

From: Nick Chard, Cabinet Member – Environment, Highways & Waste

To: Environment, Highways & Waste Policy Overview & Scrutiny Committee

Subject: Policy for the Management of Obstructions and Temporary Items on the Highway

Classification: Unrestricted

Summary:

This report seeks approval from the members of the Policy Overview and Scrutiny Committee to approve a policy for the control and licensing of temporary items on the highway, including Advertising Boards and Tables and Chairs. The Enforcement Team have reviewed the previous Street Furniture Policy document and recommend updating current working procedures and improve control of obstructions on the highway. The main focus of the policy is to allow safe movement for pedestrians, those with buggies and those who have reduced mobility. Enforcement of the policy will be a key point, to remove items causing danger and a process of warnings and charges, ending in removal and disposal where necessary of items not licensed or not complying with licensing requirements.

1. Introduction

- 1.1 Advertising boards, commonly referred to as A-boards are currently placed at will and with little regulation across the highways of Kent, often affecting the free and safe passage of highway users, due to thoughtless placement and a lack of maintenance. There is therefore the need for a policy to regulate the use of A-boards through licensing, in order to minimise any obstruction and disruption to the highway users, in the same way as we are doing with Tables and Chairs. *S.130 Highways Act 1980* states the highway authority has a duty to 'assert and protect the rights of the public to the use and enjoyment of any highway' and *S.16 Traffic Management Act 2004* states that it is the duty of the network management duty to 'secure the expeditious movement of traffic' where traffic includes all groups of highway users. These acts together place duties on us to ensure that we consider all aspects that affect traffic flow and this includes footway traffic. S115 of the Highways Act provides that we may authorise and so licence the placing of items including A boards and Tables and Chairs on the highway.
- 1.2 The rights of the public to move freely and safely along the highway apply to all users of the highway, including those with limited mobility and this is key to this policy, to ensure that all users of the highway have equal access to the highway. By licensing the A-boards, as we

currently do with Tables and Chairs, safety would improve, not least because there will be fewer hazards for the users to negotiate in their day-to-day journeys.

2. Policy outline and Charging

- 2.1.1 Licensing of A-boards is proposed in a similar way to our existing licensing of Tables and chairs. A-boards and Tables and Chairs will only be permitted on the highway outside the relevant premise if they have a licence and evidence is provided at the time of application of Public Liability insurance. An unobstructed width of 2m of the highway will normally be required for footway users – however, a distance of 1.5m will be permissible where certain circumstances prevent the full 2m from being available. If this distance cannot be achieved, then the item(s) will not be granted a licence and will not be allowed to be placed there. (A-boards will be permitted leaving a 1.3m minimum width, as a 'point obstruction'). Normally only one A-board will be permitted per property, unless it is on a street corner or occupying multiple units, when no more than two may be permitted.
- 2.2 In the interests of public safety and improving highway aesthetics, the size of an A board is to be between a minimum of 0.8m and a maximum of 1.05m in height and between a minimum of 0.45m and a maximum of 0.7m in width only and must be appropriately weighted to keep it upright and securely in place. All items will be licensed for a specific position/area outside the premise, normally against the building line. Larger Tables and Chairs areas may require barriers to prevent spread outside the licensed area.
- 2.3 Restrictions may be given on the licence regarding times the items may be placed, perhaps relating to pedestrianised hours for the street, or occasions when the items must be removed, for example on Market days when the street is unusually congested.
- 2.4 Licences will be issued for one year at a time at a charge of £65 for an A board, (Tables and Chairs are currently £150); this will include a site visit and assessment and checking public liability insurance as part of this process. Licences will show the required position of the items with any conditions and must be displayed in the shop window.

3. Enforcement Action

- 3.1 All complaints received will be investigated and acted upon to improve levels of compliance with licensing of items on the highway.
- 3.2 Whenever a premise is not complying with the terms of the licence issued, a £47.50 non-compliance charge may be applied, to recover the cost of site visit and investigation.

- 3.3 If there is no licence in place for a premise they will be asked to remove the items and apply. They will be notified in writing that a repeat offence will incur a non-compliance charge (£47.50 to recover the cost of that inspection visit). This warning could also be applied to goods on the highway (currently not licensable).
- 3.4 Further stages will involve formal written warnings and possible removal and disposal of the items, with costs recovered where possible.
- 3.5 All communications between KHS and those placing items will be recorded to form an evidence trail, should prosecution be required at a later date.

