

Report of:	Head of Economic Prosperity
Contact Officer:	David Prosser-Davies
Telephone No:	01543 464202
Portfolio Leader:	Health & Wellbeing
Key Decision:	No
Report Track:	Cabinet: 17/10/19

CABINET
17 OCTOBER 2019
POLICY FOR COMMERCIAL USE OF THE HIGHWAY

1 Purpose of Report

- 1.1 To update on the current position with regard to the Council's Policy for Commercial Use of the Highway (the Policy) following completion of a review by officers.
- 1.2 To set out options for consideration by members.
- 1.3 For members to determine which option, or other suggested alternative, is to be taken forward.

2 Recommendation(s)

- 2.1 Cabinet note the issues outlined in the report.
- 2.2 Cabinet decide which option, or other suggested alternative, they wish to proceed with, note the implications of this and recommend this option to Full Council for adoption.

3 Key Issues and Reasons for Recommendations

Key Issues

- 3.1 Members will be familiar with the aims of the Policy, which are to ensure that businesses in our town centres can use the highway to their advantage, safely and legally, whilst ensuring any obstructions do not cause danger to highway users, particularly those with visual impairment or mobility difficulties. The policy also requires that businesses have in place public liability insurance, to cover claims should any person suffer injury, and requires DBS checks for operators of fairground rides.

- 3.2 The Policy was first adopted by full Council on 18 October 2017; the Policy was subsequently referred to Scrutiny for review on 25 July 2018 and the Promoting Prosperity Scrutiny Committee made recommendations to Cabinet on 23 October 2018. Cabinet considered Scrutiny recommendations on 13 December 2018 but considered further review was necessary. At full Council on 23 January 2019 a question was asked of the Cabinet Member. In the absence of the Cabinet Member, the Leader confirmed that the review would be reported to Cabinet and then considered by full Council.
- 3.3 Following review, Appendix A sets out potential options for how the Council might take this matter forward.

Reason for Recommendations

- 3.4 The recommendations give Cabinet the opportunity to determine the scope and application of this Policy following a review.

4 Relationship to Corporate Priorities

- 4.1 The Policy on adoption aimed to support Council's Corporate Priorities as follows:
- (i) Promoting Prosperity – benefitting the local economy through allowing businesses to make use of the highway for advertising, promotion and sales; making a positive contribution to the local amenity by adding interest, vitality, colour and life to our town centres; implementing risk-based, proportionate controls, ensuring all businesses are treated equitably; ensuring non compliant businesses do not gain unfair competitive advantage.
 - (ii) Community Wellbeing – Promoting equality of access and protecting public safety, particularly amongst those with mobility difficulties and the visually impaired; ensuring operators of children's fairground rides are screened using a Disclosure and Barring Service (DBS) check; ensuring safe, unhindered access for emergency vehicles.

5 Report Detail

- 5.1 The Policy has resulted in a smarter, safer and less cluttered street scene, as many traders have chosen to remove obstructions, rather than pay fees for permits. Some businesses, however, notably those with several A Boards, and most of those with pavement cafes, have not complied.
- 5.2 In order to secure compliance with the Policy, the Council needs the support of Staffordshire County Council, which has indicated it is not minded to enforce. This was not the County's stated position when the Policy was initially introduced. The County has been requested to consider delegating enforcement of the Policy to Cannock Chase Council, but has declined. This means that key elements of the Policy, including payment of fees, location and construction of A Boards and furniture, and requirements for public liability insurance, are unable to be enforced.

- 5.3 Consideration has been given as to whether the Council could use its planning powers to regulate A Boards and pavement cafes. Controls are set out in the Town and Country Planning (Control of Advertisements) Regulations 2007. Whilst possible, this is potentially complex and resource intensive. It is also costly for business, with statutory fees of £132 for A Board permission and £462 for pavement cafes. Council planning enforcement resources are also limited, so this option in isolation is not feasible.
- 5.4 Since there is no mechanism to enable the District Council to recover its costs, or to enforce compliance with the Policy, it could be argued that this matter should now be left with the County Council, where enforcement of highways safety issues is a statutory function.

