

## **THE ENFORCEMENT OF UNAUTHORISED ADVERTISEMENTS**

### **1 PURPOSE OF REPORT**

- 1.1 To provide the Review Committee with an outline of the enforcement powers available to the planning authority and to review the planning enforcement team's procedure for dealing with advertisements without the necessary advert consent.

### **2 INTRODUCTION**

- 2.1 The Review Committee meeting of 8 November 2016 raised a query over the number of unauthorised adverts that were displayed throughout the District. There was a view from the Committee that there appeared to be a lack of enforcement action and that the number of unauthorised adverts being displayed had increased, causing harm to the visual amenity of the District. At the meeting, specific reference was made to A-Board advertisements and large banners. In addition, the Committee was reminded of a previous Review Committee in March 2016, where the enforcement team had reported on a proposal for a project that specifically targeted unauthorised adverts. An update on the progress on this project work would also be required.

### **3 THE LEGISLATION AND REGULATIONS REGARDING THE UNAUTHORISED DISPLAY OF ADVERTS**

- 3.1 The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 provides deemed consent for certain types of adverts without the need to obtain consent from the relevant authority. The Schedule within the regulations lists 16 different classes of adverts that can be displayed, providing a set of criteria is adhered to. An example of such a Class would be Class 3F - an advertisement relating to the visit of a travelling circus, fair or similar travelling entertainment to any specified place in the locality.
- 3.2 Section 224 of the Town and Country Planning Act (1990) makes provision for enabling the Local Planning Authority (LPA) to require the removal of any unauthorised advertisement. If any person displays an advertisement in contravention of the regulations set out in The Town and Country Planning (Control of Advertisements) (England) Regulations 2007, he shall be guilty of an offence and liable on summary conviction to a fine through the magistrate court. Section 225 provides powers to the LPA for the removal of posters and placards. Under both provisions, where the person displaying the advert, poster or placard can be identified, the LPA is required to give notice to the advertiser advising them of the offence and request for the adverts to be removed.
- 3.3 Section 132 of the Highways Act 1980 also allows the Highway Authority to remove any sign or advert displayed on the highway without consent.

However, the Highway Authority may do so immediately and is not required to give notice to the advertiser.

- 3.4 The immediate removal powers under the Highways Act have led to a combined approach between the Highway Authority and the LPA being deployed, allowing the LPA to, on occasion, remove and discard unauthorised adverts on the highway. The LPA would not prosecute under the Highways Act, but it is an effective tool for a quick remedy when resources allow, balanced against other more pressing priorities.
- 3.4 Recently, advertisers intent on flouting the regulations have embarked on the practice of attaching adverts to heavy wooden boards and trailers; chained to street furniture or gates which makes the task of removal by the Council Planning Enforcement Officers extremely difficult or sometimes impossible. The Highway Authority will at times intervene with the removal, if there are concerns relating to highways safety, distraction to drivers and visibility but not because of the effect on the visual amenity of the District as this is not within their remit.

#### **4 THE USE OF A BOARDS FOR ADVERTISEMENT**

- 4.1 Class 6 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 provides for adverts to be displayed on the forecourt of business premises. The use of A Boards for this purpose is not permitted on the public maintainable highway under the Highways Act 1990 and the Highway Authority, that is, Essex County Council have the power to remove such adverts under Section 132 of the Act.
- 4.2 Notwithstanding the provisions of the Act, the Highways Authority has adopted a more pragmatic approach and produced a policy document '*Essex County Council Policy for the placement of advertising boards on the publicly maintainable highway*' (2013). This policy allows for a degree of tolerance for such adverts. There is a set of criteria to be adhered to, which allows a business to display one such advert, providing sufficient width is maintained for other highway users.
- 4.3 If alerted to a possible breach, the LPA enforcement team will attempt to negotiate for the repositioning or removal of the A Board as and when resources are available. If this proves unsuccessful the matter is referred to the Highway Authority for their action.

