



Meeting: **POLICY REVIEW COMMITTEE**
Date: **TUESDAY, 24 JULY 2018**
Time: **5.00 PM**
Venue: **COMMITTEE ROOM - CIVIC CENTRE, DONCASTER ROAD, SELBY, YO8 9FT**
To: **Councillors J Deans (Chair), M Hobson (Vice-Chair), J Cattanach, M McCartney, K Arthur, D Hutchinson and J Shaw-Wright**

Agenda

1. Apologies for Absence

2. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests.

Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

3. Minutes (Pages 1 - 6)

To confirm as a correct record the minutes of the meeting of the Policy Review Committee held on 17 April 2018.

4. Chair's Address to the Policy Review Committee

5. Planning Enforcement Management Plan (PR/18/1) (Pages 7 - 26)

To consider the report which outlines the current policy position on Planning Enforcement and recommend improvements.

6. Policy Review Work Programme 2018-19 (Pages 27 - 28)

To consider the current Policy Review Committee Work Programme for 2018-19.

G. Marshall

Gillian Marshall, Solicitor to the Council

Dates of next meetings (5.00pm)

Tuesday, 11 September 2018

Enquiries relating to this agenda, please contact Victoria Foreman on 01757 292046
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Minutes

Policy Review Committee

Venue:	Committee Room - Civic Centre, Doncaster Road, Selby, YO8 9FT
Date:	Tuesday, 17 April 2018
Time:	5.00 pm
Present:	Councillor J Deans (Chair), Councillor M Hobson (Vice-Chair), Councillor J Cattnach, Councillor M McCartney, Councillor K Arthur, Councillor D Hutchinson and Councillor J Shaw-Wright
Officers present:	Drew Fussey, Customer, Business and Revenues Service Manager, Aimi Brookes, Contracts Team Leader and Victoria Foreman, Democratic Services Officer
Others present:	Councillor C Lunn, Lead Executive Member for Finance and Resources and Ben Jewell, Graduate Trainee
Public:	0
Press:	0

23 APOLOGIES FOR ABSENCE

There were no apologies for absence.

24 DISCLOSURES OF INTEREST

There were no disclosures of interest.

25 MINUTES

The Committee considered the minutes of the meeting held on 13 March 2018.

RESOLVED:

To approve the minutes of the Policy Review Committee held on 13 March 2018 for signing by the Chair.

26 CHAIR'S ADDRESS TO THE POLICY REVIEW COMMITTEE

The Chair welcomed Councillor C Lunn, Lead Executive Member for Finance and Resources, to the meeting.

27 THE COUNCIL'S APPROACH TO SUPPORTING RESIDENTS AND TENANTS TO CLAIM AND MANAGE THEIR UNIVERSAL CREDIT ENTITLEMENT - PR/17/9

The Committee received a report from the Customer, Business and Revenues Service Manager and were asked to note the impact Universal Credit Full Service (UCFS) would have on HRA rent arrears and additional workload across the Operational Services team, and consider and comment on the proposals to reduce the risk of hardship to claimants and increasing HRA debt.

The Committee noted that Universal Credit (UC) aimed to ensure claimants were better off in work than on benefits. There had been many criticisms of UC as it had been rolled out across the United Kingdom since May 2016. The government had responded to these concerns but the key impacts of hardship for claimants and especially the impact of UC on rent arrears remained a potential concern.

To help the Council understand the likely impact on UC claimants that live in the district, Officers had gathered information from a range of sources to provide a national context alongside local impact from visiting neighbouring local authorities that are already UCFS. The work undertaken to predict the impact of UCFS had been thorough. It was clear from the research that workloads across Operational Services would increase and HRA debt was likely to rise as more people claimed UC.

Members expressed concern regarding the lack of integration between Council systems and software and that used by the DWP; therefore, the resulting manual inputting that would be required when the DWP notified the Council of changes to individuals' circumstances was unavoidable. It was noted that this was also an issue of concern across the country for all local authorities.

The Committee was pleased to note that Selby District Council had been proactive in preparing for the implementation of UC, and had planned for the support that would be required by some recipients, such as personal budgeting support. Digital support and advice would be offered to those who needed to apply for UC but weren't used to using computers, and individuals or families with complex debt issues would be referred on to the Citizens Advice Bureau and other organisations that would be best placed to assist them.

Some Members felt that information on UC should be available in hard copy form, perhaps as a leaflet, that could be delivered or given out by the Council staff, such as Neighbourhood Officers. Officers confirmed that

they would raise the matter with the DWP at an upcoming meeting, and that if such leaflets were available, they would endeavour to make these available to residents.

Members were pleased with the level of preparation undertaken by the authority and complimented Officers on the work they had done so far.

