

# **STAFFORDSHIRE COUNTY COUNCIL**

## **DEVELOPMENT SERVICES DEPARTMENT**

### ***MANAGEMENT OF COMMERCIAL OBSTRUCTIONS POLICY***

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# STAFFORDSHIRE COUNTY COUNCIL - MANAGEMENT OF COMMERCIAL OBSTRUCTIONS POLICY

## 1. INTRODUCTION

### General

- 1.1 The widespread encroachment of portable advertising boards ('A' boards), retail / trade displays and Street Cafés 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 illegal within the terms of the Highways Act 1980.
- 1.1.1 Whilst all of these factors are acknowledged by Staffordshire County Council (SCC), it is also accepted that their controlled use can reduce their negative influence on the street scene, promote safer access for all highway users and disabled groups, assist in promoting tourism and maintaining the vitality of town centres and, by a combination of all of these factors, enhance the economic sustainability of both town, suburban and rural businesses and communities.
- 1.1.2 SCC has, in its role as the Local Highway Authority (LHA), created a Policy entitled, 'Management of Commercial Obstructions Policy', that is designed to operate as a high level framework document, setting out the conditions under which SCC will accept the placement of 'A' boards, retail / trade displays and the establishment of Street Cafés within the boundaries of its highway network, and which Authorities will be responsible for the varying elements of their licensing or consent, conformance inspections and infringement enforcement.
- 1.1.3 A copy of the current Policy, for use by Staffordshire Highways personnel, will be located on H:\Highways\Operational Info\Policy Documents\Operational Policies.
- 1.1.4 Copies of this Policy will also be provided to the following:
- Chief Executives Office – (Legal Services - Development Services)
  - Finance Directorate - (Insurance)
  - Children & Lifelong Learning - Principal Access Officer – (Disability Access)
  - District and Town Councils within Staffordshire
  - Staffordshire Police Authority
  - Staffordshire Fire & Rescue Service
  - Neighbouring Highway Authorities
- 1.1.5 This Policy will also be available on the Highways Portal, which can be accessed by SCC employees via the Intranet and by the public via the Staffordshire Web.

## **2. SUMMARY**

### **Structure**

- 2.1 Chapter 3 contains details of the legislation that is relevant to the management of obstructions placed both on, above and adjacent to the highways within Staffordshire.
  - 2.1.1 Chapter 4 outlines the objectives and implementation strategy for the Policy.
  - 2.1.2 Chapter 5 sets out the procedures to be followed and areas of responsibility for both the County and the District Council's within Staffordshire, in relation to the development, management and operation of Staffordshire's 'Management of Commercial Obstructions Policy'.
  - 2.1.3 Chapter 6 outlines the conditions under which a licence / consent will be given by the local District Council, for the positioning of 'A' boards and retail / trade displays on the public highway network within their district area.
  - 2.1.4 Chapter 7 outlines the conditions under which a licence / consent will be given by the local District Council, for the establishment of Street Cafés on the public highway network within their district areas.
  - 2.1.5 These Chapters are supported by Appendix 1 that contains copies of standard letters to be used for the management of this Policy.

### **3. LEGISLATION**

#### **General**

- 3.1 The following sections summarize the legislation relevant to the control of highway obstructions, and provide general guidance to its application.
- 3.1.1 Practitioners would be advised to ensure that copies of any legislation that is referred to are current, and should contact their Legal Services Section for advice if there is any uncertainty. Additionally, online reference source's, such as LocalLawUK, which offers access to Sweet & Maxwell Local Government Library of Encyclopaedias and provides an authoritative, up to date, legal research service in Local Government Law, can provide additional sources of information.

