

# Public Document Pack

## Executive Member Decisions

Friday, 2nd February, 2024  
10.00 am

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### AGENDA

1. **Approve EVCP TRO**  
EMD - Approve EVCP TRO 3 - 9  
EMD - Approve EVCP TRO APP1  
EMD - Approve EVCP TRO APP2  
EMD - Approve EVCP TRO APP3
  
2. **Award of Grant from the Heat Networks Delivery Unit**  
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3. **Blackburn Town Centre - Demolition and Site Assembly Works**  
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4. **Business Rates and Benefits Policy Changes for 2024-25**  
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EMD - Report Enforcement and Prosecution Policy Review -APP1  
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**6. Schedule of Delegated Property Decisions**

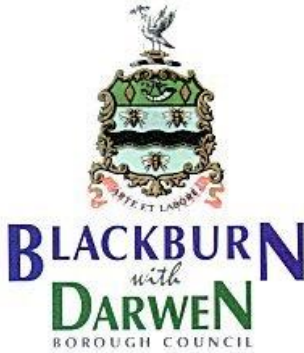
**EMD - Schedule of Delegated Property Decisions - PART1 67 - 78**

**EMD - Schedule of Delegated Property Decisions 2023-24 Q1andQ2 - PART2**

**EMD - Schedule of Delegated Property Decisions - APP1**

Date Published: 2<sup>nd</sup> February 2024  
Denise Park, Chief Executive

## EXECUTIVE MEMBER DECISION



<b>REPORT OF:</b>	Executive Member for Growth and Development
<b>LEAD OFFICERS:</b>	Strategic Director of Environment & Operations
<b>DATE:</b>	01 February 2024

<b>PORTFOLIO/S AFFECTED:</b>	Growth and Development
<b>WARD/S AFFECTED:</b>	Audley & Queen's Park, Darwen South Ward

**SUBJECT:** Proposed Traffic Regulation Order (TRO) for the BwD Electric Vehicle Charge Point - Parking Places (Pilot 1) on Lambeth Street and Pringle Street in Blackburn and Progress Street in Darwen.

### 1. EXECUTIVE SUMMARY

The Council is proposing to advertise a Traffic Regulation Order to support new Electric Vehicle parking bays. This is in accordance with the approved EV strategy, as detailed below and seek approval to restrict parking within the designated EV charging bays to be only available for electric vehicles.

These EV charging points form part of a pilot scheme that will install charge points at five locations around the borough. The pilot scheme will help generate evidence and test our processes to be used for the Local Electric Vehicle Infrastructure (LEVI) funding application due in April 2024. The LEVI funding of £1.6million is to be spent on forming new charge points in predominantly residential areas with low or no off-street parking. The pilot will be key evidence for the LEVI bid.

### 2. RECOMMENDATIONS

That the Executive Member:

Authorise the Deputy Director of Legal and Governance to advertise the proposed Traffic Regulation Order as per the attached schedule contained in appendix 1.

Authorise the Deputy Director of Legal and Governance to then make the Traffic Regulation Order should no objections be made.

Note that any unresolved objections to the Traffic Regulation Order will be reported to a meeting of the Planning and Highways Committee.

### 3. BACKGROUND

It has been identified in the published Electric Vehicle charging strategy document that there is a need for EV charging bays to be provided in areas where residents have no access to off-street parking. In order to facilitate this requirement, the Council will be applying for funding to install EV charging points in Blackburn, Darwen and the Rural areas.

A pilot scheme is being trialled at five locations within Blackburn with Darwen to understand the process of providing EV charging points in residential areas in more detail. This pilot scheme will provide insight to allow the main EV project to be completed successfully.

This TRO covers three of the five sites on Lambeth Street and Pringle Street in Blackburn and Progress Street in Darwen. Once this TRO is passed, future locations in which EV charging sites are located can be added to the order via amendments to this TRO, providing no existing restrictions need to be revoked.

Due to the type of housing and the general lack of available parking, we intend to enhance the parking offer for residents. This will be achieved by adding additional Electric Vehicle parking spaces into available vacant land that was not previously open to the public.

The new spaces will be contiguous with the highway where possible and will look like charging hubs alongside the street, without removing significant available parking space for non-EV users.

The aim is that these charging hubs will serve all properties within a five-minute walk from the hub. Each car that utilises one of these EV spaces will reduce the number of cars parked in busy terraced streets.

#### **4. KEY ISSUES & RISKS**

No risks arising from this proposal have been identified. The proposal is of benefit to the social and economic well-being of the Borough.

**NB – all EV charging points will be installed in accordance with the IET Code of Practice that outlines specific safety guidelines.**

#### **5. POLICY IMPLICATIONS**

The proposal to make a new Traffic Regulation Order requires delegated approval from the Executive Member for Environment & Operations and Chief Officer. Traffic Regulation Orders are required to be published in the local press and on site to comply with the Road Traffic Regulations Act 1984. Directly affected properties are consulted in line with current procedure.

#### **6. FINANCIAL IMPLICATIONS**

The cost of making and advertising this Traffic Regulation Order will be approximately £1000 and will be funded by Highways from within existing budgets.

#### **7. LEGAL IMPLICATIONS**

The necessary legal powers to implement this scheme are within the Road Traffic Regulations Act 1984. The advertising of the proposals will provide the public the opportunity to comment/object which will be considered appropriately by officers and if any objections cannot be agreed then they will be brought back for a decision by the Executive Member.

#### **8. RESOURCE IMPLICATIONS**

None

#### **9. EQUALITY AND HEALTH IMPLICATIONS**

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Page 4

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

## 10. CONSULTATIONS

Members of the public will be given the opportunity to object to or comment on the proposal following statutory advertising on the council's website.

## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

<b>VERSION:</b>	<b>1</b>
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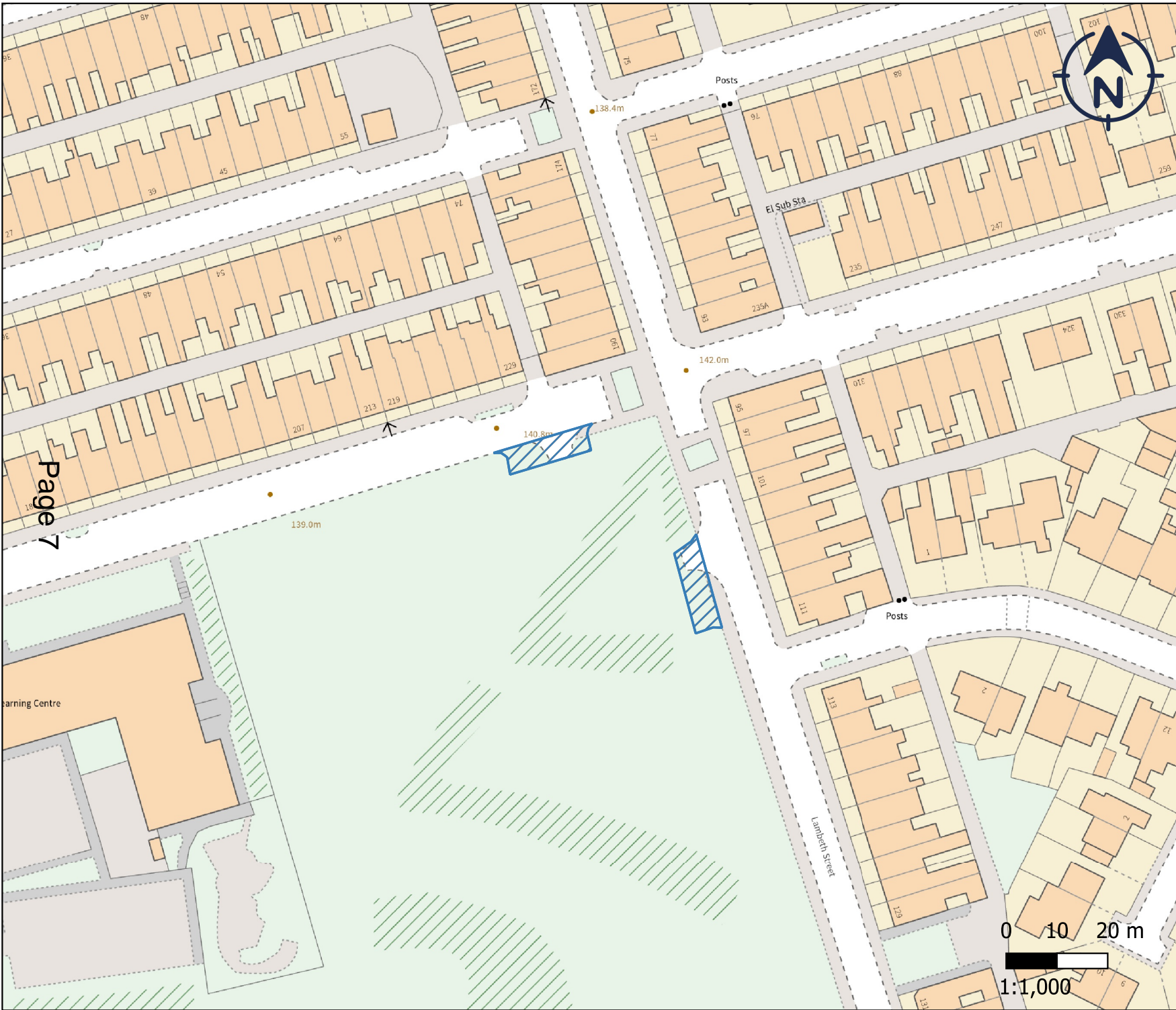
<b>CONTACT OFFICER:</b>	<b>Paul Withington</b>
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<b>DATE:</b>	22/01/2024
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<b>BACKGROUND PAPER:</b>	Appendix 1 Schedule Appendix 2 Plan 1, Plan 2 Appendix 3 Statement of reasons
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Schedule 1: Electric Vehicle Only

Street	Side	Location
Progress Street, Darwen	West	From a point approximately 25m from its junction with Marsh House Lane in a southerly direction. To a point approximately 39m from its junction with Marsh House Lane in a southerly direction.
Lambeth Street, Blackburn	West	From a point approximately 7m of its junction with Harrow Drive in a northerly direction. To a point approximately 27m from its junction with Harrow Drive in a northerly direction.
Pringle Street, Blackburn	South	From a point approximately 14m of its junction with Lambeth Street in a westerly direction. To a point approximately 36m of its junction with Lambeth Street in a westerly direction.



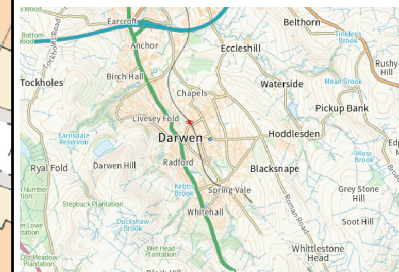
**BLACKBURN**  
with  
**DARWEN**  
BOROUGH COUNCIL