RESOLVED:

- i) To note the impact Universal Credit Full Service (UCFS) would have on HRA rent arrears and additional workload across the Operational Services Team.**
- ii) To note and endorse the proposals to reduce the risk of hardship to claimants and increasing HRA debt.**
- iii) To note with concern the lack of software integration between the DWP and Council systems, and ask that Officers make representations to the Government on the matter.**
- iv) To compliment Officers on the level of preparation undertaken in the last few months to support residents and tenants to claim and manage their UC entitlement.**

28 REVIEW OF PARKS AND OPEN SPACES BYELAWS - PR/17/10

The Committee received a report from the Contracts Team Leader which asked it to endorse the revised park byelaws for referral to full Council for formal adoption.

The Committee noted that the Regulation of Pleasure Ground byelaws were adopted for Selby Park in 1899 and amended in 1925 to include four other sites (Selby Recreation Ground, Leeds Road Recreation Ground, East Common Recreation Ground and Scott Road Recreation Ground). The byelaws were outdated and the Council had been through a prescriptive legal process to update them to ensure they reflect how the authority currently used its open spaces.

Following a previously unsuccessful application for approval to the Secretary of State (SoS) to amend the byelaws in 2016, a second application was submitted in November 2017. This application removed the amendments to the model byelaws that had been proposed in the first application. The model byelaws had been developed by the Department for Communities and Local Government (DCLG). On 9 February 2018 the Council received formal notification from the SoS that the second application had been approved; the Council gave notice of its intention to adopt new byelaws on 22 February 2018. The proposed byelaws would go before Full Council for adoption on 15 May 2018.

Officers confirmed that the byelaws only applied to the five named parks owned and managed by Selby District Council, but that should Parish Councils wish to adopt byelaws for their own parks and open spaces, they could follow the same process.

The Committee was pleased to note that the Council would be publicising the change to the byelaws in a number of ways, such as newspaper adverts, social media, press releases and signage. Copies of the new byelaws would be deposited at the Council Offices, Contact Centre and North Yorkshire County Council.

Members also noted that the signage in Selby Park would be replaced as part of the wider investment and improvement work.

RESOLVED:

To endorse the revised park byelaws and refer to full Council for adoption.

29 ANNUAL REPORT OF THE POLICY REVIEW COMMITTEE - PR/17/11

The Committee received a report from the Democratic Services Officer which asked them to agree the annual report for 2017/18, and to authorise the Chair to agree the final version of the Annual Report 2017/18 following the inclusion of details from the current meeting.

RESOLVED:

- i) To agree the Annual Report of the Policy Review Committee 2017/18, submitted by the Chair of the Committee.**
- ii) To authorise the Chair of the Committee to agree the final version of the Annual Report 2017/18 following inclusion of details from the meeting on 17 April 2018.**

30 POLICY REVIEW COMMITTEE WORK PROGRAMME 2018/19 - PR/17/12

The Committee considered the draft Work Programme and were asked to agree items for inclusion in the 2018/19 municipal year.

The Chair emphasised the importance of Members suggesting items for inclusion on the Work Programme, and asked that suggestions be sent to both himself and the Democratic Services Officer.

Members identified a review of the Council's Enforcement Policy as a piece of work that they would be interested in undertaking.

RESOLVED:

- i) To agree the draft Work Programme for 2018/19.**
- ii) To include on the Committee's Work Programme for 2018/19 a review of the Council's Enforcement Policy.**

The meeting closed at 5.55 pm.

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Report Reference Number: PR/18/1

To: Policy Review Committee
Date: 24 July 2018
Author: Fiona Derbyshire, Planning Enforcement Officer
Lead Officer: Martin Grainger, Head of Planning

Title: Planning Enforcement Management Plan

Summary:

This report outlines the current policy position on Planning Enforcement and recommends improvements.

Recommendations:

- i. The Committee are asked to agree the use of a specific Planning Enforcement Management Plan to improve the performance of planning enforcement.**
- ii. To note that a specific Planning Enforcement Management Plan will enable the embedding of policy and practice which will improve responses and output, whilst at the same time setting clear standards for delivery.**

Reasons for recommendation

Concerns have been expressed about the performance of Planning Enforcement.

1. Introduction and background

- 1.1** This report sets out the current policy governing Planning Enforcement and establishes the principles of forward planning for service improvement. This service is underpinned by Selby District Council's Corporate Enforcement Policy and forms an overarching general approach to enforcement of planning, licensing, housing and environmental issues (see Appendix A).

2. The Report

Principles

- 2.1** The existing policy referenced the Regulatory Reform Act 2006 and National Planning Policy Framework (NPPF) require that action taken be

Proportionate, Consistent, Transparent, Accountable and Targeted.

Further, the policy made reference to operating within the Regulator's Code, the Cabinet Office's Enforcement Concordat, the Police and Criminal Evidence Act and the Equalities Act 2010. All officers were required to have due regard to the obligations and advice set out in these documents. A key principle albeit with due regard to risk and constraints of each investigation remained keeping all parties informed.