#### **The Highways Act 1980**

- 3.2 Section 41 provides that SCC, as the local authority responsible for highways maintainable at the public expense within Staffordshire, 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.
- 3.2.1 Section 58 provides SCC with a defence to successfully counter a legal action for negligence if one arose. SCC 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".
- 3.2.2 As a responsible LHA, Staffordshire CC has developed a Policy that outlines what it considers to be acceptable criteria governing the usage and operation of 'A' boards, retail / trade displays and Street Cafés across the highway network for which it is responsible. This has been produced to ensure that the LHA is able to show that it has met the requirements of Section 58, 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 LHA 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 the local council and the LHA, may have been contributory to the cause of the accident.
- 3.2.3 Section 130 makes it the duty of the LHA 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.
- 3.2.4 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. Section 132 also permits the LHA 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.

- 3.2.5 Section 137 makes it an offence to obstruct the free passage along a highway.
- 3.2.6 Section 137ZA allows, in certain circumstances, for the courts to order the person convicted under Section 137, to remove the obstruction within a specified period. Failure to do so is a further offence.
- 3.2.7 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 LHA 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.
- 3.2.8 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'.
- 3.2.9 Section 149 allows the LHA to serve notice requiring the person who deposited it, 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 LHA 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.
- 3.2.10 Section 152 empowers both the LHA 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 etc) 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. 14 days notice is given before the Authorities may remove the obstruction and recover their expenses reasonably incurred.
- 3.2.11 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.
- 3.2.12 Section 178 prohibits, without consent, the fixing or placing of overhead beams, rails, pipes, cable or wire or similar apparatus over, along or across a highway.

### **The Local Government (Miscellaneous Provisions) Act 1982**

- 3.3 Part X of this Act applies Schedule 5, which introduces Part V11A into the Highways Act 1980 that contains Sections 115A – 115K. These 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.
- 3.3.1 Section 115E enables a Council, within Staffordshire this will be a District Council, to grant a person permission to allow them to locate an 'A' board, retail / trade display or Street Café within the highway, so long as they can be shown to enhance the amenity of the highway, to provide a service for the benefit of the public or provide a facility for refreshments.
- 3.3.2 Section 115F enables both District Councils and the LHA to require that 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 the District Council have incurred with administering any licensing scheme developed under S115E.

- 3.3.3 Section 115H requires that District Councils seeking to grant permissions under S115E, should seek the consent of the LHA before permission is granted, this consent should not be unreasonably withheld (S115J).
- 3.3.4 Consent by the LHA 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 / consent has been confirmed by a District Council.

### **The Disability Discrimination Act 1995**

- 3.4 The main aim of this Act is to improve access for disabled people.
  - 3.4.1 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.
  - 3.4.2 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 / amenities 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**

- 3.5 There are other legislative requirements that may impact upon the ability of a business to legitimately locate 'A' boards, retail / trade displays and Street Cafés within the highway such as the Town and Country Planning Act 1990, the Town and Country Planning (Control of Advertisements) Regulations 2007, the Licensing Act 2003, the Health and Safety at Work etc Act 1974 and the Health Act 2006 which deals with the issues pertaining to smoking in public places.
  - 3.5.1 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.

## **4. STRATEGY**

### **General**

- 4.1 The objective of this Policy is to ensure that there is an accepted minimum standard for the establishment and use of 'A' boards, retail / trade displays and Street Cafés throughout Staffordshire, allowing the risks associated with the positioning of these items within the highway, to be assessed and effectively managed, in a broadly consistent fashion, across the County as a whole.
- 4.1.1 This Policy is designed to provide a high level guidance framework for local Councils, allowing each to include their own requirements, should they so wish, to produce a licensing regime, or other procedure, that they will administer, that is tailored to best suit the diverse needs of the local population and business community within their respective Districts.
- 4.1.2 Staffordshire CC will not implement this Policy within a District until such time as the District Council has itself created and implemented its own effective licensing regime, or other suitable procedure, to govern the use of these items. In the interim, SCC will continue to operate its unofficial policy of 'non-disapproval' of obstructions placed within the highway, and will only take unilateral action where the obstruction is blatant, highway inspections, or complaints from the public, clearly indicate that a nuisance to highway users is evident, and public safety is unambiguously an issue.
- 4.1.3 Adherence to, and compliance with this Policy, by all parties, will eliminate the proliferation of poorly sited 'A' boards and ad hoc, retail / trade displays and Street Cafés, ensuring that the potential for what may also be deemed street amenities, to meet criteria that will enhance the street scene, is realised throughout Staffordshire. In combination, this will increase the aesthetic appeal of our towns, villages and country roads, enabling the public to maximize their access to, and use and enjoyment of, the highway and all of its amenities.

