

AGENDA ITEM NO. 5

CABINET

Date **31 MAY 2007**

Title **REVISED CORPORATE ENFORCEMENT POLICY**

1. PURPOSE

To seek approval of a revised Corporate Enforcement Policy.

2. KEY ISSUES

- Enforcement work is undertaken in many service areas within the Council and has to be carried out in the context of a defined policy. The work often needs action by more than one service team and increasingly involves partner agencies, such as the police.
- The impact of enforcement can be very significant on the individual or business concerned and so has to be carefully considered. It is also necessary to manage the expectations of customers who may feel the Council should take enforcement action at once.
- The policy needs to be clear about the approach the Council will take and that the “enforcement mix” includes informal actions, as set out in our Prevention, Intervention and Enforcement (PIE) approach to delivering a Council-wide, integrated enforcement service (Corporate Plan, Local Priority SA1).
- By having an agreed Enforcement Policy, the Council can show consistency and good practice in its approach to carrying out its regulatory functions.
- The current Enforcement Policy was adopted by Council in April 2004. At that time the Council also formally adopted the Enforcement Concordat, a Government initiative for public sector bodies to commit to, setting out the principles of good enforcement practice. The revised policy continues to incorporate the principles in the Enforcement Concordat, including proportionality, consistency and transparency.
- The proposed new policy has been updated to reflect how enforcement is delivered, for example in the greater use of Fixed Penalty Notices. The proposed revised Enforcement Policy is attached as Appendix 1.
- The review has involved significant consultation, the results of which are summarised in Appendix 2. Generally, the response has been very positive and therefore there has not been any need to make amendments to the policy. However, a simplified summary of the policy is being produced and will be made generally available in response to requests.
- There are special issues to consider when dealing with young people. This is likely to be mainly in the context of litter and dog fouling offences. This issue is currently the subject of consultation with relevant groups and a further addendum to the Council’s Enforcement Policy will be brought forward in due course.

3. RECOMMENDATIONS

1. To adopt the revised Corporate Enforcement Policy, as set out in Appendix 1.

Wards Affected	All
Forward Plan Reference No. (if applicable)	
Portfolio Holder(s)	Councilor F.Yeulett
Report Originator	Graeme Carson, Environmental Protection Manager
Contact Officer(s)	Mike Gleadow, Food and Safety Manager
Background Paper(s)	None

DRAFT CORPORATE ENFORCEMENT POLICY

1. INTRODUCTION

1.1 The Council has set clear, long term objectives in its Corporate Plan 2008-10. These are:

Streets Ahead - To use a prevention, intervention and enforcement (PIE) approach to create an attractive and sustainable environment for the community to enjoy, with a streetscape that is clean, green, safe and well maintained.

Community First _ To deliver services and work with partners to ensure improved health and social wellbeing for the whole community.

Open for Business – To work in partnership to promote the growth of local businesses and develop the Fenland economy.

Decent and Affordable Homes – To contribute towards the provision of decent and affordable homes for local residents.

Quality Organisation – To provide effective access to services and to improve the skills and capacity of the organisation to meet local priorities and deliver excellent services.

1.2 The PIE approach embodied in the Streets Ahead objective is an integral part of this Policy. However, this approach is also consistent with the other 4 long term objectives as we will work with businesses and our communities throughout Fenland for the benefit of residents and the Fenland economy. The Council recognises that enforcement can be successful only if the policy has the support of both our local communities and local businesses. So, we have consulted widely on our Draft Policy and taken full account of feedback from all stakeholders before finalising and adopting the policy. We will also review the policy regularly.

1.3 The Council also recognises that we need to work in partnership with other agencies in providing enforcement services. This approach extends to the government's Respect initiative on tackling anti-social behaviour and working closely with the police and others in the development of neighbourhood policing to build safer, stronger communities.

1.4 The Corporate Enforcement Policy is the core of our approach to enforcement. It incorporates best practice and sets common principles that we will follow. The Policy describes the range of enforcement activities we use and how we intend to comply with the Cabinet Office Enforcement Concordat.