## Highways Authority

Title: Traffic Regulation Order  
Plan 1

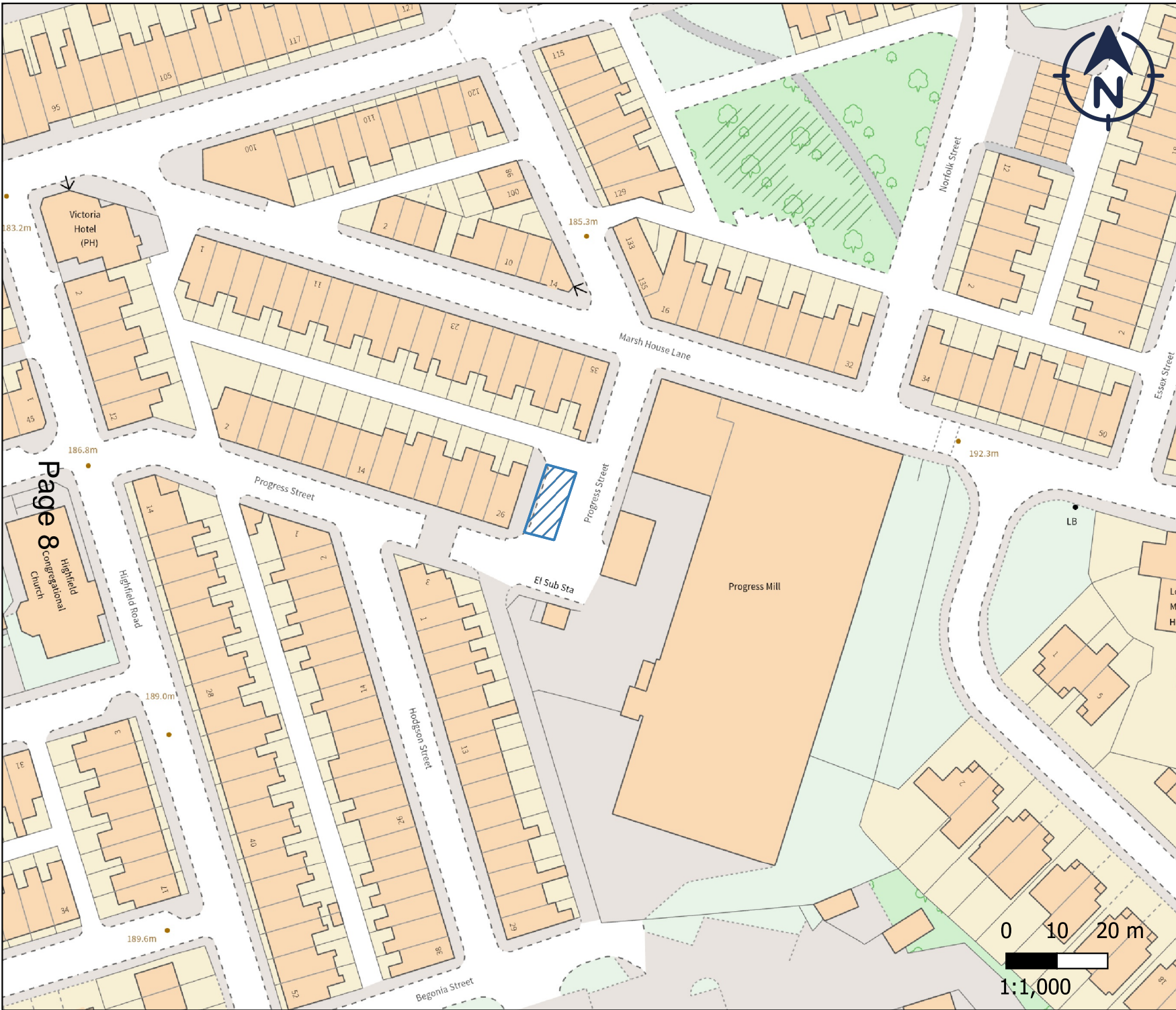
Produce by: PW  
Checked by: HF  
Date Produced: 2024-01-10

Text Location: Lambeth Street /  
Pringle Street Blackburn



**Legend**  
 Electric Vehicles Only  
 At all times

Crown copyright and database rights 2016.  
Ordnance Survey licence number: 100019493  
Indication of PROW - E&OE

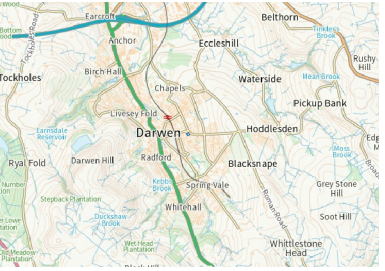



## Highways Authority

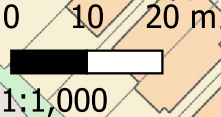
Title: Traffic Regulation Order  
Plan 2

Produce by: PW  
Checked by: HF  
Date Produced: 2024-01-10

Text Location: Progress Street,  
Darwen



**Legend**  
 Electric Vehicles Only  
 At all times



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 Ordnance Survey licence number: 100019493  
 Indication of PROW - E&OE



## STATEMENT OF REASONS

On the 6<sup>th</sup> of July 2023 the Executive Board at Blackburn with Darwen Borough Council (BwD BC) approved the proposed Electric Vehicle Infrastructure Strategy. This leverages LEVI funding from the Department of Transport to bring Electric Vehicle (EV) charging infrastructure to residents that are unable to charge on their own land. The strategy identifies areas that predominantly park on street and predicts short term future demand for EV's.

The decision can be found at <https://democracy.blackburn.gov.uk/ieDecisionDetails.aspx?ID=598>

The strategy has set a target of 259 Electric Vehicle Charge Points (EVCP) to be installed before April 2026. Funding bids will open from April 2024. BwD BC has been allocated £1.6m to achieve this but to be successful the authority will need to demonstrate it can achieve its target.

BwD BC have initiated a pilot program to install three residential charging areas that have a significant number of terrace houses within a five-minute walk. Currently there may be low or no EV take up due to the lack of available chargers.

These charging areas will have new bays constructed on land that is eCouncil owned but not currently adopted highway. The bays will be adopted and maintained as highway and as such will need a TRO to ensure these new bays are available for EV charging. The proposed Traffic Regulation Order (TRO) will protect the bays all day every day for electric vehicles that are charging.

Without the EVCP's and the TRO the Council will not have the required data or draft contract documents to support the LEVI bid for funding.

For the above reason BwD BC is proposing to introduce a new TRO to restrict the new parking bays to Electric Vehicles while charging.

## EXECUTIVE MEMBER DECISION



<b>REPORT OF:</b>	Executive Member for Growth and Development
<b>LEAD OFFICERS:</b>	Strategic Director of Growth & Development
<b>DATE:</b>	31 January 2024

<b>PORTFOLIO/S AFFECTED:</b>	Departments
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<b>WARD/S AFFECTED:</b>	(All Wards);
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<b>SUBJECT:</b> Award of Grant from the Heat Networks Delivery Unit
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### 1. EXECUTIVE SUMMARY

The Council applied for and has been awarded a grant by the Heat Networks Delivery Unit towards the cost of undertaking heat zoning and a techno-economic feasibility study of heat networks in Blackburn and Darwen. Approval to accept the grant is requested from the Executive Member for Growth & Development.

### 2. RECOMMENDATIONS

That the Executive Member approves acceptance of the award of grant from the Heat Networks Delivery Unit.

### 3. BACKGROUND

The Council declared a climate Emergency in 2019 and pledged to work towards becoming carbon neutral by 2030. Included within the supporting Climate Emergency Action Plan is an objective to cut emissions from the heat supply to Council buildings.

A Heat Decarbonisation Plan (HDP) prepared in Q4 of 2022/23 for 13 of the Council's highest energy consuming buildings concluded that heat networks would be more efficient than individual heat pumps in each building. All but two of the buildings are located in either Blackburn or Darwen town centre. The conclusion reinforced a heat mapping and master-planning study undertaken in 2019 that identified potential networks in the borough, but which wasn't followed up due to lack of resource and then the outbreak of Covid-19. The cost of producing this study was funded by a grant of £26,281 from the Heat Network Development Unit in 2018/19.

Heat networks (also known as district heating) supply heat from a central source to consumers, via a network of underground pipes carrying hot water. Heat networks can cover a large area or a small cluster of buildings. They can be expanded over time and heat 'off-takers' other than Council can connect to them.

Further, detailed work is needed to test and check the initial findings and to undertake a detailed technical and economic analysis that provides the Council with sufficient information to determine whether to invest in progressing the scheme(s). The work involves:

#### 1. Heat Network Zoning:

To identify potential strategic heat network zone(s) and determine potential core heat networks in the borough, which based on detailed technical and economic analysis, offer the lowest cost solution to consumers, in accordance with Heat Zoning Technical Specification section 3.

The Technical Consultant will be working with client and stakeholders to collect local data that will add to and improve the data within the HNDU/DESNZ heat network zoning model for this area.

#### 2. Techno-Economic Feasibility of Core Heat Networks:

To develop a clear set of recommendations, based on detailed technical and economic analysis, as to the feasibility of developing a low-carbon heat network scheme(s) for the borough, how it may be expanded in the short and long terms to align with the Heat Network Zoning ambitions identified in the first stage of works.

The Heat Network Delivery Unit (HNDU) offers financial assistance to undertake heat network viability assessment. An application for assistance was submitted to Round 13 of the fund in October 2023. The Council received notification of an award on 22nd January 2024:

- £67,000 zoning and feasibility
- £29,880 project management

HNDU's threshold value for feasibility for a borough of the size of Blackburn with Darwen is £100,000. The Unit will fund 67% of the cost, requiring 33% match from the grant recipient. An allocation of match funding, capped at £33,000, has been made for this purpose from the Climate Emergency Action Plan budget. The award is therefore up to £67,000, depending on the actual cost of the work (to be tendered). The match funding amount will be adjusted accordingly.

No match is required for the project management element. The allocation should meet the cost of external project management, bringing in heat network expertise that the Council does not have, for the duration of the study.

To accept the grant the Council must sign a non-legally binding Memorandum of Understanding with the Department of Energy Security and Net Zero. The MoU sets out the grant conditions and reporting requirements. These are as would be expected of a grant from a government department.

On acceptance, an invitation to tender will be issued on the Chest to find a technical consultant to undertake the work, which is expected to take 6 months.

#### 4. KEY ISSUES & RISKS

Acceptance of the grant will enable the Council to undertake preliminary work on heat networks, through which the Council may be able to decarbonise the heat supply to some of its buildings, an objective of its Climate Emergency Action Plan. The grant helps to stretch its limited resources.

The conditions attached to the grant are reasonable and achievable. The Council is required to account for the use of the funding and to submit regular reports to the Heat Network Delivery Unit. This is standard practice for any grant award.

Acceptance of the grant does not oblige the Council to deliver a heat network.

#### 5. POLICY IMPLICATIONS

Acceptance of the grant will allow the Council to pursue one of the priorities in its Action Plan to address the Climate Emergency.

## 6. FINANCIAL IMPLICATIONS

Cost to the Council will be up to £33,000, which is the match funding required as a condition of the grant. This cost will be met from the Climate Emergency budget.

## 7. LEGAL IMPLICATIONS

Acceptance of the grant requires the Council to sign a non-legally binding Memorandum of Understanding with the Department of Energy Security and Net Zero. The MoU has been reviewed by the Legal Department and the terms and conditions deemed acceptable.

Procurement of the work described will need to be in accordance with the Public Contract Regulations 2015 and the Council's Contract Procurement Procedure Rules.

## 8. RESOURCE IMPLICATIONS

The works for which the grant has been awarded will require input from staff in the Growth & Development Department. The time requirement will be reduced by appointment of an external project manager for the duration of the project, which is funded by the grant.

## 9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

## 10. CONSULTATIONS

None

## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

VERSION: 1

<b>CONTACT OFFICER:</b>	<b>Gwen Kinloch</b>
<b>DATE:</b>	23 <sup>rd</sup> January 2024
<b>BACKGROUND PAPER:</b>	

## EXECUTIVE MEMBER DECISION



<b>REPORT OF:</b>	Executive Member for Growth and Development
<b>LEAD OFFICERS:</b>	Strategic Director of Growth and Development
<b>DATE:</b>	16th January 2024

**PORTFOLIO/S AFFECTED:** Growth and Development

**WARD/S AFFECTED:** Blackburn Central

**SUBJECT: Blackburn Town Centre - Demolition and Site Assembly of former Fleece Inn, Penny Street and Starkie Street Car Parks**

### 1. EXECUTIVE SUMMARY

This report seeks approval to proceed with the demolition and site assembly of the former Fleece Inn, Starkie Street and Penny Street car parks and to appropriate Penny Street and Starkie Street car parks as development land in preparation for the delivery of the wider Town Centre Masterplan.

### 2. RECOMMENDATIONS

That the Executive Member:

1. Notes that the former Fleece Inn was acquired by the Council in 2021 from Thwaites for the purpose of site assembly and future development;
2. Notes that the former Fleece Inn suffered fire damage in 2022 following a fire caused by arson;
3. Notes that Council officers have concluded that the refurbishment of the former Fleece Inn is unviable due to nationally determined factors and pressures, including historically high interest rates and high and rising construction costs, with the viability further undermined by fire damage;
4. Approves the demolition of the former Fleece Inn and subsequent construction works required to convert the cleared site to new car parking thereby extending Penny Street car park;
5. Approves the closure of Starkie Street car park and to relocate permit holders to alternative town centre car parks;
6. Approves the ground clearance, remediation and enabling works of the Starkie Street car park site to prepare the site for future development;
7. Approves the former car park sites to be appropriated as development land for planning purposes;

8. Approves the commencement of the marketing of the enlarged Penny Street car park site for development;
9. Delegates authority to the Growth Programme Director to progress the settlement negotiations with the Council's insurer to finalise the fire damage claim for the former Fleece Inn;
10. Delegates authority to the Growth Programme Director to proceed with the procurement and appointment of consultants and contactors to support the demolition and construction works as well as obtaining any approvals for the work including planning permission and associated award where required all in accordance with the Council's procurement procedures;
11. Approves the commencement of commercial negotiations with the Council's insurance provider to agree a settlement payment for the Fleece property following the fire damage in 2022. This payment will contribute towards the costs of demolition works.
12. Notes the estimated gross capital costs for the demolition and enabling work of £250,000 will be drawn down from the Development Investment Fund with all capital to be expended over financial years 2024/25 and 2025/26 and will be offset by the insurance settlement payment.
13. Authorises the Growth Programme Director in liaison with the Deputy Director of Legal and Governance to finalise the contract terms of the consultant and contractor appointments for the demolition of the former Fleece Inn and subsequent construction works.

