

### **POLICY NAME – LEQ08 – OBSTRUCTIONS ON THE HIGHWAY AND LICENCING OF ‘A’ BOARDS, SHOP DISPLAYS AND PAVEMENT CAFES**

#### **POLICY SUMMARY**

Enforcement of legislation relating to keeping the highway (footway) free of obstruction including the licencing of ‘A’ boards, shop displays and pavement cafes.

It is an offence for a person without authority (or licence) to erect or deposit anything on a highway to the interruption of any user of that highway. Items left on the highway without permission should in most circumstances be removed. In relation to ‘A’ boards, shop displays and pavement cafes the local authority can licence these items and request a fee in doing so. Any licences such issued will clearly state any limitations, conditions and the exact area or location for the ‘A’ board, shop display or pavement cafe.

If an application is rejected the application fee will not be refunded but the applicant will be advised in writing why that particular location is unsuitable for example to safeguard the safety and rights of access for other highway users. Charity shops are exempt from payment of fees but must adhere to all other relevant legislation with regards to the display of ‘A’ boards and shop displays on the pavement.

The local authority can remove any unauthorised items including ‘A’ boards, shop displays or pavement cafes where it is deemed that the unauthorised items are causing a danger on the highway, without notice being issued to the owner. In other circumstances the trader will be “noticed” to remove the items or invited to apply for a licence.

Currently there are no legislative powers to issue a FPN where a person obstructs the highway or has failed to apply for a licence or comply with its conditions. Persons who obstruct the highway may be prosecuted in the Courts through use of other legislation in the Highways Act.

#### **POLICY DETAILS**

**Legislation** – Sections 41, 58, 130, 137, 137ZA, and 178 of the Highways Act 1980 (as amended) refers and sections 132 and 143 of the Highways Act 1980 (as amended) gives authorities the powers of removal. Sections 137, 148, 149, 152 and 161 of the Highways Act 1980 (as amended) refers to penalties and offences and The Local Government (Miscellaneous Provisions) Act 1982, Schedule 5 Highway Amenities Part I, addition of part VIIA to Highways Act 1980 (as amended) sections 115A – 115K give authorities’ powers for the licencing of ‘A’ boards, shop displays and pavement cafes on the highway. The Disability Discrimination Act 1995 will also be considered.

#### **Enforcement Procedure**

##### **‘A’ Boards, Shop Displays and Pavement Cafes Licences**

Proposed application Fee table; (non refundable)

‘A’ Board – 1<sup>st</sup> year (including initial fee and application, max size approx 600x900mm) is £50 and subsequent years £40

Shop Displays - 1<sup>st</sup> year (including fee and application, maximum 5m<sup>2</sup>) is £75 and subsequent years £60

Pavement Cafes – 1<sup>st</sup> year (including initial fee and application, total maximum area of 6m<sup>2</sup>) is £300 and subsequent years £150. Any area above 6m<sup>2</sup> will be charged at an additional £20 per m<sup>2</sup> for the initial fee and application with any subsequent years charged at £15 per m<sup>2</sup>.

Applicants must satisfy the Council that they have suitable Public Liability Insurance and indemnify the Council against any action arising from the positioning of the item(s). In all cases a licence will only be granted if there will be a suitable footway width remaining after the items are placed on the highway. This may vary depending upon location and traffic/pedestrian levels.

'A' Board licences will only be considered in relation to boards that are to be placed within the extents of the shop/business frontage ie they cannot be remote from the premises. They will also not be permitted in locations where they would compete with locations currently utilised or identified for Highway Roadside Advertising.

In circumstances where planning permission is required, an owner must have or be in the process of obtaining a valid planning permission before the authority will consider an application for a pavement café licence. There are other legislative requirements that may impact upon the ability of a business to legitimately locate 'A' boards or a shop display within the highway such as the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 2007. It is the responsibility of the trader to ensure that they meet the requirements of these and any other Acts and Regulations that are applicable and apply for the relevant permissions.

The Council may refuse a request for a licence where it is considered that the position of the 'A' boards, shop displays or pavement cafes could constitute a danger on the highway.

If the Council grant a licence it will include various limitations and conditions, for example designated boundaries, sizes and locations of items, permitted times when they may be displayed ie during trading hours only, and requirements to leave the highway in a clean and tidy state. It may also take action against a person who fails to comply with the terms of a licence.

Where the Council issue a licence, follow up visits will be made to ensure compliance with the limitations and conditions of that licence. In all circumstances the licence should be displayed so as to be visible from outside the premises (ie in a shop/cafe window) for inspection by the Council at all times the items are located on the highway.

If an unauthorised 'A' board, shop display or pavement café is observed on the highway but considered to be acceptable in terms of its size and location and any relevant permissions have been obtained, then the trader will be invited to submit an application for a licence within 14 days.

Where a person fails to apply for a licence following a 14 day compliance period, then the Council will issue a 28 Day Removal Notice. If the responsible person fails to comply with the notice the authority may make a complaint to the magistrates' court for a removal and disposal order or if the item(s) is considered to constitute a danger, then an enforcement officer can instruct removal of the item(s) immediately. Any costs incurred by the Council in

doing so can be recovered through the Courts and that person will also be found guilty of an offence and liable to a fine not exceeding £100 or, in the case of a second or subsequent conviction, to a fine not exceeding £200.

If any unauthorised item including an 'A' board, shop display or pavement café is observed on the highway in a location which is considered an obstruction to other highway users, the owner will be asked to remove the item immediately. Follow up visits will be made and if no progress has been made a case may be prepared and presented to Legal Services for possible Court prosecution for obstructing the highway. The Council may also formally "notice" the owner requiring them to remove the item within a specified timescale, after not less than one month the Council may remove the item(s) and recharge the owner for doing so.

**Appeal Procedure** – Where an authority takes action and prosecutes, the right of appeal is made through the Courts. Any subsequent payment arrangements would be determined by the Courts.