

Committee: SCRUTINY

Agenda Item

Date: 4 December 2012

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Title: ENFORCEMENT

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Item for decision

Summary

1. This report has been requested by members of this committee to enable the committee to understand issues relating to airport related parking.

Recommendations

2. None.

Financial Implications

3. There are no financial implications associated with 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	Some wards in the vicinity of Stansted Airport may be more prone to airport related parking than others.
Workforce/Workplace	None.

Situation

6. At its meeting on the 4 September this committee requested a report dealing with airport related parking issues. The terms of reference were:
 - To identify what the airport related parking issues are and if levels increased over the summer.
 - To establish how many incidents have been reported yearly.
 - To understand what action has been taken to eliminate and rectify issues.
 - To identify what the success cases are.
 - To determine if the airport's delegated complaints line is successful or if more publicity is needed.
 - To consider what prevents successful enforcement.
7. Uttlesford District Council's current Local Plan adopted in January 2005 describes Stansted Airport as "an airport in the countryside". Pursuant to this general statement the Local Plan provides that development unrelated to the airport will not be permitted within the airport boundaries. Conversely parking associated with the airport is not favoured. The current Local Plan states "adequate space exists inside the boundary of Stansted Airport for air passengers to park their cars if they have driven to the airport. It is important that the character of the villages and countryside around Stansted and residential amenities are not damaged by car parking compounds. The scale and management of car parking needs to be carefully controlled in order to maximise the percentage of non-transfer air passengers using public transport to get to or from the airport. This would not be practicable if the provision of car parking became fragmented and included off-airport sites. It would undermine the airport service access strategy agreed by the Multi-Agency Airport Area Transport Forum. It will also be important to ensure that the scale of car parking associated with hotels, bed and breakfast accommodation and the like does not exceed vehicle parking standards for the same reason. There are market pressures to use spare capacity to accommodate air passengers' cars whilst they are not in residence at these establishments. Policy T3 - Car Parking Associated with Development at Stansted Airport – "Proposals for car parking associated with any use at Stansted Airport will be refused beyond the airport boundaries as defined in the Stansted Airport inset map".
8. Proposals for the council's Local Development Framework do not suggest any departure from these policies.

9. Although there is clearly adequate capacity at Stansted Airport to park vehicles within the airport boundary at existing car parks a number of consumers are unwilling to pay the prices charged by the current on-airport operations. At the date of writing this report the parking charges at Stansted Airport were:

Long Stay - £15 per day

Medium Stay - £16.50 per day

Short Stay - £36 per day

10. The charging regime is part of the strategy to reduce the number of private car journeys to the airport. This strategy appears to be successful as Stansted compares very favourably with other airports in terms of transport mode share for those flying from the airport.
11. The fact that some people are unwilling to pay the current rate does give rise to a number of parking related issues which can be described as follows.
12. There is evidence that some airport customers will park their vehicles on the street in the vicinity of the airport and complete their journey by taxi. As part of the s.106 agreement linked to the planning permission expanding the airport to 25 mpm pa capacity, funds were made available for a study to be carried out by Essex County Council to examine the magnitude of this problem. As a result some parking restrictions were introduced. Providing the cars are legally parked on street this is a matter over which there is no control.
13. There are a number of valet parking operations. These businesses tend to advertise their services on the internet. These are sometimes described as “meet-and-greet” operations. The method of operation is that a booking is generally made online. The customer meets a representative of the company at the airport and hands over his or her vehicle. The car is then driven away and returned to the customer at the airport at a pre-arranged date and time. A web search indicates that this type of service can be purchased at a considerably lower rate than is charged by the airport starting at just over £5.50 per day.
14. Valet/meet-and-greet services do not per se breach planning control. The issues are whether the premises from which the business is run has planning permission for office use and whether the locations where the cars are stored are authorised for that purpose.
15. There is anecdotal evidence that a proportion of vehicles which are parked using this type of service are in fact parked on the street. Provided they are lawfully parked this is not a planning enforcement issue.
16. With other operations vehicles are parked in buildings or on open land. Where such use is not authorised under the planning legislation this gives rise to enforcement issues.
17. Another type of operation is what is commonly described as “park and fly”. Under this system customers drive their car to a particular drop-off point where

they leave their cars. The customer is then taken to the airport. On their return from their journeys the customer are collected from the airport and taken back to the site where they collect their vehicle. This type of operation may give rise to enforcement issues with regard to both planning and licensing.

