

Agenda Item No: 16
Report To: CABINET
Date of Meeting: 26 November 2020



Report Title: **Ashford Borough Council Enforcement at Sevington Border Control Post (BCP)**

Report Author & Job Title: Sheila Davison
Health of Community Safety and Wellbeing

Portfolio Holder: Cllr. Peter Feacey
Portfolio Holder for: Community Safety and Wellbeing

Summary: As a consequence of EU Transition, Ashford Borough Council (ABC) will become responsible for delivering port health controls at the new Sevington Border Control Post (BCP). These controls relate to checks on imports of animal products (products of animal origin and animal by-products) and high-risk food not of animal origin (POAO) imported from the EU. This report advises on the new service the council will be providing, the support being given by the Department for Environment, Food & Rural Affairs (Defra) towards establishing the service, and the collaborative work with Dover District Council who are to implement a similar service within their area. The BCP will operate 24 hours a day, 7 days a week, 365 days a year and involve over 120 staff directly employed/engaged by ABC. The service is to be introduced on a phased approach with documentary checks starting on the 1 April 2021 and physical checks three months later. This report addresses specifically the BCP health control service to be operated by the borough council, it does not address wider issues relevant to the operation of the Sevington Inland Border Facility.

Key Decision: YES.

Significantly Affected Wards: Mersham, Sevington South with Finberry i.e., the location of the BCP

Recommendations: **The Cabinet is recommended to:-**

- I. Note the progress to date in preparation for the council undertaking port health controls at the BCP.
- II. Authorise the Chief Executive and Director of Law & Governance, in consultation with the Leader of the Council and Portfolio Holder for Community Safety

and Wellbeing, to take all necessary steps and enter any necessary agreement:

- a) to secure funding for the council to undertake all required port health functions in relation to Sevington BCP;
 - b) use such funding for the agreed purposes and
 - c) establish and manage a service providing all required port health and related or subsidiary function for the Sevington BCP in accordance with statutory requirements.
- III. Express commitment to implementing the necessary changes that will arise from the UK's departure from the EU as relevant to the discharging its port health responsibilities.
- IV. Address subsequent reports on the progress of the BCP as necessary.

Policy Overview:

The council has no previous involvement with port health controls and therefore this represents a totally new policy area. However, the purpose of the checks are to ensure that only products that are safe to eat can enter the food chain, to safeguard animal and public health and check compliance with relevant rules and international standards, and therefore these objectives are highly relevant to the council's existing food safety work and wider responsibilities to protect consumers.

Financial Implications:

The financial implications are significant. There is no existing budget provision for this service either in regard to initial project management, service design and implementation, or when operational. All aspects will require Government funding and underwriting as necessary until such time as the service is operating on a full cost recovery basis. This project is not currently reflected in the Medium-Term Financial Plan (MTFP).

Officers are working closely with DEFRA on initial budget allocations to setup and run the service for in the initial stages i.e. to 31 March 2021. This is currently work in progress and more information will be released once an agreement has been reached.

Legal Implications:

The legal context for the council responsibilities for port health controls at Sevington are set out in Article 49 of the Official Controls Regulation (OCR), which requires competent authorities to conduct checks at designated BCPs.

There are significant legal implications related to every aspect of the BCP ranging from the grant and service agreements with Defra, procurement arrangements and subsequent contracts, and employment contracts. Once the BCP is operational there are legal implications relating to the day-to-day service i.e. the documentary checks, identification checks for consignments, the physical inspection of goods and related enforcement activity.

Equalities Impact Assessment:

An Equalities Impact Assessment will be required for this new service and will be prepared in due course. The service will be designed taking into full account the council's equality duty.

Data Protection Impact Assessment:

The BCP will handle personal information and as such there will be a need for a Data Protection Impact Assessment (DPIA). This will be necessary for the initial service design and ongoing receipt, holding and exchange of data once the BCP is operational and the health are being conducted.

Risk Assessment (Risk Appetite Statement):

The risks associated with designing and implementing a port health service of such scale in just a few months are immense.

The council's lack of previous experience in this area exacerbates the risks, as does uncertainty over the likely volume of checks that will be required.