### **3. BACKGROUND**

- 3.1 The former Fleece Inn property was acquired by the Council in 2021 from Thwaites for the purpose of site assembly and future development and supports the Council's town centre vision and masterplan as set out in the Council's Local Plan.
- 3.2 Acquisition of the property complemented the adjacent Council investment in acquiring the former Thwaites brewery site in joint venture with Maple Grove Developments. The established joint venture company, Maple Grove Blackburn, is preparing plans for the redevelopment of the former Thwaites site and will be bringing forward these proposals in 2024.
- 3.3 Following a fire at the property in 2021, caused by arson, a detailed assessment was undertaken to assess the damage caused and to reassess the potential for refurbishment for commercial uses, including a bar and food outlet. However, given the fire damage together with higher than anticipated interest rates and construction costs, refurbishment of the property is assessed as unviable by Council Officers and therefore demolition is recommended.
- 3.4 The demolition of the property will enable the Council to temporarily use the cleared site for additional car parking whilst the longer-term plans for redevelopment of the site are established.
- 3.5 To support the wider regeneration and development plans for the former Thwaites site, the Starkie Street car park will close with permit holders relocated to alternative town centre car parks, including the extended Penny Street site.
- 3.6 Starkie Street car park is of low quality construction with an undulating gravel surface, with customers generally being permit holders rather than pay and display users. It was always the Council's intention to leave Starkie Street as a gravel car park due to the potential for redevelopment.
- 3.7 Following the closure of Starkie Street car park, the site will be cleared and remediated together with any required enabling works to prepare the site for future development.

#### **4. KEY ISSUES & RISKS**

- 4.1 Due to the proximity of the former Fleece Inn property to both Starkie Street and Penny Street a partial closure of the footway will be required to ensure the safety of the public during the demolition works. Council officers will engage with highways officers to seek all necessary approvals and permits to ensure the safety of the public and to minimise disturbance and inconvenience.
- 4.2 Ground clearance works will be undertaken near to the Salvation Army property, which adjoins the Starkie Street car park site, and Council officers will engage with the Salvation Army to ensure all works are coordinated including any enabling works to support the future site development and regeneration plans.
- 4.3 A number of approvals will be required and Council officers will engage with all stakeholders to obtain all necessary approvals, including planning, building control, parking, highways closures and possibly party wall approvals with the Salvation Army property.

#### **5. POLICY IMPLICATIONS**

None.

#### **6. FINANCIAL IMPLICATIONS**

- 6.1 The estimated gross capital costs of £250,000 will be drawn down from the Development Investment Fund with all capital to be expended over financial years 2024/25 and 2025/26 and therefore no additional capital is required. The final agreed insurance settlement payment will offset the gross costs.
- 6.2 It is proposed the works will be undertaken in phases with consultants and contractors for the initial works being procured by quotes for packages less than £10,000 and by a restricted Invitation to Quote via the Chest procurement system utilising local suppliers for packages between £10,000 and £80,000.
- 6.4 No works packages are expected to exceed £80,000 and the Council's procurement procedures are to be adhered to at all times.

#### **7. LEGAL IMPLICATIONS**

The demolition contractor, works contractor and consultants will be procured in accordance with the Council's Constitution and the Public Contracts Regulations 2015.

#### **8. RESOURCE IMPLICATIONS**

Current staff resources from the Council's Growth, Property, Planning, Procurement and Legal teams will be utilised to complete the legal agreements and supervise the design and works on site.



## 9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

## 10. CONSULTATIONS

Council Officers will ensure local businesses, residents and ward councillors are informed on the proposals through the statutory planning process.

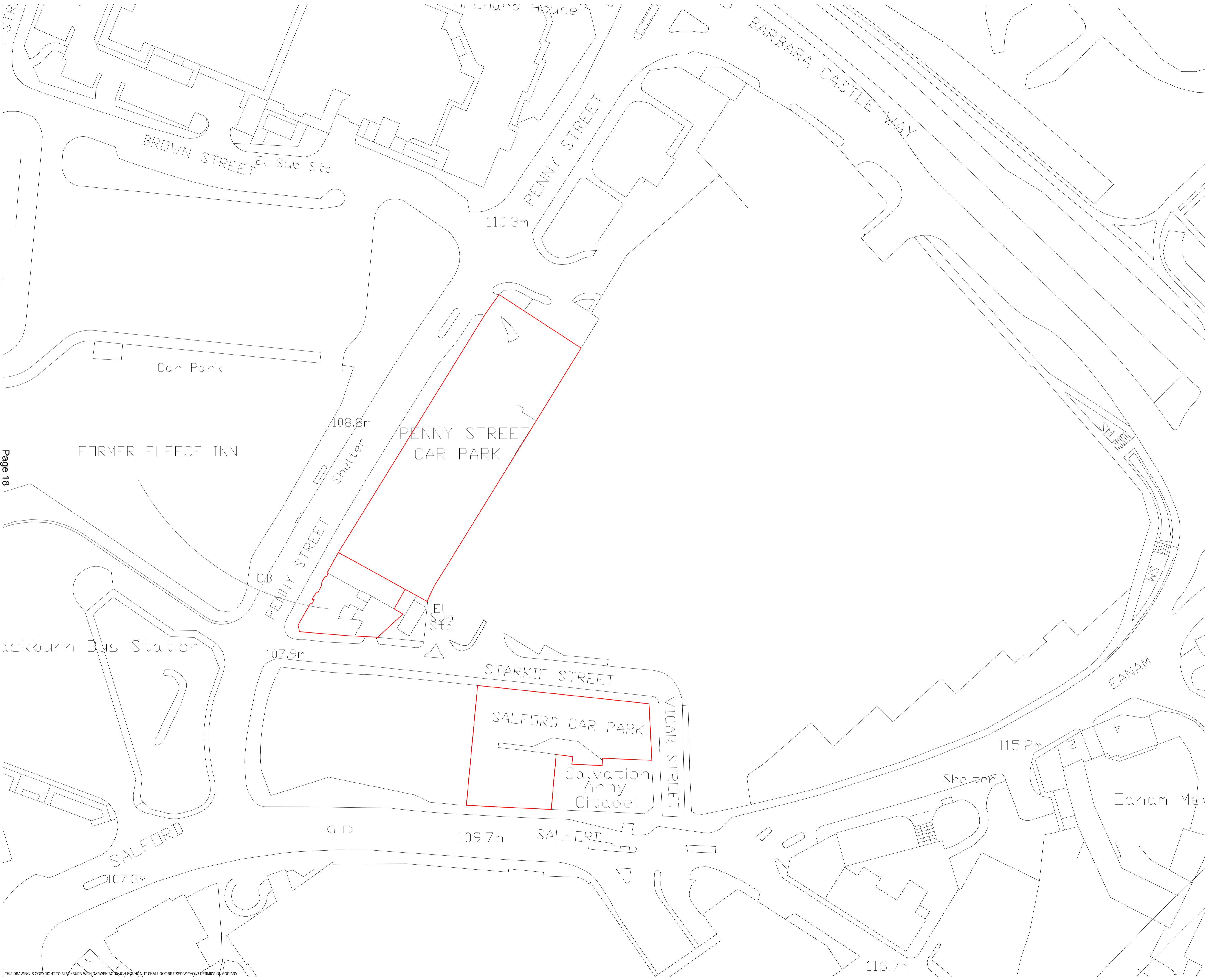
## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

<b>VERSION:</b>	1.0
<b>CONTACT OFFICER:</b>	Simon Jones, Growth Programme Director, Growth and Development
<b>DATE:</b>	16 <sup>th</sup> January 2024
<b>BACKGROUND PAPER:</b>	None



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NOTES:-

REV	DESCRIPTION	DRAWN	CHK	APP	DATE
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status

client  
**BLACKBURN WITH DARWEN B.C.  
 TOWN HALL  
 BLACKBURN BB1 7DY**

project title  
**STARKIE STREET / PENNY STREET  
 COUNCIL SITES**

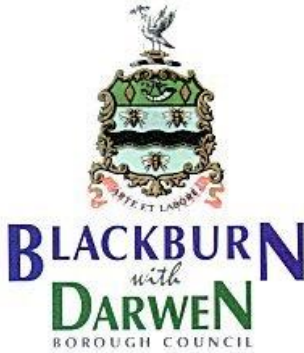
drawing title  
**EDM - SUPPORTING DOCUMENT**

scale @ A1	designed by	drawn by	checked by	approved by	date drawn
1:500		RJ	SJ	SJ	22/01/24

drawing no.	revision

Do Not Scale From This Drawing

## EXECUTIVE MEMBER DECISION



<b>REPORT OF:</b>	Executive Member for Finance and Governance
<b>LEAD OFFICERS:</b>	Strategic Director of Finance and Resources
<b>DATE:</b>	31 January 2024

<b>PORTFOLIO/S AFFECTED:</b>	Departments
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<b>WARD/S AFFECTED:</b>	(All Wards);
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<b>SUBJECT:</b> Business Rates and Benefits Policy changes for 2024/25
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### 1. EXECUTIVE SUMMARY

The Government has announced the introduction of a new relief to assist Business Rate payers with higher bills where certain improvements have taken place to existing properties. The new Improvement Relief will assist with mitigating the increase in the rateable value and higher bills from the improvement. Full details of the criteria and relief awarded are set out in Appendix A.

In addition, after careful consideration of the Council's Corporate Parenting role, a proposed change to the Discretionary Housing Payment scheme will ensure greater financial support could be made available to care leavers who are in rented accommodation and in financial need. The change proposes to include a specific objective of securing and maintaining tenancies of those individuals leaving care which will provide for greater flexibility to allocate Discretionary Housing Payments.

### 2. RECOMMENDATIONS

That the Executive Member:

Approves the new Improvement Relief policy and the proposed amendment to the Discretionary Housing Payment scheme.

### 3. BACKGROUND

Each financial year all Revenues and Benefits policies are reviewed and amended following any changes to Council priorities or legislative requirements. This report ensures that the review of Corporate Parenting policy is incorporated into the administration of the Discretionary Housing Payment. In addition, the formal adoption of the Government's new Improvement Relief from 2024/25 ensures that the Council is able to conform to the legislation in the new financial year.

### 4. KEY ISSUES & RISKS

#### 4.1 Business Rates Improvement Relief

The criteria, assessment and award of the new Improvement Relief is detailed in Non-Domestic Rating Act 2023, and the Non-Domestic Rating (Improvement Relief) (England) Regulations 2023. The initial role of the Council is to check whether the conditions for the relief are met, i.e. that a certificate has been issued by the Valuation Office Agency and that the same person has been the occupier on each day since the day the improvement works completed.

Following confirmation of the certificate and occupancy, the Business Rates team will award relief to the value of the Valuation Office Agency improvement relief certificate.

This change is not expected to affect many businesses within the financial year and the additional administration involved in the new relief is expected to be minimal.

The full policy is attached in Appendix A.

#### **4.2 Discretionary Housing Payments**

The new policy document for 2024/25 has been amended to ensure additional support can be provided to care leavers. There is no additional funding or administration cost to the Council as the Discretionary Housing Payment budget is a cash limited one provided by the Department of Work and Pensions.

The full policy is attached as Appendix B.

### **5. POLICY IMPLICATIONS**

The proposed policy changes to the Business Rates Improvement Relief scheme and Discretionary Housing Payment scheme are contained in the attached Appendices.

### **6. FINANCIAL IMPLICATIONS**

None. The Improvement Relief will be fully funded by the Government.

