

ITEM 17 - APPENDIX L

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 1ST OCTOBER 2013

Title:

PRIMARY AUTHORITY PARTNERSHIP (PAP) SCHEME

[Portfolio Holder: Cllr Brian Adams]

[Wards Affected: All]

Summary and purpose:

It is proposed that the Council operate a Primary Authority Partnership (PAP) Scheme for businesses that trade across Council boundaries. This means that a business, regardless of its size, could enter into a legally recognised partnership with the Council, receiving an agreed package of advice and support relating to the Environmental Health Service functions of food, and health and safety. This would be chargeable on a cost recovery basis. This report seeks member approval to enter into an agreement(s). Any proposed agreement(s) would be ratified by the Better Regulation Delivery Office (BRDO).

The PAP scheme is gathering momentum nationally, currently with approximately 750 partnerships across more than 100 Local Authorities. The scheme provides benefits for the local authority and for businesses.

The Council has not currently identified a primary authority agreement that it wishes to put forward. Should the opportunity arise it is important that legal authority is approved by the Council to enter into an agreement under the provisions of section 25 of the Regulatory Enforcement and Sanctions Act 2008.

How this report relates to the Council's Corporate Priorities:

This report relates to:

Understanding Residents' Needs- through working with our businesses to ensure our services are designed to meet their needs

Leisure & Lives- through working in partnership with the business community to promote health and wellbeing for all

Financial Implications:

The scheme allows the Council to recover its costs if it chooses to do so. Where costs are to be recovered it is important that there is an appropriate balance between the needs of the Council in terms of service planning, as well as the needs of the business to be certain of receiving value for their investment.

At the outset it can be difficult for partners to assess what level of resources will be needed to facilitate a Primary Authority Partnership (PAP). For this reason agreement on cost recovery may be most readily reached through determining an hourly rate for services provided.

Legal Implications:

The PAP is a formal legal contract and it is important that the authority meets contractual obligations. The standard terms and conditions provided by BRDO mitigate the risks for participating local authorities to an acceptable level and legal officers will rigorously scrutinise any contract.

Introduction

Background

1. In October 2008 the Government set up the Local Better Regulation Office (LBRO). The role of the LBRO was to improve the local authority regulation of Environmental Health, Trading Standards, Fire Safety and Licensing in line with the statutory principles of good regulation. These principles are that regulation should be transparent, accountable, proportionate, consistent, and targeted.
2. LBRO was also tasked with operating the Primary Authority scheme which was established by the Regulatory Enforcement and Sanctions Act 2008 to allow businesses to form a partnership with a statutory basis with a single local authority. The scheme addresses the fact that businesses that trade across council boundaries can be subject to differing requirements from the many different local authorities that may regulate them. This undermines consistency and increases unnecessary burdens for business. It can also mean that regulation of the business is less effective, reducing the impact that local authorities could have on increasing protection for their residents, workers and the environment.
3. From 1 April 2012, LBRO ceased to exist and responsibility for the scheme now rests with the Secretary of State for Business, Innovation and Skills, with the Better Regulation Delivery Office (BRDO) operating the scheme on behalf of the Secretary of State.
4. A PAP allows a business to form a legal partnership with a single local authority and this partnership, once it has been nominated by BRDO, has a statutory basis. The business, by choosing to participate in the scheme, demonstrates both its commitment to working in partnership with regulators and its desire to improve its experience of local regulation.
5. A local authority that offers PAP to businesses is demonstrating its willingness to work constructively with them to improve their compliance, and is taking on responsibility for leading and shaping the regulation of those businesses across their operations. It does this by providing tailored, assured regulatory advice to businesses and by guiding the way that other local authorities regulate them so that it is both effective and efficient, including through the sharing of compliance information.

6. There is a clear government drive to increase the number of PAPs. There are approximately 750 businesses in partnerships with approximately 100 local authorities covering over 63,000 premises. There is a range of types and sizes of businesses already benefitting from PAPs, these include partnerships between small business as well as larger well known businesses and their chosen local authorities, for example Sainsburys have a partnership with Cherwell District Council and Tesco with Dacorum Borough Council.

