



Agenda - Scrutiny Working Group (Review of Policy for Commercial Use of the Highway)

Time: 3:00pm

Date: Tuesday 21 August, 2018

Venue: Datteln Room

1. Apologies

2. Declarations of Interest from Members

To declare any personal, pecuniary or disclosable pecuniary interests in accordance with the Code of Conduct and any possible contraventions under Section 106 of the Local Government Finance Act 1992.

3. Notes of previous meeting

To approve the notes of the meeting held on 26 July, 2018 and agree any actions.

4. Review of Policy for Commercial Use of the Highway

- Briefing Note from Interim Head of Economic Prosperity (Enclosed - Item 4.1-4.2 – appendices to follow)
- To receive any information from Councillors and Officers
- To review the Scrutiny Template (Enclosed - Item 4.3)
- To determine the next stage of the review

To: Councillors:

Mrs. M. Davis
A. Dudson
P. Hewitt
M. Sutherland

By Invitation: Councillor Mrs. C. Martin – Health and Wellbeing Portfolio Leader

Officers:

P. Beckley Interim Head of Economic Development
D. Prosser-Davis Food, Safety and Licensing Manager
W. Rowe Senior Committee Officer

Date Despatched: 15 August, 2018

ITEM NO. 4.1

Briefing Note of:	Interim Head of Economic Prosperity
Contact Officer:	Paul Beckley
Telephone No:	4223

**PROMOTING PROSPERITY SCRUTINY COMMITTEE
WORKING GROUP TO REVIEW THE POLICY FOR COMMERCIAL USE OF THE
HIGHWAY
21 AUGUST 2018**

1 Purpose of Briefing Note

- 1.1 The purpose of this briefing note is to provide the details requested by Members of the Working Group at the meeting on 26 July 2018 together with additional information.

2 Key Issues

- 2.1 At the meeting of the Working group on 26 July 2018 Members discussed the current Policy for the Commercial Use of the Highway.
- 2.2 Members requested that additional information to be provided by Officers in order for them to be able to adequately review the Policy. This briefing note provides this information together with some additional information which may be useful to Members.

3 Detail

- 3.1 Information provided covers the following areas:
- Benchmarking of other Local Authority Commercial Obstructions Policies
 - Staffordshire County councils approach with regards to enforcement of the Policy (verbal update)
 - Planning Permission requirements for the areas covered in the Policy
 - Views of the Economic Development Team
 - Details of how the charges are established (paper will be circulated at the meeting)
 - Views of Charities and other groups in relation to persons with disabilities

- RNIB Briefing papers regarding street obstructions and A boards
- Views of the Licensing Team on the implantation of the Policy.
- MP letter regarding petition dated 7 August 2018
- Councillor Adamson response to MP letter dated 9 August 2018
- Hednesford Traders Surveys collected by Councillor Woodhead (previously circulated with the Notes of the 26 July 2018 meeting)

3.2 The information collected is contained in the Appendices in Section 5 of the briefing note.

4 Implications (if applicable)

None

5 Appendices

Appendix 1	Other Local Authority Approaches
Appendix 2	Planning Permission Requirements
Appendix 3	Economic Development Team Views
Appendix 4	Views of Charities and Other Groups
Appendix 5	RNIB Briefing Papers
Appendix 6	Licensing Team Views
Appendix 7	MP Letter
Appendix 8	Councillor Adamson Letter

Background Papers

None

Commercial Obstructions Policies for Commercial Use of Highway - Survey of Local Authorities

Local Authority	Policy in Place? Yes / No	£ fee	Planning Permission Req'd? Y/N £fee	£5M public liability Insurance required?	Other comments
Cannock Chase DC	Yes.	A Boards £85 for 3 year permit £85 for 1 table and 4 chairs; £170 for 2 tables and 8 chairs; £250.00 for 3-6 tables (12-24 seats) £500.00 for 7-10 tables (28-40 seats)	No	Yes	Allows flexibility and choice in how many tables and chairs to use; Reduces fees and admin as 3 year permit for A Boards
Tamworth BC	Yes.	Initial fee £25.00 first year; £50 thereafter for A Boards	Yes £95.00 initial fee for A Boards	Yes	
Lichfield DC	Yes voluntary code for A Boards; pavement cafes by planning permission	N/A for A Boards	Yes for pavement cafes. Fee £462 (as of 13.08.18)	Yes for A Boards	
East Staffs BC	No	N/A	N/A	N/A	Left to County Council
South Staffs DC	No	N/A	N/A	N/A	Left to County Council
Stafford BC	No	N/A	N/A	N/A	Left to County Council
Newcastle under Lyme BC	No	N/A	N/A	N/A	Left to County Council
Stoke on Trent City Council	Yes:	£150.00 for 1 table and 4 seats; additional tables / 4 seats £50.00 each ; renewal £150.00	No	Yes	
Walsall MBC	Yes:	£350.00 p.a. for upto 4 tables / 16 seats £400.00 upto 5-10 tables and 17-40 seats £450 for over 10 tables and 41 seats plus	No	Yes	

