

# Report of the Strategic Director of Place to the meeting of Executive to be held on Tuesday 7<sup>th</sup> March 2017

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### Subject:

**Review of the operation and effectiveness of the 12 month trial ban of pavement obstructions.**

### Summary statement:

This report updates the Executive on the effectiveness and practicality issues of the 12 month trial ban on pavement obstructions in Bradford City Centre, Saltaire, Ilkey and on A647 Leeds Road between Thornbury Gyratory and Bradford City Centre.

On the basis of the trial's findings a number of potential options for the continuation, revocation or amendment of the policy related to pavement obstructions in the future are presented for the Executive's consideration and determination.

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Steve Hartley  
Strategic Director of Place

### Portfolio:

Regeneration, Planning & Transport

Report Contact: Richard Gelder  
Highways Services Manager  
Phone: (01274) 437603  
E-mail: [Richard.Gelder@bradford.gov.uk](mailto:Richard.Gelder@bradford.gov.uk)

### Overview & Scrutiny Area:

Environment & Waste



## EXECUTIVE SUMMARY

1. A trial ban on the placing of obstructions on pavements in Bradford city centre, Saltaire, Ilkley and on the A647 Leeds Road between Thornbury gyratory and Bradford city centre was introduced in January 2016 following its approval by Executive. For the past twelve months businesses failing to comply with the ban have been subject to enforcement action by Council officers to remove obstructions to the highway. A series of enforcement days were held over 4 separate occasions throughout 2016 which saw a 95% level of compliance with the ban within each of the trial areas.
2. During the trial information was gathered in relation to various metrics of the approach which identified the following issues:
  - a) Levels of compliance with the ban and the costs of its enforcement;
  - b) Issues of parity in enforcement in between the different areas and types of areas;
  - c) Difficulties in identifying the extents of highway / private curtilage;
  - d) Specialist difficulties associated with the Saltaire World Heritage Site; and
  - e) Alternative approaches to advertising of businesses.Each of these metrics is explored in greater detail within the report.
3. During the operation of the ban staffing resources equivalent to 2.52FTEs were allocated to activities associated with its operation at a staff and plant cost of £61,400. Further extension of the ban would place increasing pressures on reducing budgets within the Planning, Transportation & Highways Service.
4. The ban was reviewed by the Health and Social Care Overview & Scrutiny Committee in December 2016 who made the following recommendation to Executive:

**Following completion of the trial ban of advertising boards Executive approve the formalisation of the ban across all clearly defined urban centres of the district.**

5. This report therefore presents a number of options for Executive's consideration in relation to the future operation of any ban including:
  - a) Retain the ban in the current 4 areas;
  - b) Retain the ban but widen to include other urban centres;
  - c) Increase the ban to include all roads and pavements within the district;
  - d) Revert to the previous Code of Practice approach; and
  - e) Retain a modified ban with an element of licensing of obstructions.
6. The costs of 5(b) and 5(c) have been calculated based on the experience gained during the trial and further work has been done on considering the licensing option as has the potential for income from the licensing proposal under 5(e). Based on this work the report therefore recommends that Executive:
  - a) Retaining the ban across the trial zones with arrangements to allow licensing of pavement obstructions included.
  - b) That the development of the licensing arrangements be devolved to the Strategic Director: Place in consultation with the Portfolio Holder.

## 1. SUMMARY

1.1. This report updates the Executive on the effectiveness and practicality issues of the 12 month trial ban on pavement obstructions in:

- a) Bradford City Centre;
- b) Saltaire;
- c) Ilkley; and
- d) A647 Leeds Road between Thornbury gyratory and Bradford City Centre.

which was introduced in January 2016.

1.2. Based on the evidence which has been collated during the trial in relation to the effectiveness of the policy, the level of observed compliance, complexities of enforcement and impact on businesses within the trial zones the report considers options for the continuation, revocation or amendment of the policy in the future for Executive's determination.

## 2. BACKGROUND

2.1. At its meeting of 6<sup>th</sup> February 2014 the Health and Social Care Overview and Scrutiny Committee considered a report into the Council's current arrangements for dealing with obstructions on the highway under Section 137 of the Highways Act 1980. The Health and Social Care Overview and Scrutiny committee resolved that:-

### **Resolved -**

**That the Council be urged to use its best resources to bring about a change in the Authority's available powers to deal more effectively with obstruction of the highway and that all the relevant policies be referred for consideration by the Council's Executive.**

2.2. Following this resolution a report outlining potential options for improving compliance with highway law in relation to pavement obstructions was presented to Executive for consideration on 16 October 2014. Executive resolved that:

### **Resolved –**

**That a report be presented to Executive with further information and options on the Council's approach to dealing with pavement obstruction on the highway.**

2.3. This report outlining detailed options for the potential approach to dealing with pavement obstructions was presented to Executive on 13 October 2015. Executive resolved inter alia that:

### **Resolved –**

**(1) That the introduction of a zero tolerance approach in three district centres of Bradford City Centre, Saltaire and Ilkley and along the A647 Leeds Road between Thornbury Gyratory and Bradford City Centre be**

