

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Emily Spicer, Assistant Director Wellbeing & Community Leadership

To: Performance Monitoring Panel Tuesday 9th November 2021

(Author: Emily Holmes, Communities Manager)

Subject Corporate Enforcement Update

Purpose: To provide Members with an update on enforcement activity across the Council

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 as part of the Performance report going forward for more regular updates

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, vehicles, homes and businesses.
- 1.3 All departments dealing with enforcement do so in line with the Corporate Enforcement Policy approved on 29th May 2018. The policy is currently being updated and is due to be considered at the next meeting of the Policy Development Panel in November. 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.
- 2.2 The table below summarises the total enforcement activity recorded during 2020/21.

Table showing enforcement activity for 2020/21

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	18	0	2	0	0	0	0
Licensing*	6	0	N/A	N/A	N/A	0	0
Food, Health and Safety – non covid	21	0	0	0	N/A	0	0
Communities	1,170	1	4	81	1	N/A	0
Planning	N/A	N/A	13	N/A	0	N/A	2
Housing-	20	0	4	3	5	0	2
Building Control	0	146	0	0	0	0	0
TOTALS	1,235	147	23	84	6	0	4

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

2.3 The table below summarises enforcement activity for Quarter 1, 2021/22

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	4	0	0	0	0	0	0
Licensing*	1	0	0	0	0	0	0
Food, Health and Safety – non covid	29	0	6	0	0	0	0
Communities	351	0	0	45	0	N/A	0
Planning	N/A	N/A	4	N/A	0	N/A	0

Housing-	2	0	1	1	0	0	0
Building Control	0	92	0	0	0	0	0
TOTALS	387	92	11	46	0	0	0

2.4 The table below summarises enforcement activity for Quarter 2, 2021/22:

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	3	0	0	0	0
Licensing*	2	0	0	0	0	0	0
Food, Health and Safety – non covid	87	0	1	0	0	0	0
Communities	572	0	0	21	0	N/A	0
Planning	0	N/A	4	N/A	0	0	0
Housing	2	0	1	0	0	0	0
Building Control	0	160	0	0	0	0	0
TOTALS	671	160	9		0	0	0

Key areas of note provided by service areas are:

2.5 Environmental Protection

The number of warnings issued are generally similar to numbers in the same quarter the year before. Environmental Protection complaints and enforcement trends tend to be

seasonal; for example, the summer tends to see an increase in noise nuisance complaints as people have their windows open, as well as insects and pests.

2.6 Licensing

There are very few enforcement notices available to deal with licensing matters as a different process exists in most cases, whereby a licence can be reviewed, and a panel hearing is held. Enforcement action such as prosecution is usually the last resort in the most serious cases.

The Licensing team are now seeing an increase in licensing activity including applications for new licences and renewals across most aspects of licensing. The inspection of animal establishments such as kennels, catteries, breeders, pet shops and riding establishments is now being prioritised although new legislation requiring qualifications restricts the officers that can do this currently.

The team are continuing to support licensed businesses who have been impacted by Covid, and in particular are seeing an increase in variations of licences, where businesses are having to adapt and change their business model.

The Panel of the Committee of the Licensing Authority met in April to consider an application for a premises licence for the sale of alcohol that the police had objected to. The Panel rejected the application and did not grant the licence.

In June, the Licensing Panel considered an application for the grant of a Hackney Carriage/Private Hire Drivers Licence, as the applicant fell outside the scope of the existing policy in respect of previous driving offences. The Panel determined not to grant the licence.

2.7 Food, Health & Safety

During 2020 /21 the majority of the work has been Covid compliance and outbreak management related. Any food safety matters have been resolved and there were two ongoing health and safety investigations, one of which was closed in Q2 2021, with one ongoing.

