

## Cabinet – 18 October 2023

### Walsall Council Food Law Enforcement Service Plan 2023/24

**Portfolio:** Councillor G. Perry – Deputy Leader and Resilient Communities

**Related portfolios:**

**Service:** Community Safety and Enforcement

**Wards:** All

**Key decision:** No

**Forward plan:** Yes

#### 1. Aim

- 1.1 The aim of food law is to protect the public from preventable food and water borne disease, contamination and undeclared allergens. It also aims to ensure the integrity of food quality, labelling and compositional standards and to protect consumers from food fraud, food substitution and adulteration.
- 1.2 The Food Law Enforcement Service Plan (the plan) attached as **Appendix A** describes how the authority will enforce statutory controls regarding food safety and monitor food, premises and personnel in a structured manner. The plan will also be used as the basis for any inspection or audit by the Food Standards Agency (FSA).

#### 2. Summary

- 2.1 The Covid-19 pandemic restricted the delivery of official food controls creating an increase in the number of unrated businesses and rated businesses whose inspections were overdue. Consequently, the FSA introduced a national recovery plan in July 2021 directing local authorities to re-start their intervention programmes using a phased approach. The recovery plan formed the basis of the 2022/23 service plan. The FSA ended its recovery plan in March 2023. In order for services to re-align with the Food Law Code of Practice and to catch up the FSA now expects local authorities will carry out due interventions for establishments that are back in the routine programme of interventions in accordance with the frequencies set out in the Code. (This is reflected in the 2023/24 service plan.)
- 2.2 Through the work of its environmental health and trading standards services, Walsall Council ensures that its statutory responsibilities in the respect of regulating the food industry are fulfilled.
- 2.3 Through the work of the director of public health, issues around health and wellbeing are at the centre of policy development. The link between the health of residents and the local economy is seen as a key issue in Walsall and is enshrined

in the joint strategic needs assessment, health and wellbeing strategy and Council Plan. The aims and objectives of the plan, contribute significantly to both the health and economy agendas.

### **3. Recommendations**

- 3.1 That That Cabinet receive the plan for the year 2023/24 as evidence of the Council's compliance with its statutory duties in relation to food law and recommend it to Full Council for approval and adoption.

### **4. Report detail - know**

#### ***Context***

- 4.1 The provision of safe food and water, the prevention of outbreaks of food and water borne disease and the investigation of allegations of food fraud are fundamental principles of protecting public health and the economy. Environmental health and trading standards officers work directly with businesses, residents and partner agencies and are constantly striving to provide a balance between the economic success of the business against the need to always protect the health of customers and staff.
- 4.2 The plan sets out the council's commitment to the implementation of food safety enforcement for the year ahead.

#### ***Council Plan priorities***

- 4.3 The strategic priorities and the ways in which environmental health and trading standards contribute to them are detailed below.

- 4.4 **Economic growth for all people, communities and businesses** - the work of the service supports economic growth in a number of ways:

- New and existing businesses are given advice and support to not only survive but thrive despite difficult economic conditions.
- Consumers are given confidence when shopping in Walsall.
- Introducing competition into regulatory standards through the national food hygiene rating scheme, empowering residents to choose which business should receive their custom and motivating businesses to improve their standards so they gain new and retain existing customers.
- The service promotes those businesses which sign up to and achieve the Health Switch Awards and encourages residents to visit and enjoy their healthier food.
- We take robust enforcement action against those businesses or individuals who seek to gain an unfair advantage over competitors by not complying with regulations thereby putting their staff and customers at risk.

- 4.5 **People have increased independence, improved health and can positively contribute to their communities:**

- The service ensures that unsafe practices and foodstuffs are identified and robustly tackled. This ensures that the health of the public is protected thereby preventing ill health that places a negative burden on the economy and people's lives.
- The skills and opportunities available within the service are used to promote and implement key aspects of the Health and Well Being Strategy for example through Healthy Workplace Awards, Making Every Contact Count, the Health Switch Award and tobacco control/smoking cessation projects.
- The service strives to prevent outbreaks of communicable disease and where such disease outbreaks take place use the statutory powers available to control and stop their spread as well as bringing to justice those who may be responsible.

