

Bath & North East Somerset Council

MEETING: **Licensing Committee**

DATE: **28 March 2011**

AGENDA
ITEM
NUMBER

TITLE: **Proposed Footways Obstructions Policy and Conditions**

WARD: **All**

AN OPEN PUBLIC ITEM

List of attachments to this report:

Annex A: Proposed Footways Obstructions Policy and Conditions

1 THE ISSUE

- 1.1 This report invites the Committee to comment on the proposed Footways Obstructions Policy and Conditions (“the Policy”) as part of a consultation exercise before it is presented to the Cabinet Member for Service Delivery.

2 RECOMMENDATION

- 2.1 That the Committee give due consideration to the proposed Policy and Conditions at Annex A and, if necessary, make recommendations to the Cabinet Member for Service Delivery for any amendments or additions as part of the consultation exercise..

3 FINANCIAL IMPLICATIONS

- 3.1 There will be additional resource implications in the administration and enforcement of this policy. A fee will be set for the application process based on full recovery of all the costs involved however, the Council is not allowed to include the cost of enforcement and this additional cost will have to be absorbed within existing resources.
- 3.2 The application fee will be determined by the Divisional Director for Environmental Services in conjunction with the Cabinet Member for Service Delivery.

4 THE REPORT

- 4.1 For some time now the Council has been considering how best to regulate obstructions on the highway, which include A Boards on pavements and a host of other obstacles. Last year the authority received around 25 complaints relating to A-boards.
- 4.2 The proposed policy and guidelines, provided in Annex A, seek to introduce clear controls by using the Council's powers under the Highway's Act 1980 to balance the legitimate aspirations of local businesses to attract customers, whilst at the same time safeguarding the pavements for their primary purpose. This is particularly important, for example, to wheel chair users, people with visual impairments, the elderly and those who try to get pushchairs around.
- 4.3 The proposal is that anyone wanting to put an object on the pavement would have to apply for a permit. The application would be advertised and if it meets the guidelines i.e. if it would not be an obstruction according to the policy, it would be granted.
- 4.4 If the Council receive a relevant objection to the application, the application would be referred to the appropriate Licensing Sub-Committee for determination. This is similar to the process that the Council already operate for the processing of applications for tables and chairs on the highway and a fee would be charged for the application and permit.
- 4.5 Anyone who puts an obstacle on the highway without a permit, or the object breaches the Council's guidelines in terms of size, position etc, may, after due warning, have the object impounded and may have to pay for its return.
- 4.6 The Council are in the process of carrying out a consultation on the proposed policy and guidelines and this will culminate in a report to the Cabinet Member for Service Delivery who will make a decision on whether or not to adopt the policy with, or without, any amendments in April.
- 4.7 A copy of the proposed policy and conditions is provided in Annex A.

5 RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

6 EQUALITIES

- 6.1 The equality groups will be included within the consultation exercise and the consultation will be carried out in accordance with the equalities requirements for consultations.

7 CONSULTATION

- 7.1 This report has not been sent to the Trades Union because they would have no involvement in this application.
- 7.2 This report is being brought to the Licensing Committee as part of a consultation exercise and any comments from the committee will be incorporated in a further report to the Cabinet Member for Service Delivery when considering whether to adopt the Policy and Conditions.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 Social Inclusion; Young People; Human Rights, Public Safety.

9 ADVICE SOUGHT

- 9.1 The Council's Monitoring Officer (Council Solicitor) and Section 151 Officer (Strategic Director - Support Services) have had the opportunity to input to this report and have cleared it for publication.