4. Conclusion

- 4.1 These proposals bring the control of A boards into line with current work practices, particularly in relation to Tables and chairs which are already licensed, rather than simply having operating guidelines. There are no major differences in approach and we believe the proposals are both relevant and practicable in the control of A boards, to make the highway a safer place. The suggested fees are £65 per single A-board licence, (Tables and Chairs are currently £150 licence). A non-compliance charge of £47.50 will be applied, where a licence requirement or previous warning is not complied with. Licences are renewable on a yearly basis and will remain unchanged until such times as all licensing charges for highway activities are reviewed.
- 4.2 It is recognised that this is likely to result in additional workload for existing personnel and consideration will be given to a self funded part-time post in each of the two Road works offices. This will largely depend upon levels of compliance and will be reviewed by Officers.

5. Recommendations

- 5.1 Subject to the views of this Committee, it is proposed to recommend the approval of the Policy for Obstructions and Temporary Items on the Highway, to allow for licensing A-Boards on the highway as outlined above, also for charging of annual fees for A-board or Tables and Chairs licence and of a non-compliance charge to cover the cost of an inspection for any items on the highway, where a premise has after warning, failed to comply with what was required of them, whether through licence or formal warning. This will support the current approach being developed to improve control measures used for items on the highway, helping KHS to continue to provide a better experience for all highway users.

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A POLICY FOR
THE MANAGEMENT OF OBSTRUCTIONS
AND TEMPORARY ITEMS ON THE
PUBLIC HIGHWAY

1 Introduction

This policy sets out the processes to be considered when applying for permissions to place items on the public highway, to include street furniture, temporary advertising boards (removable licensed items), etc. It is intended to act as a guide to applicants to explain why there is a need to control and manage items placed on the highway, the issues to be considered and the conditions that will be applied upon successful application.

1.01 Common law

Common law has established that a highway is a route which all persons can use to pass and repass along as often and whenever they wish without hindrance and without charge. This definition therefore includes the carriageway (road), verge and the footway (pavement). In order to preserve these rights of way it is necessary to ensure that they are not obstructed either wilfully or without due consideration. Consequently there is an obligation to regulate features placed on the highway to minimise risk and to make sure that there are no severe hazards particularly for the visually impaired, for those with mobility problems, the elderly and those with young children.

1.02 Responsibilities

In the County of Kent, the main responsibilities lie with the Kent County Council (KCC), as Highway Authority, and the owners of any items placed on the highway.

- KCC is responsible for the highway and must ensure that, public access is maintained that items approved do not obstruct drainage, sight lines or road traffic signs and that the area is safe, in line with Highways Act 1980.
- The owner of any items that are placed on the highway is responsible for obtaining the relevant permissions in advance and placing the items safely, in accordance with the permissions granted. The owner is also responsible for maintaining the items in good condition and in the correct position on the highway.

1.03 Provision of amenities and Café Culture

KCC is keen to further develop a 'café culture' to improve the town centre areas in a general move towards a vibrant 21st century environment where external 'pavement' dining using furniture placed on highway and public land can be a vital part of the life and character of the area.

1.04 Powers

Both KCC and local district/borough authorities have powers under the Highways Act 1980 to allow certain items of street furniture such as benches and bus shelters on the highway. Private sector traders have no such power to place features on the highway, only on their own private forecourt where no highway rights exist – as planning permission may still be required. Both authorities can grant permissions, (or licences), to others to carry out street trading activities, to provide advice or information, or for the production of income, such as Tables and Chairs or A-Boards on the highway. The powers also exist to remove these items in respect of unauthorised street trading under the same Act and the Town Police Clauses Act 1847.

1.05 When can items be placed

An applicant may only place any street furniture on the highway when all the required approvals have been granted as necessary. In addition, street furniture may not be placed until evidence of Public Liability Insurance has been provided and checked and the approval is on public display within the body of the business as specified.

2 Criteria for Consideration

Before making an application, consideration must be given to the following which will be taken into account as part of any formal assessment.

2.01 Space and Positioning

A clear footway width of 2.0m will normally be required for the unimpeded use of pedestrians. This width is to allow wheelchairs and prams to pass and to provide a consistent and reasonable route for blind and partially sighted pedestrians. Licensed items should normally be placed adjacent to the premises at the back of the footway. In some large communal areas this requirement may be waived.