6 Implications

6.1 Financial

Continuing with the Policy in its current form, i.e. on the basis of cost recovery through a permitting system, is clearly not possible without the ability to sufficiently enforce the Policy and this requires the support of the County Council. Given this, Members may wish to consider whether to offer a full, or part, refund to traders who have paid in good faith for a 3 year A Board permit and whether to refund any payments made for one year pavement café licences (which have now expired). The total sum involved to date is approximately £4,500.00 and the amount refunded will depend on whether all monies are refunded or only such monies as are outstanding on such date that fees are no longer payable. It should be noted that there is currently no budgetary provision for such refunds and funds would have to come from working balances.

6.2 Legal

Should the Policy be rescinded, clarity will be required on how certain activities within our town centres are controlled and managed. Sale of goods and articles are defined as Street Trading, so are controlled by the Council's Street Trading Policy. Sales of subscriptions to satellite TV, sign up to utility direct debit payments, fairground rides, promotion, exhibition and recruitment activities do not fall within the definition of Street Trading, so will no longer be required to hold permits or to comply with conditions (for example the DBS for fairground ride operators). Historically, the Licensing Unit has issued permits for such activities, since traders' vehicles and units are otherwise deemed to be parking illegally and are issued with parking tickets.

6.3 Human Resources

None.

6.4 Section 17 (Crime Prevention)

None.

6.5 Human Rights Act

None.

6.6 Data Protection

None.

6.7 Risk Management

If a revised charging regime is adopted, in conjunction with planning enforcement for businesses who do not obtain consent, then consideration will need to be given to the resource required to effectively implement this and the risks of reputational damage since opposition to the policy will likely remain. This creates the potential for conflict with businesses and the resource implications are not clear. Planning enforcement powers to ensure compliance with the Policy have not been used to date so it is unclear how effective this model may be.

The adoption of an advisory only approach, which uses Cannock Chase Council branded material, or involves any correspondence from the Council, could create confusion amongst business and the public over which authority is responsible for regulating highway safety and may create a perception that the Council has power to act in these matters.

6.8 Equality & Diversity

A stated aim of the Policy is to ensure those with visual impairment and / or mobility difficulties are afforded safe access to our town centres, so assisting the Council in meeting its duties under the Equality Act 2010.

6.9 Best Value

None

7 Appendices to the Report

Appendix A: Review of Policy for Commercial Use of the Highway

Previous Consideration

As referred to in paragraph 3.2.

Background Papers

None



Appendix A

Review of Policy for Commercial Use of the Highway

September 2019

Introduction

1. The Policy for Commercial use of the Highway (The Policy) was first adopted by full Council on 18 October 2017; the Policy was subsequently referred to Scrutiny for review on 25 July 2018 and the Promoting Prosperity Scrutiny Committee made recommendations to Cabinet on 23 October 2018. Cabinet considered Scrutiny recommendations on 13 December 2018 but considered further review was necessary. On 23 January 2019, at full Council, the Leader confirmed that the review would be reported to Cabinet and then considered by full Council.
2. This document sets out the detail of the review conducted by Council Officers in respect of the following:
 - a) Fee Structure;
 - b) Whether enforcement of highways obstructions covered by the Policy could be delegated from the County Council to the District Council;
 - c) Feasibility of expanding the application of the Policy to the whole District;

The Review

a) Fee Structure

A review has been carried out and a proposed revised fee structure is set out at Table 1 below with the original fees for comparison purposes. Tables 2, 3 and 4 show how these fees are arrived at.

ITEM	CATEGORY / BANDING	ORIGINAL FEE £	PROPOSED REVISED FEE £
3 YEAR A-BOARD PERMIT	SINGLE A BOARD	85.00	55.00 (note 1)
1 YEAR PAVEMENT CAFÉ LICENCE	UP TO 2 UNITS*	85.00 PER UNIT	150.00 (note 2) 100.00 (note 3)
	3-6 UNITS*	250.00	150.00 (note 2) 100.00 (note 3)
	7-10 UNITS*	500.00	150.00 (note 2) 100.00 (note 3)
PROMOTIONS, GAZEBOS, RIDES ETC. IN TOWN CENTRES	SINGLE ITEM	25.00 PER DAY	25.00 PER DAY
	OVER 4 ITEMS	FEE ON REQUEST	FEE ON REQUEST