### **Future Developments**

- 4.2 It is intended that, during 2008 / 2009, this Policy will be incorporated into a comprehensive Street Scene Policy which will be a contributory factor in enabling SCC to apply a consistent, long term approach to the management of the County's highway assets.

## **5. PROCEDURE**

### **General**

5.1 Town centre management is a District Council function that enables them to balance the vitality of their town centres against the potential risks to their town centre users.

5.1.1 Whilst this Policy is specifically intended to manage the issue of 'A' boards, retail / trade displays and Street Cafés located upon the highways of Staffordshire, it may be assumed that the terms and conditions of this Policy and any licensing requirements or additional local conditions that a District Council may decide to implement, will apply to all other similar objects placed within the highway that could be considered to be an obstruction, such as:

- free standing parasols, canopies or gazebos;
- seats or benches;
- flower pots or planters.

5.1.2 There are some items that are located upon the highway which serve as amenities to the highway user and are permitted by other policy or legislation, e.g. street markets established by ancient charter. The licensing or consent provisions of this Policy will not apply in these circumstances, however, they will still be expected to adhere to the Conditions of Use contained within Chapters 6 and 7 of this Policy, any additional conditions that a District Council may require, together with any applicable requirements contained within the Acts and Regulations detailed within Section 3.5 or any other relevant legislation.

### **Management**

5.2 The management of the local authority maintained highway network within Staffordshire is undertaken by Staffordshire County Council, Development Services Directorate. Within this Directorate, the Highways Network Management Business Unit contains the Asset Management Section who will be responsible for:

- the development and any periodic review of Staffordshire's 'Management of Commercial Obstructions Policy'.

5.2.1 The maintenance of the highway network infrastructure within Staffordshire is undertaken by Area Highway Managers who are responsible for the maintenance of highways within specific geographical areas of Staffordshire.

5.2.2 The management of this Policy will be undertaken by the District Councils within Staffordshire who may choose one of two mechanisms for controlling the establishment & usage of 'A' boards, retail / trade displays and Street Cafés that are located on the public highway within their respective boundaries:

- Option 1 – A District Council may either adopt this Policy to develop a licensing procedure, or, utilizing the contents of this Policy to provide an outline of the minimum standards that SCC considers acceptable, develop their own Policy and associated licensing procedure that is specifically designed to meet the needs and the character of their area;

- Option 2 - The Conditions of Use contained within this Policy, together with existing highway, planning, advertisement, licensing and health & safety legislation, may be employed to manage the use of these items, with a targeted, risk based approach being used to monitor any obstruction or nuisance issues that may arise that may require enforcement action to be undertaken.

