Councillor(s) Allport, Beeston, Burnett-Faulkner, Dymond, Edginton-Plunkett, S Jones and Lewis

Officers:	Geoff Durham	Civic & Member Support Officer
	Martin Hamilton	Chief Executive
	Simon McEneny	Deputy Chief Executive
	Sarah Wilkes	Service Director - Finance / S151 Officer
	Georgina Evans-Stadward	Service Director - Strategy, People and Performance
	Nesta Barker	Service Director - Regulatory Services
	Anthony Harold	Service Director - Legal & Governance / Monitoring Officer
	Craig Jordan	Service Director - Planning

### 1. DECLARATIONS OF INTEREST

There were no declarations of interest stated.

### 2. MINUTES OF A PREVIOUS MEETING

**Resolved:** That the minutes of the meeting held on 24 January, 2024 be agreed as a correct record.

### 3. MAYOR'S ANNOUNCEMENTS

## **Council - 14/02/24**

The Mayor made one announcement:

The Mayor's Civic Mass would be held on Sunday 25 February, 2024 at the Holy Trinity Catholic Church, commencing at 11am.

*For the next two items, Simon McEneny and Anthony Harold left the room*

### **4. APPOINTMENT OF INTERIM HEAD OF PAID SERVICE**

The Leader introduced a report regarding the appointment of Simon McEneny as the Interim Head of Paid Service.

**Resolved:** That, in accordance with s4 of the Local Government & Housing Act 1989, Council confirm the appointment of Simon McEneny (Deputy Chief Executive) as the Council's Interim Head of Paid Service (Chief Executive) with effect from 1st April 2024 on an acting up basis for a period of 3 months or until the substantive appointment is in post, whichever is first.

[Watch the debate here](#)

### **5. APPOINTMENT OF INTERIM RETURNING OFFICER**

The Leader introduced a report regarding the appointment of Anthony Harold as the Interim Returning Officer and Electoral Registration Officer.

**Resolved:** That, in accordance with the Representation of the People Act 1983, approve the temporary appointment of Anthony Harold (Monitoring Officer) to the posts of Returning Officer and Electoral Registration Officer as an interim arrangement, with effect from 1st April 2024 pending permanent recruitment to the Chief Executive Officer role.

[Watch the debate here](#)

### **6. TOWN CENTRE REGENERATION UPDATE**

The Leader introduced a report providing an update on the progress made by Capital&Centric on York Place, The Midway car park and the Ryecroft projects which had been agreed by Cabinet on 6 February, 2024.

The Leader made reference to the Members briefing that had taken place where questions were answered. The new car park was currently under construction and York Place was being taken to the next stage. Also, there were plans for the Midway to be repurposed as apartments. Working with partners made the scheme more affordable and would move forward in stages.

Councillor Sweeney stated that the spending on the developments was £2.649m to take it to the planning permission stage. Of that amount, £2,185,678 was Future High Street Fund and £326,338 was from Aspire. The actual Council money was £136,984.

Members felt that this was good progress for the town centre and looked forward to seeing the next steps. Bringing people in to live in the town was welcomed.

Councillor Brockie, referring to Appendix C – item 7, asked for clarification of the arrangements for maintaining the green spaces around the development.

The Leader stated that there was a Planning process with obligations which would determine future maintenance.

Councillor Richards asked about the Midway car park, stating that previously, Members had been informed that the car park was in a poor state of repair and needed to be demolished. However, the suggestion now was that it was fit to live in so why was this now the case?

The Leader stated that £2m had been spent on the car park dealing with concrete issues and Capital&Centric's ideas for the site could be groundbreaking. There was information available including previous Cabinet reports on the Midway.

Councillor Fox-Hewitt had previously asked for the Feasibility Studies and Consultation reports to be shared with Members and asked if this had been done. The Deputy Chief Executive confirmed that they had been shared with Councillor Fox-Hewitt.

Councillor Dave Jones stated that there had been some concerns over appropriate scrutiny of the report and had considered a call-in. However, the all-members teams briefing had answered many of those concerns. Councillor Jones stated that he would like to see more of those briefings taking place.

Councillor John Williams felt that members should have been given the opportunity to meet Capital&Centric or attend a site visit to one of their developments.

The Leader stated that a document had been attached to the Cabinet agenda and at the members briefing which outlined Capital& Centric's history and current projects.

- Resolved:**
- (i) That the progress made to date by Capital&Centric on the York Place, Midway Car Park and The Ryecroft projects in Newcastle Town Centre, be noted;
  - (ii) That, expenditure of up to £2,649,000 to develop the three schemes to the end of RIBA Stage 3, and the submission of the requisite planning applications, be approved.

[Watch the debate here](#)

## 7. **REVENUE AND CAPITAL BUDGET STRATEGIES 2024/25**

The Leader introduced the report and moved the recommendations which set out the recommendations of Cabinet for Revenue and Capital Budgets for 2024/25.

The Medium Term Financial Strategy 2024/25 to 2028/29, Capital Strategy for 2024/34, the Treasury Management Strategy for 2024/25, Investment Strategy 2024/25 and the Commercial Strategy for 2024/25 were also recommended for approval.

Following a debate, a named vote was taken in respect of the proposed budget:

<b>ADCOCK</b>	Y	<b>GROCOTT</b>	ABSTAIN	<b>SKELDING</b>	Y
<b>ALLPORT</b>	ABSENT	<b>HEESOM</b>	Y	<b>STUBBS</b>	N
<b>BARKER</b>	Y	<b>HOLLAND</b>	Y	<b>SWEENEY</b>	Y
<b>BEESTON</b>	ABSENT	<b>HUTCHISON</b>	Y	<b>J TAGG</b>	Y
<b>BETTLEY-SMITH</b>	Y	<b>JOHNSON</b>	Y	<b>S TAGG</b>	Y
<b>BROCKIE</b>	ABSTAIN	<b>D JONES</b>	N	<b>J WARING</b>	Y
<b>BROWN</b>	ABSTAIN	<b>S JONES</b>	ABSENT	<b>P WARING</b>	Y
<b>BRYAN</b>	Y	<b>LAWLEY</b>	ABSENT	<b>WHIELDON</b>	Y
<b>BURNETT-FAULKNER</b>	ABSENT	<b>LEWIS</b>	ABSENT	<b>G WHITE</b>	Y
<b>CRISP</b>	Y	<b>MOSS</b>	ABSTAIN	<b>S WHITE</b>	Y
<b>DYMOND</b>	ABSENT	<b>NORTHCOTT</b>	Y	<b>WILKES</b>	Y
<b>EDGINGTON-PLUNKETT</b>	ABSENT	<b>PANTER</b>	Y	<b>G WILLIAMS</b>	N
<b>FEAR</b>	Y	<b>PARKER</b>	Y	<b>J WILLIAMS</b>	N
<b>FOX-HEWITT</b>	N	<b>REECE</b>	ABSTAIN	<b>WRIGHT</b>	ABSTAIN
<b>GORTON</b>	ABSTAIN	<b>RICHARDS</b>	ABSTAIN		

