

BABERGH DISTRICT COUNCIL

FROM: Head of Natural and Built Environment

REPORT NUMBER **G121**

**TO: **OVERVIEW AND SCRUTINY
(COMMUNITY SERVICES)
COMMITTEE****

DATE OF MEETING: 16 October 2007

A REVIEW OF THE COUNCIL'S REGULATION AND ENFORCEMENT ACTIVITY

1. PURPOSE OF REPORT

To provide the committee with an overview of enforcement activity undertaken within the Natural and Built Environment Division, in accordance with Item 21 of the minutes for the Overview and Scrutiny (Community Services) Committee, 24 July 2007. The report also aims to provide the Committee with information regarding the Council's obligations with regard to fulfilling its statutory obligations, the mechanisms involved, evolving priorities and how it is intended, in the future, to deliver effective regulation and enforcement throughout the District.

2. RECOMMENDATION

2.1 That the report be noted

The Committee is able to resolve this matter

3. FINANCIAL IMPLICATIONS

3.1 Enforcement activity is carried out within existing funding allocations. However, financial assistance for supporting the implementation of Smokefree legislation has been specifically provided by the Department of Health. As well as funding compliance checks and promotional visits, this money has also been used to offer businesses subsidised waste bins for cigarette ends.

4. RISK MANAGEMENT

| Risk Description | Likelihood | Seriousness or Impact | Mitigation Measures |
|---|------------------------------|--|--|
| Failure to maintain regulatory services leading to threat to public safety and health | Low given existing resources | Outbreaks of food-borne illness and preventable accidents at work occurring up to loss of life level, fire and consequent loss of life or other incident at unregulated entertainment premises | Ensure sufficient funding and staffing of regulatory services, maintain and improve educational measures and business support. |

5. **KEY INFORMATION**

Background

5.1 One of the key functions of a Local Authority is the regulation and enforcement of a wide range of statutory powers and duties. In this capacity the Council authorises a number of competent and appropriately trained officers to undertake these duties on its behalf. The most familiar of these regulatory functions are:

- Building Control
- Development Control
- Environmental Protection
- Food Safety and Hygiene
- Health and Safety at Work
- Housing Standards
- Licensing

5.2 Within these regulatory areas, officers are empowered under a wide range and number of statutory provisions in the form of acts, regulations and statutory codes of practice. Powers and actions are further informed by codes of practice, policy documents and guidance notes, all of which must be considered in justifying appropriate action. In addition officers must be aware of legal precedents and previous decisions, ensuring consistency in decision-making. In addition, as well as delivering the regulatory and enforcement functions to achieve the Council's own Corporate Priorities, namely; 'Maintenance of a safe, clean and sustainable environment', 'Promotion of healthy living and reduction of health inequalities' and 'Giving easy convenient access to quality public services' the Council must fulfil statutory obligations to meet the requirements of a number of Governmental Bodies. Service standards are set down by:

- Health and Safety Executive
- Food Standards Agency
- Department for Environment, Food and Rural Affairs (Defra),
- Department of Health,
- Health Protection Agency
- Department for Communities and Local Govt.
- Department for Culture, Media and Sport
- Department for Transport

These central government bodies determine the nature and extent of local authority regulatory activity. While their controls are quite prescriptive, there is still considerable freedom at local level to provide additional mechanisms for ensuring compliance. These can include supplementary business advice, support and educational activity, areas in which Babergh traditionally has been strong. However, those Councils who choose to inadequately resource to meet the demands of the government bodies will see this reflected in their performance assessments and in extreme cases will have the responsibilities removed from them and delivered by 'hit squads' the costs of which will be met by the Council.