## Operation

- 5.3 Where an 'A' board, retail / trade display or Street Café, is identified by the District Council as being located within a highway, the owner / manager of the premises in question should be contacted by a District Council representative and a copy of the relevant Conditions of Use should be provided. If following an assessment of site specific factors, it seems probable that the Conditions of Use can be met, either a licence application can be provided or consent can be given using the procedures that the District Council has chosen to adopt.
- 5.3.1 If the District Council considers that there may be specific highway safety implications associated with the proposed location, the LHA Area Highways Manager should be consulted to enable the LHA to decide upon the appropriate response to that particular application.
- 5.3.2 When, following an evaluation of site specific factors, it is clear that the Conditions of Use cannot be met, the District Council should provide clear guidance to the owner / manager of the premises in question, informing them that, unfortunately, that particular location is unable to satisfy the requirements that will ensure the safety and rights of access for highway users. Furthermore, it should be explained that, according to the terms of the Highways Act 1980, the placement of their 'A' board, retail / trade display or Street Café is causing an illegal obstruction within the highway that may potentially endanger highway users, and therefore the item(s) must be permanently removed. Further explanation should be provided, outlining that, if the obstructing item(s) are not permanently removed from the highway, the Act also provides for the LHA to remove the obstructing item(s) and recover their costs against the owner.
- 5.3.3 When, following an evaluation of site specific factors, it is clear that the Conditions of Use cannot be met but, in the opinion of the District Council, there is a clear public benefit in permitting the obstruction / amenity with a minimal departure from the standards outlined within this Policy, a risk assessment should be carried out and the LHA Area Highways Manager consulted, to enable the LHA to decide upon the appropriate response to that particular application.
- 5.3.4 Where a licence application (if applicable) has not been received within 14 days, or, it is clear that the Conditions of Use cannot be met and contrary to the advice of the District Council the item(s) are still being placed upon the public highway, then the District Council should issue Standard Letter CBO1: 28 Day Removal Request, to the owner / manager of the premises in question. If the item(s) have not been removed within the specified period, the District Council should forward Standard Letter CBO2: Policy Enforcement Removal Request, together with a copy of CBO1, to the LHA Area Highways Manager requesting that they take enforcement action to remove the unauthorized obstruction to the highway.

5.3.5 The Area Highway Manager shall:

- receive from District Councils, via the CLARENCE Customer Contact Centre, the Standard Letters CBO1 and CBO2, notifying the LHA of an unauthorized highway obstruction, and requesting that enforcement actions are carried out (see Appendix 1).

5.3.6 Upon receipt of the Standard Letters CBO1 and CBO2 from the District Council, the Area Highways Manager will authorize a site investigation of the location to assess:

- the resources required to carry out enforcement action;
- whether the presence of Staffordshire Police is necessary to ensure that the LHA operatives can carry out the enforcement action safely.

5.3.7 The Area Highways Manager will also:

- issue Standard Letter CBO3: 28 Day Removal Notification (if applicable);
- update a register for that Maintenance Area, which will be a record of locations, types and frequency of enforcement requests and actions within the Maintenance Area;
- address the issue of prioritisation of enforcement actions, based upon the number, location and type of actions and available resources, to promote the best use of maintenance budgets;
- manage the programming and implementation of enforcement action;
- organize the transport and storage of seized items;
- dispose of unclaimed items after 28 days;
- maintain a record of all associated costs in order that the LHA can recover their expenses, reasonably incurred, from the owner.

5.3.8 The Area Highways Manager will also receive, directly from the general public or from observations made by Maintenance Area Office staff during the course of their duties, complaints or information relating to suspected infringements of either this Policy, or of any licensing, or alternative arrangements that a District Council has chosen to implement. These reports will be forwarded to the appropriate District Council for their information, assessment and any actions that they deem necessary.

5.3.9 Periodic visual inspections of each of the licensed / consent premises should be undertaken by the District Council to confirm that the conditions of the 'Management of Commercial Obstructions Policy', and any additional conditions required by the District Council, are being adhered to.