1.5 To ensure consistent performance across a broad range of activities and duties, we are producing supplementary operational policy documents that give details of our range of services, the standards of service our customers can expect and the

criteria we will use when deciding on how we will deal with infringements. We are also producing service specific operational policy documents to cover technical aspects of each service and themed operational policy documents, eg. for dealing with Juvenile offenders. We will consult with stakeholders on these policies before adopting them.

2. A BALANCED APPROACH TO ENFORCEMENT

2.1 The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are met and that everyone acts/operates within the law. It does not just mean taking formal action, such as prosecution, but includes a wide range of actions and measures to achieve compliance and giving help or advice. We will generally endeavor to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action.

2.2 We recognise that most business owners, their employees and the public want to comply with the law and thereby operate legitimately and responsibly. We will help and advise wherever possible but will take firm action against those who ignore legal requirements or act irresponsibly.

To achieve this we will:

- Make available information and advice on the law in electronic and printed formats
- Publicise enforcement campaigns, especially for new initiatives and new or changed laws
- Make promotional visits to increase awareness to groups within our communities and to business forums.
- Work with our partner agencies and through the Safer Fenland Partnership to co-ordinate enforcement activities for the benefit of our communities
- Carry out inspections.
- Investigate complaints.
- Examine goods, documents or notices.
- Take samples or make test purchases.
- Talk to witnesses and obtain witness statements, where appropriate.
- Conduct interviews to investigate offences and obtain the facts.

2.3 So we can see things from the point of view of a customer or ordinary member of the public, we may carry out informal visits but not introduce ourselves as Council officers.

There is a range of actions we can take where we find problems, breaches or contraventions:

- Give verbal or written guidance.
- Give written instruction.
- Send a cautionary letter or notice.
- Issue Fixed Penalty Notices.

- Serve formal Statutory Notices
- Take samples and seize goods or documents.
- Carry out a formal interview.
- Issue a formal caution.
- Suspend or revoke a license or permit
- Take out an injunction.
- Prosecute offenders.
- Issue legal proceedings (civil or criminal)

2.4 Guiding Principles:

- **Enforcement Concordat.** Fenland District Council has adopted the Government's Concordat on Good Enforcement. The Council is committed to its aims and will abide by the following principles when considering and undertaking enforcement.
- **Openness.** We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.
- **Helpfulness.** We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.
- **Clarity.** We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.
- **Consistency.** We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies eg. The police, Health and Safety Executive, parish councils, etc., particularly where we may share an enforcement role.
- **Suitable Action.** Every case is unique and must be considered on its own facts and merits. When making decisions on the actions to take, we will always take account of our service standards (see section 4).
- **Human Rights.** We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).
- **Equal Opportunities and Diversity.** We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and

respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

- **Vulnerable People.** We will have regard to the particular circumstances of breaches involving young people and the elderly and we will deal with them in a manner that is appropriate. To this end, we will work in consultation with the relevant agencies, eg. Social services, Youth Offending Team and the police. We will also have regard to any government guidance, eg. that issued by DEFRA.
- We understand that some members of the community may have specific difficulties or special needs, which will need extra advice and assistance. Careful explanation will be given and if necessary the services of an Interpreter or translation of documents will be provided. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing, vision or other impairment.
- **Complaints.** All complaints made about service quality will be recorded and tracked against the Council's formal complaints procedure. An information leaflet, which explains the process, is available at all Fenland @ Your Service Shops and on the Council's website.

3. POLICY APPLICATION

3.1 The policy is relevant to services in the following service areas:

- Hackney Carriage and Private Hire Vehicle Driver and Operator Licensing, Licensing Act 2003, Public Entertainment, Sex Establishments, House to House and Street Collecting Licensing and Gaming Act.
- Revenue recovery and the investigation of Housing Benefit, Council Tax and Business Rates fraud.
- Planning Development Control and Building Control
- Environmental Services, Environmental Protection, Anti-social Behaviour, Food and Safety and Port Health.
- Private Sector Housing Conditions.
- Any other service which carries out enforcement duties.