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Background papers	The Highways Act 1980

POLICY AND CONDITIONS

FOOTWAY OBSTRUCTIONS and THE ISSUING OF PERMISSION TO PLACE AMENITIES ON THE HIGHWAY

CONSULTATION DOCUMENT

POLICY ON FOOTWAY OBSTRUCTIONS AND THE ISSUING OF PERMISSION TO PLACE AMENITIES ON THE HIGHWAY

1 Introduction

Bath and North East Somerset Council (the Council), as the Highways Authority, is responsible for managing the street scene throughout the whole of the district. To ensure that it is both attractive and easy to use for all, the Council has adopted a policy for the control of articles that are placed on footways. The term “footway” includes any road, footway or other area including car parks, pedestrian areas and parks to which the public have access without payment. The Council’s policy is to create a street environment where amenities can be placed on the highway which:

- complement premises based trading but are not unduly cluttered;
- are sensitive to the needs of residents;
- do not cause health or safety problems for other users of the footway

2 Purpose of the Policy

The Council has a duty to assert and protect the rights of the public to the use and enjoyment of the highway and to allow the public to use the highway safely and without obstruction. (s130 Highways Act 1980). In doing so the Council will:-

- keep the highway free of obstruction;
- protect the safety of highway users;
- ensure the expedient movement of pedestrians; and
- control the placement and removal of articles that prevent safe and expedient pedestrian movement.

As the Highway Authority, the Council also has powers under the Highways Act 1980 to deal with obstructions and hazards to users of the public highway. This policy supports the Council in meeting its duties as a Highway Authority.

This policy is designed to enable the Council to control and regulate articles placed on footways which could detract from the area’s heritage and its diverse and attractive street scene. It will also help businesses promote their goods and services in a welcoming and regulated way that helps maintain economic viability.

The Council has therefore decided to adopt a procedure whereby it may grant permission on application for a person or business to place items on the highway. The permission it grants will be by way of a permit. The permitting process will enable the Council to attach conditions to the permit issued and take enforcement action should the terms of the permit not be complied with.

This policy is designed to ensure that the Council continues to promote equal opportunities for all regardless of age, ethnicity, sex and disability. This policy is also designed to ensure that there are no unauthorised obstructions on footways preventing the safe passage of all pedestrians.

3 Legal Background.

An organisation, individual or business wishing to place an item covered by this policy on a footway will be required to obtain a permit before so doing.

All such permits applied for will be determined in accordance with Part VIIA of The Highways Act 1980.

Section 115E Highways Act 1980 enables the Council to grant permission to a person to use objects or structures in the highway, for a purpose which will result in the production of income or for the purpose of advertising. Section 115E also gives the Local Authority the power to grant to a person permission to erect and use a facility on a walkway (e.g. tables & chairs, advertising boards).

Section 115F Highways Act 1980 gives the Local Authority the power to require the payment of such reasonable charges for the grant of permission issued under s115E.

Section 115F Highways Act 1980 gives the Local Authority the power to impose such conditions as they think fit.

Section 115G Highways Act 1980 sets out the consultation process required to be undertaken in respect of an application for the grant of permission under s115E.

Clean Neighbourhoods and Environment Act 2005 (CNEA): The CNEA allows for the issue of Fixed Penalty Notices for “fly-posting/unlawful display of advertising” which covers advertising by A-board, unless it is authorised.

4 What does this Policy Cover

The placing of an item on the highway is not permissible until an application has been submitted to the Council and all associated fees paid and the permit granted.

The policy applies to:

- the use of advertising boards, including A Boards, on the highway.
- the placing of motorcycles, bicycles and other objects on footways and, or chained to railings/street furniture for the purposes of advertising.
- the placing of tables & chairs on the highway.
- the placing of children’s rides, street vending machines and stands displaying or advertising goods for sale.
- placing objects for the purpose of providing a service for the benefit of the public.

This policy does not relate to goods sold under a street trading consent, displayed at markets, street fetes or lay-bys which are regulated under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 or other special regimes.

5 Applying for Permission

In the first instance applicants should contact the Council's licensing team to discuss what other permissions or consent may be required. An application form, together with the relevant fee and additional information, should then be submitted.

Examples of additional information include:

- Photographs of the object;
- Plan of the exact area where the object is to be placed;
- Copy of the relevant insurance certificate.

Following receipt of an application the Council will consult a range of Council Departments, other organisations and individuals including for example:-

- Local Planning Authority
- Highways Authority
- Any owner and occupier of premises likely to be materially affected
- Frontagers with an interest
- Local Councillors

A public notice will be displayed close to the application site for a period of not less than 28 days during which representations regarding the proposal can be made to the Council.