2.2 Choice of actions taken were set against the following considerations:

- a. the prior history including risk to the public or environment and any matters considered to be a local priority,
- b. achievable outcomes of action,
- c. public interest,
- d. proportionality
- e. balance of financial gain.

However, this did not establish key priorities in any finite sense particularly in terms of communicating this clearly to residents.

2.3 Specific reference was made to, where possible, advice and education would be offered to any 'breacher' to enable compliance.

2.4 For customers, every effort was made to encourage access to the service with reporting of potential breaches enabled by means of a variety of easy access points and a range of reporting methods.

2.5 Review of legislation and the effectiveness of the services would inform revision of the policy.

Current performance

2.6 The current Enforcement Team consists of one full time Principal Enforcement Officer (PEO), one full time Senior Enforcement Officer (SEO) and one full time Enforcement Officer (EO). The permanent PEO is on maternity leave with an anticipated return date in October 2018. A temporary full time replacement has been filling the post since August 2017. The SEO post has been filled with a former Development Management officer who took up the role in July 2018.

2.7 There has been difficulty in recruiting to the posts and this has effectively meant the extra resources have not been fully in place at any time since their determination and approval. A Planning Development Officer was recruited to assist with prioritisation and management of case load and long-term strategy and development of the Enforcement service on a part-time contract to manage permanent strategic improvement.

2.8 The existing active case load currently shows a substantial number of outstanding investigations. Many relate to minor issues such as modest extensions and changes of use that could potentially be resolved through

planning consent. Approximately 20% (around 80) of these cases could be closed as they relate to duplicate cases or matters which are out of time under the relevant regulations and are therefore exempt from action. Resource and time is now being managed to affect this process.

- 2.9** There are also cases which relate to non-planning matters which the Planning Enforcement team have historically been required to manage. These require a multi-agency approach which can take considerable time as every effort is made to achieve an appropriate outcome across all disciplines working with partners.
- 2.10** With no agreed qualification on policy on prioritisation all cases are currently being treated as of equal importance.
- 2.11** Work systems and database use is limited with a lack of procedural standards and time saving work practice. Inefficient data storage and retrieval is time consuming and impacts on all cases, thus adding to workload and lack of progress. There is also a historic underuse of the Uniform system that leads to a lack of reporting metrics further challenging case review and identification of priorities. This also makes for inconsistent practice particularly for new recruits.
- 2.12** A number of cases have been elevated to Stage 1 or 2 complaints, approximately 10%, and a approximate further 5% involve challenging complainants which collectively consume a significant amount of officer time but without formal agreement on priorities have to be uniformly given high priority.

Proposal

- 2.13** As noted in the adopted review of Selby District Council Development Management Service (2016) NPPF Para. 207 states:

'Effective enforcement is important as a means of maintaining public confidence in the planning system'.

Government guidance further advises authorities should have a *'...local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area'.*

- 2.14** The existing plan is not specific to planning enforcement and as such is not able to be targeted in setting out specific principles or in defining working practice. A tailored prescriptive plan will enable the definition essential in management of resources effectively but also in measuring performance against specific objectives, therefore informing future allocation of resources and focus. A detailed management plan specific to planning enforcement should be produced to define identification of priorities and, equally as important, areas of lower priority and areas where we will not act. These should include proactive conditions checking on sensitive sites, compliance with key policy areas and health and safety issues, listed buildings, protected

trees and waste disposal. Balancing factors present in other organisational drivers will need to be factored in and their impact acknowledged and weighted.

- 2.15** A critical and full analysis of working practice and systems improvements will be necessary to inform this plan and this will require basic service improvements to be put in place that will enable full reporting on performance and better assessment of capacity. Work is also being done to effect better use of standardised documents. These improvements will establish an improved level of service from which to manage further enhancements.

3. Implications

3.1 Legal Implications

Enforcement is discretionary and powers would be exercised in accordance with any policy adopted and enforcement principles.

3.2 Financial Implications

Following the completion of the Enforcement Management Plan a further report will be provided for Members this will be the subject of a full financial assessment.

4. Conclusion

This report demonstrates that the existing plan and working practice in Planning Enforcement needs to be reviewed. The proposal to create a dedicated Enforcement Management plan will establish both policy and working practice improvements that will enable Planning Enforcement to work in a structured, strategic and more effective way.

5. Background Documents

None.