In Favour (Y) – 23

Against (N) – 5

Abstain – 8

**Resolved:** That recommendations (a) to (o), as set out in Appendix ‘1’ of the agenda report be approved.

[Watch the debate here](#)

## 8. PAY POLICY STATEMENT

The Leader introduced a report seeking Council’s approval of the Pay Policy Statement for 2024/25.

This was an annual requirement of the Localism Act, 2011 setting out the remuneration of chief officers and the lowest paid employees and the changes in roles and titles of senior officers.

**Resolved:** That the Pay Policy Statement, as attached at Appendix A to the report, be approved with a view to it being published on the Council's website by 31 March, 2024 .

[Watch the debate here](#)

9. **WAR AND WAR WIDOW(ER)'S PENSION DISREGARD TOP UP**

The Portfolio Holder for Finance, Town Centres and Growth introduced a report seeking approval for the continuing disregard of War Pensions and War Widow(er)'s Pension in calculating Housing Benefit entitlement and Council Tax Reduction.

**Resolved:** That the disregard of War Pensions and War Widow(er)'s pensions, be approved:-

- (a) in full as income above the statutory £10.00 per week disregard in the calculation of Housing Benefit entitlement and
- (b) in full as income in relation to the means tested assessment of Council Tax Reduction Scheme discount.

[Watch the debate here](#)

10. **QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS**

Two questions were received:

1) Question from Councillor Gorton to the Portfolio Holder for Sustainable Environment:

“Leaving out a waste bin on the pavement days after a collection has been made is a practice which the Borough Council would want to discourage. Bins left out in this way block pavements with the result that passers by are often obliged to walk in the road. I understand that as a last resort local authorities can issue a fixed penalty if a bin is persistently left on a pavement. The issuing of a fixed penalty must be a last resort which is only applied when persuasion has failed. Can the Portfolio Holder outline the action or actions the Borough Council proposes to take to encourage householders to be good neighbours and not leave their bins out on pavements days after a collection has taken place? “

The Portfolio Holder for Sustainable Environment stated that there had been a long standing issue in some areas of the Borough where wheelie bins were left out in the street between collections, thus causing an obstruction. The Councils Mobile Multi Function Team and the Recycling and Waste Team were now working to raise awareness with households and had put together a

three stage process of education, warning and ultimately, a fixed penalty notice.

Education would be in the form of written literature and possibly a verbal or first written warning. The street or repeat offender households could be leafleted. This would explain the range of waste collection and recycling services and also to place their bins on the street at certain times for collection, removing them afterwards.

Stage two would be a warning, which would be a repeat of the education process but also a Notice of Intent of any repeat offence.

Stage three would be a Fixed Penalty Notice of £60. The MMF Team worked on these when it was founded in 2023, reviewing issues such as dog fouling, fly tipping and residents duty of care regarding their waste management. The Fixed Penalty fees and charges would be decided by Cabinet, then reviewed, debated and amended where necessary and endorsed by the Licensing and Public Protection Committee.

At present, education seemed to be working, with no Fixed Penalty Fees having been issued.

Councillor Gorton asked a supplementary question:

“Could the Portfolio Holder give assurance that resources would be available to underpin the action that had been outlined?”

The Portfolio Holder confirmed that resources would be provided.

2) Question from Councillor Brockie to the Portfolio Holder for Finance, Town Centres and Growth:

“Capital & Centric’s business model based on ‘Driving value through ownership’ has clearly been successful for them, and will hopefully be successful for Newcastle. It is accepted that the projects and their costs and benefits will be put through consultation and scrutiny. With ‘ownership’ comes responsibility - and at the moment we still own these sites. Selling them, and others, off to relieve ourselves of debt may or may not be appropriate in future-proofing ourselves financially. To make these decisions, can we be assured that the progression of the projects will be offered for scrutiny with full disclosure of any changes and modifications which arise in the course of realisation?”

The Portfolio Holder for Finance, Town Centres and Growth stated that the Capital&Centric proposals had been taken through a special, all members briefing on 5 February and proposals and suggestions for all elements of regeneration of the town centre were taken to every Economy and Place Scrutiny Committee. The paper on the regeneration plans for the town centre had also been discussed this evening at this meeting. Proposals would continue to be put forward for future scrutiny, as had been done throughout the development.

Councillor Brockie asked a supplementary question:

“Was it possible to have a meeting at some stage, where all Councillors could actually get to meet Capital& Centric and share the vision as it was felt that not enough information had been received and it should be approached with caution, if not suspicion”

The Portfolio Holder for Finance, Town Centres and Growth stated that Capital&Centric were an excellent company. They were visionary and their ideas for the town centre were superb and he had no qualms about recommending them.

[Watch the debate here](#)

**11. RECEIPT OF PETITIONS**

No petitions were received.

**12. URGENT BUSINESS**

Members were informed that Martin Hamilton, the Chief Executive Officer was leaving the Authority.

The Leader, Councillor Dave Jones, Councillor John Williams and Councillor Stephen Sweeney paid tribute to Martin who then responded with thanks.

[Watch the tributes here](#)

**13. DISCLOSURE OF EXEMPT INFORMATION**

There were no confidential items.