3.2 Certain services require detailed specific enforcement policies and when this is the case these policies will follow and complement the principles and practice of the Corporate Policy. Therefore, detailed policies must be read in conjunction with this policy.

4. SERVICE STANDARDS

4.1 Our officers often find breaches of the law but have to choose the most appropriate method of achieving compliance from the range of possible actions available to them.

4.2 Action taken will be proportionate to the risk to people and property caused by the breach and as far as the law allows will take account of the circumstances of the case and the attitude of the alleged offender.

4.3 Particular care will be taken when working with small businesses and voluntary and community organisations so that they can where practicable, meet their legal obligations without unnecessary expense.

4.4 Emphasis will be given to informal enforcement actions that support the achievement of the Council's long term objectives.

4.5 Before we take formal enforcement action, there will be an opportunity to discuss the circumstances of a case, unless immediate or emergency action is required (e.g. to prevent destruction of evidence, or where there is an imminent risk to health and safety, damage to property or the environment).

4.6 Where immediate action is considered necessary, an explanation of why such action is required will be given at that time and confirmed in writing, usually within 5 working days and always within 10 working days. However, in certain cases, where emergency action is deemed necessary, no notice is required to be given in law. Nevertheless, we will endeavour to give notice, if possible, in such cases.

4.7 Where there are rights of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time the action is taken.

4.8 All communications will be clear and in plain English and will distinguish between practical advice, best practice and legal requirements. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing, vision or other impairment.

4.9 Enforcement action may be taken by the Council alone or in conjunction with other agencies such as the Police, Department of Works and Pension, Inland Revenue, and County Council.

5. FORMAL ENFORCEMENT ACTION

This part of our Enforcement Policy sets out how we will deal with any alleged breach of law which the Council is empowered or duty bound to enforce:

5.1 Verbal Warnings and Advice

The Council will seek to resolve matters informally whenever possible. Accordingly, advice and/or verbal warnings will usually be sufficient in the majority of cases as a means of resolving minor offences and technical infringements that are capable of

being sorted out immediately and are unlikely to be repeated. Failure by alleged offenders to act on verbal warnings or advice may result in more serious enforcement action being taken against them.

5.2 Written Warnings and Advice

Where the issue demands a more formal approach than verbal advice, written guidance clearly identifying the infringement involved and giving advice on how to put it right and a deadline by which to do it will be provided. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. The circumstances of each case and the implications of infringements will be taken into account.

5.3 Fixed Penalty Notices (FPNs)

5.3.1 FPNs are a means to impose an immediate financial penalty on an offender for certain criminal offences. The Council will use FPNs wherever a local or district-wide need is identified to deal with minor enviro-crime offences such as dog fouling, littering, fly-tipping and workplace smoking.

5.3.2 We will carry out campaigns and produce information about the use of FPNs, especially on their use in connection with young offenders.

5.3.3 Receipts generated from issuing FPNs will be invested in the relevant services.

5.4 Formal Statutory Notices

Notices may/must be served to require offenders to stop illegal activities immediately or give them reasonable time to remedy a breach. Any time allowed to put things right will be reasonable, but will take into account the implications of the contravention.

Statutory Notices may be issued where:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the individual or management of a business to respond to an informal approach or this approach has previously failed;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible;
- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating; or
- Failure to comply with a statutory notice will usually result in prosecution and/or we may carry out any works in default and recovery our cost of doing so.

5.5 Formal Caution

A formal caution will only be considered when all the evidential requirements necessary to bring a prosecution are met, but the circumstances surrounding the infringement are such that a more lenient approach than prosecution is appropriate. Any formal caution will follow the criteria laid down in relevant Home Office Guidelines. If a decision to offer a formal caution is rejected by the alleged offender, then a prosecution will be instituted.

