

PLANNING COMMITTEE

28 FEBRUARY 2017

REPORT OF MANAGEMENT AND MEMBERS' SUPPORT MANAGER

A.6 CORPORATE ENFORCEMENT STRATEGY

(Report prepared by Karen Neath)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consult with the Committee on the draft Corporate Enforcement Strategy.

EXECUTIVE SUMMARY

- At Cabinet on 16th December 2016, the draft Corporate Enforcement Strategy was agreed for consultation. Within the Council, it was agreed that the Strategy be considered by the Planning, Licensing and Community Leadership and Partnerships Committees.
- The purpose of this Corporate Enforcement Strategy is to set out the overarching “umbrella” principles to apply to all service departments and its officers within the Council which undertake enforcement functions.
- The Council’s enforcement responsibilities and powers cover a wide range of legislation with a variety of formal and informal sanctions, which aim to protect the interests and rights of people in relation to the environment that they use. The enforcement of regulatory legislation enables the Council to achieve its’ priorities contained within the Corporate Plan and fits with national policy, codes and guidance.
- It is important that these enforcement functions are carried out in an equitable, practical and consistent manner, and that both those subject to regulation and those on whose behalf enforcement is carried out can understand the approach we take. The purpose of this Corporate Enforcement Strategy is to explain clearly and publicly summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance.
- It is important to note that the Licensing and Registration and Planning Committees retain the legal responsibility and power with regards to enforcement decisions including the proposed adoption of a corporate Harm Risk Assessment Checklist and Template however, it is intended that some general principles can be agreed across the Council to form a corporate approach.
- The draft Strategy is attached at Appendix A and includes the following sections on how we will deal with enforcement:-
 - Openness & Transparency
 - Helpfulness
 - Consistency
 - Proportionality

- Targeting resources on higher risk; and
- Accountability.
- The outcome of the consultation will be reported back to Cabinet in early 2017 for consideration in the adoption of the final document.

RECOMMENDATION(S)

That Members of the Committee determine whether they have any comments on the draft Corporate Enforcement Strategy as attached at Appendix A.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Council enforcement services across the Council have a key role to play in helping to deliver an ethos of open for business whilst addressing issues adversely affecting our residents. It underpins Tendring Council's ethos and objectives to deliver high quality affordable services, engaging with the community and effective partnership working to promote healthier lifestyles and well-being in the district. It is important to ensure that enforcement solutions are developed to meet local needs and through engagement with local stakeholders.

Adopting a Corporate Enforcement Strategy will provide a means for engaging with the community to explain to how its enforcement services will be targeted and delivered following harm and risk assessments, encouraging compliance through communication and partnership working.

Adopting Principles of Good Regulation demonstrates good governance through openness & transparency, helpfulness, consistency, proportionality, targeting resources on higher risk and accountability.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The introduction of the draft Corporate Enforcement Strategy for further consultation does not in itself have any financial implications, however, there may be resource implications in delivering the principles of Good Regulation although, at this stage it is anticipated that these will be covered by existing budgets and resources.

Risk

The introduction of the draft Corporate Enforcement Strategy and associated Service Standards will summarise Tendring District Council's intended approach towards enforcement and dealing with non-compliance. It is intended that adherence to the Principles will increase public confidence, awareness and understanding of the factors taken into consideration and consequently, reduce adverse criticism of enforcement activity.

LEGAL

Local authority regulators whose functions are specified by order under section 24(2) of the Legislative and Regulatory Reform Act 2006 are bound to have regard to the Regulators' Code when developing policies and operational procedures that guide regulatory activities.

The Government have stated that they will monitor published policies and standards of regulators subject to the Code, and challenge local authorities where there is evidence that

policies and standards are not in line with the Code or are not followed.

The draft Strategy accords with the government's 'Better Regulation Agenda'. Specifically, it implements good practice recommended by the Cabinet Office Enforcement Concordat, the Regulators' Code; and the regulatory principles required under the Legislative and Regulatory Reform Act 2006 ("the 2006 Act"), including the duty to have regard to economic growth ('the Growth Duty'). The provisions of Section 6 of the 2006 Act include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them.

