

**Committee:** LICENSING

**Agenda Item**

**Date:** 21 January 2009

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**Title:** ENFORCEMENT

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Item for information

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### Summary

1. This report has been prepared at the request of members to inform members how the Enforcement Team deal with issues of licensing enforcement.

### Recommendations

2. That members note this report.

### Background Papers

3. None.

### Impact

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Communication/Consultation	None.
Community Safety	One of the aims of the various licensing regimes is to ensure the safety of the public.
Equalities	None.
Finance	The costs of the Enforcement Team are recharged across the Council departments for which the team carries out enforcement work pro rata to the time spent on various issues.
Human Rights	All enforcement must be carried out having regard to the provisions of the Human Rights Act.
Legal implications	Where licences are refused, suspended or revoked there is a right of appeal to the Courts.
Sustainability	None.

Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

5. Uttlesford District Council is the enforcing authority for various items of legislation. These include the Refuse Disposal Amenity Act 1974 (abandoned vehicles and other items in the open air); the Local Government (Miscellaneous Provisions) Act 1976 (hackney carriages, private hire vehicles, drivers and operators); the Environmental Protection Act 1990 (litter, fly-tipping and similar offences); the Town and Country Planning Act 1990 (breaches of planning control, unauthorised works to listed buildings, unauthorised work to preserved trees and illegal display of advertisements); the Social Security Administration Act 1972 (benefit fraud); the Licensing Act 2003 (premises licences, club premises certificates, regulated entertainment, late night refreshment and personal licences); the Clean Neighbourhoods and Environment Act 2005 (nuisance parking) and the Gambling Act 2005 (licensing gambling premises).
6. Prior to March 2008 Enforcement Officers were employed within the Anti Fraud Team, Development Control, Environmental Health and Licensing. However, prior to September 2006 the Licensing Team did not have an Enforcement Officer. One of the now designated Licensing Officers did previously have the job description of Licensing Enforcement Officer but in practice very little enforcement work was carried out due to the burden of administrative work within the department. That being as it may, very few complaints were received appertaining to licensing matters and when complaints were received they were dealt with appropriately.
7. Prior to February 2005 the Licensing Team's role was essentially confined to dealing with the licensing of hackney carriages and private hire vehicles, the drivers of those vehicles and operators of private hire vehicles and licensing various charitable collections and lotteries. This changed dramatically in 2005 when the Licensing Act 2003 came into effect. The Licensing Team responded exceedingly well to this challenge. The size of the team was increased to cope with the anticipated workload by engaging a permanent part time administrative post and also a temporary full time administrative post. In the transitional period, the team converted over 300 premises licences and club premises certificates from magistrates' licences/certificates to those issued by this authority and also issued numerous personal licences. They prepared for and serviced over 40 hearings where representations had been made in response to an application to vary conditions on licenses/certificates.
8. In anticipation of the Licensing Act coming fully into effect, members gave thought to possible enforcement issues under the 2003 Act. It was my view at the time that an Enforcement Officer role was not justified within Licensing due to the very low number of complaints which were made. However,

members were very keen that there should be an Enforcement Officer within Licensing and a growth bid was made to the Council as part of the budget setting process for the year 2005/6. This was approved by Full Council but before recruitment could take place it was established that the Council needed to make significant financial savings against its budget. The Licensing Committee delivered on its savings target by delaying the recruitment of an Enforcement Officer until September 2006.