Supporting Businesses

7. A PAP provides important support to local businesses. This will complement the Council's commitment to encourage local business growth; partnerships could assist existing businesses and new businesses locating into our area. In October 2013 the legislation covering Primary Authority is to be amended to include access to the scheme for trade organisations. This will give small businesses the chance to benefit from a partnership where they belong to a trade body.
8. As well as important relationships with local businesses the scheme is particularly beneficial to businesses which have outlets in more than one local authority boundary as it is important that these businesses experience a consistent approach from enforcers.
9. Examples of support may include review of a regulatory policy that the business wishes to introduce. Other enforcing authorities are then assured that the policy is sound and do not need to challenge it, or request detailed information about the policy from the business. This reduces the regulatory burden on the business.
10. Primary authorities may also assist with development of "inspection plans" to provide other enforcing authorities with a clear focus when inspections are carried out. As other enforcing authorities are bound to take these into account, businesses benefit from a more focused, targeted and consistent approach.

What does a primary authority mean for Waverley Borough Council?

11. Local authorities have an obligation under the Regulators Compliance Code to provide businesses with advice and guidance about their legal obligations in respect of Environmental Health, Trading Standards, Fire Safety and Licensing legislation.
12. The Council is already an enforcing authority for Environmental Health, Private Sector Housing and Licensing and the Council's regulatory officers currently support a range of businesses informally by providing advice and information, usually on an individual business basis. It is proposed to initially offer PAPs for food safety and health & safety functions only- but the offer could conceivably be extended to other regulatory functions should the scheme prove a success.
13. Surrey County Council Trading Standards Team provides advice and guidance on aspects of the business's activity that falls within the regulatory

scope of Trading Standards Service. Trading Standards are also able to enter into PAPs with businesses. Preliminary consideration is being given to the possibility of being able to offer a 'single point of contact' to businesses that would deal with both Environmental Health and Trading Standards advice via PAPs. Further work is required to establish how the links between the two regulatory areas and businesses may work.

14. Primary authorities have an important role to play in supporting other enforcing authorities/environmental health teams, that may receive a complaint or information about non-compliance, or identify an issue during a check on a business that has a PAP in place. Where an enforcing authority is considering enforcement action against a business that has a PAP, it must comply with the statutory requirement to notify the primary authority of enforcement action.
15. As a PAP, the Council will hold valuable information that can be shared with other environmental health teams, in order to inform a proportionate and consistent response to any enforcement issues that may arise.
16. A PAP will often be able to provide an efficient means of effectively resolving the non-compliance identified at a local level and can ensure that the business addresses the issue across its operations where necessary.
17. Primary authorities are heavily reliant on the information that they receive from enforcing authorities, as this enables them to build up a more detailed picture of compliance across the business, and how the business's control systems are being implemented at a local level.
18. Where businesses require additional advice and support services under Primary Authority, the Act enables the Council to recover the costs associated in providing these services from the business. This will allow greater impact to be achieved from the existing resources deployed in providing support to business on regulatory issues.

Requests to enter into a Primary Authority Partnership

19. Requests from business to enter into a Primary Authority Primary Authority partnership are likely to come from the business directly but may, in some circumstances be passed through BRDO.
20. Environmental Health Officers regularly meet with a range of local, national and regional businesses that trade within Waverley. Interaction with businesses comes in many forms, from inspection and advice, through to dealing with complaints and referrals from other authorities. The majority of these businesses are either catering, retail or leisure services, most of which are small to medium enterprises. Environmental Health Officers inspect these businesses on a regular basis and also may respond to complaints, investigate accidents and alleged food poisoning incidents. In some cases many hours of officer time are devoted to some businesses, whilst others have very little contact outside of inspections. In order for businesses to engage with, and benefit from, the Primary Authority scheme it is important that sufficient Local Authority resource is allocated to their needs.

21. It is proposed that the operational management of Partnerships will be by the Environmental Health Manager in conjunction with the Partnership Manager. A draft checklist of responsibilities is attached at Annexe 1.

Resources required

22. At the outset it can be difficult for partners to assess what level of resources will be needed for Primary Authority Partnerships. Tentative approaches have been made to a small number of businesses and careful consideration will be given to each proposed partnership to ensure that adequate resources are available. It is unclear at the moment how many businesses might wish to enter into partnership arrangements with the Council.
23. The aim is initially to support our Primary Authority Partnerships from within the Council's own professional staff resources within the Environmental Health team. This is to ensure that partner businesses benefit from the highest quality advice from highly trained and competent officers. The cost recovery from the businesses will enable funding of 'backfilling' of the officer time that will be used on partnership work. If, over time the demand for Partnerships grows sufficiently we look to recruit staff and employ them on a fixed term contract. This would be on a cost recovery basis, and would be the subject of a further report to the Executive.

