

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member – Environment and Transport
Date:	3 April 2012
Title:	‘A Boards’ Policy
Reference:	3731
Report From:	Director of Economy, Transport and Environment

Contact name: Steve Spender

Tel: 01962 845978

Email: steve.spender@hants.gov.uk

1. Executive Summary

- 1.1. The purpose of this paper is to seek the formal adoption of a policy that will enable the regulation of ‘A’ Boards on the Public Highway controlled through the issuing of licences by the District Councils under the appropriate section of the Highways Act 1980.
- 1.2. This paper seeks to set out the reasons for the proposed policy, explain the details of the proposed policy and identify the mechanism by which District Councils can authorise and licence the placing of ‘A’ Boards on the public highway.

2. Contextual information

- 2.1. Traditionally it has been the County Council’s policy, under the terms of the Highways Act 1980, not to permit the use of ‘A’ Boards on the highway because they constitute an obstruction of the highway which could prevent its legitimate use. This policy can be difficult to enforce due to a perception by some businesses of unfair treatment.
- 2.2. A revised and specific policy on ‘A’ Boards has been drafted following consultation with numerous other Highway Authorities throughout the UK to establish current good practice that is in place. The policy has been formulated having considered the experience of some of the other Authorities from which guidance was received, in particular from Authorities where a similar scheme to that being proposed has been implemented. The proposed Policy is attached to this report as Appendix 1.
- 2.3. The draft policy is aimed at reducing the conflict between the desires of traders to promote their businesses and the rules for unobstructed movement

set down in the Highways Act by regulating the use of 'A' Boards rather than a blanket ban. Whilst it is acknowledged that 'A' Boards can be an obstruction and an unsightly nuisance it is also accepted that controlled use can reduce the negative influence of such items on the street scene, promote safer access for highway users and disabled groups, assist in promoting tourism, aid in maintaining the vitality of town centres and provide a service for the benefit of the public. A combination of all of these factors enhances the economic sustainability of town and rural businesses, and communities.

- 2.4. Under the policy 'A' Boards could be placed legitimately on the public highway outside shops on the basis of a licensing scheme controlled by District Councils. The District Council would be the licensing authority, rather than the County Council. The County Council would continue to treat unlicensed 'A' Boards as unauthorised signs on the highway and seek their removal. The County Council would adopt a policy of not permitting 'A' Boards in areas other than those where the District Councils agreed to undertake such a licensing scheme.
- 2.5. Consent to place objects on the highway can be exercised by both the County Council as Highway Authority and by District Councils through the Highways Act 1980. The appropriate Section covering this function is Section 115 A-K (this is currently used for licensing tables & chairs etc). Where District Councils are not also the highway authority (which is the case in Hampshire) the consent of the Highway Authority is required. Consent can be subject to conditions.

3. Finance

- 3.1. The proposal is expected to be cost-neutral to the County Council, although an approach of only permitting licensed 'A' Boards might be resource-intensive for the County Council in policing the arrangements for removal of such boards.
- 3.2. Costs incurred by the District Councils for administering the scheme would likely be recovered from the licensees by means of a licence fee. The fee would be expected to vary from district-to-district dependant upon the costs incurred.

4. Performance

- 4.1. Work is underway on developing a robust procedure that can be employed to deal with operating such a scheme, and which will aid the implementation by District Councils that wish to undertake such a scheme.
- 4.2. Issues needing further detailed attention include:
 - (i) The public liability requirements for permitting the placing of 'A' Boards on the public highway.

- (ii) Any possible legal challenges the Authority may face when such a scheme is implemented.

5. Future direction

- 5.1. It is proposed to advise the District Councils in Hampshire of the development of this policy and seek their cooperation in adopting the conditions contained within it.

6. Recommendation

- 6.1. That the policy related to the regulation of 'A' Boards on the public highway (Appendix 1) be formally adopted and added to the Department's Highway Maintenance Management Plan suite of policies.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	Yes
Corporate Improvement plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>
Highways Act 1980		
Equalities Act 2010		

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Executive Member briefing, 06/09/2011	
Executive Member briefing, 10/10/2011	
EMET/DMT Informal Briefing, 16/01/2012	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. The use of 'A' Boards on the public highway potentially affects the unobstructed use of the public highway by mobility- and visually- impaired people. While the number of 'A' Boards present on the highway might increase under the proposed policy, the proposed policy should provide for those 'A' Boards that are present to be better regulated, and might make those that are not licensed easier to remove, in contrast to the difficulty in enforcing the removal of the 'A' Boards placed on the highway under current arrangements.

