

Report of the Strategic Director of Place to the meeting of Health and Social Care Overview and Scrutiny Committee to be held on 13th February 2020

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Subject:

Review of the Authority's 'A' Board Ban

Summary statement:

This report Reviews the progress and processes surrounding the current 'A' Board ban within Bradford District.

Steve Hartley
Strategic Director - Place

Report Contact: Darren Badrock
Phone: (01274) 437420
E-mail: darren.badrock@bradford.gov.uk

Portfolio:

Regeneration Planning and Transport

Overview & Scrutiny Area:

Health and Social Care Overview and Scrutiny Committee

1. SUMMARY

- 1.1 This report Reviews the progress and processes surrounding the current 'A' Board ban within Bradford District.

2. BACKGROUND

- 2.1 On 7th November 2017 Executive Committee resolved the following;
1. That the introduction of a total ban on the use of advertising boards on areas of adopted highway on a district wide basis be approved.
 2. That the proposed Advertising Board policy and the arrangements for its advertisement, implementation and operation described in Document "AH" be approved.
 3. That the proposed date of implementation of the ban of 1st April 2018 be approved.
- 2.2 In preparation for the 1st April 2018 date, letters were sent, accompanying business rate documentation, to every registered business within the district providing information about the ban.
- 2.3 Information was also placed on the Authorities web site giving details of the ban and how it is to be implemented. The URL and screenshots of this web page are shown in Appendix A.
- 2.4 Policy Documentation to implement the ban was drawn up by the Network Resilience and Management (NRM) Team. This policy has been included in Appendix B.
- 2.5 Subsequently, a ban on 'A' Board within the district was implemented from 1st April 2018 as specified, and has been enforced by the Highway Enforcement Team within NRM
- 2.6 Following the implementation of the ban members the Highway Enforcement Team have committed to attend the quarterly Mobility Planning Group to collate and address concerns raised by people with disabilities or disabled people. Information and comments from these meetings have helped guide enforcement action and policy.
- 2.7 Given the high number of complaints (of varying complexity) that are received by the Highway Enforcement Team on an annual basis 'A' Board enforcement has been undertaken on a informal and proportionate reactive basis derived from direct complaints or via direct observations by officers in conjunction with other investigations. Intelligence is also received from Council Wardens.
- 2.8 Wardens may speak to individual business owners regarding 'A' Board, but cannot undertake enforcement actions due to current standing orders and the relevant legal processes required in undertaking removal.

- 2.9 Incidents relating to 'A' Board are recorded on the corporate Highways Management System. This system has been interrogated to determine the number of complaints received.
- 2.10 Since the implementation of the ban NRMT have received 9,497 enforcement complaints of varying types (district wide).
- 2.11 70 of these complaints relate to 'A' Board (0.73% of total received). Individual complaints may relate to single or multiple boards in a given area.

3. OTHER CONSIDERATIONS

- 3.1 There are currently 3 dedicated highway enforcement staff working in the district who are capable of processing A Board prosecutions at this time. Two vacant posts exist within the team and are currently under recruitment. Given these staffing levels proactive enforcement is not considered viable given the current case load.
- 3.2 'A' Boards may be sited off-highway on private land. In such cases no enforcement action can be undertaken by the Highway Enforcement Team.
- 3.3 It is the intention of the Highway Enforcement Team to issue a further reminder letter to all businesses within the district accompanying the annual business rate mail-out in the 2020 financial year

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 'A' Board enforcement is undertaken on the basis of recoverable costs only.
- 4.2 As no dedicated budget has been allocated for A Board removal any action undertaken is required to be cost neutral if it cannot be factored into other recoverable costs, such as wider days of action.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 There are no significant risks arising out of the implementation of the proposed recommendations

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 assert and protect the rights of users of the highway under section 130 the 1980- Act which should take account of 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 presence 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

- 7.1.1 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

- 7.2.1 There are no sustainability issues

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

7.3.1 There are no Greenhouse gas emission impact issues

7.4 COMMUNITY SAFETY IMPLICATIONS

7.4.1 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

7.5.1 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

7.6.1 There are no Trade Union Implications.

7.7 WARD IMPLICATIONS

7.7.1 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.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

7.8.1 None

7.9 IMPLICATIONS FOR CORPORATE PARENTING

7.9.1 None.

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

7.10.1 None.

8. NOT FOR PUBLICATION DOCUMENTS

8.1 None

9. OPTIONS

9.1 None

10. RECOMMENDATIONS

10.1 That members note the content of the report.

10.2 That officers are requested to further update the Committee regarding enforcement of the ban in 12 months.

11. APPENDICES

11.1 Appendix A – Website Information

11.2 Appendix B – ‘A’ Board Enforcement Policy

12. BACKGROUND DOCUMENTS

12.1 Report of the Strategic Director of Place to the Meeting of Executive to be held on 7 November 2017 – Document AH – ‘Arrangements for the implementation and review of a district wide ban on the use of pavement display boards.’