Local Authority	Policy in Place? Yes / No	£ fee	Planning Permission Req'd? Y/N £fee	£5M public liability Insurance required?	Other comments
Wolverhampton City Council	Yes:	£25 p.a. for A Boards and pavement cafes	Not known	Yes	
Leicester City Council	Yes:	Fee £273.00 initial and £181.00 renewal	Not known	Yes	
Warwickshire County Council	Yes cafes only :	Fee £100 p.a. for pavement cafes	No	Yes	Covers all Districts of Warwickshire
Nottinghamshire County Council	Yes voluntary code for A Boards. Pavement Café Licences issued	£268 for a 5 year licence	No	Yes	Covers all Districts of Nottinghamshire
Bromsgrove DC	Yes for pavement cafes	£200 initial application £55 per annum thereafter	Not known	Yes	
Worcester City Council	Yes for pavement cafes	£230 initial application £57 per annum thereafter	No	Yes	
Birmingham City Council	Yes for pavement cafes	£815 p.a. upto 5 tables More than 5 tables £1195 p.a.	No	£2M	

Commercial Use of the Highway - Planning Issues

There are three categories of commercial obstructions in the policy:

1. A Boards

Planning permission is required for A boards (Class 6 of the Town & Country Planning Control of Advertisements Regulations 2007), unless they are located on the forecourt of the business premises, non illuminated and less than 4.6 sq m area on each forecourt area. Forecourts include the enclosed area, or terrace in front of a business premises and does not include the area of pavement in front of a business premises.

2. Fairground rides/vehicles/promotion stands and gazebos

Class 3 of the Advert Regs gives consent for a wide variety of notices and signs which are usually displaced to publicise a forthcoming event, or to advertise a short-term use of the advertisement site. Class 3 is divided up into 6 categories A, B, C, D, E & F – each with its own provisions for deemed consent. It is therefore advised to check each proposal with the planning department to check whether planning permission would be required for the associated signs and structures.

Specifically, planning permission is not required for temporary notices or signs announcing the visit of a travelling Circus or Fair (Class 3F of the 2007 Regs), provided that they are not displayed more than 14 days before the opening of a circus/fair and must be removed within 7 days after. The local planning authority must be told 14 days beforehand of the sites of the notice. The notice or sign must not exceed 0.6 sqm and:

- Not have any letters or features over 0.75 m in height or 0.3m in any Area of Special Control.
- Have the highest part of the advert at more than 4.6m above ground level, or 3.6m in any Area of Special Control.
- Not be illuminated.

If a Class 3 advert relates to a sale or event, it must not be displayed more than 28 days before the sale or event begins and must be removed within 14 days after it ends.

Gazebos are usually temporary structures if used in association with temporary events would not require planning permission.

3. Pavement cafes

Consent from the Highways Department would be required for any proposal affecting the public highway and pavements.

Planning permission may also be required for change of use of either the premises to A3 (café use) and/or the pavement area from highway to outside café area.

This Note considers any implications in relation to Planning Permission for all three categories.

For each category is planning permission required?

Do any of the following locations for the obstruction affect this?

- *Public highway/pavement*
- Highways consent would be required to ensure the structure causes no detriment to highway and pedestrian safety. Planning permission may also be required to change the use of the pavement.
- *Private land*
- Planning permission required if the advert/structure does not fall within deemed consent of the Advert Regs, or permitted development requirements of the General Permitted Development Order.
- *Other public land/open space*
- Planning permission required if the structure does not fall within deemed consent of the Advert Regs, or permitted development requirements of the General Permitted Development Order

If planning permission is required and not submitted what enforcement powers are available to the Council.

Enforcement action can be taken to remove the offending advertisements/structures under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

If planning permission is required and in the future applications are submitted or there are enforcement requirements are there any resource implications?

Cannock is limited in resources to one enforcement officer for the Council district, so enforcement action is likely to be prioritised and taken for the cases causing the most issues in terms of harm, safety, level of complaints etc.

If planning permission is required what fees are payable?

Adverts directing members of the public to business premises - £132

Adverts displayed on business premises/forecourts/or land within curtilage of business premises - £132.00

All other advertisements £462

Change of use planning application £462

Do signs hung from shops/pubs require planning permission?

Class 5 of the Advert Regs allows deemed consent for hanging signs on shops and pubs, provided they refer to the business activity at the premises and:

- Do not have any letters or symbols above 0.75 m in height, or 0.3m in any Area of Special Control.
- Are not above 4.6m above ground level or 3.6m in any Area of Special Control of Advertisements.
- Do not have its highest part above the level of the bottom of the first floor window in the wall where the advert is
- Not illuminated.
- Additionally if the premises is a shop, an advertisement may be displayed only on an external wall which has a shop window in it.

