

Scrutiny Panel

28th March 2017

Item
12

Report of	Head of Community Services Lucie Breadman	Author	Cassandra Clements 📞 282918
Title	Use of Advertising Boards in the Town Centre Discussion Paper		
Wards affected	Optional: Castle / Whole Borough		

The Panel is invited to discuss the use of A Boards in Colchester Town Centre and inform the Portfolio Holder of their views or recommendations

1. Decision required and reason for Scrutiny.

- 1.1 The Scrutiny Panel is invited by the Safer Communities and Licensing Portfolio Holder to discuss the use of A Boards in Colchester Town Centre and decide if they wish to make recommendations or inform any future approach.

2.0 Background Information

- 2.1 A Boards are used throughout the Borough by local businesses to promote their company or services. However, depending on the width of pavement/highway in front of their business the A Boards can cause an obstruction which is particularly an issue for the visually impaired, users of mobility scooters, prams and pushchairs, pedestrians in general and often vehicles.
- 2.2 There has been a number of requests to Colchester Borough Council from Access Groups to ban the use of A Boards entirely. Scrutiny Panel has been invited to discuss the situation, review the options below and to consider a view or recommendation to the Portfolio Holder.
- 2.3 There are currently approximately 288 A Boards in use within Castle Ward.

3.0 Policy & Enforcement Position

- 3.1 The only current policy in relation to A Boards is Essex County Council Highways Policy. Details of this are included as Appendix A. While they have a policy in place which does limit the size, number and location of the Boards ECC have also confirmed that they have no plans to enforce this on the ground.

CBC has enquired if ECC would delegate their authority to enforce the ECC policy in place but they have confirmed that our option to enforce would be through our own Planning Authority as A Boards are essentially outdoor advertising and CBC can address the issue from a planning enforcement perspective.

- 3.2 Planning - advertisements are controlled with reference to their effect on amenity and public safety only, so the regime is lighter touch than the system for obtaining planning permission for development. "A-boards" on highways (including footways) where vehicular traffic is prohibited will require express advertisement consent. They will also require the consent of the relevant council under section 115E of the Highways Act 1980

for permission to place items such as “A-boards” in highways (including footways) where vehicular traffic is prohibited.

- 3.3 National Planning Policy regarding adverts is contained in the National Planning Policy Framework. Paragraph 67 states; *“Poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority’s detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.”*
- 3.4 Colchester Borough Council adopted guidance on A Boards is covered in the Shopfront SPD which states: The Council will discourage the display of A Boards outside shops. Any advertisements displayed on the highway (which includes the publicly adopted footway) will need both advertisement consent and also the consent of the highway authority. These applications in the future are likely to be refused.
- 3.5 Existing national and local policy and guidance is considered to set the framework for the approach to be taken to adverts including A Boards. Policy cannot be used to restrict the display of A Boards that are permitted by regulations/legislation. No change is therefore proposed.
- 3.6 Planning enforcement – advertisement consent: A business premises has deemed consent to display an advertisement if it is within their own area or forecourt. However, as most of the A boards in the town centre are not within an enclosed privately owned area or on a forecourt of a business premises in pure terms they require advertisement consent in order to made them legal.

Planning enforcement operates to protect the public interest, and as an unauthorised advert is a criminal offence, the only enforcement “tool” available to us (if a mutual agreement cannot be reached) is prosecution through the Magistrates Court. The case for prosecution would have to be made against the offending business and the landowner, which would often be Essex County Council Highways.

As with all planning enforcement complaints, before a decision to prosecute is made a judgement must be made on the degree of harm.

In addition, CBC’s Planning Enforcement Policy states that *“it is necessary to target available resources to have maximum effect. Attention will be focussed where there is the most harm in planning terms”* and A Boards in the town centre generally provide very little harm from a Planning perspective.

- 3.7 Very few complaints are received from a planning enforcement point of view, however, where they are received and the harm is felt to be worthy of action (usually from an obstruction point of view) negotiation with the business owner, by either planning enforcement, the Police, or Zone Team’s has generally resulted in removal.

Complaints about A Boards are usually received directly by the Zone Team as they are seen as an obstruction by the complainant rather than an advertising breach. There are a very small number received per year. Zone Wardens do not routinely monitor A Boards.

