

Council – 16 April 2012

Code of Practice for Siting Shop Displays and Advertising Boards on the Highway

1. Summary

This report proposes a code of practice to manage shop displays and advertising boards on the highway. This proposal seeks to present a balanced approach to managing the needs of different users of the highway as well as improving working practices for the enforcement officers.

2. Recommendations

That the code of practice be approved as the basis for managing the siting of shop displays and advertising boards on the highway.

3. Report detail

- 3.1 Placing shop displays and advertising boards on the highway is an historic practice but one which in recent years has presented conflicting pressures on highway use.
- 3.2 The Highways Act 1980 places a statutory duty on the council to protect the rights of the public to the use and enjoyment of the Highway. However, there is provision in the legislation which authorises the council to permit the placing of structures, obstructions and objects on the highway. This is normally achieved through the constitution and scheme of delegations whereby any application is assessed individually. Examples of these processes include for the use of the designated sites in the town centre where temporary displays are authorised (e.g. in Park Street) or for the licensing of pavement cafes.
- 3.3 The council does receive complaints about the obstructions which can be caused by A boards and shop displays on the highway. Businesses, however, need the opportunity to promote their goods and services to enable them to thrive in difficult economic times. A balance needs to be reached between these conflicting pressures.
- 3.4 Previously, a licensing approach was considered, similar to that for pavement cafe licences as referred to in paragraph 3.2. However, processing of applications would inevitably introduce a level of delay and bureaucracy and the experience in a number of other authorities shows that there is little demand for such a licensing regime from businesses.
- 3.5 There is a long standing enforcement policy, approved by Council, within regulatory services which gives guidance on the different types of action that can be taken in relation to any breach of the legislation and when it is appropriate to use each of them. It was decided therefore that adapting this policy specifically for this issue and making it clearly known to businesses and the public what to expect from officers would provide a more positive and more practical way forward. Provided businesses follow the guidance and meet the criteria laid

down, they will effectively be deemed to have permission for the shop display or advertising board. The public will know what to expect in their locality and how to make a complaint should the need arise. In order to ensure that business and the public understand more easily what this is about, the terminology of a code of practice has been adopted, rather than an enforcement policy.

- 3.6 The text of the proposed code is attached as appendix 1. Once the code of practice has been approved, it will be formatted into a booklet with illustrations to assist businesses and the public understand what is and what is not permitted.
- 3.7 A similar approach has been identified as being followed in a number of other authorities and their codes of practice have been used as a model for the proposed code. A draft of the code was circulated to a wide range of organisations for consultation and this is described in section 11 below.

4. Council priorities

- 4.1 Communities and neighbourhoods - thriving local businesses help build thriving local communities, meeting the needs of residents for shops and facilities as well as maximising employment opportunities.
- 4.2 Economy – this code of practice helps business to promote themselves and to consequently thrive, resulting in increased opportunities for employment. Removing the need for each business to apply for a licence or permission removes a financial burden as well as the time delay such a process inevitably causes.
- 4.3 Health and Wellbeing – the code of practice makes provision for the needs of residents who are elderly, disabled, using pushchairs etc by making sure that sufficient clearance is maintained and the needs of visually impaired pedestrians are considered by stipulating that displays and advertising boards should always be placed in the same location.

5. Risk management

The code makes it clear that the council does not accept any liability for incidents arising as a result of businesses placing shop displays and advertising boards on the highway and that they must undertake appropriate risk management and have adequate public liability insurance in place. The code makes it clear the criteria which must be met, that certain sites will not be suitable at all for such usage and that additional restrictions or conditions may be placed on other sites.

6. Financial implications

It may be considered that by not implementing a formal licensing regime and removing the need for an application fee, there is a potential loss of revenue. However, this is more than off set by taking away an administrative burden on staff in a number of services. Additionally, the level of fee which could be reasonably charged would not cover the costs of processing the fee. It has been seen in other authorities that there is little appetite for a fee-paying licensing process amongst businesses.

7. Legal implications

- 7.1 The Highways Act 1980 places a duty on local authorities to protect the rights of the public to the use and enjoyment of the highway. Unauthorised obstructions may be dealt with by advice, prosecution or by seizure of the article, depending on the nature and extent of the obstruction. However, authorities may also permit structures and obstructions to be placed on the highway.
- 7.2 Although, labelled as a code of practice, this is in effect an enforcement policy and hence being presented to council for approval. Legal services have been involved in the development of the code and consulted on the final report.

8. Property implications

There is a stipulation that shop displays and advertising boards should not be affixed to or cause damage to the highway or street furniture.

9. Staffing implications

This does not take away from any existing functions and does not place additional duties on any staff.

10. Equality implications

An equalities impact assessment has been undertaken and the Safety Equalities and Wellbeing team involved in the consultation.

11. Consultation

- 11.1 Consultation on the draft code was undertaken with a number of organisations and departments in the council as well as with the public. Where appropriate, comments have been included in the code of practice as it is now presented.
- 11.2 The organisations consulted with include business representatives, area managers, West Midlands Police, Walsall Disability Forum, Council departments including the safety equalities and wellbeing service, planning, engineers and transportation. Emails, memos, social media and the web site were all utilised in the consultation process.
- 11.3 The majority of responses received were in favour of the proposals with a range of specific comments on the detailed requirements, especially from businesses. Where appropriate, these comments have been incorporated into the proposed code of practice as an appendix.

Jamie Morris
Executive Director

2 April 2012

Appendix

Code of Practice for Shop Displays and A Boards on the Highway

Walsall Council wants its shopping centres and streets to be vibrant places where people want to shop and visit.

