

GUIDANCE NOTE

Advertising boards and displays of goods on the highway in Herefordshire

1 INTRODUCTION

Herefordshire Council (the Council) has produced this guidance note to set acceptable standards for the placing of advertising boards and displays of goods on county highways outside traders' business premises. The Council seeks to assist traders to promote their business activities in a way which is compatible with the public's right to use and enjoy the highway.

For many years advertising boards and trade displays have been a feature of the street scene and are part of business activity in Herefordshire's town and city centres. It is important however that their number, size and positioning is covered by best practice standards which will prevent them from becoming potential or actual hazards for highway users. Particularly at risk are those with impaired vision, mobility problems, the elderly and those with prams and young children.

All advertising boards or displays of goods on the highway can be deemed to be obstructions in contravention of the Highways Act 1980. Even though most are displayed in a considered and thoughtful way, the Council has been receiving an increasing number of complaints from the public about obstruction of the highway by unauthorised advertising boards and displays in front of trade, shop or business premises. In some cases these are some distance from the relevant premises.

The Council has decided, after various consultations, that regulation would be best achieved by traders and businesses adhering to the conditions contained in this guidance note. Provided that these conditions are complied with on county highways, it is unlikely that any enforcement action on highway grounds. (County highways do not include the M50, the A49, part of the A40 (from the county boundary with Monmouthshire to the Overcross roundabout) and the short length of the A449 (from the Overcross roundabout to the M50) which are the responsibility of the Highways Agency.) Whilst particular attention will be paid to boards which present a hazard to the public, a lower priority will be given to others: a common sense approach will be taken.

2 THE LEGAL BACKGROUND

The Highways Act 1980 specifies offences relating to activities on the highway, imposes duties on the Council and also gives the Council power to enforce its responsibilities.

The main areas relating to advertising boards and displays of goods are those concerned with giving formal consent for objects or structures to be placed on the highway; the depositing or placing of items or anything whatsoever within the highway; the obstruction of free passage along a highway or the interruption of any user of the highway; and the power to remove any structure, item or things so deposited on highways as to be a nuisance.

This guidance note aims to minimise the need for exercising such powers by setting acceptable standards for the placing of advertising boards and displays of goods.

3 GENERAL CONDITIONS

The following conditions are common to the placing of advertising boards and displays of goods on county highways and must be met. (Complying with these conditions does not obviate the requirement to also comply where necessary with Schedule 2 (The Standard Conditions) of the Town & Country Planning (Control of Advertisements) Regulations 2007, and any amendments, thereof.

- There will be at least 1.8 metres (6 feet) clear passage in front of the advertising board or display of goods to the kerb, or to any item of street furniture, or other permanent structure.
- No advertising board or display of goods shall extend more than 0.6 metres into the footway from the wall of the building or other highway boundary, except where permitted otherwise under licences approved by the Council.
- Advertising boards or displays of goods must be temporary in their nature so that they can be easily removed; they shall require no excavation to install or remove.
- Advertising boards or displays of goods must not have a detrimental effect on the fabric of the highway.
- Advertising boards or displays of goods must be stable and not represent or cause a danger to highway users.
- Advertising boards or displays of goods must be easily detected by the visually impaired and easily negotiated by those with mobility difficulties.
- Advertising boards or displays of goods must not cause a visual distraction or obstruction to vehicle sight lines or block visibility for pedestrians.
- Advertising boards or displays of goods must take into account the other reasonable needs of the area such as bus stops, pedestrian crossings, etc. in relation to their positioning.
- In areas of high volume pedestrian flow such as near schools or in certain pedestrianised areas, the placing of advertising boards or displays of goods may not be allowed.
- All advertising boards or displays of goods must be totally removed at the end of each day's trading.
- In the event that any section of the footway is required to remain entirely free of any obstruction for a period of time (such as for maintenance, cleaning, public utilities works or special events) the owner of the advertising boards or displays of goods will remove it at the request of the police, the Council or its duly authorised representative.

Any advertising boards or displays of goods placed on county highways will be at the owner's risk, and the Council may seek reimbursement from the owner should any claim be made against it by any third party for personal injury or damage to property caused by the advertising boards or displays of goods. In addition, nothing contained within this guidance note gives deemed consent as may be required under any other provision in the Highways Act 1980, the Town and Country Planning Act 1990 or any other legislation.

4 FREE STANDING ADVERTISING BOARDS

The following conditions apply specifically to the placing of advertising boards.

The Council is unlikely to take any action concerning advertising boards placed on county highways if they are in accordance with the general conditions above in Section 3 and the further conditions in this section.

- Advertising boards should be in good condition and be made to a professional standard.
- Advertising boards must not have an offensive content which will not be tolerated.

