

Notes on Options for Commercial Use of the Highway

Summary

The Commercial Use of the Highway policy was introduced to:

- Benefit the local economy by allowing businesses to use the highway for advertising, promotion and sales;
- Add interest, vitality, colour and life to our town centres;
- Promote equality and protect public safety, particularly amongst those with mobility difficulties or the visually impaired;
- Ensure fairground ride operators were DBS checked;
- Ensure safe, unhindered access for emergency services;
- Implement risk-based proportionate controls and treat all businesses equitably;
- Ensure non compliant businesses do not gain unfair competitive advantage.
- In line with the Equality Act 2010, to take reasonable measures to allow disabled people not to be disadvantaged by physical features;

Options A to E in Table 1 below illustrate a number of approaches open to the District Council to control use / obstruction of the Highway. There are of course other possible options, for example, the Council could adopt a pavement café policy only, like Shropshire Council, and exclude A Boards, or could examine whether to require planning permission for A Boards and Pavement Cafés.

A key point is that Staffordshire County Council, as the statutory Highways Authority, decides whether and to what extent to resource enforcement of commercial highways issues and the District has little influence in this.

Table 1 - Commercial Use of the Highway – summary of available options

OPTION	SUMMARY OF KEY FEATURES							
	WHERE POLICY APPLIES	£5M PUBLIC LIABILITY INSURANCE REQUIRED (Note 4)	LIMIT ON ONE PROPERLY CONSTRUCTED A BOARD, WITH TAPPING RAIL, PER BUSINESS. 2M CLEARANCE TO ROAD	PAVEMENT CAFES WITH CLEARLY DEFINED SEATING AREA, SAFE FURNITURE, PARASOLS, HEATERS ETC.	DBS CHECK FOR OPERATIVES OF CHILDRENS' FAIRGROUND RIDES (Note 5)	SANCTION IF NO LICENCE IN PLACE? (e.g if licence not issued due to non payment of fee or no insurance) (Note 6)	SANCTION FOR ITEMS CONSIDERED DANGEROUS (Note 7)	ESTIMATED TOTAL COSTS TO CCDC OVER 3 YEARS 2018-2021 INC (Notes 1 and 8)
A – PRESENT POLICY – FEES COVER ADMINISTRATION & COMPLIANCE COSTS (Note 1)	TOWN CENTRES	YES	YES	YES	YES	NO	YES (CCDC directly involved)	NIL (full cost recovery)
	DISTRICT WIDE	YES	YES	YES	YES	NO	YES (CCDC directly involved)	NIL (full cost recovery)
B -PRESENT POLICY CONDITIONS USED BUT NO FEES AND CCDC ABSORBS COSTS (Note 2)	TOWN CENTRES	YES	YES	YES	YES	NO	YES (CCDC directly involved)	£23,920
	DISTRICT WIDE	YES	YES	YES	YES	NO	YES (CCDC directly involved)	£33,280
C - GIVE BUSINESSES SCC HIGHWAYS GUIDANCE AND ADVICE ONLY (Note 3)	TOWN CENTRES	ADVICE ONLY	ADVICE ONLY	ADVICE ONLY	NO	N/A	SCC only	Use existing budgets
	DISTRICT WIDE	ADVICE ONLY	ADVICE ONLY	ADVICE ONLY	NO	N/A	SCC only	Use existing budgets
D - CCDC LEAVES HIGHWAYS ISSUES TO SCC AS STATUTORY HIGHWAY AUTHORITY AND REFERS ALL ENQUIRIES TO SCC	TOWN CENTRES	NO ACTION	NO ACTION	NO ACTION	NO	N/A	SCC only	NIL
	DISTRICT WIDE	NO ACTION	NO ACTION	NO ACTION	NO	N/A	SCC only	NIL
E – TRADERS ADOPT SELF ADMINISTERED POLICY / SCHEME	TOWN CENTRES	NO ACTION	NO ACTION	NO ACTION	NO	N/A	SCC only	NIL
	DISTRICT WIDE	NO ACTION	NO ACTION	NO ACTION	NO	N/A	SCC only	NIL

Table 1 Notes :

1. The current Policy includes a fee structure to allow the Council to fully recover its costs, in line with the County Council's suggested mechanism for licensing detailed in Option 1 of their Policy (para 5.2.2, page 7, see below). Cost recovery is clearly envisaged as part of this option (para 6.1.2, page 10, see extract below).
2. This option is similar to Option 2 from the County Policy (para 5.2.2, page 8, see extract below).
3. This option relies on CCDC officers carrying out the advice and guidance whilst undertaking routine work in other areas (for example, food inspection, licensing visits, planning visits and economic development activity etc.) and assumes use of County Council information leaflets and signposting to SCC website only.
4. Staffordshire County Council requires £5 million public liability insurance, as is common with other local authorities with such policies, for the placement of items on the Highway.
5. Where a fairground ride is permitted within a town centre, the current Policy requires the applicant to undergo a DBS check; without the Policy there would be no mechanism to require this check;
6. Sanctions would have to be imposed by the County Council, as the statutory Highway Authority.
7. Total costs are estimated over a three year period as this is the length of an A Board or display permit. Costs assume that all A Board permits are applied for and that pavement café licences issued are renewed twice during this period. Costs given are for A Boards and Pavement cafes only.

Extracts from County Council Management of Commercial Obstructions Policy (2007 as amended):

“5.2.2 The management of this Policy will be undertaken by the District Councils within Staffordshire who may choose one of two mechanisms for controlling the establishment & usage of ‘A’ boards, retail / trade displays and Street Cafés that are located on the public highway within their respective boundaries:

Option 1 – A District Council may either adopt this Policy to develop a licensing procedure, or, utilizing the contents of this Policy to provide an outline of the minimum standards that SCC considers acceptable, develop their own Policy and associated licensing procedure that is specifically designed to meet the needs and the character of their area;

Option 2 - The Conditions of Use contained within this Policy, together with existing highway, planning, advertisement, licensing and health & safety legislation, may be employed to manage the use of these items, with a targeted, risk based approach being used to monitor any obstruction or nuisance issues that may arise that may require enforcement action to be undertaken.

6.1.2 District Councils may levy reasonable initial licensing charges and annual renewal administration charges, with these charges being reviewed annually.”