## **6. 'A' BOARDS AND RETAIL / TRADE DISPLAYS**

### **General**

- 6.1 Staffordshire CC will not permit the placement of 'A' boards or of retail / trade goods on adopted highways unless a license has been issued, or consent been given, by the local District Council.
- 6.1.1 A licence for the location of an 'A' board or retail / trade display issued under S115E of the Highways Act 1980, is valid for a maximum of 12 months.
- 6.1.2 District Council's may levy reasonable initial licensing charges and annual renewal administration charges, with these charges being reviewed annually.
- 6.1.3 Displays of retail goods, i.e. newspapers displayed in racks placed immediately in front of, or temporarily affixed to a building, projecting a distance of not more than 125mm from the façade of the premises into the highway, should not be considered as obstructions to the highway, and therefore a licence shall not be required and no enforcement action should be taken.
- 6.1.4 A business that has a licence or consent 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 / consent premises is located at the junction of that side street and a street carrying higher pedestrian traffic.
- 6.1.5 Hanging signs that project from above the shop frontage may, in some locations, be a realistic, cost effective alternative where these Conditions of Use, or any additional requirements that a District Council may require, prevent the positioning of an 'A' board upon the footway. It is strongly recommended that District Councils bring this option to the attention of business owners if the District Councils consider that this may be an acceptable alternative in any location within their areas.
- 6.1.6 There may upon occasion, be a situation where it is clearly to the public benefit for an item / obstruction to be placed upon the highway, which may not directly benefit the owner / manager of the premises supplying the item, but does incur a financial cost e.g. cigarette end collector / bin. In such circumstances, the District Council may wish to license or give consent for these items to ensure conformity with this Policy, and any of their own conditions or procedural requirements, but may wish to waive, or reduce, any initial licensing charge and any annual renewal administration charge.

### **Conditions of Use**

- 6.2 Staffordshire CC will permit 'A' boards and retail / trade displays to be located on the public highway, subject to the following conditions:
- The location of the 'A' board or display 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 / consent 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 or display must be within the limits of the frontage of the premises;
- The positioning of the 'A' board or display is to be agreed between the premises owner / manager and the District Council;
- 'A' boards and display furniture must be constructed of suitable materials and kept in good repair, with the type and style of the board and display furniture to be used, agreed between the owner / manager of the premises and the District Council, subject to the following conditions:
  - 'A' boards must not be more than 0.6 metres wide;
  - 'A' boards and displays must not be more than 1.0 metres tall (total height including display items);
  - 'A' boards and displays must be sufficiently stable so as not to blow over.
- The design of any display furniture must include a 100mm high tapping rail positioned at or near ground level, and the construction of both should be solid and in a colour / design which is distinct from the surrounding area, without being too visually dominant, to provide a contrast to assist the visually impaired;
- A minimum of 2 metres clearance, unobstructed by other street furniture or trees, must be maintained between the 'A' board or display and the edge of any 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;
- Suitable account must be taken of highway facilities in the immediate vicinity of the proposed 'A' board or display, 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;
- The 'A' board or display shall not encroach onto the highway by more than 0.7 metres from the façade of the premises;
- The 'A' board or display furniture must not be fixed to any street furniture or other parts of the highway;

- The location of the 'A' board or display 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 or display 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 / consent will not permit the 'A' board or display to be in position before 09:00 or after the premises that they are advertising has ceased trading for the day, or when the premises are not open for business, or after 22:00;
- The 'A' board or display 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 LHA 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 LHA and the District Council against any and all claims that may arise from the use of the 'A' board or display;
- The 'A' board or display must be removed at the instruction of the LHA or the District Council for the purpose of:
  1. 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 LHA, the District Council or any Statutory Undertaker,
  2. Access required by emergency services,
  3. Any other reasonable cause.
- If a licence has been issued, the licence holder must not display the 'A' board or display after the end of the licence period or on any sooner revocation of the licence;

6.2.1 Notwithstanding adherence to the Conditions of Use outlined above and any additional conditions required by the District Council, if an 'A' Board or retail / trade display was considered to be causing an obstruction or nuisance to highway users, Staffordshire CC reserve the right to utilise the provisions of the Highways Act 1980, to remove the items concerned.

