



New Forest
DISTRICT COUNCIL

Council Meeting Agenda

10 July 2023



SUMMONS

To All Members of the Council

You are hereby summoned to attend a meeting of the District Council to be held in the Council Chamber - Appletree Court, Beaulieu Road, Lyndhurst, SO43 7PA on Monday, 10 July 2023, at 6.30 pm



Kate Ryan
Chief Executive

Appletree Court, Lyndhurst, Hampshire. SO43 7PA
www.newforest.gov.uk

This agenda can be viewed online (<https://democracy.newforest.gov.uk>).

It can also be made available on audio tape, in Braille and large print.

Members of the public may watch this meeting live on the [Council's website](#).

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AGENDA

Apologies

1. MINUTES (Pages 7 - 12)

To confirm the minutes of the Annual Meeting held on 22 May 2023 as a correct record.

2. DECLARATIONS OF INTERESTS

To note any declarations of interests made by members in connection with an agenda item. The nature of the interests must also be specified.

Members are asked to discuss any possible interests with Democratic Services prior to the meeting.

3. CHAIRMAN'S ANNOUNCEMENTS

4. LEADER'S ANNOUNCEMENTS

5. PRIVATE SECTOR HOUSING ENFORCEMENT POLICY (Pages 13 - 54)

To consider the recommendations of the Cabinet meeting held on 7 June 2023.

6. CHANGE TO DISMISSAL APPEAL PROCESS (Pages 55 - 58)

To consider the recommendations of the HR Committee meeting held on 8 June 2023.

7. WASTE AND RECYCLING COLLECTION POLICY (Pages 59 - 86)

To consider the recommendations of the Cabinet meeting held on 5 July 2023.

8. GARDEN WASTE FEES AND CHARGES 2024-25 (Pages 87 - 90)

To consider the recommendations of the Cabinet meeting held on 5 July 2023.

9. DEVELOPMENT OF A NEW OPERATIONAL SERVICES DEPOT AT HARDLEY INDUSTRIAL ESTATE (Pages 91 - 106)

To consider the recommendations of the Cabinet meeting held on 5 July 2023.

10. QUESTIONS

To ask questions under Standing Order 22. Questions received will be published ahead of the meeting. (Members are reminded that questions must be submitted to Democratic Services by no later than 12.00 noon, Wednesday 5 July 2023).

11. NOTICE OF MOTION

In accordance with Standing Order 21, Cllr Osborne will move the following motion:-

“Humans have already caused irreversible climate change, the impacts of which are being felt in the UK, and around the world. The global temperature has already increased by 1.2°C above pre-industrial levels and—alongside this—the natural world has reached crisis point, with 28% of plants and animals threatened with extinction. In fact, the UK is one of the most nature-depleted countries in the world as more than one in seven of our plants and animals face extinction, and more than 40% are in decline.

Climate change remains a major concern for voters with 66% of people (according to YouGov) expressing they are ‘worried about climate change and its effects’. Alongside this, the popularity of Sir David Attenborough’s Save Our Wild Isles initiative demonstrates public concern that UK wildlife is being destroyed at terrifying speed.

Climate & Ecology Bill

The Climate & Ecology Bill, a private member’s bill currently before the House of Commons, seeks to address the challenges that this situation poses by creating a whole-of-government approach to deliver a net zero and nature positive future.

Based on the latest science, the Bill aims to align current UK environmental policy with the need to halt and reverse nature loss by 2030, which was goal agreed to at COP15, via the Kunming-Montreal Framework (22 December 2022); and reduce greenhouse gas emissions in line with a fair share of the remaining global carbon budget to give the strongest chance of limiting global heating to 1.5C, which was the goal agreed to at COP21, via the Paris Agreement (12 December 2015).

By bridging the gap between the UK Government's current delivery, and what has been agreed at international levels, Britain has a chance to be a world leader on the environment; seizing the opportunities of the clean energy transition, including green jobs and reduced energy bills; and boosting the UK's food and energy security.

This Council notes that:

The Climate and Ecology Bill, which has been introduced in the UK Parliament on four occasions since 2020, including most recently in the House of Commons 10 May 2023. The Bill is backed by 168 cross-party MPs and Peers, 237 local authorities, alongside the support of eminent scientists, such as Sir David King; environmental NGOs, such as The Wildlife Trusts and CPRE; businesses, such as The Co-operative Bank; and 30,000 members of the public.

The Bill would require the UK Government to develop and deliver a new environmental strategy, which would include:

- 1. Delivering a joined-up environmental plan, as the crises in climate and nature are deeply intertwined, requiring a plan that considers both together;*
- 2. Reducing emissions in line with 1.5°C, ensure emissions are reduced rapidly, for the best chance of limiting warming to 1.5°C;*
- 3. Not only halting, but also reversing the decline in nature, setting nature measurably on the path to recovery by 2030;*
- 4. Taking responsibility for our overseas footprint, both emissions and ecological;*
- 5. Prioritising nature in decision-making, and ending fossil fuel production and imports as rapidly as possible;*
- 6. Ensuring that no-one is left behind, by providing for retraining for people currently working in fossil fuel industries; and*
- 7. Giving people a say in finding a fair way forward through an independent and temporary Climate & Nature Assembly, representative of the UK population, an essential tool for bringing public opinion along with the unprecedented pace of change required.*
- 8. This council has already passed a Climate and Nature Emergency motion and is now taking tackling climate change locally as an important strand of its strategy going forward. Therefore supporting the bill is aligned with local, national and international recognition we must act decisively and timely to deal with the climate crisis.*

New Forest District Council therefore resolves to:

- 1. Support the Climate and Ecology Bill;*
- 2. Inform local residents, and local press/media of this decision;*
- 3. Write to MP's Sir Julian Lewis and Desmond Swayne to inform them that*

this motion has been passed, urging them to sign up to support the CE Bill, or thanking them for already doing so;

4. *Write to Zero Hour, the organisers of the cross-party campaign for the CE Bill, expressing its support (campaign@zerohour.uk)."*

Cllr Dowd will second the motion.

Under the provisions of Standing Order 42, the above motion, after being proposed and seconded (without speeches), should stand referred to the body within whose terms of reference the subject matter of the motion comes, or the Cabinet, Committees or Panels as the Council may determine.

The Chairman may allow the motion to be dealt with at this meeting if they consider it urgent, convenient or conducive to the despatch of business.

12. MEMBERSHIP OF COMMITTEES AND PANELS

To consider any changes to the membership of Committees or Panels that might be proposed by the political groups.

13. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT

14. EXCLUSION OF THE PUBLIC AND THE PRESS

Appendix 3 to the report at item 9 of the agenda – Development of a New Operational Services Depot at Hardley Industrial Estate, contains exempt information by virtue of Paragraph 3 in Part 1 of Schedule 12A of the Local Government Act 1972.

If required, the Chairman will move the following resolution:-

"That, under Section 100(A)(4) of the Local Government Act 1972, the public and the press be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part I of Schedule 12A of the Act and the public interest in maintaining the exception outweighs the public interest in disclosing the information."

Description of exempt information – Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Part II - Private Session

Members are reminded that reports and information relating to this session are not for publication and should be treated as strictly confidential.

Agenda Item 1

22 MAY 2023

NEW FOREST DISTRICT COUNCIL

Minutes of the Annual meeting of the New Forest District Council held on Monday, 22 May 2023.

- * Cllr Alan O'Sullivan (Chairman)
- * Cllr Neville Penman (Vice-Chairman)

Councillors:

- * Alan Alvey
- * Peter Armstrong
- * Geoffrey Blunden
- * Hilary Brand
- * Mark Clark
- * Steve Clarke
- * Jill Cleary
- * Keith Craze
- * Kate Crisell
- * Sean Cullen
- * Jack Davies
- * Steve Davies
- * Philip Dowd
- * Barry Dunning
- * Jacqui England
- * Allan Glass
- David Harrison
- * Matthew Hartmann
- * David Hawkins
- * John Haywood
- * Jeremy Heron
- * Nigel Linford
- * Patrick Mballa

Councillors:

- * Colm McCarthy
- * David Millar
- * Neil Millington
- * Ian Murray
- Stephanie Osborne
- * Adam Parker
- Dave Penny
- * Dan Poole
- Caroline Rackham
- * Alvin Reid
- * Joe Reilly
- * Janet Richards
- * Barry Rickman
- * Steve Rippon-Swaine
- * John Sleep
- * Michael Thierry
- * Derek Tipp
- * Neil Tungate
- * Alex Wade
- * Malcolm Wade
- * Christine Ward
- * Phil Woods
- * Richard Young

*Present

Officers Attending:

Kate Ryan, Grainne O'Rourke, Alan Bethune, James Carpenter, Sara Hamilton, Sue Jennings, Donna Langfield, Joe Tyler, Karen Wardle and Matt Wisdom.

Apologies

Apologies for absence were received from Cllrs Harrison, Osborne, Penny and Rackham.

1 MINUTES

RESOLVED:

That the minutes of the meeting held on 17 April 2023, be confirmed.

2 DECLARATIONS OF INTERESTS

There were no declarations of any disclosable pecuniary interests by Members.

3 VOTE OF THANKS TO THE OUTGOING CHAIRMAN

The Leader of the Council proposed that a vote of thanks be extended to the outgoing Chairman, Cllr O'Sullivan, for the admirable way in which he had carried out the duties of Chairman during the past municipal year. Cllr Penman seconded the motion.

RESOLVED:

That the thanks of this Council be extended to Cllr O'Sullivan for the admirable way in which he has carried out the duties of Chairman during the past municipal year.

4 OUTGOING CHAIRMAN'S STATEMENT

The Chairman thanked the Council for its kind words, and reported on the charity work undertaken in the past year, in support of the Fortune Centre of Riding Therapy and SCARF, who both offered facilities for young people which they may otherwise not have had the opportunity to take advantage of.

It had been a unique year, starting with the planting of trees to mark the beginning of the Green Canopy to represent the Queen's Platinum Jubilee. It was then with sadness that her passing was so soon afterwards and a Proclamation was read for the new King.

The Chairman expressed his thanks for the opportunity to represent the District over the last year and wished the Chairman-elect a successful year in office.

5 ELECTION OF CHAIRMAN

Cllr O'Sullivan moved that Cllr Penman be elected Chairman of the Council for the ensuing year. Cllr S Davies seconded the motion.

RESOLVED:

That Cllr Penman be elected Chairman of the Council for the 2023/24 municipal year, until his successor is elected at the Annual Council meeting in May 2024.

Cllr Penman signed the declaration of acceptance of office, which was formally witnessed by the Monitoring Officer. He was then invested with the Chain and Badge of Office before taking the chair.

6 ADDRESS BY THE CHAIRMAN OF THE COUNCIL

The Chairman thanked Members of the Council for electing him and in doing so paid tribute to the outgoing Chairman, Cllr O'Sullivan and his wife for their year in office.

He announced that his charities for the year would be:-

- The Minstead Trust, who nurture the unique potential of people with learning disabilities to support them to achieve greater independence and live happier and healthier lives.
- The Rainbow Trust, who provide emotional and practical support to families who have a child with a life threatening or terminal illness. The Southampton Team covers Hampshire, Dorset and the Isle of Wight.

7 APPOINTMENT OF VICE-CHAIRMAN

Cllr Penman moved that Cllr Hawkins be appointed Vice-Chairman of the Council for the ensuing year. The motion was seconded by Cllr Craze.

RESOLVED:

That Cllr Hawkins be elected Vice-Chairman of the Council for the 2023/24 municipal year, until his successor is appointed at the Annual Council meeting in May 2024.

Cllr Hawkins signed the declaration of acceptance of office, which was formally witnessed by the Monitoring Officer. He was then invested with the Badge of Office.

Cllr Hawkins returned thanks for his appointment.

8 APPOINTMENT OF LEADER OF THE COUNCIL

Cllr Rippon-Swaine moved that Cllr Cleary be appointed Leader of the Council for the four year period until May 2027. The motion was seconded by Cllr S Davies.

RESOLVED:

That Cllr Cleary be appointed Leader of the Council for the four year period until May 2027.

9 APPOINTMENT OF DEPUTY LEADER AND CABINET PORTFOLIO HOLDERS

The Leader informed the Council that:-

- (a) She had appointed Cllr S Davies as Deputy Leader of the Council and Vice-Chairman of the Cabinet.
- (b) The Cabinet Portfolio Holders and their respective Portfolios would be as follows:-
 - 1 – Leader – Cllr Cleary
 - 2 – Planning and Economy – Cllr Tipp
 - 3 – Environment and Sustainability – Cllr Blunden
 - 4 – Housing and Homelessness (Deputy Leader) – Cllr S Davies

5 – Community, Safety and Wellbeing – Cllr Poole

6 – Finance and Corporate – Cllr Heron

- (c) The full content of each Portfolio and the consequential changes to the Constitution arising from the above would be circulated to all Members in due course.

10 ELECTIONS 4 MAY 2023 - REPORT OF THE RETURNING OFFICER

RESOLVED:

That the report of the Returning Officer on the elections held on Thursday 4 May 2023, be received and noted.

11 POLITICAL BALANCE OF THE COUNCIL

The Council noted the political balance of the Council following the District Elections held on Thursday 4 May 2023, as follows:-

Conservative Group 26 (54.17%)

Liberal Democrat Group 14 (29.17%)

Independent Group 4 (8.33%)

Green Group 3 (6.25%)

Labour 1*

*Non-aligned.

12 COMMITTEE AND PANEL STRUCTURE

The Leader moved the recommendations as set out on the agenda, to approve the committee and panel structure and the terms of reference of each Overview and Scrutiny Panel. Cllr S Davies seconded the motion.

RESOLVED:

1. That the following number of seats on each committee and Panel in the Council's Constitution, be agreed:-

Committee / Panel	Number of Seats
Appeals Committee	13
Audit Committee	9
General Purposes and Licensing Committee	13
HR Committee	9
Planning Committee	13
Housing and Communities Overview & Scrutiny Panel	9
Place and Sustainability Overview & Scrutiny Panel	9
Resources and Transformation Overview & Scrutiny Panel	9

2. That the terms of reference of the Overview and Scrutiny Panels as circulated with the agenda, be agreed.

13 ALLOCATION OF SEATS AND APPOINTMENTS TO COMMITTEES AND PANELS

The Leader moved the adoption of the recommendations in the report, to approve the allocation of seats on committees and panels to the political groups where the political balance rules apply, and to appoint councillors to those committees and panels. Cllr S Davies seconded the motion.

RESOLVED:

1. That the allocation of seats to committees and panels in accordance with the principles set out in the report, be agreed as at the table at paragraph 4.4 of the report; and
2. That the Council appoints councillors to individual committees and panels, as identified in Appendix 1 of the report, for the four year period ending May 2027.

14 APPOINTMENT OF INDEPENDENT PERSONS

The Leader moved the recommendations in the report, to appoint Independent Persons under the Localism Act 2011, following a recruitment process. Cllr S Davies seconded the motion.

RESOLVED:

That the Council appoint the following Independent Persons for a four year term of office commencing 22 May 2023, until the Council's Annual Meeting in 2027:-

- Judy-Anne Clements
- Mark Edmonds
- David Hewitt

15 MEETING DATES

The Council noted the following meeting dates for the remainder of the 2023/24 municipal year, all commencing at 6.30 pm:-

- 10 July 2023
- 11 September 2023
- 9 October 2023
- 11 December 2023
- 26 February 2024
- 8 April 2024
- 13 May 2024 (Annual Meeting)

CHAIRMAN

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CABINET – 7 JUNE 2023
COUNCIL – 10 JULY 2023

PORTFOLIO: HOUSING AND HOMELESSNESS

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

1. RECOMMENDATIONS

- 1.1 That the Private Sector Housing Enforcement Policy, establishing the remedies and legislative powers available to Officers to ensure housing standards are met in the private housing sector, be approved.

2. INTRODUCTION

- 2.1 This report introduces the Private Sector Housing Enforcement policy, which sets out the Council's approach to supporting high standards of safe private rented sector accommodation, enforcing licensing where applicable and outlines the available legislation powers at the Council's disposal to remedy property related issues reported by residents of the district.
- 2.2 The Policy affirms available civil penalties and introduces charging for enforcement notices which is standard across the sector.