2. Impact on Crime and Disorder:

2.1. 'A' Boards potentially could be instruments of vandalism and misuse. While the number of 'A' Boards present on the highway might increase under the proposed policy, the proposed policy should provide for those 'A' Boards that are present to be better regulated and might make those 'A' Boards that are not licensed easier to remove, in contrast to the difficulty in enforcing the removal of the 'A' Boards that are placed on the highway under current arrangements.

3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

The impact on the County Council's carbon footprint/ energy consumption is considered negligible

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

It is thought that the proposed policy does not have much opportunity to consider the need to adapt to climate change and be resilient to its longer term impacts

Policy for the Placing of A Boards on the Public Highway

1. INTRODUCTION

- 1.1 The widespread encroachment of portable advertising boards ('A' boards) onto public highways may be considered by some to be an unsightly nuisance, by the disabled to be a potential danger and by other traders as unfair, non-rated enlargements of a competitor's business. They also constitute an obstruction of the highway which prevent its legitimate use, and are therefore unauthorised within the terms of the Highways Act 1980.
- 1.2 Whilst all of these factors are acknowledged by Hampshire County Council (HCC), it is also accepted that controlled use can reduce the negative influence of such items on the street scene, promote safer access for all highway users and disabled groups, assist in promoting tourism, assist in maintaining the vitality of town centres and provide a service for the benefit of the public. A combination of all of these factors, enhance the economic sustainability of both town and rural businesses, and communities.
- 1.3 HCC has, in its role as the Highway Authority (HA), considered the placement of such items and created this Policy which is designed to operate as a high level framework document, setting out the conditions under which the Authority will give consent to applications by District Councils in respect of the placement of 'A' boards, within the boundaries of its highway network. The policy also identifies which Authorities will be responsible for the varying elements of granting licences or consent, carry out conformance inspections and deal with enforcement of any infringements.
- 1.4 A copy of the Policy, for use by Hampshire Highways personnel, will be added to the current policies held in Hampshire's Highway Maintenance Management Plan (HMMP).

2. LEGISLATION

- 2.1 The following sections summarise the legislation relevant to the control of highway obstructions, and provide general guidance to its application.

The Highways Act 1980

- 2.2 **Section 41** provides that Hampshire County Council, as the Highway Authority responsible for highways maintainable at the public expense within Hampshire has a statutory duty to reasonably maintain the highway so that it is free of dangers to all users who use the highway in the way normally to be expected of them - taking account the traffic reasonably to be expected on the particular highway.
- 2.3 **Section 58** provides HCC with a defence to successfully counter a legal action for negligence if one arose. HCC must be able to prove, in a court of law, that it has

taken "such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic".

- 2.4 As a responsible Highway Authority, Hampshire has developed a Policy that outlines what it considers to be acceptable criteria governing the usage and operation of 'A' boards across the highway network for which it is responsible. This has been produced to ensure that the Highway Authority is able to show that it has met the requirements of Section 58 of the Highways Act 1980, in as much as it has instituted suitable highways management procedures, with regard to these aspects of retail and business trading which can cause a nuisance and/or obstruct the highway, which balance the duty to maintain safe levels of access/passage for highway users, with the amenity value that they bestow on the general population and the benefits they deliver to the urban and rural economies. This will allow the Authority to produce a robust defence if an accident occurs where it is alleged that an obstruction or nuisance on the highway that has been permitted by District Councils and the County Council as Highway Authority may have been contributory to the cause of the accident.
- 2.5 **Section 130** makes it the duty of the Highway Authority to assert and protect the rights of the public to use and enjoy the highways for which it is responsible and, in certain cases, highways for which they are not the Highway Authority, and prevent, as far as possible, its obstruction or any unlawful encroachment.
- 2.6 **Section 132** makes it an offence to paint, inscribe or affix any picture, letter, sign or other mark on the surface of a highway or on any tree, structure or works on or in the highway. This Section also permits the Highway Authority to remove any picture, letter, sign or other mark which has been painted, inscribed or affixed upon the surface of a highway or on any tree, structure or works on or in the highway.
- 2.7 **Section 137** makes it an offence to obstruct the free passage along a highway. In certain circumstances the courts can order a person convicted under Section 137, to remove the obstruction within a specified period. Failure to do so is a further offence.
- 2.8 **Section 143** makes it an offence to erect a structure on a highway, a structure including, an 'object of such a nature as to be capable of causing obstruction'. A Highways Authority may serve notice on the person having control or possession of the structure, to remove it within a specified time period, and may, after one month, remove the structure and recover the expenses reasonably incurred by them in so doing.
- 2.9 **Section 148** makes it an offence, for a person, without lawful authority, to deposit 'any thing whatsoever on a highway to the interruption of any user of the highway'.
- 2.10 **Section 149** allows the Highway Authority to serve notice requiring a person who, deposits an item on the highway so as to be a nuisance to remove it forthwith. A magistrates order for its removal, disposal and recovery of expenses can be applied for if it is not removed, alternatively if the Highway Authority consider it constitutes a danger to users of the highway and ought to be removed without delay, they may remove it forthwith, without a magistrates order, and recover their expenses reasonably incurred.