**Mayor - Councillor Simon White  
Chair**

Meeting concluded at 10.53 pm

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## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### CORPORATE LEADERSHIP TEAM'S REPORT TO FULL COUNCIL

10<sup>TH</sup> APRIL 2024

**Report Title:** Appointment of Chief Executive

**Submitted by:** Service Director for Strategy, People and Performance

**Portfolios:** All

**Ward(s) affected:** All

<u>Purpose of the Report</u>	<u>Key Decision</u>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
To seek the Council's formal agreement to the appointment of the Chief Executive and extension if required to current interim arrangements.			
<b><u>Recommendation</u></b>			
That Council:-			
<ol style="list-style-type: none"> <li>1) Approve the appointment of Gordon Mole as the Council's Chief Executive (including the statutory roles of Head of Paid service, Returning Officer and Electoral Registration Officer) such appointment to commence from a date to be agreed between Mr Mole and the leader of the Council.</li> <li>2) That Mr Mole be appointed on a salary of £116, 530.65 per annum (plus expenses for additional election related duties).</li> <li>3) That should it be required, for the current interim arrangements to be extended for up to a month should a start date for Mr Mole fall outwith the agreed acting up period for Mr McEneny (originally approved for up to 3 months).</li> </ol>			
<b><u>Reasons</u></b>			
<ol style="list-style-type: none"> <li>1) Under section 4 of the Local Government and Housing Act 189; the Council has a statutory duty to appoint a Head of Paid Service.</li> <li>2) In line with the constitution; the appointment of the Council's Chief Executive is a matter for decision by full Council</li> </ol>			

#### 1. **Background**

- 1.1 The Council has carried out an extensive recruitment campaign to recruit its new Chief Executive. There were 28 applicants who, through a thorough and rigorous selection process, were whittled down to a shortlist of candidates who were interviewed by an Interview Panel of Elected Members representative of the Employment Committee on 18<sup>th</sup> March 2024.
- 1.2 The Interview Panel, chaired by the leader of the panel and acting as a sub-committee of the Employment Committee reached the unanimous decision to

recommend to Full Council that Gordon Mole be appointed as the new Chief Executive of the Council.

- 1.3 Full Council is now asked to formally agree to the appointment of Mr Mole as Chief Executive.

## 2. Issues

- 2.1 In Full Council on 14<sup>th</sup> February 2024, it was agreed that Simon McEneny would act as interim Chief Executive for a period of 3 months from 1<sup>st</sup> April or until the new Chief Executive commenced in post, whichever came sooner. Should a start date for Mr Mole be agreed that is later than 1<sup>st</sup> July, Full Council are asked to approve the extension of Mr McEneny's acting up arrangement for up to 1 month to allow appropriate cover is in place.

## 3. Recommendation

That Council:-

- 3.1 Approve the appointment of Gordon Mole as the Council's Chief Executive (including the statutory roles of Head of Paid service, Returning Officer and Electoral Registration Officer) such appointment to commence from a date to be agreed between Mr Mole and the leader of the Council.
- 3.2 That Mr Mole be appointed on a salary of £116, 530.65 per annum (plus expenses for additional election related duties).
- 3.3 That should it be required, for the current interim arrangements to be extended for up to a month should a start date for Mr Mole fall outwith the agreed acting up period for Mr McEneny (originally approved for up to 3 months).

## 4. Reasons

- 4.1 Under section 4 of the Local Government and Housing Act 189; the Council has a statutory duty to appoint a Head of Paid Service.

## 5. Options Considered

- 5.1 A full and robust selection process was undertaken with Gordon Mole emerging as the preferred candidate.

## 6. Legal and Statutory Implications

- 6.1 Under section 4 of the Local Government and Housing Act 189; the Council has a statutory duty to appoint a Head of Paid Service.

## 7. Equality Impact Assessment

- 7.1 The selection process undertaken was fair and equitable

## 8. Financial and Resource Implications

8.1 No additional costs

## 9. Major Risks & Mitigation

9.1 No risks identified

## 10. UN Sustainable Development Goals (UNSDG)



## 11. Key Decision Information

11.1 n/a

## 12. Earlier Cabinet/Committee Resolutions

12.1 Interim Appointment of Head of Paid Service (Chief Executive) February 2024

## 13. List of Appendices

13.1 n/a

## 14. Background Papers

14.1 n/a

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## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### CORPORATE LEADERSHIP TEAM'S REPORT TO COUNCIL

10 April 2024

**Report Title:** Elections – Scale of Fees and Charges

**Submitted by:** Director of Legal and Governance Services/Monitoring Officer

**Portfolios:** One Council People and Partnerships

**Ward(s) affected:** All

<u>Purpose of the Report</u>	<u>Key Decision</u>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<p>This report sets out the proposed fees paid to the Returning Officer and their staff employed to undertake various duties in connection with Police, Fire and Crime Commissioner Election being held on 2<sup>nd</sup> May, 2024.</p>			
<p><b><u>Recommendation</u></b></p> <p>That Council:-</p> <p style="padding-left: 40px;">1. Notes the proposed election fees for 2024/25, as set out in Appendix 1.</p>			
<p><b><u>Reasons</u></b></p> <p>To ensure that there is a consistent and transparent approach to payments for administering elections within the borough and in the Staffordshire county area.</p> <p>To ensure that elections staff are remunerated in line with the changes to their role following the implementation of the Elections Integrity Bill.</p> <p>To ensure we are in line with the limits placed on election staff fees by the Department for Levelling Up, Housing and Communities.</p>			

## 1. **Background**

- 1.1 Each Local Authority is required to appoint a Returning Officer (RO). The RO is appointed in an independent capacity by the Council to organise and run elections free from the political structure of the authority. Councils must provide their RO with the resources they need to run elections. This includes staff payments and any necessary disbursements considered necessary by the Returning Officer to run effective elections.
- 1.2 The Returning Officer in Newcastle-under-Lyme needs to employ and pay up to 350 additional staff with different levels of responsibility. It is important that this is done fairly and transparently.