5.3 The Government has expectations of councils with regard to how they exercise the powers vested in them. All enforcement authorities are expected to have comprehensive enforcement policies and be signed up to the Government's voluntary Enforcement Concordat. Babergh signed up to this

corporately in November 2000 and adopted its Corporate Enforcement Policy in January 2002. This was based on the Environmental Services General Enforcement Policy (Revised February 04 – Appendix 1). The adoption of a corporate policy ensured a consistent basis across the Council for all enforcement activity, with the understanding that this would be supported by policies for specific enforcement activities. Specific policies exist for:

- Health and Safety
- Food Safety
- Environmental Protection
- Abandoned and Nuisance Vehicles
- Licensing (Joint protocol with Police)
- Debt Management Strategy and Policy
- Benefits Fraud Prosecution Policy
- Planning – a specific policy is currently being written.

5.4 The fundamental principles of good enforcement are:

- Transparency.
- Proportionate to the offence.
- Consistently applied.
- Shown to provide help to the person or business being investigated.
- Subject to having a published complaints mechanism in place.

5.5 Once a complaint or referral concerning a matter is received – the service records in excess of 7,000 potential actions a year – there needs to be an appropriate response and subsequent investigation. The relevant options are generally as follows;

- (i) take no further action;
- (ii) take informal action; notify, issue advice and/or assist in achieving compliance
- (iii) take formal action; issue of formal notice/formal warning
- (iv) issue a formal ('simple') caution; only if satisfied an offence has been committed
- (v) take legal proceedings – usually leading to prosecution in magistrates' court

It should be stressed that, once a decision is made to pursue formal action, then the Council is committed to criminal proceedings. This means the burden of proof and the quality of evidence must meet exacting standards, interviews are undertaken under caution and the Council can face significant costs or compensation payments, particularly in the event of an appeal. Investigations must be undertaken in accordance with the principles of the Police and Criminal Evidence Act 1984 (PACE) and surveillance must be authorised in compliance with the Regulation of Investigatory Powers Act 2000 (RIPA). All authorised officers are trained accordingly.

Current Arrangements

5.6 Following the Council's structural review last year, an opportunity has been taken to change the emphasis on the Council's regulatory and enforcement duties. Within the Natural and Built Environment Division two sections perform a principally regulatory function;

- (i) Planning Control, regulating development of the built environment (planning applications, building regulations)
- (ii) Food and Safety Regulation, ensuring businesses comply with food standards, health and safety and licensing obligations

A third section, Environmental Protection, will deliver the formal enforcement function with particular emphasis on planning, environmental crime (noise, litter, fly-tipping, abandoned vehicles etc.), enforcement of licensing conditions and maintenance of housing standards.

5.7 The new arrangement brings together, in a small team, a number of officers who are dealing with formal enforcement procedures on a daily basis. As a focus of their job, rather than ancillary to it, the enforcement process should be:

- Applied consistently – irrespective of the specific legislation
- In accordance with established service standards
- Managed by highly competent officers
- Delivered by officers with skills in investigation, witness statements, evidence preparation, court experience
- Efficient and effective

Future Developments

5.8 The newly formed teams were effective and resourced from April 2007. Recruitment of one new and two vacant posts gave an opportunity to select individuals with relevant skills and experience. As a result an excellent balance has been achieved. In addition to an established Senior Environmental Health Officer, Principal Planning Officer and planning assistant, the team now boasts a further planning enforcement officer, an environmental enforcement officer and a former police officer. This places Babergh in a good position to respond to future demands and expectations anticipated.

5.9 As members are aware, the Council's Clean Neighbourhoods and Environment Enforcement Strategy is out to consultation. This addresses the Council's response to a range of new powers, including the use of Fixed Penalty Notices and further raises expectation that Councils will use the powers granted to them. This, together with legislation aimed at tackling anti-social behaviour, licensing and gambling laws and the very recent 'Smokefree' legislation (a review of this activity is presented at Appendix 2) and perhaps a growing level of intolerance amongst neighbourhoods indicates that this will be a busy team. Additionally the professional mix in the team will enable flexibility of resources in response to peaks in demand, covering of absenteeism etc for all planning and environmental enforcement issues. Within Suffolk this is a new and unique approach to enforcement.