18. From the planning perspective, there are potentially two issues. The first is that the premises from which the business is run would usually need to have business use. This will include the drop-off/pick-up point if this was other than where the business's offices are. Providing that business use for such premises is authorised the next issue relates to where the cars are stored. In some cases the vehicles are stored away from the pick-up/drop-off point. In others they are stored at or in the vicinity of the drop-off/pick-up point. In either case the area where the vehicles are stored would need to be authorised under the planning acts for that purpose.
19. Included in the "park and fly" operations are a number of hotels and guest houses which advertise free or discounted parking for people staying at the hotel or guest house prior to departure. Most hotels and guest houses that have been given planning permission for hotel/guest house use are subject to planning conditions which prevent the use of the car park other than for bona fide guests whilst staying at the establishment. However, there are some premises which were long established for planning purposes or which were granted planning permission some time ago where no such condition applies. A notable example of this is the Hilton Hotel within the airport boundaries. In such cases unless the degree of parking is such as to constitute a material change of use of the planning unit as a whole there will be no breach of planning control.
20. Finally there is evidence that some home occupiers permit parking within the curtilage of their properties for payment of a fee. This type of operation can be found online under the heading "park on my drive", "park at my home" etc. This type of operation is often found in commuter areas as well as in the vicinity of airports. Typically only one or two cars additional to the householder's normal vehicles are capable of being parked at any one time. Unless the number of cars parked is such as to constitute a material change of use of the planning unit as a whole there would be no breach of planning control. Where this type of operation offers transport to and from the airport licensing enforcement issues may also arise.
21. With regard to park and fly/hotel and guest house/house holder parking if transport is offered to and from the airport, unless such transport is in a vehicle constructed or adapted for carrying more than 9 persons including the driver, that aspect of the operation would need to be licensed under the Local Government (Miscellaneous Provisions) Act 1976 even if no separate fee is charged for such transportation. Where such arrangements are encountered the operator is encouraged to apply for the appropriate licenses or to use licensed taxis under threat of prosecution if they do not do so. To date this approach has secured 100% compliance with operators taking one of the recommended courses of action.

22. Airport related parking issues tend to be seasonal, the greatest amount of activity occurring when the airport is at its busiest e.g. the summer months, Easter, the period around Christmas and the New Year and school half term holidays.

23. The level of airport related parking incidents fluctuates yearly. For the last six years the figures are:

2006	13
2007	6
2008	13
2009	16
2010	11
2011	17
2012	9

24. When any breach of planning control is identified, enforcement officers make contact with the land owner and (if different) the person responsible for the breach and endeavour to negotiate compliance with the legislation. This approach coupled with the threat of enforcement action in the event of non-compliance often produces positive results, particularly if the land owner is not the same as the operator of the business. This frequently is the case as often the business operator will have rented the land upon which the vehicles are parked.

25. Where negotiated compliance is not achieved, the case will be passed for enforcement action. There are a number of steps the council can take in this connection.

26. Where there is a breach of planning control arising from a breach of a condition attached to a planning permission (e.g. with regard to hotels and guest houses) the council may serve a Breach of Condition Notice. A Breach of Condition Notice identifies the breach of planning control and requires it to be rectified within a specified period of time being not less than 28 days. Breach of a Breach of Condition Notice is an offence which carries a fine of up to £2,500. Multiple prosecutions are possible. There have been no issues identified to date involving airport related parking where the service of a Breach of Condition Notice would have been appropriate.

27. The council may serve an Enforcement Notice. An Enforcement Notice will describe the nature of the breach of planning control involved, state what steps are required to comply with the notice, the date upon which the notice is to take effect and the period for compliance. The notice cannot take effect earlier than 28 days after it is served. A reasonable time must be allowed for compliance which ought to have regard to the fact that the operator will have taken advance bookings and would be in breach of contract if he failed to honour these.

28. If an Enforcement Notice is served, the operator of the business may appeal against the Enforcement Notice prior to the date upon which it takes effect. The effect of an appeal is to suspend the Enforcement Notice until such time

as the appeal has been determined. The activity may therefore be lawfully carried on during the appeal process.