- 1.3 For national polls the government issues a Fees and Charges schedule which identifies for each authority a “maximum recoverable amount” along with a fee which may be claimed by the appointed RO for the rendering of their services. The RO will pay their appointed staff from the monies provided by government and will account for their expenditure by way of a return to the Election Claims Unit (ECU) at the Cabinet Office.
- 1.4 The Department for Levelling Up, Housing and Communities (DLUHC) has recently undertaken an exercise to review staffing fees for national polls that are met out of the consolidated fund. The outcome of the review was to introduce a new schedule of fees for election duties.
- 1.5 The recently formulated scale of fees published by DLUHC applies to Parliamentary and Police, Fire and Crime Commissioner elections. DLUHC consulted with all Local Authorities and members of the Association of Electoral Administrators as part of their review exercise.
- 1.6 For all such national elections, the RO will be expected to adhere to the range proposed for each role by DLUHC. To pay outside of this range will require special agreement from the ECU or risk the ECU refusing to reimburse the difference where roles exceed their expected amounts.

## 2. Issues

- 2.1 The Elections Act 2022 imposes additional burdens on election staff, particularly those employed in polling stations where new requirements for checking Voter ID and handling postal votes mean additional complexity in terms of process and understanding of legal requirements. An increase in fees would reflect the additional burdens and responsibilities being placed on polling station staff.

## 3. Recommendation

- 3.1 To inform members of the schedule of fees set out in appendix 1

## 4. Reasons

- 4.1 In order for the elections to be administered, election staff will need to be paid for the work that they undertake. Failure to agree a fees and charges structure could undermine the effective administration of elections and result in the RO not able to appoint the staff required to run the forthcoming election which will expose the Council and RO to risk and liability.

## 5. Options Considered

- 5.1 The proposed fees outlined in appendix 1 have been agreed by Electoral Services teams within the Staffordshire County Working Group and for the PARO and Staffordshire County Council to take into consideration.

## 6. Legal and Statutory Implications

- 6.1 Such implications are set out in this report.

## 7. Equality Impact Assessment

7.1 There is no relevance to equality.

## 8. Financial and Resource Implications

8.1 Such implications are set out in this report.

## 9. Major Risks & Mitigation

9.1 Such implications are set out in paragraph 4.1.

## 10. UN Sustainable Development Goals (UNSDG)

10.1 The proposal, by achieving (whatever) contributes towards the following UNSDGs



## 11. Key Decision Information

11.1 N/A

## 12. Earlier Cabinet/Committee Resolutions

12.1 N/A

## 13. List of Appendices

13.1 Appendix 1.

## 14. Background Papers

14.1 DLUHC Expenses Guidance for Returning Officers.

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**Election Staff Rates of Pay**

	<b>PO</b>	<b>PC</b>	<b>PSI</b>	<b>COUNT ASST</b>	<b>COUNT S'VISOR</b>	<b>GENERAL ASST</b>	<b>COUNT MANAGER</b>	<b>PV OPENERS</b>	<b>PV SCANNERS</b>	<b>PV ADJUCATORS</b>	<b>Poll Card Delivery rate</b>
<b>Band</b>	C	A	D	A	C	C	D	A	A	C	Other
<b>Rate per hour</b>	15.75	13.68	17.00	<b>13.50</b> (day rate to 11pm) <b>20.25</b> (night rate 11pm-8am)	<b>18.32</b> (day Rate) <b>27.48</b> (night rate)	<b>18.32</b> (day rate) <b>27.48</b> (night rate)	<b>25.00</b> (day rate) <b>37.50</b> (night rate)	<b>12.00</b> (day rate) <b>18.00</b> (night rate)	<b>14.00</b> (day rate) <b>21.00</b> (night rate)	<b>18.00</b> (day rate) <b>27.00</b> (night rate)	<b>36p</b> per card
<b>No. Hours</b>	17	17	16								
<b>Total</b>	267.75	232.56	272.00								
<b>Training</b>	20	20	40	30	30	30					
<b>Travel</b>	20	10	Mileage rate								
<b>Box Collection</b>	20										
<b>TOTAL</b>	327.75	262.56	312.00								

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**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**CORPORATE LEADESHIPS TEAM'S**

**REPORT TO COUNCIL**

**10 April 2024**

**Report Title:** Corporate Enforcement Policy 2024

**Submitted by:** Service Director – Regulatory Services

**Portfolios:** One Council, People and Partnerships, Finance, Town Centres and Growth, Community Safety and Wellbeing, Sustainable Environment.

**Ward(s) affected:** All Wards

**Purpose of the Report**

The current Corporate Enforcement Policy requires updating to reflect current regulatory practices for which Newcastle under Lyme Borough Council has statutory responsibility. It should be noted that there is a separate local planning enforcement policy [Reference: <https://www.newcastle-staffs.gov.uk/policies-1/local-planning-enforcement-plan>]

**Recommendations**

**That Council:-**

- 1. Approves the Corporate Enforcement Policy 2024 for the Borough as attached at Appendix A to this report.**

**Reasons**

The proposed policy sets out the Council’s approach to regulation and enforcement across all functions and service areas (except Planning) and explains the principles aimed at securing compliance. The emphasis is on advice and guidance with escalation to informal and formal enforcement sanctions dependent on each individual situation. The policy identifies and explains these sanctions.

**1. Background**

- 1.1 Newcastle under Lyme Borough Council is responsible for the regulation and enforcement of a wide range of legislation covering a broad spectrum of functions and service areas. The current enforcement policy was written in 2018 and requires review. The policy includes all regulatory and

enforcement matters (except Planning) in order to provide a consistent approach across the Council.

## **2. Issues**

- 2.1 The revised policy sets out the Council's approach to regulation across all functions and service areas (except Planning) and explains the principles aimed at securing compliance.
- 2.2 It is recognised that achieving compliance at any cost is not acceptable. However, effective regulation promotes economic growth and prosperity and protects individuals, the community and the environment from harm. The revised policy recognises that this is achieved more effectively through cooperation with the community, individuals and forging closer links between regulators and businesses. It emphasises the need to target regulatory activity and resources away from those who are considered largely compliant towards those who give rise to the highest risk and cause the greatest detriment and harm.
- 2.3 The revised policy addresses the principle that individuals as well as businesses have a duty to comply with legislation.
- 2.4 It is accepted that on rare occasions the Council may need to deviate from the proposed policy. Where this is the case, it must be clearly justified, authorised by the Chief Executive or Deputy Chief Executive and fully documented.
- 2.5 The policy scope does not extend to Planning as this does not align with the priority of proactive development management or with current National Planning Practice Guidance. A recent Planning Enforcement Plan was approved at Council in November 2023.