9. The Licensing Act 2003 took full effect in November 2005. It is noteworthy in the period between the Act taking full effect and September 2006 when the Licensing Enforcement Officer took up post, there were no enforcement issues which would have required the attention of a Licensing Enforcement Officer.
10. The Licensing Officer did proactively visit licensed premises to ensure compliance with formalities of the Act. Only a few minor breaches were detected which were remedied on advice from the Licensing Enforcement Officer. As the Licensing Act failed to provide sufficient work to keep the Licensing Enforcement Officer fully engaged, he began some proactive work with the hackney carriage and private hire trades. Whilst it is true this was well received by the trade there were no infringements of legislation identified which required any subsequent action. The only matter which resulted in action (a prosecution) was detected by routine checks made on an application for a licence. Latterly the Licensing Enforcement Officer became more involved with administrative work e.g. interviewing drivers applying for licences, carrying out checks on taxi meters etc.
11. Members will be aware of the financial situation the Council found itself in the latter part of 2007. There was an imperative to cut costs wherever possible. At that time it was known that the Planning Enforcement Team would be reduced from three to one on the basis that one Enforcement Officer had been promoted to the role of a Planning Officer and another was approaching retirement. Two Enforcement Officers in Environmental Health accepted redundancy packages. Shortly thereafter the final Enforcement Officer in Development Control resigned for the purpose of career enhancement. The Strategic Management Board were of a view that enforcement largely involved evidence gathering and the preparation of files for further action if need be. The Board considered this to be a generic skill not dependent upon specialised knowledge and determined to form a new team dedicated to enforcement (save for food safety inspections which are a specialist area). Initially due to a miscalculation of finances the team was initially limited to 4 members including the Team Leader. This was below the level the Strategic Management Board considered necessary for an effective team and budget was identified to recruit a fifth member to bring the team to full complement. The Team is now functioning well and is producing good results.
12. Due to the small size of the team of necessity much of the Team's work is reactive rather than proactive. However, such an approach is consistent with the Government's 'light touch' approach to the enforcement of

regulatory matters which requires enforcement to be proportionate to the harm being caused. However, when resources permit the Enforcement Team do engage in proactive enforcement seeking to identify significant breaches of legislation where intervention may be required. In the remainder of this report I shall examine the areas of enforcement undertaken by the Enforcement Team and explain what work is being undertaken.

### **Refuse Disposal Amenity Act 1974**

13. Officers receive reports of abandoned vehicles. They inspect the vehicle and carry out checks with the DVLA to ascertain whether the vehicle has been abandoned. (A vehicle cannot be considered to have been abandoned merely because it has not been moved for a long period of time). Where it appears that a vehicle has been abandoned, officers arrange for it to be removed and ultimately destroyed. Where the owner can be traced, a fixed penalty notice is issued. Where the owner declines to pay the fixed penalty a prosecution will follow.

### **Local Government (Miscellaneous Provisions) Act 1976**

14. There are potentially 32 offences which could be committed in connection with hackney carriages or private hire vehicles. In addition, there are conditions attached to licences granted by the authority which it is desirable to enforce. There will also be cases where because of an offence committed by a licensed driver or operator or for some other reasonable cause a driver or operator ceases to meet the Council's licensing requirements and the Committee would need to consider whether that person remains a fit and proper person to hold a licence. In general for offences under the legislation it is difficult to be proactive. By the very nature of the trade, vehicles are moving around from place to place and detection of an offence is therefore difficult. There are two areas however, where proactive enforcement would be possible. The first of these is where an unlicensed vehicle or a private hire vehicle is plying for hire. The Enforcement Team could only be proactive in this regard if it were to receive intelligence indicating where this activity is habitually being carried out in which case it would undertake appropriate surveillance and if necessary carry out a test purchase. In the other area the Enforcement Team is indeed proactive namely the use of unlicensed private hire vehicles. Some hotels, guest houses or other businesses in the district may unwittingly be offering transport to its customers which would constitute the provision of a private hire vehicle in law. When time permits officers carry out web searches to ascertain the identity of these establishments. Contact is then made with the proprietor and the law explained. Over 30 cases have been investigated which has resulted in 3 businesses which are not traditional private hire businesses applying for the appropriate licences and a further 3 have been identified for further investigation/action. The Team have successfully investigated an allegation of an unlicensed private hire vehicle driver which led to the individual concerned receiving a formal caution, issued one fixed penalty for smoking in a private hire vehicle and have given advice to licensed operators regarding allegations of smoking in private hire vehicles.

### **Environmental Protection Act 1990**

15. The Enforcement Team receive allegations of fly-tipping. They attend the site and photograph the evidence. They then search to see whether the deposit contains any material which might identify the offender. If it does not the team arranges for the rubbish to be removed. If it does this is preserved and the matter may be dealt with by way of formal advice, a formal caution or a prosecution depending upon the circumstances and severity of the offence. Unfortunately, unlike Scotland there are no provisions for fixed penalties with regard to fly-tipping.

