

Cheltenham Borough Council

Cabinet – 13 September 2016

Free distribution of printed matter on designated land

Accountable member	Councillor Andy McKinlay, Cabinet Member for Development & Safety
Accountable officer	Mike Redman, Director of Environment
Ward(s) affected	Lansdown, College, All Saints, St. Pauls, Pittville & Prestbury
Key/Significant Decision	Yes
Executive summary	<p>Schedule 3A of the Environmental Protection Act 1990 empowers a principal litter authority to designate land on which it can control the distribution of free printed material.</p> <p>There is currently no formal regulation of the distribution of free printed matter in the borough. It has become necessary to adopt formal regulations due to the increasing number of issues associated with this activity.</p> <p>This report seeks permission to designate land by order on which the council can control the distribution of free printed matter.</p>
Recommendations	<p>Cabinet is recommended to:</p> <ol style="list-style-type: none">1. approve the proposed designation of land as outlined in Appendix 2;2. delegate authority to the Director of Environment to publish the necessary notices in accordance with paragraph 2(4) of schedule three of the Environmental Protection Act 1990;3. subject to there being no objections received:<ol style="list-style-type: none">a. to approve the proposed fees and charging structure set out in Appendix 2;b. to approve the adoption of the proposed conditions set out in Appendix 2;c. to further delegate to the Director of Environment (in consultation with the Cabinet Member for Development and Safety) authority to do whatever is necessary to implement the designation of land including authority to:<ol style="list-style-type: none">i. publish notices of the decision in accordance with paragraph 2(6) of schedule three of the Environmental Protection Act 1990; andii. designate officers as authorised persons under Schedule 3A of the Environmental Protection Act 1990.

Financial implications	<p>Introducing a new licensing scheme will generate additional revenue for the Council. It is not envisaged that any additional resource requirements will exceed the income generated.</p> <p>Contact officer: Myn.Cotterill@cheltenham.gov.uk, 01242 774958</p>
Legal implications	<p>As contained within the body of the report.</p> <p>Contact officer: Vikki.Fennell@tewkesbury.gov.uk, 01684 272015</p>
HR implications (including learning and organisational development)	<p>The HR implications are as detailed in the key risks section of the report. Management will monitor closely the additional resource demands and take appropriate action.</p> <p>Contact officer: Carmel.Togher@cheltenham.gov.uk, 01242 775215</p>
Key risks	<p>The council can charge reasonable fees to cover the costs of operating and enforcing this scheme. Since this is a new scheme officers do not have the specific data to inform fee setting in terms of levels that will fully recover costs. There is therefore the risk that in year one income may not be adequate to fully recover cost. This can however be addressed in year two when fee levels will be adjusted to recover any deficit from year one. The same will apply if there is a surplus.</p> <p>The new scheme will place additional resource requirements on staff to administer and enforce the scheme. The administration of this scheme is not expected to place substantial administrative demands on officers and a “soft touch” enforcement approach will be adopted in year one to manage the enforcement resource requirements. Whilst there are risks associated with additional resource demands on staff, this will be offset by the income generated and will reduce demand on resources elsewhere.</p>
Corporate and community plan Implications	<p>Cheltenham has a clean and well-maintained environment</p>
Environmental and climate change implications	<p>None</p>
Property/Asset Implications	<p>N/A</p> <p>Contact officer: David Roberts@cheltenham.gov.uk</p>

1. Background

- 1.1** Section 94B and Schedule 3A to the Environmental Protection Act 1990 (“1990 Act”), as inserted by the Clean Neighbourhoods and Environment Act 2005, empowers a principal litter authority to designate land by order on which it can control the distribution of free printed matter. Land that can be designated consist of:
 - 1.1.1** relevant land of the authority;
 - 1.1.2** all or part of any relevant highway for which the authority is responsible; or
 - 1.1.3** both.
- 1.2** The definition of “principal litter authority” is contained within section 86 of the 1990 Act and includes a district council. Therefore Cheltenham Borough Council (“council”) is the relevant “principal litter authority” for the borough.
- 1.3** The effect of designating land for this purpose is that it will be an offence for anybody to distribute free printed matter unless consent has been obtained from the council.
- 1.4** The council may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there.
- 1.5** The following are exempt from licensing requirements:
 - 1.5.1** the distribution of printed matter by or on behalf of a charity within the meaning of the Charities Act 1993, where the printed matter relates to or is intended for the benefit of the charity;
 - 1.5.2** where the distribution is for political purposes or for the purposes of a religion or belief.
- 1.6** The council can require the payment of a fee before giving consent. The amount of a fee can be determined by the council but may not be more than what is reasonable to cover the costs of operating and enforcing this scheme.
- 1.7** There is no statutory definition of “free printed matter”. Guidance by the Department for Environment, Food and Rural Affairs in 2006 specified however that free newspapers, leaflets, flyers, pamphlets, stickers and promotional supplements (if distributed and not within newspapers) should be included in the definition. Other free promotional matter such as scarves, hats and glasses containing logos, for example, could reasonably come within the meaning too.
- 1.8** This report seeks permission to designate land by order on which the council can control the distribution of free printed matter.