6. Appendices

Appendix A - Selby District Council Corporate Enforcement Policy

Contact Officer

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1. Introduction

- 1.1 At Selby District Council we have a number of duties to protect our district from harm. Therefore, we take a very serious approach to protecting individuals, animals, the environment and businesses from those who do not comply with the relevant laws or regulations. We regulate a number of functions within the district including: licensing (including alcohol and taxi), planning, fraud, housing and environmental health.
- 1.2 The purpose of this policy is to set out the main ways in which we can protect our residents, visitors, businesses, animals and the environment, whilst following the principles of good enforcement. It is not the purpose of this policy to provide an exhaustive list of all those laws we regulate or the powers of regulation available to us.
- 1.3 This policy is overarching for enforcement and sets out our general approach to enforcement (including civil and criminal enforcement action); it outlines what you can expect from us and what approach we will be taking to enforcement.
- 1.4 Through this policy we are looking to promote trust between us and those we regulate. We want you to have confidence in the advice we give and feel able to seek advice without fear of triggering unnecessary enforcement action.
- 1.5 We are always trying to improve the district and believe that effective enforcement through this policy will help us achieve refreshed Corporate Plan 2015-2020 (available to view at www.selby.gov.uk) by making Selby a great place to:
 - a. **do business** – by building confidence that effective and fair enforcement will see businesses treated with respect. We will also provide those businesses that operate lawfully the opportunity to thrive. We will achieve this by adopting a consistent approach to enforcement.
 - b. **enjoy life** – confidence that resources are utilised effectively to tackle higher risk cases; ensuring the district remains a safe and pleasant place to live.
 - c. **make a difference** – this policy will empower confidence in businesses, residents and visitors alike to report any breach(es). We will achieve this through ease of reporting and keeping those who report breaches informed of progress throughout the case.
- 1.6 Success of this policy is measured by the Enforcement Team's performance. The performance of the team is measured against the team's action plan, specifically, against any relevant service standard(s) and/or success

measure(s).

- 1.7 This policy replaces our previous Corporate Enforcement Policy adopted in September 2012.

We take a proactive and risk based approach to enforcement. As part of this approach we will, from time to time, introduce specific campaigns where we will target an area deemed to be a priority. Any breaches from the area deemed as a priority will be assigned more resources. This will give the priority area a higher profile providing more public education on how to remain compliant and make an example of those who flout the rules by adopting a zero tolerance approach to its enforcement. The priority area will be chosen by the Executive following a steer provided by elected members at Policy Review Committee.

- 1.8 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful practices or criminal activity. Where appropriate the results of specific court cases may also be published. These publications will always be in accordance with the Data Protection Act 1998.

2. Principles of good enforcement

- 2.1 As previously mentioned we aim to protect our district whilst maintaining the principles of good enforcement. These principles are set out in law in the Legislative and Regulatory Reform Act 2006. We will exercise our regulatory activity in a way which is:
- 2.2 **Proportionate** – This means we will use risk based regulation and will not undertake enforcement for enforcement's sake. Priorities will include those corporately chosen from time to time as mentioned in Para 1.8 and those breaches which are a high risk to individuals, animals, businesses and the environment. As part of measuring risk we will look at the likely consequence of action on the accused in comparison with the seriousness of the offence and only proceed with action where the potential punishment fits the offence. Repeated similar offences will be regarded as higher risk than if only a single incident of that offence had occurred. This can mean that where continued/persistent low risk offences become higher risk offences they may attract a more serious punishment.
- 2.3 **Consistent** – We recognise that enforcement is not and cannot be solved with a 'one size fits all' approach; each case is individual and we will assess them as such. Consistency comes through the application of these principles, this policy (and any other more specific ones), any relevant procedure(s) and the officers making the most of their professional experience, training and judgement. This will allow the officer to provide reliable, relevant and robust information and allow discretion to choose the most suitable route of enforcement in each case.
- 2.4 **Transparent** – It is our aim to be as honest with everyone involved with a case as we can be. We will let you know, clearly, what we expect of you and what you can expect from us in return. As part of our aim to be transparent we target all our publications to be appropriate to their audience; this will also include differentiating between legal guidance and best practice where necessary.
- 2.5 **Accountable** – To remain accountable, we aim to make it as easy as possible for you to give us feedback. We do this by following our Comments, Compliments and Complaints Policy, more details of which can be found at paragraph 10.

- 2.6 **Targeted** – we will target our enforcement resources towards those higher risk cases and those deemed to be a local or national priority. This does not mean we will ignore any reported cases. It is simply a matter of best using the resources we have available to tackle those cases which have the potential to harm our district the most.
- 2.7 To help target resources and activities we also use the information we collect wisely, following the ‘collect once, use many times’ principle. Where the law allows we will agree secure mechanisms to share information with other regulators and businesses.

3. General (Officer) Principles

- 3.1 When looking into a case we recognise that each and every one is unique and this is why we follow principles of good enforcement rather than a strict procedure. These principles are those defined above, those defined in the Regulator’s Code and those defined in the Cabinet Office’s Enforcement Concordat.
- 3.2 Only those officers duly authorised to do so by our scheme of delegation will undertake enforcement activities.
- 3.3 Our officers will give due regard to their training, legislation and supporting guidance, allowing them to make reliable, accurate and robust decisions and to give appropriate and accurate information, when necessary.
- 3.4 Our officers will be independent, fair and objective when dealing with a case. they will not allow any political view and prejudice or personal belief regarding any protected characteristic of any of those involved in the case cloud their judgement. The protected characteristics are found in the Equality Act 2010. We do not permit our officers to be affected by improper or undue pressure from any source.
- 3.5 All our relevant officers have been made aware of this policy and its requirements. Any departure from this policy will have to be justified and endorsed by the Lead Officer for Enforcement or other duly authorised officer.
- 3.6 Officers will always give regard to the policy when conducting any work; this ensures that we take action that is appropriate to the risk and to the seriousness of any breach of legislation. In most circumstances the officers have a range of actions available to them. However, in certain circumstances legislation is prescriptive and this will limit the discretion of the officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious breaches.