### **Town and Country Planning Act 1990**

16. The Team inherited a vast case load of current files from the former Development Control Enforcement Team. The Enforcement Team investigates complaints of unauthorised development, breach of legislation relating to listed buildings and illegal advertisements. Subject to planners advice as to whether or not enforcement is expedient appropriate action is taken including prosecutions where a criminal offence is established. The Team is also responsible for enforcing the high hedge legislation under the Anti Social Behaviour Act.

### **Social Security Administration Act 1972**

17. The Enforcement Team is responsible for detecting cases of housing benefit and council tax benefit fraud. Potential offences are identified using information supplied by other council officers, the DWP and the general public. Offenders may be formally cautioned, offered an administrative penalty (a locally administered fine) or prosecuted.

### **Licensing Act 2003**

17. In some respects licensing enforcement is problematic as when drafting the legislation the Government omitted to include an offence of breaching a condition attached to a licence. The main offence in the Act is one of carrying out a licensable activity otherwise than in accordance with an authorisation which can be either a licence or a temporary events notice. It follows that if no licensable activity is being carried out conditions (such as failing to observe a closing time) are not enforceable. There are a number of offences under the Act in addition to the main offence. These include exposing or keeping alcohol for unauthorised sale, allowing disorderly conduct on licensed premises, selling alcohol to or obtaining alcohol for a person who is drunk, failing to leave licensed premises, various offences relating to the sale and supply of alcohol to children and the making of false statements for the purposes of the Licensing Act itself. There are also a number of administrative type offences e.g. failure to notify changes of name etc. At the time the Licensing Act came into effect, enforcement agencies in Essex agreed to an enforcement protocol. Under this protocol the licensing authority would be responsible for prosecuting in the case of all administrative offences. For the offence of carrying out an unauthorised

licensable activity either the authority or the Police would prosecute. The choice of the enforceable authority would be agreed upon taking into account the circumstances and severity of the offence and who had gathered the evidence. Similar considerations would apply to the offences of exposing of keeping alcohol for unauthorised sale. The Police would be the main authority for offences relating to disorderly conduct. Depending on the nature and circumstances of the offence the Police, Trading Standards or the licensing authority would deal with offences relating to the sale and supply of alcohol to children. To date there have been no offences detected under the Act save for a very few cases of sale of alcohol to persons under the age of 18. These cases were detected by Trading Standards having arranged for test purchases. Trading Standards are the appropriate authority to take that course of action.

If there were to be problems with licensed premises it may be appropriate for these to be dealt with in a way which does not involve a criminal investigation and prosecution. It is open to any interested party or responsible authority at any time to apply for a review of a licence. On a review members have a number of options open to them which can fundamentally change the way in which premises are conducted. These include removing a named Designated Premises Supervisor, varying conditions or imposing new conditions, suspending a licensable activity from a licence for a period of up to three months (which may be appropriate to permit alterations to be carried out to premises or to allow staff to be retrained), the removal of a licensable activity from a licence or club premises certificate (which would be appropriate where there is no evidence to suggest that required works or training would be carried out within the maximum period allowed for a suspension) or the revocation of the licence itself. Members may recall that there have been two applications for reviews of licences, one in respect of premises which were breaching a condition where a licensable activity was removed from the licence and the other where premises had been closed by the Police where the licence was in fact revoked. Both of these matters occurred prior to the establishment of the Enforcement Team. However it may well be that further reviews will occur in the future. Where there is an application for a review by the department of the Council the licensing Team (not the Enforcement Team) is responsible for impartially advising the Licensing Committee and producing reports relating to the application.

### **Clean Neighbourhoods & Environment Act 2005**

18. No complaints of nuisance parking within the definition of the Act have yet been received.

### **Gambling Act 2005**

19. The remit of the licensing authority is merely to issue premises licences which may only be revoked in certain circumstances. It is not considered likely that any need will arise to enforce with regard to the gambling

legislation as the operators are few, are well established and professional in their approach to their businesses.

### **Risk Analysis**

15. There are no risks attached to this report.