- Advertising boards should not exceed 0.6 sq m (6.5 sq feet), with a maximum base width of 600 mm (2 feet), except where permitted otherwise under licences approved by the Council.
- Advertising boards must be two-sided, or otherwise free standing, causing an A shape or easel effect. Other designs which achieve the same purpose, such as a board suspended from a top rail within a frame will also be acceptable. The structure must be of sufficient weight or design to prevent it being blown over. It should not be on trailer wheels or on any other trailer type device.
- Advertising boards leant against walls and/or posts will not be acceptable.
- Rotating cylinders may only be placed on privately owned land, (having obtained advertisement consent from the local planning authority).
- Only one advertising board will be permitted for each premises, even where there is multi-occupation.
- Where a business has its own private forecourt adjacent to the highway, any advertising boards shall be placed wholly within this forecourt.
- Advertising boards sited on the highway must be positioned directly outside the premises, on the same side of the road and adjacent to the frontage.
- Advertising boards will be placed at the back of the footway as near to the property as possible. In respect of a sign relating to a business located in a pedestrian-only passageway it shall be placed immediately adjacent to the entrance to the passageway but not in a location which in any way obstructs the entrance to the passageway.
- Advertising boards will not be permitted on grass verges except in respect of boards immediately alongside the entrance to the particular premises involved..
- Advertising boards will not be permitted on roundabouts, pedestrian safety refuges or central reservations.
- Advertising boards will not be permitted on roads subject to a speed limit greater than 40mph.
- Advertising boards must not be attached to highway street furniture, trees or any other items within the highway boundary.
- Advertising boards must be positioned consistently in the same place on a day-by-day basis.
- Advertising boards must be taken in at night or when the business is closed.
- Advertising boards must not impede emergency vehicular access.
- Where an accumulation of advertising boards and/or other advertising techniques restrict the easy use of the footway, all advertising must be removed until agreement is reached as to what is deemed acceptable.

5 DISPLAYS OF GOODS

The following conditions apply specifically to the placing of displays of goods.

The Council is unlikely to take any action on highway grounds with regard to displays of goods placed on county highways if they are in accordance with the general conditions above in Section 3 and the further conditions in this section. The displays must not bring about a material change of use for which planning permission would be required.

- Displays of goods must relate to the normal business of the trading establishment.
- Displays of goods must be entirely within, and adjacent to, the frontage of the trading establishment.
- Displays of goods remote from the frontage will not be permitted.
- No selling or trading will be permitted upon the highway. All transactions must take place within the trading establishment
- Displays of goods must be presented in an attractive, professional manner

This section does not relate to goods displayed at markets, street fêtes, lay-bys or street trading pitches which are regulated and enforced by other sections of the Council. Street

furniture and pavement cafés are subject to the terms and conditions detailed in the 'Street Trading' and 'Highways Amenity Licences for Pavement Cafés' information packs and guidelines, which are available from the markets and fairs office of the Council.

6 CASE LAW

There is extensive case law on the placing of advertising boards and displays of goods on the highway, and whether or not they constitute wilful obstructions. The conditions contained within this guidance note establish when it is unlikely that action will be taken on highway grounds against those who place advertising boards and displays of goods on the highway. However, anyone who places items on the highway is potentially liable to any person who suffers personal injury or damage to property caused by that item. Traders would therefore be advised to consider obtaining public liability indemnity insurance in the event of such claims.

7 PROCESSES TO BE FOLLOWED WHEN THE CONDITIONS FOR THE PLACING OF ADVERTISING BOARDS AND DISPLAYS OF GOODS ARE NOT MET

This guidance note sets acceptable standards for the placing of advertising boards and displays of goods on county highways. Where the conditions are not met, action may be taken by re-positioning, removal, warning or prosecution.

As part of routine highway inspections or in responding to complaints, any obstruction that is deemed unreasonable in accordance with this guidance note and constitutes an immediate danger will be removed from the highway and either returned to the owner or retained.

For similar obstructions that are unreasonable but do not constitute an immediate danger, the owner will be requested to remove or reposition the boards or displays to be in accordance with this guidance note.

Evidence of persistent offenders will be recorded and the relevant legislation will be used to pursue the matter. In the majority of cases an initial written warning will be issued but the Council may serve a formal legal notice requiring the advertising board or display of goods be removed. Failure to comply may lead to prosecution, substantial fines and recovery of the Council's costs.

Any items removed from the highway will be retained for collection by the owner. The items will be disposed of if they are not collected within a period of one month. The Council may seek to recharge the owners any expenses incurred in removing and storing such items.

8 OTHER LICENCES

The Council can legally place items of street furniture such as road signs, trees and seats on the highway. In addition, the Council may issue licences for the erection of scaffolding, for the placing of builders' skips and for the provision of outside catering facilities in accordance with the relevant specific regulations.

9 FURTHER INFORMATION

This guidance note advises when it is unlikely that any enforcement action will be taken on highway grounds for obstruction of county highways over the placing of advertising boards and displays of goods. It does not extend to other items which may not be covered by the examples described above.

This guidance note does not absolve anyone from any statutory, or non-statutory, risk, with regard to personal injury or damage to property, that incurred by depositing anything on the

highway. Similarly this guidance note does not override a police officer or the powers of the Planning Authority.

This guidance note is without prejudice to the powers to license other amenities on county highways in accordance with the provisions of the Highways Act 1980. It does not confer any right or privilege or permit any breach of statutory requirements, but outlines the Council's normal approach in such matters. It reserves the right to enforce any appropriate statutory requirement where considered necessary.

10 MODIFICATIONS, ALTERATIONS AND AMENDMENTS

The conditions, procedures and requirements specified within this guidance note may be modified, altered or amended at anytime without notice as the Council deems appropriate.

Dated 22 June 2009

