

**MINUTES OF A MEETING OF THE SAFER AND STRONGER COMMUNITIES  
COMMITTEE HELD AT COUNTY HALL, CHELMSFORD, ON 9 SEPTEMBER 2011**

Membership:

|                      |                          |
|----------------------|--------------------------|
| Councillors:         |                          |
| * S Walsh (Chairman) | * E Johnson              |
| * J Deakin           | * C Pond (Vice Chairman) |
| * M Fisher           | J Schofield              |
| * M Garnett          | M Skeels                 |
| R Howard             | * M Webster              |

(\* present)

Councillor T Higgins was in attendance for Minute 43.

Christine Sharland, Governance Officer, and Matthew Waldie, Committee Officer, were in attendance throughout the meeting.

The meeting commenced at 10.00 am.

**40. Apologies and Substitutions**

The Committee Officer reported apologies from Councillors R Howard, J Schofield and M Skeels.

**41. Declarations of Interest**

There were none.

**42. Minutes of the Previous Meeting/Matters Arising**

The Minutes of the meeting held on 15 July 2011 were agreed by the Committee and signed by the Chairman as a correct record.

**43. A Board Policy on the Publicly Maintainable Highway (Minute 37/ July 2011)**

The Committee considered report SSC/15/11 concerning this Scrutiny Review, including responses to the questionnaire sent to Essex Boroughs and District Councils, and a draft Policy on the placement of A Boards.

The Chairman welcomed the following witnesses to the meeting:

- Vicky Duff, Network Strategy & Enforcement Manager, Highways
- Mike Wray, Town Centre Marketing Manager, Chelmsford Borough Council
- Paul Houghton, Access Officer, Chelmsford Borough Council
- Lee Smith-Evans, Urban Designer, Colchester Borough Council

- Michael Perry, Assistant Chief Executive (Legal), Uttlesford District Council
- Mick McDonagh, Manager High Chelmer Shopping Centre
- Phil Lee, Fair Access 2 Colchester Group

Ms Duff was then invited to introduce her briefing paper as attached to report SSC/15/11. She emphasised that the control of A Boards on the public highway was a difficult matter to tackle. The legislation is complex and there is the potential for conflicting interests between shop owners, specific groups of highway users, and the general public. She put forward the view that based upon the legislation, the size, and the mixture of different urban and rural areas across Essex, it was difficult for the County Council to implement and enforce a countywide policy to control A Boards. In practice, District Councils would be in a better position to identify how A Boards should be managed and controlled in their particular areas, taking into account local conditions.

Several points were noted by Members:

- Replying to a question on how binding a policy would be in practice, Ms Duff pointed out that it could be open to challenge. The existing case law is not helpful in clarifying how A Boards may be controlled, and most of the decisions have gone in favour of the defendant.
- A total countywide ban would not allow room for making concessions for any particular areas where A Boards may not be viewed negatively; and where on occasion they may be perceived as an enhancement to the street scene.
- A County Council policy would only be applicable to publicly maintainable highways and not to privately owned land. As a street scene may be made up of a mixture of indistinguishable public and private land, A Boards could still be placed legitimately on those areas in private ownership. Any enforcement action would have to establish the status of the land the A Board was placed upon, and the highway boundary.
- Although an A Board could be considered as an obstruction under some statutory provisions, under alternative legislation it could be construed as “acceptable obstruction”. Ms Duff advised that case law had not clarified whether A boards were necessarily a highways obstruction or not.
- The costs associated with the control of A Boards are an important consideration eg responsibility for the costs of enforcing a countywide ban.
- Across Essex there is a wide range of urban and rural scenarios, and variation in the demographic make up of areas that may influence whether or not A Boards may be more or less acceptable to a community. There is an argument that a total ban (or any other blanket

option) might not be appropriate in all areas. A localism based approach would give the twelve Districts the opportunity to determine how to address the needs of their own areas based on local circumstances.

- Obstructions such as A boards were not only of concern to those with mobility problems, but could be seen as a potential nuisance/hazard to all pedestrians.
- The Committee noted that the District Council responses received to a questionnaire that had been sent out the previous autumn, illustrated a wide range of opinions in this matter.

The Chairman then invited the other witnesses to address the meeting.

