1. **INTRODUCTION**

1.1 Two of West Lindsey District Council’s stated aims are to work to increase the quality of life of the district and its residents and to work to improve the built and natural environment.

1.2 The Council will seek to achieve these aims partly by enforcement of its powers under the public health drainage laws in relation to the investigation of public health problems arising from broken and defective drainage.

1.3 The objective of this document is to detail the decision framework which the Council will apply in deciding what, if any, of its enforcement powers it will use to address public health drainage problems.

2. **GENERAL PRINCIPLES**

2.1 The Council will seek to enforce its powers and carry out its duties to address public health drainage problems efficiently and effectively, and in a way, which is open, clear and helpful to members of the public and businesses.

2.2 The Council will endeavour to communicate the requirements of the law to the public and to businesses clearly and in plain English, and in doing so will distinguish between advice and legal requirements.

2.3 The Council will endeavour to discuss fully with members of the public and businesses any compliance failures or difficulties, and will consider all relevant issues before exercising any of the enforcement powers available to it.

2.4 The Council affirms its commitment to achieving consistent, balanced and fair enforcement of legislation and to achieve this, regard will be had to the relevant public health laws and all relevant regulations, orders and directions issued by the Secretary of State.

2.5 The Council will have regard to the Human Rights Act, Article 8 and the Regulation of Investigatory Powers Act 2000 (RIPA), to ensure that any monitoring or surveillance work, in the investigation of complaints, should not compromise an individuals right to
“privacy, a family life and correspondence”. In any situation where it is thought that “directed” or “intrusive” surveillance is required to investigate a complaint, then authorisation will be applied for, from one of West Lindsey District Council’s authorised officers, the Assistant Chief Executive or Head of Financial Services.

2.6 The Council will ensure that all authorised officers are fully acquainted with the requirements of this policy, and are appropriately trained.

2.7 The Council will endeavour to ensure that resources are targeted effectively according to risk, and that there is an appropriate interpretation of what is reasonable.

2.8 In coming to any decision as to which is the appropriate form of action, regard will be had to this policy document, and in particular the following criteria:-

- the attitude and past performance of the offender
- the likely effectiveness of the various enforcement options
- the consequences of non compliance
- the public interest

2.9 The Council will seek to achieve the above objectives by means of the decision framework detailed in the Environmental Services Enforcement Policy and as further described in the following sections, which detail the enforcement action considered appropriate in the circumstances described. Departures from the decision framework will only be made in exceptional circumstances and following discussion with an appropriate senior officer.

**DECISION FRAMEWORK**

3 PROMOTING AWARENESS OF THE PUBLIC HEALTH DRAINAGE LAWS

3.1 The Council will provide advice and information either verbally or in writing to any person making an enquiry concerning public health drainage laws.

3.1 The Council will provide advice and information, in writing, to any person making a complaint concerning a public health drainage problem and to any person allegedly responsible for causing such a problem, explaining the law and advising how the Council will carry out any subsequent investigations to establish legal responsibilities and remedies.

4 ENFORCEMENT ACTION TO ADDRESS PUBLIC HEALTH DRAINAGE PROBLEMS

Local Authorities are given powers to address public health problems arising from blocked or otherwise defective private drains and private sewers. These powers extend to problems arising from cesspools and septic tanks. Problems associated with defective public sewers are addressed by the Water Companies who are given legal responsibility as “statutory undertakers”, and in effect act as owners of the public systems.
The principal powers that local authorities have to address drainage problems are:

- The power to require the unblocking of private drains or sewers.
  The Public Health Act (PHA) 1961 Section 17(3).
  The Local Government (Miscellaneous Provisions) Act (LG (MP)) 1976 Section 35.

- The power to require the repair of private drains or sewers
  The Public Health Act (PHA) 1961 Section 17
  The Building Act (BA) 1984 Section 59

4.1 Blocked up Private Drains or Sewers etc.

4.1.1 If it appears that a drain, private sewer, water closet, waste pipe or soil pipe is stopped up, the Council may serve a notice on the owner or occupier of the premises at which the problem is evident, under the powers of Section 17 (3) of the PHA 1961 requiring that they remedy the defect within 48 hours.

Under the powers of Section 17 (4) of the PHA 1961, if the notice is not complied with the Council may do the work and recover the costs reasonably incurred from the person upon whom the notice was served.

Under the powers of Section 17 (5) of the PHA 1961, if the cost of works is less than £10, the Council may decide not to recover the cost.

There is no appeal against a notice served under Section 17 of the PHA 1961, neither is there a penalty for non-compliance.