The funding of the Discretionary Housing Payment scheme is determined by the Department of Work and Pensions. Once the allocation for the financial year is exhausted, future applications are refused or delayed until the following year.

### **7. LEGAL IMPLICATIONS**

The provision of Improvement Relief is detailed in the Non-Domestic Rating Act 2023 and the Non-Domestic Rating (Improvement Relief) (England) Regulations 2023.

The Discretionary Housing Payment policy detailed in this report are discretionary and can therefore be determined by the council.

### **8. RESOURCE IMPLICATIONS**

None. Any additional work required from the changes listed in the policy documents will be undertaken by existing resources.

### **9. EQUALITY AND HEALTH IMPLICATIONS**

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

**10. CONSULTATIONS**

None.

**11. STATEMENT OF COMPLIANCE**

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

**12. DECLARATION OF INTEREST**

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

**VERSION:** 1

<b>CONTACT OFFICER:</b>	<b>Andy Ormerod</b>
<b>DATE:</b>	23 <sup>rd</sup> January 2024
<b>BACKGROUND PAPER:</b>	Appendix A – Business Rates Improvement Relief Policy Appendix B – Discretionary Housing Payment Policy 2024-25



# **Business Rates Improvement Relief Policy 2024 - 28**

## **2. Improvement Relief**

### **2.1 Overview**

From 1<sup>st</sup> April 2024 the Non-Domestic Rating (NDR) Bill 2023 provides a 12 month relief for ratepayers facing higher bills where eligible improvements to an existing property have increased their rateable value.

The objective of the Improvement Relief policy is to assist occupiers make improvements to their existing premises, rather than subsidising general commercial property development. The Non-Domestic Rating (Improvement Relief) (England) Regulations 2023 provides the details on the process, criteria and award of relief.

### **2.2 Qualifying Criteria**

To qualify for the relief, two criteria need to be met:

#### ***i. Works condition***

The work undertaken should increase the area of any building in or on the hereditament, otherwise improve the physical state of the hereditament, or add to it rateable plant and machinery.

A newly constructed hereditament or a refurbished hereditament (which had left the rating list during the works) will qualify.

A change of use alone or the addition of land will also not qualify.

#### ***ii. Occupation condition***

The same ratepayer needs to have been in occupation of the hereditament on each day since the qualifying works commenced. This ensures the support is not diverted to landlords, developers or businesses which have merely inherited the improvement from a previous occupier.

Changes in occupation between subsidiary companies will not count as a change in occupation.

Conditions for the relief can still be met where a hereditament splits or merges providing the same person has been in occupation throughout the relevant period.

### **2.3 Applications**

It is not possible for Individuals or organisations to apply for Improvement Relief as the decision on entitlement lies solely with the Valuation Officer. The Valuation Officer will consider qualification for Improvement Relief when reviewing the RV following notification of improvements to an existing property.

### **2.4 Calculation of relief**

The legislation provides for a Valuation Officer to certify the value of the amount to be deducted from the rateable value. The certificate will specify:

- I. When the certificate will take effect from;
- II. When the qualifying improvement works were completed, and;
- III. When the qualifying period ends.

If the qualifying improvement works lead to the split or merger of the hereditament, the Valuation Officer will ensure that the certificate is only concerned with the change in the rateable value from the improvement works and not the change in rateable value from any increase the hereditament being larger due to a merger.

In cases where the hereditament has more than one set of qualifying works, the certificate will show the amounts certified for the works, when the qualifying works were completed and when the period ends.

The Valuation Officer may also withdraw a certificate if it has been issued in error.

Upon making a determination of a certificate, the Valuation Office Agency will notify the Local Authority that Improvement Relief may apply by means of an indicator on the update schedule via the BATrans system. The VOA will issue the Local Authority with a copy of the certificate detailing the RV amount for the qualifying works. It is only then that it is the responsibility of the Local Authority to confirm that the individual or organisation fulfil the 'Occupation Condition' of the Relief before applying to the account.

## **2.5 Period of Relief**

The relief will commence from 1<sup>st</sup> April 2024 and apply to works completed by 2028. Qualifying works completed by that date will then benefit from 12 months of relief.

## **2.6 Appeals**

Any appeal against a decision made under the '*Business Rates Improvement Relief*' policy must be made in writing and reach the Council within 28 days of an organisation receiving notification of an award decision.

- The Council will acknowledge the appeal within 5 working days of receipt.
- The Strategic Director of Finance and Governance will consider the appeal.
- The applicant will be informed of the final decision as soon as practicable thereafter.

## **2.7 General**

The Council will consider each case in accordance with the criteria set out above and the legislation. The criteria is not restrictive and does not restrict the Councils ability to depart from its general policy as to the granting of relief if it sees fit to do so bearing in mind the facts of each case.





# **Discretionary Housing Payment Policy 2024 - 25**

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## **1. Introduction**

- 1.1 Discretionary Housing Payments (DHPs) are awarded by the Council to provide financial assistance (outside of the Housing Benefit and Universal Credit Regulations) to help customers meet their housing costs.
- 1.2 The regulations covering DHP's are contained in the Discretionary Financial Assistance Regulations 2001; amendments include the Welfare Reform Act 2012 (Consequential Amendments) Regulations 2013, Council tax Benefit abolition (consequential amendments) regulations 2013 and the Universal Credit (Miscellaneous Amendments, Saving and Transitional Provision) Regulations 2018
- 1.3 In addition, the Secretary of State has also released a guidance manual and good practice manual in April 2014 (updated May 2022).
- 1.4 Blackburn with Darwen Borough Council has taken the above into consideration when developing and reviewing the DHP policy.
- 1.5 DHPs can play an important role in sustaining tenancies, preventing homelessness and, where needed, enabling customers to move into more affordable accommodation.
- 1.6 DHPs may cover all or part of a shortfall in a customer's eligible rent or provide the deposit or other assistance a tenant may need in order to secure or sustain a tenancy. DHPs may be awarded as a one-off payment and/or as an ongoing series of payments.
- 1.7 To qualify for a DHP, the customer must have a rent liability, require further financial assistance with their housing costs and be in receipt of Housing Benefit or Universal Credit Housing Costs element for the period of time assistance is needed.

## **2. Amount of funding available**

- 2.1 The Department for Work and Pensions (DWP) provide grants each financial year to Local Authorities for DHP purposes.
- 2.2 The Council needs to consider how to allocate this limited DHP budget in a way that is not only fair, but also supports those that are in most need of assistance.
- 2.3 LAs can use their own funds to top up their government contribution by an additional 150% in England and Wales, and by any amount in Scotland. Once the Local Authority has met its overall cash limit it cannot make any further awards in that financial year. If the Local Authority does award above this limit, it is breaking the law. The legislation which specifies the overall limit on expenditure is Article 7 of the Discretionary Housing Payment (Grants) Order 2001.
- 2.4 Any unspent DHP funding from the government contribution will be returned to DWP at the end of the financial year.

### **3. The DHP scheme**

- 3.1 Welfare reform is aimed at encouraging people to move into work, increase their hours and / or move to more affordable accommodation.
- 3.2. Although it is hoped that many people will be able to address and resolve their difficulties without the need for a DHP, the Council recognises that DHPs have an important role to play in providing customers with short term assistance to ease transitions and allow households time to find a way to resolve their difficulties.
- 3.3 The overriding principles of the DHP scheme in Blackburn with Darwen are as follows:
- All customers will be treated fairly;
  - All DHP applications will be assessed on their individual merits;
  - All of the options available to the customer (including, for example, reducing household expenditure, maximising income, securing employment and/or moving to alternative, less expensive accommodation) will be taken into account when the Council assesses the merits of each application, and;
  - In order to be awarded a DHP, customers must be able to show that their circumstances are exceptional.

### **4. Objectives of this DHP policy**

- 4.1 The Council will consider making a DHP award to applicants who meet the qualifying criteria. Assessing all applications on their individual merits will include considering the extent to which the financial assistance requested will meet the Council's objectives of –
- Encouraging and sustaining people in employment;
  - Sustaining tenancies and preventing homelessness;
  - Safeguarding residents in their own home;
  - Helping customers who are trying to help themselves;
  - Keeping families together;
  - Supporting victims of domestic violence to move to a place of safety;
  - Supporting the vulnerable and elderly in the local community;
  - Helping customers through personal and difficult events;
  - Supporting young people in the transition to adult life, and;
  - Support for households affected by welfare reform.
- 4.2 DHPs are not generally intended to be used as a long term solution to the customer's financial difficulties. Instead, they should be used to provide short term assistance to ease transitions and allow households time to find a way of resolving their difficulties.
- 4.3 All applications will be assessed on their individual merits however, when considering all applications the Council will take into account not just the cash

limitations of what remains in the DHP budget, but also the extent to which a DHP can help a customer to overcome temporary difficulties and if possible, enable them to secure paid employment and / or move to alternative accommodation that they can afford.

- 4.4 The expectation is that DHP's will be awarded in unusual or extreme circumstances where additional help with the current rent will have a significant effect in alleviating hardship, reducing the risk of homelessness, keeping families together or alleviating difficulties that may be experienced in the transition from long term benefit dependency into work.

## **5. Examples of the shortfalls that DHP may/may not cover**

- 5.1 Blackburn with Darwen Borough Council is not required to spend its overall grant allocation in any particular way, and so is able to use discretion. The types of shortfall that a DHP may cover include the following:

- a shortfall between the Housing Benefit or Universal Credit and the rent payable;
- reductions in Housing Benefit or Universal Credit, resulting from the application of the Benefit Cap;
- reductions in Housing Benefit or Universal Credit, resulting from the under-occupation of social rented housing, Reductions in Housing Benefit or Universal Credit, resulting from Local Housing Allowance restrictions, including the Shared Accommodation Rate;
- rent officer restrictions such as local reference rent or shared accommodation rate;
- non-dependant deductions in HB, or housing cost contributions in UC;
- income taper reduction;
- Customers with foster children;
- Customers who have recently become unemployed;
- To secure tenancies and avoid eviction / homelessness, and;
- Providing assistance with arrears which prevent someone from moving to more affordable and suitable accommodation.
- Policy to limit benefit to 2 children
- Removal of the family premium
- Former HB only claimants who were previously in receipt of the Severe Disability premium
- Any other changes that limit the amount of Housing Benefit or Universal Credit Housing costs.

A DHP may also be awarded for one-off costs such as a rent deposit or removal costs. When reviewing an award the Council must be satisfied that:

- Rent deposits are reasonable;
- The property is affordable;
- There is a valid reason for the move i.e. downsizing to a more affordable property, and;

- Where the rent deposit is linked to preventing homelessness.

## 5.2 What DHP's cannot cover

For the purposes of a DHP, the following elements of a customer's rent cannot be included in their claim for housing costs because the regulations exclude them:

- Service charges that are ineligible for Housing Benefit or Universal Credit;
- Increases in rent that are due to outstanding rent arrears;
- Any charges for water, sewerage or allied environmental services;
- Any liability for Council Tax;
- Recovery of Overpayments of Housing Benefits or Universal Credit, or to sanctions relating to jobseekers allowance, child support or benefit offences, and;
- To supplement levels of Universal Credit paid. DHP will only be awarded where there is a shortfall between the eligible rental liability and the amount of Housing Costs awarded.

## 5.3 Support for households affected by welfare reform

DHPs are not generally intended to be used as a long term solution to the customer's financial difficulties. Instead, they should be used to provide short term assistance to ease transitions and allow households time to find a way of resolving their difficulties.

All applications will be assessed on their individual merits, however, when considering all applications the Council will take into account not just the cash limitations of what remains in the DHP budget, but also the extent to which a DHP can help a customer to overcome temporary difficulties and if possible, enable them to secure paid employment and/or move to alternative accommodation that they can afford.

The expectation is that DHP's will be awarded in unusual or extreme circumstances where additional help with the current rent will have a significant effect in alleviating hardship, reducing the risk of homelessness or alleviating difficulties that may be experienced in the transition from long term benefit dependency into work.

