

<b>Subject:</b>	<b>Access: Traders' objects on the highway</b>		
<b>Date of Meeting:</b>	<b>21 April 2009</b>		
<b>Report of:</b>	<b>Jenny Rowlands, Director of Environment</b>		
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<b>Key Decision:</b>	Forward Plan No. n/a		
<b>Wards Affected:</b>	All		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

1.1 This report sets out Brighton & Hove City Council's Highway Enforcement team's progress on Recommendation 10 of the Access Scrutiny Panel of July 2006.

1.2 Recommendation 10 is as follows:  
That in consultation with sensorily-impaired people, officers give priority to achieving as wide, safe and straight access as possible in planning, licensing and enforcing all forms of pavement/street furniture and obstructions for pedestrians.

That there be a presumption in favour of clear straight pathways in line with Department for Transport's guidance on the width of footways, footpaths and pedestrian areas.

#### 2. RECOMMENDATIONS:

2.1 To note the proposed changes suggested by officers following Recommendation 10 and a review of the council's duties under the Disability Discrimination Act. The review's aim is to bring the policy on Traders' Objects on the Highway into line with the requirements of the Disability Discrimination Act 1995 and the Department for Transport's Inclusive Mobility Guidance, resulting in improvements to accessibility. The proposals also take into account the economic effect on the city and therefore do not seek a complete ban on all traders' placements on the highway.

2.2 To note that these proposed changes have been made under officer delegated powers but will be presented to Licensing Committee on 24 April 2009 for member consideration. Officers recommendation is that these proposals go ahead in order to better reflect legal and good

practice requirements but that a further review takes place during the coming year in order to examine to a greater extent the wide range of views and submissions on this subject and to inform any future policy for the city.

- 2.3 That any review includes site visits with officers, Members and interested parties to relevant areas of the city.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

#### **Information**

- 3.1 The following information only relates to work by the Highway Enforcement team, within Network Management, Sustainable Transport. This team licences and enforces the placement of traders' objects on the highway – such as A-boards, tables & chairs and shop displays – and also the placement of items associated with building works - such as skips, scaffolds, hoardings and builders' materials.
- 3.2 The licensing of such items is lawful under the Highways Act 1980, and a policy has been in place since pre-unitary East Sussex days. The policy was reviewed in 2001 and a coherent licensing system was established, with set procedures and strict licensing conditions.
- 3.3 The policy was reviewed with no major changes and agreed by Environment Committee in January 2008, until officers could prepare a more detailed review looking at the relevant disability discrimination duties.
- 3.4 The Highway Enforcement team also deal with abandoned vehicles, overgrown vegetation, abandoned bicycles and other objects that require education, enforcement or removal in order to aid accessibility on our highway (See Appendix A).

#### **Background**

- 3.5 Since 2001, the team have been working to the clear, straight accessway principle and to DfT guidelines on the large majority of licensed sites. For example, the team worked with disabled people to establish these accessways in areas such as St James' Street when the licensing system was being rolled out. The team have also had regular communication with DAAG over the years as well as with other communities of interest such as Brunswick & Adelaide resident groups.
- 3.6 Although the principles of working to maintain free pavement widths of 1.2m - 1.3m and of ensuring straight accessways have been adhered to for many years (and already apply to most licensed sites within the city) assessments have in the past been made on a site-by-site basis – with areas, pavement

width and licence conditions being based upon local conditions and officer judgement.

- 3.7 However, the proposed changes currently under review mean that we are now setting these existing practices as a non-negotiable, minimum standard for all officer-issued licences.

### **Current proposals**

- 3.8 A new set of licence conditions governing the behaviour of those city-centre shops, cafes, pubs and restaurants placing items on the public highway pavement has been drawn up by officers of the council's Highway Enforcement Team.
- 3.9 The policy review is supported by a team restructure which will allocate specific areas to each Highway Enforcement Officer and improve general enforcement of such licensed placements alongside the other functions of the team (which also reduce obstruction and nuisance on the highway).
- 3.10 The new rules are proposed to be formally implemented in April 2009 (when all highway licences for traders' items undergo their annual renewal or replacement) and, except in special cases (such as where an appeal has been upheld by elected representatives) will apply to all sites within the current Highway Licensing Zones.
- 3.11 This review has been prompted by the concerns of officers, councillors and disabled peoples' groups over the effect an increasing number of traders' items is having on highway users, particularly disabled people
- 3.12 Existing policies and procedures go some way to addressing the issues of concern, but it is felt that a number of changes to existing systems are necessary to both meet the challenges of the present situation and comply with the council's duties under legislation. Following a close re-examination of current disability legislation, officers feel that these changes need to be formally adopted by Brighton & Hove City Council as soon as possible.
- 3.13 The measures below will help improve access and safety for all highway users and better reflect the Department for Transport's Mobility Guidance and Disability Discrimination Act guidelines.
- 3.14 The main changes are as follows:
- That no traders' items should be allowed to reduce the width of a footway to less than 1.3 metres, except in special circumstances (such as in pedestrianised areas or streets closed by Traffic Orders where the whole of the road is kept clear for wheelchair user/pedestrian use).
  - That where a footway is reduced to a width of 1.3 metres (or less) by objects (no matter if these objects are traders' items or fixed street furniture such as lamp posts, bins etc. or any mix thereof) "turning