3. BACKGROUND

- 3.1 Through the delivery of the Council's Private Sector Housing Strategy the Council is committed to supporting our residents right to live in a safe and healthy home, through supporting and co-operating with landlords and using enforcement powers where required.
- 3.2 The Housing Act 2004 and associated secondary legislation sets out the duties and powers the Council has in relation to regulating housing standards in its capacity as the Local Housing Authority.
- 3.3 The enforcement policy is principally aimed at tackling poor unsuitable housing conditions and Landlords who do not comply with informal and supportive actions.

4. THE PRIVATE SECTOR HOUSING ENFORCEMENT POLICY KEY COMPONENTS

- 4.1 The policy is designed to ensure that all residents within the district are living in a safe and healthy home.
- 4.2 The policy reflects legislative and regulatory duties placed on the Council to keep housing conditions within the district under review and take appropriate action where identified, to ensure suitable standards are maintained. The Policy also supports the priorities listed in the Private Sector Housing Strategy.
- 4.3 The policy introduces a reasonable charge for enforcement notices and orders as prescribed by section 49 of the Housing Act 2004. The charges are based on the current hourly rate of officers plus any associated costs. Details of the calculation can be found in Appendix C of the policy. It would be typical for a charge to be levied at between £250 and £350. The aim of introducing this charge is to add an additional deterrent to landlords who do not co-operate with the Council.

- 4.4 The policy also introduces civil penalties which can be used as an alternative to prosecution for certain prescribed offences under the Housing Act 2004. These fines can be found in Appendix A of the policy.
- 4.5 The policy also introduces financial penalties applicable to specific legislation e.g. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015. The details of these charges can be found in Appendix A.
- 4.6 Any income received from civil/ financial penalties can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

5. PRIVATE SECTOR HOUSING STRATEGY

- 5.1 This Private Sector Housing Enforcement policy supports the Private Sector Housing Strategy in achieving high standards within the private rented sector.
- 5.2 In addition, working closely with landlords is also a key action in the strategy and to support this relationship the policy implications and changes were discussed at the Council's April Landlord Forum, and received positive support.

6. FINANCIAL IMPLICATIONS

- 6.1 There may be a financial impact to the Council if the most appropriate course of action is to carry out works in default, emergency remedial action or a demolition order. These are last resort approaches taken only after all other avenues of resolution are exhausted. The costs incurred are recoverable and are registered with the Local Land Charges Registry as a financial charge on any property where such works are carried out. Upon any future sale the Council would recover its costs.
- 6.2 Since 2018, the team were required to serve only two improvement notices which were both complied with and incurred no cost to the Council. It is not envisaged that this policy will result in an increase of costs to the Council, but the policy will provide adequate protection for the Council in case such action is required.

7. CRIME & DISORDER IMPLICATIONS

- 7.1 There are no crime & disorder implications arising from this policy.

8. ENVIRONMENTAL IMPLICATIONS

- 8.1 There are no environmental implications arising from this policy.

9. EQUALITY & DIVERSITY IMPLICATIONS

- 9.1 The Council recognises that promoting equality and equal access to quality and safe accommodation is a key component to the Private Sector Housing Strategy and the Enforcement Policy. There is a likelihood that tenants reporting issues to the Council will experience health and welfare issues because of poor housing conditions and ineffective management of properties.

9.2 Through implementation of the policy the Council will support tenants resolve such issues.

10. HOUSING AND COMMUNITIES OVERVIEW AND SCRUTINY PANEL COMMENTS

10.1 The predecessor Panel (Housing and Homelessness) supported the proposed Private Sector Housing Enforcement Policy.

11. PORTFOLIO HOLDER COMMENTS

11.1 I thank the officers for a thorough and clearly laid out new Enforcement Policy and note that this has been reviewed by the Landlord Forum.

12. CABINET COMMENTS

12.1 The Cabinet welcomed and supported the proposed policy and recognised the importance of working with private landlords in order to ensure the provision of good quality private sector housing for residents in the District.

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Background Papers:

Private Sector Housing Enforcement Policy

[Cabinet agenda, reports and minutes – 7 June 2023](#)

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Private Sector Housing Enforcement Policy



Name of policy	Private Sector Housing Enforcement Policy
Purpose of policy	<p>This Policy details how New Forest District Council (the Council) will regulate standards in Private Sector Housing and tackle empty homes in the New Forest. It also provides a background to the legislation and guidance on which it is based.</p> <p>It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council Officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.</p> <p>Our aim is to raise standards in Private Sector Housing throughout the district, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.</p> <p>In applying this policy, we must remain impartial to both landlord and tenant to be fair to both sides and give help and advice to achieve our aim, but we must also be firm in taking enforcement action if appropriate.</p>
Policy applies to	This policy applies to all persons responsible for property within the private rented sector to include tenants, landlords, owners, leaseholders, freeholders, managing agents, letting agents, estate agents, property licence holders and any other person with a legal or financial interest in rented premises.
Lead officer	Private Sector Housing Manager
First Issued	May 2023
Latest update	V1.0 New Policy
Review period	At least every three years from date of issue. Otherwise, as required by legislative, contractual, or organisational changes.
Update overview	V1.0 New Policy

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1. Introduction

This policy sets out New Forest District Council's approach to enforcing standards in the private sector housing sector. This will be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action towards those activities that pose the most serious risk or create the most danger to residents; transparency about how we operate and what those regulated may expect; and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities.

The Council will provide awareness, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant legislation before embarking on the enforcement process

Effective enforcement is important as a means of maintaining public confidence in the quality and safety of private sector housing within the district and supporting our residents right to live in a safe and healthy environment.

Enforcement powers are part of the statutory obligation placed on the Council to keep housing conditions within the district under review and take appropriate action where identified to ensure suitable standards are maintained.

Legislation, national guidance and local policies provide framework on which Private Sector Housing enforcement is undertaken.

Objectives

Private Sector Housing enforcement is principally aimed at tackling poor and unsuitable housing conditions.

The nature and intensity of any investigation will differ on each case dependant on the type of dwelling and issue(s) reported/ identified.

In normal circumstances enforcement action will be carried out with the objectives to ensure that:

- Tenants of private rented accommodation live in homes free of hazards that affect their health and safety
- Houses in Multiple Occupation (HMOs) that are required to be licensed are licensed, and licence conditions are met
- Empty Homes are tackled to bring them back into use and to ensure that the amenity of the area is not affect, the property is safe and secure and not causing a statutory nuisance.
- Private rented accommodation meets the minimum energy efficiency standards.
- Private rented sector tenants or residential occupiers are not subject to unlawful eviction or harassment under the Protection from Eviction Act 1977.
- Letting Agents meet the legal requirements that apply to their business.

2. What to expect from us

Landlords

- We will advise you of the legislation and help you understand how you can comply with it
- We will advise you of any action you need to take to comply with the legislation and will ask you to respond with your proposal of how you intend to comply with any requirements of any Notice
- If we are satisfied with your proposal, we will work with you to comply within agreed timescales
- If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances
- In making any decision to prosecute we will have regard to how serious the offence is, the benefit of enforcement action and whether some other action would be appropriate
- A charge will be made for the service of the Notice

Tenants

- We will expect you to advise your landlord of any issues within your property, preferably in writing (including email), before contacting us.
- We will advise you as to what action we can take and advise you of the expected timescales
- We will expect you to cooperate with the landlord to get the works carried out and to advise/update us of any action taken by the landlord

Owners

- We will expect owners to maintain the properties they live in and own
- Enforcement action will be considered if there is an imminent risk to a person's life

Owners of Empty Homes

- We will work proactively with owners of empty homes to encourage and assist in bringing their empty homes back into use
- Where an empty property is having detrimental impact on the neighbouring area enforcement action will be considered as appropriate
- If owners fail to take responsibility for their properties, are not willing to engage or negotiations have failed, and where there is little prospect of a property being brought back into use voluntarily, enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered

3. Enforcement policy and principles

Role of the Private Rented Sector

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. To adequately meet that need, we must strive to provide professionally managed and well-maintained homes. We will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours, or visitors to a property.

Inspections and other visits

In most cases, officers will undertake an inspection of the property to establish whether any offences or breaches have been committed and/or to ascertain whether any other parts of the relevant legislation need be applied.

Inspections and other visits will take place in response to a request for service or where poor conditions have been brought to our attention. Following an inspection, the landlord or his or her agent will be contacted to discuss the findings and wherever possible to encourage and reinforce good practices.

Authority to investigate or enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the Council has in relation to regulating housing standards in its capacity as the Local Housing Authority. Powers are also contained in the Housing Act 1985, as amended, and other legislation, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961, the Housing and Planning Act 2016, Deregulation Act 2015, Anti-Social Behaviour Crime and Policing Act 2014, Tenant Fees Act 2019. This is not a complete list of the powers available.

Authorisation of officers

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the delegated powers given to Officers in this regard.

Power of Entry

The Council's authorised officers have several powers of entry. The Housing Act 2004, section 239(3) or (7), is primarily used for this purpose. However, officers do also have powers of entry under the legislation listed below and these may be used instead of the Housing Act 2004 where appropriate to the investigation.

- Environmental Protection Act 1990 – Schedule 3, para. 2
- Prevention of Damage by Pests Act 1949 – Section 22
- Public Health Act 1936 – Section 287
- Building Act 1984 – Section 95
- Local Government and Housing Act 1989 – Section 97

The power of entry is to enter the land or premises at any reasonable hour for the purpose of carrying out an inspection and/or investigation either required by the legislation or to ascertain if any part of the relevant legislation should apply.

3. Enforcement policy and principles

For most of the above powers of entry, a minimum of 24 hours' notice of the intended entry must be given to the owner/landlord or responsible party for the property. The exceptions to this being sections relating to licenced HMOs, houses required to be licensed under Part 3 and HMO management regulations respectively, which are:

- Under Local Government and Housing Act 1989, 7 days' notice must be provided.
- Section 239(7) of Housing Act 2004 does not require any notice to be given, if the purpose of the inspection is in relation to sections 72, 95 or 234.

If officers are refused entry, the Council has the right to apply to the Magistrates Court for a warrant to enter the land/property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the matter under investigation.

Any person who wilfully obstructs an authorised officer acting in exercise of a right of entry commits an offence and may be liable on summary conviction to a fine, the level of which is specified by the respective legislation:

- Level 4 – Housing Act 2004, Building Act 1984
- Level 3 – Environmental Protection Act 1990, Local Government & Housing Act 1989
- Level 1 – Public Health Act 1936, Prevention of Damage by Pests Act 1949

Information Gathering

There are two main legislative tools used for gathering information as part of private rented sector enforcement investigations:

- Section 16 Local Government (Miscellaneous Provisions) Act 1976 - (Requisition for Information Notice)
- Section 235 Housing Act 2004 - (Requisition for Documents Notice)

Failure to respond to either of the above notices within the specified time frame is a criminal offence and may lead to prosecution. These notices do not register as a Land Charge and are not included on the Council's Enforcement Register.

In addition to the above there is also the following tool available to the Council.

- Regulation 37 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – (Compliance Notice)

Failure to respond to the above is a breach of the regulations and so may incur a financial penalty.

We may also, as part of gathering information during an investigation, refer to information held within other parts of the Council such as Council Tax records and Electoral Register, as well as some external databases such Land Registry records or Ministry of Housing and Communities & Local Government's (MHCLG) Rogue Landlord Database.

Possible Outcomes

Some issues reported to the Private Sector Housing Team are of a minor nature and formal action cannot be justified, so it is important to be aware that the Council may not address all disrepair items and will only act when it is expedient to do so. Action will only be taken where

3. Enforcement policy and principles

the hazards identified are of sufficient severity. The outcome of each case will be based on the individual circumstances of each investigation.

The possible outcomes are:

- **No action taken** – either the reported issue is not within the control of the legislation, or the reported issue is considered to pose a minimal hazard and/or impact and that it is not expedient to pursue.
- **Informal action** – Landlords will be engaged informally initially, followed up by correspondence sent to the relevant party identifying the hazard(s) or issues of concern and inviting them to undertake work to address these, within an appropriate time. Many people do take the positive steps required to rectify the situation and formal action is only necessary in a small number of cases.
- **Formal action** – If we are unable to resolve the matter through informal action or the hazard(s), breach or circumstances is/are so serious, the Council has the power and, in some circumstances a duty, to take formal enforcement action. The nature of the hazard(s), breach or circumstances will determine the type of formal action chosen by the Council.

Enforcement action will be consistent with the Council's overall Housing Strategy, Private Sector Housing Strategy and the Empty Homes Strategy. The Private Sector Housing Team will adopt a co-ordinated approach with other Council services and other relevant agencies, in particular with preventing and dealing with homelessness.

New Forest District Council Officers with the Delegated Powers to approve or action the powers contained within this policy are:

- Strategic Director – Housing, Communities and Governance
- Assistant Director – Housing
- Private Sector Housing Manager
- Housing Standards Officer

4. Formal enforcement action

Enforcement Notice & Orders

A number of different enforcement notices & orders are available to the Council under various legislation, as detailed below.

Housing Act 2004

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS)

The HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe and are known as Category 1 hazards when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as Category 2 hazards. HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling. It is applied to all residential premises, whether owner-occupied or rented.

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the HHSRS (Part 1 of the Housing Act 2004).

The Council has a duty to take appropriate action in response to a Category 1 hazard. (When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail below.)

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to act in response to Category 2 hazards.

Enforcement notices & orders under Part 1 of the Housing Act 2004 are briefly outline below:

Hazard Awareness Notice

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to but does not impose any further requirements.

The notice is in effect from the date the notice was served and there is no legal right of appeal.

Improvement Notices

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to.

It also imposes requirements to undertake works as specified to mitigate or minimise the hazard(s). The notice will stipulate the times by which works are required to commence and be completed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the First Tier Tribunal (FTT) within 21 days from the date the notice was served.

Suspended Improvement Notice

The Council has the power to suspend an Improvement Notice once served and will consider this course of action where it is reasonable in the circumstances, to do so.

4. Formal enforcement action

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

Prohibition Orders

This is available for both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost. It will state the nature of the hazard(s), residential premises it relates to and state the purpose for which a part or whole of the premises are prohibited to be used.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the First Tier Tribunal (FTT) within 28 days from the date the notice was served.

Suspended Prohibition Order

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable in the circumstances to do so.

Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

Emergency Remedial Action

This is only available for category 1 hazards and allows the Council to immediately undertake works at the premises to mitigate or minimise the hazard.

A notice will be served within 7 days of the action being taken and will state the nature of the hazard(s), residential premises it relates to and date on which the work was or is to be started.

The Council is permitted under the Act to recover any expenses in taking the emergency remedial action

The notice is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the notice was served.

Emergency Prohibition Order

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and clearly stipulate the purposes (which may be for all purposes) for which a part or whole of the premises are prohibited to be used.

The order is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

Demolition Order

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and impose a requirement that the premises be vacated and demolished.

The order will specify the times on which the order becomes operative and demolition must be completed by the Council following the order becoming operative or the date on which the property is vacated.

4. Formal enforcement action

There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

Power to Charge for Enforcement Action

The Housing Act 2004 (section 49) provides local housing authorities with the power to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action.

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Charges will be made on a cost recovery basis, using the current hourly rates of the officers involved, plus any associated costs including travelling costs, travel time, copying charges and any relevant 'on costs' for that officer.

Details of this calculation and the minimum charge can be found in Appendix C. Where the time reasonably incurred in carrying out the above actions means that this minimum charge is exceeded, then the Council may charge for the service of that particular notice at the higher calculated rate. This minimum charge will normally be reviewed annually to allow for inflation and other relevant cost increases.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

Tenure

The HHSRS and the associated enforcement options apply to all tenures of housing.

It is generally considered that owner-occupiers are primarily responsible for the repair and maintenance of their own home. They are usually in a position to make informed decisions concerning their own safety and welfare and the necessary maintenance and improvement of their home.

Tenants and particularly those occupying private rented accommodation are less able to do so and the condition, repair and safety of such accommodation is the primary responsibility of some other person; namely the property owner, landlord or letting agent.

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

- **Owner Occupiers**

In the first instance owner-occupiers concerned about the condition of their home will normally be provided with relevant telephone advice or information via the Council's website.

Formal visits and inspections of owner-occupied properties will only normally be undertaken if there is a concern that the condition of the property gives rise to a high risk for the safety of the occupants, they are considered to be vulnerable or the property possesses a high risk to persons other than the occupant's i.e. neighbouring properties or passers-by.