## **3. Recommendation**

- 3.1 That Council approves the Corporate Enforcement Policy 2024 for the Borough, as attached at Appendix A to this report.

## **4. Reasons**

- 4.1 The existing enforcement policy requires updating to include new sections on:
  - Civil Penalties [Section 4.1.10]
  - Bankruptcy and Winding-Up Petitions [Section 4.1.17]
  - Mediation [Section 4.1.19]
- 4.2 The desire for enforcement matters to be considered in a consistent and co-ordinated approach across the Council.

- 4.3 To follow the principle of openness in providing clear information in plain language about how we carry out our work.
- 4.4 The approach supports better regulation for businesses.
- 4.5 The policy supports the key priorities for the Borough
- **Priority one: One Council delivering for local people** which underpins our work.
  - **Priority two: A successful and sustainable growing borough;** protecting our communities by improving how we use our enforcement powers.
  - **Priority three: Healthy, active and safe communities;** building on our work with Staffordshire Police and other partners to reduce anti-social behaviour and crime in our communities.
- 4.6 This is a living document and comments on the policy are welcomed throughout the duration of the policy.

## 5. Options Considered

- 5.1 Retaining the existing policy agreed in 2018. This would potentially leave the Council open to challenge in terms of 'openness' by providing information and advice about how we approach enforcement. The updated policy reflects up to date guidance and best practice.

## 6. Legal and Statutory Implications

- 6.1 The preparation and publishing of the policy is not in itself a legal requirement. However, the Regulators' Compliance Code, issued in accordance with section 22 of the Legislative and Regulatory Reform Act 2006, requires regulators to have regard to this Code. The Code came into statutory effect on 6 April 2014. The adoption of a policy is considered to be best working practice and will assist the Council to demonstrate that it has regard to the Code.

## 7. Equality Impact Assessment

- 7.1 The proposed policy is a revision of a policy previously adopted by Newcastle under Lyme Borough Council. An Equalities Impact Assessment has however been undertaken. There are no risks identified following the assessment. The proposed policy is consistent with national guidance on regulation and Officers must have due regard to Code C of PACE that protects young and vulnerable persons.

## 8. Financial and Resource Implications

- 8.1 There are no financial implications associated with the recommendation.
- 8.2 Enforcement actions is usually undertaken within existing budgets. Where existing budgets are unlikely to meet the financial costs of such action, then this will be the subject of a separate report.

## 9. Major Risks & Mitigation

- 9.1 A GRACE risk assessment has been completed including the following main risks:
- Legal challenge on content of policy.
  - Legal challenge on application of policy.
- 9.2 Controls have been identified and implemented in order to control these risks; the main controls include:
- Policy recognises current legal requirements.
  - Policy recognises current best practice and guidance in respect of enforcement.
  - Policy is a live document, which can be updated.

## 10. UN Sustainable Development Goals (UNSDG)

- 10.1 The proposal, by achieving (whatever) contributes towards the following UNSDGs



## 11. Key Decision Information

- 11.1 This is a key decision as it will affect more than two wards.

## 12. Earlier Cabinet/Committee Resolutions

- 12.1 The Council meeting on 21st February 2018 considered and approved the Corporate Enforcement Policy 2018-21. Minute number 12.
- 12.2 Cabinet on 6<sup>th</sup> February 2024 considered the Corporate Enforcement Policy.

**13. List of Appendices**

13.1 Appendix A – Enforcement Policy 2024.

**14. Background Papers**

14.1 Local Government Concordat on Good Enforcement

14.2 The Regulators Compliance Code

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# ENFORCEMENT POLICY

2024 - 2027



<b>Document Control</b>	
Prepared by:	Regulatory Services
Title	Enforcement Policy
Status	DRAFT
Author	Nesta Barker
File Name	NULBC Enforcement Policy 2024-2027
Document Owner	Nesta Barker
Keywords	Enforcement, policy, compliance, regulation, non-compliance
Date of Review	

<b>Revision History</b>			
Version	Date	By	Summary of Change
1.0	18/02/2014	N Henshaw	Creation
1.1	19/03/2014	N Henshaw	Comments from EH incorporated
1.2	09/05/2014	N Henshaw	Comments from Corporate enforcement working group. Approved by Council 04/06/2014
2.0	03/01/2018	N Barker	Review & Update
2.1	21/02/2018	Council	Sec 1 include 'firm' and approval
3.0	28/11/2023	A Morgan	Review & Update

<b>Approval Signature</b>			
Name: Nesta Barker	Service Director – Regulatory Services	Date	
Name:	Chief Executive	Date	
Council	Approved	Date	



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## 1.0 INTRODUCTION

Fair and effective enforcement is essential for the economic interest and protection of the public, business and the environment.

This enforcement policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with legislation enforced by Newcastle-under-Lyme Borough Council. This policy applies to all areas except Planning, which is available [here](#).

The decisions of the Council and its officers about enforcement action, and in particular the decision to prosecute, have serious implications for all involved. The aim of this policy is to set out the principles that apply when the Council conducts its enforcement work and should be read in conjunction with the [Officers scheme of delegation](#). By applying the same principles, everyone involved in the decision-making process is treated fairly, and our business is conducted effectively.

This Policy is adopted by Newcastle-under-Lyme Borough Council (hereafter referred to as 'the Council').

Specific guidance on the particular approach may also be provided – any additional guidance will be in accordance with the approach taken by this policy. For example Regulatory Services has additional guidance that sits below the Enforcement Policy to guide housing law decisions which is available [here](#).

The Council believes that most businesses and individuals want to abide by the law and will assist them where possible. The Council recognises that prevention is better than cure, but firm action will be taken against those who break the law or act irresponsibly.

## 2.0 PRINCIPLES AND PROCEDURES FOR GOOD ENFORCEMENT

The Council has adopted the Central and Local Government Concordat on Good Enforcement. The Legislative and Regulatory Reform Act 2006 also places a duty on the Council to have regard to the 'Principles of Good Regulation' when exercising specified regulatory functions.

The 'Principles of Good Regulation' together with the principles set out in the Concordat, are intended to ensure:

- **Standards:** provide and publish clear standards setting out the level of service and performance provided by the Council.
- **Openness:** provision of information and advice in plain language about how we carry out our work, including consultation with stakeholders.