- 2.11 **Section 152** empowers both the Highways Authority and the Local Authority to serve notice on either the owner or occupier of a building, or both, requiring the removal of projections (including signs) from buildings, which have been placed against or in front of the building and obstruct safe and convenient passage along a street, and if the person fails to do so, they are guilty of an offence.
- 2.12 **Section 161** makes it an offence for a person to deposit, without lawful excuse anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered.

Part VIIA of the Highways Act 1980

- 2.13 **Part VIIA of Highways Act 1980** contains Sections 115A – 115K, which sections deal with the provision of, and the mechanisms governing the permissions required for, the placement of objects or facilities, which may be considered to provide an amenity upon certain highways. These are highways where the use of motor vehicles is prohibited by law, either because the highway is a non-vehicular highway, or because a Traffic Regulation Order is in force prohibiting or restricting vehicular use.
- 2.14 **Section 115E** enables a “Council”, within Hampshire (this includes District Councils), to grant permission to a person which allows them to locate an ‘A’ Board within the highway, so long as they can be shown to enhance the amenity of the highway and its immediate surroundings, or to provide a service for the benefit of the public.
- 2.15 **Section 115F** enables both District Councils and the Highway Authority to set any conditions of use that they consider necessary are complied with and to require payment of such reasonable charges as may be determined, to cover the costs that are incurred with administering any licensing scheme developed under S115E.
- 2.16 **Section 115H** requires that where consent is given by a Council which is not also the Highway Authority, the consent of the Highway Authority is needed, unless a pedestrian planning order is in force. District Councils seeking to grant permissions under S115E therefore need to seek the consent of the Highway Authority before permission is granted. Section 115 J provides that this consent should not be unreasonably withheld consent of the Highway Authority. (S115J).
- 2.17 Consent by the Highway Authority may be accepted as having been granted for a premise, if compliance with the contents of this policy by the owner/manager of the premises seeking a licence has been confirmed by a District Council, and all other necessary consents or permissions have been obtained.

The Equalities Act 2010

- 2.18 The Equalities Act 2010 provides that the County Council must in the exercise of its functions have due regard to the need to:
- eliminate discrimination, harassment and victimisation;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it;
- for the purposes of this report the relevant protected characteristics are:
Age, Disability and Pregnancy and Maternity.

- 2.19 In the context of this Policy, the Act imposes a duty on local authorities to consider the requirements of the disabled community when establishing procedures for the management of items positioned on the highway that may cause an obstruction to highway users, but can also be identified as providing an amenity to the general public.
- 2.20 By taking account of the requirements of the disabled community Local Authorities will be able to ensure that, as far as is reasonably practical, continuity of use of these highway obstructions will be established throughout the County, providing a safer and more equal environment for the disabled community in terms of access to, and use of, the public highway.

Other Relevant Legislation

- 2.21 There are other legislative requirements that may impact upon the ability of a business to legitimately locate 'A' boards within the highway such as the Town and Country Planning Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 2.22 It is the responsibility of the individual/company seeking a licence or consent under the terms of this Policy, to ensure that they meet the requirements of these and any other Acts and Regulations that are applicable and, where pertinent, obtain any additional licences, permissions etc. that may be required.
- 2.23 The Local Government Act 2000 (Wellbeing Powers) enable a Local Authority to do anything to promote or improve economic, social or environmental wellbeing providing it is not expressly prohibited by other powers.

3. POLICY ON THE PLACING 'A' BOARDS ON THE HIGHWAY

- 3.1 Hampshire County Council will **not** permit the placement of 'A' boards on the Public Highway unless a licence has been issued, or consent been given, by the District Council or other licensing Authority.
- 3.2 A licence for the location of an 'A' board issued under S115E of the Highways Act 1980, is valid for a maximum of 12 months.
- 3.3 District Councils may levy reasonable initial licensing charges and annual renewal administration charges with these charges being reviewed annually.
- 3.4 A business that has a licence for the location of an 'A' board outside of its premises, may allow a part of that 'A' board to be used to promote, or direct customers to a separately owned business premises remote from the location of the board. This provision may be useful where the 'remote' business is located on a side street and the licensed premises is located at the junction of that side street and a street carrying higher pedestrian traffic.

