

WIRRAL COUNCIL

SUSTAINABLE COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE – 8th MARCH 2010

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

REVIEW OF POLICY LEQ08 – OBSTRUCTIONS ON THE HIGHWAY AND LICENSING OF 'A' BOARDS, SHOP DISPLAYS AND PAVEMENT CAFES

1.0 EXECUTIVE SUMMARY

- 1.1 This report has been prepared at the request of this committee and reviews the current policy on the control of 'A' boards, shop displays located within the public highway.
- 1.2 The report recommends that the process of licencing items placed on the highway is retained with some amendments and requests a recommendation from members on the licence fee structure.

2.0 BACKGROUND

- 2.1 Wirral as the local highway authority has powers and duties to manage and maintain highways and footways in the borough. The Highways Act 1980, the Traffic Management Act 2004 and the Disability Discrimination Act 1995 place duties and responsibilities on authorities to manage and maintain the highway so that amongst other things it provides safe, efficient and obstruction free highways available for all its users.
- 2.2 Members are reminded of Wirral's commitment to the Merseyside Pedestrian Strategy, which forms part of the Merseyside Local transport Plan and was approved by Cabinet in June 2008. The vision of the strategy is to provide "*a safe, secure, accessible and clean local area which can be enjoyed by the whole community and provides easy access to employment, health, educational and social opportunities, across Merseyside..... to create an environment which encourages walking by giving high priority to all pedestrians...*". Actions from the strategy include clutter reduction and creating a standard for the street environment including obstruction free pavements wide enough for the busiest use.
- 2.3 When considering the built environment, the authority must pay due regard to BS8300 a Code of Practice for the Design of buildings and their approaches to meet the needs of disabled people. This standard provides guidance and recommendations of good practice to ensure that access routes are convenient to be used by disabled people. In particular it recommends minimum widths and how hazards and projections should be treated.
- 2.4 Further advice and guidance is also contained within Accesscode: a Code of Practice on Access and Mobility. This is a joint project between Merseytravel and the five Merseyside Metropolitan Councils including Wirral and Chester City Council. The advisory code of practice reflects current statutory requirements and best practice within the UK for the design of buildings, structures, highways and transportation and provides guidance on the design and implementation of inclusive design for buildings, environments, structures, highways and transportation.
- 2.5 At the Cabinet meeting of 16th October 2008 Members considered a report on a Streetscene Enforcement Strategy and resolved to adopt a set of policies covering many aspects of Streetscene and Environmental Enforcement. Policy LEQ08 (included in Appendix A to the report) dealt with the management of obstructions including 'A' boards, shop displays and pavement cafes within the highway. The 2008 report built upon a number of previously agreed policies and in relation to 'A' boards and shop displays was a confirmation of decisions and resolutions from

previous reports to Environment and Transportation Select Committee and the Licencing, Health & Safety and General Purposes Committee between 2004 and 2006.

- 2.6 Implementation of Policy LEQ08 was rolled out in April 2009 and since then approximately 400 businesses have been contacted and invited to either remove items from the highway or to apply for a permit. Approximately 40 "A" board and shop display applications and 10 pavement café applications have been received to date. It has also been noted that a significant number of items have been removed completely from the highway, although many still remain.
- 2.7 In response to our requests to apply for permits we have received representations from a number of businesses mainly shopkeepers and retail traders who have raised concerns regarding the implications of this policy on their businesses in the light of the current economic climate. A number of local Councillors have since raised similar concerns and voiced support for the affected businesses. The main concern is that some businesses have traditionally displayed items on the highway and that the imposition of charges to display goods or advertise on the highway will place an unacceptable financial strain on them. It is noted that no such complaints have been raised in relation to licences and charges for pavement café licences, which has been a requirement for a number of years.
- 2.8 At the meeting of the Sustainable Communities Overview and Scrutiny Committee on the 20th January 2010 it was resolved that the Director of Technical Services be requested to review the existing policy in relation to "A" boards and shop displays and report back to the March meeting of this Committee, hence this report.