There are considerable financial, reputational and legal risks. The BCP has been added as a corporate risk and will be reviewed and reported on as the project develops. The council has a statutory responsibility to deliver this service and is seeking the necessary reassurances from Defra to mitigate the risks currently being identified.

Sustainability Implications:

Outside the scope of this report.

Other Material Implications:

There are significant staffing implications. The project is already consuming council resources which, it is anticipated, will be compensated for by the Government. Staff will be employed on either a permanent or temporary basis by the council. Agency staff will be utilised when necessary, especially over the implementation period and initial operational period. This will give flexibility to adjust resources in line with demand. Existing council staff will be involved in supporting the BCP development and continue to be involved as the service goes live in a support role. There are therefore material implications for many of our current workforce.

Exempt from Publication:

NO

**Background
Papers:**

None

Contact:

sheila.davison@ashford.gov.uk – Tel: (01233) 330224

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Introduction and Background

1. In late September 2020 information was received from Defra that the Sevington Inland Port Facility (IPF) is to be designated a BCP and that as a consequence the council will become responsible for carrying out various port health controls on behalf of central government.
2. The health controls (i.e. checks on food at the point of import) that the council will be required to undertake are to ensure that only food that is safe to eat enters the food chain, that animal and public health is safeguarded and that there is compliance with relevant rules and standards.
3. The council is not currently responsible for any port health controls and has no experience of managing services relevant to port health activity. It is stressed that the nature, full extent and volume of the services to be provided remains unclear at this time.

The current position

Service required

4. For imports of goods, the UK Government announced on 13 July 2020 that Sanitary and Phytosanitary (SPS) controls will be introduced in stages from January 2021 to July 2021. Local Authority responsibility for these controls is limited to checks on imports of animal products (products of animal origin and animal by-products) and high-risk food not of animal origin.
5. Under the phased approach, these checks will not be required until 1 April 2021, when remote documentary checks will be required to be undertaken by the council on products of animal origin (POAO) imported from the EU.
6. From 1 July 2021 the council will be responsible for undertaking documentary, identity and physical checks on POAO and certain animal by-products (ABP) at the Sevington facilities.
7. Checks on live animals, POAO under safeguard measures, plants and plant products will be carried out by the Animal and Plant Health Agency (APHA). These will be carried out at destination from 1 January 2021, and at the BCP from 1 July 2021. These checks are not undertaken by the council.
8. A documentary check is an examination of official certifications, attestations and other commercial documents that are required to accompany a consignment. An identity check entails the visual inspection of a consignment in order to verify its content and labelling corresponds to the information provided in accompanying documentation. A physical check entails a check on the goods to verify that they are compliant with the sanitary and

phytosanitary import requirements for GB. This includes, as appropriate, checks on the consignment's packaging, means of transport and labelling. Temperature sampling, laboratory testing or diagnosis may also be required.

Volumes and staffing requirement

9. Defra have estimated, on the basis of their forecast of EU POAO import data for Eurotunnel, that the following checks will be required annually. This is the number of checks that the council will be making.

| | Documentary | Identity | Physical | Sampling | TOTAL |
|-------------------|--------------------|-----------------|-----------------|-----------------|--------------|
| Risk Based Checks | 120,482 | 1,782 | 1,782 | 178 | 124,224 |

10. On the basis of this information and estimates of the time it takes to complete the different check, Defra have recommended that the following staff numbers are required.

| | Staff estimates |
|--|------------------------|
| Official Veterinarians (OVs) | 14 |
| Port Health Officers (PHOs) i.e., EHOs appointed to undertake port health checks | 14 |
| Port Health Support Officers (PHSOs) | 46 |
| Admin | 26 |
| Team Leaders | 7 |
| IT | 8 |
| Legal | 4 |
| HR | 3 |
| Finance | 3 |
| Senior Management | 4 |
| Total | 129 |

11. It should be noted that Defra only provided staffing estimates relevant to OVs, PHOs, PHSOs, Admin, Team Leaders IT & Legal. Additional posts have now been agreed as relevant to the overall management of this new service area.
12. Additional resources have been identified to support the development and implementation stages, namely project management support plus additional HR and Finance resource i.e., over and above the staff estimates identified above. We will also draw from the funds available for the posts identified in the above table to support the project development and implementation i.e. those employed /engaged before 1 April 2021.
13. It should be noted that the council will be doing 100% document checks but only around 1% physical checks. We are advised that the number of physical checks will be less than 20 per day.