2. Designation proposal

- 2.1** **Appendix 2** sets out the designation proposal.
- 2.2** It is being proposed that the fee structure be based on a points scoring system. The reason for this is to ensure a proportionate approach is adopted.

3. Enforcement powers

- 3.1** Under the 1990 Act, authorised officers will have authority to:
 - 3.1.1** seize printed matter where the distributor does not have consent to distribute the matter;
 - 3.1.2** issue a fixed penalty notice for offences; and/or

3.1.3 prosecute for offences.

3.2 Having these powers available to the council will greatly assist with controlling the distribution of free promotion material particularly during the Cheltenham Gold Cup week.

4. Reasons for recommendations

4.1 To designate land by order on which the council can control the distribution of free printed matter.

4.2 There is currently no formal regulation of the distribution of free printed matter in the borough. It has become necessary to adopt formal regulations due to the increasing number of issues associated with this activity:

4.2.1 **Race meetings** – Race meetings have historically caused significant problems with litter and nuisance caused as a result of the distribution of free printed matter such as leaflets, stickers, scarves and other relevant promotional material. This is specifically problematic around the town centre and Evesham Road. Attendance at race meetings has consistently increased over the last few years which has continued to exacerbate the problem of excessive litter.

4.2.2 **Night time economy (NTE)** – Leafletting in the NTE has recently become increasingly problematic due the fiercely competitive nature of the NTE. As a consequence of this there has over the last number of years been an increase in marketing activity, primarily in the form of leaflets, printed cards and stickers which has caused problems associated with littering as people drop large quantities of unwanted promotional material.

4.2.3 **Marketing and promotions** – There has also been an increase in the number of enquiries for promotional activity in the town during shopping hours. These requests are currently being dealt with informally which renders the council and its partners unable to regulate and control litter that is being caused as a result.

4.3 The culmination of the factors mentioned above has promoted the need for the council to deal with the issue of the distribution of free promotional material in the town more formally.

5. Alternative options considered

5.1 The council can decide not to adopt formal regulations to regulate the activity.

6. Consultation and feedback

6.1 The 1990 Act sets out the required procedure to follow in adopting an order to control the distribution of free printed matter.

6.2 There is a requirement to publish a statutory notice setting out the council's proposal to adopt an order.

6.3 The notice must specify:

6.3.1 the land proposed to be designated;

6.3.2 the date on which it is proposed that the order is to come into force (which may not be earlier than the end of a period of 28 days beginning with the day on which the notice is given);

6.3.3 the fact that objections may be made to the proposal, how they may be made and the period within which they may be made (being a period of at least 14 days beginning with the day on which the notice is given).

6.4 If after giving notice and taking into account any objections received, the council decides to adopt

the order, it must publish a further notice specifying the date on which the order is to come into force.

7. Performance management –monitoring and review

- 7.1 If adopted, the performance of the new scheme will be measured against its ability to effectively regulate the distribution of free printed matter in the borough and the council to recover its costs in administering and enforcing the scheme.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Designation proposal
Background information	<ol style="list-style-type: none">1. Environmental Protection Act 19902. Clean Neighbourhoods and Environment Act 20053. DEFRA Code of Practice on Litter and Refuse (April 2006)

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the council does not designate land to control the distribution of free promotional material then it will be less equipped to deal with the problem of, at times, excessive litter resulting from it.	Director of Environment	July 2017	3	3	9	Accept				
	If the council is not able to effectively control the distribution of free promotional material then it risks adversely affecting the town's reputation as a clean and welcoming place to visit.	Director of Environment	July 2017	2	3	6	Accept				
Explanatory notes											
<p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											