#### **5 PROSECUTION**

- 5.1 A person displaying an advertisement in contravention of the Town and Country Planning Act 1990 Act and Regulation 30 of the Control of Advertisement Regulations 2007 shall be liable, on summary conviction of an offence under section 224(3) of the Act, and be liable to a fine and criminal record.

- 5.2 The planning enforcement team have a suite of standard letter templates when dealing with unauthorised adverts. The letters inform the parties involved of the offence being committed and warn of potential prosecution. The letter provides a short time period for the advert to be removed. Often advertisers will request time to apply for advert consent; in these circumstances the LPA will normally insist on the removal of the advert whilst consent is being applied for. If the offender does not comply with the Council's request an instruction is sent to the Council's legal team to consider prosecution in the magistrate court. The threat of prosecution can be an effective deterrent.
- 5.3 If the matter proceeds through the Court, as well as leaving the offender with a criminal record, a successful prosecution allows the Council to apply for a Proceeds of Crime Act (POCA) Confiscation Order. If successful, the offender is punished by forfeiting the profits attributable to the planning breaches and the local authority would then receive a share of those profits. The initial preparations for the confiscation order are made in tandem with the prosecution. As an Accredited Financial Investigator, Chelmsford City Council have an officer Rochford could potentially use, who would carry out all the investigations into the defendant's financial situation to enable an application to be made to the Court. As soon as a conviction is secured, the confiscation order can commence. The use of POCA was certainly a consideration when a project to address unauthorised adverts in the District was discussed last year.

## **6 ADVERT PROJECT**

- 6.1 It is acknowledged not all unauthorised adverts have been reported to the LPA and a fair and consistent approach should be adopted. In March 2016 the team reported on a proposal to launch a project that surveyed and reviewed all existing illuminated adverts in the District towns, to contact the advertisers and seek the removal or regularisation. Apart from identifying the project in March 2016, and some initial survey work conducted in Rayleigh town centre, the project has not progressed, as other enforcement work was considered to be a priority.

## **7 CONCLUSION**

- 7.1 The Highway Authority has more immediate powers to remove unauthorised adverts on the highway. With agreement from the Highway Authority the LPA may occasionally undertake this work under the Highways Act 1980 to improve the amenity of the area. The LPA have powers under the Town and Country Planning Act 1990 to request the removal of adverts, however, notice must be given and there is a procedure to be followed and is dependent on available resources within the team. The number of A Boards on the pavement has increased since there has been a greater level of tolerance by the Highway Authority and the LPA since the publication of guidance by Essex County Council.

- 7.2 A specific task and finish project to review all illuminated adverts across the District is a possibility, but is unlikely to be deliverable without additional resources. However as there are few complaints about illuminated advertisements to the Council, on balance, it is not considered there is justification in finding additional resources for such a retrospective review when there are other more pressing concerns. It is estimated that a review could take about six months of a full-time officer to complete, at a cost in the region of £25,000.

## **8 RISK IMPLICATIONS**

- 8.1 There is a risk to the visual amenity of the District if appropriate enforcement actions cannot be undertaken. The Highway Authority will remove adverts if there are concerns relating to highway safety, distraction to drivers and visibility, but not because of the effect on the visual amenity of the District as this is not within their remit.

## **9 RESOURCE IMPLICATIONS**

- 9.1 The report indicates that a task and finish project to review illuminated advertisements is not considered to be justified, given the likely scale of the problem in the District. If a review were to be carried out it is estimated this could cost in the region of £25,000.

## **10 LEGAL IMPLICATIONS**

- 10.1 The legal implications are already set out in the body of the report.

## **11 EQUALITY AND DIVERSITY IMPLICATIONS**

- 11.1 None.

## **12 RECOMMENDATION**

- 12.1 It is proposed that the Committee **RESOLVES**
- (1) To note the approach that has been taken by officers in relation to advertisements and their inter-relationship with the work, jurisdiction and responsibilities of Essex Highways.
  - (2) To note that there are always competing priorities for the Enforcement Team with the resources available to carry out this essential planning function.



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**Background Papers:-**

None.

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