If no representations are received the permission will be granted with the attachment of the Council's standard conditions.

If representations are received against the application the matter will be referred to the Council's Licensing (Taxis, Street Trading and Miscellaneous) Sub Committee for determination. The Committee may then grant or refuse the application and in granting may attach any additional conditions as are necessary and proportionate, together with the Standard Conditions.

Applicants should allow up to at least eight weeks for the application to be processed. This will allow for any relevant objections to be considered and the possible need for a decision to be made in the case of contested applications.

A permit will be granted for up to 12 months or until the 31st March each year, whichever comes first.

All permits are subject to the conditions specified at the end of this policy.

6 Exclusions

The use of an area may involve a requirement to obtain a number of other approvals in addition to meeting the criteria of this policy (e.g. planning permission). It is important for the applicant to secure all appropriate approvals and clearly understand the obligations and conditions that apply to each consent.

The granting of permission to place items on a highway does not:

- cover street trading and other activities licensed by the Council's Public Protection Service and covered by the Council's Street Trading policy.
- cover banners, hoardings, skips and scaffolds etc, which are licensed by application in accordance with The Highways Act 1980
- exempt any applicant/owner from obtaining any consent required under any other legislation including for example The Town and Country Planning Act.

7 Fees

The Council's Divisional Director of Environmental Services in consultation with the Cabinet Member for Service Delivery has delegated authority to set fees and to annually review the fee structure.

Relevant fees for permits must be paid in advance.

If payment is dishonoured by a bank (e.g. bounced cheques), this will result in the revocation of the permit unless payment is made in cash within five working days. In such cases an administration charge will also be imposed.

8 Refunds

Application fees will not be refunded, unless in exceptional circumstances.

The Council cannot guarantee that footway sites will be available every day, and accepts no liability for loss of earnings in relation to permit holders or their employees.

In the event of prolonged use of the location by roadworks, utility or service repairs and other genuine circumstances affecting the use of any location, the Authorised Officer will consider requests for a refund of the fee on a case by case basis, provided a request has been made in writing from the permit holder.

When a permit is surrendered or revoked the Council may refund the whole or part of any fee paid as it considers appropriate.

All applications for refunds should be made, in writing, to the Council's Licensing Service.

9 Enforcement

To ensure that the highway remains free from obstructions and is safe for highway users the Authority may take direct action to remove any object placed on a footway having regard to this policy and all the circumstances.

Where an investigation has established a contravention some form of action will be considered dependent upon the seriousness of the contravention. Under normal circumstances compliance should be achieved through negotiation or informal action such as giving advice or warning letters.

In the event of non-compliance the following options are available:

- giving verbal advice on the law and the means to ensure compliance
- consideration of reasonable timescales to achieve compliance
- service of advisory and warning letters. The policy is always to confirm in writing any visits to premises - even the initial visit is confirmed with a letter advising what actions are required by the recipient.

Where this does not result in compliance a decision will need to be taken as to the appropriate action, such as:

- take no further action
- informal or formal cautions
- issue a fixed penalty notice
- issue a statutory notice
- prosecute
- carry out work in default
- seek injunction
- seizure of goods

On occasions, where a contravention justifies such action enforcement proceedings may be instigated immediately after the initial investigation. Some of the factors to be considered in coming to a decision may include:

- the seriousness of the offence
- the impact of the contravention on the public interest
- the past history of the offender
- the confidence of officers that the offender will remedy the contravention

Enforcement of minor infringements is only taken where it is deemed in the public interest to prosecute or issue fixed penalty notices. In these circumstances 3 warnings will be given prior to taking enforcement action. In cases where there is more serious or repeated obstruction then action may be taken at an earlier stage.

Fixed Penalty Notices (FPNs) will be issued as an alternative to court action; And court action will be considered only for unpaid FPNs or repeat offences by the same business/individual.