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ECONOMIC DEVELOPMENT SERVICE (Internal views) – ‘A’ Board Policy (Policy for Commercial Use of Highway)

As at the 16th August 2018

- As per the Councils’ policy an ‘A’ board consent costs £85 over 36 months; £2.36 per month. When you compare this to advertising costs eg in a local paper or magazine then the cost is extremely low. Advertising in the local press for a quarter page advert averages £250 per article.
- A total ban of ‘A’ boards could be put in place but this may have an adverse affect on the businesses in the Town that rely on this sort of ‘passing trade’. If ‘A’ boards are banned the policy would need to be enforced and resourced by the Council properly. (this could be costly).
- There appears to be a lack of detail in the policy that would assist with enforcing the uniformity and standardisation of all ‘A’ boards.
- If no fee was introduced by the Council for the use of ‘A’ Boards then the importance of setting standards of uniformity and curtilage i.e distance from business premises becomes very important. Boards would have to be removed and a fine to retrieve the sign back imposed on a business would need to be applied as breaching the policy/standards. It is important that all ‘A’ boards are in good repair to avoid an ‘unkempt’ feel to Town Centres.
- Health and Safety to members of the public is important especially for accessibility by all members of the community e.g. Disabled people, blind, elderly, wheelchairs and pushchairs. Some ‘A’ boards are randomly placed away from the business premises causing obstructions and problems to manoeuvre around for visitors. Entrances to indoor market areas or shops in courtyard/enclosed areas can also become very difficult , especially in a confined space – this supports the need for a ban in the prime ,core shopping area.
- There should be a direct relationship between the ‘A’ board and the business it is advertising premises. In the case of the indoor market, maybe introduce an external wall mounted sign board that allows every trader to promote their business that is visible to visitors and shoppers when entering the market and does not clutter or make the area difficult to navigate.
- Zoning based on periphery and core areas with fees scaled to match this would be better.
- The income from the ‘A’ boards is not considered to be a massive income generator for the Council. Maybe insufficient to cover enforcement costs, if serious about having the policy must be adequately enforced/ policed – does the Council have the resources to do this ?
- Anecdotally, some businesses/traders have reported reduced footfall since the ‘A’ board policy has been introduced but the scheme has not been running long enough to be properly evaluated in our opinion and no enquiries have been made on the policy to Economic Development to date for or against its introduction.
- GBSLEP have a Town Centre local framework which advocates the importance of the uninterrupted flow of an area for pedestrians and the strategy advocates decluttering of existing Town Centres i.e. banning such ‘A’ Boards.
- Businesses need to make sure their Third Party Public Liability Insurance is covered up to £5m. This is an additional expense for traders/businesses to have this level of cover. It is unrealistic to expect, particularly small traders/businesses, to have public liability cover of

£5m (Council recently increased their advice to officers to up this to £10m which if applied to this policy would further exacerbate the situation). Anecdotal evidence suggests a premium increase of £200 plus for businesses to increase cover from £2m to £5m.

Overall, charges in the Councils 'A' Board policy are extremely low when compared to other authorities, see below.

Comparisons - Councils who have banned the use of 'A' boards

- Cannock Shopping Centre
- Bradford and Ilkley - A 12 month trial to Ban 'A' boards was held and at the end of 12 months did not see any deterioration in business or indeed any business closing or being shutdown. The Council have now put in force a total ban on all 'A' boards.
- Edinburgh
- York (Complete ban with a prohibition zone)

Councils who do not charge a fee but have a policy permitting 'A' Boards

- Lichfield
- Derby Council (Any 'A' board has to be sensibly placed)
- Bristol
- Worcester
- Monmouthshire – After pressure from Businesses the Council have reversed their decision to ban the 'A' boards (July 2018). These are now permitted with no fees

Councils who charge for 'A' boards under their policy

- Tamworth – Initial fee £95 plus £25 admin fee in the first year then £50 p.a.
- Reading - £60 for the first year, then £50 pa
- Solihull - £181 pa (£100 if paid within the month of May)
- Cheshire £250 then £75 p.a.

The above suggests our policy is very competitive in comparison with others and favourably priced for a single 'A' board consent.

OVERALL SUMMARY

The importance of 'A' boards is largely attributable only to very small businesses/traders unable to pay for large advertising/promotional campaigns.

Arguably the Council policy is more beneficial **to those** businesses in peripheral (out of core area) locations and maybe zoning should be considered with fees commensurate with their location and size.

Social media and other ways to promote a business are arguably readily available now and free of charge. If the policy is deemed cost prohibitive to pay for the necessary consent then businesses do have alternative means of promoting their business.

Economic Development would advocate any prime location business should not be permitted to display 'A' boards (ban entirely from core town centre) whilst smaller, out of view traders, maybe on a zoning scale relevant to the size of their business and location, should be allowed to display boards. Amendments to the policy should be considered especially to control uniformity of permitted boards.'

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Appendix 4**Consultation with Charities and Disability Groups**

A total of 23 groups have been consulted. These are as listed below and the email sent to each organisation is also included. A copy of the Commercial Use of the Highway Policy was also included.

Organisations

Action for blind people Staffordshire
Action on Hearing Loss (Gill Wyatt, local contact)
Assist
Beacon (sight loss)
Birmingham Institute for Deaf
British Deaf Association
Cerebral Palsy Mid Staffs
dDeaflinks
Deafvibe
Disabled Living Foundation
Disability Rights UK
Epilepsy Action (Cannock Coffee and chat)
Epilepsy Society
Freedom Support Ltd
Headway South Staffordshire
Learning Disability Cannock
Mid Staffs Mind
MS group (Cannock)
Phab (Rugeley)
RNIB
Scope
South Staffs Network for Mental Health
Stroke Association

Email

In April 2018 Cannock Chase Council introduced a policy to licence the Commercial Use of the Highway. A copy is attached. It covers:

- A Boards
- Pavement Cafes
- Gazebos, fair rides, advertising stands

Businesses erecting these on the public highway in our town centres are now required to apply for a licence and as part of this the licence stipulates suitable location zones and maximum sizes for the obstructions.