**approved for the initial trial period of twelve months commencing in January 2016.**

- (2) That prior to the implementation of the trial ban reasonable steps be taken to contact all local businesses within the zones likely to be affected to advise of the Council’s intentions and the effective date of the implementation of the ban. That in the period running up to the introduction of the trial in January 2016 all businesses be offered appropriate advice and support in relation to making alternative arrangements for their advertising.**
  - (3) That training sessions for the Council’s Warden Service be arranged by the Council’s Mobility & Inclusion officer to ensure that enforcement staff possess an appropriate basic understanding of differing disabled people’s access needs prior to the commencement of the trial.**
  - (4) Subject to the performance of this trial in addressing the concerns of disabled user groups, a further report be presented to the Health and Social Care Overview & Scrutiny Committee to review the findings of the trial and make recommendations as to any amendment to the scope of the zero tolerance policy following the initial trial period.**
- 2.4. Prior to the implementation of the trial Council Wardens undertook a survey of all the areas identified in the Executive resolution to identify businesses that were utilising advertising boards and shop displays on adopted highway in order that a list of business names and addresses could be compiled. In November/December 2015 letters advising businesses of the introduction of the ban and its extents were issued over a four week period commencing on 21 November by Council wardens. This notification resulted in 34 businesses contacting the Council to express their concerns about the potential impact of the ban on their trading.
- 2.5. In line with Executive’s resolution the Council’s Mobility & Inclusion Officer undertook a series of training briefings with Council Wardens to increase awareness difficulties experienced by disabled highway users, together with briefing wardens on how the enforcement of the ban would operate. As part of this briefing a number of operational issues were identified including:
- a) How the enforcement of the ban would operate amongst staff from Neighbourhoods and Highways Services.
  - b) How Wardens would have access to appropriate information related to identifying areas of adopted highway whilst out on patrol.
  - c) The arrangements for collation of evidence necessary to support the potential removal of advertising boards which had previously been warned of their contravention of the ban; and
  - d) The ability of the service to effectively commence the ban on all areas in January 2016.

2.6. Following these discussions the trial ban was introduced in Bradford city centre on 4<sup>th</sup> January 2016 and rolled out, in sequence, to Saltaire, Ilkley and Leeds Road corridor over the following eight week period. It was agreed that the enforcement protocol for the ban would comprise the following actions:

- a) Wardens would patrol the area of the ban and where any advertising boards were found to be in contravention of the ban a warning sticker would be affixed to the advertising board. Photographic evidence of the board, its location and the presence of the warning sticker would be taken and details passed to the Mobility & Inclusion officer.
- b) All queries from businesses related to issues of advertising boards being placed on private land rather than adopted highway were passed to Highways Service who undertook checks of the Council's adoption records in an attempt to clarify the highway status of the location in question. Where advertising boards were found to be located on private land an appropriate record of this was placed on the enforcement record submitted by the Wardens in order to avoid removal of any boards not on highway.
- c) Each trial zone would receive a number of enforcement visits where advertising boards which had not been removed after the issue of warning notices would be physically removed. Each visit would occur two weeks after the warning notice was affixed to the advertising board or warning letters were issued to businesses.
- d) Advertising boards which were removed would be taken to one of the Council's depots (Wakefield Road or Stocksbridge) for temporary storage. The facility was provided, via the Council's website, for businesses to recover confiscated advertising boards upon payment of a release fee (£200).

2.7 In accordance with Executive's resolution (as described in paragraph 2.3 (4)) a report on the findings of the trial was presented to the Health and Social Care Overview & Scrutiny committee on the 8<sup>th</sup> December 2016. The committee considered the findings of the trial as reported and heard representations from both the business community and disabled user groups before resolving, inter alia as follows:-

**Resolved –**

**(1) That the Committee recommend to Executive that:**

- a) Following completion of the trial ban of advertising boards Executive approve the formalisation of the ban across all clearly defined urban centres of the district.**
- b) That opportunities for additional signposting in the District, including, for example the Instaplanta scheme, and possible measures to deal with other pavement obstructions be investigated by officers in conjunction with local businesses including those affected by the loss of advertising boards.**

- c) A further approach is made to all businesses within the trial zones to seek information in relation to the impact of the ban on trading levels prior to Executive's consideration of the ultimate approach.**

### **3. OTHER CONSIDERATIONS**

#### **Pre-trial Situation**

- 3.1. Prior to the introduction of the ban an audit of the numbers of advertising boards on the highway was undertaken by Council wardens. Within Bradford city centre 120 advertising boards were located within the trial zone, whilst in the smaller Ilkley zone some 132 advertising boards were identified as being placed on the highway. Within Saltaire the level of advertising boards identified was 47 and along the Leeds Road corridor only 17 boards were recorded. The numbers of businesses with more than one advertising board were similarly more prevalent in the small urban centres of Ilkley and Saltaire. Photographs of examples of advertising board placement observed during this audit are included in Appendix B of this report.

