

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

#### **POLICY SUMMARY**

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

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, pavement cafes and certain other items 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 (if any) 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 items including ‘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 is also relevant.

#### **Licencing and Enforcement Procedures**

**This policy covers the following:**

- “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.
- Other items of a similar nature

### **Proposed application Fee table;**

'A' Board, Shop Display and any other items displayed on the highway– 1<sup>st</sup> year (including initial fee and application) – as agreed by Committee

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>.

Fees if any apply are non refundable

### **Licencing Conditions**

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.

Before a licence is issued, applicants must satisfy the Council that they have suitable and relevant 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. 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.

The maximum size for "A" boards is nominally 600x900mm high and 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 5m<sup>2</sup>. 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.

Licences for 'A' boards or similar items will only be considered in relation to boards or items that are displayed near to or adjacent to the frontage of the premises and not located remote or outside other properties. 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, shop displays or other such items 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' board, shop display, pavement café or other item could constitute a danger on the highway.

If the Council grant a licence it will include various limitations and conditions as outlined above and will also include for example, designated boundaries, sizes, locations of items and permitted times when they may be displayed ie during trading hours only. 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/café window) for inspection by the Council at all times the items are located on the highway.

If an unauthorised 'A' board, shop display, pavement café or other such item is observed on the highway but is 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 may issue a 28-Day Removal Notice or alternatively consider prosecution for wilful obstruction of the highway. If a 28-Day Removal Notice is issued and the responsible person fails to comply with the notice, then 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 for prosecution.

**Appeal Procedure** – Where an authority takes action and prosecutes, the right of appeal is made through the Courts.