

# Report of the Strategic Director of Place to the Meeting of Health and Social Care Overview & Scrutiny Committee to be held on 23 March 2017

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**Subject:**

**Review of the Operation and Effectiveness of the 12 month trial ban of Pavement Obstructions**

**Summary statement:**

Attached is the response to reasons cited for the call in of the decision of the Executive Committee, 7 March 2017, relating to Agenda Item BM, Review of the Operation and Effectiveness of the 12 month trial ban of pavement obstructions.

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**Portfolio:**

Regeneration, Planning & Transport

**Overview & Scrutiny Area:**

Health & Social Care

## 1. INTRODUCTION

- 1.1 In accordance with Paragraph 8.6.2 (Part 3E of the Constitution) the decision of the Executive held on Tuesday 7 March 2017 regarding the operation and effectiveness of the 12 month trial ban of pavement obstructions (Executive Document BM) has been called-in.
- 1.2 Councillor Arshad Hussain (Chair of the Corporate O&S) has called-in the decision, as requested to do so by Councillors Dale Smith and Joanne Sharp. The call-in relates to the following resolution and the reasons for the call-in are set out below:

## 2. REVIEW OF THE OPERATION AND EFFECTIVENESS OF THE 12 MONTH TRIAL BAN OF PAVEMENT OBSTRUCTIONS

**Resolved –**

**That the retention of the pavement obstruction ban be approved with the following modifications:**

- a) **The current trial zone ban areas be retained;**
- b) **Arrangements to allow licencing of pavement obstructions be incorporated into the Council's approach;**
- c) **That the development of details of the licensing arrangements including the approval of the 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.**

*ACTION: Strategic Director, Place*

(Environment & Waste Overview & Scrutiny Committee)

## 3. THE REASONS FOR CLLR DALE SMITH REQUESTING THE CALL IN ARE:

- The proposals give scant regard to the Equality Impact Assessment and subsequently do not sufficiently ameliorate the disadvantage those most affected particularly those with Visual Impairment or the need to use wheelchairs etc.
- The evidence presented and upon which the decision was partially based, regarding the charge for a Licence is unrealistic, containing conflicting figures and presented alongside unconvincing evidence submitted by businesses regarding their claimed financial losses due to the removal of A-Boards, with the latter having been given too much emphasis.
- A letter from the Ilkley Chamber of Trade was tabled but not circulated to members of the public and thus could not be challenged.
- The loss of the Mobility and Inclusion Officer reduced the Council's contact with service users, with the result that awareness of the decision to be taken at the Executive meeting was poorly advertised, thus reducing the opportunity of those

whose mobility is to be most affected, to get quick access to the report in an appropriate format and have their voices heard.

- The costing information provided for both the trial and the proposals are inadequate.
- The absence of adequate, detailed information detailing which other Local Authorities were implementing an A-Board ban or making a charge for any Licence, along with the outcomes, undermines the validity of the report upon which the decision was based, as this information would provide a much clearer picture of what to expect.
- The absence of criteria for identifying areas where A-Boards can and cannot be placed undermines the validity of the decision taken, as this information would again provide the Executive and the vulnerable citizens who should benefit from any new policy.
- The report did not adequately address the recommendations from the Health and Social Care O&S meeting.

#### **4. THE REASONS FOR CLLR SHARP REQUESTING THE CALL IN ARE:**

- The Executive document contains information not made available to the Health and Social Care O & S Committee when we carried out an extensive review of the trial ban in meetings last year so this new information needs to be considered by the Committee.
- The executive report itself does not reflect views of the O & S Committee for proper consideration by the Executive. In part this is demonstrated by the scarcity of the views expressed by disability organisations (2 paragraphs only) in the Executive report.
- The long term operational costs of either scheme are not clearly evidenced in the Executive report.
- The call in needs to happen to allow O & S Committee to consider the differences between the report we received and the report submitted to Exec to allow the committee to make an informed choice as to whether we maintain our decision of December last year or accept the decision made by the Executive.

#### **5. RESPONSE TO EQUALITIES IMPACT ASSESSMENT CONCERNS**

5.1 The Equality Act 2010 requires the Council to have due regard to the need to

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups

5.2 In developing the Code of Practice (Appendix 1) which was the Council's original approach to dealing with pavement obstructions the Council endeavoured to establish a balanced set of criteria which were fair to licence holders of existing street trading licences and pavement cafés, 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 protected characteristics. The introduction of the 12 month trial ban approved by Executive on 13 October 2015 was considered to be consciously changing this approach in favour of those persons who share a relevant protected characteristic over those persons who do not share it. This situation was addressed in the Executive report although no formal Equalities Impact Assessment was undertaken.