## **7. STREET CAFÉ'S**

### **General**

- 7.1 Public houses, wine bars, restaurants, and cafés may wish to site tables and chairs, and other associated facilities, on the highway outside their business premises for the use of their customers. For the purposes of this Policy, these and all similar installations will be referred to as Street Cafés.
- 7.1.1 SCC will not permit the establishment of a Street Café on adopted highways unless a license has been issued, or consent been given, by the District Council.
- 7.1.2 A licence for the location of a Street Café issued under S115E of the Highways Act 1980 is valid for a maximum of 12 months and is totally independent of any licence issued to a business premises under the Licensing Act 2003.
- 7.1.3 District Council may levy reasonable initial licensing charges and annual renewal administration charges, with these charges being reviewed annually.
- 7.1.4 The issuing of a license or granting of consent to individual premises by the District Council, is designed to ensure that adequate space is available for the safe and free movement of all highway users and that consideration is given to the location of the amenity in terms of possible disturbance for local residents and nearby shops and offices and pollution from unwanted noise or smells.

### **Conditions of Use**

- 7.2 Staffordshire CC will permit a Street Café to be established on the public highway, subject to the following conditions:
- The location of the Street Café must not hinder passage by the emergency services, or hinder access to, or egress from the premise, 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;
  - The location of the Street Café must be within the limits of the front or side elevations of the premises applying for the licence / consent;
  - The method utilized to enclose the boundary limits of the Street Café is to be solid in construction and agreed between the owner / manager of the premises and the District Council. The design should be not less than 800mm high and include a 100mm high tapping rail positioned at or near ground level, and both the barrier and rail should be of a colour / design which is distinct from the surrounding area, without being too visually dominant, to provide a contrast to assist the visually impaired;
  - Where the Street Café is situated immediately adjacent to the premises, a minimum of 2 metres clearance, unobstructed by any other street furniture, trees or supports of any boundary demarcation barrier, must be maintained between the boundary of the Street Café and any other obstruction including the edge of any 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;

- Where the Street Café is not situated immediately in front of, or to the side of, a premise, a minimum of 2 metres clearance, unobstructed by any other street furniture, trees or the supports of any boundary demarcation barrier, must be maintained between the building line and the boundary of the Street Café. Where pedestrian flows are high, the District Council will make an assessment as to the width of unobstructed clearance required if it is considered that a clearance greater than 2m is appropriate to ensure the safety of all highway users. Additionally, a minimum of 1.5m clearance must be provided between the boundary of the Street Café and the edge of the trafficked carriageway, with the District Council making an assessment, based upon highway geometry and vehicle usage and speeds, as to the width of clearance required if it is considered that a clearance greater than 1.5m is appropriate to ensure the safety of all highway users;
- Whether the site of the Street Café is to be immediately adjacent to a premises, or the site is to be away from the front or side elevations of a premise, suitable consideration must be given to highway facilities in the immediate vicinity 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;
- The location of the Street Café must not obscure the visibility for vehicular road users of road signs, or obstruct their view at pedestrian crossing facilities, junctions, accesses or bends etc;
- The location of the Street Café must not obscure the visibility for pedestrians of vehicular road users;
- Excavations or fixtures of any kind, are not permitted to the surface or other infrastructure of the highway without the prior written approval of the LHA;
- Street Cafés are to be used for seated customers only;
- The type and style of the furniture to be used must be agreed between the owner / manager of the premises and the District Council and the furniture must be kept in good repair;
- All furniture associated with any Street Café, including parasols, should be securely fastened to ensure that they are not liable to be moved by external forces, such as the effects of the wind;
- Specific permission must be obtained from the District Council for the use of outdoor space heaters;
- Where a premise is licensed under the Licensing Act 2003 or any modification or re- enactment thereof, the licensee must comply with the terms of that licence so far as they relate to the Street Café, with the specific hours of operation of the Street Café adjudged through the terms of the liquor licence. Premises that are not licensed under the Licensing Act 2003,

will not be permitted, under the terms of their Street Café licence, to place tables and chairs on the highway prior to 09:00 and they must be removed from the highway by 22:00;