Legal context

14. The legal context for the council's responsibilities for Port Health controls at Sevington are set out in Article 49 of the Official Controls Regulation (OCR), which requires competent authorities to conduct checks at designated BCPs. The Trade in Animals and Related Products Regulations (TARP) 2011 and the Official Feed and Food Controls Regulations (OFFC) 2009 then set out those authorities as being the relevant local authorities, i.e., the borough council for Sevington.
15. The council has been advised by Defra that the Public Health Act 1984 precludes a Port Health Authority, such as Dover, acting outside of the area of its jurisdiction set out in the relevant Port Health Order, hence, the approach to Ashford and the need to plan local authority enforcement at Sevington and designation of the council and staffing of the facility.

Defra support and financial implications

16. Defra recognise that there are significant challenges as the council prepares for the introduction of SPS controls on EU goods and are committed to supporting the authority with its preparations. Defra officials are now chairing a fortnightly Steering Group where the council receives policy updates and are able to raise concerns and questions. Defra have also agreed to hold regular meetings with council officers to provide a package of additional, bespoke support given the scale of work we need to work together on. The first of these sessions was held on 15 October to agree the principles of the Defra and FSA tailored support.
17. Defra have created a new "embedded" team who will partner us during implementation, transition and through go-live until at least October 2021. Defra will follow-up shortly with more information on this, including by agreeing with us an initial list of areas where additional specialist support would be most beneficial but have indicated that this will encompass project, change and transition management support. They have indicated that where the council may need to access commercial arrangements to support our preparations, the team will be able to use existing Government frameworks on our behalf.
18. Defra have provided formal reassurance regarding any financial risk arising from the recruitment of additional staff to our authority. A bid has been submitted to the Port Health Authority (PHA) Transition Fund covering recruitment, training and salary costs for this financial year. From next financial year the council will introduce a system of fees and charges in order, in theory, that we can generate enough revenues to cover our costs, including for the first phase of implementation (documentary checks) between April and July 2021.
19. Defra are conscious that even though they have shared with the council the best evidence available on the likely trade flows, these predictions might not materialise, at least in the short term. As a result, Defra acknowledge that a risk remains that we are not able to generate enough revenues to cover the costs arising from the implementation of the new regime of checks post-April 2021. This financial risk, in the absence of certainty regarding funding made available to the council, means that we may find it challenging to start

recruiting new staff, and to attract the right candidates. Defra have indicated that they do not want the council to under-recruit, which creates additional and further pressures later in the implementation.

20. Defra have therefore assured the council that in the event we experience a shortfall in revenue in the period April 2021 to March 2022, they will absorb the financial risk. This is on the condition that:
- our recruitment plans match those agreed as part of our application to the PHA Transition Fund
 - we update Defra on progress to recruit additional staff for the purpose of the future regime of import checks
 - where relevant, we can demonstrate that, from April 2021, we actively use new evidence on actual volumes of EU-SPS imports, and on the costs arising from the new regime of import SPS checks, to adapt the size of our workforce:
 - we work with Defra on the establishment of a regime of EU SPS import fees and charges, appropriate to cover the costs arising from the implementation of the new regime of checks.
21. The bid, which was submitted to Defra on the 12 November 2020 covers the staff costs (including shift payments) to 31 March 2021, non-staff costs including ICT provision, PPE, payroll licence fees, training costs, agency fees, EU sponsorship fees and on-going Home Office support, potential reimbursement and visa costs, insurance and a management fee.

Risks

22. In addition to the financial risk highlighted above, the council has no previous experience of managing port health functions. It was first requested to provide PHA services by Government just two months ago. The nature, full extent and volume of those services remains unclear at this time, which is a risk not only in terms of the bid submitted to Defra but in regard to the actual operation. Many untested assumptions have had to be made in order to prepare the bid.
23. Accordingly, Defra have been advised that the bid submitted by the council cannot be taken as an indication or acceptance that the services can be provided to the required standards. A number of government commitments and assurances are required if the BCP services are to be set up and operated in line with current expectations. **Defra have been asked for suitable assurances and commitments and we are engaging positively to resolve these matters.**
24. The council has, for example, requested a longer period of financial underwriting while volumes stabilise and arrangements for jointly keeping under review the impact of any changes to the regulatory or trading regimens.
25. As well as the financial risks, there are considerable logistical risks involved. The scale of the task is clear when one appreciates that the number of new posts required represents at least 25% to 30% of the council's current workforce. There are also considerable concerns that the number of professional staff required are just not there to be recruited. Defra are assisting in regard to access to OVs but Port Health Officers and Port Health Support Officers i.e., Environmental Health Officers and Technical Officers,