## 5.4 Households affected by the Benefit Cap

The purpose of the DHP funding is to provide short-term, temporary relief to mitigate the most severe effects of the Benefit Cap until a more sustainable solution is found. Examples of the groups that are likely to be particularly affected by the Benefit Cap include (but are not limited to) the following:

- Families living in private rented accommodation;
- Families living in temporary accommodation;
- Individuals or families fleeing domestic violence;
- Individuals or families who cannot move immediately for reasons of health education or child protection, and;

- Households that are moving to, or are having difficulty moving to, more appropriate accommodation.
- 5.5 DWP intention is that the majority of these customers affected by the Benefit Cap will move into work and therefore become exempt from the Cap. Some may choose to move whilst others may consider other means by which they might be able to meet any shortfall such as trying to negotiate a reduction in their rent.
- 5.6 The Council is unable to provide a list of cases who will automatically receive DHP as it will treat each claim on its own merits and take into consideration the individual circumstances of the customer. Below are examples of the areas the Council may consider a priority however, other cases depending on the circumstances will not be excluded:
- Households that need to move to alternative, lower cost accommodation but are unable to do so immediately (for reasons of health, education or child protection) and the provision of short-term financial assistance will contribute to the achievement of one or more of the Councils DHP policy objectives;
  - Households that need to move to alternative, lower cost accommodation but are working proactively to resolve their situation and the short-term award of the DHP will prevent the household from becoming homeless, or delay homelessness for long enough to enable them to complete a planned move to more affordable accommodation;
  - Households that are working proactively with the Job Centre and advice/support providers to secure paid employment, claim Working Tax Credit and become exempt from the Benefit Cap, and;
  - Homeless households that are residing in temporary accommodation (provided by, or on behalf of, Blackburn with Darwen Borough Council) and have been assessed as being particularly vulnerable and so need to remain in the area awaiting the offer of alternative temporary accommodation.

All applications will be considered on their individual merits.

- 5.7 Households affected by the Social Sector Size Criteria
- The purpose of the DHP funding is to help those customers who are unlikely to be able to meet the shortfall in the rent payments, in a property they are under occupying, and for whom moving to a smaller property may be inappropriate.
- For customers who are under occupying and living in *significantly* adapted accommodation, it may be more cost effective to allow them to live in their current accommodation rather than moving into smaller accommodation which then needs to be adapted at a cost to the LA.
- 5.8 As a Corporate Parent we will also look to positively support young people leaving care to establish and then sustain tenancies.

5.9 Given the limitations of the DHP budget, and on the understanding that the Council and its Housing Association partners will do everything they can to support customers and prevent them from becoming homeless, the Council will give priority to DHP applications received from the following households:

- Households that contain a person with a disability and are living in '*significantly adapted*' accommodation;
- Households that contain a disabled child or disabled adult (wef 01/04/17) who is unable to share a bedroom because of their severe disabilities, where regulations do not allow for the extra bedroom;
- Households that contain a disabled child or disabled adult (wef 01/04/17) and are living in accommodation that has been adapted to meet the child/adults needs, where regulations do not allow for the extra bedroom;
- Households containing someone who has a severe and persisting disability which means that they are dependent on the care and support of relatives and friends who are living in the local community, and there is no suitable alternative accommodation in the area;
- Households where an additional room is needed because a person or persons disability precludes a couple from sharing a room or where an additional room is needed to store essential equipment because of a person's disability, and;
- Households who have been approved as adopters or prospective foster parents within the previous 52 weeks or are going through the approval process and need a spare room in order to qualify.

5.10 Depending on the level of demand for DHPs, the Council may also give priority (albeit slightly less priority than is given to the households listed above) to DHP applications from the following households:

- Households whose Housing Benefit is restricted by the Size Criteria but that restriction will soon be lifted because one or more of their children will soon reach an age when they are not expected to share a bedroom;
- Customers who are pregnant and whose Housing Benefit is restricted due to under occupancy but that restriction will soon be lifted when the baby is born, and;
- Households with exceptional needs which are actively and consistently engaging in seeking to downsize to accommodation that matches their need.

5.11 The legislative criteria must be followed, however, applications which are outside the policy but within the law should be considered.

## **6. Rent deposits and removals**

A DHP can be awarded for a rent Deposit for a property that the customer is yet to move in to if they are already entitled to Housing Benefit or have Housing costs included in their Universal credit award, or where the Council is satisfied that



Housing Benefit or the housing costs within Universal Credit entitlement exists when the award is made.

The DHP budget is insufficient to meet the rent shortfalls of the thousands of customers whose Housing Benefit/Universal Credit will no longer cover their rent in full. In order to provide long term solutions, the Council will help and encourage customers to move to alternative accommodation that they can afford.

Instead of providing customers with short-term assistance to enable them to maintain the rent payments on a home they will never be able to afford without a DHP, the Council may decide that it would be better to help those customers to move somewhere they can afford via a payment of rent-in-advance, help with a deposit or removal costs.

6.1 When awarding DHPs for a rent deposit, the following will be checked:

- The property is affordable for the tenant;
- The tenant has a valid reason to move, and;
- The deposit is reasonable.

Establish with the claimant whether they:

- are due to have a deposit or rent in advance in respect of their existing tenancy returned to them, or;
- have they received assistance from another department within the LA towards a rent deposit (such as a rent deposit guarantee scheme or similar), and;
- However, tenants will typically not receive a returned deposit until they have vacated a property and begun a new tenancy;
- Any housing costs already awarded, or are due to be awarded will be deducted from any potential award as duplicate payments will not be made.

6.2 It may not always be possible for the claimant to seek the most affordable accommodation, for example, when someone fleeing the home due to domestic violence needs to seek a place of safety such as a refuge service. Deposits will be paid directly to the future landlord, contact must be made with the landlord to discuss when and how this can be paid. Landlords should be aware of their legal obligations to protect any deposit paid in a Government approved tenancy deposit protection scheme. Compliance with this requirement will help reduce the need for future help with deposits. Further information can be found at:

<https://www.gov.uk/tenancy-deposit-protection/overview>

6.3 As a lump sum payment for a deposit is not made in respect of a period, the claimant must be entitled to HB or UC at the point of the award.

6.4 Deposits can also be paid to people who are moving out of the area to secure a new tenancy.

- 6.5 The regulations allow DHPs to be awarded on two homes when someone is treated as temporarily absent from their main home, for example because of domestic violence. In this case, if the claimant is treated as liable for rent on both properties, and in both cases there is a shortfall, they could have DHPs in respect of both properties subject to the weekly limit on each property.

If the claimant is only treated as liable for payments on one dwelling but is having to pay rent on two, a weekly DHP could be made up to the level of the weekly eligible rent on the dwelling from which they are temporarily absent. For example, a claimant may be temporarily absent from their normal dwelling to stay near a child receiving treatment in hospital. They are not treated as liable for payments on the temporary dwelling, but are still incurring housing costs for their normal home. The Council will consider a DHP to help cover costs on the claimant's permanent residence.

In cases of domestic violence the victim may have fled from, or to, another area to seek safety the Council may liaise with other Council's to establish which authority should take the DHP application (the authority where the home is located or the refuge service where the victim is currently living).

Removal costs can also be paid in circumstances where the claimant has to move in emergency circumstances.

## **7. DHP's and two homes**

- 7.1 The regulations allow a DHP to be awarded in respect of two homes when someone is treated as temporarily absent from their main home, for example, because they have had to leave their main home because they are a victim of domestic abuse. Please refer to the Housing Benefit Regulations 2006 (S.I. 2006/213) (HB regulations) or Universal Credit Regulations 2013 (S.I. 2013/376) (UC regulations) for the time restrictions on these provisions. In such cases of temporary absence - if the claimant is treated as liable for rent on both properties, and in both cases there is a shortfall, the Council will consider an award a DHP in respect of both properties subject to the weekly or monthly limit on each property.
- 7.2 Where the claimant is only treated as liable for HB or UC on one home, but is having to pay rent on two, a weekly DHP could be made to cover costs of the second home; the HB or UC eligible rent for the main home is the maximum award. For example, a claimant may be temporarily absent from their main home to stay near a child receiving treatment in hospital. They are incurring costs on their temporary dwelling but their housing costs are covered for their main home. The Council will consider a DHP to help cover costs on the claimant's temporary dwelling.
- 7.3 In cases of domestic abuse where the victim has fled from, or to, another area to seek safety, the Council may collaborate with other Councils in order to establish which authority should receive the DHP application (i.e. the authority where the main home is located or that of the refuge service or temporary dwelling where the victim is currently living).

## 8. Claiming a DHP

- 8.1 Applications for DHP's will be made on line via Blackburn with Darwen Council's website [www.blackburn.gov.uk/benefits](http://www.blackburn.gov.uk/benefits) or by referral from another party acting on the customer behalf. In order to make an assessment customers must provide details of their income, capital and expenditure and provide proof where required.

When deciding whether or not to award a DHP, the Council will assess each application on its merits and take into account its objectives and such things as:

- The size of any shortfall that exists between what the customer is receiving in housing costs (from Housing Benefit or Universal Credit) and the eligible housing costs for which they are liable, together with the reasons for this shortfall;
- The financial circumstances (income and expenditure, savings, capital and debt) of the customer, their partner and anyone else living in their home;
- Any special needs or health and social problems that the customer and / or their family have along with what impact these have on their housing and financial situation;
- The impact that moving and / or changing schools is likely to have on the family and the educational outcomes of any young people in the household;
- The reasons why, compared to other people, the circumstances of the customer and their family should be considered '*exceptional*';
- The impact that not awarding a DHP is likely to have on the Council's finances and services especially homelessness, social care health etc;
- The length of time for which a DHP is being sought;
- Any steps the customer has taken to reduce their rental liability, including looking for alternative accommodation, and;
- The amount of money remaining in the DHP budget, and
- Any other factors that the Council and/or the customer consider appropriate.

In most cases, the person who claims a DHP will be the person who is receiving Housing Benefit or Universal Credit, or their partner. The Council may however accept a claim from someone who is acting on behalf of that person (such as an appointee or advocate) if the person is vulnerable and requires support.

A claim for a DHP will be considered from the date a DHP is requested, but on condition that all supporting information and documentation is received by the Council within one month of that request.

If the Council requires additional information and evidence to assess the claim, it will request this from the customer in writing, electronically or verbally (over the telephone or face to face). The customer must provide this information and documentation within one month of the date requested.

If the customer fails to provide the information and documentation on time, the Council will make a decision based on any information it already holds, including the information held on file.

8.2 The Council will not normally make allowance for any financial loss resulting from the customer's failure to claim any benefits in a timely manner. No allowance will be made for any debt relating to an overpayment of Housing Benefit.

8.3 The award of a DHP does not guarantee that a further award will be made at a later date, even if the customer's circumstances remain unchanged.

## **9. Backdating an award**

9.1 Each application will be looked at on its own merits when deciding whether or not to backdate a DHP. There are no restrictions on the length of the backdating period beyond a prohibition on awarding DHP for any date prior to 2 July 2001, when the scheme began, but we do have a duty to act consistently.

9.2 A backdated DHP award may be made in cases where a claimant is subject to a rent shortfall due to welfare reforms and has accrued rent arrears during the transition period between a reduction in benefit and moving into employment. In this case it the LA will award a backdated DHP to cover the arrears so as not to undermine the claimant's move into employment. In other cases DHP could be used to facilitate a move of home (such as through a mutual exchange) where a landlord will not allow a move for someone who is in arrears.

## **10. Making a claim in advance**

10.1 A DHP can only be considered for a period when the customer is entitled to Housing Benefit or Universal Credit. Claims can however, be made in advance such as the forthcoming imposition of upcoming welfare benefit changes.

## **11. Notification of a decision**

11.1 The customer will be notified, in writing, of the outcome of the DHP claim. If a claim is unsuccessful, the letter will include an explanation of how the decision has been reached and details of the right of review. If the claim is successful, the Council's decision notice will include the following:

- The reason for the award;
- The amount awarded;
- The period of the award;
- To whom the DHP will be paid, and;
- The customer's duty to report any changes in circumstance.

## **12. Change in circumstances**

12.1 The customer must tell the Council if their circumstances change after a DHP is awarded. This is made clear to customers in the award letter and application form.

12.2 DHP's will be stopped:

- If DHPs are being, and/or have been made because a claimant has misrepresented or failed to disclose a material fact, fraudulently or otherwise; and/or
- When a claimant has been paid as a result of an error.

### **13. Payment arrangements**

13.1 The Council will decide whether the DHP should be paid to the tenant, the landlord or a third party. All payments will be made via BACS in accordance with the Council's HB payment schedule.

### **14. Right to request a review**

14.1 As a DHP is not a payment of Housing Benefit or Universal Credit, it is not subject to the appeals mechanism that operates under those schemes.