Since the repeal of the Covid legislation, the Food Safety team have been concentrating on high-risk large and complex premises inspections, as well as night-time economy. They have also been working through an unusually high number of new food business registrations, likely because of people diversifying during and after the pandemic business restrictions. Officers have been prioritising the inspection of new businesses in line with Food Standards Agency requirements. The team also continue to use and promote the National Food Hygiene Rating Scheme as a means of securing and promoting good business practices.

Due to the intensive inspection work that has resumed, the team are issuing a higher number of notices when required to ensure businesses are safe and compliant. Follow up and revisits are carried out to ensure businesses carry out the necessary actions.

2.8 Covid Enforcement

The Public Protection Service led on the regulatory enforcement of the various Covid regulations and statutory guidance in respect of business premises. Most of these have

now been repealed, enabling the service to focus on its substantive statutory responsibilities, although the service does continue to provide business advice.

The Public Protection Service continues to work with Lincolnshire County Council and the UK Health Security Agency (formerly PHE) and supports businesses on outbreak prevention and management. This work falls under public health obligations as well as health and safety.

2.9 Communities

2.9.1 As restrictions have eased and people are interacting in greater numbers, the level of enforcement action across community safety and anti-social behaviour has increased. In 20/21, the total number of advice or warning letters given was 1,170. The combined total for Q1 & Q2 for 21/22 is 923 for 6 months of this year. Total Financial Penalties in 20/21 was 81. The combined total for Q1 & Q2 21/22 is 66 showing an increase in action taken compared to 21/22.

The table below gives further detail of the type of action undertaken;

Action	20/21	Q1 21/22	Q2 21/22
Community Wardens – number of interactions	2,174	790	1,715
Community Wardens - number of verbal warnings	94	88	66
Community Wardens – FPNS from patrols	75	40	21
Abandoned Vehicle investigations	181	53	68
Fixed Penalty Notices issued for Fly-tipping	6	3	0
Fixed Penalty Notices issued for littering from a vehicle	0	1	0
Community Protection Warnings issued for;			
Creating Noise/ Nuisance from a vehicle	2	0	0
Noise from visitors to property	1	2	0
Early presentation of waste	1	0	0
Failure to clear litter	5	0	0
Community Protection Notices issued	4	4	0

2.9.2 The majority of the team's work sits at the first stage of the enforcement process. Informal warnings are issued and the behaviours usually cease with early intervention putting an end to the nuisance caused and reducing the need for formal enforcement action. There are cases where early intervention is not successful, resulting in the next stages of the policy being followed and ultimately ending with formal notices such as Community Protection Notice or an injunction.

2.9.3 In May, June and July 2021, unpaid FPN fines were pursued through the courts. These case files included unpaid fines from 2019 and 2020 and in the majority of cases, the fine was increased to £220, costs of £85 and £34 victim surcharge were awarded. Every fine is tracked from issue through to payment.

2.9.4 Fly tipping continues to be a significant concern to South Holland residents as well as for communities across the country. Incidents of fly-tipping are investigated where evidence supports a reasonable line of enquiry, however, if no evidence to identify the perpetrator is found, the only action that can be taken is removal of the waste. The table below details enforcement action taken to-date.

	Fixed Penalty Notices(FPN)	Prosecutions
April 2018- March 2019	1	4
April 2019- March 2020	3	4
April 2020- March 2021	6	0
April 2021- September 2021	3	0

There are currently 11 live investigations on going with persons being written to, visited or interviewed. Where enforcement action has been possible, witness reports of the incident have been key and ongoing communication about the importance of reporting will continue. In August and September 2021, 27 reports of fly-tipping resulted in doorstep visits to approximately 60 households, giving advice on correct presentation of waste and details of the Council's collection and bulky waste service. Letters were also sent as a reminder of the discussion during the visit.

