

Report to Environmental & Planning Services Panel

Date of meeting: 28 February 2008

Subject: Local Better Regulation Office – Draft Strategy 2008-11

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Committee Secretary: Z Folley



Recommendation:

- (1) To note the receipt of the Local Better Regulation Office consultation paper;**
- (2) To respond to the consultation as set out in paragraph 9 of the report; and**
- (3) To consider how to proceed with a review of the Council's existing enforcement policies and processes**

Background

1. The Local Better Regulation Office (LBRO) has been established by the Government to drive the wider regulatory reform agenda at a local level and to stimulate, support and incentivise improvement. The LBRO is tasked with securing more effective performance of regulatory services in accordance with the principles of better enforcement.
2. The LBRO recognises the key role played by local authority regulatory services, in for example ensuring the food we eat is safe, the air we breathe is clean and our workplaces safe. The LBRO wishes to ensure that in making business comply with legislative requirements, this is done in a consistent and intelligent way, avoiding unnecessary burdens and contributing to sustainable economic growth.
3. The LBRO feels that regulatory services are often undervalued by too many authorities and not understood by the local community. The difficulty of achieving the balance between protection and "red tape" is all too difficult to achieve. The LBRO sees a mixed situation, with a lot of good practice, but with still an undercurrent of business bemoaning inconsistent enforcement alongside residents and consumers wishing to see high levels of protection provided.
4. The regulatory landscape is very complex, with regulation taking place at local, regional and national levels. Some is entrusted to authorities and some is 'contracted out' to agencies. Government, through the financial assessment of the Regulatory Enforcement and Sanctions Bill (RESB) has identified possible savings of up to £80 million per year through "better regulation". The LBRO, through its strategy, seeks to realise those savings whilst maintaining the balance already referred to. The Panel will already be aware of Government intervention in this complex area through its recent consideration of the Rogers Review and the setting of national and local enforcement priorities.

The draft strategy

5. The draft strategy is attached to this agenda as appendix xx. The LBRO wishes to help local authorities change their approach to enforcement to achieve positive outcomes. It sees regulatory activities as needing to be:

- proportionate
- accountable
- consistent
- transparent
- targeted

6. What does the LBRO mean by the five items set out in paragraph 5 above?

Proportionality:	balancing the intended enforcement action against the risk, with more stringent action in the more serious cases etc
Accountability:	conducting enforcement activity in a way residents and businesses wish it to be done, providing a means whereby residents and businesses can engage
Consistency:	applying regulation fairly within and without the district, so that, for example, national companies receive consistent treatment across authority boundaries
Transparency:	business know what is expected of them and what the authorities approach is to regulation, thereby providing higher levels of certainty for local business
Targeted:	targeting regulation where it is most needed, and in accordance with risk, treating compliant businesses with a lighter touch than non compliant businesses.

7. As currently drafted, the RESB gives six key functions to the LBRO:

- to operate the primary authority scheme;
- provide advice to central government on local regulatory issues;
- issue statutory guidance to regulatory authorities;
- review and revise the (Rogers Review) national and local priorities;
- map the regulatory landscape to better understand how it all works; and
- work with national regulators and representative and professional bodies to create benchmarks for a “world class” regulatory system.

8. To achieve this the LBRO will focus its activities around three strategic objectives:

- support for service improvement and change;
- the delivery of consistency; and
- improved services generally

Members are directed to page 12 of the consultation document where these principles are set out in diagrammatic form.

The consultation

9. The Local Better Regulation Office (LBRO) have asked stakeholders to comment on their draft strategy and in particular to address their thoughts to three questions, namely:

- do you share our understanding of the problems facing local regulation and local authority regulatory services?
- will the three objectives we intend to focus on effectively deliver LBRO’s mission to secure the effective performance of local authority regulatory services in accordance with the better regulation principles? and
- are the activities outlined under the core objectives sufficient to achieve that mission and contribute towards improving economic prosperity and community wellbeing?