- 5.3 In considering the results of the trial and the ultimate proposal for how to deal with pavement obstructions Executive were again advised of the requirements of Section 149 of the Equalities Act 2010 and, as described in paragraph 7.1 of the report "... 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..."
- 5.4 An Equality Impact Assessment was not produced for the Executive report as at this stage of the process one was not considered necessary. The Council permitted A boards in some circumstances prior to the trial. The trial was for 12 months only. At its conclusion a choice existed between reverting to permission in some circumstances or continuing the ban. As the Executive decision was to revert to permission in some circumstances (the position prior to the trial) no assessment of its impact was necessary. In any event, a blanket ban may have adverse consequences for other persons with protected characteristics which cannot be assessed without knowing for example, the age, disability, etc. of shopkeepers affected. The better approach decided upon was to undertake an EIA on the licensing policy once it is developed before any decision is taken on its adoption, and undertake one on each application for permission as they are received as circumstances dictate. The latter could assess the impact of approval on pedestrians with protected characteristics and the impact of refusal on shopkeepers with protected characteristics. This may require a difficult balancing act in some circumstances but in others (where, for example, pavement width is generous and location of an A board can be accommodated without impeding passage for the visually or mobility disabled) the assessment might be more straightforward. What the Council cannot do is ignore the impact of a ban on the livelihood of Bradford residents, some of whom will have protected characteristics, without considering all the circumstances in each individual case, including the consequences for pedestrians.

## **6. IMBALANCE OF EVIDENCE PRESENTED AND LACK OF CLARITY IN RELATION TO FINANCIAL IMPLICATIONS OF THE BAN**

- 6.1 The report considered by Executive presented details of the further engagement of businesses within the trial zones as recommended by the Health and Social Care Overview & Scrutiny Committee at their December 2016, namely

**Resolved –**

- (1) (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.**

- 6.2 To comply with this resolution a further distribution of a Business Impact questionnaire was undertaken by both post and email (where business email addresses were

available). The purpose of this exercise was to determine the level of impact on local businesses of the ban. The responses of those businesses which returned the questionnaire were anonymised and details of the content of their returns were included within the appendix of the report. The Executive report set out in detail the process which had been adopted to engage with businesses describing the number of businesses approach and the level of responses received (2.3%).

- 6.3 Actual commentary on the findings of the trial within the body of the report was restricted to an assessment of the where responses were received from as no overall conclusion could be obtained from the information provided by businesses. By comparison the level of information provided by disabled interest groups was provided confirming the general level of support for the Council's trial approach but also highlighting to Executive the frustration of groups in relation to the fact that the Council had not introduced the ban across the whole district.
- 6.4 Appendix 1 of this report contains information which has been collated in relation to the approaches of other Councils both within West Yorkshire and nationally in relation to their approaches to dealing with advertising boards and/or pavement obstructions. This information was not reproduced in the report to Executive.
- 6.5 Using the time recording information gathered in relation to administration of the ban within the 4 trial areas a financial model was created to look at the implications on resources (in terms of FTE numbers) and funding which would be necessary to operate the ban in a number of scenarios including up to 10 additional urban centres and the whole district. This model used the information in relation to staff resources (**see Table 1:** Information relating to the operation of the 12 month trial ban for details of the staffing structure) used during the trial. The agglomerated costs of operating in the four trial zones were reduced to a unit rate and then factored up to reflect various operating scenarios.
- 6.6 To calculate the potential level of take up of businesses who may apply for a license experience of other Councils in relation to the operation of their scheme was sought. As with the experience of Bradford it was noted that a number of businesses had multiple advertising boards and hence restricting the numbers of licenses to one license per business would automatically reduce the number of advertising boards on the highway. Because of this a conservative take up level of 25% of the current level of advertising boards was used to calculate the level of applications which could be expected.
- 6.7 To calculate the number of licenses in the various scenarios modelled (urban centres and whole district) the level of advertising boards which were identified in the initial audit of the four trial zones was used as a starting point. The total number of advertising boards identified in the initial audit (316 across all areas) was again reduced to an indicative level of advertising boards per area and again factored up to represent the possible number of licenses per area. It is recognised that this rather crude approach could vary significantly from the numbers of boards which may be present on the highway but was felt, that with the 25% take up rate, would conservatively allow calculation of an appropriate license fee. The final calculated fee ranged significantly given the numbers of areas which could be included in the scheme and the potential level of applications for a license but a median value of £182 / license was used for the purposes of the Executive report which could, in the case of

a ban which operates throughout the whole district provide funding such that the enforcement and operation of the licensing scheme could be self-financing.