#### **Level of Compliance during the Trial**

- 3.2. Each of the four trial zones were subject to three enforcement action days comprising activities as outlined in paragraph 2.5.d)2.5.d) above. In general a two week period was observed between the issue of warning notices and the subsequent enforcement action in order to allow businesses to comply with the requirements of the ban (i.e. the removal of the advertising board).
- 3.3. As anticipated the first phase of enforcement resulted in the largest number of removals of advertising boards with a total of 42 advertising boards being removed, however due to difficulties in arranging police attendance no removals took place during the first phase of enforcement in both Saltaire and Ilkley. On this phase the 21% of the boards which were issued with a warning notice in Bradford city centre were ultimately removed whilst in contrast over 70% of the boards issued with a warning on Leeds Road corridor ended up being removed. Following the enforcement in Bradford city centre a number of advertising boards had to be returned free of charge to businesses as they had been incorrectly removed without previously being subject to a warning notice.
- 3.4. The second phase of enforcement in all four zones was more co-ordinated based on the experience of the previous enforcement action and took place in May 2016. The overall numbers of advertising boards issued with a warning notice on this occasion had reduced from 316 to 69 (a 78% reduction in infringements) and of these boards ultimately subject to removal drastically fell to 17 (a 60% reduction). Following this phase of enforcement each zone was again monitored as to the level of compliance achieved and maintained. In September 2016 the levels of advertising boards re-appearing within Bradford City Centre were noticed to have increased and therefore the third phase of enforcement was arranged for October 2016.
- 3.5. In the third and final phase of enforcement the levels of contraventions in Bradford city centre had increased with 12 warning notices issued (an increase

of 6 notices over the phase 2 levels) whilst in Ilkley, Saltaire and Leeds Road corridor the trend of reduced contraventions with a minor decrease in the number of warning notices being issued was recorded. In this phase only 11 advertising boards were removed from all zones with the largest number being removed from Ilkley. Of all the advertising boards removed there have been no requests made for the return of any advertising board.

- 3.6. Overall, as a result of the three phases of enforcement the numbers of advertising boards which could be subject to enforcement within each of the trial zones was observed to reduce indicating a broad level of compliance with the ban had been achieved. The full detailed analysis of activities is included in Appendix A of this report.

### **Difficulties in Relation to Adopted Highway & Highway Records**

- 3.7. One key difficulty which was identified with ensuring effective and appropriate enforcement of the ban related to the availability and accuracy of highway records for the trial areas.
- 3.8. Whilst the Council's records of adopted / un-adopted highways are currently stored in its computerised graphical information system (GIS) this information was not available to the wardens whilst on patrol. Because this information could not be accessed by wardens broad training on identification of areas of highway and possible private land was provided sufficient to ensure that the majority of locations where boards were observed could be appropriately assessed by the wardens prior to any enforcement action taking place. The warden's confidence with the application of this training was identified as a continuing concern during the early stages of the trial as unlike enforcement of parking restrictions where there is a clear contravention of a restriction (e.g. parking on a double yellow line), the extent of the highway is generally not as obvious on site. As a result of this continuing concern the approach was adopted to have all advertising boards issued with warning notices and any appeals to these notices would be referred to highway officers for determination.
- 3.9. As a result of this approach a number of businesses contacted the Council to contest that their advertising boards were placed on private land rather than adopted highway. In general this belief arose from the respective property deeds which showed ownership of land extending to the moiety of the road. To resolve each complaint highways officers had to undertake an extensive search of highway records to determine the actual line of highway in the immediate vicinity. These searches were often protracted given the need to refer to historic plans where the Council's electronic GIS records were inconclusive and in a small number of cases the records and street infrastructure were ambiguous such that a determination of highway status currently remains unresolved.

### **Alternative Advertising Approaches**

- 3.10. As part of the initial notification letter regarding the introduction of the trial businesses within each of the zones were offered advice on possible alternative advertising solutions which they may wish to explore in place of the use of advertising boards. Details of how to access potential sources of advice on the internet including:

- a) the Council's Shop Front Design Guide;
- b) Saltaire Shop Front Design Guide; and
- c) The Communities & Local Government – Outdoor Advertisement and Signs: A Guide for Advertisers publications

were included within the letter. These publications suggested a range of potential alternative approaches which could be adopted to the design of the front of shops, which would be acceptable to the Council, to increase the visibility of businesses on the streetscape.

3.11. During the trial some alternate methods of advertisement of businesses' presence were observed, particularly within Bradford city centre including the use of members of shop staff advertising the location of their business to passing shoppers during peak trading hours through handheld signs. Information relating to alternative communication channels used by local businesses affected by the trial was sought as part of the feedback exercise undertaken to review the impacts of the trial.

3.12. Officers also became aware of an alternative advertising scheme which is operated in both Kirklees and Leeds by a company called Instaplanta. This scheme provides advertising space within a fixed item of street furniture (a standard design wooden planter as shown in Photograph 1) which is located in an appropriate location which will have previously been subject to a detailed risk assessment by a Council highways officer. Under this scheme the company identify appropriate locations around the district where a planter could be placed without causing an obstruction to pedestrians or obscuring vehicle sight lines and offer advertising space on the planter to small local businesses for an annual fee. From this fee the maintenance of the planting, including watering and replacement of bedding flowers is undertaken at no cost to the Council.

It is suggested that a trial of the Instaplanta scheme be implemented within the urban centres of Bradford City Centre, Ilkley and Keighley for a period of twelve months and that subject to satisfactory performance of this trial delegated authority be given to the Strategic Director in consultation with the Portfolio Holder to approve further urban centres where the scheme may be adopted.