- The area occupied by the Street Café must be washed down thoroughly at the end of every day, using a method sufficient to remove food debris and grease, including staining from food and drink spillages;
- The Street Café and surrounding area must be kept free of litter and rubbish caused by patrons using the Street Café, and arrangements made to regularly check for and remove litter and rubbish on pedestrian footways, for a distance of up to 10 metres from the boundary of the Café;
- The Street Café must not be established other than in accordance with the provisions of the licence / consent;
- The owner / manager of the Street Café shall not make, or cause to be made, any claim against the LHA or District Council in the event of any property associated in any way with the Street Café becoming lost or damaged in any way from whatever cause;
- For the period of the licence / consent, the owner / manager of the Street Café must hold Third Party Public Liability Insurance to the sum of two million pounds and indemnify both the LHA and the District Council against any and all claims that may arise from its establishment;
- The Street Café must be removed at the instruction of the LHA or the District Council for the purpose of:
  1. 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 LHA, the District Council or any statutory undertaker,
  2. Access required by emergency services,
  3. Any other reasonable cause.
- The Street Café must not be erected and the area must be kept clear, at the end of, or any sooner revocation of, the licence / consent;
- The owner / manager of the Street Café will, in the event of a breach of the terms of the licence / consent, reinstate the highway, or street furniture to the satisfaction of the LHA, or reimburse the LHA if, as a result of a breach, it is required to carry out any reinstatement works itself.
- The LHA reserve the right to remove any Street Café and clear the area of all obstructions if any of the above criterion are contravened;

7.2.1 Notwithstanding adherence to the terms issued by the District Council prior to the issue of a licence / consent, if a Street Café, in whole or in part, was considered to be causing an obstruction or nuisance to highway users, Staffordshire CC reserve the right to utilise the provisions of the Highways Act 1980, to remove the items causing the obstruction or nuisance.

## **8. Record Keeping**

- 8.1 The retention of accurate, contemporary records, by all local authorities involved with the implementation of this Policy, is important to assist in any future cost recovery procedures.
  - 8.1.1 In the event of any disputes, third party claims, or other legal proceedings, any and all documentary or electronic records may prove invaluable in enabling Staffordshire County Council to demonstrate that it has acted in a responsible manner and is able to robustly refute any complaint or defend any action.
  - 8.1.2 It is important to recognize that all information recorded, even if not primarily intended for highway network safety purposes, may have consequential implications for safety related issues and may therefore be relevant to any potential legal proceedings.
  - 8.1.3 Following the introduction of the Freedom of Information Act 2000, it is important to recognize that all records are potentially available for inspection by members of the public.

## **9. References**

### **Acts of Parliament**

Highways Act 1980

Local Government (Miscellaneous Provisions) Act 1982

Town and Country Planning Act 1990

The Disability Discrimination Act 1995

Freedom of Information Act 2000

Licensing Act 2003

Town and Country Planning (Control of Advertisements) Regulations 2007

Health and Safety at Work etc 1974

Health Act 2006

### **Design Manual for Roads and Bridges**

HD 39 (DMRB 7.2.5) Footway Design

### **Statutory Instruments**

The Traffic Signs Regulations and General Directions 2002

### **Other Reference Sources**

Designing for Accessibility – Published by Centre for Accessible Environments  
and RIBA Enterprises, 2004



# **APPENDIX 1**

## **STANDARD LETTERS**

CBO1: Standard Letter - 28 Day Removal Request

CBO2: Standard Letter – Policy Enforcement Removal Request

CBO3: Standard Letter – 28 Day Removal Notification



**CBO1: STANDARD LETTER: 28 DAY REMOVAL REQUEST**

**Our Ref**

**Your Ref**

**Date**

Dear Sir/Madam,

**COMMERCIAL OBSTRUCTION ON THE HIGHWAY:**

..... **(LOCATION)** .....

Following complaints received from members of the public / Following routine inspections undertaken within your area  
(delete as appropriate)

it has been brought to the attention of your District Council, that there is a .....  
... **(Description of Commercial Obstruction)** ..... which is located on the public highway, the ..... **(Road Number / Road Name)** ..... and is situated ..... **(Location on the Highway)** ..... that is causing an obstruction on the highway and may endanger highway users.