5.6 Prosecution

5.6.1 Before prosecution is considered the facts relating to the infringement must show behaviour by an individual or an organisation responsible for the infringement which caused or was likely to cause actual or emotional damage, loss or prejudice to people, including organisations, businesses, or the environment and which may have:

- Involved an element of deception which may or may not result in a loss or potential loss of public funds
- The seeking of an unfair 'competitive advantage'
- Involved deliberate or persistent breach of a legal obligation, (e.g. disregarding previous advice or warnings or following other enforcement action such as Formal Cautions, Statutory Notices, or seizure)
- Been caused through gross negligence or carelessness and caused, or was likely to cause, significant loss or prejudice to others.
- Been targeted at the young, the elderly or other vulnerable people or minority groups
- Involved the obstruction of an authorised officer in carrying out his or her duties.

5.6.2 Before making a decision whether or not to prosecute, consideration will also be given to:

- The sufficiency of evidence and the public interest
- How well prosecution supports the achievement of corporate aims or the delivery of corporate priorities
- Action taken by other enforcement agencies in relation to the same facts to avoid duplication
- The likelihood of the alleged offender being able to establish a statutory defence
- The probable public benefit of a prosecution and the importance of the case - e.g. the possibility of establishing legal precedent
- Cost effectiveness of prosecution - a need to balance likely overall cost against the "value" of the likely outcome

5.7 Injunctive Action

Injunctive action will be considered where an alleged offender persistently acts in a way that acts against the collective interests of the public or where formal undertakings are ignored.

5.8 Works in Default

Some legislation gives power to the Council to carry out works itself to achieve compliance, eg. with a Statutory Notice. These powers will be used in situations where it is clear that the works required will not be carried out, even if reasonable additional time has been allowed, taking account of all the circumstances of each case. The Council will always seek to recover all costs reasonably incurred in carrying out works in default.

5.9 Anti-social Behaviour

5.9.1 Safer Fenland Crime Partnership (SFP): The Council acts through the SFP to deal with anti-social behaviour (ASB) and to promote safer, stronger communities. Our work here embodies the PIE approach and uses a range of measures in the context of the government's Respect framework. This special form of enforcement includes the following measures:

5.9.2 Acceptable Behaviour Contracts (ABCs): The Council will work with the police and other agencies to get certain individuals to agree to improve their behaviour. ABCs are a voluntary measure which people can sign up to say they will do so. Breach of an ABC is likely to lead to ASBOs being sought and other measures, e.g. a RSL seeking a possession order.

5.9.3 Antisocial Behaviour Orders (ASBOs): ASBOs may be used to deal with persistent anti-social behaviour and certain types of nuisance. We will work with partners, especially Registered Social Landlords (RSLs), to co-ordinate action to deal effectively with ASB. ASBOs can be obtained against anyone 10 years old or over. Their purpose is to protect the community from anti social acts. ASBOs may be sought following conviction for a criminal offence, for Statutory Nuisance or other similar offences. ASBOs may be used to prohibit an individual from anti-social acts or to order an individual not to return to an area following an eviction for ASB.

5.9.4 Injunctions: Injunctions will be sought to deal with serious and persistent ASB.

- We may seek an injunction with power of arrest and an exclusion order to ban an individual from an area when he/she has acted in a threatening and/or abusive manner.
- In cases involving the use or threat of violence, we will consider applying for an urgent injunction without giving the individual prior notice.

5.9.5 Other Measures to Deal with ASB:

Parental Control Agreements (PCAs) will be used to control ASB in children under 10 years old. Similar to ABCs, these are also voluntary and parents undertake to control their children. Failure to abide by the terms of a PCA may lead to a Parental Control Order (PCO) being sought. PCOs are similar in nature to ASBOs.

The Council may act to use its powers as a landlord to seek possession of a dwelling in serious cases of ASB. This will be only where a breach of the tenancy agreement has occurred and in accordance with current policy on tenancy agreements.

5.10 No Action

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of action taken by the offender to comply outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a business has ceased to trade, or the offender is elderly and frail and formal action could seriously damage their well being. A decision to take no action will take into account the implications of the contravention. Usually a decision to take no action will only be made where the breach is not a serious one.