At the time of introduction a commitment was made to undertake a review of the policy. This is now underway. As part of this it would be very useful to gain the views of your organisation.

I would therefore be grateful if you could forward to me any policy documents your organisation has relating to this matter and to let me have your organisations views on how these obstructions can affect persons with disabilities use of shopping areas. If you feel there is no impact then your confirmation of this would also be very useful.

Your assistance in this would be very welcome. A reply by 17 August 2018 would be appreciated.

Responses

Disability Rights UK

Phone call. No specific comments and they do not have a policy as other organisations have these. Specific reference was made to RNIB. (see Appendix 5)

Assist

The following comments are from Mike Tyler, Lead Interpreter for ASSIST and Jayne Rogers, Multi-Sensory Advisor. Their comments are below and if there is anything that is unclear do please let us know and we will ask them to clarify.

Consideration needs to be given to providing this in accessible formats:

"... make information about the Policy and the standards widely available to the public and business within the District." p.3

Illustrative examples would be helpful:

"Consideration must always be given to the requirements of the Equality Act 2010 and any associated codes of practice. There is an obligation to regulate features placed on the highway to minimise risk and to ensure that there are no severe hazards particularly for vulnerable people. This includes the visually impaired, those with mobility problems as well as the elderly and the young." p.9, 14

This needs strengthening. Surely it should say "never be given"?

"Approval will not normally be given for tables and chairs close to points where people queue or congregate, e.g. close to junctions, traffic signals or over tactile paving, bus stops, cash points or where other essential street furniture restricts the pavement width." p.14

NB: p. 15 re. "colour of furniture" - could consideration be given to contrasting colours for visual impaired people or is this superseded by requirements for colour to fit local surroundings?

p.3

Traders should be aware that some town centres are pedestrianised and that vehicle movement must therefore be kept to an "absolute minimum".

It's not clear what this means in practice and for people with sight loss it has a potential impact on safety and in feeling confident about travel. With the use of electric vehicles there is also a safety factor and this should be recognised. Many people with sight loss are unidentifiable – they look physically the same and many do not carry a cane and it possible that in looking towards a car (which they might not have seen) the driver will assume they have seen them/understand hand signals to indicate that they should cross/wait etc.

p.5

Commercial obstructions which form part of fetes, festivals, carnivals or street markets which are managed by recognised organisations and take place in town centres, will not normally require authorisation from the Council's Licensing Unit.

It would help if organisers were to be given information about how to make areas safe/as accessible as possible for people with sight loss.

p.6

The A-boards must not cause a nuisance or hazard to persons using the highway or any adjacent land or premises.

and

The 'A' board or display shall not encroach onto the highway by more than 0.7 metres from the façade of the premises;

And

The location of the A-board must be within the limits of the frontage of the premises and must be positioned so as to be touching and perpendicular to the frontage of the building.

I suggest including the following to reflect the problems that positioning a board incorrectly can cause for someone with sight loss. Perhaps "for people with sight loss it is important that boards be situated as described so that they can mobilise safely"

p.8

Fairground rides/vehicles/promotion stands and gazebos etc ... "

Fairground rides, vehicles, promotion stands and gazebos etc. (including tables and display stands etc. placed outside commercial premises) must not be deployed on the highway without prior permission of the Council and will only be permitted if an adequate, clearly defined* pedestrian space is available.

Such items may only occupy a specifically identified area so as to ensure a free and unobstructed route for emergency service vehicles and delivery access.

It's not obvious what "clearly defined" means. For people with any degree of sight loss, any change in a route is difficult, if not impossible, without sighted support. I would include people with sight loss by stating something like "... will only be permitted if an adequate, clearly defined pedestrian space is available, **taking into account the needs of people with sight loss**".

p.9 The application process

I would include a further point that they recognise the need to ensure that people with sight loss are not disadvantaged by Or words to that effect.

It would be helpful to add in some information about how adherence supports those with sensory loss. It would also be helpful to include some contacts (RNIB for vision loss, Action on Hearing Loss for hearing loss/Deafness) for any queries traders may have which would then make them responsible for informing themselves as to good practice for sensory loss.

p.14 Design of the pavement café "There is an obligation to regulate features placed on the highway to minimise risk and to ensure that there are no **severe hazards** particularly for vulnerable people"

this implies that hazards are acceptable as long as they're not severe? For sight loss what might appear a small factor can cause significant problems.

p.15 Approval will **not normally** be given for tables and chairs close to points where people queue or congregate, e.g. close to junctions, traffic signals or over tactile paving, bus stops, cash points or where other essential street furniture restricts the pavement width.

I am concerned at the wording and recommend that it should be "will not be given...." Tactile paving exists for people with sight loss and allows them to know what sort it is depending on how far it extends onto the path etc so that they can orientate themselves and know how to position themselves relative to crossings etc. Any of the above examples in the policy will impact on someone with sight loss, pushing them off track so that they miss landmarks needed for orientation at best, into the road in order to get around groups at worst. This is particularly relevant for long cane users who rely on tactile landmarks to know where they are on route. Any of the above examples has the potential to push someone off course with a risk to safety and in getting lost.

p.16 - Boundaries

All activities associated with the café must be contained within the agreed boundary, including all tables, chairs, parasols, space heaters, planters, barriers, etc.