## **7. REPRESENTATIONS BY ILKLEY CHAMBER OF TRADE**

7.1 As noted during the Executive meeting a representation from Ilkley Civic Society (ICS) was received after the Executive report had been completed but officers had given assurances that the contents of this representation would be made available to members of Executive in order that appropriate consideration could be given to the concerns expressed. The ICS position requests that Executive consider a much more comprehensive policy to make life easier for all users of pavement which would:

- Include all of the current obstructions to pavement users including street furniture, café seating areas, display areas, pavement parking, banners/ flags, wheelie bins, pavement surfaces (public and private), mobile food / ice cream vans and cycle racks.
- Be more transparent in that all licensing should be displayed at the site of the permitted use. This would become self-policing in time.
- That council wardens, once trained and established in this subject, should be able to police this along with their many other duties, helped by having GIS and licensing information available on tablets.
- Limited 'A' boards or similar should be allowed, with licensing, for off the beaten track businesses and those with no shop front, but only where an obstruction is not caused. The reports continually state possible use of 'A' Boards outside shops. This is not where they are needed as the shop window shows what is inside. There should be a limit on the size of 'A' Boards that are licensed.
- A separate review and consequent removal of all unnecessary council street furniture.
- Other means of marketing of retail areas should be investigated with the business community, particularly for those businesses in out of the way locations.

7.3 The majority of the points raised by ICS will be considered in the development of the Council's ultimate policy based on Executive's resolution with the exception of the recommendation of the review and consequent removal of all unnecessary council street furniture for which the Council already has a policy of reducing street clutter.

## **8. ENGAGEMENT WITH SERVICE USERS**

8.1 Notification of the Executive's consideration of the pavement obstruction report at its March meeting was raised with the Bradford Strategic Disability Partnership (SDP) as part of the disability group engagement transition arrangements implemented within Planning, Transportation & Highways Services. Information relating to this matter was shared with SDP members, however contact with Mobility Planning Group and Planning & Highways Access Forum members was not shared as effectively as it potentially could have been. Contact details for these groups have now been shared within the service to ensure that a similar situation is avoided in the future.

8.2 During the Executive meeting nine representatives spoke about their experiences of moving around the district both prior to and during the trial ban. Of these only one representative made any representation in relation to addressing the impacts on businesses whilst the majority made representation in support of the disabled interest group.

## 9. FINANCIAL INFORMATION IN RELATION TO COST OF THE TRIAL AND LONG TERM OPERATIONAL COSTS

9.1 The detailed assessment of the level of staff resource recorded during the period of the 12 month trial of the 4 areas and their associated costs are shown in the table below.

*Table 1: Information relating to the operation of the 12 month trial ban*

Resource	Average Hrs/Wk on Day-to-day operations	Time spent on Enforcement days (4/year)
Service Manager	1.5*	0.75
Principal Engineer – NR&M	3	
Senior Highway Enforcement Officer	4	8
Traffic Officer	2	
Principal Engineer – HDC	1*	0.5
Highway Records Officer	2.75*	1.5
Mobility & Inclusion Officer	9*	8*
Council Wardens (x2)	2	8
Assistant Manager – HDU		3
HDU Operative (x2)		8
Sub Total	39.25 hr/week	53.75 hr/day
<b>Total</b>	<b>2.52 FTE's (assuming 37hpw)</b>	

\* indicates durations which could be expected to reduce in Year 2 operation.

It is acknowledged that the cost of £61,400 recorded during the trial represents Year 1 costs which contain a significant element of dealing with land boundary issues within the four trial zones. Assuming that the majority of land issues have been resolved Year 2 cost should reduce as back-office costs associated with continuing the ban at the same level would no longer be required, however a small residual number of issue currently remain in dispute. As a guide, the projected Year 2 costs associated with maintaining the ban in the four zones could reduce to circa £36,400, however this remains an unbudgeted expenditure for the Planning, Transportation & Highways service to fund especially in light of the recently announced budget savings for the service which £1.331m over the next two financial years.

