

Brighton & Hove City Council

Strategy, Finance & City Regeneration Committee

Agenda Item 70

Subject: Bus & Taxi Shelter Concession Agreement

Date of meeting: 7 December 2023

Report of: Executive Director, Economy, Environment & Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 Committee is asked to give delegated authority to the Executive Director to tender the Bus & Taxi shelter advertising, cleaning, and maintenance concession and to grant authority to seek a temporary extension of the existing contract and to approve a new city-wide policy restricting the advertising of High Fat, Sugar, and Salt (HFSS) foods on all council property.

2. Recommendations

2.1 That the Committee grants delegated authority to the Executive Director Economy, Environment & Culture to procure and award a new Bus & Taxi Shelter Advertising Concession for a period of 8 years with an option to extend for a further period up to 24 months.

2.2 That Committee agrees a waiver of contract standing orders to enable officers to agree an extension to the current concession contract on its expiry on 31st March 2024, or to enter into a new short-term contract, in each case for up to 18 months with an option to extend for a further 6 months while the procurement process takes place.

2.3 That committee approves a draft policy restricting the advertising of High Fat, Sugar, and Salt (HFSS) products on all Council owned and managed advertising spaces across the City as set out in Appendix A, the policy to apply only on the retendering or renewal of leases on any sites or properties.

3. Context and background information

3.1 The contract for advertising, cleaning and maintenance of bus & taxi shelters is currently managed by Clear Channel on behalf of the Council.

3.2 There are 508 bus shelters of which 304 are non-advertising shelters and 204 are advertising shelters (50 shelter side panels being digital screens). In

return for advertising space, Clear Channel clean and maintain the shelters and pay an annual concession fee to the Council. Income paid by Clear Channel is invested in bus infrastructure and supported bus services in the city.

- 3.3 The existing contract was last extended in September 2022 due to unstable economic conditions following the Covid pandemic reducing the likelihood of receiving viable tenders and this temporary contract expires in March 2024. It is necessary to retender the contract and to request authority for a further temporary extension while any tender process is carried out.
- 3.4 The reason for a contract being awarded for 8 years plus a possible extension period rather than a shorter period is that successful bidders are expected to invest in the shelter stock, in particular adding further digital media panels, and requires a contract of this length to justify a return on investment.

Background to the proposed HFSS policy

- 3.5 On the 7th of April 2022 full Council agreed a Notice of Motion seeking to obtain data about fast food & energy drink advertising on council properties. The Notice of Motion was subsequently referred to the 14 June 2022 meeting of the Adult Social Care & Public Health Sub-Committee where members agreed that an officer working group should be established to look at this issue, and that the group should report to the 08 November 2022 Health & Wellbeing Board meeting with proposals to improve Council policies in regard of advertising these products.
- 3.6 On the 8th November 2022 the Health & Wellbeing Board recommended to the Policy and Resources Committee that a decision be taken to implement restrictions to the advertisement of high fat salt and sugar (HFSS) food and drinks on council owned and managed advertising space, this includes advertisement on the transport / bus system and other hoardings. This matter needs to be resolved before procurement is started as it will have a material effect on potential bids.
- 3.7 There is currently a restriction on advertising fast food takeaways within 100 metres of any school or youth club, NHS building, or public sector building/premises/facility/park/leisure centre primarily used by those under the age of 18 (or their guardian or carers).
- 3.8 The main feature of an HFSS advertising policy would be that it would ban the direct or indirect promotion of HFSS food and drink as defined by the UK Nutrient Profiling Model (NPM), but would not ban directional adverts e.g., “McDonald restaurant 200m left” or an advert purely showing a “healthy” product.
- 3.9 The policy would apply to council owned outside advertising sites and advertisements at Brighton & Hove City Council premises open to the public.