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- **Helpfulness:** provision of advice and assistance on compliance in a courteous efficient and prompt manner.
- **Proportionality:** when making a decision on appropriate enforcement action, Officers will, where discretion is allowed, consider both the circumstances of the case and history of the parties involved and will ensure that the remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance, that it reflects any advice issued by Central Government or other co-ordinating bodies and takes into consideration relevant advice, Policy and the aims of the Council.
- **Consistency:** duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.
- **Transparency:** access to information regarding regulatory procedures and decisions to be freely available.
- **Accountability:** the Council will be accountable for the efficiency and effectiveness of its regulatory activities.
- **Targeting:** the Council accepts that its enforcement resources are limited and, where appropriate, this should be focused on those persons or companies whose activities give rise to the risks which are most serious or least well controlled on their own premises or public open space. Enforcement is informed through intelligence arising from an investigation or complaints, planned projects, special surveys, enforcement initiatives or as a requirement from a Government Department.
- **Confidentiality:** the Council will ensure information provided in confidence is treated accordingly.

## 2.1 The Regulator's Compliance Code

The Council will have regard to the Regulators' Compliance Code with a view to achieving regulatory outcomes without imposing unnecessary burdens on businesses, organisations and other regulated entities.

The Regulators' Code states that Regulators should;

- Carry out their activities in a way that supports those they regulate to comply and grow.
- Provide simple and straightforward ways to engage with those they regulate and hear their views.
- Base their regulatory activities on risk.
- Share information about compliance and risk.
- Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- Ensure that their approach to their regulatory activities is transparent.



In certain instances, we may conclude that the provision of the Regulators' Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code will be properly reasoned, based on material evidence, and documented.

## 2.2 Our Aims

We will

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

## 2.3 Our Objective

Our primary enforcement objective is to achieve regulatory compliance. There are a wide range of tools available to us to achieve compliance. Where enforcement action is deemed appropriate we will choose an enforcement method that is relevant and proportionate to the offence or contravention.

## 2.4 Our approach to enforcement

Each case is unique and will be considered on its own facts and merits.

In arriving at a decision to recommend formal action officers will be fair, independent, and objective.

We will not let any personal views about ethnic or national origin, sex, age, religious beliefs, political views, or sexual orientation of the suspect, victim or witness influence their decisions.

We will not be affected by improper or undue influence from any source.

We will comply with the relevant codes of the Police and Criminal Evidence Act 1984. This Act applies to all enforcement bodies, including local authority enforcement teams



We will take account of both national priorities for local government enforcement together with local priorities based on evidence or emerging need. We will focus enforcement on matters;

- with the greatest risk to public health, safety, animal health, the economic or environmental wellbeing of the community,
- those where we believe there is an expectation from our residents, businesses or elected members that action should be taken,
- to achieve the priorities of the Council including those set out in [Council's Plan](#).
- where repeated incidents or breaches of regulatory requirements, which are related.
- where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, we will take action against those who can be regarded as primarily in breach

### **3.0 ENFORCEMENT FOR COMPLIANCE**

#### **3.1 Inspection and Intervention Programme**

Relevant business activities and/or premises are risk assessed to inform an inspection and/or intervention programme, and the level of risk is reviewed regularly. We will focus our greatest inspection effort on those regulated where risk assessment shows that both:

- A compliance breach or breaches would pose a serious risk to a regulatory outcome or to health or the environment;
- There is high likelihood of non-compliance by those regulated.

Inspection and intervention frequency will generally be risk based, but may additionally be determined by set, or prescribed, intervals and additional interventions may take place as part of a local or national campaign.

Visits are also made to businesses for other reasons, such as advice, as a result of an allegation or for a sample or test purchase and will probably be without prior notice.

#### **3.2 Sampling Programme**

The purpose of sampling is to protect public health and the environment and to verify standards. This enables officers to provide information and advice to improve business practices.



A sampling programme sets out samples, test purchases (e.g. foodstuffs) the collection of materials (e.g. soil, air, water) taken in response to enquiries, as a part of a planned survey/exercise or as a result of officer or national initiatives. The programme sets out planned activities and targets for the year, concentrating efforts into risk-assessed areas of trade or products in order to ensure the most effective use of resources.

### **3.3 Primary Authority Principle**

Under Primary Authority, a local authority partners with a business or group of businesses to provide them with regulatory advice that other authorities have to respect. Primary Authority is a statutory scheme underpinned by Statutory Guidance which includes obligations for local authorities

We will consider requests for prospective partnerships from businesses which have their decision-making base within the Borough.

Where businesses have a Primary or Home Authority elsewhere, officers will follow the inspection plan for that business and will contact the Primary Authority at the earliest practicable time.

### **3.4 Statutory Notifications**

Where appropriate we will consult and work with a wide range of other agencies and report incidents and enforcement actions to relevant bodies, such as

- Department for Business Energy and Industrial Strategy;
- Department for Levelling up, Housing & Communities
- Department for Environment Food and Rural Affairs;
- Department for Work and Pensions;
- DVLA;
- Environment Agency;
- Health and Safety Executive;
- Food Standards Agency;
- Office of Fair Trading;
- Staffordshire County Council;
- Staffordshire Fire and Rescue;
- Trading Standards;
- UK-Health Security Agency

and any other relevant statutory bodies.



We will respond appropriately to notifications, such as notifications from the Health and Safety alerts and food safety alerts from the Food Standards Agency. Information will be shared with other regulators where it is appropriate to do so.

The authority will work alongside partner agencies in pursuit of the objectives of the Serious Organised Crime Strategy which aims to reduce the level of serious and organised crime by maintaining the Pursue, Prepare, Protect and Prevent delivery framework;

- To pursue offenders through prosecution and disruption
- To prepare for when serious and organised crime occurs and mitigate impact
- To protect individuals, organisations and systems from the effects of serious and organised crime
- To prevent people from engaging in serious and organised crime

### 3.5 Enforcement Visits

When conducting enforcement visits, other than for test purchasing or covert purposes, officers will make their identity known and explain why they are there. Officers may make combined visits with other agencies where there is a shared and/or aligned enforcement role.

### 3.6 Evidence Gathering

The authority will record complaints it receives and the action it takes in response. We will encourage those who provide information to supply their contact details and explain how the information they provide may be used. Generally, the authority will only be able to take enforcement action if their account can be confirmed in a form admissible to the courts – i.e. witness statement.