If there is a need to move beyond the provision of advice, it is anticipated that a Hazard Awareness Notice is likely to be the most appropriate course of action. However, the use of

4. Formal enforcement action

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

- **Leaseholder/ Freeholder**

Circumstances can arise where a long leaseholder is experiencing ongoing poor housing conditions, where a higher landlord, such as a freeholder or management company, are not willing to take the necessary steps to remedy the housing defects for which they are legally responsible.

Formal visits, inspection and any appropriate enforcement action will only be considered where:

- the leaseholder has made reasonable efforts to remedy the matter with the higher landlord,
- that action has proved ineffective
- the higher landlord is responsible for remedying the said defect(s) likely to give rise to a Category 1 or 2 hazard.

- **Registered Providers of Social Housing (RPs)**

Registered Providers of Social Housing (RPs) exist to provide suitable and properly maintained accommodation for their tenants. RPs 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 for registering any complaints about service failure.

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

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

If the Council determines that it is appropriate to take action, it will then normally notify the RP that a service request has been received and/or a hazard identified and seek the RP'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**

Most landlords provide decent quality, well managed properties to rent. Should a private tenant have concerns about the condition or safety of their rented home the Council will normally firstly advise them to contact their landlord or letting agent directly. This ensures that landlords can resolve any defects in the first instance.

4. Formal enforcement action

If the Council needs to visit a property, the landlord or his or her agent will be contacted following the inspection to discuss the findings and seek the landlord/ agents' proposals for remedying the problem.

The Council will not normally need to take any further action to discharge its duties as long as:

- Satisfactory proposals and timescales for the work to be carried out are received and agreed within 14 days of contact, and
- The work is carried out to a satisfactory conclusion within agreed timescales.

If the Council does not receive a satisfactory response or the works are not completed within the agreed timescales, then it will proceed with formal action by taking the most appropriate enforcement action in accordance with this policy.

- **New Forest District Council Housing Stock**

Council owned and managed properties are provided to tenants in keeping with the Decent Homes Standard and quality and safety guidance issued through the Social Housing regulatory regime and other compliance legislation. The Housing Maintenance service has written arrangements for reporting problems, clear response times and systems for registering any complaints about service failure. Their performance is also scrutinised by the through a corporate governance process and ultimately the Housing Ombudsman and Regulator for Social Housing. The Private Sector Housing team works with colleagues from the Council's Housing Maintenance team and, at their request, can provide advice on housing standards required in their stock. Formal enforcement action cannot be taken by New Forest District Council against itself.

Retaliatory Evictions

Retaliatory eviction refers to a situation where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice seeking possession.

The Deregulation Act 2015 introduced some protection for tenants against unfair eviction. In summary if the Council serves an Improvement Notice or takes Emergency Remedial Action in relation to a property, the landlord will be unable to rely on using the section 21 'no-fault' notice seeking possession procedure for 6 months from the date the action was taken by the Council.

The Private Sector Housing Team will work with landlords to understand their obligations and the implications of this legislation and will work alongside the Council's Housing Options team and other advice agencies to provide support, advice and guidance to the tenant in these circumstances.

Failure to Comply with Notices

If a Notice is complied with, no further action will be taken. However, if the Notice is not complied with, the Council will consider the following options:

- Prosecution
- Carrying out the works in default
- Carrying out the works in default and prosecution

4. Formal enforcement action

- Whether a simple caution is appropriate
- Financial Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine.

The Council will take action to recover its costs in connection with works in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

Revocation and Variation of Notices

The Council must revoke an Improvement Notice once the Notice has been complied with. If part of the work required within the Notice is carried out, then the Notice can be varied.

Review of Enforcement Action

If there is a change in the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action should be reviewed by the investigating officer, in consultation with the private sector housing manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

Prosecution

Where the Council is satisfied that an offence has been committed, whether by failure to comply with the requirements of a notice served or a direct breach of the relevant legislation has occurred, the case may be considered for prosecution. Prosecutions will be sought where it is expedient to do so and there is a public benefit to taking the case to court.

Prosecutions cannot be undertaken on cases where a Civil Penalty Notice has already been issued for the same offence.

Works in Default

Works in default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Private Sector Housing Manager who will consider approval based on the following information;

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractor's costs, the cost of any specialist reports, supervisory costs etc.)

In the case of Officer time, the Council will calculate costs as follows:

- The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database

4. Formal enforcement action

- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses incurred are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in rent.

Simple Cautions

Officers may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions can only be issued where:

- There is evidence an offender is guilty
- The offender is eighteen years of age or over
- The offender admits they have committed the crime
- The offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

5. Other housing related enforcement action

Civil Penalties/ Penalty Charges

The Housing & Planning Act 2016 introduces a range of measures to tackle rogue landlord practice including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain prescribed offences under the Housing Act 2004 and other legislation.

Income received from financial penalties can be retained by the local housing authority if it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- 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)

The Council will impose Civil Penalties where permitted, in accordance with its Statement of Principles, which can be found at Appendix A and having regard to relevant government guidance.

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. To achieve a conviction in the magistrates' court, the Private Sector Housing Team must be able to demonstrate beyond reasonable doubt that the offence has been committed.

In deciding whether to prosecute an offender or whether to issue a financial penalty, the following factors may be considered:

- The seriousness of the offence - *Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.*
- Where a significant financial penalty is determined to be a greater sanction than prosecution - *A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties, if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case*

5. Other housing related enforcement action

- Where New Forest District Council considers that a banning order may be an appropriate sanction for a landlord, in addition to prosecution - *A banning order may only be applied for where a landlord has been convicted for committing certain prescribed offences and therefore if this is considered an appropriate sanction, may lead to a presumption in favour of prosecution in such cases.*

The reason for a particular course of action being pursued will be documented and provided to the Strategic Director for Housing, Communities and Governance and the Council's solicitor for approval. This will ensure that the proposed action meets the tests set out in the Code for Crown Prosecutors and that the preferred sanction is the most 'appropriate and effective' course of action.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require landlords to:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671.
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.

A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. This provides the landlord with the opportunity to respond to the alleged failures.

If a local housing authority has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is

5. Other housing related enforcement action

required, the local housing authority may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.

Otherwise, they must serve a remedial action notice requiring the landlord to take the necessary action within 28 days. Should a landlord not comply with the notice the local housing authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have rights to make written representation and appeal against remedial action. The local housing authority can recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.

The Council will impose Financial Penalties where permitted, in accordance with its Statement of Principles, which can be found at Appendix B and having regard to relevant government guidance.

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Minimum Energy Efficiency Standards (MEES)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Minimum Energy Efficiency Standards (MEES) are designed to tackle the least energy efficient properties, setting a minimum standard of Energy Performance Certificate (EPC) band 'E' for private rented accommodation.

A landlord with a property with an EPC rating below an E (F&G) are required to improve their properties with energy efficiency improvements to bring the property up to at least an E rating before the property is rented out, unless the landlord qualifies for an exemption and the exemption is registered on the Public Exemptions Register.

Non-compliance with these Regulations *may* result in the imposition of a financial penalty by the Council in accordance with a specific Statement of Principles which can be found at Appendix B.

The Smoke and Carbon Monoxide Alarms (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords to ensure that under certain circumstance tenanted properties are provided with smoke and carbon monoxide alarms.

Where a local housing authority has reasonable grounds to believe that a landlord is in breach of one or more of the duties under these regulations, the authority *must* serve a remedial notice on the landlord. A remedial notice will specify the premises it relates to and set out the duties the Council consider the landlord have failed to meet and the remedial action required to be taken by the landlord within 28 days of the notice.

There is a right to make representation in writing to the Council following the service of the notice which must be made within 28 days from the date of service.

Failure to comply with the remedial notice imposes a further duty on the Council to arrange remedial action.

5. Other housing related enforcement action

Non-compliance with these Regulations *may* result in the imposition of a financial penalty in accordance with a specific Statement of Principles which can be found at Appendix B.

The Redress Scheme for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

The Redress Scheme for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 requires that a person who engages in lettings agency or property management work must be a member of a redress scheme for dealing with complaints.

Non-compliance with these Regulations may result in the imposition of a financial penalty in accordance with the specific Statement of Principles, which can be found at Appendix B.

Rent Repayment Orders

In addition to the powers provided by the Housing Act 2004 to apply Rent Repayment Orders (RROs) in regard to offences related to HMOs as outlined at section 73 and 74 of Housing Act 2004, the Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6th April 2017;

- 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
- 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

The maximum amount of rent that can be recovered is capped at 12 months. A criminal standard of proof is required. The Council must apply to the First Tier Property Tribunal for an RRO. New Forest District Council will consider application for RROs in all cases where a successful prosecution has been achieved.

Houses in Multiple Occupation

The Housing Act 2004 introduced a national mandatory licensing system for Houses in Multiple Occupation (HMO) occupied by 5 or more people who share basic facilities.

Due to the way they are occupied, HMOs often pose particular hazards in relation to fire, overcrowding and property management and maintenance. The aim of proactive licensing is to ensure that every licensable HMO is safe for the occupants and is properly managed.

The responsibility for applying for a licence rests with the person having control or the person managing the property, licences normally cover a period of three to five years and the licence is subject to an administration fee to cover the cost of the licensing issuing process.

Those applying for a licence must satisfy a self-certification 'fit and proper person' 'test' and the property must be suitable for the number of proposed occupants in relation to the

5. Other housing related enforcement action

provision of facilities, it shall be subject to appropriate management and also possess adequate fire precautions.

- **Licensing Offences**

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

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) by a First-tier Tribunal (Property Chamber) under sections 96 and 97 of the Housing Act 2004. The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the landlord has received rent that has been paid by Housing Benefit.

Where an unlicensed HMO is identified, 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.

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.

Generally, any breach of licence condition will be dealt with informally initially. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue legal proceedings.

Special Powers in Relation to Houses in Multiple Occupation (HMOs)

- **Interim and Final Management Orders**

An Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. The circumstances in which an order can be made are discussed below. In particular, the IMO allows the Council possession of the property against the immediate landlord, and subject to existing rights to occupy can;

- Do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- Spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property
- To create new tenancies (with the consent of the landlord).

5. Other housing related enforcement action

Under an IMO the Council must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force. It must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant person.

The Council must take enforcement action in respect of a licensable property (which means an HMO subject to Part 2, or other residential property subject to Part 31) by making an IMO if:

- The property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future. An IMO may not, however, be made on these grounds if an effective application is outstanding with the authority for the grant of a licence or a temporary exemption notice or if such a notice is in force
- The Private Sector Housing Team is satisfied that the Health and Safety Condition isn't met and, therefore, it would not have granted an application for a licence
- The Private Sector Housing Team intends to revoke the licence on one or more of the grounds specified in Parts 2 or 3 of the Act, other than the property has ceased to be licensable, and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)
- The Private Sector Housing Team is satisfied that when the licence is revoked the Health and Safety Condition test will be met

- **Final Management Orders**

In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years. Such powers will only be used in exceptional circumstances and will be agreed by relevant senior manager as per the Council's scheme of delegation.

A FMO cannot be made unless an IMO or another FMO was already in force. An FMO transfers the management of the house to the Private Sector Housing Team for the duration of the order. In particular, the FMO allows the Council;

- Possession of the property against the immediate landlord, but subject to existing rights of occupation
- To do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property;
- To create new tenancies (without the consent of the landlord).

- **Management order Management Schemes**

The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

5. Other housing related enforcement action

- The amount of rent it will seek to obtain whilst the order is in force
- Details of any works which the Council intends to undertake in relation to the property
- The estimate of the costs of carrying out those works
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time
- In general terms how the authority intends to address the matters that caused the Council to make the order. The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

- **Temporary Exemption Notices**

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. In exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the HMO non-licensable within 3 months.

- **Management Regulations**

Management Regulations made under the Housing Act 2004 imposes duties on landlords and managers of HMOs (whether subject to licensing or not). There are no powers to service notice under the Management Regulations, but the Local Authority can prosecute or issue a financial penalty for breach of the regulations.

Empty Homes

Empty homes can be a blight on our community as well as a wasted housing resource. Our approach will be to work alongside owners of empty homes with a solution-based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home with due regard given to our Empty Homes Strategy.

The Council will provide advice and assistance to the owners of empty properties to help bring the home back into use. It will however also consider using any of the following enforcement options, if necessary:

- **Empty Dwelling Management Orders (EDMO)**

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.

5. Other housing related enforcement action

- **Compulsory Purchase Orders (CPO)**

CPOs can be made under s17 of the Housing Act 1985 or s226 of the Town & Country Planning Act 1990. They allow local authorities to purchase properties in specific circumstances without the owner's consent.

- **Enforced Sale procedure**

The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register a charge against the property and should the owner still not pay this debt, the Council can commence legal proceedings to sell the property to recover the costs. An enforced sale under a different procedure can also be used to recover Council Tax arrears.

Tenant Fees Act 2019

Landlords or agents are no longer able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make certain payments in connection with a tenancy. In the legislation "in connection with a tenancy" is defined as requirements:

- in consideration of, or in consideration of arranging for, the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy;
- on entry into a tenancy agreement containing relevant provisions;
- pursuant to a provision of a tenancy agreement, or pursuant to an agreement relating to such a tenancy with a letting agent, which requires or purports to require the person to do any of those things in the event of an act or default of the person or if the tenancy is varied, assigned, novated or terminated; and
- as a result of an act or default related to the tenancy unless pursuant to, or for breach of, a tenancy agreement or other agreement; and
- in consideration of providing a reference for a former tenant.

Permitted payments are defined in the Act as:

- the rent
- refundable tenancy deposit capped at no more than five weeks rent, where the annual rental income is below £50,000 and six weeks rent where an annual rental income is above £50,000
- refundable holding deposit (to reserve a property) capped at no more than one weeks rent
- payment in the event of a default of the tenant
- payments on assignment, novation or variation of a tenancy when requested by the tenant, capped at £50 or reasonable costs incurred if higher
- payments associated with early termination of a tenancy, when requested by the tenant
- payments in respect of utilities, communication services and council tax

5. Other housing related enforcement action

A breach of the legislation will usually be defined as a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this will be pursued as a criminal offence. Upon conviction, the penalty is an unlimited fine and is a banning order offence under the Housing and Planning Act 2016.

Where an offence is committed, the Council may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, the Council will have discretion over whether to prosecute or impose a financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

The final determination of any financial penalty will be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Further information on Civil Penalties are found in Section 14 of this policy. The application of such civil penalties and decision matrix is attached at Appendix A.

Protection Against Eviction 1977

Under S1(2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy. In the main, an eviction Notice, followed by a Possession Summons, then a Possession Order is the usual procedure for landlords to regain possession of a premises. Even when the Possession Order expires, the tenants can remain in occupation until the landlord obtains a Bailiffs Warrant of Execution. Only the County Court Bailiff can carry out the eviction.

The Council can prosecute for breaches of the Protection Against Eviction Act 1977 and such prosecutions can amount to a criminal offence. Housing Standards Officers will work alongside the Housing Options team and support providers such as Citizens Advice and Shelter in order to gather evidence and undertake prosecution where required.

Environmental Protection Act 1990 Section 80 Abatement Notice

This shall be served where a Local Authority is satisfied that a statutory nuisance (as prescribed in section 79) exists or is likely to occur or recur.

A notice may impose requirements to; abatement of the nuisance or prohibition or restricting its occurrence or recurrence, execution of such works as may be necessary for that purpose, or both.

The notice will specify time or times within which the requirements are to be complied with. The notice is in effect from the date on which it was served. There is a right of appeal which must be made to the Magistrates court within 21 days from the date on which the notice was served.

Prevention of Damage by Pests Act Section 4

This may be served where it appears to a Local Authority that steps should be taken for the destruction of rats or mice on land or otherwise for keeping the land free from rats or mice.

5. Other housing related enforcement action

A notice may impose requirements to undertake any form of treatment specified and / or carry out repairs or other works as specified. The notice will specify the times by which any treatment and/or works are to be carried out.

The notice is in effect from the date on which it was served. There is no right of appeal to this notice.