- 3.10 The incumbent bus shelter concession holder is aware that the Council are reviewing its policy on HFSS advertising, however the policy could not take immediate effect as this would require the incumbent to agree to a contract variation and they are not bound to do so given this will affect their revenues.
- 3.11 In addition, advertising space on hoardings is leased by the council estates team at five different billboard sites across the city.
- 3.12 The policy will only apply to council owned advertising sites. There are numerous advertising sites and displays both on and adjacent to the public highway, e.g. there are 30 free standing digital advertising panels which are former BT phone boxes now managed by One Digital, some are within several metres of a bus shelter. These adverts cannot be controlled by the policy and so there could be a situation where a branded HFSS product was displayed within a few metres of similar branded non HFSS product blunting the impact of the policy on public health. The same applies to advertisements in shops and other premises facing the highway.
- 3.13 This potential conflict would have to be accepted until and unless there was comparable national legislation on the control of HFSS advertising in both the public and private realms. There is no legislation in the pipeline that we are aware of.

4. Analysis and consideration of alternative options

- 4.1 An immediate imposition of the policy was considered in respect of all sites but in the case of the bus shelter concession both parties would have to agree to a contract amendment and sufficient notice would be required. It is highly unlikely that the incumbent provider would agree to a change in contract terms without requiring a substantial discount of the concession fee, so it proposed that the policy is introduced into the specification for the next tender.
- 4.2 Another alternative would be to suspend the imposition of the policy for a period of time. However, waiting until contracts are retendered or leases renewed will have the same effect.
- 4.3 A third alternative is not to introduce a policy and retain the status quo but this would not produce the potential health benefits outlined above.

5. Community engagement and consultation

- 5.1 The relevant committee chairs have been consulted including the chair of the Transport & Sustainability Committee.
- 5.2 The report has been a collaborative process with the council's Public Health and Properties teams and their comments have been considered.

- 5.3 Engagement has also taken place with Brighton & Hove area Buswatch and the local Enhanced Bus Partnership set up under the Bus Service Improvement and they have not made any specific comments

6. Conclusion

- 6.1 Authority to tender is required in order that the Council can offer a viable concession agreement that will provide scope for capital investment in the city's bus & taxi shelter infrastructure and a sustainable income for the next 8-10 years.
- 6.2 It is necessary to approve a waiver to contract standing orders either to extend the existing contract or to enter into a new short-term contract in each case to cover the period of the retendering process. A new short-term contract may be preferable so as to simplify the concession arrangement and clarify that the contract term is only to cover the period pending the conclusion of a full procurement process.
- 6.3 It is necessary to make a decision on the proposed HFSS policy as that will affect the value of concession bids.

7. Financial implications

- 7.1 Public Transport budgets contain an income target for Bus Shelter Advertising revenues of £0.438m. Of the advertising revenues approximately 34% relates to HFSS advertising which if not replaced could result in lost incomes of £0.148m. If alternative advertising is identified, it is still estimated that lost income could be 8.5% in the first year, reducing to 4.25% in the second year. Lost income in the first year would be estimated between £0.036m and £0.148m, which unless mitigated with spend reductions elsewhere, would add pressure to existing budgets.
- 7.2 However, it should be noted that when Transport for London (TFL) introduced a ban, they did not see a significant reduction in revenue as products being advertised were swapped rather than brands no longer being advertised. However, the TFL estate was much broader than bus shelters and so is not a direct comparison.
- 7.3 The current maintenance budget is £0.173m, £0.135m relates to maintenance of the shelters, the remainder is for additional works in erecting new bus shelters, setting up temporary shelters, and moving existing shelters. There is increased activity for these works in 22/23 but this isn't expected to continue moving forward. Both elements will make up part of the new contract, but the financial implications of this will not be known until bids are made.

Name of finance officer consulted: David Wilder
(22/11/2023):

Date consulted

8. Legal implications

- 8.1 The Concession Contracts Regulation 2016 permit a concession contract which is longer than 5 years in cases where a longer duration is justified on the basis of the time that a concessionaire could reasonably be expected to recoup the investments made at the outset and during the contract, together with a return on the invested capital. In this case the concessionaire has made a significant investment which justifies an extension to the contract term pending a full procurement process.
- 8.2 If a new contract is entered into to cover a full procurement process, the estimated value of the proposed contract would be below the threshold for concession contracts under the Concession Contracts Regulations 2016.

