



## COUNCIL

8 November 2004

Agenda  
Item:

### UNAUTHORISED OBSTRUCTIONS ON THE HIGHWAY – REVIEW OF COUNCIL POLICY

Ward(s) All

Forward plan: Yes

Report of: - Executive Director

Service Area Built Environment

#### Summary of report: -

The report seeks to end the Council's existing policy in relation to unauthorised obstructions on the highway. Current policy dates back to 1991 and it no longer complies with case law or the Council's duty. The report also sets out a process to develop and approve a new policy. In the meantime it is proposed to approve an interim policy which will ensure that the Council complies with its duty in relation to the removal of unlawful obstructions on the highway. The revised policy will be subject to consultation prior to seeking Council approval.

#### Background Papers

Highways Act 1980  
Report to Overview and Scrutiny Community  
Equalities and Values Equality Advisory Group 23 April 2003  
Top Ten Footway Obstructions

#### Recommendations

1. To end the existing Policy in relation to unauthorised obstructions on the highway approved by the Highways and Public Works Committee on 26 September 1991.
2. To approve an interim policy in relation to unauthorised obstructions on the highway as follows:  
  
"The Council will comply with its duty in relation to the removal of unlawful obstructions on the highways as set out in the Highway Act 1980 and any other relevant legislation."
3. To instruct officers to develop a revised policy consulting with the Development Control Committee and report back to Council within the next 12 months.

**Signed:** .....

**Executive Director:**   **Sonia Davidson-Grant**

**Date:** .....

## Resource and Legal Considerations

The Council, as the Highway Authority for the highway, has a duty under the Highways Act 1980 to enforce the removal of unauthorised obstructions from the highway.

The Council's existing policy on this matter was agreed on 26 September 1991. At a meeting of the Highways and Public Works Committee, a procedure was agreed for dealing with footway obstructions and the criteria for dealing with certain displays which established the following policy:

- i. No advertisement boards at any location.*
- ii. No shop displays in Park Street.  
No shop displays where the clear area of footway is less than 1.8 metres (6 feet) wide.*
- iii. Shop displays may be tolerated if the display protrudes less than 0.5 metres from the shop front, does not exceed 1.0 metres high, does not extend beyond the shop frontage and there remains at least 1.8 metres of unobstructed footway.*
- iv. Any display must have adequate warning for the blind.*

*In the event of any legal action arising from such displays, the liability remains with the shopkeeper and toleration by the Authority of such displays will not be viewed as an approval, authority, exercise or licence to obstruct the highway."*

Advice was sought from Legal Services on the robustness of the existing policy in relation to the Council's duty in this area and case law since the Council's policy was agreed.

The advice to Council from the Council's legal advisor is that the policy does not fully comply with the Council's duty and a revised policy is needed which requires Council approval.

The existing policy may hamper enforcement activities because it does not comply with the Council's duty in relation to this matter. Having sought legal advice it is proposed to end the existing policy, seek approval for an interim policy and then formulate a more detailed policy consulting with the Development Control Committee prior to seeking Council approval.

The interim policy will ensure that the Council complies with its duty to enforce the removal of unlawful obstructions on the highway. Compliance with this duty requires the Council to be mindful of the most recent case law in relation to this matter and use this information to determine its approach to enforcement actions.

The restructuring of the Built Environment has released resources to tackle a number of enforcement requirements, including dealing with obstructions on the highway, within existing budgetary provision.

### **Citizen Impact**

The removal of unlawful obstructions on the highway will assist citizens' access to footways, and in particular, disadvantaged groups such as people with disabilities, families with young children and senior citizens.

### **Environment Impact**

Unlawful obstructions on the highway create hazards to vulnerable groups and detract from the visual appearance of the built environment.

### **Performance Management & Risk Management Issues**

Actions are contained within Service Plans to improve a number of enforcement measures including the removal of unlawful obstructions on the highway. These actions then flow into relevant officers' individual performance plans. These actions are monitored as part of the established review processes.

The implementation of the new policy should reduce the degree of hazard to highway users and therefore the risk presented by such obstructions. A risk assessment will be undertaken as part of the policy review process.

### **Equality Implications**

In addition to legal requirements, the Council has recognised the impact that obstructions on the highway have on groups such as people with disabilities, families with young children and senior citizens.

A report on this matter to Overview and Scrutiny Community Equalities and Values Equality Advisory Group on 23 April 2003 set out the top ten footway obstructions. This report identifies a number of obstructions that can be dealt with under the provisions contained within the Highways Act 1980 and the Environmental Protection Act 1990, and acknowledged that the Council has responsibilities in relation to obstructions on the highway and has authority to enforce;

- Overgrown hedges/low branches overhanging the highway
- Other obstructions on the highway including shop frontage displays, advertising boards, (A boards), low canopies etc.

The above mentioned report also noted that offences in respect of driving or parking on the footpaths can only be enforced by the Police.

The Council has received feedback on this matter as part of the consultation process regarding the Council's vision. This feedback resulted in a commitment under priority two – make it easier for people to get around:

“People will find it easier to travel within the borough and across the West Midlands sub-region ..... The borough's roads and pavements will be accessible to disabled people, carefully planned, properly maintained and free from unnecessary

obstructions; Walsall will be a place that is welcoming to people with disabilities.

The new policy will be beneficial to all residents but will particularly benefit people with disabilities including visually impaired people or people who use wheelchairs, children in pushchairs and guide dogs.

### **Consultation**

Consultation has taken place with Legal Services, Risk & Insurance Section and the Council's Access Officer.

The consultation process in April 2003 involved a wide section of the Community. Traders have contributed their comments by stating their general concern that 'A' boards are helpful in advertising their business. There is clearly an issue with traders who use unauthorised 'A' boards or display their goods on the public footpath, thereby creating an obstruction for pedestrians. Able-bodied people have few problems with these obstructions but people who have disabilities or responsibility for children find these features a hazard, and in some cases quite dangerous. If Walsall is to serve all members of the community, it must address its responsibilities for safety to people with disabilities as well as providing an environment where local traders can run successful businesses.

### **Vision 2008**

In order to achieve the Council's vision, a service of priorities has been established. The key priorities connected with this report are as follows:

**Priority Two** – Make it easier for people to get around. People will find it easier to travel within the borough and across the West Midlands sub-region. The borough's roads and pavements will be accessible to disabled people, carefully planned, properly maintained and free from unnecessary obstructions; Walsall will be a place that is welcoming to disabled people.

### **Contact Officer**

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## **COUNCIL 8 NOVEMBER 2004**

### **UNAUTHORISED OBSTRUCTIONS ON THE HIGHWAY – REVIEW OF COUNCIL POLICY**

1. Context
  - 1.1 The existing Council policy in relation to the removal of obstructions from the highway dates back to 1991. This policy does not fully comply with the Council's duty in this matter.
  - 1.2 It is proposed to end the existing policy and develop a new policy in a two stage process.
  - 1.3 Stage one will be the introduction of an interim policy designed to ensure that the Council complies with its duty in this matter.
  - 1.4 Stage two will be the development of a new policy which will be subject to consultation via the Development Control Committee. A revised draft policy will be presented to Council for approval within the next 12 months.