

Committee: Cabinet

Agenda Item

Date: 22 October 2015

16

Title: Enforcement

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Item for information

Summary

1. This report is to inform members of the cabinet of the operation of the Enforcement Team within the council.

Recommendations

2. That members note this report.

Financial Implications

3. As set out in the body of this report.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. The Enforcement Team in Uttlesford District Council is responsible for a wide range of functions. The main areas of activity are planning, licensing (in respect of licensed drivers, operators and vehicles and also licensed premises); environmental health street scene (e.g. abandoned vehicles and fly-tipping) and smoking in the workplace legislation.
7. The Enforcement Team comprises a team leader and three enforcement officers all of whom are full-time. The budget for the service for the year 2015/16 is £149,630.
8. The council has an enforcement strategy with regard to planning matters which was adopted by the then Development Control Committee on 1 June 2011. The strategy appears on the council's website at <http://www.uttlesford.gov.uk/article/1982/Planning-Enforcement> . The emphasis is on trying to secure compliance with the legislation without taking formal action where possible. The Enforcement Team's mission statement is "to prevent and detect crime and breaches in regulatory legislation. To achieve compliance by education, negotiation and where necessary by enforcement action".
9. In the first instance therefore where a breach of planning control has been identified, enforcement officers will explain to the developer what the breach is and endeavour to secure compliance by way of negotiation. Where this fails, the council has a range of options open to it. Where a developer has failed to comply with a condition attached to a planning condition a breach of condition notice may be served to require compliance with that condition. An enforcement notice may be served for any breach of planning control (i.e. unauthorised development or development in breach of condition). There is no appeal against a breach of condition notice, although a decision to serve such a notice may be challenged by way of judicial review. There is a right of appeal against an enforcement notice. Where a developer lodges an appeal against an enforcement notice, this has the effect of suspending the notice until such time as the appeal has been determined. The appeal process therefore effectively delays securing compliance with planning legislation.
10. In addition to these remedies in cases of urgency the council may serve a Stop Notice and where an individual frequently breaches planning control an injunction may be applied for.
11. The Enforcement Team have opened 466 planning enforcement cases between 1 January 2015 and 9 October 2015. In round figures, 39% of these were in respect of work carried out without planning permission; 30% for breaches of conditions attached to planning permission; 13% for unauthorised changes of use; 8.5% for unauthorised works to listed buildings and 7% in respect of unlawful advertisements. The remaining 2.5% encompassed breaches of tree preservation orders; removal of hedgerows; untidy sites and high hedges.

12. Seven enforcement notices have been served since the 1 January 2015 including 3 in relation to airport related parking.
13. On two occasions the Enforcement Team took direct action to secure compliance with the legislation. Cabinet members will recall approving the finance for the clearance of land at Broxted. In addition, the team took direct action in respect of a breach of the High Hedges legislation where all other efforts to secure compliance had failed.
14. Planning enforcement is not a duty. It is a power. Further that power is not unlimited. The council may only take enforcement action if it considers it expedient to do so. "Expediency" can be a difficult subject for the public to come to terms with. There is frequently a perception that action should be taken merely because there has been a breach of planning control. The council's approach to expediency is set out in paragraph 1.06 of the Enforcement Strategy. In essence enforcement action should not be taken merely to rectify a breach or to seek retribution. Action should only be taken if the nature of the breach itself causes material harm of a planning nature. Expediency can cover a number of issues. The breach may be so minor (e.g. a very small amount above the permitted development rights), that the breach can be considered only a technical breach not worth pursuing. Even if the breach is more than a technical breach then a decision must be considered as to whether planning permission would have been considered being granted for the breach. Although in circumstances where permission would have likely been accepted, a planning application would be invited, if one is not submitted then unless particular conditions would need to be attached to any permission, formal action should not be pursued and the matter is closed for lack of expediency. Planning and enforcement officers meet every week to review files to determine whether there is evidence of a breach of planning control and if so whether it is expedient to take enforcement action if compliance cannot be achieved through negotiation. Where a decision is taken to close a case for lack of expediency officers endeavour to explain to the complainant and other interested parties the reason for that decision.
15. For the period from the 1 January 2015 to the 9 October 2015 the Enforcement Team also carried out 112 investigations into various licensing issues. Eighty-six of these involved the private hire/hackney carriage trades. Eighteen were complaints under the Licensing Act 2003. There were 8 miscellaneous other matters. As a result of the team's work the council has brought a total of 12 prosecutions for a range of offences including making false statements to obtain licences; failing to report accidents and driving unlicensed vehicles or driving without a driver's licence. The team have also carried out a number of road spot checks in conjunction with Essex Police which have resulted in some of these prosecutions.
16. With regard to complaints made under the Licensing Act 2003, to date compliance has been secured by negotiation and no formal action has been necessary.
17. The Council has a duty to remove any vehicles abandoned in the district and has power to remove untaxed vehicles under an agency agreement with the

DVLA. Not all vehicles reported as abandoned can be treated as such. From 1 January 2015 the team have investigated 103 complaints of abandoned or untaxed vehicles resulting in the removal and destruction of 27. The majority of the rest of the vehicles were removed by the owners.

18. The team have investigated 47 cases of fly tipping since 1 January 2015. Unfortunately there were no eyewitnesses to these events and in the majority of cases the waste contained no identifying material. However in 2 cases there was identifying matter and prosecutions are pending in both of these cases.
19. 48 fixed penalty notices have been issued for breaches of the smoking at work legislation. 44 have been paid. 2 are pending prosecution and in the remaining 2 the time for payment had not lapsed at the time of presentation of this report.

Risk Analysis

20. There are no risks associated with this report