**Photograph 1:** A Typical Instaplanta Installation



### **Saltaire World Heritage Site (WHS) Issues**

- 3.13. Following the introduction of the trial in Saltaire the World Heritage Site Officer (WHSO) also reviewed its operation within the context of the WHS and the Access Audit Report which was undertaken in August 2014. The WHSO noted a number of issues related to accessibility within Saltaire which the trial did not address including:
- a) Enforcement of the ban has not been as equitably applied as believed as a number of non-retail businesses who use advertising boards are perceived to have escaped enforcement action.
  - b) Obstructions on the pavement outside Gordon Terrace tend to be caused largely by unlicensed pavement café tables and chairs rather than advertising boards.
  - c) Traders in Saltaire face additional challenges to providing alternative advertising for their businesses whilst still complying with the restrictions associated with the WHS status of Saltaire. Businesses could be encouraged to consider developing schemes such as those in Keighley where groups of traders pool their advertising funds and co-operatively decide how to advertise through either printed media, on-line services or physical means. Similarly, the previously trialled Saltaire Traders Loyalty Card scheme could be reinstated.

### **Experience of disabled users**

- 3.14. As evidenced by the meetings of the Health and Social Care Overview & Scrutiny committee on 1<sup>st</sup> September and 8<sup>th</sup> December where representatives of the disabled community and their associated organisations presented their perspective on the trial the general feedback in relation to the introduction of the ban has been unanimously positive. Many disabled users are now able to move around the pavements of the district with increased confidence due to the removal of the temporary obstructions which were caused by advertising boards.
- 3.15. However, there remains frustration amongst these groups that this approach has not been rolled out across this District and that the trial itself has not been confirmed as continuing.

### **Experience of Businesses**

- 3.16. The greatest proportion of complaints from businesses within the trial zones related to the impact of the introduction of the ban on their trading through loss of footfall. Of the complaints and objections during the trial 13 businesses in Bradford city centre, 10 Ilkley businesses, 10 businesses in Saltaire and one business on Leeds Road raised this issue as a particular concern, together with seeking clarification as to why the ban was introduced by the Council.
- 3.17. All businesses contacting the Council were asked in the responses back to their complaint if they would be willing to share details of their financial accounts both

pre-trial and during the trial in order that a comparison of the impact of the loss of income could be made. This request resulted in one business providing unsubstantiated evidence to officers relating to the impact of the ban on their business trading.

- 3.18. Another concern raised by businesses within the trial zones related to the equity of enforcement of the ban within the vicinity of their business. Businesses perceiving that their neighbours were not receiving the same level of enforcement treatment reported contraventions of the ban to the Council with requests for action. However, where the Council was perceived as being slow to take action it was noted that this led to a number of complying businesses returning to the use of advertising boards.
- 3.19. Following the consideration of this issue by the Health and Social Care Overview & Scrutiny committee in December 2016 and in response to their resolution a standardised questionnaire was developed and issued to businesses by post and email in December 2016. Across all of the trial zones a total of 386 questionnaire letters were issued together with 36 email questionnaires. This approach has resulted in 10 responses from businesses representing a return rate of 2.3%. The summary of the feedback received from this consultation is shown in Appendix C of this report.
- 3.20. Of these responses all bar two were from businesses in Ilkley where the greatest use of advertising boards was observed prior to the start of the trial; the other returns included a single from Saltaire and one from Bradford City Centre. There have been no returns received from businesses on the Leeds Road corridor.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1. As has been noted previously the Council currently employs a single Highway Enforcement Officer who in addition to having responsibility for dealing with the enforcement of highway obstructions also deals with enforcement of all other aspects of general highway legislation. Funding for enforcement of highways legislation derives from existing revenue budgets. Under the recent restructure of the Planning, Transportation & Highways Service an additional Highway Enforcement Officer post was added to the structure bringing the total Highway Enforcement resource to 2FTE's although at the time of writing this report it remains unfilled.
- 4.2. Enforcement of the trial during the past 12 months has required redirection of a significant level of staff resources to administer the scheme as well as to undertake enforcement activities both from within the Planning, Transportation & Highways Service and Neighbourhood Service. The level of resources which has been applied to this trial equates to an average requirement of 2.52FTE's per year (including resources necessary for the 4 enforcement days) and represents a revenue staff and plant cost of £61,400 during the life of the trial.
- 4.3. Sustaining, or increasing, this level of resource, in the future is likely to become increasingly difficult in the face of reducing Council budgets. Therefore, any expansion into wider areas of the district will need to have due regard to the associated resource requirements and their funding.

- 4.4. Based on the details of officer time spent on operation of the trial it is predicted that expanding the ban to other urban centres would require resources equivalent to 4FTE's per year with a revenue cost of approximately £200,000p.a. whilst expansion to the whole district would require resources equivalent to 4.67FTE's and funding of £287,000p.a. to operate.
- 4.5. Introduction of a licensing arrangement allowing businesses to legitimately place one advertising board on the highway in a pre-agreed location could potentially be used to off-set the running costs of on-going enforcement. Based on a potential level of 25% of businesses taking up a license an annual cost of £182 per permit (equivalent to £3.50 per week) would cover the costs of running the scheme.
- 4.6. It is worthy of note the final sanction for repeated breaches of section 137 Highways Act 1980 is by way of criminal prosecution for a summary offence before the Magistrates court . The offence carries a level 3 (£1,000) fine. To date no prosecutions have been necessary due to the forced or voluntary removal of the A Board advertising signs by the Council's enforcement action. However ultimately some prosecutions may be required which will have staff resource implications for the Council's Legal service.

## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

- 5.1. Responsibility for maintaining the safe operation of the highway under Section 130 of the Highways Act 1980 rests with the Council as local Highway Authority. Licencing of trading activities on consent and licensed streets is the responsibility of the Council's licensing team who consult with highways about each application for a new consent or license.
- 5.2. The close working relationship which has been established between the officers of Planning, Transportation & Highways Service and Neighbourhood Services (both of which are now under the Department of Place) has helped ensure that this trial has delivered the level of compliance described previously. The trial has demonstrated that whilst Council wardens are able to perform the function of the "eyes and ears" of the Council and issue appropriate warning notices to businesses contravening the trial ultimate responsibility for co-ordination of positive enforcement action remains with Highways officers.

## **6. LEGAL APPRAISAL**

- 6.1. The Council has a dual role in the control of obstructions arising from advertisements on the highway, that of:

**Local Planning Authority** who have the powers and duties under the Town and Country Planning Act 1990 (as amended)

As the Local Planning Authority the Council is responsible for the day-to-day operation of the advertisement control system, and for deciding if a particular advertisement should be permitted or not. The advertisement control system in England are part of the planning control system. The present regulations are contained in the Town and Country Planning (Control of Advertisements) Regulations 2007. It should be noted that A-boards located on private land

contained within the forecourt of a premises will require neither express consent under the planning system nor approval under the Highways Act as these are deemed to have consent under the deemed consent provisions.

The Council as **Highway Authority** has powers and duties under the Highways Act 1980 (the 1980 Act) and responsibility for street scene enforcement.

The Council is under a duty to maintain the use of public highways in its district under the provisions of section 41 the 1980- Act which is augmented by section 149 Equality Act 2010 mentioned in Para. 7.1 below.

The Council has power to order by notice the removal of obstructions under s143 and 149 of the 1980 Act.

The offence of 'obstruction of the public highway' arises under section 137 of the 1980 Act. The presence of 'A boards' or other types of advertising which causes an obstruction to the general public may subject to sufficient evidence give rise to the commission of this offence.

The option of licensing " A Board" obstruction which is contemplated by option 5 below is lawful subject to the matters below.

The Council as highways authority can licence an obstruction to a public highway only if it is no more than a minor inconvenience to the use of the highway. Primarily a highway is a route which all persons can use to pass and re pass along as often and whenever they wish without hindrance and without charge. This definition includes the road or carriageway and the footway or pavement and bridleways and footpaths. In order to preserve these rights of way it is necessary to ensure that they are not obstructed either wilfully or without consideration.

Sections 115A to K of the 1980 Act permits features and structures to be licensed so long as they do not obstruct or endanger pedestrians; eg those with impaired vision, those using wheelchairs and parents with prams.

Further legal advice on this issue needs to be sought and a policy approved prior to any licences been issued.

## **7. OTHER IMPLICATIONS**

### **7.1. EQUALITY & DIVERSITY**

Section 149 of the Equalities Act 2010 states that the Council must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and other conduct prohibited by or under the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) Foster good relations between such persons.

Having due regard to (a) above involves having due regard, in particular, to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic and take steps to meet the needs of persons who share a relevant protected characteristic that are different from those who do not share it. A relevant protected characteristic is defined as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In the case of the issue of highway obstructions the most relevant characteristic would be visually impaired or blind persons, those with mobility issues, the elderly and parents with young children in prams or push chairs.

By the development of the various policies and Codes of Practice described in this report the Council has endeavoured to established balanced criteria which are fair to licence holders of existing street trading licences and pavement cafes, future applicants for consents, owners and occupiers of business premises fronting onto the highway, all customers and persons who will be using the streets concerned for any lawful purpose, (including those with special requirements).

## **7.2. SUSTAINABILITY IMPLICATIONS**

There are no apparent sustainability implications arising from matters contained in this report.

## **7.3. GREENHOUSE GAS EMISSIONS**

There are no apparent greenhouse gas emission impacts arising from the contents of this report.

## **7.4. COMMUNITY SAFETY IMPLICATIONS**

As the Highway Authority the Council has a statutory duty to protect the rights of its citizens to the safe use and enjoyment of the highway.

Obstructions to the highway invariably can interfere with this enjoyment to varying degrees depending upon the size of the obstruction and its actual location. As the local Highway Authority the Council has the power to remove obstructions and prosecute through the Courts persistent or intransigent offenders.

## **7.5. HUMAN RIGHTS ACT**

A fair balance must be struck between the rights of property owners to make beneficial use of their properties and any need to restrict such rights in the overall public interest.

By the development of the various policies and Codes of Practice described in this report the Council has endeavoured to established balanced criteria which are fair to licence holders of existing street trading licences and pavement cafes, future applicants for consents, owners and occupiers of business premises fronting onto the highway, all customers and persons who will be using the streets concerned for any lawful purpose, (including those with special

requirements).

## 7.6. **TRADE UNION**

There are no Trade Union implications arising from this report.