areas” at least 1.6 metres wide must be maintained at regular intervals (with not more than six metres between each such “turning areas”) for the use of manual wheelchair users and people with guide dogs.

- Restrictions on the size and placing of “remote” advertising boards.
- The need for licensees to have on show (or available on demand) an A4 Data Sheet, with plans or photographs clearly showing what and where they are licensed to place upon the Public Highway.

### **Licensing system practicalities**

- 3.15 Traders’ licences run from 1 April to 31 March each year and therefore in order to ensure that placements are legally licensed in time for the new financial year, officers have been sending out licence renewal forms since January 2009, with licences granted under the new conditions but have drawn traders’ attention to the fact that these conditions will be presented to members at Licensing Committee.
- 3.16 Licences must be renewed on 1 April in order to ensure that objects on the highway are authorised and meet the relevant criteria. (See Appendix B for example of licence. The sections highlighted in yellow are of particular relevance to Recommendation 10 and to other issues such as cleanliness or crime & disorder prevention).
- 3.17 The licensing system only applies to objects on the public highway and Highway Enforcement officers have no jurisdiction over the numerous private forecourts in prime retail areas and other areas of the city.
- 3.18 The new licence conditions will also serve as the template for all sites outside of the Licensing Zones, ensuring a greater level of consistency across the City.

## **4. CONSULTATION**

- 4.1 Since 2001, Members, residents’ groups, access organisations and individuals have had formal or informal input in the development of the present system, as have certain departments of the Council specifically dealing with issues relating to disabled people:
- DAAG
  - National Federation of the Blind
  - British Limbless Ex-Service Men's Association
  - Patients Advisory Forum
  - Royal British Legion
  - Federation of the Disabled (aka Brighton & Hove Federation of Disabled People)
  - Older People’s Council
  - Tenant Disability Network
  - Shopmobility

- The Disabled Tenants Assoc.
- Eastern Road Partnership
- RNIB
- The St. James Street Community Safety Committee
- Access In Brighton
- The 60+ Group
- The Disabled Motorists Club
- The George Street Users Group
- EBRA
- BARG
- BRNAG
- LARA
- Living Streets
- Moulescoombe LAT
- The North Laine Community Association
- The St. James Street Traders Association
- The Lanes Traders Association
- The North Laine Traders Association
- Hove Business Forum
- Brighton Business Forum
- Sussex Police
- Rottingdean Parish Council

4.2 As part of an Equalities Impact Assessment on the proposed changes, the following groups' views have been taken into account or requested during the consultation process:

- The Federation of Disabled People via the council's Equalities & inclusion team
- All traders with current licences or wishing to apply for a licence from 1 April this year
- Brighton Business Forum
- RNIB
- Brunswick & Adelaide ward councillors and residents' groups
- The Older People's Council
- Rottingdean Parish Council
- North Laine Traders' Association
- BHCC's Planning & Conservation Officers

4.3 Communications from these various groups reveal a range of different views, ranging from a desire to keep 1 metre clear access ways to a preference for a total ban on all traders' placements on the public highway.

## 5. FINANCIAL & OTHER IMPLICATIONS:

### 5.1 Financial Implications:

Revenue: There are no financial implications associated with the review of the policy itself. However, the budget for 2009-10 assumes a level of income based on traders objects on the highway. A boards, tables and chairs and skips and scaffolds are expected to yield £238,550 over the year, which will be used to cover the monitoring costs of the Highway Enforcement Team. It is estimated that a reduction in the number of permissible sites will reduce income by around £4,000.

Capital: There are no capital implications.

Finance Officer Consulted: Karen Brookshaw

Date: 26/03/09

### 5.2 Legal Implications:

The Council, as highway authority, is bound by the duty under section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of the highway. This duty will include a duty to prevent, as far as possible, the obstruction of highways.