Officers may also identify potential non-compliance as part of their routine duties.

We may use search engines, internet listings companies, and review publically shared social media to establish, for example to confirm if businesses operate from within Newcastle-under-Lyme Borough. Where this information suggests there needs to be registered or licensed etc. we will contact them to advise them of their obligation, escalating our actions if they fail to respond promptly.

Officers will only carry out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. Any officer intending to acquire data covertly will only do so if the evidence or intelligence sought cannot be obtained by any overt other means. All covert surveillance will be undertaken in accordance with the Councils 'Policy and Guidance on the use of RIPA' (Regulation of Investigatory Powers Act 2000 as amended)

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### 3.7 Enforcement in Local Authority Establishments

Officers will carry out enforcement within local authority owned, occupied or operated premises (e.g. crematorium for pollution, prevention and control and leisure centres, fly tipping on Council land) in a manner consistent with any other business. Any serious breaches of law that may be detected in such establishments will be brought to the attention of the responsible Service Director and Chief Executive without delay.

Contract caterers that operate within Local Authority establishments will be assessed in accordance with the Food Law Code of Practice and be inspected accordingly.

### 3.8 Powers of Entry

In most circumstances the exercising of powers of entry is unnecessary because access is voluntarily given. If access is denied, then officers may exercise powers of entry which may be immediate or may require at least 24 hours written notice of the intention to enter a premises.

Where appropriate we will seek to obtain a warrant from the Magistrates' Court to enter premises where legislation provides for this and the circumstances justify the action.

We will have appropriate regard to the Protection of Freedoms Act 2012 and the associated Code of Practice on Powers of Entry

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

## 4.0 ENFORCEMENT OF NON-COMPLIANCE

### 4.1 Levels of enforcement action

In assessing what enforcement action is necessary and proportionate,;

The options available (but not limited to) are:

#### 4.1.1 No Action

In certain circumstances, contraventions of the law may not warrant any action. Consideration will be given to whether the resultant cost of action would outweigh the detrimental impact of the contravention (sometimes referred to as the public interest test). A decision of no action **may** also be taken where formal enforcement



is inappropriate in the circumstances. In such cases we will advise the offender of the reasons for taking no action.

#### **4.1.2 Informal Action and Advice**

For minor breaches of the law, we may take informal action.

Informal action can include advice, verbal or written warnings, letters requiring action, inspection reports. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done.

The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Failure to comply could result in an escalation of enforcement action.

We will be clear about what are requirements and what are recommendations.

#### **4.1.3 Fixed Penalty Notices**

Certain offences may be dealt with by fixed penalty notices (FPN) where prescribed by legislation. An FPN is recognised as a low-level enforcement tool and avoidance of a criminal record for the defendant.

In certain instances, a FPN is the only enforcement option e.g. evidence of smoke from a chimney in a smoke control area

In other instances, we have an option to administer a FPN on the first occasion without issuing a warning. Such matters may include dog fouling, littering, waste disposal activities, breach of a PSPO (Public Space Protection Order). This list is not exhaustive.

The alleged offender's choice to not cooperate with the officer (e.g. refuse to give a name and address), to dispute or not pay the FPN may result in the case being escalated to the Magistrates Court.

We will only offer a FPN where we have robust evidence that an offence has been committed by the individual. This may be evidence gathered directly by Council Officers, or that passed to officers by partners documented in a form admissible to the courts.



#### 4.1.4 Penalty Charge Notices

Penalty Charge Notices (PCNs) (e.g. parking tickets) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of

money to the enforcer in recognition of the breach. Failure to pay the PCN may result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

#### 4.1.5 Voluntary Closure, prohibition, surrender or undertaking

A business or individual may in some circumstances, where there is an imminent risk, provide an offer to :

- Voluntarily close premises
- Voluntarily prohibit and cease to use any product, equipment, treatment, process or building
- Voluntarily surrender to us an item or product associated with the imminent risk.

In such circumstances the proprietor or individual would be requested to confirm their undertaking in writing. Failure to comply may result in further formal action.

#### 4.1.6 Formal/Statutory Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately and be prohibited. In other circumstances they must cease or change within a reasonable time and consider the seriousness of the contravention and the implications of the non-compliance.

All notices issued will include details of any applicable appeals procedures.

#### 4.1.7 Works in Default

Following the service of a notice (section 4.1.6) certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves.

Works in default may be carried out where:-

- There is no reasonable prospect of the person responsible carrying out the work, e.g. the person is absent

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- There is an imminent risk to public or the environment
- Hazard to health, e.g. unsafe electrics
- A prosecution is not appropriate
- A prosecution has been brought and the works have not been carried out.
- A nuisance exists and it is appropriate to get the nuisance abated quickly.

Where the law allows, we may then charge the person/business served with the notice for any cost we incur in carrying out the work, including administration. Failure to comply may result in further formal action.

Where the authority is required to undertake works in default it will ensure that the works are appropriate, and the costs incurred are not unduly excessive.

#### **4.1.8 Forfeiture Proceedings**

This procedure, dealt with through an application in an appropriate court, may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the marketplace or being used to cause a further problem.

#### **4.1.9 Seizure**

Certain legislation enables officers to seize goods, equipment or documents, for example. unsafe food, sound equipment that is being used to cause a statutory noise nuisance, workplace articles and/or substances, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods, we will give written notification of the seizure as soon as reasonably practicable for example a Detention of Food Notice.

Where appropriate we will explain the procedure for their reclaim, and indicate any cost associated with storage, return or where applicable disposal of items. We will ensure that costs incurred are not unduly excessive.

#### **4.1.10 Civil Penalties**

Under section 126 and schedule 9 the Housing and Planning Act 2016 local housing authorities can impose a civil penalty as an alternative to prosecution for the following offences:

- failure to comply with an improvement notice (section 30)
- offences in relation to licensing of houses in multiple occupation (section 72)
- offences in relation to licensing of houses under part 3 of the act (section 95)



- offences of contravention of an overcrowding notice (section 139)
- failure to comply with management regulations in respect of houses in multiple occupation (section 234).

