

Committee: Scrutiny Committee

Agenda Item

Date: 6 September 2016

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Title: Enforcement Task Group Review

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Item for decision

Summary

At Scrutiny Committee on 17 November 2015 it was agreed to establish a Task and Finish Group to consider the functioning of Enforcement within the Council.

The Task and Finish Group had the following terms of reference:

- Understanding of the structure of Enforcement within the council.
- To review how decisions are reached as to when it is appropriate to take action.
- To review the resourcing of the service.
- To understand the limitations in law in relation to enforcement, such as the test of expediency.
- To understand the processes and priorities of the different elements of Enforcement, including planning, licensing and environmental matters.
- To understand how Enforcement works in its wider sense, for example which other agencies are responsible for elements of enforcement.
- To understand what service agreements/protocols are in place with regard to delivery by outside agencies?

Following various meetings of the group and associated activities, supported by the Development Manager, the following recommendation is made.

RECOMMENDATION

Scrutiny Committee recommends to Cabinet the following five actions:

- A. Following the re-engineering of the Council's IDOX Software System, from 1 April 2017; the Corporate Enforcement Team introduce monthly Parish/Town Council and District Council updates on Planning Enforcement Cases (including status and numbers); and introduce a quarterly report to Planning Committee.**

- B. Introduction of a Customer Charter with standards for updating complainants on the progress of all enforcement activities in all areas of activity before 1 April 2017.**
- C. Review the Council's Enforcement Strategy; and the Review/Introduction of Enforcement Policies for all principal enforcement areas before 1 April 2017.**
- D. Introduction of Memorandum of Understanding between Essex Highways and Uttlesford District Council on Highway Enforcement Matters.**
- E. Relaunch Forums for Taxi Drivers/Operators and other Non-Planning Enforcement Areas where appropriate before 1 April 2017.**

Financial Implications

1. There are likely costs with respect of recommendation A with respect of the re-engineering of the IDOX and the existing data associated with the recommendation.

Background Papers

Impact

- 1.

Communication/Consultation	Improved customer service and communication with stakeholders including, members, parish/town councils and Regulatory Committees
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None

Workforce/Workplace	None
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Situation

1. Members will recall from Scrutiny Committee on 17 November 2015 that it was agreed to establish a Task and Finish Group to consider the functioning of Enforcement within the Council.
2. The Task and Finish Group had the following terms of reference:
 - Understanding of the structure of Enforcement within the council.
 - To review how decisions are reached as to when it is appropriate to take action.
 - To review the resourcing of the service.
 - To understand the limitations in law in relation to enforcement, such as the test of expediency.
 - To understand the processes and priorities of the different elements of Enforcement, including planning, licensing and environmental matters.
 - To understand how Enforcement works in its wider sense, for example which other agencies are responsible for elements of enforcement.
 - To understand what service agreements/protocols are in place with regard to delivery by outside agencies?

Actions

3. In response to this the group (or parts of the group) carried out the following actions, supported by the Development Manager,
 - Received a presentation from the Enforcement Team Leader regarding the structure of the team. This included an overview of the variety of enforcement functions carried out; with some indication of how workload was distributed amongst the team.
 - Received clarification from the Enforcement Team Leader of the levels and types of cross agency relationships on enforcement issues.
 - Discussed with the Enforcement Team Leader matters related to the reporting of live caseloads to Town and Parish Councils as well as Ward Councillors and Regulatory Committees.
 - Considered the decision making process on all types of Enforcement Area.
 - The Development Manager outlined the specific considerations around Planning Enforcement including the various outcomes from planning enforcement, including matters around expediency.

- Met with representatives of taxi drivers and their experiences with the Corporate Enforcement Team.
- Visited the premises of one of the larger taxi operators.
- Carried out a quick survey of the Town & larger Parish Councils seeking their views and experiences of dealing with Enforcement Issues at the Council (including reference to agencies other than UDC).

Understanding the Structure of Enforcement within the Council

4. For the purposes of this review the group confined its work to the activities of the Corporate Enforcement Team. The Corporate Enforcement Team consists of four officers including the Team Leader. The team carries out investigations into the following areas:
 - Fly Tipping
 - Littering
 - Unauthorised Waste Carriers/Transfer of Waste
 - Lack of trade waste agreements
 - Dog Fouling
 - Smoking in Public Buildings/Vehicles
 - Failure to display no smoking signs in smoke free premises or vehicle
 - Untaxed and abandoned vehicles
 - Graffiti
 - Licensed Vehicles
 - Licensed Premises
 - Gambling
 - Planning
 - Housing Tenancy Fraud
 - Fly Posting
 - Scrap Metal
5. The Enforcement Team Leader has indicated the following levels of casework in 2015;
 - 541 files opened for investigation into possible breaches of planning control
 - 167 referrals for abandoned and untaxed vehicles
 - 64 fixed penalty notices paid totalling £8,200
6. Within the first four months the team had had seven successful prosecutions against taxi drivers on specific breaches of licenses
7. In addition there has been work around prosecutions for traders failing to have trade waste licenses.