"Enforcement" includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law. The term "enforcement" therefore has a wide meaning and applies to all dealings between the Council and those upon whom the law places responsibilities. It is not limited to formal enforcement action such as prosecution, but can include a range of interventions that seek to achieve compliance with the law.

Regulatory activities within Licensing, Registration and Planning are non-executive functions and therefore consultation is required with the relevant committees before approval by Cabinet, this is particularly relevant to the suggested use of a corporate Harm Risk Assessment Checklist/Template across all council services. It will still remain the responsibility of the relevant enforcement Committee to adopt a corporate checklist and template and they will have the power to suggest and make changes appropriate to their specialised area.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

The Regulators' Code and Draft Corporate Enforcement Strategy contributes to the Council's duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Equality and Diversity

An assessment of the impact of the recommendations in this report has been undertaken and no potential for discrimination or adverse impact has been identified and all opportunities to promote equality have been taken.

Consultation / Public Engagement

Internal consultation has been undertaken in formulating the draft Corporate Enforcement Strategy and further consultation will be carried out with external partnership bodies, key stakeholders and relevant committees and reported back to Cabinet for consideration in the adoption of the final document.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The [Regulators' Code](#), published by BRDO in July 2013, came into force on April 6th 2014. The Better Regulation Delivery Officer (BDRO) sits within the Department of Business, Energy and Industrial Strategy (BEIS).

Nearly all non-economic regulators, including local authorities and fire and rescue authorities, must have regard to this code when developing standards, policies or procedures that either guide their regulatory activities with business or apply to other regulators.

Section 6 of the Regulators' Code sets out Government's expectation that local authorities will ensure that their approach to regulatory activities is transparent. The provisions of section 6 include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This includes their enforcement policy, explaining how they respond to non-compliance.

The Regulators' Code contains details of how enforcement activity should be approached and specifically requires that Regulators:

- Carry out activities in a way that supports those that are regulated to comply and grow;
- Provide simple and straightforward ways to engage with those that are regulated and hear their views
- Base their regulatory activities on risk
- Share information and compliance and risk
- Ensure clear information, guidance and advice is available to help those regulated to meet their responsibilities to comply
- Ensure that their approach to regulatory activities is transparent.

Published service standards serve to bring the provisions of the Regulators' Code to life for each regulator and are important for regulators in meeting their responsibility under the statutory principles of good regulation to be accountable and transparent about their activities.

The Regulators' Code requires that published service standards should be accessible, clearly signposted, and kept up-to-date, but does not set out a single required approach to service standards. It is for each authority to determine an approach which works best for those it regulates and itself. The Code expects that local authorities will engage with those they regulate in relation to the development of their service standards. To date each service undertaking enforcement activity has focused on their individual enforcement policies and standards and to ensure consistency it is recommended that the BRDO's toolkit mentioned below is considered.

The BRDO has worked with a number of groups, including the Local Authority Reference Panel, Pathfinder LEPs and others, to explore the content of service standards and how the local authority can ensure that businesses find them. From this work, a toolkit was produced by the BRDO presenting examples of how a local authority might choose to approach:

- Developing or reviewing its service standards; and
- Developing or reviewing its enforcement policy.

The Council's services have been informally working together on corporate operational enforcement matters for some time however, it has been identified that a more consistent joined up approach would be beneficial and review of its working practices and procedures has commenced. Adopting a Corporate Enforcement Strategy would assist and provide a directional steer in this process.

The Community Safety Hub in Tendring already engenders the ethos of partnership working and holds regular hub tasking meetings to consider multi- agency enforcement issues. The principles set out in the Corporate Enforcement Strategy can also be applied to the hub to strengthen the good practice already in place.