- 3.7 We understand that our customers have varied and busy schedules, and that, for example, some hours of operation will not coincide with normal office hours. For this reason, where possible, we will try to find a mutually acceptable time or visit businesses during their normal trading hours.
- 3.8 Our officers will comply with the requirements of the particular legislation from which they are acting along with any associated guidance or codes of practice.

4. Regulator's Code

- 4.1 When developing policies and operational procedures relating to the regulatory functions and activities within the scope of the Regulator's Code ('the Code') we will duly regard the requirements of the Code. The Code only applies to those enforcement activities that we carry out under the relevant laws and regulations which are listed under Part 3 of the Legislative Reform (Regulatory Functions) Order 2007 as amended.
- 4.2 However, in certain circumstances we may need to depart from the Code. This may be for example because we conclude that a certain provision from the Code is not relevant or is outweighed by another relevant consideration. In any event, any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

5. Reporting the issue(s)

- 5.1 Investigations can occur either as a result of issues being reported to us, or we can discover the issues ourselves as part of our proactive approach to enforcement. When an issue is reported to us, this can be by: a member of the public, another business or a regulated person, another regulator or other third party. We may also provide information to another regulator if they are best placed to deal with any breaches of legislation we discover.
- 5.2 We have several ways in which you can report issues to us. You can:
- Complete an online form on the relevant page (for example fly-tipping or anti- social behaviour) on our website www.selby.gov.uk
 - Call us on 01757 705101
 - Email us at enforcementteam@selby.gov.uk
 - Tell us at Access Selby, Market Cross Shopping Centre, Selby, YO8 4JS
 - Write to us at: Enforcement Team, Selby District Council, Civic Centre, Doncaster Road, Selby, YO8 9FT
 - Tell your local Community Officer
 - Tell your local Councillor – Councillor details can be found on our website

5.3 When an issue is reported to us, we will assess the information received and may make further enquiries to determine if the issue requires a full investigation – this may include us sending an officer out to do a preliminary investigation. This may be one of our Community Officers, Environmental Health Officers, Asset Coordinators or other relevant officer. This officer will then report back with the details to establish if there has been a breach.

6. Investigating the issue(s)

6.1 General conduct

6.1.1 Enforcement action may result in us bringing either civil or criminal proceedings against an offender. How our investigations are conducted depends on whether the breach falls under legislation covering civil or criminal law.

6.1.2 We will carry out any formal interview(s) in line with this Policy and the Police and Criminal Evidence Act 1984.

6.1.3 We will carry out investigations in compliance with the relevant legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to us.

6.1.4 By using this legislation (and associated guides) we control how evidence is collected and used. They also offer a range of protections to citizens and potential defendants.

6.1.5 In line with our principles we will keep all those involved in the investigations as well informed as possible about the progress of an investigation insofar as their involvement in the process is concerned. There may be times when it would jeopardise the investigation to keep certain people informed. On such occasions we will not provide any information and/or updates until such a time where the risk to the investigation has been deemed to be mitigated to an appropriate level.

6.2 Primary Authority

6.2.1 We must consult with any primary authority before we take enforcement action against a business.

6.3 Partnership Working

6.3.1 In certain types of enforcement partnership working is crucial to effective enforcement. A good example of this is the 'Safer Selby Hub'. Officers work closely with the Police and Social Services to ensure any issues are flagged and shared at an early stage. This allows for a coordinated approach to

resolving issues to be achieved.

- 6.3.2 When tackling enforcement with partners we can have a shared or complimentary role. On occasion it will be more appropriate for other enforcement agencies or local authorities to deal with breaches of legislation, in these cases officers may pass details of the offence(s) to such other parties. In carrying out these duties we will still comply with our Enforcement Policy, but the other agencies will maintain the right to take any enforcement action that they consider to be necessary.
- 6.3.3 If an offender commits offences in a number of Local Authority areas, it may be more appropriate for one Local Authority to take a prosecution for all the offences, including ones that took place outside of its area. In such cases, we will enter into legal agreements with other councils for one authority to take the lead role: making provisions under section 19 of the Local Government Act 2000, section 22 of the Local Government Act 1972 or any other enabling power(s).
- 6.3.4 Our officers do not have the power of arrest. Therefore, as part of partnership working with the Police (or other agencies) instances may arise where the Police (or other agencies) consider that an arrest should be made in connection with our investigation.
- 6.3.5 When working with partners there may be situations where it is necessary to exchange information regarding enforcement activities with a partner organisation. In such circumstances, we will exchange the information, only in accordance with any established methods of information sharing and legal requirements. These include the requirements established by the Data Protection Act 1998, the Crime and Disorder Act 1998 and any information sharing protocols, codes of practice or memoranda of understanding that exist.