Table 1 summary of revised fees

- Note 1 This fee is taken from Table 2
 Note 2 This fee is taken from Table 3 (existing compliance costs retained)
 Note 3 This fee is taken from Table 4 (reduced compliance costs)

Table 2 showing revised fee calculation for A Boards

Street Obstructions Policy Fee Setting		A Boards	
Note: The fee is for a 3 year permit, so recurring annual costs are multiplied by 3			
Item	Hours	Licensing Unit Hourly Rate	Cost (Total)
Staff training / update costs per annum	1 hr per officer (x 2)	£40	£80
Policy, fee setting, update website, produce guidance, review forms etc. (Allows for initial set up, drafting, consultation and development of policy etc.)	40 to set up 2h p.a. ongoing	40 /3 = 13 (13 x £40) (2 x £40 x 3)	£520 £240
APP Civica software licence costs (£735 per licence/person) £735 x 4(LU) users = £2,940 / 11 regimes (alcohol, taxis, gambling, animals, street trading, sex shops, SMDA, LGMPA, Obstructions, Café, A Board)	n/a	n/a	£270 (x3) £810
A Board application processing, (administration, consultation and liaison with agencies, decision process, production of consent etc.)	1hr each	£40	£40 (x130) £5200
<i>Reactive compliance checks in response to complaints only (estimate 10% give rise to complaint)</i>	<i>8 x 20 min (= 4 hrs p.a.)</i>	<i>£40</i>	<i>£160 (x3) =£480</i>
Sub total			£7330
Est 130 A Boards, so £7330/130 = £55 (approx) (rounded down from £56.38)			£55.00

Notes:

1. Items in standard font represent **annual** costs of administering the regime (no matter how many boards);
2. Items in *italics* represent **annual** compliance costs which could be refunded to unsuccessful applicants;
3. Items in **BOLD** represent the one-off cost of processing the 3 year licence / permit;
4. Licensing Unit Hourly rate of £40.00 includes salaries, on costs, transport, support services (corporate services, accounts, HR, legal, ICT) printing, consumables, office lighting, heating, accommodation costs etc.)
5. Figures have been rounded as necessary.
6. There are approx. 160 Boards; estimate 20% (32) will remove boards and not apply. Leaves 128 (round to 130). Exact number will only be known after all apps received.

Table 3 showing fee calculations for Pavement Cafés

Street Obstructions Policy Fee Setting 2017-18		Pavement Cafés	
Note: The fee is for a 1 year licence			
Item	Hours	Licensing Unit Hourly Rate	Cost (Total)
Staff training / update costs per annum	2 hrs per officer	£40	£80
Member costs - training for elected members incl. legal advice and input	n/a	n/a	£100
Policy, fee setting, update website, produce guidance, review forms etc. (Allows for initial set up, drafting, consultation and development of policy etc.) (This is divided by 3 as 3 regimes within this area: A Board, Café and Obstruction)	40 to set up 2h p.a. ongoing	40 /3 = 13 (13 x £40) (2 x £40)	£520 £80
APP Civica software licence costs (£735 per licence/person) £735 x 4(LU) users = £2,940 / 11 regimes (alcohol, taxis, gambling, animals, street trading, sex shops, SMDA, LGMPA, Obstructions, A Boards, Cafés)	n/a	n/a	£270
Application processing, (administration, site inspections, consultation and liaison with agencies, decision process, production of consent etc.)	2h each	£40	£80 (x25) £2000
<i>Compliance checks on all premises (includes all proactive and reactive work, investigations, preparation of case files etc.); est. 100% checked each year; of those est 10% cause problems</i>	25 x 30 min (12.5hrs) 3 x 2h	£40 (x 12.5hrs) (x 6hrs)	£500 £240
Sub total			£3790
Est 25 cafés : so £3,790 / 25 = £151.60 (rounded down from £151.60 per application)			

Notes:

1. Items in standard font represent **annual** costs of administering the regime (no matter how many boards);
2. Items in *italics* represent **annual** compliance costs which could be refunded to unsuccessful applicants;
3. Items in **BOLD** represent the one-off cost of processing the annual licence;
4. Licensing Unit Hourly rate of £40.00 includes salaries, on costs, transport, support services (corporate services, accounts, HR, legal, ICT) printing, consumables, office lighting, heating, accommodation costs etc.)
5. Figures have been rounded as necessary.
6. There are approx. 25 Pavement Cafés; if a uniform fee is to be adopted then the total costs are divided by number of premises rather than number of units.