## 7.7. **WARD IMPLICATIONS**

Activities associated with the removal of obstruction of the highway impact on all wards within the District. However, given the nature of most obstructions being centred in retail centres activity tends to be concentrated in the city centre and outlying town and village centres.

## 8. **NOT FOR PUBLICATION DOCUMENTS**

None.

## 9. **OPTIONS**

9.1. There are a number of options which the Executive may consider as the potential permanent approach to dealing with advertising boards and shop displays on the District's highway network including:

a) **Retain ban in current form** – the current four enforcement zones of the trial have demonstrated a significant reduction in the numbers of advertisement boards on the highway. Initial problems associated with the introduction of the trial in each zone have now by in large been resolved although a few land ownership issues still remain unresolved, particularly around Ilkley. However, the four zones which were initially selected may no longer represent the key “hot spots” of the district.

b) **Retain ban with modification** – The four enforcement zones which were initially selected by Executive have demonstrated that in general the greatest proliferation of advertising boards is centred in urban centres. The numbers of boards on Leeds Road corridor for example are significantly lower than those found in Saltaire. Therefore the Executive may wish to retain the ban in urban centres and expand these to include other urban centres whilst allowing advertising boards on the connecting transport network.

Within the definition of urban centres the following areas of the district could be identified:

Baildon, Bingley, Bradford City Centre, Greengates, Haworth, Ilkley, Keighley, Queensbury, Saltaire, Shipley, Silsden, Thornton and Wyke.

Adopting such an approach would ensure that the maximum benefit of enforcement can be achieved whilst minimising the on-going revenue costs to the Council.

c) **Expand the ban to whole district** – The Executive may feel that the benefits demonstrated by the trial are such that for the sake of consistency the ban should be extended to include all roads and urban

centres within the district. However, the revenue costs and staff time associated with this option will place an excessive burden on existing staff resources and revenue budgets and may lead to unrealistic expectations being raised with disabled interest groups in relation to the level of enforcement that the Council can realistically provide.

- d) **Revert to previous Code of Practice approach** – This is the least favourable option from the perspective of disabled users who have enjoyed the benefit of obstruction free footways that have been established by the trial. Whilst a limited introduction of advertising boards would be welcomed by some businesses the complexities of enforcement of this policy are well known and as such long-term continued compliance with the requirements of the code is unlikely to be maintained.
- e) **Retain the ban with modification and the introduction of licencing in selected areas** – This option would involve retention of the ban on pavement obstructions in the trial zone areas but would allow businesses to apply for a license to display a single advertising board adjacent to their business premises. The income from these licenses could provide an appropriate revenue stream to fund the necessary staff resources to enforce this policy.

Benchmarking the level of licensing with adjacent West Yorkshire Authorities results in a base level of licence charge of £105 for a single advertising board per year. At this level of cost the income from advertising board applications based on the four priority zones alone would be sufficient to fund a further full-time Highway Enforcement Officer but insufficient to provide funding for the levels of resources required for an expansion of the ban.

- 9.2. The Executive may choose a different permutation of the above options as its recommended approach. Appropriate officer advice on the merits of any approach proposed will be given to the Executive as appropriate.
- 9.3. The Executive may also wish to consider endorsing the recommendation of the Health and Social Care Overview & Scrutiny committee in relation to the use of alternative advertising approaches as described in this report as a way of assisting businesses affected by the loss of advertising boards.

## 10. RECOMMENDATIONS

- 10.1. Executive approve the retention of the pavement obstruction ban with the following modifications:
  - a) The current trial zone ban areas be retained;
  - b) Arrangements to allow licensing of pavement obstructions be incorporated into the Council's approach.
  - c) That the development of details of the licensing arrangements including the approval of policy for determining locations suitable for placement of obstructions and levels of license fee to be charged be delegated to the

Strategic Director: Place in consultation with the Portfolio Holder.

## **11. APPENDICES**

- 11.1. Appendix A – Record of Advertising Board enforcement action.
- 11.2. Appendix B – Examples of obstructions of streets pre- the trial.
- 11.3. Appendix C – Questionnaire Response Summary.

## **12. BACKGROUND DOCUMENTS**

- 12.1. Highways Act 1980
- 12.2. Local Government (Miscellaneous Provisions) Act 1982
- 12.3. Statutory Instrument 2004 No. 3701
- 12.4. Town and Country Planning Act 1990 (as amended)
- 12.5. Countryside and Rights of Way Act 2000
- 12.6. Report of the Strategic Director (Regeneration) to the Health and Social Care Overview & Scrutiny Committee to be held on 8<sup>th</sup> December 2016, Review of the Operation of the Council's 12 month trial ban of pavement obstructions.
- 12.7. Report of the Assistant Director Environmental & Regulatory Services to the meeting of Regulatory and Appeals Committee to be held on 28 August 2013, Proposed changes to the current street trading restrictions within the Bradford District and adoption of a district wide street trading policy.
- 12.8. Report of the Strategic Director, Regeneration & Culture to the meeting of Health & Social Care Overview & Scrutiny Committee to be held on 6 February 2014, The Council's approach to dealing with 'A' boards and other obstructions on the highway under the Highways Act 1980.
- 12.9. 'A' Boards and Shop Pavement Displays as Obstruction on the Public Highways report to Environment and Waste Management Overview and Scrutiny Committee, 1 September 2011.
- 12.10. 'A' Boards and Shop Pavement Displays as Obstruction on the Public Highways report to Executive on 4 February 2011
- 12.11. 'A' Boards and Shop Pavement Displays as Obstruction on the Public Highways report to Environment & Waste Management Overview and Scrutiny Committee, 18 January 2011.
- 12.12. City of Bradford Metropolitan District Council Transportation, Design & Planning Director Decision Sheet 80/04
- 12.13. City of Bradford Metropolitan District Council Transportation, Design & Planning Director Decision Sheet 17/05