Name of lawyer consulted: David Fairfield Date consulted (22/11/2023):

9. Equalities implications

- 9.1 Bus shelters will be designed to a specification that benefits all users, but with particular regard to persons with reduced mobility. Advertising messages will conform with equality legislation and where possible free advertising campaigns will be run that promote equality and celebrate diversity including anti-racism messages. There will be a target that racist or other offensive graffiti will be removed from shelters within 24 hours of reporting.
- 9.2 A conversation around equalities impacts has taken place to assess the policy, similar policy impacts and equalities approaches have been referenced and reviewed that other councils have undertaken.
- 9.3 Bristol City Council completed a screening Equalities Impact Assessment (EIA) and concluded that there were no significant equalities impacts to note and did not proceed to full EIA. Luton BC did a full assessment and concluded the impact was neutral for all characteristics except for a positive impact on young people under-age.
- 9.4 A General EIA form is under completion but discussions and findings support recommendations which stand that no negative disproportionate impact on any single group or cumulatively is expected based on our understanding and current data/ awareness as a result of this policy implementation.

10. Sustainability implications

- 10.1 Ten percent of the quality evaluation percentage will be attributed to Sustainability and will be a scored requirement in the evaluation of any future tender process
- 10.2 The “Out of Home” advertising market consists of 0.04% of the total power consumption in the UK; The average roadside digital 6-sheet uses approx.

1.5x the energy of the average UK home (4500kWhrs) & the roadside digital six sheet network is now powered down between 12pm – 5am to save energy consumption

- 10.3 A requirement for lower power digital panels will be included in the new tender specification, manufacturers are competing to make ultra-energy efficient screens because this is what the industry wants to buy, and recent technology is expected to come with dramatic reductions in power usage
- 10.4 Digital panels enable a greater turnover of adverts which operate at six second intervals. They do not require visits by staff to insert new paper adverts saving on time and resources.

11. Other Implications

Social Value and procurement implications

- 11.1 Ten percent of the quality evaluation percentage will be attributed to Social Value and will be a scored requirement in the evaluation of the tender process.
- 11.2 The draft report has been discussed with the lead members for procurement, they have had an opportunity to comment, and their views have been considered.

Crime & disorder implications:

- 11.3 There are no specific crime or disorder implications.

Public health implications:

- 11.4 Childhood obesity and overweight levels in Brighton and Hove have risen over the last few years. One in three 11-year-olds leaves primary school already overweight or obese. In some schools in the city this rises to one in two.
- 11.5 Nationally two out of three adults are overweight or obese, this brings with it a risk of diabetes, many cancers, heart disease, severe Covid and other health problems affecting our residents. Those children and adults living in more disadvantaged parts of our city have a higher chance of not being a healthy weight and suffering from the health problems that brings.
- 11.6 Advertising of foods that are high in fat salt and sugar has been shown to significantly increase purchase and consumption of these items. National evidence shows the relationship between the advertisement of unhealthy foods and more deprived areas. Restricting advertisements for these foods has been recommended as one of a range of evidence-based measures to reduce consumption of high calorie and less healthy food options, reducing the risk of obesity amongst children and adults. (Thomas, C., Breeze, P., Cummins, S. et al. The health, cost and equity impacts of restrictions on the advertisement of

high fat, salt, and sugar products across the transport for London network: a health economic modelling study. *Int J Behav Nutr Phys Act* 19, 93 (2022). <https://doi.org/10.1186/s12966-022-01331-y>

- 11.7 An audit has taken place and Clear Channel have reported to us that the percentage of food and drink adverts on outdoor media that are HFSS is c.34%. The impact of similar restrictions on the TFL (Transport for London) system shows a reduction in the purchase of less healthy foods, modelled longer term health and economic benefits, no negative impact on advertising revenue and a positive effect on more deprived parts of the population with greater health benefits to gain. Learning from other local authorities with similar restrictions in place is available and has informed the policy attached as Appendix A

Supporting Documentation

1. Appendices

1. Appendix A Proposed HFSS policy