In addressing problems as described in 4.1.1 the Council will initially attempt to contact all parties informally to achieve a remedy and will only consider further action in compliance with the general principles of the Environmental Services Enforcement Policy (January 2002).

In particular, in assessing the need for formal action the Council will consider:

- The attitude of the individuals involved.
- The degree of urgency required to address possible public health issues.
- The likely effectiveness of the alternative formal and informal actions.

4.1.2 As an alternative to action, as described in 4.1.1 above, for the removal of obstructions from private sewers, the Council may serve a notice on each persons who is an owner or occupier of the premises that are served by the sewer, under Section 35 (1) of the LG (MP) Act 1976, requiring removal of the obstruction before a time specified in the notice. That time shall not be less than 48 hours.
Under Section 35 (2) of the LG (MP) Act 1976, if a notice is not complied with then the Council may carry out works and, under Section 35 (3) of the LG (MP) Act 1976, recover those costs reasonably incurred from those persons upon whom the notices have been served.

There is no appeal against a notice served under Section 35 (1) of the LG (MP) Act 1976 neither is there a penalty for non-compliance.

In addressing problems as described in 4.1.2 the Council will initially attempt to contact all parties informally to achieve a remedy and will only consider further action in compliance with the general principles of the Environmental Services Enforcement Policy (January 2002).

In particular, in assessing the need for formal action the Council will consider:

- The attitude of the individuals involved.
- The degree of urgency required to address possible public health issues.
- The likely effectiveness of the alternative formal and informal actions.

4.2 Defective Private Drains or Sewers etc

4.2.1 If it appears that a drain, private sewer, water-closet, waste pipe or soil pipe is not sufficiently maintained and kept in good repair and is repairable at a cost not exceeding £250 then the Council may, after giving not less than seven days notice to the responsible persons, under the powers of Section 17 (1) of the PHA Act 1961, carry out repair works and recover those costs reasonably incurred.

As defined in Section 17(2) of the PHA 1961, the responsible person(s) in relation to private drains of sewers is any person(s) owning any premises drained by the drain or sewer.
The responsible person(s) relating to those other facilities referred to above is the owner or occupier of the premises on which the facilities are located.

Under the powers of Section 17(5) of the PHA 1961, if the cost of works is less than £10, the Council may decide not to recover costs.

There is no appeal against a notice served under Section 17 of the PHA Act 1961, neither is there a penalty for non-compliance.

In addressing problems as described in 4.2.1 the Council will initially attempt to contact all parties informally to achieve a remedy and will only consider further action in compliance with the general principles of the Environmental Services Enforcement Policy (January 2002).

In particular, in assessing the need for formal action the Council will consider:

- The attitude of the individuals involved.
• The degree of urgency required to address possible public health issues.
• The likely effectiveness of the alternative formal and informal actions.

4.2.2 With regard to the probability that repair works will exceed £250, it is likely when considering actions to address defective or inadequate private drains or sewers etc, that the Council will use the powers of Section 59 of the Building Act 1984. Under Section 59 of the BA 1984, if it appears that in the case of a building:

a) satisfactory provision has not been made for drainage,
b) a cesspool, private sewer, drain, soil pipe...is insufficient or in the case of a private drain or sewer...is so defective as to admit subsoil water,
c) a cesspool or private sewer etc is in such a condition as to be prejudicial to health or a nuisance,
d) a cesspool, private drain or sewer, no longer in use, is prejudicial to health or a nuisance,

then the Council will serve notice on the person responsible requiring the carrying out of remedial works as may be necessary.

A notice will define the nature the works required and a time period within which the works will be completed, in compliance with the requirement of Section 99(1) of the BA 1984.

A notice will have attached, written details of the procedure for an appeal as defined by Section 102 of the BA 1984.

In addressing the problems as described in 4.2.2 the Council will initially attempt to contact all parties informally to achieve a remedy and will only consider further action using the powers of the legislation in compliance with the general principles of the Environmental Services Enforcement Policy (January 2002).

In particular, in assessing the need for formal action the Council will consider:

• The attitude of the individuals involved.
• The degree of urgency required to address possible public health issues.
• The likely effectiveness of the alternative formal and informal actions.

4.2.3 Action on Non-Compliance

If after formal action has been taken, a notice has not been complied with and an appeal has not been lodged then the Council will consider the following options:
• Summary prosecution in a Magistrates Court to seek conviction and fine.

• Carry out Works in Default and recover the costs reasonably incurred.

• No further action.

4.2.4 In considering the above options the council will have regard to the general principles of the Environmental Services Enforcement policy (January 2002) and in particular will consider:

• The seriousness of the offence.

• The reasons why non-compliance occurred.

• The cost of taking action weighed against the likely benefit to the community.

• The likely hood of a successful action.