Building Act 1984 Section 59

This shall be served where it appears to the Local Authority that there is; insufficient provision for drainage, drainage infrastructure as specified in (1)(b) is defective to the point of admitting subsoil water, drainage infrastructure is in such a condition as to be prejudicial to health or a nuisance, or former drainage infrastructure no longer in use is prejudicial to health or a nuisance.

A notice may impose requirements to either; make satisfactory provision for drainage, undertake works as may be necessary for renewing, repairing or cleansing of the relevant part of the drainage infrastructure, or removal or otherwise rendering innocuous the disused parts. The notice will specify the times by which any works are to be executed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

Public Health Act 1936 Section 83 & 84

A notice shall be served where a local authority are satisfied that:

- Sect. 83 - any premises are in such a filthy or unwholesome condition as to be prejudicial to health and/or verminous
- Sect. 84 – any article in any premises is in so filthy a condition as to render cleansing, purification or destruction necessary, or is verminous or having in contact with is likely to be verminous.

A notice may impose requirements to undertake work specified to remedy the condition of the premises and/or articles within the premises. The notice will specify the times by which any works are to be executed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

6. Monitor and review

This enforcement policy will be subject to regular review and amendment when necessary to accommodate new legislation, guidance, or local needs. The policy provides authority to the Strategic Director for Housing, Communities and Governance to make minor alterations in consultation with the Portfolio for Housing.

This enforcement policy will be available on the council's website at www.newforest.gov.uk

Appendix A

Statement of principles for determining Civil (financial) penalties for Housing Act and other offences

Introduction

This statement sets out the principles that the New Forest District Council (the Council) will apply in exercising powers to impose a Civil (financial) penalty for specified criminal offences under the Housing Act 2004.

The Council's power to impose financial penalties.

Legislation and guidance has been introduced which provides local housing authorities with a power to charge a financial penalty in prescribed circumstances.

The Ministry of Housing, Communities and Local Government (MHCLG) publication is statutory guidance to which local housing authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

The Council has a wide discretion in making this determination and this policy provides further guidance as to how a penalty will be calculated. In developing its policy the Council has had regard to principles set out in a number of publications including the Magistrates' Court Sentencing Guidelines. In anticipation of further legislative provisions being introduced enabling the imposition of a financial penalty, the principles detailed in this document will be applied in setting any charge.

Scope of the document

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences. The Housing Act 2004 Act prescribes the procedures that a local housing authority must follow before imposing a financial penalty, details of the appeal process and the procedure for recovery of the penalty.

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord / agent.
- Whether the non-compliance was deliberate or resulted from a matter of which the landlord / agent should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord / agent concerned.
- Any history of previous contraventions of Housing or Housing related legislation.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord / agent for the non-compliance.
- The cost incurred by the Council in enforcing the relevant provision.

Appendix A

- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

Where a financial penalty is charged the Council must have regard to a statement of principles published and in place at the time when the breach in question occurred. The Council may revise this statement of principles and where it does so, it will publish the revised statement.

General principles and factors to be applied to the imposition of a financial penalty.

The guidance on the imposition of financial penalties advises local authorities to take account of the following seven factors when calculating the amount of any penalty. The Council will take these seven factors into account when determining the amount of any financial penalty to be imposed:

1. Severity of the offence.
2. Culpability and track record of the offender.
3. The harm caused to the tenant.
4. Punishment of the offender.
5. Deter the offender from repeating the offence.
6. Deter others from committing similar offences.
7. Remove any financial benefit the offender may have obtained as a result of committing the offence.

Procedure for imposing a financial penalty

The procedure for imposing a financial penalty is set out in Schedule 13A of the Housing Act 2004. Where a penalty is considered the appropriate sanction, the level of penalty will be set by reference to the 'Financial Penalty Matrix' detailed below in Table 1.

The Financial Penalty Matrix accounts for the seven factors detailed in the guidance at fig 54 above and consolidates it into four headings. The resultant total 'score' in column 'A' of table 1 is then transferred to one of the eleven possible penalty bands detailed in Table 2.

Each band provides a range of possible penalties with the lowest band having a penalty of up to £250 and the highest band imposing a penalty up to the maximum of £30,000.

The maximum penalty for any band will be assumed to apply unless there are accepted mitigating circumstances associated with the case. These may include, but not limited to:

- No previous convictions or no relevant or recent convictions
- Steps voluntarily taken to remedy the problem
- A high level of cooperation with the investigation, beyond that which will always be expected
- Good previous record of maintaining the property
- Self-reporting of the issue, cooperation and acceptance of responsibility
- Good character or exemplary conduct
- Mental health issue or learning disability is linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment

Appendix A

In all cases a view will be taken on the level of the penalty calculated from the matrix, compared to the offence committed and if necessary, the penalty will be adjusted, subject to appropriate documented evidence. Prior to the final determination of a penalty the Council will satisfy itself that the penalty is just and proportionate. Decisions to adjust a civil penalty will be taken and documented by the Private Sector Housing Manager.

Where the offender is issued with more than one financial penalty, the Council will have regard to guidance from the definitive guideline on Offences Taken into Consideration and Totality and consider the totality of the penalties.

If the aggregate total of the penalties is not considered just and proportionate, the Council will consider how to reach a just and proportionate financial penalty.

The statutory guidance advises that local authorities should use their existing powers as far as possible, to make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, either singular or cumulative, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained, or the offender has supplied, any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay.

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

Where it is determined that a financial penalty is appropriate the Council will serve a 'notice of intent' on the person responsible for the offence within 6 months of the offence being evidenced

The Council will invite representations which must be made within 28 days of receipt of the 'notice of intent'. Having considered any representations received the Council must then decide if it still wishes to impose a civil penalty and, if so, the amount. If a civil penalty continues to be considered appropriate a 'final notice' will be served.

A person who receives a final notice may appeal to the First-tier Tribunal against the decision to impose a penalty; or the amount of the penalty. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Appendix A

Civil Penalties Matrix – Housing Act 2004 and other offences (Table 1)

Financial Penalty Matrix						
	<u>Score = 1</u>	<u>Score = 5</u>	<u>Score = 10</u>	<u>Score = 15</u>	<u>Score = 20</u>	<u>Total (A)</u>
Factors						
1. Severity of offence and culpability	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.	
2. Deterrence of offender and others	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.	
3. Removal of financial benefit	No significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2- 3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	

Appendix A

<p>4. Harm to the tenants (x2 weighting)</p>	<p>Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.</p>	<p>Likely some low-level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact</p>	<p>Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence</p>	<p>High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants. more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.</p>	<p>Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants. exposed. Large HMO (5+occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).</p>	
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Appendix A

<u>Score Range Total Score in Column A</u> <u>(Table 2)</u>	<u>Penalty</u>
<6	£250
6<11	£500
11<21	£750
21<31	£1,000
31<41	£2,500
41<51	£5,000
51<61	£10,000
61<71	£15,000
71<81	£20,000
81<91	£25,000
91+	£30,000

Appendix B

Statement of principles for determining financial penalties for general housing legislation

Introduction

This statement sets out the principles that New Forest District Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements for which they are the enforcing authority.

The Council's power to impose financial penalties

Legislation has been introduced which has provided the Council with a power to impose and charge a financial penalty in prescribed circumstances.

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

In anticipation of further legislative provisions being introduced which enable the imposition of a financial penalty, the principles detailed in this document will be applied in setting any charge.

Scope

Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, requires the council to prepare and publish a 'statement of principles' to which it will have regard in determining the amount of a penalty charge it will apply where a landlord is in breach of the duties under those Regulations.

The Council will also apply these principles when determining any other housing related legislation that permits the Council to impose a financial penalty. The Council may revise this statement of principles and in the event will publish the revised statement.

Where a financial penalty is charged the Council must have regard to the most current statement of principles that it has published.

General principles applied to the imposition of a financial penalty.

The primary purpose of the Council's enforcement of its regulatory powers is to protect the interests and safety of the public. The primary aims of any financial penalty will therefore be to:

- Change the behaviour of the landlord / letting agent concerned.
- Deter future non-compliance by landlords / letting agents.
- Eliminate any financial gain or benefit from non-compliance with the Regulations.
- Be proportionate to the nature of the breach of the Regulations and the potential harm outcomes.
- Reimburse the cost incurred by the Council in undertaking any work in default and fulfilling its enforcement duties

In determining the amount of any financial penalty to be charged the Council may in general have regard to the following:

- The level of cooperation provided by the landlord/letting agent concerned.

Appendix B

- Any history of previous contraventions of Housing or Housing related legislation
- The level of risk created by the non-compliance
- The cost incurred by the Council in enforcing the relevant provision.
- Any other circumstances identified as specifically relevant to the individual matter
- The Council's current Housing Standards Enforcement Policy

Financial penalties applicable to specific legislation

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Where the Council have reasonable grounds to believe that the requirements have not been met by a landlord there is a duty to serve a 'Remedial Notice' on the landlord. Failure to comply with a Remedial Notice imposes a further duty upon the Council to arrange remedial action and a power to require payment of a penalty charge. The amount of the penalty charge must not exceed £5,000.

The Council will comply with the requirements and guidance regarding the information to be contained within any penalty charge notice, including provisions for a review, and the appeal procedures. A penalty charge will be recoverable on the order of a court, as if payable under a court order.

The New Forest District Council Standard Penalty Charges are as follows and in determining the amount of any financial penalty to be charged the Council may have regard to the matters raised above.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Table 1)

Penalty charges for non-compliance are currently as follows:

First Offence	£1,500	Reduced to £750 if paid within 14 days
Second Offence	£3,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

The Regulations make provision for a landlord to seek a review of a penalty charge notice. The Council will refer to this statement of principles in considering any request for a review, and the review will be conducted by an Officer not directly involved in the service of the original notice

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This Order requires that tenants and landlords with agents in the private rented sector will be able to complain to an independent person about the service they have received. The aim is that the requirement to belong to a redress scheme will help remove bad agents and property managers and drive-up standards.

Appendix B

Where the council is ‘satisfied on the balance of probabilities’ that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a ‘monetary penalty’. The amount of the monetary penalty must not exceed £5,000.

The Council will comply with the procedure and guidance for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures. The Council will normally provide the landlord with a reasonable period of time to remedy any breach; normally 21 to 28 days, prior to considering imposing a penalty. A monetary penalty will be recoverable on the order of a court, as if payable under a court order.

Standard monetary penalty for breach of duty under article 3 or 5	£5,000	Reduced by 50% if paid within 14 calendar days of the date of issue of the monetary penalty.
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While this monetary penalty is set as a standard the order makes provision for a Letting Agent to make representations or objections. The Council will refer to this statement of principles in considering representations or objections received. Reviews will be conducted by an Officer not directly involved in the service of the original notice of intent.

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

The Council may serve a penalty on the landlord where they are satisfied that the landlord is, or has been in the last 18 months in breach of the:

- prohibition on letting sub-standard property (those rated F or G on the EPC scale) or
- requirement to comply with a compliance notice or
- has uploaded false or misleading information to the Exemptions Register.

The Council will normally provide the landlord with a reasonable period of time to remedy any breach; normally 21 to 28 days, prior to considering imposing a penalty. The Council has discretion to decide on the amount of financial penalties, up to maximum limits set by the Regulations and associated guidance. The maximum penalties are as follows:

		Financial penalty up to
A	Where the landlord has let a sub-standard property in breach of the regulations for a period of less than 3 months	£2,000 may be imposed in addition to a publication penalty
B	Where the landlord has let a sub-standard property in breach of the regulations for a period of more than 3 months	£4,000 may be imposed in addition to a publication penalty
C	Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1,000 may be imposed in addition to a publication penalty
D	Where the landlord has failed to comply with compliance notice	£2,000 may be imposed in addition to a publication penalty

Appendix B

The Council may not impose a financial penalty under both a. and b. above in relation to the same breach of the Regulations, but they may impose a financial penalty under either A or B, together with financial penalties under C and D, in relation to the same breach.

Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000. The Council will initially impose the maximum penalty permitted. The Council will refer to this statement of principles in considering any request for a review and the review will be conducted by an officer not directly involved in the service of the original notice.

For all offences resulting in a financial penalty the Council will also consider a 'publication penalty'. A 'publication penalty' allows the Council to publish details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The Council will generally keep the information on the Register for at least 12 months.

Appendix C

Charging for Enforcement Action

	Business Support		Housing Standards Officer		Private Sector Housing Manager		Service Manager		Total
Hourly Rates (2023/24)	£24.69		£38.89		£49.81		£64.44		
Activity for which charge maybe made	Hours	£	Hours	£	Hours	£	Hours	£	£
Inspection including travel			2.00	77.78					
HHSRS assessment			1.00	38.89	0.25	12.45			
Drafting schedules of work			1.00	38.89	0.25	12.45			
Sec 8 consideration (Statement of reasons)			1.00	38.89	0.50	24.91	0.25	16.11	
Service of notices/ orders			0.50	19.45	0.50	24.91	0.25	16.11	
Admin support	1.00	24.69							
Total		24.69		213.90		74.71		32.22	345.52

The minimum charge for the service of a housing enforcement notice is £345 (VAT not applicable)

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HR COMMITTEE – 8 JUNE 2023

COUNCIL – 10 JULY 2023

CHANGE TO DISMISSAL APPEAL PROCESS

1. RECOMMENDATIONS

- 1.1 That the Council agree the proposal to change the internal Appeal process in relation to dismissals, outlined at section 6 of the report.
- 1.2 That authority be delegated to the Monitoring Officer to make the consequential changes arising to the Constitution, which include the Appeals Committee Terms of Reference.

2. INTRODUCTION

- 2.1 Currently employment related dismissal decisions can be appealed by the outplaced employee. This can include dismissals arising from the disciplinary, capability, grievance, redundancy and absence management procedures and are heard by a panel of members selected from the Appeals Committee.
- 2.2 This process applies to all employees except those in their probationary period.

3. CURRENT APPEAL PROCESS

Dismissal Appeals

- 3.1 An employee has 10 working days to submit an appeal against a dismissal decision.
- 3.2 The hearing is normally held within 28 days of the appeal being lodged. A panel of 3-5 members is agreed, supported by the Service Manager Human Resources with additional legal support as required. The panel is a formally constituted meeting of the local authority.
- 3.3 The panels appeal decision is final. There is no further avenue of appeal available within the Council.

Appeals against other sanctions

- 3.4 For other measures – for example a Disciplinary Hearing at a lower level where dismissal could not be a possible outcome, we have an Authority to Act schedule which shows the level of officer which can make the decision, and the level of officer that can hear the appeal.

4. CONSIDERATIONS

- 4.1 We do not receive many appeals against dismissals however when we do, due to the involvement of members and diary commitments it takes a considerable time to set up the arrangements.
- 4.2 Due to the infrequency of the appeals, when they do occur it often requires a training session to be set up for members who are not necessarily trained in employment law or have any background in dealing with HR matters.

- 4.3 We have compared with other neighbouring authorities including running a survey through South East Employers in January this year to establish what others do.

The results can be seen here:

Authority	Member Involvement in Appeals	Procedures that include elected member involvement in the appeal process	How many elected members are involved in an appeal?	What is the role of the elected members in the appeal process?	Policy changed in the last 5 years	What were the reasons for making this change?
NFDC	Y	All dismissal Appeals	Up to 5	The panel decides whether to uphold the appeal or not	No	
Unitary 1	No				Yes	To allow for a speedier process
District Council 1	No				No	
District/Borough 2	No				No	
Unitary 2	Yes	All dismissal Appeals All other appeals	2	To be part of a panel	No	
Unitary 3	Yes	Just dismissal	1	The member is part of the Employee Appeal Panel	No	
Borough Council	No				No	

- 4.4 As can be seen half of those that answered the survey do not involve members in their dismissal appeals at all. The two (other than us) that do, only use members as part of the panel.

5. CONCLUSIONS

- 5.1 We have a number of senior officers that are experienced in HR matters and would be able to provide an impartial view in an appeal situation.
- 5.2 It should also be remembered that if required, the chair of any dismissal appeal would be required to provide evidence in an Employment Tribunal.
- 5.3 We are in the minority when it comes to using members for our dismissal appeals.

6. PROPOSALS

6.1 It is proposed that the Council changes its policies to facilitate the following:

All dismissal appeals up to and including Band 11 employees will be heard by a Strategic Director or above. The Strategic Director must not be responsible for the service area that the individual is employed within.