7. Deciding which action to take

- 7.1 There is a range of actions available to us to take against those who breach enforcement regulations. These actions are set out across the different pieces of legislation that we regulate. A decision on what enforcement action we will take is based on the merits of each case and after a full consideration of the consequences and the implications of the action.
- 7.2 There are a number of considerations we will take account of when determining which action to take, these include:
 - a) The previous history of the breach/accused – whether any similar situation has been found before
 - b) The seriousness of the alleged offence(s), including:

- i. Risk to the public or the environment
- ii. Any intent or recklessness of the person(s) committing the alleged offence(s)
- iii. Any obstruction of our officer(s)
- iv. Whether the alleged offence(s) are considered to be a special priority locally (as determined by Executive or nationally as determined by Central Government)

c) If considering prosecution or the breach may lead to prosecution, whether there is enough evidence to provide a realistic prospect of prosecution

d) Whether any further action be in the public interest

e) Whether the action is likely to be deemed an adequate deterrent to further breaches

f) Whether the action is proportionate to the nature of the breach and the harm caused

g) When appropriate whether the action will aim to restore the harm caused by regulatory non-compliance

h) Whether the action will eliminate any financial gain or benefit from the non-compliance.

7.3 Where appropriate decisions about what enforcement action we will take may involve consultation between two or more of the following:

- a) Investigating Officer(s)
- b) Senior Manager(s)
- c) Lead Officer(s)
- d) Senior Officer(s)
- e) Our Legal department
- f) Primary Authorities
- g) Other regulators

7.4 The decision to prosecute a case will be taken by those with authority to do so in accordance with our scheme of delegation.

7.5 The following lists some of the more common enforcement actions available to us. This list is not exhaustive and other actions may be used where appropriate:

7.6 **Compliance Advice, Education and Support**

We are aware that the majority of our residents and businesses want to comply with the legal requirements. Therefore, where possible and appropriate, we will offer compliance advice education or support to the

accused as the first form of enforcement action. This can be in several forms, for example verbal & written warnings. We take this approach as it offers a good use of resources and promotes a culture of trust and confidence. If a warning letter is issued and a similar breach is identified again, this letter will be considered when determining the most appropriate enforcement action.

7.7 Voluntary undertakings

We may accept a voluntary undertaking from the accused where they accept responsibility and will correct any breaches accordingly and to the appropriate standard. Failure to adequately complete this undertaking will result in further enforcement action.

7.8 Statutory/Formal Notices

- 7.8.1 Sometimes we are required to send a notice to stop an offender from doing an action that is a contravention of any relevant legislation. These notices include (but are not limited to):

Planning Notices

Breach of conditions
 Enforcement Notice
 Temporary Stop Notice
 Stop Notice

Health and Safety:

Improvement Notice
 Prohibition Notice

Licencing:

Notice to suspend Premises Licence
 Notice to suspend driver/operator
 Notice to suspend vehicle licence
 Closure order (imminent risk)

Environmental Protection:

Abatement Notice
 Variation Notice for an Environmental
 Protection Permit

General:

Detention Notice
 Closure Notice

PSH & LA Housing:

Improvement Notices
 Prohibition Notice
 Emergency Remedial Notice
 Hazard Awareness
 Demolition Order
 ASB/civil Injunction
 Notice Seeking Possession
 Introductory Tenancy Notice
 Introductory Extension Notice

Food Hygiene:

Detention of Food Notice
 Food Condemnation Notice
 Hygiene Emergency Prohibition notice
 Hygiene Improvement Notice
 Withdrawal of Detention of Food Notice
 Remedial Action Notice
 Notice of Determination that the Health
 Risk
 Condition Remains in Existence
 Notice of Intention to Apply for a Hygiene
 Emergency Prohibition Order

7.8.2 If you are issued a notice, it will clearly set out any actions that we need you to undertake. Common actions include stopping an activity immediately or steps which must be taken to rectify the breach. If we have included steps which must be taken to rectify the breach we will always include a reasonable timeframe in which to carry out these actions.

7.8.3 Failure to comply with a notice can be a civil or criminal offence and therefore may result in prosecution or in certain circumstances, where appropriate, we will carry out the work 'in default' and then we may recover our costs for doing so.