Table 4 Showing fee calculation for pavement cafés using reduced application & compliance hours.

Street Obstructions Policy Fee Setting		Pavement Cafés	
Note: The fee is for a 1 year licence			
Item	Hours	Licensing Unit Hourly Rate	Cost (Total)
Staff training / update costs per annum	2 hrs per officer (x2)	£40	£80
Member costs - training for elected members incl. legal advice and input	n/a	n/a	£100
Policy, fee setting, update website, produce guidance, review forms etc. (Allows for initial set up, drafting, consultation and development of policy etc.) (This is divided by 3 as 3 regimes within this area: A Board, Café and Obstruction)	40 to set up 2h p.a. ongoing	40 /3 = 13 (13 x £40) (2 x £40)	£520 £80
APP Civica software licence costs (£735 per licence/person) £735 x 4(LU) users = £2,940 / 11 regimes (alcohol, taxis, gambling, animals, street trading, sex shops, SMDA, LGMPA, Obstructions, A Boards, Cafés)	n/a	n/a	£270
Application processing, (administration, site inspections, consultation and liaison with agencies, decision process, production of consent etc.)	1h each	£40	£40 (x25) £1000
<i>Compliance checks on premises (includes all proactive and reactive work, investigations, preparation of case files etc.); est. 80% checked each year (so, 20 of 25)</i>	<i>20 x 30 min (10hrs)</i>	<i>£40 (x 10 hrs)</i>	<i>£400</i>
Sub total			£2450
Est 25 premises: £2,450 / 25 = £100 per unit (rounded up from (£98)			

Notes:

1. Items in standard font represent **annual** costs of administering the regime (no matter how many cafés);
2. Items in *italics* represent **annual** compliance costs which could be refunded to unsuccessful applicants;
3. Items in **BOLD** represent the one-off cost of processing the 3 year licence;
4. Licensing Unit Hourly rate of £40.00 includes salaries, on costs, transport, support services (corporate services, accounts, HR, legal, ICT) printing, consumables, office lighting, heating, accommodation costs etc.)
5. Figures have been rounded as necessary.
6. There are approx. 25 Cafés;

The original fees were based on estimated numbers of applications (for either A Board permits or pavement café licences). The costs were arrived at using established methodology for licence fee setting. The costs are made up of officer and administration time spent on policy development, report drafting, consideration of applications, and carrying out of compliance and enforcement activities.

The original fee structure envisaged compliance and enforcement work would be carried out and that each application made would require a site visit to ensure the suitability of what was being proposed. Compliance activity would then be undertaken to ensure permits and licences were complied with.

As can be seen from the proposed cost revisions, compliance and enforcement activity, along with time required to consider applications, has been considerably reduced, leading to a corresponding reduction in fees.

In addition, it is proposed to remove the bandings for pavement cafes so a standard fee is payable regardless of the number of tables and chairs.

b) Delegation of Enforcement Powers from County Council to District Council

In order to secure compliance with the Policy, the Council needs the support of Staffordshire County Council, which has indicated it is not minded to enforce. This was not the County's stated position when the Policy was initially introduced. Despite a number of requests from the Managing Director, the County Council has not been able to make a decision on whether or not it would wish to delegate enforcement authority to the District Council. This is, therefore, not considered an option going forward.

Given that enforcement cannot be carried out using highways legislation without the agreement and cooperation of the County, existing planning controls could be used to ensure any non compliant A Boards and Pavement Café obstructions are removed. These items ordinarily require planning permission, which for an A Board costs approximately £132.00 and for a pavement café costs £462.00. The applications would have to be submitted with drawings etc. It is suggested that the Council would not wish to consider taking planning enforcement action against a business which has applied for and been granted a permit or licence under the adopted commercial use of the highway policy.