Unauthorised Objects

Unauthorised objects may be removed by an authorised officer after having regard to this policy, the provisions of the Highways Act 1980 and all the circumstances. Any person who deposits an unauthorised object on a footway may be considered for a formal caution or prosecution in accordance with the Council's Environmental Services Enforcement Policy.

- A person placing an unauthorised object on a footway will be contacted and asked to remove the object forthwith.
- If the object has not been removed within two hours of the request the Council may remove it and will keep it in storage for a period of 3 months.
- A person may collect the item from storage on payment of the Council's reasonable removal, storage and release fees.
- The Council reserves the right to dispose of any uncollected objects after the 3 month period has expired.

Authorised Objects

If an object is placed on the footway otherwise than in accordance with the permit the permit holder will be contacted and asked to relocate the object within the permit terms.

- If the object has not been relocated within two hours of it being reported to the owner the object may be removed and placed in storage for a period of 3 months
- A person may collect the item from storage on payment of the Council's reasonable removal, storage and release fees.
- The Council reserves the right to dispose of any uncollected objects after 3 month period has expired.

Other Contraventions

Other contraventions may include such issues as dangerous structures, inappropriate wording, not displaying the permit details or non compliance with any of the conditions attached to the permit.

- The Authority may issue the permit holder with a warning requiring the holder to correct the contravention within one week and a maximum of two warnings will be issued within a 12 month period.
- Failure to correct a contravention within one week of a second warning will result in the item being removed from the highway and taken to store.
- A person may collect an item from storage on payment of the Council's reasonable removal, storage and release fees
- The Council reserves the right to dispose of any uncollected objects after 3 month period has expired.

10 Arbitration

Any dispute regarding the interpretation of the policy or conditions shall be referred to the Divisional Director of Environmental Services for determination.

11 Modifications, Alterations or Amendments

The procedures and requirements specified within this policy may be modified, altered or amended at any time, as the Council deems appropriate.

CONDITIONS

These are general conditions and may not be appropriate in every circumstance. Applicants are reminded that an object may need to be removed during events, to enable highway maintenance or street works to be carried out or for any other reasonable cause. Further, any additional request made by the Council, police or emergency services, including immediate removal of an object, must also be complied with.

Display of Permit

The Council's authorised permit shall be displayed on the item at no cost to the Council (or displayed in the window of the premises to which the object relates).

Design

The permit holder is responsible for the safety and suitability for use of all items placed on the highway. They should ensure that all items used are sufficiently robust and well maintained for their purpose. Permit holders are also responsible for the health & safety aspects relating to the portability and handling procedures adopted in each case.

No object shall have sharp edges and must not be chained or locked to any street furniture, railing or lighting column.

Any item placed on the highway must be sufficiently stable so as not to present a danger to any highway user.

Location

- Adequate width must be available for the free passage of pedestrians and items will not normally be permitted if they reduce the footway width below 1.8 metres.
- A route for emergency vehicles (minimum 3.5 metres) is required in pedestrianised areas.
- No item should be placed on the highway which impacts on the visibility at a road junction.

Removal

Items shall be removed from the footway during windy weather or when the premises are closed, and at any other time that the Council shall direct.

All items must be removed in their entirety at the end of each trading day or at a time specified by the Council.

An object placed on the footway otherwise than in accordance with this permit may be removed and placed in storage for a period of 3 months during which time the permit holder may collect the item on payment of the Council's reasonable removal, storage and release fees.

Insurance

All owners of items covered by this policy are required to indemnify the Council against any claim arising from the item. A minimum of £5 million Public Liability Insurance is required relating to any single claim and the Council requires proof of insurance before it will authorise a permit for an item.

A Boards and Goods display:

The Council is keen to see that only high quality A Boards and Goods displays are integrated into the district's shopping areas. In so doing the Council expect the design of the A Boards and Goods displays to be of a high quality and standard.

A maximum of one double sided A Board directly outside the building in which the business or businesses are located will be permitted.