Customers can however request a review of a decision to refuse an award, a decision to award a reduced amount, a decision not to backdate an award or a decision to seek recovery of an overpayment of a DHP as follows:

- A customer (or their representative) who disagrees with a DHP decision may request a review. This request must be made in writing, within one month of when the notification was issued and confirming the reasons why the review has been requested;
- The appeal will be reviewed by an independent person to those that made the initial decision, and;
- The customer will be notified in writing once the decision has been reviewed, including the outcome of the review and a new decision notification if appropriate.

This decision will be final. In cases of alleged maladministration by the Council, the customer should follow the Council's complaints procedure. If a customer is still unhappy, they have a right to contact the Local Government Ombudsman.

### **15. Overpayments**

15.1 The Council will make every effort to minimise overpayments of DHP. If an overpayment does occur, the Council will decide whether or not it is appropriate to recover. If recovery action is appropriate, the Council will send an invoice to the customer (and/or the person to who the payment was made) and a written explanation of how the overpayment occurred and the periods and amounts to which it relates.

- 15.2 Where the overpayment is a result of an error made by the Council, recovery will not normally be sought, unless the customer or person who received the payment could have reasonably known they were being overpaid. DHP overpayments will not be recovered from payments of Housing Benefit and Universal Credit that are due to the customer.
- 15.3 DHPs will not be recovered from ongoing HB or UC. This is unlike HB overpayments where there is a regulatory provision to allow recovery from ongoing HB.

## **16. Fraud**

- 16.1 The Council is committed to tackling and preventing fraud in all its forms. If a customer, landlord or agent attempts to claim a DHP by making a false declaration or by providing false evidence or statements, they may have committed an offence under the Theft Act 1968. Where the Council suspects that fraud may have occurred, it will investigate the matter as appropriate and this may lead to criminal proceedings.

## **17. Publicity**

- 17.1 The Council has a responsibility to ensure that it does not limit the legal discretions it may apply, and is committed to applying this policy fairly and consistently. It will take steps to maximise take up to make sure that the funds are targeted towards those who are most in need. This policy will be made available on request.

## **18. Debt advice**

- 18.1 Anyone experiencing debt problems will be signposted to the local debt advice team 'Shelter' for free, confidential advice. Personal Budgeting support and Assisted Digital support can and may be offered where applicable.

## **19. Policy review**

- 19.1 This policy will be reviewed on a regular basis and in light of any legislative changes or other factors that impact on its effectiveness.

## EXECUTIVE MEMBER DECISION



<b>REPORT OF:</b>	Executive Member for Finance and Governance and the Executive Member for Environment and Operations
<b>LEAD OFFICERS:</b>	Deputy Director Legal and Governance, Director of Environment and Operations
<b>DATE:</b>	31 January 2024

<b>PORTFOLIO/S AFFECTED:</b>	All Departments
<b>WARD/S AFFECTED:</b>	(All Wards);

**SUBJECT: EMD Report Enforcement and Prosecution Policy Review**

**1. EXECUTIVE SUMMARY**  
The Council's Enforcement and Prosecution policy was originally approved and adopted at the Executive Board meeting on 11 October 2018. The policy was reviewed in 2021 with some minor amendments which were approved by Executive Member Decision on 22 October 2021. It has now been further reviewed and there are further relatively minor amendments recommended as shown in red in the policy attached at Appendix 1.

**2. RECOMMENDATIONS**  
That the Executive Member:  

- Agrees to adopt the amendments to the Enforcement and Prosecution policy.

**2. BACKGROUND**  
At the Executive Board on Thursday 11 October 2018 the Council's Enforcement and Prosecution Policy was first noted, approved and adopted.  
  
The policy was reviewed in 2021 with a number of minor amendments to reflect current law and practice. For instance, references to government departments were updated after name changes and all the links to the Codes of Practice and legislation in the policy have also been refreshed. There were also amendments to improve on the wording of some sections for clarity and to make reference to matters such as revenues and benefits enforcement, use of contracted enforcement officers, animal welfare and landlord banning orders which had been omitted previously. This was approved by EMD in October 2021.  
  
Now in 2023, as a result of a request by the Head of Service Public Protection, a further review has taken place necessitated by a requirement to enter into an MOU with the HMRC to collaborate in relation to some enforcement matters.  
  
Appendix 1 is the new full version with the amendments in red.  
  
Appendix 2 is the short version showing the main amendments

Whilst the terms of the policy require a review every 3 years, it also allows earlier reviews if changes of circumstances or legal requirements make that necessary.

#### 4. KEY ISSUES & RISKS

The general need for the policy to ensure compliance with Government Codes of Practice and the law has already been established at adoption stage in 2019. The policy contains a requirement that it is reviewed formally and this ensures that it reflects current law and practice.

#### 5. POLICY IMPLICATIONS

This policy contributes in the main to the following corporate priorities:

[A more prosperous Borough](#)

[Healthier happier and Safer Communities](#)

[Every Child and young person to have opportunities to fulfil their potential](#)

#### 6. FINANCIAL IMPLICATIONS

The policy is relevant to all current enforcement activity but does not require any additional resources to operate.

#### 7. LEGAL IMPLICATIONS

This policy continues to demonstrate the Council's commitment to the Regulators Code and the Code of Crown Prosecutors.

#### 8. RESOURCE IMPLICATIONS

Continuing to adhere to the policy will not require any additional resources.

#### 9. EQUALITY AND HEALTH IMPLICATIONS

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

#### 10. CONSULTATIONS

This policy has been drafted in consultation with the following departments – licensing, community safety, planning, education, audit, housing standards, public protection and Revenues and Benefits.

#### 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The



recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	<b>Shelagh Lyth</b>
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<b>DATE:</b>	3 November 2023
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<b>BACKGROUND PAPER:</b>	Previous draft and emails
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# ENFORCEMENT AND PROSECUTION POLICY

## 1. Introduction

- a. Council has a variety of enforcement functions, the purpose of which are to promote public safety and to protect public amenities, the environment and consumers.

- b. The Council's intention is to promote a balanced, thriving and safe local community by carrying out enforcement in a practical and proportionate manner, whilst having regard to the impact the enforcement is likely to have upon local businesses and people.
- c. The Council also has a statutory duty to have regard to the need to safeguard the welfare of children<sup>1</sup> and vulnerable adults<sup>2</sup> and to prevent and detect crime<sup>3</sup> in exercising any of its other statutory functions.
- d. This policy sets out the general standards that will be applied in relation to enforcement of legislation by the Council in its role as regulator and enforcer. It must be noted that this policy cannot describe every piece of legislation or every national or local code or standard. The Council will use its best endeavours to apply all the general principles in this policy wherever possible whilst recognising that each case must be dealt with lawfully on its own merits.
- e. For the avoidance of doubt, whenever Council officers, enforcement officers are referred to this will include third party investigators duly contracted to undertake work on behalf of the Council.

## **2. The Council's Statutory Functions**

The following list contains the categories of statutory enforcement functions the Council's enforcement services are empowered to carry out:

- Environmental protection
- Envirocrime

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<sup>1</sup> Section 11 Children Act 2004

<sup>2</sup> Care Act 2014

<sup>3</sup> Section 17 Crime and Disorder Act 1998

- Revenues and Benefits – Council Tax/Business Rates recovery and benefit overpayment/fraud
- Housing Standards
- Planning, Building Control and Highways (including parking)
- Licensing
- Trading standards and consumer protection
- Community Safety- Anti-Social Behaviour
- Food law
- Animal Health, welfare and feed law
- Health and safety at work
- Education – offences under the Education Act 1996, for example, unauthorised absence from school or a breach of a school attendance order.

## 2. Principles of Enforcement

The Council hereby commits to the principles of proportionality, consistency, transparency, targeted/prioritised enforcement action and accountability, all of which are set out in the statutory Regulators' Code (the Code)<sup>4</sup>. It is a statutory duty for all regulators to have regard to the Code when considering exercising a regulatory function.<sup>5</sup> All these principles have been taken into account in this policy but in the event of any perceived inconsistencies the Regulators Code will prevail (save that it shall not override the status of the Code for Crown Prosecutors in relation to prosecutions.)

## 3. Proportionality

- a) Any enforcement action taken by the Council will be proportionate to the seriousness of the harm or likely harm which the enforcement is designed to prevent. An assessment of any harm being suffered by the victims or

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705regulatorscode.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705regulatorscode.pdf)

<sup>5</sup> Section 22 of the Legislative and Regulatory Reform Act 2006 [Legislative and Regulatory Reform Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2006/52/section/22)

complainants and the effects of that harm upon them should be done where relevant in order to decide what action would be most appropriate.

- b) In accordance with the Regulators' Code, the Council's enforcement services should also assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means, taking into account, for example, business size and capacity. They should also ensure that their officers and any third party investigators duly contracted to undertake work on behalf of the Council have the necessary knowledge and skills to understand those they regulate so that they are better able to choose proportionate and effective approaches<sup>6</sup>.
- c) The role of the Council's enforcement services is to obtain and maintain compliance, the preferred method being by means of engagement, inspection, advice and education. ( 'Explain, engage, encourage' first, then enforce. ) Formal enforcement actions are viewed as a means of helping to secure appropriate standards and changes in behaviour, not an end in themselves.
- d) The Council will take into account all the circumstances of the particular case but will also take into account the attitude of the business or person who is being investigated. Full co-operation with any investigation is likely to be a mitigating feature which will be taken into account when the Council is making a decision as to the type of enforcement action to take. Deliberately ignoring warnings will be an aggravating feature.
- e) A prosecution will normally only be taken in cases where the harm or risk of harm is most serious or in cases where the more informal types of enforcement, including repeated written and/or oral warnings, have been unsuccessful in changing the illegal behaviour of the offender, or where there are unpaid fixed penalty notices<sup>7</sup> (e.g. littering, non-school attendance or persistent anti-social behaviour).

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<sup>6</sup> See para 1.1 and 1.3 of the Regulators' Code

<sup>7</sup> or other unpaid civil penalties where the statute prescribes prosecution as the enforcement method

#### 4. Consistency

- a) Arrangements are in place to promote consistency in the interpretation and enforcement of legislation through national or local standards. Such standards are set by liaising with other local authorities and taking advice provided by professional organisations such as National Trading Standards, the Association of Chief Trading Standards Officers, the Chartered Institute of Environmental Health, the Institute of Licensing, Chartered Association of Building Engineers (CABE), Royal Institute of Chartered Surveyors (RICS), Royal Town Planning Institute (RTPI), National Association of Planning Enforcement (NAPE), the Department of Work and Pensions Ofsted and other central government departments e.g. Department of Health and Social Care, Department for Education, Department for Levelling Up, Housing and Communities, Department for Environment, Food and Rural Affairs, Health and Safety Executive, Office for Product Safety and Standards (ie Department for Business, Energy and Industrial Strategy) and the Department of Transport or their current equivalents.
- b) Council procedures require that senior managers maintain oversight of formal enforcement activity and that enforcement officers receive appropriate training and supervision. This also means that any third party investigators duly contracted to undertake work on behalf of the Council should be properly vetted prior to instructions and supervised appropriately.
- c) Consistency is not a simple matter of uniformity. As well as comparing similar cases, and looking at national or local standards, officers will also need to exercise their professional judgement and discretion according to the circumstances of each individual case and be able to justify their actions accordingly.

- d) Any decision regarding enforcement action must be impartial, reasonable, take into account all relevant considerations and discount irrelevant considerations.

## **5. Transparency and clarity**

- a) Transparency is important in maintaining public confidence in the Council's ability to regulate. Transparency and clarity means helping those the Council regulates to understand what is expected of them and what they should expect from the Council (including the use of plain English standards). It also means making clear why the Council intends to, or has taken enforcement action.
- b) The Council's enforcement services must, in their dealings with individuals and businesses who may be in breach of regulations, ensure that they make it clear which requirements are legal requirements which must be complied with and which are best practice or policy guidance.
- c) The Council will from time to time publish specific enforcement policies for specific legislative functions. In the event of inconsistency those specific policies prevail – see also 11 e).
- d) Some pieces of legislation also advocate transparency. For example, the Council's enforcement services are also required under section 51 Protection of Freedoms Act 2012 to have regard to the Code of Practice on Powers of Entry<sup>8</sup> which requires the reasonable exercise of those powers as well as ensuring that the enforcing officers keep the occupier properly informed in undertaking their rights of entry into premises under the various pieces of legislation.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/383079/Code\\_of\\_Practice\\_Powers\\_of\\_Entry\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383079/Code_of_Practice_Powers_of_Entry_web_.pdf) dated December 2014

- e) The Council will ensure that where they request an individual or a business to take remedial action, they will explain why the action is necessary and by when it must be carried out. The Council will ensure that a written explanation is given of the relevant legislation and give details of any rights of appeal against formal enforcement action and the appeal limitation period.
- f) The Council will accommodate all requests for information unless it is exempt under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or other statutory restriction e.g. as exists in the Enterprise Act 2002<sup>9</sup>.

