

Report of the Strategic Director of Place to the meeting of Executive to be held on 7 November 2017

Subject:

AH

Arrangements for the implementation and review of a district wide ban on the use of pavement display boards.

Summary Statement:

Following the resolution of Full Council on 18 July 2017 to ask the Council's Executive to implement a full ban on A-boards across the district preparatory work to produce the necessary policy and set up enforcement arrangements has been undertaken. This report updates the Executive on these arrangements and seeks formal approval to the policy and its implementation.

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Portfolio:

Regeneration, Planning & Transport

Overview & Scrutiny Area:

Environment & Waste Management /
Health & Social Care

1. SUMMARY

- 1.1 Following the resolution of Full Council on 18 July 2017 to ask the Council's Executive to implement a full ban on A-boards across the district preparatory work to produce the necessary policy and set up enforcement arrangements has been undertaken. This report updates the Executive on these arrangements and seeks formal approval to the policy and its implementation.

2. BACKGROUND

- 2.1 Executive considered details of the operation and effectiveness of a 12 month ban of pavement obstructions (advertising boards) in Bradford City Centre, Saltaire, Ilkley and on the A647 Leeds Road between Thornbury Gyratory and Bradford City Centre at its meeting of 7th March 2017 where the following resolution was made:

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; and**
 - 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 by delegated to the Strategic Director: Place in consultation with the Portfolio Holder.**
- 2.2 This resolution of the Executive was subject to call in within the prescribed period and the matter referred to the Health and Social Care Overview and Scrutiny Committee on 23 March 2017. The committee resolved that:

RESOLVED –

That the decision of the Executive be referred to Full Council for consideration.

- 2.3 The matter was subsequently considered by Full Council on 18 July 2017 where the Council proposed:
- **To ask the Council's Executive to implement a full ban on A-Boards across the District.**
 - **That a report is sent to the Health and Social Care Overview & Scrutiny Committee to review the effectiveness of the ban 12 months after implementation.**

3. OTHER CONSIDERATIONS

- 3.1 In preparation for the implementation of a district wide ban a policy outlining the process for enforcement of contraventions of the ban was developed in conjunction by the Council's Network Resilience & Management Team. This policy is attached at Appendix A of this report.
- 3.2 Based on the experience gained from the 12 months trial of banning advertising boards the policy covers specifically how the Council will approach dealing with disputes over title deed / highway status records.
- 3.3 The use of Community Protection Notices (CPNs) (under the Anti Social Behaviour, Crime and Policing Act 2014) is proposed as a more robust way of dealing with repeat offenders rather than referral to Magistrate's Court as required under the Highways Act 1980. A trigger of 2 instances of repeat offending by a business is proposed before the Council would move to the formal CPN process. This would allow sufficient evidence to be collected of the wilful contravention of the ban by the business in question.
- 3.4 When moving to a formal CPN stage of enforcement a business is served notice outlining the contravention which must cease by an authorised officer. Failure to comply with this notice permits the Council to issue a Fixed Penalty Notice of not more than £100 for failure to comply with the CPN as well as seize the item causing the contravention.
- 3.5 The policy describes the formal removal procedure to be adopted together with the process for businesses to reclaim any removed advertising boards from the Council.
- 3.6 A principal consideration as to when the ban could become operational is the need to contact all businesses who potentially use advertising boards as part of their marketing strategy. Unfortunately, as highlighted in the 12 month trial the Council does not have a separate data set of businesses who use advertising boards and must therefore consider how best to contact businesses across the district for the least cost to advise them of the date of introduction of the ban. To accomplish this it is proposed that details of the ban and its implementation date are included in the business rates mailing in the New Year.
- 3.7 To provide businesses the opportunity to comply with the requirements of the ban once they have been advised the date of operation of the ban is proposed to be 1 April 2018.