are in very short supply. In addition a number of professional support staff are required (such as legal support) and it is uncertain how buoyant the recruitment market is for these posts. Recruiting this number of staff will be an enormous task and will require recruitment agency support as well as the additional permanent HR staff resources for both the implementation stages and on-going service.

26. It is worth emphasising that the BCP at Sevington has been planned on the basis of taking imports from Eurotunnel. There is a risk that additional traffic from the Port of Dover could seek to use the services at Sevington which would increase the volume of EU POAO imports.
27. These risks are being captured within the corporate risk register and BCP project risk assessment. Early engagement with our audit service will further strengthen our ability to identify and analyse risks as well as determine appropriate risk responses.

Equalities Impact Assessment

28. An Equalities Impact Assessments will be required for this new service and will be prepared in due course. The service will be designed taking into full account the council's equality duty.

Consultation Planned or Undertaken

29. Not applicable at this point in time. No doubt as the design of the service becomes clearer it will be appropriate to liaise with service users and other relevant stakeholders.

Other Options Considered

30. There are no other options.

Reasons for Supporting Option Recommended

31. The council would be failing in its statutory duties were it not to undertake the required port health checks for a BCP located in its area. Defra have indicated that in regard to Eurotunnel, the Public Health Act 1984 precludes a Port Health Authority, such as Dover, acting outside of the area of its jurisdiction set out in the relevant Port Health Order.

Next Steps in Process

32. An officer steering group has been established to drive this project forward. This group is chaired by the Chief Executive who is supported by the Director of Law and Governance plus key Heads of Service including the Head of Community Safety and Wellbeing, Head of HR and Customers Services, Head of Finance and IT and Head of Corporate Property and Projects. They

are joined by additional officers some of whom are being assigned to work purely on this project. Arrangements are being made to back-fill within services and where necessary this will involve the recruitment of temporary staff.

33. As soon as we have received confirmation of the funding bid, the hard work really begins in terms of designing the service in detail, developing a timeline for staff recruitment, identify the roles performed by the various staff groups, purchasing the required IT systems and integrating them with council back office systems, designing the checking processes, undertaking the necessary recruitment and beginning the various training programmes.
34. We are pleased to have not only the assistance of Defra but also the support of the Association of Port Health Authorities and the Port of London. This assistance will be invaluable.

Conclusion

35. The creation of new inland border posts after EU transition is of national importance. The site at Sevington is a key part of the national plan and when fully operational will be one of the largest BCPs in England, possibly even the largest. Our council will therefore play a vital role in making a success of the country's new trading arrangements with the EU. Designing and implementing a service of this scale in such a short period of time is a significant challenge, but one that will be met positively by the council. It could not have come at a more difficult time i.e. in the middle of the covid-19 pandemic. We also face the wider challenges posed within Kent by leaving the EU and the normal problems caused by winter weather. It will not be an easy few months, but we will embrace the challenges and seek to maximise benefits for our community.

Portfolio Holder's Views

36. The new service being developed for the Sevington Border Control Post is definitely a challenge but equally is an exciting prospect for the borough council. The scale of the task is vast, logistically complex and extremely time sensitive. We are, however, fully committed to implementing the changes that are necessary and discharging our responsibilities. I am heartened by the support being provided by Defra, not only from a financial perspective but also practically in terms of designing and implementing this service in just a few months. I am also aware of the close collaboration between our council and Dover District Council who face a similar challenge in their area. I am sure that both councils will rise to the challenge before them and provide these nationally strategic services.

Peter Feacey, Portfolio Holder for Community Safety and Wellbeing

Contact and Email

37. Sheila Davison - Head of Community Safety and Wellbeing
(01233) 330224 - sheila.davison@ashford.gov.uk