What does a Primary Authority Partnership cover?

24. Statutory duties in relation to inspections, investigations of breaches and complaints will continue to be carried out. These activities do not form part of a Primary Authority Partnership.
25. Basic advice consisting of 'signposting' and web-based advice will be available to businesses at no charge. Basic support and advice for start-up businesses will still be provided for businesses based within Waverley.
26. As part of any Primary Authority Partnership, the following services would be offered as standard:
 - Liaison with other enforcement agencies and the public. This comprises of the co-ordination of enquiries from other Local Authorities/Regulators/members of the public and communicating with them.
 - On-going strategic support for the business. This includes comprehensive advice and guidance from professionally qualified officers with regular meetings with the partner business.
27. In addition, we would look to provide additional optional services at the request of the business, including:
 - Training

- Review of policies, procedures and systems
- Audit of business compliance

Formation and Delivery of Primary Authority Partnerships

28. Primary Authority is administered by BRDO. Standard terms and conditions for agreement between the local authority and a partner business have been made available by BRDO. These terms and conditions mitigate the risks for participating local authorities to the minimum allowable in law, and are appended to this report at Annexe 2.
29. Formation of a Primary Authority Partnership involves the following elements:
- Our acceptance of a request to form a partnership
 - Agreement on the terms and conditions (see Annexe1)
 - Agreement on costs and charges
 - Acceptance by BRDO
30. Not all businesses will be suitable for a PAP and the Council will continue to support those businesses in accordance with statutory and government direction.

Cost Recovery

31. Currently the Council provides regulatory advice to businesses without charge. With a Primary Authority Partnership the Act allows the Council to fully or partly recover cost from the business:

'the Primary Authority may charge the regulated person (business) such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under this part in relation to the regulated person'.

32. At the time of agreeing a partnership, both parties will need to agree the resourcing arrangements for the partnership. In practice, there are numerous ways in which primary authorities and their business have decided to resource their partnership and the Council can recoup some or all of the costs incurred under the scheme. An approach that is used by many local authorities involves specifying an hourly rate that will be charged to the business. It is proposed to charge £60 per hour; this rate has been arrived at following some detailed modelling (including on-costs) taking account of the likely contribution of a range of different officers that will be needed to provide the PAP. An example of the charges involved in a Primary Authority Partnership are included as Annexe 3.
33. Primary Authority charges would be discussed at the beginning of the agreement and the business and partnership officer would agree the amount of time the business would like to be included. By arranging the number of hours required in advance it means that the business will be securing the time of the officer for the coming year. These hours are pre-allocated and non-refundable. Additional hours may be provided on request. The fees charged and the scope of the partnership will be reviewed at regular intervals during

the lifetime of the partnership and in any case no longer than every 12 months.

Information, monitoring and reporting system

34. The existing database system used in Environmental Health (Northgate M3) will be used as an auditable time-recording system to keep track of the hours used and officers will keep checks on progress and produce monthly reports. In the event that more hours were being used than expected, the business would be notified and agreement would be reached to add hours as necessary

Conclusion

35. The Council already provides free advice and support to businesses in accordance with its obligations under the Regulators' Compliance Code. If the Council chooses to enter into Primary Authority Partnerships, it can utilise the expertise of experienced officers to provide businesses with additional formal support to businesses on a cost recovery basis.

Recommendation

That the Executive:

1. approves the Council entering into legal Primary Authority agreements with businesses under the provisions of Section 25 of the Regulatory Enforcement and Sanctions Act 2008;
2. delegates authority to the Strategic Director in consultation with the Portfolio Holder and Deputy Chief Executive to enter into Primary Authority partnerships for the purposes of the Regulatory Enforcement and Sanctions Act 2008 and that the Scheme of Delegation be amended accordingly;
3. agrees that the Environmental Health Team promotes the Primary Authority Scheme to businesses based on the arrangement of £60 per hour and that agreements be negotiated as appropriate on that basis; and
4. agrees that the Scheme be reviewed after 12months.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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