A civil penalty can also be imposed for breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

#### 4.1.11 Injunctive Actions

Injunctive action includes agreements and formal undertakings to improve compliance which, if breached, may lead to the obtaining of an injunction in the civil law courts.

In situations where the non-compliance under investigation amounts to anti-social behaviour, such as persistent targeting of an individual or a group of individuals in a particular area, then Anti Social Behaviour Orders as appropriate or Criminal Behaviour Orders may be sought to stop the activity.

#### 4.1.12 Simple Caution

A simple caution is an alternative means for dealing with low-level, mainly first-time offending. The aims of the simple caution are to deal quickly and simply with offences, save Court time and reduce the likelihood of reoffending.

A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

The criteria for issuing a simple caution depends on:

- the nature of the offence – a simple caution cannot be issued where the offence is indictable only
- the offender making a clear and reliable admission of the offence before simple caution can be offered;
- the evidence meets the evidential test and that the public interest is in favour of prosecution
- the offender agrees to receive a simple caution
- the offender must be 18 years or over

The offender should not have received a simple caution for a similar offence within the last 2 years.

The Council has opted to follow the guidance issued by the Government in relation to the issuing of simple cautions for details on the Ministry of Justice Guidance visit [here](#)



The person administering the caution will be an appropriate Senior Officer employed within the Council.

If the caution is not administered, because the suspect refuses to accept it, the facts of the case will be reviewed again, without the option of a simple caution, and a prosecution may result.

A record of the caution will be kept for 2 years. If the offender commits a further offence, within that 2-year period, the caution may influence our decision to take a prosecution. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

#### **4.1.13 Benefits Cautions/Sanctions**

The benefits legislation provides for additional sanctions, beyond those applicable to other areas of our work. These include administrative penalties. These are also used as an alternative to prosecution. In such cases the Administrative Penalty and any linked caution will be retained on file for five years.

These are issued if the circumstances are such that the interests of the public and justice would be better served without recourse to legal proceedings in the first instance.

#### **4.1.14 Administrative Penalty**

Under Section 115 of the Social Security Administration Act 1992 a financial Administrative Penalty may be issued as an alternative to a prosecution in matters relating to Housing and Council Tax Benefit.

In determining whether to offer an Administrative Penalty there must be sufficient evidence in which to consider commencing criminal proceedings. The offer of an Administrative penalty is more likely in cases where dishonesty does not form part of the offence, it is the first time the customer had caused a fraudulent overpayment or there was a clear lack of intent on the part of the customer.

An Administrative Penalty cannot be imposed and there is no obligation on the part of any person to accept it. If accepted that person has 14 days to withdraw their agreement to pay the penalty ('cooling off period'). If the penalty is not paid, then civil recovery of the debt will be initiated in the County Court.



Where an Administrative Penalty has not been accepted or a person has withdrawn their agreement to pay, then alternative enforcement action will be considered in respect of the original breach. Administrative Penalties are not recorded as a criminal offence.

#### **4.1.15 Refusal, Revocation or Suspension of a Licence**

Certain types of businesses, premises and individuals require licenses to operate legally. A refusal, revocation or suspension of a licence will normally ensue when one or more of the following criteria are met:

- deliberately or persistently breached legal obligations which likely to cause material loss or harm to others.
- deliberately or persistently ignored written warnings or formal notices
- endangered the health, safety or well being of people, animals or the environment
- obstructed an officer
- non-payment of relevant fee
- providing false or incomplete information
- not fit and proper person.
- qualifying criteria not met

#### **4.1.16 Prosecution**

A prosecution is undertaking legal proceedings through the Courts against a person, company or trader in respect of a criminal offence.

We will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equality Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to serious risk.



Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. We will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service. Both stages of the 'Full Code Test' as set out in the Code for Crown prosecutors will be applied in two stages (i) the evidential stage; followed by (ii) the public interest stage.

#### **4.1.17 Bankruptcy and Winding-Up Petitions**

Bankruptcy proceedings under the jurisdiction of a bankruptcy court allow the property of a debtor to be seized. That property may then be realised and, subject to certain priorities, distributed rateably amongst the people to whom the debtor owes money.

Bankruptcy is only applicable to individuals, partnerships and not to companies.

Liquidation is the process of bringing a company to an end by liquidating (winding-up) or realising a company's assets to discharge its debts.

#### **4.1.18 Proceeds of Crime Applications**

Where the enforcement action is criminal the Council can use the Proceeds of Crime Act 2002 legislation to recover money. Applications may be made for the confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

Proceedings are conducted according to the civil standard of proof.

Applications are made after a conviction has been secured. Any proceeds received from the proceeds of crime act action will be used in line with relevant guidelines.

#### **4.1.19 Mediation**

Mediation is a type of alternative dispute resolution and can be used to resolve almost all types of civil dispute for example an appeal against an Abatement Notice. Mediation may take place when both parties agree to it. There is usually only one opportunity to mediate during the enforcement process.



## 5.0 DETERMINING WHETHER A PROSECUTION OR CAUTION IS APPROPRIATE

We apply the full code test to determine whether a prosecution or simple caution is viable and appropriate.

We follow guidance set by the Crown Prosecution Service when applying the tests:

**The evidential stage:** There must be enough evidence to provide a 'realistic prospect of conviction' against each defendant on charge.

**The public interest stage:** There may be public interest factors which are in favour of or are against prosecutions. These must be weighed-up before enforcement action is taken.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

### 5.1 The evidential stage

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 offender has put forward or on which the offender intends to rely on. 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 courts themselves must apply. A court may only convict if it sure that the defendant is guilty.

When deciding whether there is enough evidence to prosecute, the investigating officer(s), along with the departmental managers must consider the following questions:

- Can the evidence be used in court?
- Is the evidence reliable?
- Is the evidence credible?

### 5.2 The public interest test

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.



When deciding the public interest, prosecutors should consider each of the following questions:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is the prosecution a proportionate response?

The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead, and those factors put to the court for consideration when sentence is passed.

## 6.0 REVIEW

The enforcement policy will be reviewed following significant changes to relevant legislation or government guidance.

However, it will be the subject of regular evaluation and, if necessary, formally reviewed at any time. Minor changes would be made where:

- they are to correct an administrative error
- they are a change needed because something is no longer possible or legal
- there is no foreseeable detrimental effect



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