Conditions of Use

4.1 Hampshire County Council will grant consent on applications by District Councils to place or give others permissions to place 'A' boards to be located on the public highway, subject to the following conditions:

- The applicant will be responsible for ensuring that all necessary planning requirements and any other requirements of the District Council are met before any licence is granted;
- A minimum of 1.8 metres clearance, unobstructed by other street furniture or trees, must be maintained between the 'A' board and the edge of any vehicular trafficked carriageway. Where pedestrian flows are high, the District Council will make an assessment as to the width of clearance required, if it is considered that an unobstructed clearance greater than 2m is appropriate to ensure the safety of all highway users the increased clearance will form part of the licence conditions;
- The location of the 'A' board must not hinder passage by the emergency services, or hinder access to, or egress from the premises, or to any adjacent premises, including fire evacuation routes, or cause a nuisance or hazard to persons using the highway or any adjacent land or premises;
- A licence for only one 'A' board per premises will be issued by the District Council, (unless the premises has public access from more than one street, in which case one 'A' board per street is acceptable);
- Where multi occupancy premises exist, e.g. shopping arcades/centres or alleyway locations, this Policy provides for the provision of one 'A' board to be located at each public street entrance, each of which may be a composite board used to advertise more than one business;
- The location of the 'A' board must be within the limits of the frontage of the premises to which the licence is issued;
- 'A' boards should be placed adjacent to the building line of the property and should not encroach into the highway by more than 0.7 metres unless an alternative location is agreed with the licensing authority.
- 'A' boards must be constructed of suitable materials and kept in good repair, without protrusions that could cause trips, injury or damage to passing pedestrians and traffic.
- The type, style and appropriateness of content of the board to be used is to be agreed between the owner/manager of the premises and the District Council,;
- Boards will also be subject to the following conditions:
 - 'A' boards must not be more than 0.6 metres wide;
 - 'A' boards must not be more than 1.0 metres tall;
 - 'A' boards must be sufficiently stable so as not to blow over;
 - Rotating, swinging or flexing boards will **not** be permitted;
- Suitable account must be taken of highway facilities in the immediate vicinity of the proposed 'A' board, e.g. bus stops, taxi ranks or pedestrian crossings, which will themselves give rise to intermittent footpath obstruction, and must therefore, be taken into account when considering unobstructed clearance;
- A boards should not be placed out during periods of strong or gusty winds;
- The 'A' board must not be fixed to any street furniture or other parts of the highway;
- The location of the 'A' board must not obscure the visibility for road users of road signs, or obstruct the view of road users at pedestrian crossing facilities, junctions, accesses or bends;

- The location of the 'A' board must not obscure the visibility for pedestrians of vehicular road users;
 - Specific hours of operation will be indicated on the licence, however, generally the licence will only be permitted during the normal trading hours of the premises to which they are licenced.
 - The 'A' board must not be erected other than in accordance with the provisions of the licence or terms of consent;
 - The owner/manager of the premises is not to make, or cause to be made, any claim against the Highways Authority (Hampshire County Council) or District Council in the event of any property of the owner/manager becoming lost or damaged in any way from whatever cause;
 - Third Party Public Liability Insurance to the sum of **two** million pounds must be held by the owner / manager of the premises to indemnify both the Highway Authority and/or District Council against any and all claims that may arise from the use of the 'A' board;
 - The 'A' board must be removed at the instruction of the Highway Authority or the District Council for the purpose of works in or under or over the highway or for using it in connection with works in, under or over land adjacent to or adjoining it as may be required by the Highway Authority, the District Council or any Statutory Undertaker, access required by emergency services or any other reasonable cause.
 - The licence holder must not display the 'A' board after the end of the licence period or sooner if the licence is revoked;
- 4.2 Any consent granted by the County Council under this policy can be revoked at any time should the County Council consider it necessary to do so, in the interests of its undertaking as highway authority.
- 4.3 HCC will reserve the right to remove or request the removal when considered necessary and in instances such as parades and other events which require improved/increased footway widths to be maintained.
- 4.4 Notwithstanding adherence to the Conditions of Use outlined above and any additional conditions required by the District Council, if an 'A' Board was considered to be causing an obstruction or nuisance to highway users Hampshire County Council reserve the right to utilise the provisions of the Highways Act 1980, to remove the items concerned.