Where a business chooses not to apply for a permit or licence under the commercial use of the highway policy, it will be expected that the business obtains planning permission for any items. Failure to do so could result in the item(s) being confiscated and the business being charged a fee to recover the item(s) and / or enforcement action.

c) Examine the feasibility of expanding the application of the Policy to cover the whole District.

To date, application of the Policy has been restricted to the three main town centres of Cannock, Rugeley and Hednesford. The rationale for this came from the 2016-17 “Better Jobs and Skills” PDP work programme, under “supporting attractive and competitive town centres” to “review the Street Trading Policy to include enforcement of the County Council Commercial Obstruction Policy”. The aim being to ensure town centres were attractive, welcoming and safe for all visitors. The Policy applies only to items on the public highway and not to privately owned land.

It is estimated that, within the District, there are in the region of 400 A Boards and a total of 35 pavement cafes. Application of the Policy in its present form to the whole District would present difficulties should this include areas such as industrial estates and verges, on which there are a wide range of “obstructions” placed. Determining whether land was privately owned or public highway, and monitoring compliance would prove resource intensive, in comparison with a town centre, or local centre location.

Application of the Policy to all town and local retail centres would be more feasible, monitoring compliance would be less challenging and would, at the same time, address some concerns expressed by business over unfairness and inconsistency.

Existing costs of implementing the Policy over 3 years are £8,000 per annum. The additional resource required to expand coverage of the Policy as set out above is estimated at £3,000 per annum (based on the issue of 3-year A Board permits and annual pavement café licences).

Options for consideration

Based on the outcome of the review set out above, a number of options for consideration are set out in Table 5 below. It should be noted that Table 5 does not include all possible options and members may decide to adopt an alternative model, or combination of options (for example, retaining the Policy for A Boards, and requiring planning consent for pavement cafés, or providing advice only for A Boards and retaining the Policy for cafés etc.).

Table 5 - Commercial Use of the Highway – options for consideration

OPTION	SANCTION FOR ITEMS CONSIDERED DANGEROUS (Note 7)	ESTIMATED TOTAL COSTS TO CCDC
A - POLICY IS RESCINDED AND A CHARTER CREATED. CCDC BRANDED GUIDELINES ARE ISSUED TO BUSINESSES.	Complaints referred to SCC for action. CCDC will only consider intervening using its planning enforcement powers where there is repeated non compliance with the Charter and SCC do not enforce using Highway Powers. No other compliance action will be taken by the Council.	£2,000* Planning Enforcement costs – unknown as this approach not previously tested.
B - PRESENT POLICY CONTINUES WITH REVISED FEE STRUCTURE. PLANNING ENFORCEMENT POWERS USED FOR NON COMPLIANCE.	As above for dangerous items. Non compliance with Policy, or failure to obtain permit, results in CCDC using planning powers to remove obstructions.	£11,000 p.a. Requires delegation of planning enforcement powers to the Licensing Unit and likely assistance from planning in early stages;
C POLICY RESCINDED. CCDC ACTIVELY SEEKS TO MAKE BUSINESSES AWARE OF SCC HIGHWAYS GUIDANCE.	All matters referred to SCC for action, with no further CCDC involvement	Use of existing budgets
D – POLICY RESCINDED. CCDC HAS NO FURTHER INVOLVEMENT IN OBSTRUCTION MATTERS AND DOES NOT PROACTIVELY PROVIDE ANY ADVICETO BUSINESSES ON THIS ISSUE.	All matters referred to SCC for action, with no further CCDC involvement	Nil

*estimated one off cost of designing, producing and printing leaflets (including officer time and materials)

Summary of Costs / Benefits of above Options

Option A

Benefits

- Businesses are made aware of SCC requirements and their own legal obligations;
- Businesses do not incur additional costs, other than insurance if required;
- CCDC assists businesses in complying with SCC conditions;
- No ongoing reputational damage risk to CCDC from policy implementation;
- Improve relationships with business