Appendix A – Website Information

1/21/2020

Control of advertising boards on the highway pavements of the Bradford District | Bradford Council

Control of advertising boards on the highway pavements of the Bradford District

What is an A-board?

An 'A-board' is a board or pavement sign placed on the highway and used to advertise businesses and/or their products. For example, an a-board may:

- be made of wood, plastic or metal
- hang from a frame
- swing or swirl
- be propped up against a wall.

What is classed as a public highway?

'Public highway' in this instance is defined as a footway, verge, carriageway or public right of way between the boundaries of private property which could be adopted or un-adopted.

Dedicated park land and private land are not classed as public highway. We do not have any powers to enforce removal of A-boards on private land next to the public highway.

If the ownership of land is disputed the alleged owner will be asked to provide evidence to the contrary to that recorded by the definitive Highway Record and/or Land Registry.

Please note:

1. Un-adopted highway may show that you have ownership on the title deeds. However, the existence of a public highway on this land supersedes any land ownership rights. The Highway Authority has precedence in legal consideration of activities in the highway land over the land owner.
2. Under Section 31 of the Highways Act the designation of highway may also arise from the use of land for an uninterrupted period of 20 years. Therefore the Council may consider that land which has not formally been dedicated or adopted is appropriately designated as highway.

District wide A-board ban

The placing of A-boards on the public highway poses a nuisance and potential danger to highway users, particularly to sight impaired, disabled or vulnerable people.

Please note:

1. The physical removal of an A-board will be dependent on its weight and size as well as the availability of a vehicle. In the meantime and where reasonably possible (in line with health and safety policies and procedures) a Council officer will attempt to move the A-board to a less obstructive position until it can be collected.
2. If the A-board is on private land we cannot take any enforcement action.

Who will carry out the enforcement action?

Bradford Council's Network Resilience and Management Team will carry out the enforcement action. This team are a part of the Planning, Transportation and Highways Service.

How can I reclaim a confiscated A-board?

There is a £250 charge to have your A-board returned if we have removed it from the public highway. The charge covers the cost of removal and temporary storage. You can pay using the Council's online payment system.

Pay for the return of a confiscated A-board

<[https://ip.e-paycapita.com/AIP/itemSelectionPage.do?
link=showItemSelectionPage&siteId=310&languageCode=EN&source=AIP&fc=54](https://ip.e-paycapita.com/AIP/itemSelectionPage.do?link=showItemSelectionPage&siteId=310&languageCode=EN&source=AIP&fc=54)>

The link above explains how to pay and where you can retrieve your A boards from.

Are there any suitable alternatives to A-boards?

We want to work with businesses and the community to achieve a sensible and practical solution to advertising.

Whatever form of advertising you choose to adopt for the future please be mindful that flyposting on street furniture and highways land is illegal and also subject to enforcement action.

Contact details

General enquiries about traffic, highways and highway maintenance : **01274 431000**
(**tel:01274431000**).

Bradford Council's Executive Committee voted to impose a **district wide ban on advertising A-boards** on the public highway, following a successful 12 month trial ban within designated areas of the district.

The ban came into force on **1 April 2018**.

Which laws and legislation allow the Council to impose an A-board ban?

The following enforcement legislation allows the Council impose an A-board ban:

- Highways Act 1980, Section 130 – Protection of public rights.
- Highways Act 1980, Section 137 – Penalty for wilful obstruction.
- Highways Act 1980, Section 143 – Power to remove structures from highways.
- Highways Act 1980, Section 148 – Penalty for depositing things or pitching booths etc. on the highway.
- Highways Act 1980, Section 149 – Removal of things so deposited on the highway as to be a nuisance etc.
- Town Police Clauses Act 1847, Section 28 -
- Anti-Social Behaviour, Crime and Policing Act 2014, Part 4 – Community Protection Notices.

What should I do if I see an A-board on the highway?

If you see an A-board on the highway you can report it to us by calling 01274 431000.

How will enforcement action be taken?

The following procedure will be followed if an A-board is found on the public highway:

1. A Council officer will visit the site of the A-board. They will collect evidence including photographs, the location of the A-board, the name and contact details of the business.
2. We will contact the relevant business or owner of the A-board and ask them to remove the A-board from the highway permanently by no later than the close of the current working day. We may also place a 'notice to remove' sticker on the A-board.
3. If the A-board has not been removed by the business or owner by the next day it will be removed from the highway by an authorised Council officer.
4. We will store any removed A-boards for a maximum of 28 days.
5. We will charge a storage cost and administration fee to anyone wishing to reclaim the A-board.
6. We will destroy the A-board if nobody reclaims it.
7. If there are 3 repeat instances of an A-board being placed outside/by a particular business, we will consider issuing a Community Protection Notice.