However, Part VIIA of the Highways Act (sections 115A – 115K) allows highway authorities carry out works or place objects on the highway, or permit others to do so, for purposes of enhancing the amenity of the highway and its immediate surroundings, or of providing a service for the benefit of the public or a section of the public. It is under s115E that the Council is empowered to grant licences for the placing of A boards in the highway provided the consent of the relevant frontagers has been obtained.

By virtue of section 21B (1) of the Disability Discrimination Act 1995 (“the DDA”) it is unlawful for a public authority to discriminate against a disabled person in carrying out its functions. For the purposes of s21(B) (1) a public authority discriminates against a disabled person if, for a reason which relates to his or her disability, it treats a person less favourably than it treats or would treat others to whom that reason does not apply and cannot show that the treatment is justified in certain prescribed circumstances.

The licensing of A boards is a Council function under section 21B and a potential claim of discrimination could arise.

Moreover, under section 21(E) of the DDA, where a public authority has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to receive any benefit that

is or may be conferred; or is unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected – the authority has the duty to take steps as reasonable in all the circumstances of the case to change the policy, practice or procedure so that it no longer has that effect.

Section 49A of the DDA imposes a general duty on the Council as a public body to (inter alia) eliminate discrimination that is unlawful under the Act and to promote equality of opportunity between disabled persons and other persons.

As noted under paragraph 2.1 of this Report the aim of the review is to bring the policy on traders' objects on the highway into line with, inter alia, the Disability Discrimination Act which, as outlined above places important duties on the Council. It is considered that the recommended changes to the Council's policy on traders' items will allow the Council better to comply with its duties under that Act.

Legal officer consulted: Hilary Woodward

Date: 27/03/2009

### 5.3 Equalities Implications:

Brighton & Hove City Council was one of the first authorities to establish a formal system of control of traders' objects on the public highway. The recommendations are changes to existing highway policy and will better reflect the council's Disability Equality Scheme, DfT mobility guidelines and duties under of the DDA than existing measures. An impact assessment has been carried out and is available on request. The new changes bring the licensing system into line with Disability Discrimination Act requirements, although the comments arising from the Equalities Impact Assessment have led officers to propose a further review, to provide further opportunities for groups and individuals to contribute.

### 5.4 Sustainability Implications:

There are no sustainability implications identified.

### 5.5 Crime & Disorder Implications:

Changes within the licensing conditions require all patrons of pub and café placements to be seated within the licensed area, to avoid crowds of people standing on the pavement. Noise issues and other crime and disorder implications for any individual sites are addressed in partnership with the police, Environmental Health and other relevant agencies.

### 5.6 Risk & Opportunity Management Implications:

The current proposals affect approximately 20% of businesses, some of which may lose their A-boards (particularly where they have used remote A-boards in the past) and some of which may have their licensed areas reduced. Most of the businesses affected will be small, sole traders in parts of the city centre.

This could have economic implications for the city, but it is felt by officers that the needs of mobility and visually impaired people and the council's legal obligations must prevail over these concerns. If further measures are proposed, these would need to be subject to additional risk and opportunity assessment.

### 5.7 Corporate / Citywide Implications:

The proposals seek to increase the amount of accessible pavement available to pedestrians. This will help with mobility and accessibility around the prime retail areas within the city. If any further measures are proposed, these would need to be subject to additional examination of corporate and citywide implications.

## 6. **EVALUATION OF ANY ALTERNATIVE OPTION(S):**

6.1 This report sets out the progress made by the Highway Enforcement team towards Recommendation 10 of a former Scrutiny Panel on Accessibility. Alternative options include:

- Introduce no changes to the licensing system but this may mean the council's policy does not reflect accessibility requirements.
- Introduce more changes but officer recommendation is that any additional changes should only be introduced after a thorough examination of the relevant duties, risks, legal, equalities and economic factors.

## 7. **REASONS FOR REPORT RECOMMENDATIONS**



- 7.1 The recommendations sum up progress to date. The reason for recommending that the current proposals go ahead is because these are changes to existing highway policy and will better reflect the council's Disability Equality Scheme, DfT mobility guidelines and duties under of the DDA than existing measures.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix A - Complaints statistics for the Highway Enforcement team 206 – 2009

Appendix B – Example of licence conditions

Appendix C – Illustrations of established accessway corridors enforced by the Highway Enforcement team in prime retail areas

Appendix D – 2007 survey of pavement widths and fixed or traders' obstructions in Western Road

### **Documents In Members' Rooms**

None

### **Background Documents**

Access Scrutiny Review July 2006