3.0 REVIEW AND KEY ISSUES

- 3.1 This report reviews the scope of the existing policy and the charges in relation to items placed temporarily on the highway for the purpose of advertising, promoting or enhancing an adjacent business. The review specifically excludes pavement cafes licences as this element of the policy is already well established and is not the subject of the concerns raised. Included in the review are the results of consultations received from a number of bodies and groups representing users of the footway and/or vulnerable user groups.
- 3.2 Many objects and items are located within the footways and paved areas of the borough. Most of these are essential for highway safety reasons, or provide guidance or improve the user experience or environment. Examples of these would include street lighting columns, road signs, traffic signal equipment, pedestrian guardrails, bollards, litter bins, seating, bicycle racks etc. Most of these items are placed by the highway authority and their placement is regulated by statutory or legislative requirements or adopted standards. Utility companies and other statutory undertakers are also lawfully permitted to place equipment and cabinets within the highway and these are also subject to vetting and standards relating to location and other highway safety considerations. However there is a whole raft of items, at which this policy is aimed, that are placed on the highway to promote, enhance or advertise a business, and which is frequently done with little, if any regard, for its effect or impact on other highway users.
- 3.3 It could be argued that there is a tradition for some businesses of placing items on the footway outside premises, for example green grocers and florists and that this can enhance the retail experience and overall ambience of the area. Whilst this may be true in some circumstances, this is certainly not universal and in many locations items are placed in a manner that create a danger or hazard to other users and is visually unappealing. This argument also does not absolve the authority of its duties to manage and regulate use of the highway.
- 3.4 In order for the authority to fulfil its responsibilities, it must be able to demonstrate policies and procedures for dealing with such matters. The current policy was

therefore introduced so that these matters could be dealt with in a fair and consistent manner, to assist in the removal of hazardous or inappropriate items but allow in certain circumstances items to be displayed on the highway.

- 3.5 These problems are not unique to Wirral and many authorities have taken a different approach. For example in the other Merseyside districts a much firmer stance is taken and such items are not allowed to be placed under any circumstances. Businesses placing items on the highway face the possibility of formal enforcement action if not removed. Within Wirral we believe that there are locations and instances where items could be placed without detriment to other highway users and that a more reasonable and justifiable approach is to assess each case individually against agreed criteria.
- 3.6 By implementing the licencing system Wirral can ensure that the needs and requirements of all highway users including the partially sighted, blind people, wheelchair users and other pedestrians are fully considered. Factors that are considered in the application stage include the need to maintain adequate and convenient unobstructed passage and inter-visibility for all pedestrians and highway users at the busiest times and to ensure that the items themselves do not present a hazard or danger by virtue of material, design, shape or size. A further benefit of the licencing system is that it allows the Council to introduce conditions or limitations and to check that the applicant has suitable and appropriate Public Liability Insurance to cover in the event of accidents or claims.
- 3.7 Any item placed on the highway without thought, consideration or design can give rise to an obstruction, hazard or danger be it an "A" board, shop display or any other item. It is not necessarily the size or the shape of the item that is the issue. It is its appropriateness in relation to factors such as its location, pedestrian flows and footways widths. For this reason it is not considered feasible or justifiable to exempt any one type of item or display from the regulation process. To do so would create inequalities that would be impossible to justify, in particular when charges apply. The policy should be applied equally to all items placed temporarily on the highway (footway or verge) to promote, enhance or advertise an adjacent business.
- 3.8 In preparing this report the Council has consulted with and sought comment from the following bodies:
- WIRED
 - Age Concern
 - Living Streets Wirral
 - Blind and Visually Impaired
 - Wirral Council Access Officer
- 3.9 Representations have been received from The Blind and Visually Impaired, Living Streets and the Council's Access Officer. All the representations support the policy of regulation of such items on the highway and these are summarised below.
- 3.10 The Blind and Visually Impaired representative raised concerns in relation to shop displays. Shop displays and "A" boards can pose a potential hazard to the visually impaired if they do not have an appropriate tapping rail or similar barrier so that a blind or partially sighted person can detect the hazard using a cane. It is considered that this matter can be addressed by attaching appropriate conditions within any licence granted. The representative was pleased that the Council was having due regard to the Disability Discrimination Act 1995 in its approach to regulation of these items.
- 3.11 Living Streets Wirral/Chester accept that 'A' boards and shop displays can benefit the character of a commercial centre, making it a more attractive place, and giving support to the local economy. However, they raised concerns that some items can cause an obstruction to pedestrians on the footway and are therefore in support of the current policy to licence 'A' boards and shop displays. They also stated that 'A'

boards and shop displays should not protrude into the area required for the free movement of pedestrians, and the following groups should be considered with regards to this matter:

- People with disabilities – whether in a wheelchair, mobility scooter or with walking sticks;
- Young families where children may be holding hands or walking alongside parents who are pushing a pram or pushchair;
- People carrying shopping;
- People walking in groups or singly.

3.12 They also suggested that a minimum pavement width of 1.8m should be left for pedestrians and if shop front displays were to be exempted from the policy, that there should not be allowed to protrude from the shop front more than 15cm.

3.13 The Council's Access Officer commented that pedestrian use should be given priority over other use of the footway and in particular people with impairments, those with small children, people carrying heavy shopping, people with temporary accident injuries and older people. Without a barrier free environment many of these are essentially mobility impaired. The Access Officer would like to see further guidance as to what is and what is not acceptable to be on the footway.