Appendix B – ‘A’Board Enforcement Policy

Planning Transportation and Highways – Policy Document

A-Boards

Author	Darren Badrock
Revision Number	2
Date of Last Revision	March 2018
Review Date	1 st April Annually

1 Background

The placing of ‘A’-Boards outside premises on the public highway poses a nuisance and potential danger to pedestrians – particularly to partially sighted/blind and vulnerable members of society.

2 Council Position

On 7th November 2017 Executive Committee resolved the following;

2.2 That the introduction of a total ban on the use of advertising boards on areas of adopted highway on a district wide basis be approved.

2.3 That the proposed Advertising Board policy and the arrangements for its advertisement, implementation and operation described in Document “AH” be approved.

2.4 That the proposed date of implementation of the ban of 1st April 2018 be approved.

As such, the stated position of the Authority is that no such boards be allowed on the public highway.

3 Relevant Enforcement Legislation

The following list details the main relevant legislative powers that may be used by the Authority in the context of enforcing this policy. This list is non inclusive and legislation is to be implied on a case by case basis.

Due consideration as to whether an item presents a nuisance or a danger should be clearly recorded when applying legislative procedure.

In all cases the procedures set out in the relevant sections of the respective act should be carefully followed.

Highways Act 1980 – Sect. 137 – Penalty for wilful obstruction.

Highways Act 1980 – Sect. 148 – Penalty for depositing things or pitching booths etc. on highway.

Highways Act 1980 – Sect. 143 – Power to remove structures from highways.

Highways Act 1980 – Sect. 149 – Removal of things so deposited on highways as to be a nuisance etc.
Anti-Social Behaviour, Crime and Policing Act 2014 - Part 4 - Community Protection Notices.

4 Guidance for Officers

“Public Highway” in this instance is defined as the surface layers of any area maintainable at public expense, including footway, verge and carriageway between private property boundaries, excluding dedicated park land. Public rights of way are to be included in the policy.

There may be occasions where A-Boards are placed on private land immediately adjacent to the building in question and not on the Public Highway. In these instances, CBMDC Highways have no powers to enforce removal.

In specific instances, where the ownership of land is disputed, the owner should be asked to take the board down for safety reasons until the issue is resolved. They should also be asked and provide evidence that they own the land in question.

If they refuse to remove the board, the dispute should be noted and the date and time of the visit should be recorded.

The definitive Highway Record is held by The City of Bradford MDC Highway Records Officer.

Anisah Naz — 01274 433707 – anisah.naz@bradford.gov.uk

Caution is advised in disputed areas as removal of an A-Board from private land may be seen to constitute theft.

Use of Community Protection Notices (CPN)

CPN's are intended to be served in cases of antisocial behaviour. It is suggested that in order for a CPN to be issued a definitive pattern of repeat offences needs to be established.

In this instance it is suggested that after 3 repeat instances of A-Boards being placed outside a particular business, a CPN is considered.

The issuing of a CPN is a formal process that requires a consistent evidence base and a caution to be issued PRIOR to moving to formal stage.

The issuing of CPN's is covered in a separate policy document.

5 Removal Procedure

- A-Board location to be noted, date and time of encounter to be recorded.
- Photographic evidence of A-Board, including siting to be taken – to include relevant nearby landmark/structure etc.

- Above information to be passed to Highways for recording
- Relevant Businesses/owner of A Board to be contacted and asked to remove permanently no later than the close of the current working day.
- If not removed by the business in question by the next day, the board may be removed from the Highway by an authorised officer.
- Boards will be retained for 28 working days, after which an appropriate magistrates order will be obtained for their disposal.
- Anyone wishing to reclaim the board within the 28 day period may do so, at a cost of £250, this covers collection, storage and administration.
- Advice regarding suitable alternatives to A-Boards is available on the Authority's website at the url below.

<https://www.bradford.gov.uk/transport-and-travel/highways/control-of-advertising-boards-and-display-of-goods-on-the-highway-pavements-of-the-bradford-district/>

6 Financial Aspects/Costs to the Authority

Staff time and other associated costs relating to A Board enforcement is to be recorded separately.

7 Enforcement Timescales

- i. Given staff resources, no set inspection/enforcement schedule for A Board's is to be introduced.
- ii. This policy relates to items either specifically reported to the Authority by the public or those directly encountered by officers on site in the course of their duties.
- iii. Initial responses to A Board complaints from the public should be undertaken within 10 working days where possible. This may take the form of noting for action when visiting a particular area.
- iv. Where multiple complaints are received from a single source enforcement will be undertaken at officers discretion to allow time for other issues to be dealt with proportionately.

8 Notes

- i. An initial guidance letter to all retail properties in Bradford District will be sent out with the corporate 2018 business rates documentation.
- ii. A copy of the letter in (i) above is to be included as standard in response to new planning applications for retail premises.
- iii. This policy is to be reviewed annually following introduction

Document History

Revision/Review		
1	Initial Draft	L. Greenwood
2	Final Draft	D. Badrock
3	Annual Review 2019	D. Badrock