A boards must:

- not exceed 1.2 metres high x 0.5 metres wide in total;
- not interfere with visibility for traffic or pedestrians at dropped kerbs around road junctions;
- not contain moving parts (including rotating or swinging signs);
- be well constructed and maintained;
- not be light weight, flimsy or tatty;
- be self-weighted (sandbags not permitted) and stable in order to resist wind loadings; and
- have a white or yellow surround to aid detection by pedestrians with a visual impairment.

In determining where to allow A Boards, the Council will have regard to:

- any effect on highway safety;
- any loss of amenity;
- existing Traffic Orders e.g. waiting restrictions;
- any potential obstruction of pedestrian or vehicular access;
- any obstruction to the safe passage of pedestrians;
- the safe access and egress of customers and staff to and from the immediate vicinity;
- any land owners permission.
- any impact on other permits granted by the Council i.e. Street trading pitches

In addition:

- A Boards will not normally be permitted anywhere when the footway is less than 1.8 metres wide, nor normally permitted within 10 metres of a traffic sign.

- A Boards will normally only be permitted immediately outside the property covered by the permit, except where this is impractical due to the layout of footways. In such cases they must be placed on the footway as close to the premises as possible. Where a private forecourt exists adjacent to the adopted footway, A Boards will not be permitted on the adopted footway.
- No A Boards will normally be permitted within 10 metres of a road junction, and no article is to be placed blocking the visibility of a junction.
- A Boards will not be permitted on highway verges and must not be placed over manhole covers and inspection/access chambers for underground services.
- A Boards will not be placed in front of doorways or emergency exits from buildings, and must not interfere with the access/egress to property.
- Items containing political messages or wording which are deemed likely to cause offence will not be permitted and will be removed immediately from the adopted highway. The Council's Divisional Director of Environmental Services shall adjudicate on any disputed wording. That decision will be final and there is no appeal.
- In order not to restrict the Council's street cleaning activities the A boards must not be put out before 10:00 AM and must be removed by 6:00 PM.

Tables & Chairs

All tables and chairs need to be of a high standard in terms of design, style and quality, and must be well maintained.

Furniture must be located and retained within the designated area and be arranged so that users remain within this area. It must be removed from the highway at the end of the permitted hours and the surrounding area must be kept clear of litter at all times.

Bicycles and Motorcycles

Bicycles and motorcycles used for advertising purposes must not be chained to railings and street furniture e.g. bicycle racks and are not to be parked on footways unless in a designated parking area.

Display of Goods

The following conditions apply specifically to the display of goods:

- The display must relate to the normal business of the trading establishment.
- All displays must be entirely within and adjacent to the frontage of the trading establishment and be no wider than a third of the available highway footway width.
- In all cases displays must be located to the rear of the footway, close to the building frontage.
- Displays detached from the frontage will not normally be permitted.

- No selling or trading will be permitted upon the highway. All transactions must take place within the trading establishment.

Other Goods for Sale and Promotional Objects

Other goods for sale and promotional objects such as trade stands, models, children's rides and other promotional materials must be sited at the back edge of a footway and only be displayed directly in front of the owner's property. A minimum clear width of 1.8 metres shall normally be maintained at all times for the passage of pedestrians.

PART B GUIDANCE ON TRADE WASTE CONTAINERS

Trade waste containers, or wheelie bins, are those designed for commercial waste collection – including those provided on a communal basis – these will include communal ‘domestic’ waste bins. They are usually large waste containers such as four-wheeled bins (typically 660 litres and above), eurocarts, front end loader containers, paladins and skips.

General Guidance

Your container should be kept tidy and should be big enough to hold the waste you produce. Do not over-fill it and keep it in a reasonable location so that it is not creating an obstruction. Do not pile waste around your container and don't allow other people to dump items or bags in the area around your business.

In addition to the above:-

- All containers should be stored off street in a secure location.
- All refuse should be contained within the bin and the lid closed prior to collection.
- For collection purposes all containers should be placed at the boundary of your property by 7.00am on the morning of your collection day.
- Please return your bin to the normal storage area as soon as practicable after emptying.
- Side waste will not be taken under any circumstances. If you are unable to contain your waste within the bin provided, additional containers may be required.