For Chief Executive, Strategic Directors and Assistant Directors it is proposed that an appeal panel would remain as it is now, with the appeal following the procedures as laid out in the Council's Standing Orders.

7. FINANCIAL IMPLICATIONS

7.1 None.

8. CRIME & DISORDER IMPLICATIONS

8.1 None.

9. ENVIRONMENTAL IMPLICATIONS

9.1 None.

10. EQUALITY & DIVERSITY IMPLICATIONS

10.1 All employees except those in probation would be covered by these changes.

11. EMT COMMENTS

11.1 EMT are happy to support the proposals moving forward.

12. EMPLOYEE SIDE COMMENTS

12.1 Employee Side had no issues or concerns with the changes proposed.

13. HR COMMITTEE COMMENTS

13.1 At its meeting held on 8 June 2023, the HR Committee supported the recommendations, and noted that it was difficult for elected members to keep fully abreast of the constant changes in what was often complex employment law.

For further information contact:

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Background papers:

[HR Committee agenda, reports and minutes – 8 June 2023](#)

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WASTE AND RECYCLING COLLECTION POLICY

1. RECOMMENDATIONS

- 1.1 That the Cabinet recommend to Council, the adoption of the proposed waste and recycling collection policy and new garden waste terms and conditions for the roll-out of new collection services as set out in the Waste Strategy 2022-2027.

2. INTRODUCTION

- 2.1 Waste and recycling is the only council service that is delivered directly to every household, every week. The council has an obligation to provide a service that encourages waste prevention and minimisation, and the most effective way to do this is to change the frontline collection services.
- 2.2 In December 2018, the UK Government released 'Our Waste, Our Resources: A Strategy for England' (known as the Resources and Waste Strategy, or RaWS). The strategy set out key objectives for dealing with waste and paved the way for legislative changes set out in the Environment Act 2021.
- 2.3 New Forest District Council recycling rates are currently 32% (2021-22), significantly below the national average of 43%. The current national target has been set at 55% by 2025, rising to 65% by 2035. The current collection system will not meet these national recycling targets or be in line with forthcoming legislation.
- 2.4 In response to national and regional changes in the approach to management of waste and resources, as well as a desire to ensure that local goals are met, the Council approved a new Waste Strategy 2022-27 in July 2022.
- 2.5 Approved changes to the waste and recycling collection system as set out in the Strategy include:
- A weekly separate collection of food waste
 - Dry recycling collected in a reusable bag (paper and card) and a wheeled bin (glass, plastic, metal), both of which are collected on the alternate week to general waste
 - General waste collected in a wheeled bin on the alternate week to dry recycling
 - Collection of garden waste every two weeks in a wheeled bin
- 2.6 A new collection policy must be developed to ensure efficient and safe practices are implemented on the rollout of these new collection services. It is important that the expectations for both the Council and the resident are clearly set out and that the policy is written in line with government legislation and health and safety best practice.
- 2.7 This report provides some background to the development and proposed implementation of the new collection policy and sets out the two new policy documents for approval in Appendix 1 & 2.

3. BACKGROUND

- 3.1 New Forest District Council is committed to tackling climate change. Key to this commitment is the introduction of measures to reduce the environmental impact of waste in the New Forest. The most effective way to do this is to make changes to our frontline collection service and introduce policies that support and encourage waste reduction and recycling practices.
- 3.2 The decision has been made to change the collection system to support positive environmental outcomes as outlined in 2.5. Full background on the rationale for these changes can be found in the Waste Strategy itself, which is included in the background papers. If the Strategy's aims are to be met it is vital that we create a collection policy that supports these service changes. Some example drivers in the development of the policy can be seen below:
- **Contamination** - the new collection service will help to reduce contamination of recycling by collecting more materials and separating them differently. That means we will need a clear policy in place to inform and encourage residents whilst also dealing with contamination of recycling that occurs.
 - **Reducing general waste** – the new collection service will help reduce general waste and encourage more recycling, by restricting the amount that can be added to the general waste bin and the provision of more comprehensive recycling services. For this to be effective we need a clear policy to deal with additional general waste, whilst also accounting for households with additional waste capacity needs.
 - **Presenting waste** – the move to a containerised collection system brings changes to the expectations on both our residents and operatives in the presentation and collection process. A clear policy is needed to outline where and when waste containers should be presented and returned, whilst also accounting for those residents that need additional support presenting their waste.
- 3.3 The collection policy is written with the intent of maximising environmental benefits and operational efficiency, improving health and safety, and ensuring that the future service is as easy for residents to use as possible.
- 3.4 The collection policy was written in consultation with best practice from other Councils. Numerous policy documents were examined from across Hampshire but also from other high-performing authorities. However, the policy also needs to meet the needs of the New Forest and so current working practice, local knowledge and the diverse landscape of the New Forest have also been fully considered.
- 3.5 The development of the waste strategy was informed by the views of a full range of stakeholders including residents, elected members, town and parish councils, business owners, partner/local organisations, landowners and council waste and transport employees. The engagement process showed an appetite for change but also illustrated the need to do this with sensitivity to the local environment and with the needs of residents in mind. The new collection policy has considered the consultation response and aims to ensure as many households as possible can access the core collection services, whilst introducing alternative arrangements for certain property types, container sizes and allowances for larger households. Additionally, the Customer Equality Impact Assessment undertaken to consider the impact of the new service on protected groups highlighted that assisted collections are an important part of the existing service and therefore this has been included in the proposed collection policy.

- 3.6 For the environmental benefits of the new waste strategy to be realised it is important that the council is clear in its policies. The policy sets out the legislation that will allow the council to follow an enforcement process to deal with issues such as persistent contamination, side waste and containers being left on the public highway. However, the council will develop a strong communication plan with increased resource. Before any enforcement action is taken, an education and engagement approach will be adopted to ensure residents can fully participate in the new service. Additional resource in this area will be particularly important during the phased rollout of the service ensuring residents are supported during the period of change.
- 3.7 The waste and recycling collection policy can be read in full in **Appendix 1**, and covers the following:
- Containers offered to households
 - Recycling and waste capacity
 - Materials collected
 - Storage and collection points
 - Collection times and presentation of waste and recycling
 - Additional general waste and recycling
 - Ownership and replacement of containers
 - Assisted collections
 - Weather and bank holidays
 - Access issues
 - Other services
 - Charges and costs
- 3.8 An additional document has been created to update the terms and conditions for the garden waste collection service (see **Appendix 2**). This document reflects the policies set out in the main waste and recycling collection policy document, accounting for the move to wheeled bins for this service and the new ways of working. These terms and conditions are separate because the garden waste service is a subscription-based service (with around 1 in 4 households subscribing).
- 3.9 The new garden waste terms and conditions will be implemented in line with the service change to wheeled bins in April 2024. The main collection policy will not come into effect until the service changes to the core collections service are implemented, currently planned for summer 2025.

4. FINANCIAL IMPLICATIONS

- 4.1 There are elements of the policy documents which relate to charges and income. These policies are in line with common practice in other local authorities and are designed to cover certain costs relating to service provision.

5. CRIME & DISORDER IMPLICATIONS

- 5.1 There are none.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 The implementation of new waste collection service, will increase recycling rates and reduce overall waste, thus reducing environmental impact. A strong and clear collection policy is key to the successful implementation of the new collection service.

7. EQUALITY & DIVERSITY IMPLICATIONS

- 7.1 The public sector equality duty requires the council to consider how it can positively contribute to the advancement of equality and good relations and demonstrate that it is paying due regard in its decision making in the design of policies and in the delivery of services.
- 7.2 In the development of the waste strategy 2022 -2027, a public engagement exercise was undertaken to better understand any comments and concerns that could arise through a changed service design. Two comprehensive Equality Impact Assessments were also undertaken to fully consider the impact on protected groups and other service users.
- 7.3 Assisted collections are an important part of the existing service to support those with physical disabilities and mobility issues in accessing the service. These arrangements will continue to ensure assistance is available to those who need it.

8. CONCLUSIONS

- 8.1 The waste and recycling collection policy is a key document that will be used over the coming years to support the implementation of a safe, efficient, and effective collection service.
- 8.2 It is important that the collection policy is agreed ahead of the implementation of the new garden waste collection service (introducing wheeled bins) so that policies and working practices are aligned across waste streams.

9. PLACE & SUSTAINABILITY OVERVIEW & SCRUTINY PANEL COMMENTS

- 9.1 The Panel recommended to Cabinet the adoption of the proposed waste and recycling collection policy and new garden waste terms and conditions for the roll-out of new collection services as set out in the Waste Strategy 2022-2027.

Members of the Panel agreed that waste prevention formed an important part of the process and noted the waste reduction plan within the policy. The Panel were reassured that assisted collections would continue and that residents will be able to submit an application to the Council for assisted collection.

The Panel were unanimous in their agreement to recommend the policy to Cabinet.

10. PORTFOLIO HOLDER COMMENTS

- 10.1 Following on from the approval of the waste strategy in July 2022 the appendices to this report clearly set out how we will manage the new waste and recycling collection service in the future. The documents are an important piece of the puzzle and will ensure consistent safe working practices for our operatives and I believe will provide an excellent service to our residents.
- 10.2 This consistent approach along with clear communications, will make it easier for residents to participate fully in the new services, in turn boosting our efficiency and performance. More importantly though, helping us realise the overall environmental benefits set out in our waste strategy.

The collection policy has been well researched and seeks to emulate the successes of those highest performing authorities.

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Background Papers:

[Waste Strategy 2022-2027 FINAL WEB.pdf \(newforest.gov.uk\)](#)

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Waste and Recycling Service Collection Policy

May 2023

Background

New Forest District Council is committed to tackling climate change, key to this commitment is the introduction of measures to reduce the environmental impact of waste in the New Forest. The most effective way to do this is to make changes to our frontline collection service and introduce policies that support and encourage waste reduction and recycling practices. In July 2022 the council approved a new Waste and Recycling Strategy for 2022 -2027. This Collection Policy supports the implementation of the new working practices.

Under the terms of the Environmental Protection Act, 1990, New Forest District council (the 'council') is classed as a Waste Collection Authority, and as such, under section 45 (1), has a statutory duty to collect household waste from all domestic properties within the district.

Section 46 of the Environmental Protection Act 1990 (EPA) empowers a Waste Collection Authority to require residents to place household waste out for collection in designated containers and separated into specified waste streams. In so doing it can stipulate:

- The size and type of collection receptacle(s)
- Where the receptacle(s) must be placed for the purpose of collecting and emptying
- The materials or items which may or may not be placed within the receptacle(s)

The Environment Act 2021 paved the way for consistent recycling collections across England. We must therefore ensure that:

- Recyclable waste is collected separately from other waste
- Recyclable waste includes glass, metal, plastic, paper/card, food waste, and garden waste
- Recyclable waste streams must be collected separately from each other, unless not technically/economically practicable or if there is no environmental benefit in doing so

This document outlines how New Forest District Council intends to deliver waste and recycling collection services to its residents, and the actions required by householders to participate fully in the service.

The service to residents

The property type, access and storage provision will determine the service that is provided to any given household. The core service will be provided to properties wherever possible. Variations will apply if a property is assessed as being unsuitable for the core service based on storage or access restrictions. The assessment of property suitability for the core service is at the discretion of the council. Policies 1-3 outline the 3 types of service the council offer to households across the New Forest. The containers provided must be used to present waste for collection, no other containers will be accepted.

1. The Core Service

Waste Stream	Container	Container Colour	Collection frequency
General waste	180L wheeled bin	Black with black lid	Fortnightly
Mixed recycling	180L Wheeled bin	Black with green lid	Fortnightly
Paper and cardboard	90L reusable bag	Blue	Fortnightly
Food waste	23L external caddy	Brown	Weekly
Garden waste*	240L Wheeled bin	Black with brown lid	fortnightly (subscription)

2. Properties with storage or access constraints

Waste Stream	Container	Container Colour	Collection frequency
General waste	Plastic sacks, max 2 per collection (max 90L), supplied by resident	Black sacks	Fortnightly
Mixed recycling	55L lidded box or clear sack (assessed by waste team)	Black with green lid	Fortnightly
Paper and cardboard	90L reusable bag	Blue	Fortnightly
Food waste	23L external caddy	Brown	Weekly

3. Properties with communal storage areas

Waste Stream	Container	Container Colour	Collection frequency
General waste	Communal bins	Black with black lid	Fortnightly/weekly
Mixed recycling	Communal bins (reusable bags for home storage)	Black with green lid	Fortnightly
Paper and cardboard	Communal bins (reusable bag for home storage)	Blue	Fortnightly
Food waste	Communal bins (5L caddy for home storage)	Brown	Weekly

In addition to the containers set out in policy 1-3 the council will also provide smaller internal waste caddies for residents to use within their home for the internal storage of food waste. For households that use communal storage areas, such as flats, an additional reusable bag will be provided for the storage and transfer of mixed recyclable material from the home to the communal containers.

* Please note the garden waste service is a chargeable service, only residents subscribed to this service will receive these containers.

4. Recycling and waste capacity

General Waste

The standard size containers provided to each household are listed in policies 1 – 3. The council will provide more capacity for larger households and those with additional waste needs (see table below). However, this will be subject to assessment made by the waste team.

Households will need to demonstrate that they are recycling everything that they can and taking measures to reduce general waste before additional general waste capacity is offered, a member of the waste team may visit the property to assess current recycling behaviours.

Applications for additional waste and recycling capacity can be made via the council website if the necessary criteria are met.

Recyclable waste

Requests for additional recycling capacity will be accepted from all residents.

Applications for additional general waste capacity must meet the minimum criteria stated in the table below:

Household type	Provision
Up to 5 occupants	General waste - 1 x 180 litre black wheeled bin Recycling - 1 x 180 litre green lidded wheeled bin (240L on request) 1 x 90 litre blue paper and cardboard sack (extra sack on request) 1 x 23 litre external kitchen bin
<ul style="list-style-type: none"> •6 – 8 occupants •2 or more children in nappies •Additional waste due to medical needs 	<i>(Application process applies)</i> General waste - 1 x 240 litre black wheeled bin Recycling - 1 x 240 litre green lidded wheeled bin 1 x 90 litre blue paper and cardboard sack (extra sack on request) 1 x 23 litre external kitchen bin
9+	This assessment will be made by a Waste Officer
Flats/properties with communal bin areas	Waste and recycling will be contained in communal wheeled bins ranging from 140L for food waste up to 1100L for general waste and recycling. The number and size of the containers will be dependent on the number of dwellings served and the space in the bin storage area. At least 90L capacity per household per week will provided for general waste and mixed recycling. At least 45L capacity will be provide per household per week for paper and cardboard. at least 23L capacity per household per week will be provided for food waste.

The provision of additional waste capacity for any household is a temporary allowance. Should a household be allocated additional capacity, it will be informed of the review date of this service, currently set at 12 months. Upon review, should the household not meet the minimum criteria, additional general waste capacity will be removed.

5. Materials collected¹

General waste

Any domestic household waste that cannot be recycled. Exemptions apply please see **policy 12** of this document.

¹ Materials collected will be reviewed when the input specification of the MRF and Anaerobic Digestion facility is known.

Mixed recycling

All recycling must be clean and dry and added loose to the recycling bin

- Glass bottles and jars
- Plastic pots, tubs and trays
- Plastic bottles
- Aluminium and steel tins/cans
- Cartons/tetra paks
- Tin foil/foil food trays
- Flexible plastic and film

Paper and cardboard

All paper and cardboard must be clean and dry and broken down to fit inside the bag provided, no side waste or cardboard boxes will be collected outside of the bag (an additional bag can be supplied upon request)

- Flattened cardboard boxes
- Newspapers and magazines
- Packaging
- Junk mail and envelopes and greeting cards

Food waste

- Uneaten food and plate scrapings
- Baked goods, bread, cakes, pastries
- Dairy product, eggs, and eggshells
- Fruit and vegetable peelings
- Out of date or mouldy food
- Pet food
- Raw and cooked meat or fish, including bones
- Tea bags and coffee grounds

Garden waste

- Grass cuttings and hedge clippings
- Flowers and non-invasive weeds
- Leaves
- Twigs and small branches (less than 75mm diameter)
- Christmas trees (cut up to fit in the container)

6. Storage and collection points for containers

Household waste and recycling whether placed in a receptacle provided by the council or otherwise must be stored on private property between collection days. Storage is NOT permitted on the public highway. If an occupier continues to store household waste receptacles on the public highway an enforcement process will be followed by the council, see Appendix 1 for the council's enforcement process.