The placement of this obstruction constitutes an offence under the terms of the Highways Act 1980: Section 148.

To maintain the safety of road users and pedestrians, I would be grateful if you would arrange for the ..... **(Description of Commercial Obstruction)** ..... to be immediately removed from on the highway, and not replaced.

Should you fail to act upon this request within 28 days, your local council will contact the Highway Authority, Staffordshire County Council, and request that they undertake any and all actions necessary to remove the highway obstruction.

You should also be aware that the Highway Authority can, using the provisions contained within the Highways Act 1980: Section 149, recover from yourself any expenses that they incur in removing this item from the highway.

If you have any questions about the above matter, you are welcome to contact us on the telephone number at the head of this letter.

Finally, please may I thank you for your co-operation in this matter.

Yours faithfully

**CBO2: STANDARD LETTER: POLICY ENFORCEMENT REMOVAL REQUEST**

**Our Ref**

**Your Ref**

**Date**

Dear Sir/Madam,

**COMMERCIAL OBSTRUCTION ON THE HIGHWAY:**

..... **(LOCATION)** .....

It has been brought to the attention of this District Council that there is a  
..... **(Description of Commercial Obstruction)** .....  
which is located without the consent of this Council, on a public highway, the  
..... **(Road Number / Road Name)** ..... and is situated  
..... **(Location on the Highway)**..... which is obstructing  
the highway and may endanger highway users.

This Council has issued Standard Letter CBO1, which informed the owner / manager of the premises that the placement of this obstruction constitutes an offence under the terms of the Highways Act 1980: Section 148, and requests that the obstruction be removed within 28 days **(Copy Attached)**.

The owner / manager of the premises was also informed that failure to remove the obstruction within 28 days would result in a request by this Council to the Highway Authority for its removal, and that the costs involved with the removal could be recharged to themselves. This notice period has elapsed and the obstruction is still being located on the highway.

To maintain the safety of road users and pedestrians, I would be grateful if Staffordshire County Council, as the Highway Authority for Staffordshire, would arrange for the obstruction, as described above, to be removed from the highway.

Yours faithfully

**CBO3: STANDARD LETTER: 28 DAY REMOVAL NOTIFICATION**

**Our Ref**

**Your Ref**

**Date**

Dear Sir/Madam,

**COMMERCIAL OBSTRUCTION ON THE HIGHWAY:**

..... **(LOCATION)** .....

I have received notification from ..... **(Name of District Council)** ..... that there is a ..... **(Description of Commercial Obstruction)** ..... which is located, without the consent of your District Council or the Highway Authority, upon the public highway, the ..... **(Road Number / Road Name)** ..... and is situated ..... **(Location on the Highway)** .....

I have also received from your District Council, a copy of the letter that they sent to you informing you that they consider that the obstruction to the highway may endanger highway users and requesting that, to maintain the safety of road users and pedestrians, the obstruction be removed from the highway within 28 days and not replaced.

Staffordshire County Council, as the Highway Authority for Staffordshire also considers that this obstruction constitutes a danger to highway users.

**I must inform you that the placement of this obstruction constitutes an offence under the terms of the Highways Act 1980: Section 148.**

To ensure that the safety of all highway users is maintained, i would be grateful if you would arrange for the ..... **(Description of Commercial Obstruction)** ..... to be immediately removed from on the highway, and not replaced.

**Should you fail to act upon this notification within 28 days, the Highway Authority will use its powers under the Highways Act 1980: Section 149 (2) and undertake any and all actions necessary to remove the highway obstruction and recharge any expenses that are incurred in doing so against yourself.**

If you have any questions about the above matter, you are welcome to contact us on the telephone number at the head of this letter.

Finally, please may I thank you in anticipation of your co-operation in this matter.

Yours faithfully