DRAFT CORPORATE ENFORCEMENT STRATEGY

The Council's enforcement services seek to ensure that advice and information is available to individuals and local businesses about their responsibilities and duties and, when appropriate, uses its powers to make sure that those who disregard the law are held to account for their behaviour. The Council will approach enforcement decisions by ensuring that they will comply with this Strategy and information on individual services Enforcement Policies may be obtained from the relevant department and the Council's website.

Initial proactive engagement is encouraged to discuss issues, in a positive manner. If initial approaches are unsuccessful then a firm but fair stance will be adopted which will address issues quickly and transparently, whilst protecting members of the community and the environment.

We want to engage with residents who are often unaware that they require certain permissions to help them through processes; however if they are unwilling to engage then we take appropriate action. With new businesses, we want to encourage them to open and expand in Tendring and identify what are the blockages for them, rather than our first contact being one of enforcement; but we are prepared to take a proactive approach to enforcement if required.

The Council shares the Government's view that effective and well-targeted regulation is essential in promoting fairness and protection from harm and that as regulators we should adopt a positive and proactive approach towards ensuring compliance by:

- helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and
- responding proportionately to regulatory breaches

Where possible, the Council will reward good compliant businesses by lighter touch, fewer or no visits, alternative interventions, and/or other incentives. However, adopting a risk based approach, we will not hesitate to take all necessary enforcement action against those who, e.g. commit serious breaches, flout the law, and refuse to work with us to seek compliance or commit offences which are prevalent in the district. It is intended that a corporate Harm Risk Assessment Checklist/Template is adopted for use across council services.

Whilst it is acknowledged that the Regulators' Code relates principally to the Council's activities for Environmental Health and Licensing, the principles outlined are considered to be equally relevant to other council services undertaking enforcement functions. It was felt appropriate to have a single Strategy to cover all of these areas therefore, the scope of the Strategy is intended to include:

- Building Control and Dangerous Structures
- Community Safety and Anti-Social Behaviour
- Environmental Health (including food hygiene, health & safety, housing,

- pollution control and smoking)
- Housing
- Licensing (including alcohol, animal establishments, gambling, public entertainment and taxis) (some of these activities are also subject to specific policies on the application of legislation adopted by Full Council)
- Parks, Open Spaces and the Seafront (including Bylaws, Trespass and unauthorised encampments)
- Planning; and
- Street Care (including dog fouling, fly tipping, fly posting, littering, trade & domestic waste);

In achieving compliance, the Council will exercise our regulatory activities in a way which delivers the following Principles of Good Regulation:

- The Council is committed to following good enforcement practice in accordance with current legislation, guidance, codes of practice that influence policy listed within the draft Corporate Enforcement Strategy as set out in Appendix A.
- We aim to carry out our activities in a robust but fair way that supports those we regulate to comply without creating unnecessary business burdens.
- We will exercise our regulatory activities in a way which delivers:
 - (i) Openness & Transparency
 - (ii) Helpfulness
 - (iii) Consistency
 - (iv) Proportionality
 - (v) Targeting resources on higher risk; and
 - (vi) Accountability
- We will assess whether similar social, environmental and economic outcomes to achieved by less burdensome means.

The Draft Strategy also includes a section on a ward councillor's role in relation to enforcement matters and a Data Sharing Statement. The statement aims to provide a common understanding of the data that can be shared between public bodies undertaking enforcement activities and includes Councils (all tiers), Police and Fire Authorities, Central Government agencies and Statutory Undertakers.

The sharing of personal data between delivery bodies involved in the enforcement of legislation is subject to the requirements of the Data Protection Act 1998 (DPA). This statement aims to clarify how such data should be handled to ensure openness, transparency and consistency in compliance with the DPA and any other applicable legislation. It also promotes best practice to encourage effective working relations.

BACKGROUND PAPERS FOR THE DECISION

- Department for Business Innovation and Skills – Better Regulation Delivery Officer Regulators' Code April 2014
- Department for Business Innovation and Skills – Better Regulation Delivery Officer Regulators' Code Section 6: Local Authority Toolkit March 2014

APPENDICES

Appendix A: Draft Corporate Enforcement Strategy for consultation