4.0 OPTIONS

4.1 In consideration of the factors and issues discussed above a number of ways forward are possible and these are outlined below.

4.2 Confirmation of the current policy – members could resolve to endorse the current policy and schedule of charges without amendment. This option is not recommended as it is considered that the policy needs to be widened to encompass the range of items encountered on the footway such as potted plants, novelty displays, furniture etc. which do not fall into the original groups. It was also considered that further guidance on minimum standards and criteria should be included in the policy.

4.3 Confirmation of the current policy but with amended or deferred charges – members could again choose to retain the existing policy and either amend the fee structure or defer charges completely until such time that the economy improves. There would be financial implications for this option, however, for the reasons outlined above this option is also not recommended.

4.4 Amending the scope of the policy – it is proposed that the policy should be extended to encompass all items temporarily placed on the highway (footway or verge) for the purpose of promoting, advertising or enhancing a business. This is considered necessary to ensure that the policy can be implemented fairly and consistently and so that items currently not included but potentially presenting a similar hazard can be regulated. For the reasons already discussed it is not proposed to exempt any particular type or size of item or display from the need to make a formal application. The current charging policy could be retained with this option or amended as discussed below.

4.5 Amendments to the charging policy - options for charging include retaining the present fee structure, deferring charges until some later date, and amending the fee structure or the removal of charges completely. The purpose of charging is to offset the costs of administration of the scheme and not to generate additional income. The licence fees for Pavement Cafes serve a different purpose and reflect the added trading value and income gained from occupation of the highway, it is not proposed that these are considered for amendment at the present time.

4.6 With the current take up of licences for "A" boards and shop displays the financial implications in terms of both income and operational costs are relatively small. It is

estimated that each licence costs approximately £85 to process, including the costs for site visits, administration, stationary, payment processing and consultation. Income received varies between £40 and £75 depending upon the type of permit and whether it is a first time or renewal. When fully rolled out it is estimated that between 200-400 licences would be issued annually. Assuming the lower number of licences is issued and using a nominal £50 fee, annual permit income in the region of £10,000 could be achieved. However, this is offset by staffing and administrative costs estimated at £17,000. The notional cost to the authority of issuing 200 permits annually is in the region of £7000, which is borne by existing staffing resources.

- 4.7 From the above it can be seen that to make the process cost neutral, the charge for permits would have to rise on average by approx £35. Conversely, if permit charges are deferred or removed completely the cost of processing the permit would fall slightly, as the payment processing element would no longer apply. The net costs to the authority for the above 200 permits in that scenario are estimated to be in the region of £13,000. It can therefore be estimated that abolishing fees for “A” boards and shop displays could result in a small increase in costs to the authority of approximately £6000 per annum, based upon processing 200 permits.

5.0 PROPOSED POLICY

- 5.1 Having regard to the issues considered above it is proposed that the existing Policy LEQ08 is amended to include the following items, this list is not exhaustive and any other items of a similar nature should also be included within the scope of the policy;

- “A” boards
- Placards
- Statues and cut-outs
- Novelty displays
- Shop displays
- Display islands and trestles
- Pots, plants and planters
- Furniture
- Window displays projecting over the footway
- Pavement Cafes, tables, chairs etc.

- 5.2 Persons placing any of the above items on the highway will be required to complete and return an application form. The application will be assessed by reference to the criteria set out in the paragraphs below and a consultation process will also take place, which will include a site notice and writing to ward members and adjacent frontages. Subject to satisfying the criteria and having received no substantiated or relevant objections a permit may be issued. The permit will include terms and conditions relating to what, how, when and where the item can be displayed.

- 5.3 To support the Councils commitment to improving the overall streetscene environment, it is proposed that all permits approved will contain a condition relating to maintaining the footway in front of the premises in a clean and tidy state, including regular inspection and removal of any litter.

- 5.4 The applicant must provide proof of valid and suitable Public Liability Insurance that covers items displayed on the highway.

- 5.5 The location must be assessed for suitability from a highway safety viewpoint having regard for pedestrian and vehicle movements and flow at the busiest times. This will include allowance for the presence of vehicle and pedestrian crossing points, traffic signals, sightlines and visibility and existing street furniture or obstructions.