7.9 Financial penalties – Fixed penalty notice (FPN)

7.9.1 FPNs can be issued by different authorities, as a district council we can issue FPNs for:

- a. Littering
- b. Graffiti
- c. Fly-posting
- d. Nuisance parking (people selling or repairing cars on the road)
- e. Dog control offences
- f. Alarm noise (no nominated key holder)
- g. Noise Act offences
- h. Unauthorised distribution of free literature on designated land

- i. Abandoning a vehicle
- j. Waste receptacle offences

When we will issue an FPN We will only issue when all of the following apply	When we won't issue an FPN We won't issue if any of the following apply
✓ an offence has been committed	<input type="checkbox"/> there is no criminal liability
✓ an FPN is a proportionate response	<input type="checkbox"/> enforcement action is inappropriate or would be disproportionate for the offence
✓ there's evidence to support prosecution if the offender doesn't pay the fixed penalty	<input type="checkbox"/> prosecution is more suitable
✓ the offender understands why the FPN is being issued	<input type="checkbox"/> littering is done accidentally
✓ we believe that the name and address offered by the offender is correct	

7.9.2 When we issue an FPN we must state: the alleged offence, details about the offence, when and where the offence took place, how the FPN has been issued (in person or by post), the fine imposed (and if there is a prompt payment discount), when the fine must be paid by (we must give you at least 14 days) and how the fine can be paid.

7.9.3 Failure to pay your fixed penalty is a criminal offence. Therefore, if you do not pay your fixed penalty within the time given, we will initiate prosecution proceedings – unless there are exceptional circumstances for failure to pay. These legal proceedings must be commenced within 6 months of the failure to pay.

7.9.4 We cannot issue an FPN to any person younger than the age of 10 years old, we will, however, contact the parent or guardian of the child to make them aware of the child's behaviour. For those offenders aged less than 18 years old we will use special procedures and work with both the youth offending team and children's services.

7.10 Injunctive Actions, Enforcement Orders etc.

7.10.1 Where appropriate we may seek an injunction or an order from the court. If granted this will mean that the court is giving direction to the offender that the breach is rectified and/or is prevented from re-

occurring. Courts may also order that specified activities must be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

- 7.10.2 We seek enforcement orders following the issue of enforcement notices to allow the court the opportunity to confirm the restrictions imposed by the notice. Otherwise, we will usually only seek a court order if we have serious concerns about compliance with voluntary undertakings or a notice.
- 7.10.3 Failure to comply with a court order by an offender is considered to be contempt of court. This is a serious offence which may result in imprisonment.
- 7.10.4 In certain cases (e.g. Housing Benefit Fraud) administrative penalties can be used as an alternative to prosecution.

7.11 Simple Caution (previously known as a formal caution)

We will use a simple caution to offer a proportionate response to low-level offending where the offender has admitted the offence. Simple cautions offer the delivery of swift, simple and effective justice which reduces the need for prosecutions. This still allows us to record an individual's criminal conduct for possible reference in future criminal proceedings or in a criminal record (or other similar checks). These are all contributory factors to the simple caution being an effective tool which reduces the likelihood of re-offending occurring. A simple caution can only be issued to an adult.

7.12 Prosecution

- 7.12.1 Deciding to prosecute an offender is not a decision we take lightly. Before we decide to prosecute we will look at such things as:
 - a. the seriousness of the offence
 - b. whether the likely punishment of prosecution is proportionate to the seriousness of the offence
 - c. if there has been any other enforcement action taken
 - d. if the offender is purposefully and/or persistently breaking their legal obligations and this is likely to cause harm or loss to others
 - e. if the breach is endangering to a serious degree the health and safety or wellbeing of people, animals or the environment
 - f. if the offender has failed to comply with an enforcement notice, including non-payment of a fixed

penalty notice

7.12.2 Any decision to prosecute must have regard to the Code for Crown Prosecutors (see paragraph 8). We will prosecute should our officers be assaulted or obstructed in the course of their duty.

7.12.3 A successful prosecution may result in the offender receiving a criminal record. In addition, the court will have power to add additional punishment as dictated by relevant legislation; this may include fines, prison sentences, the forfeiture and disposal of non-complaint goods and in some circumstances the disqualification of individuals from acting as company directors.

7.13 Refusal/Suspension/Revocation of licences

7.13.1 As previously mentioned certain types of people and businesses/premises require a licence, registration or authorisation to legally operate. We therefore take the granting and continued use of these licences, registrations and authorisations very seriously.

7.13.2 Should we see the need to refuse, suspend or revoke one of these licences, registrations or authorisations we will usually require one or more of the following statements to apply:

- a. The individual is not/is no longer a fit and proper person
- b. Legal obligations which were likely to cause material loss or harm to others have been deliberately and/or persistently breached by an individual/the organisation
- c. An officer has been obstructed from doing their duty by an individual/the organisation
- d. The individual/organisation has deliberately and/or persistently ignored written warnings or formal notices
- e. There has been deliberate and/or persistent breach(es) of licence conditions or byelaws by the individual/organisation
- f. The individual/organisation have endangered, to a serious degree, the health, safety or wellbeing of people, animals or the environment.