Unless otherwise agreed with the council, householders are asked to place their waste containers at the edge or curtilage of their property, where it meets the public highway. Our operatives will collect the container and return it.

If the property is in a private lane or road, the collection point will, wherever possible, be where the lane or road meets the public highway. Householders are required to return their bins to their property at the end of the scheduled collection day to ensure the highway is not obstructed.

The council reserves the right to change collection points if they are unsafe or impact on the efficiency of collections.

Properties with access to free roaming animals

Residents will be provided with secure containers therefore, all containers should be set out at the edge or curtilage of the property, where it meets the public highway. In some circumstances the council may request that containers are left behind the householder's gate. Safe pedestrian access must be maintained, operatives cannot cross a cattle grid to collect waste and recycling containers.

7. Collections times and presenting waste and recycling

All bins, bags, caddies or lidded boxes must be put out for collection before 6am on the specified collection day. Waste and recycling should not be put out before 6pm the day before the scheduled collection. Collection days can be found on the council website.

Overflowing bins

All wheeled bins must be presented with the lid closed. They must not be overflowing or too heavy for the collection crew to manoeuvre safely. Overflowing or heavy bins will not be collected. A notice will be left on the bin stating why the bin has been left and residents will be required to remove the excess waste and wait for the next scheduled collection.

Food waste²

Food waste bins must be presented with the lid closed. Food waste caddies should be presented with the carry handle in the upright position (which is locked) this reduces the bending over of operatives and ensures the lid is in the locked position.

Garden Waste

² Presentation of food waste and the use of liners will be reviewed when the input specification of the Anaerobic Digestion facility is known.

Full details of the presentation of garden waste for collection is available in the Garden Waste Terms and Conditions.

Following the collection of waste containers, residents are required to remove them from the public highway by the end of the scheduled collection day. Householders that leave containers on the public highway could be subject to the council's enforcement procedure, see appendix 1 for more details.

Missed collections

Our collection crew record the presentation of waste and recycling using an onboard in-cab technology system.

If a bin has not been collected, and there is no notice on it to explain why, it may have been missed by our collection crew. Missed collections can be reported via the council website. Missed collections must be reported by 12pm on the next working day after the scheduled collection day. We will send a vehicle back to collect waste within 2 working days of it being reported.

Before returning to collect any reported missed bins, the in-cab technology system will be checked to ensure the waste was presented on time and in accordance with our collection policy. We will not return to collect a reported missed bin if it is not presented in line with our policy.

8. Extra general waste

Additional household waste or side waste, that is left beside or on top of a black general waste wheeled bin, will not be collected. The lid of the wheeled bin must be fully closed for the collection to take place. If the bin is overflowing and the lid is not fully closed the bin will not be collected. A notice will be left on the bin stating why the wheeled bin and/or additional waste was not collected.

It is the responsibility of the householder to dispose of additional household waste as follows:

- **Place the waste in their wheeled bin awaiting the next collection.**
- **Dispose of the waste at their local Household Waste Recycling Centre (HWRC).**
- **Arrange for any licensed waste carrier to collect and dispose of the waste.**

The council can provide this service via their bulky waste collection. Information can be found on the council website, please note there is charge for this service.

If households leave uncontained additional/side waste on the public highway after the scheduled collection day the council may follow the enforcement process as set out in appendix 1.

Households will be able to set out additional bagged general waste for the first collection of general waste after the Christmas bank holiday. This is a maximum of 1 standard size 90L bag per household of general waste.

9. Extra recycling

Additional household recycling that is left beside or on top of the wheeled bin, will not be collected. The lid of the wheeled bin must be fully closed for the collection to take place. If the bin is overflowing and the lid is not fully closed the bin will not be collected. A notice will be left on the bin stating why the wheeled bin and/or additional material was not collected.

Residents can request additional recycling capacity through the council website. This would be either a larger wheeled bin (240L), an additional paper and cardboard sack, or additional mixed recycling lidded boxes (for households not suitable for wheeled bins).

The householder must have capacity to store any additional containers safely off the public highway.

Households will be able to set out additional mixed recycle for the first collection after the Christmas bank holiday. This should be no more than the equivalent of 1 standard size 90L bag per household. All glass must be contained safely in the wheeled bin or boxes provided.

10. Ownership and replacement of containers

The council requires that all household waste and recycling is placed in receptacles provided by the council.

Bins not supplied by the council will not be emptied.

Residents should number their bin and other containers, so they are identifiable to the property.

The waste and recycling containers remain the property of the council, If you move house the containers must be left at the property. The council reserves the right to remove containers from residents in instances of misuse.

Replacement

It is the householder's responsibility to pay for the administration and delivery of replacement wheeled bins from the council should the bin go missing or be damaged by the householder. Payment should be made online or via Customer Services.

The charge covers the administration and delivery of bins and is intended to encourage residents to take responsibility for the wheeled bins provided and to reduce demand for replacement containers.

However, should any bin be damaged or lost during the crew collection process, the council will replace it at no charge to the resident.

External food caddies, reusable paper and cardboard bags and lidded boxes will be replaced free of charge.

Internal food waste caddies will be provided at the start of the food waste collection service and to new residents. These will not be replaced.

The replacement containers provided (including wheeled bins) will not always be a new container. Pre-used wheeled bins and other containers will be re-distributed wherever possible.

The delivery and administration charges for lost and damaged bins will be reviewed annually in the council's Fees and Charges report. Services charges are also listed in **Policy 19** of this document.

New build properties

Property developers are required to meet the cost of providing bins for new developments and these must be procured through the council. Guidance on the requirements for waste storage and collection at new residential developments, can be found in the Technical Guidance note in the following link:

[Waste Facilities Technical Guidance Note FINAL Feb 2022.pdf \(newforest.gov.uk\)](#)

11. Assisted collections

If residents are unable to put out their household waste to the edge of the property due to a disability, illness or injury, they can request an assisted collection. Assisted collections are available for all waste streams. We will collect the waste from an agreed location, on the normal collection day. We will return all containers after emptying. Assisted collections are only available where there is no one else in the household to help put out your waste for collection.

Assisted collections can be requested on the council website.

Assisted collection requests are reviewed annually and residents will need to reapply to ensure they continue to receive an assisted collection. A member of the waste team may visit the applicant/ property to discuss.

12. Contaminated/rejected bins

The council can only collect bins that contain the correct materials. Operatives will not empty bins if they contain the wrong material, examples of this are listed below although this is not exhaustive:

- The mixed recycling bin contains non-recyclable material or paper and card.
- The paper and cardboard bag contains other materials or wet/contaminated paper and card

- The food waste caddy contains non-food items
- The general waste bin contains material that is excluded from general waste collections. A list of these items can be seen below:
 - Asbestos
 - Commercial or industrial waste
 - Brick rubble, soil, and construction materials
 - Domestic appliances and electrical/electronic equipment
 - Bulky household items or fixtures and fittings
 - House clearance waste
 - knives
 - Green garden waste and soil
 - Hot ashes
 - Medication
 - Clinical waste deemed as infectious
 - Oil and flammable liquids
 - Paints and chemicals
 - Scrap metals
 - Other hazardous waste

Garden waste bins may also be rejected on collection, full details of the presentation of garden waste are available in the Garden Waste Terms and Conditions [insert link]

If households consistently contaminate recycling containers with the wrong materials, the council could follow the enforcement process, set out in appendix 1.

13. Weather and bank holidays

In cases of severe weather, such as snow and ice, it may be necessary to cancel waste and recycling collection services for the safety of the crew and residents. Cancelling collections services is at the discretion of the waste and recycling management team.

Service cancellations will be displayed on the council website, social media and where appropriate a text message or email could be sent to residents that subscribe to the service.

Collection services will take place as normal on banks holidays throughout the year. The exception to this is at Christmas where collections will not take place on Christmas day (25 December), boxing day (26 December) or New Year's Day (1 January). These changes will be posted on the council website and social media. Where possible alternative collection days will be scheduled, which could include weekend collections for some households.

14. Access issues

If our crew cannot access a road or property safely, they will not collect the waste and recycling. there are several reasons why this might happen:

- Road works / road closures
- Fallen trees / overhanging branches
- Poorly parked cars blocking access /building works

If the road cannot be accessed on collection day, the crews will log the reason via the in-cab technology system. Where time allows, they will return twice more, on the same collection day to attempt to access the road, each visit will be logged to ensure customer services have up to date information.

If the collection cannot be made on the same day, where possible, alternative collection arrangements will be put in place within 2 working days, in line with our missed bin collection policy.

For longer term road works/building works/overhanging branches, other solutions maybe sought, which could include temporarily moving the collection point for waste and recycling.

15. Garden waste

The council provide a chargeable garden waste collection service.

Residents can join garden waste collection service at any time of the year, it is a rolling year subscription.

Customers must use a council supplied garden waste wheelie bin to display their garden waste for collection. There is an administration and delivery charge for the garden waste wheeled bins. Current service charges can be seen on the council website.

The policies within this document apply to the garden waste collection service. Additionally, the full garden waste terms and conditions can be found on the council website.

16. Bulky waste

The Controlled Waste (England and Wales) Regulations 2012, sets out what types of household waste are defined as chargeable. The council collect bulky waste items for a small charge.

Residents in receipt of certain benefits can apply for one free collection of up to three items in any one financial year (April to March).

Full details of how to book, the cost of the service, and the items that can be collected can be seen on the council website.

- bulky waste items must be at the front of the property by 6am on the day of collection.
- Upholstered furniture is collected separately from other items due to regulations around the transport and disposal of fire-retardant foam.
- Upholstered items that have been split or damaged, will need to be sealed with tape or plastic, by the resident, before collection.

Upholstered items also need to be protected from the rain and covered. Otherwise, our crews will be unable to collect the items, and another chargeable collection will need to be booked.

- Items must be left outside the property. We cannot enter the house, garage, or shed to collect items.
- We can only collect items which have been specified at the time of booking.
- Cancellations made after 48 hours of booking will not be refunded.

Services charges are also listed in **Policy 19** of this document

[Bulky waste collection - New Forest District council](#)

17. Healthcare waste

Residents can apply for our free healthcare waste collection service if they have a medical condition and are treating themselves at home.

There are two types of healthcare waste: infectious waste and offensive waste. These require different methods of collection and disposal; offensive waste can usually be disposed of as general household waste. However, classification of healthcare waste is determined through a healthcare professional.

This service only collects healthcare waste from households.

The following types of waste will be collected:

- Infectious sharps contaminated with medicines arising from self-treatment (yellow sharps boxes).
- Cytotoxic / cytostatic waste arising from self-treatment (sharps boxes with purple lid).
- Infectious waste, that can be treated, arising from self-treatment (orange sacks).

The following types of waste will not be collected:

- Waste resulting from treatment by a healthcare worker within the home (this is not defined as household waste and will be removed by the healthcare worker).
- Waste arising from commercial premises as defined within The Controlled Waste (England and Wales) Regulations 2012.

Full details of the types of healthcare waste collected, when they are collected and how to apply, can be found on the council website.

[Healthcare waste collection - New Forest District council](#)

18. Business waste

Business waste is everything a business owns, uses or produces that it wishes to dispose of. This includes:

- waste produced while working at private households
- waste produced by contractors working at a business premise
- any waste produced from home-based business activities
- waste produced from holiday lets and B & B's

Every business, no matter how large or small, has a duty of care under Section 34 of the Environment Protection Act 1990 to ensure their waste is collected, treated, and disposed of by an authorised waste service provider. If householders dispose of business waste using their kerbside household collection containers the council will follow their enforcement process.

Business Rates do not cover the removal of business waste.

More information regarding business waste collections can be found at [Business waste - New Forest District council](#)

19. Charges /costs

The council will levy charges for certain services, as follows:

- Garden waste collection service
- Garden waste wheeled bins (administration and delivery)
- Replacement wheeled bins (administration and delivery)
- Business waste collections
- Bulky waste collections

Up to date charges for the services listed can be seen on the council website www.newforest.gov.uk

20. Policy review

The Council has implemented this Waste and Recycling Collection Policy in line with Government legislation.

Officers of the Council will manage and operate the waste and recycling collection service in line with this policy. The Strategic Director - Place Operations & Sustainability is authorised to make technical amendments to ensure it continues to meet the needs of both the Council and its residents and remains in line with Central Government legislation and guidance.

We will review this policy every 3 years, or sooner in the event of a relevant change in legislation or if a significant operational need is highlighted.

Key contacts:

For information on all the ways to contact the council visit the website

- [Contact us - New Forest District council](#)
- Tel. 023 8028 5000
- Email. customer.services@nfdc.gov.uk

To make a complaint please visit the council website for more information

- [Feedback, comments and complaints - New Forest District council](#)
- Email. complaints@nfdc.gov.uk or fill in the [online complaint form](#)

Appendix 1

Enforcement

The primary legislation governing the collection of household waste is S.45 – 46 Environmental Protection Act 1990 (as amended by the Climate Change Act 2008 and the Deregulation Act 2015).

Section 45 states:

It shall be the duty of each waste collection authority—

(a) to arrange for the collection of household waste in its area except waste—

- I. which is situated at a place which in the opinion of the authority is so isolated or inaccessible that the cost of collecting it would be unreasonably high, and
- II. as to which the authority is satisfied that adequate arrangements for its disposal have been or can reasonably be expected to be made by a person who controls the waste; and

(b) if requested by the occupier of premises in its area to collect any commercial waste from the premises, to arrange for the collection of the waste: and

(c) if requested by the occupier of premises in its area to collect from the premises dry recyclable waste or food waste presented for collection, to arrange for the collection of the waste.”

Section 46 states:

Where a waste collection authority has a duty by virtue of section 45(1) to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified.

In so doing it can stipulate:

- The size and type of collection receptacle(s)
- Where the receptacle(s) must be placed for the purpose of collecting and emptying
- The materials or items which may or may not be placed within the receptacle(s)

S.46 (6) provides the basis for enforcement of any breach of a s.46 Notice. Essentially, if a person, without reasonable excuse, fails to comply with a s.46 Notice they may be liable to enforcement action.

In order to take enforcement action, an authorised officer of the council must be satisfied that a person has failed without reasonable excuse to comply with a requirement imposed AND that failure has;

- (i) caused, or is or was likely to cause, a nuisance, or
- (ii) has been, or is or was likely to be, detrimental to any amenities of the locality.

The council therefore has the power to follow an enforcement process that may result in the issuing of fixed penalty notice for the following reasons:

- Contamination of waste and recycling containers with the wrong materials
- Waste containers left on the public highway outside of the scheduled collection day
- Uncontained waste or additional/side waste left on the highway

If the council is carrying out enforcement steps, the following is a summary of the process that must be taken by the council:

1. Written warning / waste advisor visit

Issue written warning explaining:

- identify the section 46 requirement with which the person has failed to comply
- how this has (or is likely to) cause a nuisance or have a negative effect on local amenities
- what they must do and how long they've got to fix the problem
- what will happen if they don't comply

2. Notice of intent

Before requiring payment of a fixed penalty notice an authorised officer must serve on the person notice of intent addressed to the occupier by name stating:

- if they continue to default, they may get a fixed penalty and why
- how much they'll have to pay
- that they have the right to explain why they shouldn't have to pay the penalty within 28 days of the day of service.

3. Final notice

A final notice must be served before the FPN, 28 calendar days after service of the Notice of Intent. An authorised officer must consider any representations and take a formal decision to issue a FPN before taking this step.