Cross Agency Activity

8. The team liaise with a number of agencies on many issues. Namely:

8.1 Essex County Council

- **Place Services Ecology & Archaeology-** where there are concerns about protected species, habitats, developments involving archaeology conditions; and general information. Planning & Building Control have a Service Level Agreement for Place Services.
- **Highways-** although the only form of contact is through the ECC call centre or by the online complaint form.
- **Planning-** if there are reports of unauthorised waste or matters around minerals which are county planning matters.
- **Rights of Way-** if we are aware of works being carried out on public footpath or bridleway. We also notify the department if UDC are aware of damage to footpath signage.
- **Business Services-** related to the licensing of the sales of fireworks
- **Drainage-** relates to blocking of ditches adjacent to highways
- **Fulfilment-** relates to blue badge fraud.

8.2 Essex County Traveller Unit

Regarding unauthorised encampments on public land

8.3 Forestry Commission

Shared information related to unauthorised felling in the district.

8.4 DVLA

Share information related to untaxed and abandoned vehicles. The team have access to the DVLA database of all registered vehicles in the country and in order to maintain the access they have to submit twice yearly audits to the DVLA. The database must be accessed through a stand-alone computer which links via a BT telephone line.

8.5 HM Revenues & Customs

The team provide them with information on businesses we find, where it is believed records are not being kept correctly.

8.6 Health & Safety Executive

When visiting building sites or premises the public have access to the team report any health and safety issues occurring which it believes are dangerous.

8.7 Environment Agency

Reporting of pollution concerns and working with them to resolve problems.

8.8 Parking Partnership

Provide us with information on illegally parked vehicles in the district. Also report vehicles where it is aware there is no road tax.

8.9 Stansted Airport

Liaise with the airport on multiple issues including car parking, retail units and public transport issues.

8.10 Traffic Commissioners

Licence vehicles to carry over 8 people. Sharing information

8.11 Police

General intelligence sharing

Reporting of live caseloads to Town and Parish Councils as well as Ward Councillors and Regulatory Committees

9. The group were aware that previously town and parish councils did receive monthly reports of ongoing caseloads and that this had ceased following UDC's change to the use of the IDOX Corporate Software in 2012. This raised concerns within the group as it was considered paramount that local councils were aware of new cases and the progress of current cases in their areas. This was a concern highlighted by the two town/parish councils that had responded to the quick survey with the larger town and parishes.

10. Members of the group were also concerned that District Councillors were unaware of cases within their own wards.
11. The group were also mindful that the current management of the IDOX system did not allow for the regulatory Committees (i.e. Planning and Licensing) to be updated accurately on the volume of cases and their progress outcomes.
12. The Development Manager did advise that with regards Planning Enforcement through the appropriate management of the IDOX system, it is possible that the Access Reports to interrogate the system to allow a more meaningful reporting of cases and their status. Appropriate Ward/Parish and date filtering could also provide monthly/quarterly reporting. This could only be achieved through a re-engineering of the IDOX set up.

The Decision Making Process

Planning Enforcement

13. Powers for taking Planning Enforcement are delegated jointly to the Assistant Director Planning and the Assistant Chief Executive Legal. The Assistant Director Planning's powers are primarily exercised by the Development Manager. Any formal decision to take action has to be formally agreed from planning and legal viewpoint. Decisions to close enforcement cases are confirmed by the Development Manager following a weekly meeting with the Enforcement Team. The decision to close cases can be for a number of reasons:
 - Where no breach is detected
 - The breach is time barred from formal action
 - Compliance is achieved either through reversal or authorisation (possibly following formal action)
 - It is considered not expedient to take action.
14. The group did state clear angst where cases are closed for reasons of expediency. The question of expediency is somewhat unique to planning. Being a discretionary function the Local Planning Authority does not have a duty to enforce, only a duty to investigate. There is no finite test of expediency and the issue is almost always a matter of judgement for officers.
15. The reasoning to establish whether something is expedient is a need to demonstrate harm from the breach. Such harm would have to be demonstrated and evidenced by the Local Planning Authority to defend any appeal against any formal action taken.

16. The question of expediency is covered within the Council's Enforcement Strategy (dated June 2011) in Paragraph 1.06. 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 breach in 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 permitted development rights)
 - 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 taken as to whether planning permission would have been granted for the breach.
17. Although in circumstances where permission would likely have 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.
18. Concerns were raised by the group that when a case is closed for reasons of expediency the primary reasons behind this decision are not properly explained to the complainant. These concerns could be addressed by extending the reason when the case is closed.
19. Additionally, concerns were raised that even where formal action is considered the complainant is not updated or provided with the likely timeframe of such action. Currently the Enforcement Team have a policy of not updating complainants during a case; this policy has to be revisited. Customer updates can be achieved through the IDOX system in very much the same way as neighbour notifications within Development Management.
20. With respect to prosecution the Development Manager can recommend an action but as with all prosecution matters the ultimate decision rests with the Assistant Chief Executive-Legal who decides whether to prosecute, based upon the public interest test

Other Non-Planning Matters

21. Enforcement decisions regarding other non-planning enforcement matters rests with the Assistant Chief Executive- Legal. As with all prosecution matters he decides whether to prosecute based upon the public interest test. As the Head of Service for licensing and general enforcement the Assistant Chief Executive-Legal exercises his delegated powers directly, with reference to Licensing Committee where decisions lie outside of his delegated powers.