- 12.14. Report of the Transportation, Design & Planning Director to the meeting of Executive 17 October 2005.
- 12.15. Minutes of Executive's meeting held on Monday 17 October 2005
- 12.16. Kent City Council A-Board Guidance and Application Form
- 12.17. A-Boards on the Highway – Policy and Guidance, Kirklees Metropolitan Council, October 2014
- 12.18. Kirklees Metropolitan District Council Cabinet Report, 17 December 2013, Proposed controls on street based advertising such as A-boards and goods for sale
- 12.19. Who Put That There! The barriers to blind and partially sighted people getting out and about, February 2015, RNIB Campaigns.

**Record of Enforcement Activities / Actions**

**Bradford City Centre**

Date	Action	Quantity
<b>Phase 1</b>		
21/11/15	Street Warden Audit & Warning Notices Issued	120
21/03/16	Enforcement Action / Removals	25
<b>Phase 2</b>		
13/05/16	Street Warden Audit & Warning Notices Issued	6
	Warning Letters Issued	7
25/05/16	Enforcement Action / Removals	4
<b>Phase 3</b>		
05/10/16	Street Warden Audit & Warning Notices Issued	12
20/10/16	Enforcement Action / Removals	4
	New Warning Notices Issued	5

**Ilkley**

Date	Action	Quantity
<b>Phase 1</b>		
16/11/15	Street Warden Audit & Warning Notices Issued (see note 1)	132
<b>Phase 2</b>		
13/05/16	Street Warden Audit & Warning Notices Issued	11
	Warning Letters Issued	19
25/05/16	Enforcement Action / Removals	5
<b>Phase 3</b>		
05/10/16	Street Warden Audit & Warning Notices Issued	10
20/10/16	Enforcement Action / Removals	6

**Saltaire**

Date	Action	Quantity
<b>Phase 1</b>		
15/12/15	Street Warden Audit & Warning Notices Issued (see note 1)	47
<b>Phase 2</b>		
13/05/16	Street Warden Audit & Warning Notices Issued	6
	Warning Letters Issued	10
24/05/16	Enforcement Action / Removals	4
<b>Phase 3</b>		
05/10/16	Street Warden Audit & Warning Notices Issued	5
20/10/16	Enforcement Action / Removals	1

**Leeds Road Corridor**

Date	Action	Quantity
<b>Phase 1</b>		
22/12/15	Street Warden Audit & Warning Notices Issued	17
28/03/16	Enforcement Action / Removals	12
<b>Phase 2</b>		
13/05/16	Street Warden Audit & Warning Notices Issued	6
	Warning Letters Issued	4
25/05/16	Enforcement Action / Removals	4
<b>Phase 3</b>		
05/10/16	Street Warden Audit & Warning Notices Issued	0
20/10/16	Enforcement Action / Removals	0
	New Warning Notices Issued	2

**Notes:**

1. Enforcement action was not undertaken during this phase of the trial due to difficulties associated with co-ordination of Council and police resources.

**Examples of Placement of Advertising Boards (pre-trial)**



**Photograph 2:** The Grove, Ilkley (Source: Bradford Association of Visually Impaired (BAVIP))



**Photograph 3:** Leeds Road, Ilkley (Source: Bradford Association of Visually Impaired (BAVIP))



**Photograph 4:** Ivegate, Bradford



**Photograph 5:** Leeds Road Corridor

**TRIAL ZONE AREA: Ilkley**

Total Returns: 8

**Business A – Food Supplies**

- Prior to the trial Business A used a single advertising board (0.5m x 1.0m) adjacent to their shop entrance.
- They were aware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they held appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- No financial information was given in the return due to concerns about confidentiality with the exception of advertising costs which during the period of the ban had doubled in value.
- Alternative advertising was used including social media, local magazines and support for local events. These were not perceived to have been as useful as advertising boards as the owner perceived that the advertising board was also used to indicate that the business was open.

**Business B – Charity**

- Prior to the trial Business B used a single advertising board (0.8m x 0.5m) adjacent to their shop entrance.
- They were aware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they held appropriate third party public liability insurance for the use of advertising boards.
- The company had previously been subject to enforcement action by the Council but were aware of the Council's previous Code of Practice.
- During the trial they did not have any advertising boards removed by the Council.
- No financial information was given in the return.
- Alternative advertising was used by displaying the company name on a board in the nearby car park. However, this was not perceived to be as effective as the advertising board as it was only visible to cars entering the car park.

**Business C – Charity**

- Prior to the trial Business C used advertising board(s) (0.8m x 0.5m) on land adjacent to their shop.
- They were aware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they DID NOT hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- Financially information presented records a net downturn of trade of 14% over pre-trial levels.