The notice must name the occupier and tell them:

- why they have been given a fixed penalty
- how much they must pay (maximum full penalty set by our Policy) and how they can pay it
- the deadline for the payment
- what happens if they pay the penalty early, and if there's a discount for early payment
- what happens if they do not pay
- how they can appeal

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Garden Waste Collection Service

Terms and conditions

The brown lidded garden waste bin

1. A 240L brown lidded garden waste bin will be delivered to you within 10 working days of joining the service for the first time.
2. Bins are provided for use by the customer but remain the property of New Forest District Council (NFDC), charges are made to cover administration and delivery of the wheeled bin.
3. Only official NFDC garden waste containers will be collected. Other bins, sacks and containers will not be accepted.
4. Subscriptions are capped at 5 bins per household.
5. You must mark your bins with your house number or name, so it is identifiable to your property.
6. It is the householder's responsibility to pay for the administration and delivery of replacement of wheeled bins from the Council should the bin go missing or be damaged by the householder. Payment should be made online or via Customer Services.
7. If residents present more waste than their subscription entitlement it will not be collected. Garden waste bins must be presented with the lid fully closed. Additional sacks or side waste will not be collected.
8. New bins will not be issued to customers who are renewing the subscription as it is assumed that they will continue to use the bins from the previous subscription year.
9. The bins can be used for the following materials: grass cuttings, hedge clippings, flowers and non-invasive weeds, leaves, twigs, and small branches up to diameter of less than 75mm, and Christmas trees (must be cut up to fit in the bin).
10. The bins cannot be used for: fruit or vegetable peeling, food waste, invasive weeds (such as Japanese Knotweed or Himalayan Balsam), large branches more than 75mm in diameter, logs or tree stumps, animal waste and bedding, soil, rubble, concrete, stones, plastic bags, pots or trays.

Collection day

1. Collections of garden waste will be made once a fortnight, except for a two-week period between Christmas and the New Year.
2. An email/letter will be sent on joining or renewing the service, which will contain your collection day. You will receive a link to show you how to view future collection dates online. You can also sign up to an email reminder service for garden waste collections. NFDC reserves the right to change your collection day for operational reasons and will notify you in advance should changes need to take place.
3. Garden waste bins must be presented for collection by 6.00am on collection day.
4. Bins must be placed just within the property boundary in plain view, nearest to the public road or access point, unless otherwise agreed with NFDC.
5. Assisted collections are available to residents who are physically unable to move the bin to the collection point, where there is nobody available to help them in the household. Details can be seen on our website or contact customer.services@nfdc.gov.uk for more information.
6. Collection teams will only empty the number of bins that have been paid for by the customer. A notice will be left on bins to inform customers of the reason for the non -collection.
7. If a bin is contaminated, the team will leave a notice on the bin to advise what needs to be removed before the next scheduled collection.
8. If your bin has not been collected, and there is no notice on it to explain why, it may have been missed by our collection crew. Missed collections can be reported either via our website or by calling the customer service team. Missed collections must be reported by 12pm on the following working day after the scheduled collection day. We will send a vehicle back to collect your waste within 2 working days of it being reported.
9. Teams will not return to collect bins that were presented for collection after 6 am on collection day, in the wrong location or that were contaminated with materials that are not collected as part of this scheme.
10. Our collection crew record and photograph the presentation of waste and recycling using the onboard in cab technology. Before returning to collect any reported missed bins, the system will be checked to ensure the waste was presented on time and in accordance with our collection policy. We will not return to collect a reported missed bin if it is not presented in line with our policy.
11. All wheeled bins must be presented with the lid closed. They must not be overflowing or too heavy for the collection crew to manoeuvre safely. A notice will be left on the bin stating why it has been left and residents will be required to remove the excess garden waste and wait for the next scheduled collection.

12. The team will return the bin to the collection point after emptying.
13. There may be exceptional circumstances (such as winter weather or unexpected road closures) that prevent garden waste collections taking place for safety or operational reasons. Information about changes to collections under these circumstances will be posted on the NFDC website and corporate social media.
14. Garden waste can become stuck in the bin, this can happen in exceptional cold weather, or if the bin is overloaded with material that has become wedged. Operatives will attempt to empty the bin using the mechanically bin lift but will not manually clear any material that does not empty.
15. No refunds will be given for collections missed due to circumstances beyond NFDC's control.

Charging and cancellations

1. The garden waste scheme is intended for use by domestic residents only
2. Customers may join the scheme at any point during the year. The collection service works on a rolling year. All customers receive a full year's collections, the renewal payment is due at the same time the following year. Charges are available on the council website.
3. Subscriptions to the garden waste scheme are allocated to the customer and not the property. Subscriptions are not transferable between people (e.g. if you move house and the new owners wish to continue using the service they must subscribe themselves).
4. If the customer moves to another property within the district, they must notify NFDC at least 10 working days before collections are required at the new address and take the bin with them. Failure to notify NFDC in time may result in missed collections.
5. If a customer moves out of the NFDC area, they can cancel the service by contacting customer.services@nfdc.gov.uk
6. The cost of the service is non-refundable.
7. Customers paying by Direct Debit will be notified of subscription charges to be debited from their account in advance.
8. Failure to make payment to cover the next collection year by the renewal date stated in the reminder notice will result in the service being removed until payment is made. No refunds will be made for collections missed due to late payment.
9. Customers not paying by Direct Debit will be sent a reminder in advance of the renewal date to renew their subscription. It is the responsibility of the customer to ensure their contact details are up to date on their application or renewal.

Key contacts:

For information on all the ways to contact the council visit the web page

- [Contact us - New Forest District Council](#)
- Tel. 023 8028 5000
- Email. customer.services@nfdc.gov.uk

To make a complaint please visit the council web pages for more information

- [Feedback, comments and complaints - New Forest District Council](#)
- Email. complaints@nfdc.gov.uk or fill in the [online complaint form](#)

CABINET – 5 JULY 2023
COUNCIL – 10 JULY 2023

PORTFOLIO – ENVIRONMENT &
SUSTAINABILITY

GARDEN WASTE FEES AND CHARGES 2024-25

1. RECOMMENDATIONS

- 1.1 That the Cabinet recommend to Council, the adoption of the proposed garden waste fees as set out in appendix 1 of this report, applicable from 1 April 2024.

2. INTRODUCTION

- 2.1 Fees and charges for the 2024-25 garden waste year need to be agreed earlier than normal to allow customers to subscribe this autumn so that the wheeled bins being introduced can be delivered in time for 1 April 2024.

3. BACKGROUND

- 3.1 The council operates a subscription-based garden waste service. The service currently has around 21,000 customers (1 in 4 households). The service is a fortnightly collection, using a reusable bag.
- 3.2 All other councils in Hampshire also collect garden waste as a chargeable service. NFDC's charges for this service have historically been among the lowest in the County. Service costs have risen in recent years and as Councils in Hampshire look to move to a more consistent approach, these charges have been reviewed.
- 3.3 In response to national and regional changes in the approach to management of waste and resources, as well as a desire to ensure that local goals are met, the Council approved a new Waste Strategy in July 2022. This Strategy includes moving from the reusable sack service to a wheeled bin service. These wheeled bins will be introduced ready for 1 April 2024.

4. GARDEN WASTE FEE AND CHARGES

- 4.1 The new service will have a simplified charging structure, with a new annual fee. Service charges for the new garden waste scheme are shown in appendix 1. These new charges (£65) are equivalent to the median charge from across all Hampshire councils for the financial year 2023-24. The highest charge in Hampshire this year is Hart DC, at £80. These charges also reflect the increasing costs of staff and fuel in recent years.
- 4.2 It should be noted that the new service will be rolled out using a 240l wheeled bin. The new bins have twice the capacity of one of the current reusable bags and will therefore represent an increase in the capacity of garden waste that the majority of our customers will receive for their annual payment.
- 4.3 The wheeled bins will be delivered to customers in the period December 2023 to March 2024. The exact delivery schedule will not be determined until the number of subscribers are known.

- 4.4 To prepare for this, customers will be asked to sign up for the new service during October and November this year. Customers signing up during this period will receive the “early-bird” discount in the form of no bin supply charge for their first bin. Customers signing up after this period, and customers requesting more than one bin initially, will incur the supply charge.
- 4.5 In future, customers will be able to sign up for the full 12-month service at any point during the year, rather than having to wait until the subscription year resets on 1 April.
- 4.6 The table below shows how many customers currently use the service, broken down by the number of bags they use, what capacity they are provided with and what the price is. It also shows how the capacity provided and the price will change in future. For example, it shows that customers with one bag will see the capacity provided increase by 100%.

	No. customers at end of 22/23	Price these customers would pay in 2024/25 if current price + 5% inflation is applied (reusable bag service)	Capacity provided in bags	Price these customers will pay in 2024/5 if they require capacity equivalent to current capacity (in wheeled bins)	Capacity provided in wheeled bin
1 bag	11,675	£43	120l	£65	240l
2 bags	7,850	£65	240l	£65	240l
3 bags	995	£87	360l	£130	480l
4 bags	433	£109	480l	£130	480l
5 bags	89	£131	600l	£195	720l

- 4.7 An additional document has been created to update the terms and conditions for the garden waste collection service. This document reflects the policies set out in the main waste and recycling collection policy document, accounting for the move to wheeled bins for this service and the new ways of working. The new garden waste terms and conditions will be implemented in line with the service change to wheeled bins in April 2024. In line with that policy, bins will remain the property of NFDC.

5. FINANCIAL IMPLICATIONS

- 5.1 The 23-24 base budget for garden waste income is £1.13m. Assuming that the number of customers remains consistent, the subscription income in 2024-25 would increase by £0.33m to £1.46m. This increase will cover increased direct operating costs following increases in fuel and salary and will make a contribution towards the Council's Medium Term forecast budget deficit, in support of protecting other council services.

6. CRIME & DISORDER, ENVIRONMENTAL AND EQUALITY & DIVERSITY IMPLICATIONS

- 6.1 There are none.

7. PLACE & SUSTAINABILITY OVERVIEW & SCRUTINY PANEL COMMENTS

- 7.1 Following a vote, in which a majority of members were in support of the recommendation, the Panel recommended to Cabinet the adoption of the proposed garden waste fees as set out in Appendix 1 of this report, applicable from 1 April 2024. The Panel were reminded that this was a discretionary service provided by the Council and were given reassurances on the accessibility of the collection vehicles to residents in less accessible parts of the District. Some members were concerned with the rise in service costs and highlighted that this may dissuade some residents from subscribing to the service.

8. PORTFOLIO HOLDER COMMENTS

- 8.1 The changes to the fees and charges set out in the report have been carefully considered looking at other similar collection services.

The increased capacity of the wheeled bin compared to the current bag service will be of great benefit to many garden waste customers, enabling them to recycle more garden waste without heavy lifting.

The new charge will align with the average charge from other Hampshire authorities and will still offer our residents very good value for money.

For further information contact:

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Background Papers:

[Waste Strategy 2022-27](#)

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Strategic Director – Place Operations &
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Appendix 1

<u>ENVIRONMENT AND SUSTAINABILITY PORTFOLIO</u>			
<u>PROPOSED SCALE OF FEES AND CHARGES FOR 2024/25</u>			
			Proposed Charge 2024/25 £
<u>GARDEN WASTE COLLECTION FOR COMPOSTING</u>			
	Collection Charge for 12 month period, per 240 litres (up to maximum 5 bins)		65.00
	Bin supply charge per bin* - including replacement bins		25.00
*customers signing up for 1 bin as part of the initial sign-up period in 2023 (dates TBC) will not pay the bin supply charge . Any additional bins will incur the charges shown above.			

CABINET – 5 JULY 2023
COUNCIL – 10 JULY 2023

PORTFOLIOS: ENVIRONMENT & SUSTAINABILITY, FINANCE & CORPORATE

DEVELOPMENT OF A NEW OPERATIONAL SERVICES DEPOT AT HARDLEY INDUSTRIAL ESTATE

1. RECOMMENDATIONS

1.1 That the Cabinet recommend to Council:

- i. The allocation of £7,800,000 in funding to complete this project, this figure being inclusive of all construction and relocation costs,
- ii. To appoint the contractor identified in Confidential Appendix 3 as the preferred bidder to design and build the operational services depot on land at Hardley Industrial Estate.

2. INTRODUCTION

- 2.1 NFDC is seeking to develop land at Hardley Industrial Estate for use as an operational services depot. The proposed scheme shall comprise staff and operational vehicle parking, storage, fuelling, and vehicle washing facilities, a vehicle maintenance workshop and office units. This development shall be in accordance with the current planning permission granted on 8 February 2023.
- 2.2 This new depot will serve as an operational centre for the east of the district. One of the Council’s three existing depots – “Claymeadow” in Totton – will be decommissioned and planning permission sought for an alternative development, most likely housing.

3. BACKGROUND

- 3.1 The Council operates a range of frontline services within the “Place Operations” department. This includes waste and recycling collections, fleet maintenance, street cleaning, grounds maintenance, public toilets, corporate tree management and inspection, pest control, cemeteries, engineering works and parking and enforcement. These services are delivered by over 200 staff and over 200 vehicles/plant.
- 3.2 The geographic size of the NFDC area is such that these services are currently provided from three depots, as follows:

Depot name	Location	Services provided
Marsh Lane Depot	Marsh Lane, Lymington	Waste/recycling, street cleaning, fleet maintenance, parking and enforcement, administration services, vehicle washing and refuelling.
Claymeadow Depot	Hounslow Avenue, Totton	Waste/recycling, grounds maintenance, cemetery maintenance, street cleaning, corporate tree

		management, fleet maintenance, pest control, vehicle washing and refuelling.
Ringwood Depot	Christchurch Road, Ringwood	Primarily a waste/recycling depot with small street cleaning and grounds maintenance presence, vehicle washing.

3.3 In 2021, the Council commissioned a review of its depot provision, which was carried out by the consultant Wood Group UK Ltd who developed an Operational Depot Strategy. This Strategy reviewed:

- Current depot site capacities and limitations
- Future service delivery resource requirements
- Staff location requirements
- Transport implications
- Parking requirements
- Maintenance and storage requirements.

The output from these reviews were used to develop a consolidated view as to the best provision of depot facilities in support of service delivery across the District. This strategy concluded that the Hardley site would be an effective location from which to service the eastern side of the district, and that the Council should proceed with a relocation from Claymeadow to Hardley.

4. THE CASE FOR CHANGE

- 4.1 The three depots have served the Council well in terms of providing bases for the delivery of key frontline services. In recent years however it has become increasingly evident that the Claymeadow Depot will not be fit for purpose in the medium to long term.
- 4.2 The buildings and other structures at the Claymeadow site are approaching the end of their life, and do not currently provide the facilities or working environment suitable for modern operational services. Space on site is also an issue, with some office staff accommodated in portacabins, operational vehicles double parking, staff having to park vehicles on access roads, some equipment being stored outside, and limited capacity within the vehicle workshop. The new Waste Strategy, approved in 2022 and due for implementation in 2025, will require further capacity for parking of vehicles and storage of equipment.
- 4.3 The Claymeadow site, shown in Appendix 1, is bordered by a community centre, housing, a railway line, and a road. This means there is no capacity to expand the current depot footprint to alleviate some of the issues described above, and the proximity to a residential area is not the ideal location for an operational depot. The location does however lend itself more favourably to an alternative use, such as housing, subject to securing planning permission.
- 4.4 The Council is investing in the modernisation of operational services via its new waste strategy and new ICT systems. A new operational depot at Hardley would be a further part of this modernisation that would deliver the following benefits:
- Provision of a more modern and comfortable working environment for staff, improving our ability to attract and retain staff in services with a traditionally high staff turnover.

- Health and Safety improvements, such as greater separation of staff parking and operational vehicle parking, and reduced reversing on site through use of one-way systems.
- A larger and purpose-built vehicle workshop that will improve servicing of the Council's fleet and associated efficiency.
- Better facilities for storage and care of Council vehicles, plant, and equipment.
- Capacity for an expanded vehicle fleet (particularly once the new waste service is implemented).

5. DETAILS OF THE PROPOSAL

5.1 The Council owns the freehold of a former industrial site known as Unit 8, Hardley Industrial Estate, Hardley, comprising approximately 1.29 hectares (3.19 acres) of land. The site forms part of a larger industrial estate, the freehold of which is also owned by the Council. The industrial estate is accessed from Hardley Roundabout on the A326. The site is currently vacant, and the Council secured planning permission for a new depot on this site on 8th February 2023.

5.2 The site plan can be seen at Appendix 2. It is estimated that once developed into an operational depot, it will have a useful economic life of at least 60 years.

