

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Rob Walker, or Executive Director - Place

To: Performance Monitoring Panel Tuesday, 12 November 2019

(Author: Dee Bedford Community Safety & Enforcement Manager)

Subject Corporate Enforcement Update

Purpose: To provide Members with an update on enforcement activity

Recommendation(s):

- 1) That the content of the report be noted
- 2) That a further update is provided to the Performance Monitoring Panel in six months' time

1.0 BACKGROUND

- 1.1 The Council is responsible for enforcing a wide range of legislation, with powers of enforcement usually delegated to individual officers in the various service areas concerned.
- 1.2 Enforcement activity in the Council is extensive and includes planning enforcement, contraventions of building regulations, littering, fly-tipping, anti-social behaviour, abandoned vehicles, evictions, possessions, prohibitions orders, food safety, health and safety, licensing, noise nuisance and pollution. The activity covers individuals, public areas, homes and businesses.
- 1.3 All departments dealing with enforcement do so in line with the Corporate Enforcement Policy approved on 29th May 2018. All services adopt an incremental approach to enforcement; starting with compliance, advice or warnings and progressing to other enforcement activity where proportionate and appropriate.

2.0 ENFORCEMENT DATA

- 2.1 Performance indicators created for this financial year commenced 1 April 2019, requiring all teams across the authority with enforcement responsibilities to report on their enforcement on a quarterly basis. The tables below show enforcement activity over Q1 and Q2.

2.2 Table showing enforcement activity for Q1

Service	No. informal notices/warning letters	No. voluntary undertakings	No. Statutory notices	No. financial penalties	No. Injunctive Actions, Enforcement Orders etc	No. Simple Cautions	No. Prosecutions
Environmental Protection	94	0	0	1	0	0	1
Licensing*	7	0	N/A	N/A	N/A	0	0
Food, Health and Safety	85	1	0	0	N/A	0	0
Communities	22	0	0	49	0	N/A	4
Planning	0	N/A	6	N/A	0	N/A	0
Housing	11	0	1	0	0	0	0
Building Control	0	135	1	0	0	0	0
TOTALS	219	136	8	50	0	0	5

2.3 Table showing enforcement activity for Q2

Service	No. informal notices/warning letters	No. voluntary undertakings	No. Statutory notices	No. financial penalties	No. Injunctive Actions, Enforcement Orders etc	No. Simple Cautions	No. Prosecutions
Environmental Protection	158	0	0	0	0	0	0
Licensing*	8	0	4	N/A	N/A	0	0
Food, Health and Safety	117	0	0	0	N/A	0	0
Communities	285	0	2	75	1	N/A	2
Planning	0	N/A	1	N/A	0	N/A	1
Housing	4	0	2	3	0	0	2
Building Control	4	120	0	0	0	0	0
TOTALS	576	120	9	78	1	0	5

*N/A: service area is not legislated to use the enforcement action

2.4 This is the second quarter that service areas have been required to report on their enforcement activity and therefore comparison data is very limited. Key areas of note however are:

2.5 Environmental Protection saw a significant increase in the number of informal notices/warnings. Q2 predominantly covers the summer months, which are the peak months for that service and it is likely that there will be a reduction in figures during Q3.

2.6 Communities also saw a sharp rise in Q2 in the number of informal notices/warnings. In Q1, the statistics did not include general advice letters that are sent to residents. These will be included in all future reporting.

2.7 Communities also saw a rise in the number of fixed penalty notices being issued from 49 in quarter 1 to 75 in quarter 2. In March 2019, one of the Community Wardens retired, leaving a vacant post, which was filled by mid-August. Having both Wardens in post ensures greater coverage of the district and therefore an increase in the number of fixed penalty notices.

- 2.8 The figures reflect the continued work across departments of using early intervention. They reflect its effectiveness as there is limited need to take more formal enforcement action, which is highlighted in the low numbers of prosecutions and injunctive actions. The incremental approach in the policy is therefore working.
- 2.9 Work is continuing through the Enforcement Managers meetings to ensure that the statistics are of a high quality. New systems are being developed and implemented which will make sure the required data can be extracted and monitored effectively.

3.0 **Enforcement Case Examples**

3.1 Below are some example cases where enforcement action has been taken:

3.2 Case 1: Fly Tipping

A fly tip was reported to SHDC in January 2019, consisting of 12 black bags of domestic waste, a divan bed and mattress, and a flat screen TV. These items had been fly tipped on the verge/ditch Dozens Bank, Pode Hole, Spalding. It was reported by a local farmer who had found evidence indicating where it had come from. Following enquiries the individual was spoken to and they admitted that the waste was theirs and they had paid persons to remove it. They could not name them and hadn't checked if they had a waste carriers licence and were therefore prosecuted for a Section 34 offence of the Environmental Protection Act, namely failing in their duty of care when disposing of domestic waste. In August they received a fine of £500, costs of £585.12 (including investigation and compensation for clear up costs) and a Victim Surcharge of £50.