I'm not sure if this means that the full open width of an umbrella/parasol would need to be completely within the boundary? If not, I would recommend that it should be at a height that will not be a risk to someone with sight loss as they won't be able to see it to avoid it.

Appendix 5

Advertising boards (A-boards) – Quick Wins for Local Authorities

How local authorities can work with blind and partially sighted people to build a better future

Based on [RNIB's Quick wins and missed opportunities report](#), June 2012.

Advertising boards or A-boards

A-boards are used by businesses and other organisations to position advertising messages at pavement level. Typically a simple stand-alone board on a heavy 'A' shape frame, they are placed across the pavement and in the way of people, in order to attract their attention.

So what's the problem?

A-boards by their very nature obstruct pedestrians from being able to move in a straight line along the pavement. They present a trip hazard, especially to people who cannot see them and who use mobility aids. Tripping over or colliding with an A-board increases the risk of injury. They may also force people to step into the road in order to pass them, and this places blind and partially sighted people at greater risk from on-coming traffic.

Furthermore, wherever the available space for pedestrians narrows, flow is restricted and this causes congestion around the obstruction. It is harder to use mobility aids in congested areas because the presence of A-boards and people in the way reduces the visibility of white canes.

All pavement clutter has adverse effects on blind and partially sighted people because it makes getting around harder. The more difficult it is to get around, the less freedom and opportunity people have to participate in their local community.

Consequently, RNIB supports a complete ban on the use of A-boards and does not believe they should be placed across pavements in any circumstances. Ensuring all the available space on the pavement is

available for pedestrians to use for walking will benefit everyone, but especially people for whom obstructions are a specific accessibility barrier. The evidence from local authorities who have banned the use of A-boards suggests no adverse economic impact on traders. We believe a complete ban is fairer too because it places all traders on the same footing, regardless of the width of pavement outside their premises.

A-boards and the law

Highways Act 1980

Section 130 (1) of the Highways Act 1980 imposes a duty on the Highways to assert and protect the rights of the public to use and enjoy the highway. This general duty is reinforced by s.130 (3) which states that the highway authority have a duty to prevent, as far as possible, the obstruction of the highway.

Not every obstruction of the highway will be unlawful, some obstructions such as vehicles unloading or erected scaffolding may be considered a reasonable use of the highway.

RNIB believes that obstructions to the highway caused by A-boards are not a reasonable use of the highway.

Equality Act 2010

Under the provisions of the Equality Act 2010, it is unlawful for service providers and those exercising public functions, including highways functions, to discriminate against disabled people. This includes a duty not to indirectly discriminate and to make reasonable adjustments where existing arrangements place a disabled person at a substantial disadvantage.

In RNIB's view a failure by a Highways Authority to exercise its duties under the Highways Act to prevent obstructions to the highway, places blind and partially sighted people at a particular (substantial) disadvantage, and therefore is a breach of the Equality Act.

As the duties under the Highways Act are statutory duties, we consider that it is reasonable and proportionate for a local authority to exercise their duties under the Act.

Quick Wins for Local Authorities

Local authorities should embed accessibility into everything they do; this includes ensuring pavements are not obstructed by A-boards.

Local authorities should:

- Understand the impacts that A-boards have on the navigability of streets by proactively engaging, consulting and gathering feedback from local blind and partially sighted people who use the streets.
- Build partnerships with, listen and involve blind and partially sighted people in addressing the problems that A-boards cause. Councils have local assets such as societies of blind and partially sighted people, who may be very effective 'go to people' for reaching those who live in the local area.
- Recognise their duty under the Highways Act 1980 and the Equality Act 2010 by ensuring a clear policy is in place on the use of A-boards.
- Produce clear guidance for local business to help them act responsibly when using A-boards and raise awareness of this guidance across all target audiences.
- Enforce their policy on A-boards.

Local authority good practice

A number of local authorities have introduced policies that make it an offense to undertake activities that affect the legitimate use of the public highway.

Hull City Council

Hull City Council has a complete ban on the use of A-boards. Offenders are notified with the possibility of either enforcement and / or legal action being taken.

http://www.hullcc.gov.uk/portal/page?_pageid=221,72971&_dad=portal&_schema=PORTAL

East Riding of Yorkshire Council

Recognises its duty under the Highways Act and have a complete ban on advertising boards.

<http://www2.eastriding.gov.uk/environment/roads-street-traffic-and-parking>

For more information contact your local RNIB campaigns team

RNIB have Regional Campaign Officers all over England (and campaigns teams in Wales and Scotland).

Telephone the RNIB Campaigns Team on 020 7391 2123

Email: campaigns@rnib.org.uk

Appendix 5

Who put that there!

The barriers to blind and partially sighted people getting out and about

Advertising boards (A boards)

Advertising boards are in general use across the country. They physically obstruct the pavement and prevent pedestrians from being able to use the entire pavement. They present a trip hazard, especially to people who cannot see them and who use mobility aids.

RNIB research showed that almost half of all blind and partially sighted people had collided with an advertisement board in the last three months [1].