It has a legal duty to maintain the free use of the highway, including pavements, for all residents. This is particularly important for those people with disabilities, the elderly and people with prams and pushchairs. At the same time, however, there is a need to allow businesses to promote themselves and encourage a thriving economy.

To help balance these competing demands we have introduced this code of practice which will give guidelines to businesses on the circumstances when shop displays and A boards on the highway will be permitted.

By following these guidelines, the majority of traders will be able to promote their business and pedestrians will be able to get around freely and safely.

There are some areas, however, where the streets are narrow and so shop displays and a boards would not be permitted. In other locations, they may be permitted but subject to additional restrictions. Officers from the licensing enforcement team will be happy to discuss the particular requirements of any business with the proprietor on an individual basis.

This code of practice forms part of the council's enforcement policy. If a business fails to comply with the code of practice, then enforcement officers can take action to remove the obstruction and/or prosecute the business in the magistrates court.

If you feel a shop display or a board does not comply with these requirements or it causes an obstruction, please contact the licensing enforcement team.

Officers from the licensing enforcement team can be contacted for advice on the requirements of this code or to make complaints and enquiries:

Telephone: 01922 652246

Email: licensingenforcement@walsall.gov.uk

Post: Challenge Building, Hatherton Street, Walsall, WS1 1YG

Part A Requirements for A Boards on the Highway

An advertising board or A board as they are commonly known, is an advertisement, in the form of a board or frame which is usually freestanding on the ground.

1. Only 1 A board is permitted for any premises, even where they are in multiple occupation or benefit from 2 frontages (eg on a corner plot). Premises in multiple occupation may wish to consider a shared a board or a rota system for placing boards outside.
2. It must be placed in the immediate vicinity of the premises and adjacent to the premise wall. However, where there is other street furniture in the vicinity, it may be placed in line with this to make the flow of pedestrians easier and to avoid creating a

“slalom effect” on the pavement. They must not be placed in locations remote from the premises, e.g. on traffic islands or verges.

3. A boards will not be permitted on the highway where the premises has the benefit of adequate privately owned frontage.
4. A boards must be removed when the premises is closed. They must also be removed at the request of a police officer, fire officer or officer from the council (This is likely to be in response to particular circumstances such as public safety, access for emergency, necessity to access the highway for cleaning and maintenance. These are examples and not an exhaustive list).
5. They should always be placed in the same position to assist those with visual impairments.
6. They must not be fixed to or cause damage to the highway, street signs or highway furniture.
7. They must not obstruct the sight lines of traffic or pedestrians or the visibility of any street signs.
8. They must leave clear pavement of 2 metres. In pedestrian areas, this is extended to 3.5m to allow for access by emergency vehicles. They must be at least 2 metres from the edge of any carriageway.
9. 2 metres clearance must be left from crossings and tactile paving and they must not otherwise impede the use of crossings and bus stops. In certain locations, this may necessitate additional restrictions.
10. They must be stable and not pose a hazard to other users of the highway. Swinging or rotating signs must not be used.
11. They should not cause detriment to the appearance of the area.
12. A boards are the property of the proprietor of the business and they are liable for any damage to the highway or damage, death or personal injury to other users of the highway. The business should ensure that the use of A boards is covered by their risk assessment. They should not obstruct fire escapes and evacuation routes. The business must have adequate public liability insurance (£5m recommended). The council will not be liable for death or personal injury or damage to property caused by an A board.

Part B Shop Displays on the Highway

A shop display is a display of goods which are normally sold by the business which is placed outside the premises.

1. A shop display must only be placed in the immediate vicinity of the premises, adjacent to the premises wall and must not extend beyond the width of the premises. It must not be placed in locations remote from the premises, e.g. on traffic islands or in lay-bys.

2. Shop displays will not be permitted on the highway where the premise has the benefit of adequate privately owned frontage.
3. Shop displays must be removed when the premise is closed. They must also be removed at the request of a police officer, fire officer or officer from the council. (This is likely to be in response to particular circumstances such as public safety, access for emergency, necessity to access the highway for cleaning and maintenance. These are examples and not an exhaustive list).
4. Only 1 shop display is permitted for any premises, even where they are in multiple occupation.
5. They should always be placed in the same position to assist those with visual impairments.
6. They must not be fixed to or cause damage to the highway or highway furniture.
7. They must not obstruct the sight lines of traffic or pedestrians or the visibility of any street signs.
8. They must not extend more than 1.0 metres forward from the premises into the pavement. They must not extend beyond the width of the premises.
9. They must leave clear pavement of 2 metres. In pedestrian areas, this is extended to 3.5m to allow for access by emergency vehicles. They must be at least 2 metres from the edge of any carriageway.
10. 2 metres clearance must be left from crossings and tactile paving and must not otherwise impede the use of crossings and bus stops. In certain locations, this may necessitate additional restrictions.
11. They must be stable. The nature of the stand or the goods must not pose a risk to other users of the highway. E.g. wheeled trollies must be braked or secured, goods should not be likely to fall. The goods displayed must relate to the normal trade of the premises. No sales may take place on the highway.
12. They should not cause detriment to the appearance of the area.
13. Shop displays are the property of the proprietor of the business and they are liable for any damage to the highway or damage, death or personal injury to other users of the highway. The business should ensure that the use of A boards is covered by their risk assessment. They should not obstruct fire escapes and evacuation routes. The business must have adequate public liability insurance (£5m recommended). The council will not be liable for death or personal injury or damage to property caused by an A board.