- A reduced width of 1.5m may be permitted where there are fewer pedestrians expected, or other facilities exist, such as alternate walkway or in a pedestrian area.
- A greater width may be required in particularly heavily trafficked locations.

The available route past the premises must be straight, obvious and unobstructed, for example; the through route must not meander between the licensed items or standing customers.

2.02 Approved area

When a licence is granted a temporary form of enclosure may be required to identify and contain the area and to give a clear warning to pedestrians. A low level tapping rail will be a necessary requirement of any barrier.

- The means of enclosure must be sufficiently robust to cope with resistance to winds, especially near exposed areas.
- Rope or chain barriers are not considered suitable because they are potentially hazardous to pedestrians specifically the visually impaired.
- Portable planters may be considered but they must be well maintained, planted, kept clean of debris such as litter and cigarette stubs and be able to resist accidental or mischievous movement.
- Enclosures should have a minimum top rail height of 800mm but no more than 1050mm.

2.03 Furniture

The licensed items must be of reasonable quality and suitable for commercial use.

- Materials and colours should not be too bright, garish or overly reflective. In some areas further conditions as to the material or colour of the furniture may be imposed, especially in areas of special interest or local conservation areas.
- Furniture must be properly maintained, replaced as necessary and kept clean.
- Furniture must all be of the same type. Domestic plastic patio furniture will not be acceptable.
- Items must not damage the surface of the highway nor generate unreasonable noise when being moved at night.

2.04 Umbrellas/Parasols

Umbrella location, colour and material must be specified. They shall be positioned so that they do not overhang beyond the enclosure and weighted to prevent them being dislodged by the wind.

- Only the company name or logo may be permitted on umbrellas but these should not be too dominant.
- Outside gas heaters should not be placed on the highway as they present a hazard.

2.05 Storage

All furniture and other items must not be stored on the public highway when not in use and should be removed outside of agreed hours.

2.06 Cleanliness for café areas

The applicant is responsible for the cleanliness of the café area at all times, also for wind blown litter in the area around the outside of the enclosure.

- At least one litterbin should be available at all times of operation.
- If smoking is permitted it must comply with relevant legislation.
- Plastic glasses are to be used when specified in conditions of licence.

If the site is not kept clean the work may be undertaken by KCC or its nominated contractor and recharged to the licence holder.

2.07 Environment/nuisance

The area must be conducive to sitting/eating/drinking and therefore consideration should be given to traffic volume, bus stops, taxi ranks and fumes. .

- The proposed activities must not constitute a nuisance and strict observance of clientele must be monitored at all times.
- External public address systems and amplified music will not be allowed within the approved area.

For all activities, it is recommended that the hours of operation will depend on the location, facilities available and Police guidance. It would be expected that any business be concluded on the highway by 11pm and special conditions may be applied.

2.09 Communal areas

There may be some sites where an area of highway/public land is divided into predetermined areas available for different business to attract custom. Specific additional conditions may apply in these situations but this policy, the terms and conditions identified herein will always apply.

2.10 Pedestrians/deliveries

Vehicles and items such as licensed items will only be allowed at the same time in such streets if adequate, clearly defined, pedestrian space remains. Even during the hours when vehicles are normally excluded, such items should occupy only the identified area in order to ensure a free and unobstructed route for Emergency Service vehicles and delivery access.

2.11 Neighbours

As part of the administration of the Licence, there are two legal consultative requirements. These are:

- To seek the consent of interested frontagers close to the property
- To accept representations up to 28 days after a public notice has been posted on or near the premises.

2.12 Regulations

The use of the area may involve a number of approvals, in addition to meeting the criteria of this policy - it is important to secure the appropriate approvals and have a clear understanding about the obligations and conditions that apply in respect of each approval/licence and what is covered.

2.13 Public liability insurance

Valid Public Liability Insurance for at least £5,000,000 which also indemnifies the KCC its agents, servants and workmen against any costs, claims, expenses, actions or damages arising will need to be provided.

Evidence of such public liability insurance shall be provided to the satisfaction of the KCC respectively before permission can be granted.