Officers have taken the view that it would be unhelpful to try to deal with these questions in isolation from one another, so, in the paragraphs which follow, a response is suggested in the

wider context of the document as a whole:

- in broad terms we support the need for consistent and proportionate approach to enforcement which is risk based. We also see the benefit in a range of sanctions which reflect the intention of the offender and the severity of the breach but which also meet public expectations and discourage repeat offending. It is however worth stating that we too often find ourselves facing the situation where we feel that there is little support from the Courts in terms of the nature of the offences committed compared to the penalties or sanctions available. We therefore feel that this is an area which LBRO could help by encouraging liaison between the Courts and Regulatory Authorities
- we welcome the recognition of the problems encountered by local government when interpreting legislation on the ground. We also welcome the results of the Rogers Review, although greater is needed as to how much focus should be placed on the Review priorities (at the expenses of other services) in an environment of increasing resource constraints
- we recognise that inter authority working is a real way forward in delivering services both in terms of economy of scale and consistency of approach
- we look to the LBRO to facilitate closer relationships between the various 'layers' of Regulatory mechanisms as something which could effectively underpin the new Local Area Agreement regime
- we partially accept the criticism often cited by the private sector concerning inconsistency of approach and are pleased to see that there is an appreciation of the need for local variation in some circumstances. We would however, like to see guidance in some areas which would enable us to achieve consistency. The guidance offered under section 182 of the Licensing Act 2003 is considered to be a good example.
- in terms of resource related inconsistency, we feel that this may unavoidable in a risk based culture. Problems vary from one Local Authority to another and the risk based approach results in resources being allocated to those areas where they are needed irrespective of what is happening in neighbouring authorities. Having said this, we would strongly welcome a holistic and comparable performance assessment mechanism. We strongly feel that any form of assessment should be rigorously consulted upon and extensively trialled before introduction, thus avoiding the pitfalls of an inadequate assessment such as BV166, which is widely perceived by professional officers to be divisive and ineffective
- by its very nature, especially in a diverse County such as Essex, local inconsistencies in approach will inevitably arise. Whilst it is possible for centrally issued guidance to seek to reduce these inconsistencies, we feel that guidance should be guidance and must recognise and allow the flexibility for local circumstances to be taken into account
- we welcome the objective of supporting service improvement and change particularly the provision of guidance. We look forward to the proposals for a world class performance assessment network and the adoption of sensible and effective "Macrory" sanctions
- we cautiously welcome the aim to deliver consistency through the primary authority mechanism. Whilst seeing some advantages of such a system, and indeed having participated in the home authority regime ourselves, a number of possible problems present themselves. The issue of primacy of one local authority over another has yet to be resolved. It is vital that the overriding principle of local democracy is upheld. The question of resources is key to the success of this approach, smaller authorities may not have the resources to commit to this scheme without some form of ring fenced central allocation of funds
- we are pleased to see that you intend to improve the regulatory services system. We feel that reform is long over due and that in close consultation with Local Authorities and professional bodies such as the CIEH, the TSA and LACORS, real improvements can be

made especially in the areas of benchmarking and value added stakeholder involvement

Current Epping Forest DC position

10. The Council can justifiably look forward to some of these proposed changes because of the manner in which it generally manages its regulatory roles. The Council is a signatory to the Cabinet Office “Enforcement Concordat” and has adopted its own Enforcement Policy. These both make reference to key matters such as proportionality, consistency and transparency. The former Environmental Services also had its own enforcement policy, adopting similar principles, and as a whole the Council has generally seen enforcement as a last resort rather than something to be automatically pursued. The Council achieves a score of 100% against Best value Performance Indicator 166, which measures a basket of performance issues relating to environmental health activities, but includes specific reference to enforcement policies, public engagement and the like.

11. In the recent reports to this Panel on the Rogers Review members were informed of the need to review the Council’s enforcement policies, in order to build in the Rogers Review priorities, but also to take account of the changing circumstances which arise out of the “Safer, cleaner, greener” initiative. In so doing the Panel also recognised the need to encompass regulatory services other than those included in the Rogers Review, such as, inter alia, Building Control and Planning Enforcement . The Panel may wish to consider how best to take this process forward.