29. It is possible to serve a Stop Notice (either a Temporary Stop Notice before an Enforcement Notice is served or a Standard Stop Notice with or after the Enforcement Notice is served) requiring the use to cease forthwith. Service of a Stop Notice is a high risk strategy as if the Enforcement Notice is not upheld the council could be required to pay compensation to the operator of the business. The amount of the compensation would be the equivalent of the operator's loss of income. As the enforcement appeal process can take up to 12 months in certain circumstances, depending on the size of operation, this could give the council a liability of up to £400,000.
30. The third method of enforcement open to the council is a Planning Injunction. Planning Injunctions can be applied for speedily and unlike an Enforcement Notice have immediate effect. However, in terms of the time for compliance, similar considerations would apply as with an Enforcement Notice. Further there is no guarantee that an injunction would be granted. In considering applications for Planning Injunctions, unlike appeals against Enforcement Notices, the court is not concerned with the planning merits of the situation. If the operator were to apply for planning permission the court may be unwilling to grant an injunction pending the determination of that application. Further, courts have on some occasions indicated that they would only grant a planning injunction if an Enforcement Notice were to be served so that the planning merits of the case can be tested through conventional routes. Unlike a Stop Notice there is no automatic right of compensation for an operator in the event that the injunction is not ultimately upheld. However, the court does have the discretion to ask the council to give an undertaking in damages. If given, the effect of such an undertaking is the same as the compensation provisions for a Stop Notice.
31. In terms of successes in respect of virtually all identified breaches of planning control, compliance has been achieved by one means or another. There are currently 7 matters outstanding. In respect of one of these the development is actually within the airport boundary and is not therefore contrary to policy. Planning officers take a view that at present enforcement is not expedient but are endeavouring to negotiate with the operators to apply for a temporary planning permission to regularise the situation. In another case an Enforcement Notice was served and appealed against. The inspector on appeal upheld the Enforcement Notice but extended the time for compliance to two years from the date of the appeal. This period is still running. The inspector in this case appeared to be influenced by submissions made on behalf of the operator to the effect that the current policy was anti-competitive. In two other cases, Enforcement Notices have been served and appeals have been lodged. In respect of one site an application has been made for a Certificate of Lawful Use and it will be premature to issue an Enforcement Notice until such time as that application has been determined. In one case an Enforcement Notice is awaiting service at the time of preparation of this report and in the final case enforcement officers are having difficulty in tracing the owner of the land and it may be necessary to consider other matters of service if this cannot be resolved shortly.

32. The terms of reference ask whether the airport's dedicated complaints line is successful or if more publicity is necessary. Officers are not aware of a dedicated complaints line at Stansted Airport. Examination of the airport's website does not reveal any such line save for in connection with noise complaints. In any event, the airport is not able to exercise any control over off-airport activities. Complaints regarding off-airport related parking issues should be (and are) made to the council as the local planning authority. In the event that such complaints were made to the airport operator it is anticipated that they would refer the complainer to the council.
33. The terms of reference ask what prevents successful enforcement. Clandestine activities on the part of operators can be a factor. This can occur where vehicles are stored in such a way that they are not visible (e.g. within a building such as a barn). Where a use has continued in breach of planning control for a period of 10 years or more it becomes immune from planning enforcement and the operator is entitled to a Certificate of Lawful Use or Development. Recent amendments to the law have however given local planning authorities the opportunity of enforcement outside the 10 year period where clandestine activities have been involved in certain circumstances. There is one building in Uttlesford with a Certificate of Lawful Use in respect of vehicle storage which was granted many years ago. There is at least one other parking operation in the district (not airport related) which officers are aware of which is immune from enforcement due to the passage of time.
34. The Enforcement Team do not have the resources to be proactive in seeking out airport related parking. Members of the team do go out throughout the district regularly and are vigilant. Where they have picked up on airport related parking issues this has been processed in the usual way. However, primarily the Enforcement Team are reactive in respect of airport related parking issues responding to complaints as and when received.
35. In terms of securing compliance, negotiated compliance has been successful in a large number of cases. Where formal action has been necessary the council has used both Enforcement Notices and Planning Injunctions. A decision as to which is the most appropriate manner of enforcement is taken jointly in each case by the Assistant Chief Executive – Legal and the Assistant Director Planning and Building Control.
36. In terms of the timescales for enforcement, much of this is dealt with above. However, members should be aware that under the Town & Country Planning (General Permitted Development) Order 1995, the use of any land for any purpose for not more than 28 days in total in any calendar year generally has the benefit of deemed planning permission for that purpose. Until the use is continued for more than 28 days there is therefore no breach of planning control.

Risk Analysis

37. There are no risks associated with this report.