5.10 Regulation and enforcement have been subjects of scrutiny by Government in recent years. In 2005 the Govt. published the 'Hampton Review on Regulatory Inspections and Enforcement'. The first 3 key recommendations from the report were:

- comprehensive risk assessment should be the foundation of all regulators' enforcement programmes;
- there should be no inspections without a reason, and data requirements for less risky businesses should be lower than for riskier businesses;
- resources released from unnecessary inspections should be redirected towards advice to improve compliance;

The executive summary of this report is presented as Appendix 5.

Members should be aware that the report was written in response to the Government's request to 'reduce the burden on business', but notwithstanding, Babergh's officers have been applying the principles identified in the recommendations for many years.

5.11 More recently the Government commissioned the Rogers Report published earlier this year (The Rogers Review – National Enforcement Priorities For Local Authority Regulatory Services). This review looked at 60 topics (Appendix 6) included in Local Government regulation and enforcement and has condensed these into 5 national priorities.:

- **Air quality** (Air quality, including regulation of pollution from factories and homes) – e.g., reducing air pollution.
- **Alcohol licensing** (Alcohol, entertainment and late night refreshment licensing and its enforcement) – e.g., protecting people from the effects of the misuse of alcohol through licensing.
- **Hygiene of food businesses** (Hygiene of businesses, selling, distributing and manufacturing food and the safety and fitness of food in the premises) – e.g., preventing food poisoning.
- **Improving health in the workplace**
- **Fair trading** (Trade description/ trade marking/ mis–description/ doorstep selling) – e.g., protecting the vulnerable from scams and rogue traders.

Of these, members will note 4 of the 5 are front line duties delivered by Babergh. Also note that planning enforcement was not a subject of this review. There are a further 20 or so topic areas that imply Councils will have discretion over how these are prioritised and may wish to highlight in Corporate Plans or Service Plans.

5.12 Finally, the Council awaits the outcomes of the consultation on the Regulatory Sanctions and Enforcement Bill which will implement some of the measures referred to above. The requirement for Enforcement Policies will be mandatory therefore the Council's policies will be reviewed in light of the new requirements. Otherwise it is anticipated that the Council's new arrangements will be well placed to deliver ever more demanding and formalised procedures.

6. SUMMARY OF PERFORMANCE

6.1 All aspects of regulation activity are recorded – service requests, complaints and inspections, together with outcomes. Databases allow us to monitor progress of each investigation. Currently new key performance indicators are being developed so that effectiveness and efficiency can be better assessed and monitored. Also, as a new structure is in place there is an ideal opportunity to fundamentally review the procedures and processes involved in all enforcement areas across the Council. This will be the subject of a further report to this committee.

6.2 The attached Appendix 3 presents some of the detailed figures relating to enforcement activity. Members should note that of the 7,000 or so actions raised in a year the number that result in formal resolution are relatively few. Much officer time is spent on initial investigation that can then be resolved informally. Many issues simply reflect intolerance or long running neighbour disputes, often mischievous, but that nonetheless there is a duty to investigate. Officers are often perceived as independent arbitrators, but this role can be both time consuming and costly.

6.3 Currently planning enforcement activity is recorded using a separate database. How this information can be best recorded and presented to members is being considered with the aim of presenting all performance information in a consistent and meaningful way. Outstanding enforcement activity is presented at Appendix 4. This information will be made available to members on BEN and will be updated regularly.

7. **APPENDICES**

- Appendix 1 General Enforcement Policy
- Appendix 2 Review of Activity: The Smokefree (Premises and Enforcement) Regulations
- Appendix 3 Enforcement Performance Review
- Appendix 4 Authorised Planning Enforcement Cases – October 2007
- Appendix 5 Executive Summary of the Hampton Review
- Appendix 6 Extract from Rogers Review of Local Authority Regulatory Services

8. **BACKGROUND PAPERS REFERRED TO:**

None

CONTACT: Malcolm Firth

DIRECT LINE: 01473 825883

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