#### **4.6 Children have the best start and are safe from harm, happy, healthy and are learning well**

- The work the service undertakes has a bearing on the health of children as it does all other members of the community. Premises that deal exclusively with children such as schools and nurseries are at present given a higher risk rating score because of the vulnerability or age of the children.
- Trading standards will respond quickly and effectively to national, regional or local food alerts around compositional standards for infant formula and similar foods necessary for or targeted at children.
- Trading standards conduct age restricted sales investigations around alcohol, cigarettes and knives in order to ensure young people are not at risk from unscrupulous traders.

#### **4.7 Communities are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion**

- Food businesses are often at the centre of their community and their success and regulatory compliance can have a beneficial impact on communities. Likewise poorly run premises with overflowing bins, noisy equipment, late opening and badly prepared food can have a detrimental impact on the image or self-esteem of communities.
- Issues such as child sexual exploitation, modern day slavery, illegal immigration and other organised criminal activities can be associated with food businesses, staff therefore work closely with internal services and external agencies where they believe issues such as this exist.
- Regulatory activity is prioritised based on risk and where serious non-compliance is found robust enforcement action is taken against those businesses having the most detrimental impact on communities.

4.8 Without a plan that sets out a commitment to food safety and standards and a strategic review of the delivery of that service the authority could be challenged by the FSA. Any audit or formal investigation by the Food Standards Agency would be more difficult for the authority to defend without such a plan.

4.9 The plan highlights the good work carried out by the service to ensure food safety is maintained and to protect residents from harm. There have and continue to be pressures from other areas of work such as reactive pressures from infectious disease, emergency prohibitions and other serious incidents. These pressures have led to a number of predominantly low risk food premises not receiving their

programmed inspection. Whilst this is not ideal, it is a consequence of prioritisation of workload based on resource and ensuring wherever possible serious incidents and high-risk premises receive most attention.

- 4.10 The need for the service to continue to place a major emphasis on allergen control as a consequence of several high-profile deaths (outside of Walsall) means that a significant amount of Officer time is being dedicated to this area of work so that it is properly considered and regulatory controls implemented as effectively as possible having regard to current guidance and best practice. This is increasing the time taken to complete inspections but is a key issue for the service to prioritise at present.

### ***Financial implications***

- 4.11 There is a revenue budget of £372,337 in place that supports the funding of this council service, and the plan will be delivered within this budget. Details as to the costs associated with the service can be found at section 4 of the plan.

### ***Legal implications***

- 4.12 By virtue of section 12 of the Food Standards Act 1999 the FSA has the function of monitoring the performance of enforcement authorities in enforcing relevant legislation. This function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant legislation. The Framework Agreement on Official Feed and Food Controls by Local Authorities is the mechanism by which the FSA puts into effect the powers contained in the Food Standards Act 1999. It provides for the following:

- published local service plans to increase transparency of local enforcement services;
- clear agreed standards for local authority feed and food law enforcement;
- local authority monitoring data used to select authorities for audit where there are concerns about enforcement performance; and
- an audit scheme aimed at securing improvements and sharing good practice.

- 4.13 Any plan produced by the authority should comply with the framework agreement.

- 4.14 The FSA's audits of local authority food and feed law enforcement are conducted against the requirements of the framework agreement and, more specifically, a document called the Standard.

- 4.15 The Standard sets out the minimum levels of performance expected in relation to the full range of a local authority's feed and food law enforcement activity, including food hygiene, food standards, imported food and feeding stuffs law enforcement.

- 4.16 The Standard draws together the obligations placed on local authority food and feed law enforcement services arising from legislation and related guidance, and codes of practice. This includes local authority performance in relation to inspections, sampling, complaints, formal enforcement, promotion and advice to business.