9.2 In projecting the cost of the continuation of the ban and/or changing the basis of the numbers of zones within the ban the above staffing resource profile was changed to reflect the new staff structure within Planning, Transportation & Highways. The

changes to the staffing profile are reproduced in the table below. The calculation of resources required for extension of the ban into urban centres assumes up to 10 additional urban centres could be added to the existing trial zones. It should be noted that the time which had been recorded by the Mobility and Inclusion officer during the trial was re-distributed to the post of Highway Enforcement Officer and Traffic Officers.

Table 2: Projected staffing resources for future options

Resource	Urban Centres		Whole District	
	Average Hrs/Wk on Day-to-day operations	Time spent on Enforcement days	Average Hrs/Wk on Day-to-day operations	Time spent on Enforcement days
Principal Engineer – NR&M	7	0.75	8.75	0.75
Senior Highway Enforcement Officer	22		25	
Highway Enforcement Officer	22	8	25	8
Traffic Officer (x2)	26	8	30	8
Principal Engineer – HDC	5	0.5	6.25	0.5
Highway Records Officer	14	1.5	20	1.5
Council Wardens (x2)	14		20	
Assistant Manager – HDU		3		3
HDU Operative (x2)		16		16
FTE Summary	<b>4.00 FTE's (assuming 37hpw)</b>		<b>4.67 FTE's (assuming 37hpw)</b>	

Again, the costs reported to Executive for either of the above options would represent Year 1 costs which would similarly reduce over time. However, the significant number of areas which would be added to the ban by either of these options could similarly mean that significant reductions in costs may not be achievable until Years 3 and 4 of operation.

## 10. INFORMATION RELATING TO THE ACTIVITIES OF OTHER LOCAL AUTHORITIES

10.1 Details of the approaches adopted by other West Yorkshire local authorities and those nationally who have made this information available via their websites is shown in Appendix 1 attached to this report.

## 11. ABSENCE OF CRITERIA IDENTIFYING WHERE ADVERTISING BOARDS CAN AND CANNOT BE LOCATED

11.1 The principle criteria to be used to determine whether any application for an advertising board can be safely placed on the highway will be based on the Council's previous requirements in relation to its Code of Practice for the Placement of Advertising Boards and Shop Displays which is attached at Appendix 2 of this report. These criteria are in turn based on the Department for Transport guidance "Inclusive Mobility"



## **12. INCORPORATION OF THE RECOMMENDATIONS OF HEALTH & SOCIAL CARE OVERVIEW & SCRUTINY COMMITTEE IN THE EXECUTIVE REPORT**

- 12.1 The recommendation of the Health & Social Care Overview & Scrutiny Committee is described in paragraph 4 of the Executive Summary section of the report considered by Executive which states:

The ban was reviewed by the Health and Social Care Overview & Scrutiny Committee in December 2016 who made the following recommendation to Executive:

**Resolved –**

**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.**

- 12.2 The Executive report further makes reference to this option in paragraph 9.1(b) where definition of urban centres is provided to include Baildon, Bingley, Bradford City Centre, Greengates, Haworth, Ilkley, Keighley, Queensbury, Saltaire, Shipley, Silsden, Thornton and Wyke.

## **13. REPORT CONTAINS INFORMATION NOT MADE AVAILABLE TO THE HEALTH & SOCIAL CARE OVERVIEW & SCRUTINY COMMITTEE WHEN IT CONSIDERED THE TRIAL IN DECEMBER 2016**

- 13.1 The report presented to Executive was based on the December 2016 report presented to the Health and Social Care Overview & Scrutiny committee with a number of items of additional information, namely:

- a) Details of the consultation exercise with businesses located within the areas of the trial describing the impact of the trial on their levels of trading;
- b) Details of the resource and financial implications of running the trial ban;
- c) Details of the anticipated cost of expanding the ban to urban centres or the whole district and the potential level of license fee necessary to make the scheme self-financing; and
- d) Introduction of the option of licensing advertising boards as a possible approach to dealing with the issue of pavement obstructions.

- 13.2 In relation to information described in 13.1(a) the information provided in the Executive report was collated as a direct consequence of responding to the resolution of Health & Social Care Overview & Scrutiny's resolution requiring a further approach be made to businesses within the trial zones. Information provided in relation to 13(b), (c) and (d) was collated as a specific response to a question raised by the Portfolio Holder (Regeneration, Planning & Transport) in advance of the Executive meeting.

