

Briefing Notes

Committee name: Licensing Committee

Date: 5 June 2019

Responsible officer: Louis Krog

Objects on the Highway Consent - Briefing Paper for "Miscellaneous" sub-committee

The Licensing Committee has requested a review of the street scene policy be brought to the next full licensing committee meeting. This briefing note seeks to provide Members with some contextual information to facilitate discussion and debate.

Background

It is an offence to obstruct the public highway without consent from the highways authority. Gloucestershire County Council is the relevant highways authority as defined by the Highways Act 1980. However, Cheltenham Borough Council ("CBC") has formally entered into agreement with the county council that delegated certain Highways Act powers and responsibilities to CBC, including:

- Part VIIA Provision of Amenities on Certain Highways
- S. 137 Penalty for wilful obstruction
- S.148 Penalty for depositing things or pitching booths etc. on highway

As a consequence, any person or organisation that obstructs the public highway is required to obtain consent from CBC in so far as it falls within scope of the Highways Act.

The administration and enforcement responsibilities, also in so far as it relates to Part VIIA of the Highways Act, sits with the licensing section and Part 3C (Committee Functions) of CBC's constitution delegates "Objects on the highway" responsibilities to the Licensing Committee which has been sub-delegated to the "Miscellaneous" sub-committee.

Current Policy

CBC's current policy on the regulation of objects on the highway was adopted on 22/02/2013 taking effect on 01/04/2013. The policy principally deals with the regulation of:

1. Advertising boards;
2. Permission to use tables and chairs; and
3. Other goods displayed on the pavement.

Advertising boards

Generally speaking, the current policy approach to consenting advertising boards in the designated conservation area is assessed on need.

Appendix E (Revised Outdoor Advertising Protocol) defines this as:

No 'A' board will be approved within Conservation Areas except in the following circumstances; having regard to the position and location of the premises;

- a) where those premises are located at basement or first floor level i.e. the premises has no shop-front at street level,*
- b) the premises are situated along a side alleyway and / or on private land which is not a public thoroughfare / right of way.*

Nothing in this protocol overrides requirements set out in the Council's policy on the licensing of 'A' boards so where an 'A' board meets the exemptions in the protocol, it will still be subject to the normal policy on the licensing of 'A' boards set out in the policy.

Consents are subject to a number of conditions as outlined in the adopted policy document.

Permission to use tables and chairs

The council's current policy seeks to encourage the use of tables and chairs "to promote the 'cafe culture' in Cheltenham because of the added life and vitality this brings to the town".

To this end, the council will look favourably on applications by operators in appropriate locations to put tables and chairs on the pavement outside their premises.

Licensing & Enforcement

Anybody who wants to obstruct the public highway must obtain permission from CBC. The permission is issued as a consent under Part VIIA of the Highways Act 1980.

There is a requirement for an application to be submitted to the council which will be subject to consultation with various persons and organisations:

1. Cheltenham BID
2. GCC Highways
3. GCC Street works
4. Gloucestershire Police – Licensing
5. Ubico
6. Planning Enforcement
7. CBC's townscape team
8. Affected businesses

New applications for advertising boards and permission to use tables and chairs are referred to the Licensing Committee irrespective of the policy position.

The enforcement approach is set out in the legislation. At present, any responsible person or organisation that obstructs the highway without consent is sent an initial letter from the council, or notice issued on visit to the premises, requesting an application to be made or for the object to be removed.

If the responsible person or organisation does not proceed to an application, or is refused a consent, and the object continues to obstruct the public highway, they are reported for an offence under the Highways Act and are summoned to appear before the Magistrate's Court. It can take several months for a case to be listed. This often gives the impression that the council does not act in relation to unconsented advertising boards.

Between 01/04/2018 and 31/03/2019, 71 enforcement cases in relation objects on the highway were dealt with by the Licensing Enforcement Officer. 54 of these cases were advertising boards unlawfully obstructing the highway.

Issues with the current policy

1. Enforcement

Enforcement of unconsented advertising boards is difficult, costly and in many cases disproportionate because CBC's enforcement powers are restricted to a prosecution, which, generally speaking, the council would normally reserve for the most serious cases and where such a step would be in the public interest.

Since the enforcement options are restricted to prosecutions, it is costly for the council enforcement officers to gather the required evidence and to attend court hearings. Additionally, it can take several months for a hearing to be listed during which time the circumstances of the defendant may change which could be material to the outcome of the case.

It is also the case that businesses ignore a court ruling which requires CBC to seek a further order from the Magistrates' Court to remove the object.

On the whole, the council's enforcement efforts have had limited impact on the number of unconsented advertising boards in the town. This is largely down to the desire of businesses to have advertising boards (consented or otherwise) which creates a situation where the licensing enforcement officer is continuously dealing with advertising boards, taking up a lot of their time and resource.

2. Consistency

The current policy position has resulted in inconsistencies in the way CBC deals with advertising boards, mainly in the conservation area. Notwithstanding the policy position, Members of the Licensing Committee have at times deviated from the policy where the policy position was clear.

It is the case that the Committee has discretion to deviate but this should only be in exceptional circumstances. A number of recent cases the deviation from policy was as a result of matters (i.e. existing clutter, ongoing enforcement matters etc.) which may, under normal circumstances, not be deemed as "exceptional".

3. Licensed tables and chairs areas

The council's current policy permits the use of advertising boards within consented tables and chairs areas. The rationale being that the use of advertising boards in these circumstances would not cause any additional obstruction of the highway.

However, the implications of this approach has led to a situation where it seems irrational for individual advertising boards to be refused where other business with consented tables and chairs areas can have several advertising boards.

Planning

Regulating advertising boards is not exclusively a licensing consideration. Town and Country Planning (Control of Advertisements) Regulations 2007 and the Area of Special Control of Advertisements also apply to the control of advertising in the town.

This is relevant mainly for two reasons:

1. Certain forms of advertising do not obstruct the highway but still fall within scope of some concerns raised by the committee such as banners, estate agent signs and advertising displayed on roundabouts.

As these fall under planning legislation, it therefore does not fall within scope of this committee.

2. The planning legislation in relation to the control of advertising boards potentially offers the council alternative means of taking enforcement action.

Benchmarking

- **Bristol City Council** – Appears to operate an automatic entitlement approach where, subject to compliance with restrictions imposed by the council, advertising boards can be used without the need for an application. Bristol City Council use removal powers and recharging.
- **Bath City Council** – Similar to Bristol council.
- **Gloucester City Council** - Application required.
- **Worcestershire County Council** - Appears to operate an automatic entitlement approach also but use FPNs as part of their enforcement procedure under the under the Anti-social Behaviour Act 2003 Section 43, and Town and Country Planning Act 1990 Section 224(3).

Future Policy Options

There is an opportunity for the committee to make recommendations to Cabinet as to the future policy this council can adopt with regards to the control of particularly advertising boards.

1. The council can maintain the current policy but with revised conditions and/or a different enforcement approach. Revised conditions could address some of the current issues with the regulation of advertising boards.
2. The council can adopt a similar approach to other councils that operate an automatic entitlement approach. Whilst this will make enforcement easier, it will result in a proliferation of advertising boards that will adversely affect the town, its conservation area and be problematic for people with certain disabilities.
3. The council can adopt a similar approach to number 2 above but require an application to enable it to recover its costs.
4. The council can adopt an approach whereby it does not allow any advertising boards.

Further Reading/Reference

- [Policy for street scene activities](#)
- [Outdoor advertisements and signs: a guide for advertisers](#)
- [Cheltenham's area of special advertisement control](#)