- No alternative advertising was considered / used during the trial as the company believed that this was too expensive.

### Business D – Food Retail

- Prior to the trial Business D used two advertising boards (4ft x 2ft) at locations remote from their shop entrance.
- They were unaware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did not hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- No financial information was given in the return. However information on trading levels by month was provided which demonstrated a general downward trend in the numbers of transactions during the period of the trial.
- Alternative advertising was used including social media, local magazines and newspaper advertising. These alternates were not perceived to have been as useful as the "free" advertising boards. Comments highlighted that businesses not located on the main streets see the use of advertising boards as essential to attracting passing trade.

### Business E – Fashion Retail

- Prior to the trial Business E used one advertising board (0.8m x 0.5m) outside the shop entrance.
- They were unaware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- Financial returns for an equivalent four month period between 2016, 2015 and 2014 show a net reduction of 6.7% trading values in 2016 over 2015 however a net increase in trading of 7.2% when compared to 2014 values. However, the business does point out that prior to the trial's introduction the business was growing year on year and hence comparison between 2016 and 2014 figures should be considered within this context.
- Alternative advertising was used including radio advertising, increased expenditure on social media, Google advertising and use of local magazines and newspaper advertising. These alternates were not perceived to have been as useful as the "free" advertising boards. Comments highlighted that businesses not located on the main streets see the use of advertising boards as essential to attracting passing trade.

### Business F – Food Retail

- Prior to the trial Business F used one advertising board (0.8m x 0.5m) within the shop entrance.
- They were aware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.

- They were not subject to previous enforcement action / complaints prior to the ban's introduction and also held an café license.
- During the trial their advertising board was subject to removal but was recovered by a staff member prior to removal by the Council.
- No financial information was given in the return.
- Comments highlighted that businesses used the advertising board to advise passing trade that they were open.

### Business G – Clothing Retail

- Prior to the trial Business G used two advertising boards (0.8m x 0.5m) outside the shop entrance (located in an arcade) and one at the entrance to the arcade.
- They were unaware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- Detailed financial information was not provided by the business however levels of transactions between July and August for 2015 and 2016 were given showing a 13 – 22% drop in the volume of transactions.
- Alternative advertising was considered but the cost of placing an advertisement in the local paper was considered too expensive. Comments were also made that most visitors to the premises do not buy the local paper also.

### Business H – Retail (Other)

- Prior to the trial Business H used one advertising board (0.85m x 0.6m) which was placed in alternative locations on the Grove (outside WH Smiths) or in front of "The Moors Shopping Centre".
- They were unaware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- The business believes that the impact of the trial has not had a detrimental impact on their trading however recent changes to their premises to expand the trading space may have offset any impact. The business has advised that whilst the number of transactions during the trial has decreased the value of each transaction has increased.
- The business already used social media but during the trial expanded into paid advertising and including adverts in lifestyle publications in Leeds and surrounding area. The use of social media and advertising requires shoppers to research the business before shopping in Ilkley and the loss of advertising boards in the area is believed to have led to a missed opportunity to catch passing trade.



**Business J – Retail (Other)**

- Prior to the trial Business J used four advertising boards (1m x 0.6m) which were placed immediately outside the shop, two in the car park and one on The Grove.
- The business confirmed that they were unaware of the Council's Code of Conduct in relation to the usage of advertising boards but confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- The business believes that the impact of the trial has resulted in a loss of £1,000 per week between January – November and £8,000 per week in December. However, no evidence was presented to allow verification of these figures.
- The business increased investment in social media but during the trial as well as expanding into radio advertising, Google advertising and magazine/press advertising. The business believes that these channels are not as good as advertising boards as they had previously used their advertising boards to direct customers to their premises.

**TRIAL ZONE AREA: Bradford City Centre**

Total Returns: 1

**Business A – Food Retail**

- Prior to the trial Business A used two advertising boards (4ft x 2ft) at locations within 1 metre of their shop entrance.
- They were unaware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did not hold appropriate third party public liability insurance for the use of advertising boards.
- They were not subject to previous enforcement action / complaints prior to the ban's introduction
- During the trial they did not have any advertising boards removed by the Council.
- The limited financial information provided indicated that the business spent the same amount on advertising in the 12 months of the ban as in the preceding 12 month period.
- Alternative advertising was used including social media, leaflets and newspaper advertising. These alternatives were not perceived to have been as useful as the use of advertising boards as they were not as easy for shoppers to see.

**TRIAL ZONE AREA: Saltaire**

Total Returns: 1

**Business A – Takeaway Food**

- Prior to the trial Business A used advertising board(s) on footway adjacent to their shop.
- They were aware of the Council's Code of Conduct in relation to the usage of advertising boards and confirmed that they did hold appropriate third party public liability insurance for the use of advertising boards.
- Prior to the ban they had not received any complaints about the placement of their advertising

board and were not subject to previous enforcement action.

- During the trial they did not have any advertising boards removed by the Council.
- Financially information presented records a net downturn of trade of 8% over their 2015 trading levels and 4% over their 2014 trading levels.
- Alternative advertising was used including social media and leaflet. These were not considered as effective as advertising boards as they did not attract passing trade which forms a significant part of their trade.

**TRIAL ZONE AREA: Leeds Road Corridor**

Total Returns: 0