2.14 Fees and charges

Fees and non compliance charges will be payable within the provisions of the fees scale determined by the KCC for the period for which the application or permission relates. There will be different level of charges for each licence, amendment and non compliance inspection. Please see Appendix A for the current, up to date fees.

2.15 Special areas and events

There may be some sites where, as part of public projects or events, a share or all of the licensed trading area may be required to accommodate the proceedings. The licence holder will vacate the 'events' area for the period concerned.

- Alternative arrangements for approved items on the highway may be considered but cannot be guaranteed.
- Due notice of a forth coming event will be given, where practical. There may also be situations where high pedestrian or traffic flow may influence the placing of licensed items and the licence holder may be required to reduce the size of the enclosure or vacate the site.
- When a street market is active, items will not be permitted on the highway unless agreed otherwise, that there is sufficient space to accommodate passing pedestrians, shoppers, the stalls and stock and access is available for Emergency Service vehicles.

All situations will be assessed as necessary but additional conditions may need to be imposed as appropriate.

3 Conditions

3.01 The applicant shall display a complete copy of the permission(s) in the front window (or as otherwise agreed) at or near to the place to which the permission is applicable, throughout the period of consent.

3.02 Nothing in this shall absolve the applicant from prosecution should the application area be used in any other way than consented to or if any use expands beyond the application area.

3.03 With the exception of planning permissions and listed building consents, the permission may be withdrawn after warning, at no cost to the authority, at any time during the period of consent if complaints are received, conditions alter or if full compliance of all conditions is not achieved. Unless there is an immediate problem, the applicant will be served with a written warning/notice to comply. A failure to still comply will result in a second communication indicating that action will be taken. Applicants should note that the licence will last for one year and will require renewal reassessment.

4 Procedures

4.01 For permission to place items on the highway, first contact Kent Highway Services, to establish if your application would be acceptable in principle, i.e. the area is not exempt or too

restricted. Full information will be supplied with the application form and additional information documents.

4.02 If the indication is that the submission is satisfactory the applicant should then make contact with the relevant Planning Officers within the local district/borough authority to submit a planning application as necessary to cover all the relevant aspects of the proposal as outlined in this policy. Local authority planning, listed building and advertisement consents take approximately eight weeks to administer.

4.03 The applicant should contact the District/Borough Councils Licensing Department to determine if approval is needed to trade on street and to make the appropriate application where necessary. The applicant should also contact this department if a liquor licence or extension will be required. Liquor licences are not administered until after planning permission is granted.

4.04 The applicant should contact the District/Borough Council's Environmental Health Department to discuss any issues relating to noise, food health and safety and litter.

4.05 The applicant should complete and return the application form along with all the relevant necessary documentation and payment. To ensure that the application is processed quickly, applicants should have considered all the points listed in the 'checklist' and supply all the relevant supporting data.

4.06 It may take up to six weeks to process all aspects of the application which takes into consideration all representations made by interested frontagers who would be materially affected by the proposal. Consultation may include the local Police, local councils and local disability Access Groups.

4.07 It must be emphasised that the placing of any item on the highway must not commence until the applicant has all the required permissions or licences and paid the associated fees and charges.

5 Enforcement Action

All complaints received will be investigated and acted upon to improve levels of compliance with placing and permission of items on the highway.

On any occasion where the premise is clearly not complying with the terms of the permission issued, a charge for non-compliance will be applied, to recover the cost of site visit and investigation. Please see Appendix A for the current, up to date fees.

- If there is no permission in place for a premise they will be asked to remove the item(s) and apply.
- Further stages will involve formal written warnings and notice to comply, then where necessary, removal and disposal of the items and costs recovered from owners where known.

All communications between KHS and those placing licensed items will be recorded to form an evidence trail, should prosecution be required at a later date.

RELEVANT LEGISLATION

- Control of Pollution Act 1974
- Environmental Protection Act 1990
- Highways Act 1980
- Local Government (Miscellaneous Provisions) Act 1982
- Planning (Listed Buildings and Conservation Areas) Act 1990
- The Disability Discrimination Acts 1995 & 2005
- The Licence Act 2003
- The Police and Criminal Justice Act 2001
- Town and Country Planning Act 1990 (as amended)
- Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended)
- Town Police Clauses Act 1847

OTHER DOCUMENTATION

- Manual for Streets (DfT)
- Inclusive Mobility (DfT)