- 2.9.5 Staffing challenges in Q2 has meant that progress with rollout of temporary cameras and the planned joint days of action with Lincolnshire Police have been delayed to Q3 and Q4. Additional team members have been trained to investigate fly-tips and collect evidence so that where action can be taken it will be. An additional focus for Q3 is to develop proposals to increase the types of fly-tipping offences that can be actioned through Fixed Penalty Notice and to review the levels.
- 2.9.6 Through both the Lincolnshire Waste Partnership and the Lincolnshire Environmental Crime Partnership, agencies across the county joined over 150 local authorities and professional bodies to call for tougher fines and sentences for fly-tippers. This request has been made as part of a review of the Environmental Offences Definitive Guidelines (2014) and key recommendations were made through working in partnership with the national Fly Tipping Group. These recommendations include;
- Court fines to exceed the cost of Fixed Penalty Notice fines and to include costs incurred by the public purse and the police in bringing a fly-tipper to court
 - Costs related to the clean-up of fly-tipping on private land and restoration of that land to be included in fines paid by those who are prosecuted
 - When deciding the level of fine, fly-tipping should be looked at by the court as an offence first, and not at the person and their ability to pay first. Means testing should be used to ascertain what type of fine(s) to give, and never how much they should pay.
 - If a defendant cannot pay the fine in full, or in part, it is strongly recommended that community-based sentences are more widely used and available across all offence categories.
 - More use of suspended prison sentences which has been proven to be a strong deterrent to serial fly-tipping offenders in Buckinghamshire
 - Anyone convicted of a second fly-tipping offence is given a custodial sentence rather than another suspended sentence
- 2.9.7 There has been an increase in reports of abandoned vehicles that need investigation to determine whether they have been abandoned or not. Unlike fly-tipping, where the Council does not have a duty to investigate incidents on private land, there is an obligation to investigate any vehicle abandoned in the open air. There have been challenges tracing owners in recent months, particularly with foreign registered vehicles. However, of the 68 reports in Q2, 81% have been closed and 19% remain under investigation with attempts being made to contact the keeper and landowners. There were three cases of landowners

reporting lorries abandoned on their land, however after investigations, these were determined as unlawful parking and advice given.

2.10 **Planning**

The number of enforcement complaints received continues to increase year on year. In the vast majority of cases, breaches of planning control can be successfully resolved by negotiation with formal enforcement action only required in a small number of cases. Enforcement action is discretionary and should only be taken where it is expedient to do so. To the end of Q2 21/22 Planning have successfully prosecuted on two occasions.

2.11 **Housing**

The types of enforcement action that may be needed within Housing are broad and are used to tackle a wide variety of concerns. This can include action taken against private sector landlords or district council tenants and can range from safety concern, non-payment of rent or unacceptable behaviours. Continued upward trend in enforcement action as service returns to business as usual post pandemic.

2.12 **Building Control**

Most breaches of The Building Regulations get resolved by discussions with customers about how to rectify any issues whilst on site. The number has increased due to the number of inspections carried out in these periods.

3.0 **Enforcement Case Examples**

3.1 Below are some example cases where enforcement action has been taken during the period covered in this report.

3.2 **Food Safety**

Improvement Notices are used by Authorised Officers where there are concerns about food safety and they require the Food business Operator to take action to comply with legislation. A Hygiene Improvement Notice has been issued on a retail business who had been selling meat products prepared on an un-registered premise without any of the necessary food hygiene systems in place. Hygiene improvement notices were also served on a night-time takeaway that did not have adequate measures in place to handle and prepare high risk products.

3.3 **Environmental Protection**

Two notices have recently been served in relation to joint owners of a property under the Prevention of Damage by Pests Act 1949, for the destruction of mice and rats on their domestic premises.

As part of a different investigation, a notice has been served as a formal Request for Information in relation to a noise complaint where the alleged source was not engaging with the Officer.

3.4 **Planning**

One prosecution referred to in 2.10 concerned a developer not providing a footpath at the front of a new development in Crowland in breach of a planning condition. Despite protracted negotiations, a breach notice was issued and not complied with. The developer was prosecuted for non-compliance with the notice, pleaded guilty, and was fined a total of

£804 in March 2021. This prompted the developed to carry out the required works in June 2021 to avoid further prosecution proceedings being instigated, and the matter has now been fully resolved.

