

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Christine Marshall, Executive Director Commercialisation (S151)

To: Performance Monitoring Panel Wednesday, 27 January 2021

(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 the data within this report is provided on a quarterly basis to members

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 (PI's) for enforcement commenced in April 2019, requiring all teams across the authority with enforcement responsibilities to report on their enforcement on a quarterly basis. The table below outlines the enforcement activity over Q2 for 2020-21. Please note that Q1 data was reported to PMP in July 2020.

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	8	0	0	0	0	0	0
Licensing*	0	0	N/A	N/A	N/A	0	0

Food, Health and Safety – non covid	0	0	0	0	N/A	0	0
Communities	461	1	3	36	1	N/A	0
Planning	0	N/A	2	N/A	0	N/A	0
Housing-	13	0	1	2	0	0	0
Building Control	0	146	0	0	0	0	0
TOTALS	482	147	6	38	1	0	0

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

2.4 Key areas of note provided by service areas are:

2.5 Environmental Protection

PIs for Q2 of 2020/21 are unchanged from the same quarter in 2019/20 with the exception of a slight increase in the number of warning letters issued. This nominal increase may be due to the impact of the Covid- 19 restrictions in that people are having to spend more time at home either to work or at leisure.

2.6 Licensing

There are very few enforcement notices available to deal with licensing matters as a different process exists in most cases, where by a licence can be reviewed and a panel hearing is held. Enforcement action such as prosecution is usually a last resort in the most serious cases. Over Q2 and 3 many licensed premises have had to close due to Covid restrictions or their business has been substantially affected. One licensed café had their alcohol licence revoked following a police investigation which found the premises open and serving food when it should have been closed during lockdown.

The taxi trade saw a slow decline in new applications due to difficulties with external agencies, however this is now beginning to start up again.

2.7 Food, Health & Safety

The majority of the work has been Covid compliance and outbreak management related. Any food safety matters have been resolved and there are 2 ongoing health and safety investigations. Some inspections have taken place during this period and alternative compliance checks have been implemented. A number of businesses, such as pubs and restaurants have had to close or operate differently. There have been a number of new business start-ups too which the team have been advising.

2.8 Covid Enforcement

The Public Protection Service has been leading on the regulatory enforcement of the various Covid regulations and statutory guidance in respect of business premises. Most businesses have sought to comply and have understood the evolving requirements. Only a few have either misunderstood or ignored the requirements, however the vast majority have complied straight away following contact from officers. The Service has continued to receive a enquiries from business as to how the requirements relate to them, as well as complaints or intelligence from members of the public regarding alleged breaches of the legal requirements. This was more of an issue during the tier changes towards the end of 2020.

The Public Protection Service has been representing the Council on a number of LRF groups and cells during the pandemic and in terms of enforcement this has mainly been through the EEC Group (Engage, Enable, Comply). This Group is made up of Public Protection / Environmental Health Managers from across the County, along with LCC, Lincolnshire Police and Lincolnshire Legal Services and has continued to make recommendations to the decision making bodies within the LRF. Additionally, Public Protection Managers have attended the Environmental Health Officers sub-group, which has been looking at the finer detail of interpretation of the evolving legislation and guidance and considering consistency of approach across the County.

2.9 **Communities**

The number of informal notices/warning letters issued by the Community Safety and Enforcement team increased during quarter 2. This was largely due to officers adapting their investigations techniques due to Covid restrictions on home visits and door knocking. The number was also impacted by warning letters that were sent for possible breach of lockdown restrictions.

The figures show an increase on quarter 1's figures for financial penalties which reflect the reopening of the high streets during this quarter and increased footfall

2.10 **Planning**

Despite the number of planning enforcement complaints increasing since the beginning of the first lockdown, the planning enforcement team have been able to investigate these in much the same way as normal, despite site visits being suspended for several weeks and then severely restricted for a further period. There has been reduced Legal capacity, particularly during the first half of the year, but this hasn't significantly affected the ability to take formal action where necessary. The one area where there have been significant delays is with regards to prosecutions. This was primarily due to Magistrates Courts being closed for a lengthy period and there now being a large backlog of cases. This has resulted in two pending prosecutions being pushed back to the beginning of next year. The pandemic has been a consideration when deciding whether to extend notice compliance periods and whether to prosecute, but ultimately hasn't changed the outcome of any investigation. Where swift and expedient action has been necessary, this has occurred.

2.11 **Housing**

Housing has enforced against slightly more cases than last year. The Housing Services Team and wider Housing department are becoming more confident challenging and enforcing cases, balanced with successful responses from informally challenging tenants without the need to formally enforce. It is anticipated that enforcement figures have been impacted by Covid-19 as non-essential home visits have been cancelled. Prior to March, officers had a target to complete 150 internal property inspections per officer to ensure officers access properties in addition to Decent Homes inspections, Repairs and Gas Safety checks. These internal visits were often key to highlighting property alterations where the tenant had not requested permission. Home visits continue to only be carried out where essential visits are required to mitigate the risk of Covid-19 to officers and tenants. Our approach to formal enforcement where necessary is gradually being received by tenants across the district.