5.6 Site and location standards

- The minimum clear footway width allowing for the item or display must be no less than 2.0m (in quiet or low pedestrian flow areas this may be reduced to an absolute minimum of 1.8m). In busy or heavily trafficked areas the minimum clear width should be 2.5m or more depending upon individual site conditions. Where existing street furniture is located near to the kerb edge ie street lighting columns, pedestrians will not be expected to walk between it and the roadway and the clear width must be measured between the item proposed for display and the existing item of street furniture.
- The minimum clear widths will be increased by a minimum of 1.0m where the proposed item/display is located adjacent to a dropped pedestrian crossing.
- Items will not be permitted in locations that would impede visibility for pedestrians or vehicle users in particular at or near junctions, signals or pedestrian crossing points.
- The through route for pedestrians must be directly in the line of the main pedestrian flow and not involve kinks, detours or sharp changes of direction.
- "A" boards or similar items should normally be displayed near to or adjacent to the frontage of the premises and not located remote or outside other properties.
- The maximum size for "A" boards is nominally 600x900mm high, they must be designed with stable bases and must not rotate or spin.
- Shop displays should normally be displayed immediately adjacent to the frontage of the premises and shall not be remote or outside other properties.
- The maximum projection from the frontage for shop displays is nominally 1.0m with a total size no more than 5m².
- All shop displays or goods must be displayed on or within a stand, table or enclosure with fixed external dimensions and kicking boards or similar for the lower 300mm to assist blind or visually impaired users.
- Items must be placed and designed so as not to project over the footway beyond the display base by more than 100mm, as this can present a specific hazard to partially sighted and blind users.

5.7 Fee charging structure – members are asked to consider one of the following fee options for items displayed on the highway (excluding pavement cafés which are outside the scope of this review).

- Retention of charges but with an amended standard rate for each item or display of £50 for first time applications and £40 for renewals.
- As above and defer implementation of the charges until April 2011
- Abolish the charging element of the policy completely

5.8 It is not proposed to change the process for implementation of the policy or enforcement action, which is summarised below.

5.9 When an unauthorised item is observed on the highway but is considered potentially acceptable in terms of its size and location, then the owner will be invited to submit an application for a licence within 14 days, a reminder letter may also be sent.

5.10 If no application is submitted the Council may issue a 28 Day Removal Notice. If this is not complied with the authority may apply to the magistrates' court for a removal and disposal order. Alternatively it may be appropriate to prosecute for wilful obstruction of the highway. If the item is considered an immediate danger, then an enforcement officer can instruct removal of the item immediately. The Council can recover costs and the person may be fined up to £100 for a first offence.

5.11 If any unauthorised item is observed on the highway in a location that is considered an obstruction or danger to other highway users, the owner will be asked to remove the item immediately. If this is not complied within a reasonable timescale the enforcement process outlined above will begin immediately.

5.12 Appendix B to the report details the revised Policy LEQ08 incorporating all of the proposed changes above.

6.0 FINANCIAL AND STAFFING IMPLICATIONS

6.1 The financial implications are as detailed in paragraphs 4 and 5 above. When fully implemented the staffing and administration costs estimated at £17,000 would be offset by income of £10,000, the balance being contained within existing staffing budgets. If charges are abolished no income would be received and the scheme could continue to be administered utilising existing resources.

7.0 EQUAL OPPORTUNITIES/EQUALITY IMPACT ASSESSMENT

7.1 This review has been undertaken having specific regard for the concerns and issues for users of the highway with disabilities. There are no other specific equal opportunity or equality implications.

8.0 HEALTH IMPLICATIONS/IMPACT ASSESSMENT

8.1 There are no health implications arising directly from this report.

9.0 COMMUNITY SAFETY IMPLICATIONS

9.1 Licensing and controlling the use of the highway may reduce potential hazards to users of the public highway.

10.0 LOCAL AGENDA 21 IMPLICATIONS

10.1 There are no implications under this heading.

11.0 PLANNING IMPLICATIONS

11.1 There are no specific planning implications arising directly from this report.

12.0 ANTI-POVERTY IMPLICATIONS

12.1 There are no anti-poverty implications arising directly from this report.

13.0 SOCIAL INCLUSION IMPLICATIONS

13.1 There are no social inclusion implications arising directly from this report.

14.0 HUMAN RIGHTS IMPLICATIONS

14.1 There are no human rights implications arising directly from this report.

15.0 LOCAL MEMBER SUPPORT IMPLICATIONS

15.1 This report has implications for all Wards.

16.0 BACKGROUND PAPERS

16.1 Representations received from groups representing highway users have been used in the preparation of this report.

17.0 RECOMMENDATIONS

17.1 That the committee is requested to:

- (1) Note the outcome of the review of the "A" board and shop display policy,

- (2) Recommend to Cabinet that the revised policy as discussed in the report and detailed in Appendix B be approved.
- (3) Consider the options for charging and recommend to Cabinet one of the following;
 - Retention of charges at a revised standard rate for each item or display of £50 for first time applications and £40 for renewals.
 - As above but defer implementation of the charges until April 2011.
 - Abolish the charging element of the policy completely and administer the scheme utilising existing staffing resources.

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