3.3 Case 2: Planning

In 2013, retrospective planning permission was granted for part change of use of land, from residential and garden furniture manufacturing place to residential, garden furniture manufacturing place and the parking of vehicles associated with an arboricultural business. Complaints were later received that they were operating a tree surgery business from the site rather than just using the land for the parking of vehicles specified in the planning permission. It was also alleged that vehicles were coming in and out of the site outside of the approved hours, vehicles were being parked outside of the approved area, and vehicles were being parked on site that were not those specified in the permission. Following an investigation, the Council issued a breach of condition notice and an enforcement notice to deal with these breaches. The site owner failed to comply with the requirements of the notices, and once sufficient evidence had been collected, prosecution proceedings were commenced for failure to comply with the enforcement notice. On 1st October 2019 following a guilty plea they were fined £3,610 and ordered to pay costs of £3,560 being a total of £7,170. If we obtain evidence in the future of breaches of either notice, the Council can prosecute again if necessary to try to secure compliance.

3.4 Case 3: Without Notice Injunction

In July 2019 threats to kill were made against a South Holland District Council tenant. The individual that had threats made against them did not want to make a statement to Lincolnshire Police. In order to help protect not only that individual but the rest of the community, the Council applied for and was successful in obtaining a without notice injunction. The injunction is in place until July 2020 and to date there have been no breaches.

3.5 Case 4: Failure to license a House of Multiple Occupancy (HMO)

In October, Private Sector Housing attended Boston Magistrates Court to prosecute a landlord for failing to license an HMO. The landlord failed to attend court and the Magistrates accepted that he had been validly served with the Summons and prosecution papers, so agreed to hear the matter in his absence. The Magistrates found the case against him proven. For the offence of failing to licence an HMO, the Magistrates imposed a fine of £750 together with the mandatory victim surcharge of £75 (which goes to support victims of crimes). The Council was also awarded its costs of £380. In total the landlord will have to pay £1,205, which has to be paid in full within 28-days. The Magistrates also imposed a collection order, so that if the landlord fails to pay, the court can take action to recover the money from him.

4.0 **UPDATES**

4.1 A protocol is currently being developed to outline the Council's processes when receiving reports of Gypsies and Travellers within the district. The protocol will outline the actions required by the Council in relation to carrying out welfare checks alongside any enforcement action that may be required.

4.2 A protocol for derelict buildings is also being developed. This will include a centralised database for derelict buildings to assist with cross-departmental working.

5.0 **OPTIONS**

5.1 Do nothing

5.2 Note the contents of the report and provide members with a further update report in six months' time.

6.0 **REASONS FOR RECOMMENDATION(S)**

6.1 It is recommended that the contents of this report are noted and that members of the Performance Monitoring Panel have an up to date understanding of the enforcement that is taking place across the district.

7.0 **EXPECTED BENEFITS**

7.3 The report will give an overview of the Council's enforcement activities.

- 7.3 It enables members to ensure that enforcement action is being taken appropriately and that resident and community concerns are being addressed.

8.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

8.1 Constitutional & Legal

- 8.1.1 There are many pieces of legislation that span across Planning, Building Control, Housing, Environmental, Anti-Social Behaviour, Crime and Disorder and Public Protection functions. The most appropriate tool or power will be used for each case to resolve the issue.

8.2 Corporate Priorities

- 8.2.1 Enforcement supports the following Council priorities:
- Your Home;
 - Your Place;
 - Your Health and Wellbeing;
 - Your Opportunity; and Our Council.

8.3 Crime and Disorder

- 8.3.1 There are no direct implications from this report. However, taking appropriate enforcement action is a key part of community safety and addressing crime and disorder concerns.

8.4 Equality and Diversity / Human Rights

- 8.4.1 There are no direct implications from this report. It should be noted that surveillance techniques and investigations need to consider Article 8 of the Human Rights Act which covers right to privacy. Judicial and quasi-judicial action is also subject to Article 6 – right to a fair trial.

8.5 Financial

- 8.5.1 There are no direct implications from this report. However, some enforcement action can result in financial penalties alongside proportionate legal costs.

9.6 Reputation

- 9.6.1 It is important that the council demonstrates its commitment to taking appropriate and proportionate enforcement action and that it effectively deals with local concerns.

10.7 Risk Management

10.7.1 Enforcement action, particularly when it reaches court proceedings, is open to challenge. It is important that there is robust evidence to take enforcement action beyond an initial warning stage. There needs to be confidence in a case if it leads to court. Any case with insufficient evidence, which fails at court, has significant cost implications for local authorities and officers have a duty to use public money appropriately. Enforcement action should be in the best interest of the public and be proportional, consistent, transparent and targeted.

9.0 WARDS/COMMUNITIES AFFECTED

9.1 Services are provided for all those living, working or visiting the district.

10.0 ACRONYMS

10.1 HMO House of Multiple Occupancy

Background papers:-

Lead Contact Officer

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Key Decision: N

Exempt Decision: N