## **6. Targeting/Prioritising/Assessing risks/threats**

- a) Targeting means making sure that the Council's enforcement services are directed primarily towards those whose activities actually or potentially give rise to the most serious breaches of legislation or tackling issues which cause the most concern to stakeholders and/or 'hot spots' in relation to the matters set out in paragraph 1.2 above.
- b) Systems of prioritising enforcement include responding to complaints from individuals in the community about regulated activities, the inspection of premises/areas according to the threats assessed and the gathering and acting on intelligence about potential illegal activities. Intelligence-led threat assessments may be made from time to time by each of the Council's enforcement services. Resources for enforcement should be allocated in such a way as will be most effective in addressing these priorities.

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<sup>9</sup> Section 237 onwards



## **7. Accountability**

The Council's enforcement services are accountable to the public for their actions while remaining independent in the decisions taken. Any complaints about the Council's services should be addressed to:-

[feedback@blackburn.gov.uk](mailto:feedback@blackburn.gov.uk) or in writing to: Corporate Complaints

Manager,  
Blackburn with Darwen Borough Council,  
Town Hall,  
King William Street, BB1 7DY.

## **8. Human Rights and Equality**

- a) In carrying out its enforcement activities the Council's enforcement services will have regard to the rights and freedoms guaranteed to individuals under the Human Rights Act 1998 (HRA). Particular attention will be given to the human rights aspect in cases where either the perpetrator or the victim of the breach is considered to be vulnerable.
- b) The Council considers the right of an individual to the right to respect for their private and family life<sup>10</sup> to be significant when exercising enforcement. The Council will ensure that where it is proposed to interfere with that right it is done lawfully, only when needed and proportionately. However, the Council is obliged to recognise that in certain statutory regimes, e.g. licensing, public safety is regarded in law as being paramount. The right to a fair trial<sup>11</sup> and the interests of justice should also be taken into account particularly where the Council is reviewing a licence to operate a business. The right to the peaceful enjoyment of one's

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<sup>10</sup> Article 8 of the ECHR

<sup>11</sup> Article 6 of the ECHR

possessions<sup>12</sup> should also be taken into consideration particularly when considering the rights of entry to property and seizure.

- c) The Council will ensure that it complies with the Equality Act 2010 and whilst undertaking enforcement will not adopt practices which discriminate directly or indirectly as defined by that Act.

## **9. Authorisation**

Any officer carrying out enforcement work should be authorised to do so by the Council through the current schemes and of delegation in accordance with delegated powers contained in the current Council Constitution. All enforcement officers should carry their identity cards and be able to explain and identify the legislation they are authorised to enforce.

## **10. Purpose and Methods of Enforcement**

- a) The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with the legal requirements. Enforcement action may be taken after an investigation triggered by a complaint, an incident, a service request, relevant intelligence or an inspection.
- b) The Council's enforcement services will deal with service requests in a manner which reflects the principles stated above, by prioritising resources accordingly and will investigate offences with a view to prosecution and/or licence reviews where appropriate.
- c) As a general rule and where there may be options, the level of enforcement contemplated will be the minimum at which a satisfactory solution is thought to be achievable. The possible deterrent effect a prosecution may have on compliance in the Council's area will also be considered.

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<sup>12</sup> Article 1 of the first Protocol of the ECHR

- d) It is anticipated that most of the Council's enforcement service's dealings with those they regulate will be through informal avenues providing education, advice and assistance. However, where informal methods have been unsuccessful, or a serious or repeated breach of legislation has, or is likely to, occur, formal enforcement action will be taken to ensure compliance with the law.
  
- e) In appropriate cases, offenders may be dealt with by agreeing to a programme or scheme which provides restorative justice where there is a suitable scheme is available. The Council would only consider this if they are satisfied that there is sufficient evidence of a breach, it is proportionate and the offender has consented to give their full co-operation.<sup>13</sup>
  
- f) Decisions on the appropriate enforcement actions and when and how to carry out investigations, will be made by authorised officers of the relevant enforcement service and the decision to commence a criminal prosecution must be made by the Council solicitor in accordance with the current Council constitution. Save that it is notable that under the Health & Safety at Work (etc) Act 1974 only authorised Health & Safety Officers can by law commence prosecutions.
  
- g) Enforcement officers have delegated powers to issue summonses, civil penalty notices or fixed penalty notices, as well as other enforcement powers e.g. to apply for warrants and serve statutory notices. However, in relation to civil penalty notices for housing standards offences, statutory guidance makes it clear that it must first be determined that there is a realistic prospect of conviction in

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<sup>13</sup> For example, a training course aimed at educating offenders in under age sales cases may be offered as an alternative to formal action;

accordance with the Code for Crown Prosecutors<sup>14</sup> prior to the civil penalty being issued. Also when a civil penalty has been imposed and an appeal is subsequently made to the First-tier Tribunal, the Council must demonstrate that an offence had been committed beyond reasonable doubt.

- h) Council members set priorities and guide decision making in relation to determining the types of enforcement action that might be taken in relation to offences, and will approve general policies. Decision-making in respect of individual breaches is however delegated under the Council constitution to the requisite officers thereby assuring that no conflicts of interest can arise.
- i) Council enforcement services will be proactive in adopting a partnership approach to tackling issues within the Council's area and to that extent will seek, wherever feasible, to establish these as formal written agreements with both internal and external partners particularly where data sharing is concerned.

## **11. Enforcement Action Available**

- a) There are a variety of enforcement actions available to the Council. It is not practicable to list every type of action that the Council is empowered to take under the many pieces of legislation applicable to each area of enforcement. Generally, the following can be considered examples:
  - i. general powers of investigation, making enquiries, use of powers of entry, powers to search premises and seize items used in the commission of offences;

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<sup>14</sup>  
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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/697644/Civil\\_penalty\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf) Issued April 2018

- ii. provision of advice to particular individuals or businesses or other means of education such as leafleting or other wider publicity,
- iii. warnings to individuals or businesses, written or oral;
- iv. informal or formal mediation between complainants and those individuals or businesses that are complained about resulting in behaviour agreements or undertakings (statutory under the EA 2002 or **non-statutory**);
- v. service of statutory notices such as abatement notices, community protection notices, stop notices, breach of condition notices, enforcement notices, request for information notices, improvement notices, prohibition notices;
- vi. Issue of fixed and civil penalty notices requiring payment of a fine; some whose non-payment results in prosecution, some whose non-payment results in a civil debt recovery process;
- vii. issuing of simple and informal cautions, (which may include restorative justice),
- viii. applications to the magistrates' court, civil court/tribunal for:
  - confiscation of assets/financial benefit obtained as a result of commission of a crime,
  - forfeiture of items used in the commission of offences,
  - closure of business premises or
  - Enforcement orders under the Enterprise Act 2002,
  - injunctions under Town and Country Planning Act 1990
  - anti-social behaviour injunctions;
  - Landlord Banning Order or other orders under the Housing and Planning Act 2016
  - Liability Orders for recovery of Council Tax and Business Rates

- ix. Prosecutions which result in a punishment by the criminal court such as a statutory fine or imprisonment – and which may also include ancillary applications similar to those set out in viii) above;
  - x. The application to courts for judgements for recovery of civil debt and the use of the various court enforcement methods that are available after a court judgement has been obtained. The various legal enforcement methods available are many and include: warrants to seize goods, distress (use of enforcement agents' bailiffs) attachment of earnings/benefits orders, charging orders on property, forfeiture of property, bankruptcy/insolvency proceedings or committal proceedings. Such actions may follow in such matters as council tax or business rates arrears, rent arrears. This applies also in cases where there is a debt owed to the Council after works done by the Council in default. Examples are: planning or housing cases where the owner fails to undertake required works in accordance with a statutory notice served.
  - xi. Refusal of an application for any licence, consent or permit for which the Council is the issuing body or the review, suspension or revocation of such a licence, consent or permit e.g. taxi licenses, premises licenses (which cover licensable activities such as sale of alcohol and food), HMO licenses (Houses in Multiple Occupation) and other selective housing licences.
- b) Note that this list is not exhaustive and the Council will rely on the powers set out in each particular statute and consider all the facts of a particular case before making a reasoned decision as to how to proceed. This decision will take into account available threat assessments made from time to time by each enforcement team.
- c) The Council officers and any third party investigators duly contracted to undertake work on behalf of the Council will also adhere where appropriate to guidance which is either statutory or advisory. Statutory guidance is issued in accordance with the various specific statutes e.g. the Home office

Guidance on the Anti- Social Behaviour Crime and Policing Act 2014<sup>15</sup>. However, there will also be advisory policies and guidance issued by the various statutory, central government or professional bodies for each function. One example is the detailed guidance produced by the Health and Safety Executive in relation to enforcement decision making (the Enforcement Management Model, or EMM)<sup>16</sup> and officers must have regard to this document when determining what action to take in relation to health and safety breaches<sup>17</sup>. Another important one is the 'Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Housing Authorities'.<sup>18</sup>

- d) In addition to the matters referred to in 11 c) above there may also be other enforcement policies adopted by the Council for each specific enforcement function which are published from time to time on the Council's website. This policy shall be general. In the event of an inconsistency the specific enforcement policy will prevail.

## **12. Conduct of Investigations.**

### **Enforcement by the Council**

- a) Investigations carried out by the Council's enforcement officers and any third party investigators duly contracted to undertake work on behalf of the

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<sup>15</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679712/2017-12-13\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.1\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf)

<sup>16</sup> <http://www.hse.gov.uk/enforce/enforcement-management-model.htm>

<sup>17</sup> Other examples include policies developed by such organisations as the Association of Greater Manchester Authorities (AGMA) which develop policies for licensing and other matters, and more particularly it has recently developed a policy on civil penalties as an alternative to prosecution for relevant housing offences which authorities can adopt.

<sup>18</sup> [https://assets.publishing.service.gov.uk/media/5ac63c47ed915d76a313cbd5/Civil\\_penalty\\_guidance.pdf](https://assets.publishing.service.gov.uk/media/5ac63c47ed915d76a313cbd5/Civil_penalty_guidance.pdf)

Council will be carried out in accordance with this policy and relevant Council policies. **Cross-departmental investigations in cases where more than one Council function is involved e.g. planning and public protection will be carried out with appropriate co-ordination and consultation between departments.** Investigations will also will be carried out in accordance with relevant legislation and associated statutory codes of practice where they are applicable. Some specific pieces of legislation such as food safety legislation also provide procedures for specific evidence gathering by means of multiple sample collection and recording. The most notable pieces of legislation which apply to all investigations of criminal offences across the different Council functions are:

- The Police and Criminal Evidence Act 1984 and PACE Codes of Practice A to H, which cover procedures for such matters as search warrants and interviews under caution;
- Criminal Procedure and Investigations Act 1996 and the associated Code of Practice, which covers procedures for identifying, recording, retaining and disclosing unused material;
- Regulation of Investigatory Powers Act 2000, Protection of Freedoms Act 2012, Human Rights Act 2000 which regulate the use of investigation techniques which have an impact upon the privacy of the individual.
- Data Protection Act 2018 and GDPR i.e. legislation which regulates the use of personal data.

### **Enforcement by outside agencies**

- b) **Some other agencies<sup>19</sup>, such as Lancashire Constabulary and HM Revenue and Customs have their own enforcement functions**

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<sup>19</sup> For example, joint working may be carried out with the Lancashire Constabulary, Lancashire Fire & Rescue Service, the Health and Safety Executive, the Environment Agency, the Gambling Commission, Animal Health and Plant Agency (AHPA), Border Agency, Food Standards Agency and other local authorities, government departments or agencies.



but can in some cases request the Council enforcement officers to supply evidence.

- This may be evidence that which the Council enforcement officers have already gathered under their own enforcement duties.
- Or it may be evidence yet to be obtained where an agency may contact the Council (or vice versa) and request that they join an investigation and undertake investigatory work for a specific matter.
- Or the Council may refer an investigation in its entirety to an outside agency where they perceive that a person may have committed offences that are within a particular agency's jurisdiction.