Costs / Risks

- Possible reputational damage if Policy rescinded?
- Cost to CCDC of producing leaflets;
- Local issues remain unresolved due to SCC lack of response;
- Perception that CCDC responsible if branding used
- Confusion amongst businesses / public as to which authority is responsible
- Use of obstructions would not be actively managed / regulated to the potential detriment of the visually impaired and those with mobility difficulties;
- Use of town centres for promotional and display purposes would be “unregulated” since these activities are not Street Trading.
- The visual appearance of retail centres would not be controlled;
- Safety and construction of A Boards and Café furniture would not be checked;
- No DBS checks for fairground ride operators;
- Businesses may not take out sufficient public liability insurance;
- Businesses may illegally deploy A Boards, displays and Café furniture;

Option B

Benefits

- Consistent standards in all town centres;
- A Boards and Street cafes are checked;
- Businesses legally able to safely use the highway;
- Public Liability Insurance in place;
- DBS checks for fairground ride operators;
- Equality and inclusion in access actively promoted;
- Cost neutral to the Council;
- Town Centre appearance can be managed;
- Use of town centres for promotions and sales is controlled;

Costs / Risks

- Costs not fully recovered;
- No current budgetary provision for costs
- Policy perceived by business as a “tax”;

- Potential for reputational damage to the Council;
- Enforcement of planning controls in this area has not previously been undertaken by CCDC, so costs and implications difficult to quantify.
- Conflict with business;
- A Boards and Pavement cafes not deployed so reduces vibrancy in town centres;

Option C

Benefits

- Businesses are made aware of SCC requirements and their own legal obligations;
- Businesses do not incur additional costs, other than insurance if required;
- CCDC assists businesses in complying with SCC conditions;
- No ongoing reputational damage risk to CCDC;
- Improve relationships with business
- Costs met from within existing budgets

Costs / Risks

- Possible reputational damage if Policy rescinded?
- Local issues remain unresolved due to SCC lack of response;
- Use of obstructions would not be actively managed / regulated to the potential detriment of the visually impaired and those with mobility difficulties;
- Use of town centres for promotional and display purposes would be “unregulated” since these activities are not Street Trading.
- The visual appearance of retail centres would not be controlled;
- Safety and construction of A Boards and Café furniture would not be checked;
- No DBS checks for fairground ride operators;
- Businesses may not take out sufficient public liability insurance;
- Businesses may illegally deploy A Boards, displays and Café furniture;

Option D

Benefits

- CCDC resources are used to focus on our core functions;
- Businesses incur no additional costs;
- No additional costs to CCDC;
- No risk of reputational damage from implementation of policy

Costs / Risks

- Possible reputational damage if Policy rescinded?
- Local issues remain unresolved due to SCC lack of response;
- Use of obstructions would not be actively managed / regulated to the potential detriment of the visually impaired and those with mobility difficulties;
- Use of town centres for promotional and display purposes would be “unregulated” since these activities are not Street Trading.

- The visual appearance of retail centres would not be controlled;
- Safety and construction of A Boards and Café furniture would not be checked prior to / during use;
- No DBS checks for fairground ride operators;
- Businesses do not receive advice or information on SCC policy and requirements;
- Businesses may not take out sufficient public liability insurance;
- Businesses may illegally deploy A Boards, displays and Café furniture.

Conclusion

The review of fees has resulted in what may be considered by business a fairer, and more reasonable, charge for A Board permits / pavement café licences. It is also feasible to apply controls District wide, to other local centres. However, without the support and assistance of the County Council, there is no mechanism to enable the District Council to recover its costs, or to enforce compliance with the Policy. Whether planning legislation could be used to effectively deal with such matters is questionable, since many of the items/obstructions are temporary in nature. Tackling these obstructions through compulsory removal using planning powers is also likely to generate further opposition from those who already oppose the Policy and could prove resource intensive, so costly.

Therefore, whilst it is desirable that some degree of control is exercised over the use of the highway, and any obstructions placed upon it, achieving this through a regulatory mechanism will continue to be challenging.

Recommendation

That, following consideration of this review, Members select an option from those set out on page 8 above, or a suggested alternative, to be taken forward.