## **14. APPENDICES**

- 14.1 Appendix 1 - Summary of approach to advertising boards by other Councils.

14.2 Appendix 2 – Code of Practice: Control of Advertising boards and Display of Goods on the highway pavements of the Bradford District

## Control of Advertising Boards in West Yorkshire

Authority	Approach	Licence Fee (If applicable)
Kirklees	Formal policy of licensing of advertising boards requiring application to Council for placement. Failure to have licence leads to enforcement by the Council.	£105 / board
Wakefield	No formal policy on A-Boards. Website defines offence of obstruction to the free passage of the highway. (Section 137 Highways Act 1980). Reference to the powers available to the Council to remove an obstruction is made	
Leeds	Leeds CC website advises that <i>“The Council can only deal with A-boards that have been placed on the public highway and is causing an obstruction. In the first instance you should approach the business to ask them to remove it. If they persist in causing an obstruction with the board this should then be reported to the Council.</i>  <i>The Council will investigate and where appropriate may take action against the business by serving a legal notice requiring them to remove it. If they fail to do this the Council will remove the board and recover the costs from the owner.</i>  <i>If the A-board is on private land it is a civil matter.”</i>	
Calderdale	No formal policy on advertising boards. Council web site refers to offence of obstruction of the highway and the powers available to the Council to remove obstructions.	

## Control of Advertising Boards in elsewhere

Authority	Approach	Licence Fee (If applicable)
York	Currently operating a 12 month ban trial of advertising boards throughout the city centre	
Liverpool	Licence scheme in operation permitting one advertising board / business	£50 per item <u>plus</u> £50 where the Council is landowner
Brighton & Hove City Council	Licence scheme in operation permitting one advertising board / business	£102 initial application / £71/year renewal

<b>Authority</b>	<b>Approach</b>	<b>Licence Fee (If applicable)</b>
Wolverhampton City Council	Licence scheme in operation permitting one advertising board / business	£25 / application plus £7 addition for applications for sites remote from businesses
Gloucester City Council	Licencing scheme in operation permitting one advertising board / business	£50 per year
Kent County Council	Advertising board policy requiring clear unobstructed access of 2 metres (1.5 metres in areas of low pedestrian footfall) based on Department for Transport's guidance on 'Inclusive Mobility'.	
Bristol City Council	Advertising board policy requiring a minimum of 1.8 metres clear footway between any advertising board and the road. Policy includes guidance on size, design and colours of boards.	
Nottingham City Council	Completely banned advertising boards in part of the city centre where pedestrian footfall is in excess of 20,000 people. Where not in areas of high footfall Council will enforce any pavement obstruction which does not comply with minimum clearance requirements.	
Hull City Council	Introduced a policy which was designed to reduce the presence of A-boards being unlawfully displayed and encourage businesses to either advertise through alternative routes or to seek consent from the Council to display advertisements on the highway. This policy allows A-boards to be present in certain locations subject to strict criteria.	
Royal Borough of Windsor & Maidenhead.	Introduced a licencing scheme for any advertising board to be placed in a public open space subject to a number of criteria, including:  A-boards and other goods are only allowed on pavements where sufficient width of footway can be left clear and unobstructed for pedestrian use (usually a minimum of 2 metres). A-boards and goods must be removed from the street outside the times permitted in the licence. A-boards and goods must not be placed in the way of vehicle movements – this is to ensure free and unobstructed access by emergency services.	£450 / application with renewal of £450 / 2 years. If application is refused £150 is returned to business.
Edinburgh Council	Advertising boards are banned on the Royal Mile, Rose Street and Rose Street Area.	
Southwark Council	Introduced a license scheme for all out doo street furniture including advertising boards.	£81.50/sq. metre
Reading Council	Considering introducing a licensing scheme for advertising boards in Reading town centre.	£45 charge for initial assessment by council officer then £75.00/pa

<b>Authority</b>	<b>Approach</b>	<b>Licence Fee (If applicable)</b>
Islington Council	Introduced a licensing scheme with banded costs depending on location of business concerned.	£120pa - £390pa
West Sussex	Introduced a pilot licensing trial in 2016	Price not yet determined but will be payable annually
Hampshire Council	Introduced a licensing trial in 2015-16	Pricing not confirmed