Whenever it is reasonably practicable information will be shared under a Memorandum of Understanding to ensure information is being shared lawfully to ensure there are the necessary legal powers and duties (legal 'gateways') and DPA 2018 and GDPR compliance. In other urgent cases legal advice will be sought if necessary and proper consideration will be given to compliance by means of recorded formal requests and reasoned decision-making.

### **13. Code For Crown Prosecutors**

#### **Factors Determining Prosecution**

- a) Where statutory powers to prosecute exist, the decision to refer for prosecution is not taken lightly. The Code for Crown Prosecutors is always applied.<sup>20</sup>
- b) One of the main principles underpinning the criminal justice system in a democratic society is the independence of the prosecutor. Prosecutors

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<sup>20</sup> [The Code for Crown Prosecutors | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk)

have a public duty and should remain independent from all other persons or agencies that are not part of the Council Solicitor's prosecution decision-making process. The Council Solicitor and solicitors employed by the Council as prosecuting solicitors are also independent from the investigating officers. Prosecuting solicitors, like the Crown Prosecution Service, are officers of the court and must remain free to carry out their professional and public duties objectively without other undue influences (e.g. political) either internal or external to the Council.

- c) Before a decision to refer for prosecution is taken the case must be assessed formally in accordance with the evidential test and the public interest test. Once it has been referred to the Council solicitor it will then be independently assessed in accordance with the Code. A case which does not pass the evidential stage must not proceed no matter how serious or sensitive it may seem.
- d) Once prosecution has been determined as the appropriate course of action, consideration will be given to supplementary sanctions available through the Courts (such as applications for forfeiture, compensation, Criminal Behaviour Order) on a case by case basis.
- e) If a person who is accused or convicted of an offence can be shown to have a criminal lifestyle and to have benefitted financially from his crimes then the Council enforcement officers will consider appointing an Accredited Financial Investigator to undertake an investigation under the Proceeds of Crime Act 2002 and its accompanying Code of Practice<sup>21</sup>. This investigation may run parallel with the criminal investigation and which could result in a formal application to the Crown Court for an order to confiscate an amount of money commensurate with the amount by which the offender has found to have benefitted.

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<sup>21</sup> <https://www.gov.uk/government/publications/proceeds-of-crime-act-codes-of-practice>

## 14 Evidential Test

- a) Before commencing a prosecution the Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. This is an objective test based on the assessment of the evidence and any likely defence that could be put forward.
  
- b) Of particular importance is the following extract from the Code: "The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty." The Council Solicitor has the requisite delegated authority to make this decision.
  
- c) When deciding if there is sufficient evidence to prosecute the matters below will need to be considered:
  - i. Can the evidence be used in Court or is it likely that the evidence may be found by the court to be inadmissible? (E.g. poor identification evidence, breaches of PACE or reliance on hearsay)
  
  - ii. Is the evidence reliable? Is it credible? Officer should check all the facts and follow all reasonable lines of inquiry including those that lead away from the guilt of the suspect. Officers should also check other known associates of the suspect and/or other suspects and consider whether they should be interviewed if the evidence shows they could be involved.

- iii. Is the evidence credible? Investigating officers should test the facts stated by their witnesses so that they are sure that there is no reason to doubt their evidence.
- iv. Is there any material i.e. records, documentary or otherwise that may affect the assessment of the sufficiency of evidence, including examined and unexamined material held by the investigating officer, and material that may be obtained through further reasonable lines of inquiry?
- v. Is the defendant likely to be able to establish a reasonably credible defence? For example “due diligence” under Section 21 of the Food Safety Act 1990 or “best practical means” under Environmental Protection Act 1990.

#### **15. Public Interest Test**

- a) It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- b) When deciding the public interest, prosecutors should consider each of the factors set out below in paragraphs a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors should enable prosecutors to form an overall assessment of the public interest. They are not exhaustive, not all may be relevant in any given case, and their weight will vary depending on the facts. Whatever the decision, it should be capable of justification at court upon challenge.

- c) Those factors are listed below but in summary only and **they should not be relied upon by officers applying the Code to their cases. There is no substitute for reading the Code itself and applying its contents to each case:**
- i. **Seriousness** – consider the levels of culpability of the suspect and harm to the victims/complainants as a whole.
  - ii. **Culpability level of the suspect** – consider level of involvement, premeditation/planning, how they have benefitted, previous convictions, offending whilst on bail, breach of undertakings or court orders and continuing, persistent, escalating offending. Also consider the age and maturity of the suspect and whether they are vulnerable e.g. mental health sufferer. Consider whether they have been coerced.
  - iii. **Circumstances of the harm caused to the victim** – this is stated to be highly relevant as the greater the victim's vulnerability the more likely a prosecution is needed. Victim impact statements should be obtained. Was there any discrimination<sup>22</sup> against the victim?
  - iv. **Under 18 at the time of the offence** – will the process have a disproportionate impact on him taking into account the seriousness of the offence? The child's welfare will need to be considered and the UN 1989 Convention on the Rights of the Child. The starting point is that the younger the child the less likely a prosecution is required.
  - v. **Impact on the community** – the greater the impact of the offending on the community, the more likely a prosecution is required.
  - vi. **Proportionality** – is a prosecution proportionate to the likely outcome/penalty? Consider the cost of bringing the prosecution to both the prosecuting authority and the criminal justice system. This is a relevant factor when making an overall assessment of the public interest but it should not be a sole reason for not proceeding. Effective case management can also be a factor so that for instance where there are multiple suspects a decision can be made to proceed against the main

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<sup>22</sup> As respects the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity

suspects to avoid excessively long, complex proceedings. Another example is where the offence is likely to attract a low fine (e.g. Band A<sup>23</sup> in the sentencing guidelines where the individual is on benefits.) Consideration should be given to the alternative monetary penalties e.g. fixed penalty notices to assist in reducing the burden on the wider criminal justice system.

- vii. **Do sources of information require protecting?** In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

## 16. Review

This policy will be reviewed every three years or as and when changes in law and guidance require whichever is earliest.

Reviewed version date:

VERSION	Date	Drafted/Reviewed by	Adopted by the Council on date	Date of Executive Board decision
8 Final	22/06/2018	Shelagh Lyth Prosecution solicitor and Gary Johnston Head of Public Protection	11 October 2018	11 October 2018

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<sup>23</sup> Fine Band A – Starting point is 50% of relevant weekly income with a range of between 25 – 75%

9 Final	23/08/2021 minor amendments – refreshed links and updated in line with current law and guidance including additions relating to revenues and benefits enforcement and use of contracted enforcement officers.	“		Executive Member Decision 22/10/2021
10 Final	17 October 2023 amendments to include reference to Council entering into MOU's whereby enforcement officers may share data with those in the other agencies	Shelagh Lyth/Gary Johnston after consultation with Council departments actively involved in enforcement		

## SHORT VERSION

**Summary – the amendments add more detail about cross-departmental investigations and enforcement by outside agencies and the governance by means of a formal agreement of any necessary data sharing between the Council and those agencies.**

All substantive amendments – see below:

### **Conduct of Investigations.**

#### **Enforcement by the Council**

- a) Investigations carried out by the Council's enforcement officers and any third party investigators duly contracted to undertake work on behalf of the Council will be carried out in accordance with this policy and relevant Council policies. **Cross-departmental investigations in cases where more than one Council function is involved e.g. planning and public protection will be carried out with appropriate co-ordination and consultation between departments.**

Investigations will also will be carried out in accordance with relevant legislation and associated statutory codes of practice where they are applicable. Some specific pieces of legislation such as food safety legislation also provide procedures for specific evidence gathering by means of multiple sample collection and recording. The most notable pieces of legislation which apply to all investigations of criminal offences across the different Council functions are:

- The Police and Criminal Evidence Act 1984 and PACE Codes of Practice A to H, which cover procedures for such matters as search warrants and interviews under caution;
- Criminal Procedure and Investigations Act 1996 and the associated Code of Practice, which covers procedures for identifying, recording, retaining and disclosing unused material;



- Regulation of Investigatory Powers Act 2000, Protection of Freedoms Act 2012, Human Rights Act 2000 which regulate the use of investigation techniques which have an impact upon the privacy of the individual.
- Data Protection Act 2018 and GDPR i.e. legislation which regulates the use of personal data.

### Enforcement by outside agencies

- b) Some other agencies<sup>1</sup>, such as Lancashire Constabulary and HM Revenue and Customs have their own enforcement functions but can in some cases request the Council enforcement officers to supply evidence.
- This may be evidence that which the Council enforcement officers have already gathered under their own enforcement duties.
  - Or it may be evidence yet to be obtained where an agency may contact the Council (or vice versa) and request that they join an investigation and undertake investigatory work for a specific matter.
  - Or the Council may refer an investigation in its entirety to an outside agency where they perceive that a person may have committed offences that are within a particular agency's jurisdiction.

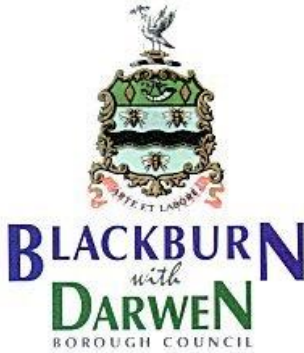
Whenever it is reasonably practicable information will be shared under a Memorandum of Understanding to ensure information is being shared lawfully to ensure there are the necessary legal powers and duties (legal 'gateways') and DPA 2018 and GDPR compliance. In other urgent cases legal advice will be sought if necessary and proper consideration will be

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<sup>1</sup> For example, joint working may be carried out with the Lancashire Constabulary, Lancashire Fire & Rescue Service, the Health and Safety Executive, the Environment Agency, the Gambling Commission, Animal Health and Plant Agency (AHPA), Border Agency, Food Standards Agency and other local authorities, government departments or agencies.

given to compliance by means of recorded formal requests and reasoned decision-making.

## EXECUTIVE MEMBER DECISION – PART 1



<b>REPORT OF:</b>	Executive Member for Growth and Development
<b>LEAD OFFICERS:</b>	Deputy Director for Legal and Governance
<b>DATE:</b>	24/11/2023

**PORTFOLIO/S AFFECTED:** Growth and Development

**WARD/S AFFECTED:** (All Wards);All

**SUBJECT:** Schedule of Delegated Property Decisions 2023/24 Quarters 1&2

### 1. EXECUTIVE SUMMARY

Report to note the property matters which have been considered under delegated powers during the financial year 2023/24.

### 2. RECOMMENDATIONS

That the Executive Member notes the delegated property decisions which have been completed during 2023/24.

### 3. BACKGROUND

Under the Council's Constitution, the Deputy Director of Legal & Governance is authorised to exercise all the Authority's powers, functions and responsibilities to approve land transactions in accordance with the Council's Financial Procedure Rules and (subject to recommendations by the Strategic Director of Growth & Development) approve all claims for compensation under Part 1 of the Land Compensation Act 1973.

During the first two quarters of financial year 2023-2024, a total of 43 transactions were reported through Delegated Powers, as summarised in the table below. The implications in terms of growth in annual rental income is reported through the key performance indicators of the Council's Strategic Asset Management Plan.

Type	Number of Transactions Approved	Disposal Income / Capital Receipts	Payments Made by Council
New lease	8		
Lease renewal	4		
Assignment	3		
Rent reviews	11		
Part 1 Claim	2		£6,600
Licence agreement	4		
Disposal of land	3	£74,500	
Subletting	2		
Surrender	3		
Consent for alterations	2		
Variation of lease	1		
Forfeiture of lease	0		
<b>Total</b>	<b>43</b>	<b>£74,500</b>	<b>£6,600</b>

#### 4. KEY ISSUES & RISKS

None.

#### 5. POLICY IMPLICATIONS

None.

#### 6. FINANCIAL IMPLICATIONS

None.

#### 7. LEGAL IMPLICATIONS

None.

#### 8. RESOURCE IMPLICATIONS

None.

#### 9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

#### 10. CONSULTATIONS

None required.

#### 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

#### 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

<b>CONTACT OFFICER:</b>	Michael Hardman
<b>DATE:</b>	November 2023
<b>BACKGROUND PAPER:</b>	Appendix A – Schedule of Delegated Property Matters

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

Document is Restricted

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of the Local Government Act 1972.

Document is Restricted