3.5 Housing

The types of action that the data in sections 2.2 – 2.4 cover actions including; Emergency Prohibition Notices, upheld First Tier Property Tribunal appeals, Electrical installation compliance notices, Community Protection Warnings to Injunctions. In 2020, a landlord was handed a £1,500 fine after hazards identified as posing a potential danger to life were identified by the Housing team. These were identified during an inspection of the property following complaints received from the tenants. Remedial action was not taken during the required time frame, a formal improvement notice was served and the civil penalty was imposed for failure to comply with the improvement notice.

In Q4 of 20/21 an injunction was served after two people were found to have been cuckooing vulnerable tenants in the District, coercing them to be allowed into their property and using violent, abusive and intimidating behaviour to take advantage of them. This injunction was secured through joint working with Lincolnshire Police and it was monitored for compliance. This injunction was breached by one of the individuals who was witnessed by Lincolnshire Police and a judge at Lincoln County Court awarded a 14-day prison sentence suspended for six months and £850 costs to be paid.

3.6 Communities

Through Q1 and Q2, the majority of Community Protection Warnings (CPW) and Community Protection Notices (CPN) have related to nuisance behaviour and disturbances by individuals, or by visitors to their properties. Where initial warning letters have not stopped the behaviours, or if the behaviour was having a significant impact on the victims a formal CPW may be issued. If this is not complied with, a CPN may be served and any breaches could lead to a Fixed Penalty Notice or court action. Officers issued a CPW to an individual in Donington whose nuisance behaviour of shouting, swearing and verbal abuse was causing considerable concern to the community. In Sutton Bridge, a CPN was issued to an individual who caused noise or disturbance to his neighbours and allowed visitors to his property. A benefit to Community Protection Notice is that as well as outlining behaviours that must cease, there is also the ability to add positive requirements. In one example, this included keeping appointments with a support worker who could help the individual address their alcohol usage, which exacerbated their anti-social behaviour.

Shuttle mediation has been trialled in Q2 to help resolve neighbour disputes. The interim Community Safety & Enforcement Manager (a trained mediator) worked with the police officer within South Holland's Operational Partnership Team on 4 neighbour dispute cases. Shuttle mediation is a process where parties do not come together in the early stages but agree to, and embark upon a series of shuttle mediation sessions between the two parties. Three out of the four cases have successfully been concluded using this method reducing the number of calls to Lincolnshire Police and the Council.

4.0 OPTIONS

- 4.1 Note the contents of this report and in future, provide the data within this report on a quarterly basis to members within the quarterly performance report (**recommended**).

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

5.0 REASONS FOR RECOMMENDATION(S)

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

6.0 EXPECTED BENEFITS

- 6.1 A quarterly update would allow for increased communication and timely updates.
- 6.2 The report would continue to provide an overview of the Council's enforcement activities.
- 6.3 The report would enable members to ensure that enforcement action is being taken appropriately and that resident and community concerns are being addressed.

7.0 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.

7.1 Constitutional & Legal

- 7.1.1 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.

7.2 Corporate Priorities

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

7.3 Crime and Disorder

- 7.3.1 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.

7.4 Equality and Diversity / Human Rights

- 7.4.1 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.

7.5 Financial

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

7.6 Reputation

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

7.7 Risk Management

7.7.1 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.

8.0 WARDS/COMMUNITIES AFFECTED

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

9.0 ACRONYMS

- 9.1 FPN Fixed Penalty Notice
- 9.2 CPW Community Protection Warning
- 9.3 CPN Community Protection Notice
- 9.4 GAP Guardian and Parent letter

Background papers:-

Lead Contact Officer

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Key Decision: N

Exempt Decision: N