- 4.17 The work of the division pertinent to this report is undertaken pursuant to the provisions of the Food Safety Act 1990 and associated codes of practice, the Food Safety and Hygiene (England) Regulations 2013 and any other such regulations which were developed from the European Communities Act 1972
- 4.18 The Food Safety Act 1990 states that every food authority shall enforce and execute within their area the provisions of this Act with respect to which the duty is not imposed expressly or by necessary implication on some other authority.

#### ***Procurement Implications/Social Value***

- 4.19 The council is part of a national agreement/service level agreement with Public Health England for the analysis of any microbiological food samples taken. There is no cost for this service. The authority has to appoint a public analyst for food and an agricultural or deputy agricultural analyst for animal feed and fertilisers. Depending upon the nature of any samples taken and the type of analysis required the service will use on an ad hoc basis those companies or other local authorities outlined in Section 2.2

#### ***Property implications***

- 4.20 There are no property implications arising from this report.

#### ***Health and wellbeing implications***

- 4.21 The council has a statutory duty to promote health and wellbeing. Through the work of the director of public health, issues around health and wellbeing are at the centre of policy development. The link between the health of residents and the local economy is a key issue in Walsall and is enshrined in the joint strategic needs assessment, health and Wellbeing Strategy and council plan. The aims and objectives of the plan, contribute significantly to both the health and economy agendas.
- 4.22 The services contribution to the corporate priorities also sets out how it contributes to the Marmot principles.

#### ***Staffing implications***

- 4.23 There are no direct impacts upon staffing arising from the report.

#### ***Reducing Inequalities***

- 4.24 The implications for reducing inequalities have been taken into account and assessed as set out below.
- 4.25 The regulation of the food industry affects all members of society. With the resources available the service will always prioritise those matters that more directly affect vulnerable persons. The service will assist where it can with

translated material, interpreters or by coaching those who require it in the production or sale of safe food.

- 4.26 Implementation of the plan will have no adverse equality implications as the same levels of advice and support are provided to all food business proprietors from all sections of the community.
- 4.27 Certain sectors of the food trade are predominantly owned by one or other ethnic groups. In order to ensure a consistent and proportionate approach all decisions are based solely on consideration of risk, public safety, evidence, and public interest. All enforcement policies reflect this approach.

### ***Climate Change***

- 4.28 The report may have some indirect climate change and environmental implications in so far as it affects the working and commercial environment in Walsall.

### ***Consultation***

- 4.29. This plan has never been traditionally consulted upon with the communities of Walsall. It is a document setting out the council's commitment based upon statutory guidelines and responsibilities and therefore not subject to influence or change based upon formal consultation responses.

## **5. Decide**

- 5.1 Cabinet is being asked to receive this service plan for the year 2023/24 as evidence of the council's compliance with its statutory duties in relation to food law and recommend it to full Council for approval and adoption.
- 5.2 The plan is required by statutory guidance. Should the Council decide not to adopt the plan and fail to meet its statutory obligations the FSA can invoke powers conferred under Section 42 of the Food Safety Act 1990 to discharge a local authority's duties where they are satisfied that duty is not being met.
- 5.2 The plan reflects a balance between the requirements of central government through the Code and the local situation in Walsall. Resources are no longer such that the authority can guarantee a fully compliant inspection regime. The plan indicates that the service will use risk, intelligence and the local knowledge and experience of inspectors to ensure high risk activities are dealt with as a priority.

## **6. Respond**

- 6.1 Although the plan is brought to cabinet and council for approval it is a living document. Therefore, from the 1<sup>st</sup> April 2023 all works relating to food safety have continued and this generates the programme for 2023/24 and so on. If agreed, then the plan will reinforce the direction of travel and the priorities for the service or if there are different suggestions forthcoming allow the service to consider and implement and recommendations given.

## **7. Review**

- 7.1 Monitoring and review of the plan is built into the document and includes regular team meetings, 121's, APC's, portfolio briefings, statutory annual returns to government and a fortnightly refresh of the food hygiene rating scheme. The annual review brought before cabinet and council fulfils a significant part of the review process.

## Background papers

None

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