The temporary and mobile nature of these boards means that blind and partially sighted people cannot learn where they are, so struggle to avoid walking into them. We know that collisions with advertising boards often result in injuries such as cuts and grazes. The “homemade” nature of some of the boards and their height make them particularly likely to injure pedestrians.

- Bob’s experience - “I could show you the bottom of my legs. I have fair amount of bruising, cuts, old scars from walking into them. One day, somebody had knocked down a metal a-board and it was lying on the floor with its legs poking into the air. I walked straight into the upturned leg, which was very painful.”

The Law

There is a significant amount of legislation, regulations and guidance which are relevant to blind and partially sighted people’s access to the street environment.

Keeping the streets clear

Under the Highways Act 1980 it is the duty of the highway authority to assert and protect the rights of the public to use and enjoy the highway (the term 'highway' in this instance meaning pavements). They also have a duty to prevent obstruction to the highway (again this means keeping streets clear!).

It is a criminal offence under the Highways Act (and the Town and Police Clauses Act) to wilfully obstruct free passage along the highway and to deposit anything on the highway which causes an interruption to, or obstruction of, the highway.

So streets should be kept clear of obstacles and clutter, enabling people to walk along them without any problems.

Inclusive Mobility

The Department of Transport have published "Inclusive Mobility - A Guide to Best Practice on Access to the Pedestrian and Transport Infrastructure". The aim of this guidance was to provide advice on best practice to assist professionals working in this field and enable them to meet their responsibilities under the Disability Discrimination Act 1995 (DDA) (now the Equality Act - see above). There is much in it for Highways Authorities to note. For example:

"Apart from roadworks and scaffolding, there are many other, sometimes temporary, obstructions that can cause problems for disabled people, particularly those with visual impairments. **A-frame advertisement boards placed outside shops**, ladders, overhanging tree branches, **dustbins, vehicles and bicycles parked on pavements** are all potential hazards.

Wherever feasible, obstructions of this kind **should be kept to a minimum** and should not encroach on the clear space (horizontal and vertical) needed to provide safe passage for pedestrians [**emphasis added**]."

Under the Equality Act Public Sector Equality Duty (PSED), public authorities, including highways authorities are also required to have due regard to the need to eliminate discrimination under the Equality Act and to achieve equality of opportunity between disabled and non disabled people. This means anyone responsible for looking after the street environment has a responsibility to eliminate and tackle problems that

make a highway inaccessible for disabled people. It is simply not an option to leave things as they are.

Planning

Under Town and Country Planning (Control of Advertisements) (England) Regulations, it is an offence to display an outdoor advertisement without the consent of the local planning authority. There are a number of categories of deemed consent but advertisement boards do not appear to fall under any of these. In order for consent to be granted, the advert would also need the explicit consent of the highway authority. Case law states that a board is placed without planning consent is unlikely to be a reasonable use of the highway, ie it will amount to an unlawful obstruction.

What we think should happen

Local authorities should explore the following options, with blind and partially sighted people:

- Local authorities should review their policy in relation to advertising boards and introduce zero tolerance. A postcode lottery approach to policy and decision making by those who have an impact on the design and enforcement of the street environment is having a negative impact on blind and partially sighted people. Local authority staff, residents and businesses would all benefit from more clarity, and policy statements would help inform decision making at a local level. It would also help to address some of the inequality due to local authorities taking differing approaches to some of the most common problems.
- Work with local blind and partially sighted people to monitor and mitigate the impact of any temporary obstructions that appear on the highway.
- Work with local business owners to make them realise how advertising-boards cause real difficulties for blind and partially sighted people and to consider alternative forms of advertising.

Best Practice

The following authorities have zero tolerance on the use of advertisement boards. Offenders are notified with the possibility of either enforcement and / or legal action being taken.

- Hull City Council
- Leeds City Council
- North Lincolnshire Council

For more information contact

Please visit www.rnib.org.uk/onmystreet for access to more information and resources.

RNIB have Regional Campaign Officers all over England (and campaigns teams in Northern Ireland, Scotland and Wales).

Tel: 020 7391 2123

Email: campaigns@rnib.org.uk

Twitter: www.twitter.com/RNIB_campaigns

References

[1] Who put that there! – RNIB Campaign Report, February 2015

[End]

Licensing Team

Commercial use of the Highway

Since the Commercial use of the Highway Policy was approved by Council in October 2017, the Licensing Unit have actively sought to advise the town centre traders of the introduction of the said Policy and to inform them of its requirements as it relates to them. Letters were hand delivered to all town centre premises in all 3 towns in November 2017. We again wrote to all town centre premises in January 2018 and informed them that application forms and other policy information would shortly be available to them online. Once again the letter was hand delivered to all traders in all 3 town centres.

In April 2018, following formal introduction of the Policy officers from the Council's Licensing Unit carried out more targeted compliance visits to town centre premises which were seen to be deploying commercial obstructions without authorisation. It was noted at that point that a number of premises had chosen to remove their A-Boards or pavement cafés rather than make application to the Council.

All visits were recorded on an excel spreadsheet and marked with officers comments about their visits. These visits resulted in a number of applications being made to the Council and further compliance with policy by means of voluntary removal by traders of commercial obstructions.