4. FINANCE & RESOURCE APPRAISAL

- 4.1 Enforcement of the ban will be undertaken by the Council's Network Resilience & Management team in conjunction with Council Wardens (where patrols currently operate). Since the introduction of the 12 month trial ban resources in this time directed to enforcement of highways matters have increased to two dedicated Highway Enforcement Officers. In addition to

these officers the Council's two Traffic Officers will also be tasked with responding to reported contraventions of the ban.

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.

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 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 is 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.

Highway Authority – who have powers and duties under the Highways Act 1980 (the 1980 Act) and responsibility for the street scene enforcement.

- 6.2 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 below.
- 6.3 The Council has the power to order by notice the removal of obstructions under Sections 143 and 149 of the 1980 Act.
- 6.4 The offence of 'obstruction of the public highway' arises under Section 137 of the 1980 Act. The present of 'A board's' 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.

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 policy described in this report the Council has endeavoured to established balanced criteria which is fair to businesses, 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 sustainability implications arising from this report.

7.3 **Greenhouse Gas Emissions Impacts**

There are no greenhouse gas emissions impacts arising from 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 policy contained in this report the Council has endeavoured to established balanced criteria which are fair to businesses, 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 associated with 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.

7. NOT FOR PUBLICATION DOCUMENTS

7.1 None

8. OPTIONS

8.1 Executive may decide to adopt the proposed policy and the details of its implementation and operation.

8.2 Alternatively, Executive may decide not to approve the policy and the details of its operation and recommend an alternative approach to the enforcement of a district wide ban on advertising boards.

9. RECOMMENDATIONS

9.1 That Executive:

- a) Approves the introduction of a total ban on the use of advertising boards on areas of adopted highway on a district wide basis.
- b) Approves the proposed Advertising Board policy and the arrangements for its advertisement, implementation and operation described in this report.
- c) Approves the proposed date of implementation of the ban of 1st April 2018.

9.2 That a report outlining the effectiveness of the ban together with its financial costs be presented to the Health and Social Care Overview & Scrutiny committee 12 months after the date of its implementation.

10. APPENDICES

10.1 Appendix A – Advertising Board Policy

10.2 Appendix B – Equalities Impact Assessment.

11. BACKGROUND DOCUMENTS

11.1 Highways Act 1980

11.2 Local Government (Miscellaneous Provisions) Act 1982

- 11.3 Statutory Instrument 2004 No. 3701
- 11.4 Town and Country Planning Act 1990 (as amended)
- 11.5 Countryside and Rights of Way Act 2000
- 11.6 Report of the Strategic Director (Regeneration) to the Health and Social Care Overview & Scrutiny Committee to be held on 8th December 2016, Review of the Operation of the Council's 12 month trial ban of pavement obstructions.
- 11.7 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.
- 11.8 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.
- 11.9 '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.
- 11.10 'A' Boards and Shop Pavement Displays as Obstruction on the Public Highways report to Executive on 4 February 2011
- 11.11 'A' Boards and Shop Pavement Displays as Obstruction on the Public Highways report to Environment & Waste Management Overview and Scrutiny Committee, 18 January 2011.
- 11.12 City of Bradford Metropolitan District Council Transportation, Design & Planning Director Decision Sheet 80/04
- 11.13 City of Bradford Metropolitan District Council Transportation, Design & Planning Director Decision Sheet 17/05
- 11.14 Report of the Transportation, Design & Planning Director to the meeting of Executive 17 October 2005.
- 11.15 Minutes of Executive's meeting held on Monday 17 October 2005
- 11.16 Kent City Council A-Board Guidance and Application Form
- 11.17 A-Boards on the Highway – Policy and Guidance, Kirklees Metropolitan Council, October 2014
- 11.18 Kirklees Metropolitan District Council Cabinet Report, 17 December 2013, Proposed controls on street based advertising such as A-boards and goods for sale
- 11.19 Who Put That There! The barriers to blind and partially sighted people getting

out and about, February 2015, RNIB Campaigns.