3.8 Few Councils take enforcement action against A Boards. For those that do there are a range of approaches, example below:

- **Tendring District Council, Maldon District Council, Braintree District Council:** These Councils all follow the ECC Policy and ask for Advertising Consent to be applied for before using A Boards.
- **Chelmsford City Council:** Chelmsford City Council implemented a Public Space Protection Order for their city centre. It covers a number of aspects including begging, fly posting, street drinking, as well as prohibiting A Boards.
- **Hackney Council:** Hackney do not allow A Boards at all and have adopted their own policy in relation to this. They have an enforcement team that liaise with businesses and remove the A Board if necessary.
- **Bath & North East Somerset Council:** Allow A Boards as per the highways guidance. We are not clear that they have any enforcement power but have adopted an approach whereby failure to comply with the Highways Policy results in removal of the A Board, and a written letter to the business to say that they will hold it for three months. In that three months the business can pay £100 + VAT to claim it back, or after that time it will be disposed of.

4.0 Current Situation in Colchester

4.1 A survey was undertaken in March 2017 from the following roads; **High Street, Head Street, Crouch Street East and West, Culver Street West, Trinity Street, Eld Lane, Sir Isaacs Walk, Long Wyre Street, Short Wyre Street, Queen Street, St Boltophs Street and Bank Passage.**

The guidance for whether the A-Frame was recorded as 'breach of policy' was taken from the Essex County Council policy 'for the placement of advertising boards on the publicly maintainable highway' published in February 2013.

The main breaches of the policy appear to be **amount of frames** (only 1 board per business allowed) and the **distance of the board from the kerb** (2m unobstructed footway width between the edge of carriageway and the board). There were a couple of other breaches such size of board but these were minimal.

- There were **288** A-Frames in total
- **168** of these were in breach of ECC policy
- This works out at **58%** of the total A-Frames being in breach of policy

Using the ECC policy regarding meter distance from the pavement the following roads would not be viable for A-Frames outside businesses:

- 1) Sir Isaacs Walk - Pavement is not wide enough from kerb to building along most of the entire stretch, but only in certain sections would they be allowed.
- 2) Eld Lane - Does not have a kerb line as it is fully paved.
- 3) Short Wyre Street - Pavement is not wide enough from kerb to building.
- 4) Long Wyre Street - Pavement is not wide enough along the entire stretch, but only in small sections.
- 5) Head Street - Certain sections of street are not wide enough from kerb to building.

5.0 Options Available

5.1 There are a number of options that could be taken, below summaries these:

Options	Advantages	Disadvantages
1)Do nothing	<ul style="list-style-type: none"> No impact on CBC resources No impact on small businesses 	<ul style="list-style-type: none"> No improvement to the Town Centre No improvement for Access
2)Follow the ECC recommended Policy	<ul style="list-style-type: none"> Attempts to tackle clear obstruction issues as we can clearly show the business they are breaking policy No new policy needed but would need to agree approach to take for the most impact to be achieved. 	<ul style="list-style-type: none"> No real enforcement power for CBC Most affected would be small businesses not major retailers due to locations of problem Resource intensive for Zones so would impact on other activities Would not cover all issues raised by Access Groups
3)Apply for a PSPO	<ul style="list-style-type: none"> Clear policy for removal and enforcement Fair across all affected areas Clutter free environment Long Term Solution Allows the use of FPN's 	<ul style="list-style-type: none"> Initially resource intensive Perceived lack of support to businesses Public Consultation May not be granted due to only having A Boards listed in it – disproportionate to the harm
4)Use Planning Advertisement regulations	<ul style="list-style-type: none"> Clear legislation in place. Would remove practically all A Boards other than those on private curtilage 	<ul style="list-style-type: none"> Very resource intensive Disproportionate response in relation to planning harm Criminal convictions Could be seen as heavy handed Negative publicity of prosecuting local small businesses Would need to prosecute ECC as landowner
5) Adopt an 'Area of Special Control' NPPG	<ul style="list-style-type: none"> Clear legislation in place. Would remove practically all A Boards other than those on private curtilage 	<ul style="list-style-type: none"> The planning authority is expected to consult local trade and amenity organisations about the proposal. Before a direction to remove deemed planning consent is made for specific advertisements, local planning authorities will be expected to demonstrate that the direction would improve visual amenity and there is no other way of effectively controlling the display of that particular class of advertisement. The comments of organisations, and individuals, whose interests would be affected by the direction would be sought as part of the process. Enforcement would need resources

- 5.2 It is unlikely that any option will please everyone and with each comes health and safety issues, a business perspective and possible impact on resources that has not been fully explored for the purposes of this paper.