7.14 Seizure and Detention

7.14.1 Certain legislation enables authorised officers to seize goods, vehicles or equipment. For example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When the council seizes goods an appropriate receipt will be given. Where the law requires, the council will produce seized

goods before the Magistrates' Court.

7.14.2 In certain circumstances officers will make an application to the Magistrates' Court for forfeiture of the goods, vehicles or equipment. Forfeiture may be used in conjunction with seizure and/or prosecution where there is a need to dispose of the goods, vehicle or equipment to prevent them being used to cause a further problem or to prevent them re-entering the market place.

7.15 Proceeds of Crime

7.15.1 We are aware of the impact that the powers given to us under the Proceeds of Crime Act 2002 can have when we enforce against offences where the perpetrator has derived a material gain from the crime. We will therefore commence enforcement action using these powers when they are deemed both applicable and appropriate.

7.15.2 It is also possible for the Courts to instruct us to carry out a Proceeds of Crime Investigation when they consider it to be appropriate.

8. Code for Crown Prosecutors ('the CCP')

8.1 The CCP is a code which is issued by the Director of Public Prosecutions and is widely available to view online. The CCP gives guidance on the general principles that as prosecutors we must apply when making decisions about prosecutions.

8.2 **Full code test** - Before we can prosecute, we must apply the two stages of the full code test. These stages are known as: (1) the evidential stage; and (2) the public interest stage.

8.3 **Evidential stage** - To pass the evidential stage and proceed to the public interest stage we must be satisfied that:

- a. There is enough evidence to justify prosecution of the defendant.
- b. The evidence will provide a "realistic prospect of conviction"
- c. The evidence will be admissible in court, reliable and credible – we are mindful that evidence must meet these criteria throughout our investigations

If we are not satisfied that all these criteria are met, we will not proceed with the prosecution.

8.4 Public Interest Stage - Once we are satisfied that we have passed the evidential stage, we then move on to the public interest stage in order to establish if prosecution is in the public's interest. When determining if the case is in the public interest we must consider:

- a. How serious is the offence committed?
- b. What is the level of culpability of the suspect?
- c. What are the circumstances of and harm caused to the victim?
- d. Was the suspect under the age of 18 at the time of the offence?
- e. Is prosecution the proportionate response (or would another enforcement option be more appropriate)?
- f. Do sources of information require protecting?

The above list is not exhaustive or listed in order of significance.

9. Appeals

Generally speaking, appeals in relation to enforcement action are limited to those routes available to the appellant through the processes outlined in the relevant legislation to their case. However, to make this process as transparent as possible, we will inform you of any rights to representation or appeal and give information on the process involved in writing as soon as possible after the decision has been made.

10. Comments, Compliments and Complaints

It is our aim to be accountable for our actions. This is why we offer everyone the chance to have their say about how their experience with the Council has been. We offer this through our Comments Compliments and Complaints Policy which is available to view on www.selby.gov.uk.

11. Review

As a regulatory body, we are always monitoring changes to legislation. When changes take place, we review the policy and update it as necessary. We will also regularly carry out a review to monitor its effectiveness and keep it in line with best practice.



Policy Review Committee Work Programme 2018/19

Date of Meeting	Topic	Action Required
12 June 2018 – CANCELLED	Work Programme 2018/19	To consider the Work Programme for 2018/19.
Tuesday 24 July 2018	Planning Enforcement Policy	To review the Enforcement Policy for Selby District Council.
	Work Programme 2018/19	To consider the Work Programme for 2018/19.
Tuesday 11 September 2018	Universal Credit/Welfare Reform Rollout – Update	To consider an update on the rollout of Universal Credit in Selby District.
	PLAN Selby	To consider and comment on the draft PLAN Selby.
	Gambling Policy Refresh	To consider and comment on the refresh of the Gambling Policy.
	Review of Taxi Licensing Policy	To reconsider the Council's Taxi Licensing Policy following consultation.
	Work Programme 2018/19	To consider the Work Programme for 2018/19.

13 November 2018 (PROVISIONAL DATE)	Planning Enforcement Policy	To consider the new Planning Enforcement Policy.
Tuesday 15 January 2019	Work Programme 2018/19 and Work Programme Planning for 2019/20	To consider the current Work Programme for the rest of 2018/19 and begin to plan the Committee's Work Programme for the 2019/20 year.
	Financial Budget 2019-20	To review the Council's Budget.
Tuesday 16 April 2019	Work Programme Planning for 2019/20	To finalise and agree the Committee's Work Programme for the 2019/20 year.
	Annual Report of the Policy Review Committee 2018-19	To consider the Annual Report 2018-19 of the Policy Review Committee.

The following **provisional** dates are also in the Democratic Services calendar for provisional meetings if required: **13 November 2018** and **12 March 2019**.

Other potential items for 2018/19:

- Empty Homes Strategy
- Air Quality Action Plan
- Digital Strategy and Transformation Plan
- GDPR Impacts and Implementation