5.11 Referral to another Agency

Subject to the provisions of Data Protection and Human Rights laws, information on infringements will be passed to other interested enforcement agencies.

5.12 Naming Offenders

The names and trading addresses of businesses or individuals who act in ways that represent significant risk of detriment to communities, particularly the young and vulnerable, may be published. This action will be taken in circumstances where:

- It is in the public interest to do so
- There is no risk of prejudicing legal proceedings or other formal enforcement action
- To do so does not breach Human Rights or Data Protection law or the Children and Young Persons Act 1933.
- Following prosecution.

6. MANAGEMENT SYSTEMS

6.1 Staff competency and the consistency of enforcement will be reviewed by each service unit on a regular basis.

6.2 The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach.

6.3 Where local or national co-ordinating bodies exist, the Council will ensure that wherever possible its enforcement practices are consistent with best practice identified.

6.4 A review of enforcement activities may involve any of the following:

- A high level review of enforcement standards by members of the Council;
- Quality Assurance systems;
- Monitoring visits by line managers;
- Shadowing visits by colleagues;
- Monitoring of correspondence and statutory notices;
- Peer review exercises;

- Internal training sessions and workshops on enforcement issues;
- Customer satisfaction surveys;
- Business focus groups.

7. TRAINING AND APPOINTMENT OF OFFICERS

7.1 All officers undertaking enforcement duties will be suitably trained and qualified to ensure that they are fully competent to undertake their enforcement activities.

7.2 All officers will be formally authorised by the relevant Council to exercise specified powers under relevant statutes.

7.3 The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines.

7.4 Authorisation will be in writing and in a warrant card form, which will be shown on request. A copy of an officer's authorisation will be held in their personal file.

7.5 The Council supports the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills.

8. COMPLAINTS

8.1 The Council will actively seek the views of those who receive our services about how we can improve.

8.2 In cases where disputes cannot be resolved, the Council will explain any right of complaint or appeal.

8.3 The Council also has its own complaints procedure and further information about this can be obtained from the leaflet entitled;

“What to do if you feel that the Council has provided an unsatisfactory service”

This leaflet is available at all Fenland @ Your Service Shops and on the Council's website

9. SERVICE REVIEW

As part of our service planning and review process, checks will be carried out at least once each year to make sure this policy continues to reflect best practice and to see how well we are meeting our commitments. We will also consult regularly with stakeholders on how our approach to enforcement is perceived. The results will be used to inform any changes needed to improve the quality of our enforcement services.

Fenland District Council
Corporate Enforcement Policy
Version 3
Date: May 07
Authorised: Cabinet

Consultation on Draft Enforcement Policy
February 2007

External Consultation Process

Over 500 Questionnaires were sent out to both domestic and commercial service users. A cover letter explaining the Consultation and our aims was also sent.

Included in the 500 service users consulted were many members of the Fenland Business Forum.

A presentation was given to the Fenland Equal Opportunities and Diversity Forum and comments invited. No adverse comments were made.

Internal Consultation

An Internal Workshop relating to the Draft Enforcement Policy was also carried out with 30 Council Enforcement Officers attending.

Returned Questionnaires

Out of the 500 sent to Commercial and Domestic service users **26 were returned**
= 0.05% return

General Analysis of Feedback

- The feedback from our Consultation on our Draft Enforcement Policy enables us to show that Fenland District Council are committed to ensuring a fair and transparent approach to all enforcement action.
- The feedback shows that 100% of those who responded feel that the Council should have an Enforcement Policy.
- 96% of respondents feel the Policy is an open and transparent way for the Council to approach enforcement and that it is fair to all.
- 100% of the respondents felt the Policy shows a gradual approach to enforcement which was supported.
- 100% of respondents were also of the opinion that the Enforcement Policy must have a robust approach available to officers when all educational and advisory approaches have been exhausted.
- There were comments that uniformity to enforcement across the Council's work areas was a good approach.