5.3 The proposal has been designed to accommodate the services currently operating from the Claymeadow Depot, provided by 93 staff. In addition, the site will also accommodate an expanded service resulting from, for example, the new waste strategy. The facility will consist of the following key elements:

- New buildings comprising a store, a 4-bay vehicle repair and maintenance workshop, and a single storey office building and staff welfare facilities.
- External stores - These pre-fabricated buildings would be set out as a single storey consisting of 14 separate storage units of differing sizes, each with a separate external access.
- A fuel store located approximately centrally within the site.
- An open-air materials storage compound.
- A one-way system, so that one access is used for depot vehicles arriving at the site and one used for depot vehicles leaving the site. Both accesses will have a sliding gate and vehicle access barrier.
- A staff car parking area which will be accessed through an access to the south of the site. The development proposes a total of 75 car parking spaces for office and operative staff, together with appropriate cycle parking provision on-site.
- A vehicle wash-down area.
- Inclusion of electric vehicle charging points ("EVCP") in the staff parking area with a network of underground ducting, servicing all vehicle parking zones, to facilitate any future EVCP requirements.

- 5.4 The Council operates a fleet of Large Goods Vehicles to deliver services, and as such requires an Operator's Licence from the Driver and Vehicle Standards Agency "DVSA." Under its current licence, NFDC's three current depots are registered as Operating Centres. NFDC will be required to apply to the DVSA to register the new depot location as an Operating Centre. The location of the site, nature of the operation and a good record of compliance with the terms of our Operators Licence mean that the council is well-placed for a successful application at this site, which will be made during construction so that the Traffic Commissioner can assess the site as a near-complete depot.
- 5.5 The existing Clay Meadow depot site is shown on the attached location plan at Appendix 1. On 7 October 2022, Council secured an external market valuation of £1.15M for the site, assuming the benefit of a residential planning permission for 26 properties, of which 35% would be affordable homes. The market valuation asserted the site was a good location for residential development and its relatively small scale would be appealing to housebuilders. There is limited supply of land for the development of new homes on a brownfield site. Options for exactly how the site will support the District's housing needs will be assessed, to deliver the best possible outcome.

6. PROCUREMENT PROCESS

- 6.1 On 19th January 2023 an open tender was advertised on the South East Business Portal in line with NFDC standing orders and in accordance with public sector procurement rules. Six contractors returned bids which were then evaluated and scored on 40/60 (quality/cost) basis.
- 6.2 The quality evaluation was based on the following criteria:
- Project Team & Associated Risks (10%)
 - Reference Contracts (5%)
 - Methodology (10%)
 - Project Management (10%)
 - Environmental Impact (5%)
- 6.3 Evaluation was supported by a team of design discipline experts who reviewed technical proposals and quantity surveyors who provided detailed analysis of the cost response. This team was responsible for reviewing the submissions to provide technical feedback and points of clarification to the evaluation team.
- 6.4 Following tender evaluation, which also included interviews, a preferred bidder has been identified, this information is contained within Confidential Appendix 3 due to it being commercially sensitive.
- 6.5 The confidential Appendix 3 is not for publication by virtue of paragraph 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part 1 of Schedule 12A of the Local Government Act 1972, and that the public interest in maintaining the exemption outweighs the public interest in disclosing it.

7. STAFF IMPLICATIONS

- 7.1 There are currently 93 roles based at Claymeadow Depot, providing the services detailed in 3.2 above. All roles currently based at this depot will relocate to the new

site, to benefit from the improved modern facilities. In November 2022, briefings were held with staff at the Claymeadow depot. This involved displaying the maps and plans, with artists impressions, and explaining the layout and facilities provided at the new site.

- 7.2 As per previous workplace relocations, such as the 2018 relocation of around 45 staff from Lymington Town Hall to Appletree Court, staff will be compensated for any additional mileage incurred in line with relevant Local Agreements.

8. FINANCIAL IMPLICATIONS

8.1 *Project Cost*

8.1.1 Table 1 below identifies spend during 2022/23 and the previously approved budget remaining. It also includes the costs required to complete the development of the site. The overall sum required includes the construction of the development and equipment on site as well as contingency. The delivery costs exceed the current approved remaining budget by £1,007,000 (including project contingency). These additional costs are anticipated to be offset through the anticipated Capital Receipt to be realised from the Claymeadow Depot Site.

Table 1

Spend during 2022/23	Budget	Approved budget Feb 2023		Approved
	C/Fwd into 2023/24 (1)	2023/24 (2)	2024/25 (3)	Budget Remaining =(1)+(2)+(3)
£207,000	£293,000	£4,875,000	£1,625,000	£6,793,000 (a)
Project Completion Costs				£7,800,000 (b)
Financial consequences, not yet budgeted:				
Additional Delivery Sum Required =(b)-(a)				£1,007,000
Anticipated Capital Receipt - Claymeadow Depot				£1,150,000

8.1.2 Project Completion Costs include contractual costs, third party delivery support, non-contractual elements (such as office fit-out and ICT) and a project contingency. A further breakdown of this cost is shown in the confidential appendix 3.

8.2 *Financing*

8.2.1 The Council's Capital Strategy, adopted by the Council in February 2023 outlined the Capital Financing Requirement to 2025/26, which includes an assumption of expenditure on the delivery of the Council's new depot.

8.2.2 The Council will utilise a combination of funding from the Capital Programme Reserve, the Capital Receipts Reserve and Revenue Contributions towards Capital Programme financing to finance this new operational asset. The

Capital Receipt to be released from the sale of the Claymeadow Depot site will finance the Additional Delivery Sum Required, as outlined in table 1 above.

- 8.2.3 The Council has spent approximately £326,000 on professional fees and charges, planning fees, design fees and other costs on the project to date (£207,000 during 2022/23, and £119,000 in prior years).
- 8.2.4 As noted in paragraph 3.4 above, a recent external valuation (October 2022) gave a market value of £1.15M for the Clay Meadow Depot site assuming the land had the benefit of planning permission for 26 homes, 35% of which being affordable homes. The Council's General Fund will seek a sale at Market Value for this site.
- 8.2.5 The Council has received a recent (November 2022) external valuation for the Hardley site assuming planning permission for the development. The valuation gave an opinion of market rental at £195,000.00 per annum for the completed Hardley development based on a letting of the proposed buildings and yard to a hypothetical third party to generate a rental income and increase the capital value of the site on an investment basis.

8.3 *Ongoing Revenue costs*

- 8.3.1 Overall, the ongoing operating costs of the Hardley Depot should be broadly similar to those of Claymeadow (budget of £100,000 per annum).
- Energy costs will be lower as a result of the new site being far more energy efficient.
 - Reactive and planned maintenance costs should be low for the first few years, although these will gradually increase after the site has been in use for a few years.
 - Servicing costs will be greater as there will be more equipment that requires statutory PPM.
 - National Non-Domestic Rates will be higher for the larger site.
 - Most other operating costs (e.g. water, sewerage, cleaning, insurance) should be cost neutral.
- 8.3.2 The Depot Strategy (see 3.3) calculated that in terms of waste/recycling collection rounds, the relocation would add on average 6 miles per vehicle per day. Based on the current collection rounds, this could equate to an additional c£30k of fuel per annum. However, the new waste strategy and new in-cab technology will give an opportunity to restructure collection rounds and maximise their efficiency, to reduce the impact of the relocation. The depot will also be prepared for future electrification of parts of the fleet.

9. **KEY RISKS**

- 9.1 Any construction project will be subject to the risk of unforeseen costs, time delays and reduction in the quality of delivery. From inception, the project team has taken a proactive approach to risk management and has taken the time to understand and mitigate key risks whilst seeking to maximise opportunity where possible.
- 9.2 Risks to the quality of delivery have been mitigated by the development of a detailed contractual specification setting out the Council's requirements. The contractor has

been selected through a rigorous open tender process to deliver the project of works pursuant to an industry standard JCT Design and Build contract and the contractor's contractual performance and quality of delivery will be monitored throughout the project. The Council has engaged a technical advisor to provide project management services to deliver the project including in respect of the tender process, costs management, project reporting, contract, and performance management and co-ordinating with the contractor and other professional services.

- 9.3 By taking a proactive approach, the project team has set realistic parameters in terms of potential changes to time and budget meaning that the costs and completion date presented within this report are risk adjusted. Key risks are presented below.
- 9.4 **Materials Cost Inflation (cost)** - The construction industry is currently experiencing unprecedented inflation in the cost of materials. Prior to confirmation of the preferred bidder, shortlisted contractors were asked to confirm their fixed price bid and that it shall remain valid until the point of tender award. Although this risk has been transferred to the contractor, the project team will work collaboratively with them to explore alternative materials and methodologies to lessen the impact of any future inflation.
- 9.5 **Contractor Insolvency (time/cost/quality)** - This would cause a potentially significant impact to project delivery time and cost but is mitigated by undertaking financial checks during the tender phase and payments being made based on monthly valuations of work by the consultant technical advisor. It is noted that the risk of sub-contractor insolvency is held by the main contractor
- 9.6 The tender process included the Council's detailed design requirements for the depot but there will be elements of the design and the Council's precise requirements which will need to be worked through before the "start on site".
- 9.7 **Service delivery** – there is a risk of some staff not wishing to transfer from the existing depot to the new site. This could present a risk to operational service delivery. However, this is mitigated by having early conversations with staff and payment of additional mileage – see section 7 of this report for further information.
- 9.8 The Clay Meadow Depot valuation assumes the site has the benefit of planning permission for residential development as mentioned above. Were the site to be sold without the benefit of planning permission the value may be reduced by a future purchaser pricing in "planning risk". The valuation factors in estimated site clearance and demolition costs, but there is a risk that site clearance is more expensive than assumed in the valuation.

10. CRIME & DISORDER IMPLICATIONS

- 10.1 The current depot location at Claymeadow is susceptible to break-in and theft, resulting in two significant break-ins involving theft of equipment over the last three years. The new site will be much more secure by design.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 The project is seeking to provide a development which meets the requirements of BREEAM Excellent. BREEAM is an abbreviation of 'Building Research Establishment Environmental Assessment Method' and is a sustainability assessment method that is used to masterplan projects and buildings. An 'Excellent' rating represents a sustainability performance in the top 10% of UK new non-domestic buildings.

- 11.2 A BREEAM rating is achieved by gaining a target amount of mandatory and optional credits. Targets fall under a variety of categories such as management, transport, waste, energy and water efficiency, thermal performance and health and wellbeing.
- 11.3 The assessment encompasses every stage of the development's lifespan, from inception through to demolition. Credits can be gained, for example, by utilising locally sourced construction labour and providing training opportunities; specifying and constructing with locally sourced materials that can readily be recycled at end of use; incorporating energy efficient lighting and heating systems (fittings and controls); controlling construction waste by reusing demolition materials onsite and separating waste streams for recycling thereby minimising materials going to landfill.
- 11.4 This development proposes the use of solar PV roof panels for local power generation – this will reduce emissions and the cost of energy. There will also be the use of permeable paving to reduce the amount of surface water being returned to drain with natural planting around the perimeter of the site providing a green backdrop and natural screening, all of which should provide BREEAM credit.
- 11.5 To benefit from the chosen contractor's experience, the scheme has been tendered as design and build so the detailed design and extent of the environmental measures to be incorporated have yet to be fully defined. The project team propose appointing a retained BREEAM specialist to work with the contractor and ensure the ambition to achieve BREEAM Excellent is achieved.
- 11.6 As highlighted in 8.3.2, the operational vehicle mileage may increase once the relocation has occurred. However, moving to the new depot will be an important enabling factor for the Council's waste strategy, which itself will help the New Forest reach a recycling rate of 55%+ once service changes are made.

12. EQUALITY & DIVERSITY IMPLICATIONS

- 12.1 The Hardley depot will be fully compliant with all relevant standards for accessibility, it is a requirement of the contract that the design and construction comply with Part M of the Building Regulations, all relevant disability guidance from the Centre for Accessible Environments, BS8300 and the Disability Discrimination Act. This will offer improved levels of access for staff and visitors to the site.
- 12.2 Staff rest and welfare facilities have been designed with diversity in mind, with staff engaged on the best mix of facilities to meet current and future need.

13. DATA PROTECTION IMPLICATIONS

- 13.1 Requirements for storage of physical or electronic data at the Hardley Depot will comply with the council's corporate policies on General Data Protection Regulations.

14. NEXT STEPS AND GOVERNANCE ARRANGEMENTS

- 14.1 Following Council approval to proceed, the construction contract will be entered into, and the contractor will be notified that they may commence project mobilisation.
- 14.2 After a period of additional survey work and detailed design and planning it is expected that the contractor shall mobilise to site within twelve weeks of award. It is anticipated

that construction of the development shall take in the region of 58 weeks and be complete by the end of 2024.

- 14.3 The Waste Programme Board is the Board overseeing the Hardley project, waste strategy, and Operations ICT project. Its membership consists of three members of EMT and three members of Cabinet. It will act as the Project Board for this scheme and will set out parameters for a smaller project specific steering group to work within to manage the development and make decisions as required through the mobilisation and delivery process. This Steering Group will be led by the Strategic Director for Corporate Resource and Transformation. Regular progress reporting shall be maintained via the issuing of monthly reports and through regular Waste Programme Board Meetings. It is also intended to deliver ad-hoc updates to Overview and Scrutiny as the scheme progresses.

15. CONCLUSIONS OF THE WASTE PROGRAMME BOARD

- 15.1 The current Claymeadow depot is not fit for purpose in the longer term, with neither the capacity nor the current facilities being suitable for the Council's needs. A 2021 review of overall depot provision recommended that a site at Hardley be utilised as a replacement for the current Claymeadow site. This new depot will be an important part of the modernisation of operational services.
- 15.2 The Hardley site is owned by the Council and received planning permission in February. Since then, a compliant tender process has been carried out and a preferred bidder identified. Including non-contract costs, as well as capital receipts to offset some of the cost, this will lead to a total budget of £7,800,000.
- 15.3 There will be 93 posts affected by this relocation, and the council will financially support additional travel costs for a 1-year period. The new depot will have improved facilities for the benefit of all staff.
- 15.4 The Waste Programme Board supports the proposal to proceed with the project, as outlined within the report.

16. COMMENTS OF THE RESOURCES AND TRANSFORMATION OVERVIEW & SCRUTINY PANEL

- 16.1 The Resources and Transformation Overview and Scrutiny Panel welcomed the report to bring forward the development of the new depot facility at Hardley and supported the proposal to allocate £7.8M of Capital funding towards the project.

17. COMMENTS OF THE DEPUTY LEADER

- 17.1 I am delighted that this proposal has come forward to the Cabinet. The new Operational Services Depot at Hardley will provide first rate facilities for waste management and for our District and our waste collection teams. The provision of many modern and future proofed facilities will be a great asset for this Council

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Background Papers:

Planning Committee Report, February 2023 -
[Hardley Plan.pdf \(newforest.gov.uk\)](https://www.newforest.gov.uk)

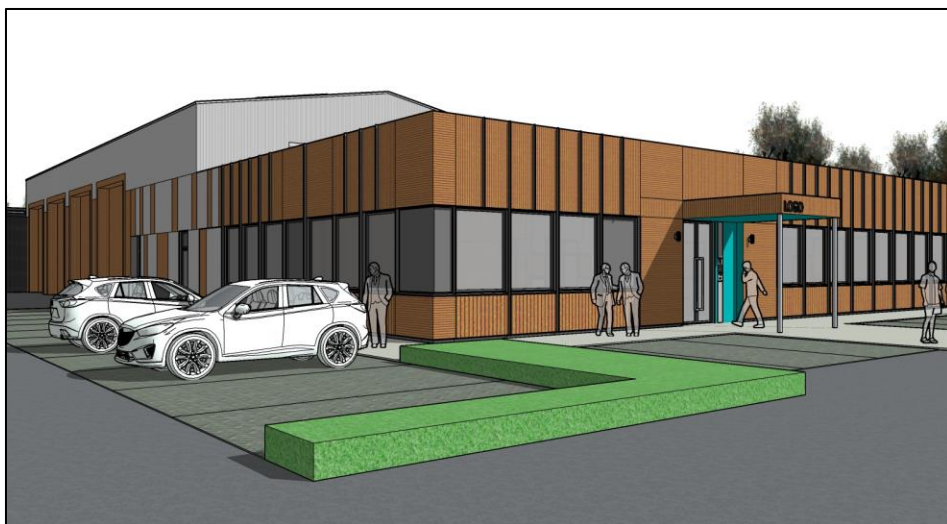
Appendix 1 - Clay Meadow Depot Plan



Appendix 2 - Site Plan Hardley Depot and artists impressions



Site plan



Corner view



View from Access Road



Elevated view

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