In more recent weeks, licensing officers have, as agreed, visited both Cannock and Rugeley. The intention was to visit all premises which deploy a pavement café or large trade display without an appropriate permit and encourage them to comply with the requirements of Council Policy.

They are able to do so by either removing the tables and chairs (or other commercial obstruction) from the highway or making application to the Council to permit the lawful deployment of the tables and chairs or trade display on the highway.

During these visits (to Cannock on Wednesday 1st August and Rugeley on Thursday 2 August 2018.), it was apparent that there were quite a lot of people in town centres and they had a nice feel to them. Some of the cafés were doing a good business. Others were quieter.

As ever, we were very polite and professional as you would expect of your officers. There was very little hard line refusal to engage with us although there was some. Others were very receptive to our visit/conversation as they were unaware of the rationale behind the policy. Many listened carefully to us explaining how simple it is for many of them to actually comply with the policy.

Although every letter we have previously hand delivered to them invited them to contact us and discuss how the policy will affect them personally, nobody has actually done so. It has fallen to us to be proactive in asking them how they now wish to proceed.

Interestingly, many of those who were somewhat resistant have already ensured some significant compliance with the policy in so far as they have already ensured that any commercial obstruction is already placed adjacent to the exterior wall of their premises and is of reasonable quality.

We have served number of 28 day removal requests on several premises and advised them that this gives them an additional 28 days to make a decision on how they intend to proceed. Nine 28 day removal requests were served in Rugeley; 6 pavement cafes and 3 large trade displays.

Costa has subsequently made application to us for a pavement café licence. Five 28 day removal requests were served in Cannock; 4 pavement cafes and 1 large trade display.

The reaction of the trade has been mixed but generally accepting of the fact that now the policy is part introduced, we are being challenged by those who have complied, to ensure a level playing field for all. This number of applications we receive increases on a weekly basis and this becomes more important as time moves on.

Those that asked, have been advised that the review is taking currently place but that it was always planned to do so. They were also told that we have been asked to carry on in the meantime.

Very many traders were confused and a little distressed because others, including a trade association in Rugeley and the local MP are apparently advising them not to make application.

This is very disappointing and I have advised them that the choice is theirs alone but that we are now asking them to decide on their intended course of action and have 28 days in which to make their decision. Several said that they will make application.

Generally, I think the town centres are looking very pleasing and are safer environments in which people might be encouraged to linger a little longer and have a coffee or a café meal in the sunshine.

We have achieved a great deal of compliance, albeit this has been partially achieved by traders removing obstructions from the highway rather an paying to obtain a permit. This is something we assumed would happen as we prepared the draft policy and fee structure. It has come as no great surprise.

I also have attached of number of “before and after” photos which show the significant compliance I speak of.

Sean O’Meara
Senior Licensing Officer
15 August 2018

Good Recent Compliance





Good Pavement Café



Poor Deployment Pre Compliance Visits





HOUSE OF COMMONS

LONDON SW1A 0AA

Cllr George Adamson
Leader of the Council
Cannock Chase District Council
Civic Centre
Beecroft Road
Cannock
Staffordshire
WS11 1BG

Ref: EW/CW/201808/28
7 August 2018

Dear Cllr Adamson,

Please find enclosed a petition against the A-boards and street furniture charges introduced by Cannock Chase District Council. The petition is made up of over 1,800 signatures collected via an online petition and over 2,500 signatures collected via leaflets.

The petition states that the signatories believe the policy is a direct tax on local small businesses in Cannock Chase and is in danger of further undermining our town centres. These charges are anti-small business and are driving independent businesses away from our town centres at a time when they should be supported.

We call on the Labour-led District Council to abolish these charges.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Amanda Milling'.

Amanda Milling MP

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9th August 2018

Amanda Milling MP
11a Market Street
Hednesford
Staffordshire
WS12 1AY

Appendix 8

Dear Amanda

Thank you for your letter and petition opposing the implementation of the Council's policy for Commercial Use of the Highway and requesting that the Labour led Council abolish charges for the use of A Boards and other furniture on the public highway relating to commercial use.

Before I address the petition, it is important that I set out some of the key facts on this issue as they appear to be getting lost in the debate.

1. Consultation

Cannock Chase Council has not suddenly and without consultation or reason introduced this policy. A full public consultation took place from 13th February to 26th March 2017. The policy was sent to over 100 separate organisations and groups including the Chamber of Commerce and all three Traders Associations. Every business in each of the town centres received a hand delivered letter on the proposed policy.

2. Responses to the Consultation



A total of 23 responses to the consultation were received. Concern was raised by 13 traders about the fee levels, as did the response from Rugeley Traders and Hednesford Traders. A local resident wrote in support of the policy and there were also submissions from Staffordshire Fire and Rescue Service and Staffordshire County Council and Chase Tenants and Residents Association on specific issues. The Chamber of Commerce did not make any submission or comment into the public consultation process. All of this consultation was considered by the cross party Licensing and Public Protection Committee on 28th June 2017 and the conclusions of the Committee were incorporated into the policy.