22. All areas outside of planning enforcement are not discretionary functions and some action has to be taken where a breach is detected. The nature of action may be from a warning through to prosecution. This decision is made within the delegated powers of the Assistant Director/Licensing Committee.

Meeting with Representatives of Taxi Drivers

23. On 9 June 2016 Cllr. Jones and the Development Manager met with representatives of the taxi drivers within UDC.

24. The drivers introduced the Council's Licensing Policy for UDC. Within the detailed policy it clearly stated areas related to matters around licensing including:

- Licensing of Drivers
- Licensing of Operators
- Licensing of Vehicles
- Enforcement

25. Clear information within the policy covers matters including cleanliness, behaviour, display of badges etc. and bookkeeping.

26. Concerns were raised with respect of some disproportionate action with prosecution often seen as the default form of enforcement, with little regard to lighter approaches like warnings.

27. The drivers raised concerns around the lack of any meaningful forum, to educate drivers and operators on certain issues. This has led to a serious lack of engagement between operators and the UDC to avoid potential breaches of the policy.

28. The drivers also raised some concerns over ambiguities in the policy and highlighted that there were at least three different undated versions of the policy circulating. The Assistant Chief Executive- Legal has already taken steps to inform the Trade which is the current version of the policy, and introduced 'copy controls'.

Conclusions & Recommendations

29. This task and finish review had a very wide remit and for reasons of timing was confined to the operations of the Corporate Enforcement Team rather than enforcement activities within service areas. It is noted that there is considerable and effective enforcement activity within Environmental Health

(Commercial and Environmental Protection), and within Council Tax and Housing.

30. The outcomes leading to recommendations can be based on five key areas:

- A. Better Reporting of Caseloads (in terms of numbers and outcomes) to District Councillors and Town/Parish Councils
- B. Improved Customer Service
- C. Review of Council's Enforcement Policy with an Introduction of Policies in each enforcement area; and reviewing polices where they exist.
- D. Improved Cross Agency Working, using good experiences from some areas, in areas with a poor relationship.
- E. Better use of Forums and General Education in Non-Planning Enforcement Areas.

A. Better Reporting of Caseloads (in terms of numbers and outcomes) to District Councillors and Town/Parish Councils

- A.1 It is considered that a better management of the Council's IDOX system will improve the ability to interrogate the system, filter information; and report Planning Enforcement caseloads and their status to Town/Parish Councils, District Councillors and Regulatory Committees.
- A.2 In order to achieve this some consideration of re-engineering of the IDOX system will be required, and it is recommended that this is put in place before 1 April 2017.

B. Improved Customer Service

- B.1 Through activities above regarding the re-engineering of the IDOX system there will be a better opportunity to update complainants on the status and timeframes of Planning Enforcement Cases.
- B.2 The introduction of specific customer standards for all the enforcement activities within the Enforcement Team.

C. Review of Council's Enforcement Strategy with an Introduction of Policies in each enforcement area; and reviewing polices where they exist

- C.1 The Council's Enforcement Strategy dated June 2011; is required to be reviewed, and updated to provide a better emphasis upon customer service and education/prevention on all areas.
- C.2 The Council's Licensing Policy (Related to taxis) needs to be reviewed in consultation with service users and providers.
- C.3 Enforcement Policies need to be introduced for all principal enforcement activity areas namely Planning and Licensed Premises.

D. Improved Cross Agency Working, using good experiences from some areas in areas with a poor relationship

- D.1 The Council can demonstrate a good working relationship with some agencies. UDC's relationships with Place Services (ECC), The North Essex Parking Partnership and the Essex County Travellers Unit have been successful based upon a working Service Level Agreement and/or Partnership Agreements.
- D.2 Other cross agency working with other parties such as the police and County Planning have been successful based upon mutual exchange of information. These relationships do not need to be formalised.
- D.3 The Council has a particularly poor relationship with Essex Highways on enforcement activities. It is recommended that a formalised relationship with Essex Highways be established on enforcement activities.

E. Better use of Forums and General Education in Non-Planning Enforcement Areas.

- E.1 The priority on non-enforcement issues such as licensing and trade waste must be on education and prevention rather than defaulting to enforcement.
- E.2 Whilst still retaining enforcement focus where required, it is essential that more emphasis be given to prevention through specific forum and education events aimed at the prevention of enforcement issues.

- E.3 It is recommended that the forum for Taxi Drivers/Operators and other non-planning enforcement areas be relaunched.

Risk Analysis

2.

Risk	Likelihood	Impact	Mitigating actions
Problems with existing IDOX data including address data resulting in delay in re-engineering IDOX system	2	2	Early engagement with IDOX/ICT may need some temporary administration resources.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.