2.12 **Building Control**

Applications were down in Q1 on previous years due to Covid but in Q2 applications recovered and passed previous years as part of Covid recovery.

Early intervention is key for the team and is successful in not ending up taking any legal action. Their interventions can be varied from initial plan checking where they discover potential contravention and getting the drawings altered to getting to site and finding the wrong material been ordered.

3.0 Enforcement Case Examples

3.1 Below are some example cases where enforcement action has been taken in Q2:

3.2 Environmental Protection

The team are taking enforcement action for the breach of an Abatement Notice which was served in June 2020, for noise nuisance from barking dogs. Subsequent to service of the Notice, complaints continued to be received. Officers have carried out further monitoring both in person and with noise recording equipment. This monitoring demonstrates the noise from the barking dogs is continuing unabated. Subsequently the EPT are instigating legal proceedings for breaches of the Abatement Notice

3.3 Planning

The issuing of a planning enforcement notice in relation to an unauthorised encampment within the district. The encampment moved onto land within their ownership in June this year without planning permission. They were given one month to submit a retrospective planning application, and when this wasn't forthcoming, a planning enforcement notice was issued in July requiring the unauthorised use to cease within 6 months. The notice has since been appealed and the matter is now in the hands of the Planning Inspectorate awaiting a decision.

3.4 Housing

Housing informally write to tenants regarding garden and property condition before taking action. They currently have a hoarding case whereby they were in the position to serve a Community Protection Warning (CPW) however they have spent some time with the tenant and managed to achieve successful steps without using a CPW by addressing complaints tenants had regarding property condition and permission for pets to encourage them to trust the Housing Team, build relations and work with us so no formal action was required.

The team have also recently been successful in achieving an injunction through the courts to enforce the removal of an unsafe conservatory installed by a tenant without permission, and also to tidy their garden. The judge required the tenant to pay the court costs of £2000 within 14 days and for the conservatory to be removed by the end of January.

The team continue with another major enforcement case from 2019 where the courts are now satisfied that an injunction has been breached. We are now proceeding with possession of the property however court delays mean this is likely to not be progressed by the courts until the spring.

3.5 Communities

The majority of the work carried out by the team sits at a lower enforcement level with informal warnings being issued and any potential vulnerabilities being identified that could be contributing to the behaviour. This allows for early intervention to take place, often without the need to take formal enforcement action.

There are cases however where early intervention is not successful which can result in legal action. The team were successful in obtaining an interim injunction in August on a

male that had caused a significant amount of harassment, alarm and distress to both members of the public and to officers at the council. The Injunction was sought to prevent further incidents from occurring. The case was a good example of cross-departmental working with the Housing team and the strong interagency links with Lincolnshire Police.

4.0 Fly tipping

4.1 Nationally there has been a significant increase in Fly tipping this year in line with Covid-19 and the impact of lock down restrictions. Enforcement for fly tipping offences sits within the Community Safety and Enforcement team and below are the figures broken down into years since April 2018 for enforcement outcomes:

	Fixed Penalty Notices(FPN)	Prosecutions
April 2018- March 2019	1	4
April 2019- March 2020	3	4
April 2020- December 2020	4	0

4.2 Those responsible for fly tipping offences cause a significant impact on those living in and visiting the district and work continues to identify those responsible and gather the required evidence to either issue an FPN or prosecute through the courts.

4.3 A number of areas of work are currently underway to assist officers with their investigations:

- New types of cameras have been identified and assessments are underway to ensure they are of the standard that their evidence can be used in a prosecution. Many rural sites across the district do not have electricity that a standard deployable camera would need. New technology has now provided an opportunity for the Council to utilise cameras in areas where this was not previously an option.
- Joint working with Lincolnshire Police to carry out stops on vehicles
- Increased inter-agency working across the County to share intelligence and best practise

4.4 Raising awareness around fly tipping offences, including duty of care has been a key focus for the team. Messages continue to go out via social media around this. All FPNs along with prosecutions are now publicised by the Council to send a clear message that this behaviour will not be tolerated.

4.5 Due to Covid-19, investigations have been impacted and courts have also seen a significant backlog. This has had a detrimental impact on the ability for the council to push cases through for prosecution. Once restrictions are lifted, full investigations can resume and it is expected that the figures for enforcement will reflect this.

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.

5.3 That the data within this report is provided on a quarterly basis to members

6.0 REASONS FOR RECOMMENDATION(S)

6.1 It is recommended that the data presented within this report is provided on a quarterly basis to members.

7.0 EXPECTED BENEFITS

7.1 The quarterly report would allow for increased communication and understanding around each service.

7.2 The report would provide an overview of the Council's enforcement activities.

7.3 The report would enable 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.

8.6 **Reputation**

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

8.7 **Risk Management**

8.7.1 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 FPN Fixed Penalty Notice

10.2 CPW Community Protection Warnings

Background papers:-

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Key Decision: N

Exempt Decision: N