3. Council approval

The policy was considered at the full Council meeting on 18th October 2017. In the debate, the Leader of the Conservative Group proposed an amendment to the recommendations that:

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 Search for 'Cannock Chase Life'  @CannockChaseDC

“Implementation be deferred for three months to:

- *Allow the policy to be rewritten to include the whole District and not just Cannock, Hednesford and Rugeley town centres.*
- *Restructure the charging schedule to a flat fee, rather than unit cost basis.”*

The amendment was not supported. I did not support it because the majority of issues relating to highways obstruction occur in the three main town centres and a flat fee would have disadvantaged businesses who only wanted one A Board licence.

The policy was approved and it was also agreed that a review of the policy would be carried out 12 months after initial implementation.

4. Rationale for Policy

There has been increasing use of the public highway for commercial advertising, promotion and street cafes and in some instances; this has got out of hand with multiple obstacles in some parts of our town centres. In particular, these are hazardous and can cause injury and problems to blind and partially sighted people as well as those with certain physical disabilities. It is an offence under the Highways Act 1980 to obstruct free passage along a Highway and Councils have been granted legal powers to deal with this issue. The other key issue is that whilst most businesses seek to be responsible in their use of the public Highway, a small number are not and this also drives the need to regulate this issue. Staffordshire County Council provides the policy framework to allow District Councils to regulate and control commercial obstructions on the Highway and the Council’s policy is consistent with the overarching one for Staffordshire. In introducing the policy Council has ensured that businesses are able to benefit from legal use of the Highway whilst also ensuring the safety of other Highway users. The policy ensures A Boards and pavement cafes are properly constructed, including tapping rails on A Boards, allow clearance for pedestrians, are legally placed and covered by appropriate insurance. I attach a briefing note from the Royal National Institute of Blind People (RNIB) that explains in clear detail how this affects groups in the community. The Council has a duty under the Equality Act 2010 to take reasonable steps to enable disabled people to avoid disadvantages caused by physical features.

5. Government Policy

As you will no doubt be aware, the Government published the Inclusive Transport Strategy: achieving equal access for disabled people (Department for Transport, updated 7th August 2018), sponsored by Nusrat Ghani, Parliamentary Under Secretary of State for Transport.

(<https://www.gov.uk/government/publications/inclusive-transport-strategy>)

Amongst many policy commitments, this strategy identifies the responsibilities that all local authorities have to ensure that any pedestrian environment is inclusive and meets the needs of the Equality Act 2010. One of the recurring themes which the Government received from the public consultation on the draft Accessibility Action Plan was the better provision of reliable accessible infrastructure ranging from less cluttered pavements to more Access for All rail infrastructure. As you are aware, the Equality Act requires local authorities to be proactive rather than wait for complaints.

The Council believes that its policy for the Commercial Use of the Highway is entirely consistent with the Government's Inclusive Transport Strategy. If you wish to invite a review of our current policy by the Department of Transport, we would be more than willing to cooperate. If the Council does not regulate the town centres in the way that it does then the rights of certain vulnerable people in the community are ignored.

6. Rationale for charging businesses

District Councils are permitted in legislation to recover from businesses reasonable costs in exercising this function. As you are aware, the Government grant for the District Council disappears entirely in 2019-20 and so all activities of the Council need to be financially self sufficient. In that regard we are no different to any business in the District.

The principle on this and any other licensing matter is that the business that derives benefit from the use of the licence should pay the relevant costs and that Council Tax payers in the District should not subsidise. The fees set allow the Council only to recover its administration and compliance costs and are not geared to generate additional income

The Council has also minimised the charges that it levies so:

- a. A single A Board is £85 for 3 years - this is a cost of 54p per week to promote the business in a lawful way.
- b. A single table and 4 chairs for a café is £85 per annum - this is a cost of £1.64 per week to be able to accommodate an additional 4 customer on publicly owned land in a lawful way.
- c. A single gazebo or ride is £25 per day.

I was surprised to note that the Conservative Deputy Leader of Tamworth Borough Council, Councillor Rob Pritchard has signed the petition to abolish charges in Cannock Chase. Tamworth Borough Council levies charges that are substantially in excess of those applied by this Council. By way of example, an A Board requires planning approval in Tamworth and the costs are as follows:

- £95 one off charge for planning;
- £25 one off admin fee;

- £50 annual charge (ongoing).

Therefore, businesses in Tamworth pay £120 for an A Board in year 1 and £50 per annum there after, so a total over 3 years of £220 compared to a charge in Cannock Chase of just £85 for the same period. Some residents of the District might consider that there is some hypocrisy at play here.

7. Petition

The Council committed to a review of the policy in October 2017 after a 12 month period of implementation. That Review is being undertaken by the Economic Prosperity Scrutiny Committee which is cross party. I will ensure the Committee receive details of your letter, the petition and any other submissions on this matter. The Scrutiny Committee will in due course make recommendations to Cabinet who will consider these. Please be advised that the current policy is in force and will continue to be acted upon by Council Officers in the meantime. I am sure the Scrutiny Committee will be engaging with all relevant stakeholders and listen to all parts of the community in considering whether or not any further policy charges are required in the future.

Finally, as there has been media interest on this issue, I am publishing my letter in the public domain to be considered as part of the public debate on this matter.

Yours sincerely



Councillor George Adamson
Leader of the Council

cc. All Cannock Chase District Councillors

Enc:

- RNIB Briefing: Who put that there! The barriers to blind and partially sighted people getting out and about.
- Tamworth Borough Council - Guidance notes for applicants: A Board Displays.