5.3 Options explained:

- Do nothing – Whilst this is the least resource intensive option, it does not address the issues raised by access groups.
- Adopt ECC Policy - This is the most common route used in Essex, with 10 of the 12 authorities using it. This route would allow CBC to ensure there are no clear obstructions to the highway as the policy dictates exactly what is acceptable. It would also allow CBC to work with businesses to remove any second A Frame which we know to be one of the most common infringements of the policy. However it is worth noting that those businesses who will not be permitted to use an A Board due to the distance restriction are likely to be the ones that are on the smaller streets, with smaller shop fronts which is why they use them in the first place. It is not guaranteed that they will be able to have a hanging sign instead – this would have to be applied for through the existing Planning process. This is a resource intensive route and would mean that Zone Teams would be taken away from other Cleansing or Enforcement activity in order to enforce it. Businesses have also stated that in order for this to be fair, that it should apply to the Borough and not just the Town Centre which again would be hugely resource intensive.
- Adopt a PSPO - CBC could look into applying for a PSPO for a total ban on A Boards in Colchester (either town centre or Borough). This is essentially a route to CBC having a Zero Tolerance Policy on A Boards. This is not a guaranteed route as the PSPO may not be successful. Chelmsford do have one, though the A Board ban is only one of 6 points covered in it. Others include Begging, Street Drinking, Fly Posting, Rough Sleeping and Distribution of Free Printed Matter. This again would be exceptionally resource intensive initially (one year), though would be easier to monitor once all enforcement had taken place.
- Enforcement of Planning Advertisement Regs – whilst this is an option, it is highly unlikely that this route would be successful. It is very heavy handed as it results in criminal convictions. Again this option is exceptionally resource intensive and Officers would have to be taken off existing priorities to undertake this work.
- Adopt an 'Area of Special Control' - Similar to the PSPO option, CBC could look into applying for an 'Area of Special Control' for a total ban on A Boards in Colchester (either town centre or Borough). This is essentially another route to CBC having a Zero Tolerance Policy on A Boards. This is not a guaranteed route as again the harm may not be proved adequately and so may not be successful.

6.0 Strategic Plan references

- 6.1 Vibrant - Create the right environment for people to develop and flourish in all aspects of life both business and pleasure.
- 6.2 Welcoming - Ensure Colchester is a welcoming and safe place for residents, visitors and businesses with a friendly feel that embraces tolerance and diversity

7.0 Consultation

- 7.1 For options one, two and four, no formal consultation will be needed to implement these. For Option Three, a Public Consultation forms part of the application for a Public Space Protection Order.

8.0 Publicity considerations

- 8.1 There are mixed views about the need for A Boards ranging from wishing to clear the town of clutter, preventing obstructions for the reasons outlined, to not wishing to disadvantage businesses and being seen to hamper their ability to trade successfully.

9.0 Financial implications

- 9.1 Any action that involves enforcement or education would impact on the resources of the Council. This paper has not clarified those resources or costs which would need to be considered alongside any recommendation made to Cabinet for a final decision on how to proceed.

10.0 Equality, Diversity and Human Rights implications

- 10.1 This is an area that is predominantly being looked at because A Boards can cause an obstruction which is particularly an issue for the visually impaired, users of mobility scooters, prams and pushchairs. A current EQIA is available on the Council's website here <http://www.colchester.gov.uk/article/12744/Community-Services>

11.0 Community Safety implications

- 11.1 Implementing Option Three would be an opportunity for any other conditions relevant to the Town Centre to be added, such as street drinking, begging etc.

12.0 Health and Safety implications

- 12.1 Option One – doing nothing would mean there continues to be a risk to a target group when using the Town Centre.

13.0 Risk Management implications

- 13.1 N/A

14.0 Other Standard References

- 14.1 N/A

Background Papers

Appendix One – ECC A Board Policy