

REPORT TO ENGAGEMENT P.D.G.

REPORT OF: Head of Legal and Democratic Services

REPORT NO: LDS113

DATE: 22nd November 2013

TITLE:	Corporate Enforcement Policy	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Key decision	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
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INITIAL IMPACT ANALYSIS: Equality and Diversity	Carried out and Referred to in paragraph (7) below Not applicable at this stage	Full impact assessment Required:
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	Current Enforcement Policy http://moderngovsvr/mgConvert2PDF.aspx?ID=2975	

1. RECOMMENDATION

1.1 That the Engagement PDG note the proposals for a revised Corporate Enforcement Policy Members are asked to consider the content of the Report and provide their views on the possible content of the proposed policy.

2. PURPOSE OF THE REPORT

2.1 The purpose of this report is to make Members aware of the forthcoming revised draft Corporate Enforcement Policy and to seek their views at this early stage so as to assist in the formulation of the draft document.

3. DETAILS OF REPORT

3.1 The Council has a key role to play in establishing an environment that assists in supporting and facilitating the growth of business and supporting local economic prosperity. At the same time there is the equally important role in protecting public health and safety and promoting community health and well being and protecting the environment. Fair and effective enforcement underpins this and ensures that we protect health, safety and quality of life for all those who live, visit and work in the District and, ensures that those businesses and individuals who undertake regulated activities do so lawfully.

3.2 The Legislative and Regulatory Reform Act 2006, requires that the Council has regard to the Principles of Good Regulation when exercising certain specified regulatory functions. The specified functions relevant to this Council are those carried out by our environmental health and licensing services.

3.3 Other guidance exists that recommends that we have a documented enforcement policy in place, for example the National Planning Policy framework, Health and Safety Executive Section 18 Guidance, and Food Standards Agency Framework Agreement.

3.4 The purpose of the Corporate Enforcement Policy is to establish a single overarching policy that encompasses the key factors and principles common to all aspects of enforcement undertaken by the Council. The intention is to commit the Council to good enforcement practice and establish a framework by which we will ensure a fair and consistent approach to the way that enforcement activities are undertaken.

3.5 It will be an important document that should give recognition to the fact that fair and effective enforcement is essential to protect economic interests, public health and safety and the environment.

3.6 Whilst the Corporate Enforcement Policy covers all regulatory activities undertaken by the Council it will remain necessary to support it with a suite of service-specific policy documents that set out in greater detail the enforcement practice in relation to particular service areas.

3.7 It is important that the Council reviews and updates its Corporate Enforcement Policy so it can demonstrate compliance with obligations imposed on it by the Regulatory Reform Act 2006, and the statutory guidance including the Regulators Compliance Code. Both of these documents post date the previous revision of the Council's Corporate Enforcement Policy in early 2006.

3.8 The intention is to produce a revised Corporate Enforcement Policy that is more directive and instructive on how to apply, for example, the assessment of when enforcement action may be necessary and proportionate. Consideration could, for example, be given to:

- The seriousness of the compliance failure;
- The businesses past performance and its current practices;
- The risks being controlled; and
- Legal, official or professional guidance received from third parties.

3.9 In addition the revised policy would inform when a particular enforcement option may be appropriate, for example:

- **To take no action** – This may be appropriate where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention to the community.
- **Informal action and advice** - We may for example take informal action when:
 - The act or omission is not serious enough to warrant formal action;
 - From the individual's or businesses past history we can reasonably expect that informal action can achieve compliance;
 - We have high confidence in an individual or business proprietor;
 - The consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.
- **Forfeiture Proceedings** – used perhaps where there is a need to dispose of goods in order to prevent them re-entering the market place;
- **Administrative Penalties** – may be appropriate where an allegation of housing/council tax benefit fraud has been investigated and officers are satisfied from the evidence before them that an offence has been committed. When considering whether this is an appropriate course of action (as opposed to prosecution) the officer may take into account the severity of the offence and any aggravating features.
- **Injunctive Actions** – this may be appropriate in dealing with dangerous circumstances or significant consumer detriment.
- **Seizure** – Certain legislation enables authorised officers to seize goods, equipment or documents for example unsafe food. This would be appropriate where the goods are required as evidence for possible court proceedings.
- **Fixed Penalty Notices (FPN)** – where an offence permits a FPN we may choose to administer a FPN on a first occasion without a warning.
- **Formal Notice** – These may be served on offenders requiring them to take specific actions or cease certain activities. The Notice may require activities to cease immediately if they relate to health, safety, environmental damage or nuisance. In other cases it may be appropriate, taking into account the seriousness of the offence and implications to allow a 'reasonable' period of time to remedy the defect.
- **Simple Caution** – this is a potential alternative to prosecution and may be appropriate to:

- Deal quickly and simply with a less serious offence;
- Divert less serious offences away from the Courts
- Reduce the chance of repeat offences

Ideally a number of criteria would be identified and require satisfying before a simple caution is thought to be appropriate, for example:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a simple caution;
- The offender must be over 18 years of age;
- The offender should not have received a simple caution for a similar offence within the previous two years.

- **Prosecution** – the decision to prosecute is significant and could have far reaching consequences. It may be appropriate that the final decision on whether or not to prosecute should rest with the Head of Legal and Democratic after consultation with the relevant Head of Service/strategic Director. In any event sound criteria should be adopted before a decision to prosecute is made and may include circumstances where:

- The alleged offence involves a flagrant breach of the law putting public health and safety at risk;
- There is a reckless disregard for the environment
- The offence includes an element of deception
- A serious risk has been identified which the suspected offender has not rectified despite having been given reasonable opportunity to comply with the law;
- There is a history of similar offences
- The alleged offence is considered to be anti-social behaviour or causes public alarm;
- Prosecution is in the public interest, there is reasonable prospect of conviction and sufficient evidence to support proceedings.

- **Prohibition/stop notices and injunctions** – these are most probably appropriate where immediate action is necessary and may be issued in the following circumstances:

- There is imminent risk of injury to health or safety or environmental pollution;
- There is a serious hazard to residential premise;
- The consequences of not taking immediate action to protect the public would be unacceptable;
- Where unauthorised development is unacceptable and continuing work is or may cause irreversible damage;
- A proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition;

3.9.1 Before adopting a Corporate Enforcement Policy a draft version will be subject to consultation.

4. OTHER OPTIONS CONSIDERED

4.1 A failure to have in place an up-to-date Corporate Enforcement Policy could result in some inconsistency of approach across the Council resulting in a greater likelihood of challenge to enforcement decisions.

5. RESOURCE IMPLICATIONS

The provision of the policy will be met from existing resource.

6. RISK AND MITIGATION

Risk has been considered as part of this report and any specific high risks are included in the table below:

Category Risk	Action / Controls
No high risks are considered at this stage of the policy formation	

7. ISSUES ARISING FROM IMPACT ANALYSIS

The Corporate Enforcement Policy should include a clear Equality Statement to ensure all enforcement activity is undertaken fairly and without discrimination on any grounds.

8. CRIME AND DISORDER IMPLICATIONS

The provision of a robust policy will ensure that enforcement prevents the continuation of potential criminal activity

9. COMMENTS OF FINANCIAL SERVICES

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

Set out in the document

11. COMMENTS OF OTHER RELEVANT SERVICES