Mr Smith-Evans (Colchester Borough Council) pointed out that that Council has adopted a Public Realm Strategy, with the intention of making its streets more attractive. While there was quite a pronounced A Board problem in the Borough, the Council did not wish to prosecute under the Highways Act as it believed that this would include prosecuting the landowner (ie the Essex County Council for publicly maintainable highway). There was also a resourcing issue to be addressed.

Mr Perry (Uttlesford District Council) confirmed that Uttlesford has asked the County Council for delegated powers under the Highways Act 1980. That Council was keen to enforce greater control over A Boards, believing that some initial positive enforcement would lead to self-regulation by retailers. However, the District Council felt that it needed a County Council policy to underpin any action taken. Tables and chairs are already dealt with on a local basis. He confirmed that he had been liaising with the County Trading Standards Service in this matter.

Mr McDonagh (High Chelmer Shopping Centre) pointed out that no A Boards are permitted within the Centre, which is privately owned. However, the Centre could not control the siting of any A Boards outside of the Centre. He cited the example of the approach taken by the local Council for Galway town, ROI, which issued two notices informing traders that their boards were in breach of regulations, and then physically removed any items still remaining after an allotted time. He did not believe a zero tolerance approach would adversely affect trading levels and advocated exploring other ways of advertising (eg, wall mounted signs, the use of plasma screens). In supporting a zero tolerance approach, he suggested that it could be enforced by District Councils through licensing.

Ms Duff confirmed that current County Council policy is against advertising on street furniture. However, the Council is looking into the matter and its potential for generating revenue.

During the course of discussion general issues were raised around advertising on the highway as distinguished from causing an obstruction. It appeared that

responsibility for the control of advertising was again a complex matter and could be addressed by both County and District Councils with varying degrees of success depending upon the legislation used. Ms Duff issued a note of caution to Members on the possible dangers of a local authority trying to implement changes and the possibility of having to face legal challenge – particularly if there is little case law to provide guidance.

Messrs Wray and Houghton (Chelmsford Borough Council) informed Members that Chelmsford had introduced a licensing system for alfresco tables and chairs, with designated areas that could be identified by metal studs in the pavement. This works well and generates some revenue. The Local Access Group had received complaints about the proliferation of A Boards and problems they caused for some pedestrians. It was suggested that people may be put off visiting those areas where A Boards were seen as an impediment to pedestrian movement.

The Chairman asked Mr Lee, who had addressed the Committee in December 2010 on this matter, for any further observations he wished to put forward on behalf of the Fair Access 2 Colchester Group. Mr Lee echoed the sentiments of one Member, who had noted the knock-on effect of one trader putting a board out, leading to his neighbour doing the same, and so on. He added that this was an important issue for the visually impaired for example, but also for people with pushchairs and wheelchairs. Café furniture, particularly when set out inconsistently from day to day, could also be problematic. With particular reference to a zero tolerance policy, he indicated that he was not totally convinced that it was the right approach and acknowledged the difficulties associated with its regulation and enforcement.

The Committee felt that they did not want to discourage trade in town centres given its importance, but there seemed much to commend greater control of A Boards. Before Members could reach any conclusions as a result of this scrutiny review, it was proposed that the Committee should visit Cambridge where the City Council appeared to have implemented a zero tolerance approach. It was hoped there would be an opportunity to find out the impact upon local traders of not being able to advertise their premises, and obtain a local authority perspective on the effectiveness of the ban. Members were encouraged to forward to the Governance Officer any further questions they wished to address as part of this review.

The Chairman thanked all witnesses for their attendance and confirmed the Committee had found their contributions most helpful.

#### **44. Two Wheeler Road Safety (Minute 33/ July 2011)**

The Committee received the Final Monitoring Report on Two Wheeler Road Safety as attached to report SSC/26/11.

The Committee **agreed** the final Monitoring Report for forwarding to its parent Committee, the Economic Development, Environment and Highways Policy & Scrutiny Committee, for the latter's endorsement.

It was proposed that when the final report is forwarded to the Cabinet Member for Highways and Transportation, it should be suggested that the Essex Casualty Reduction Board be encouraged to focus its activity on those areas like Epping Forest where there are high KSI rates.

**45. Scrutiny Review on the Off Site Emergency Planning Requirements around COMAH Sites in Essex** (Minute 10/February and 26/ May 2011)

The Committee noted that it would be undertaking a full day visit to the Port of London Authority on the 14 October. It was confirmed that it had not proven possible to combine this with a visit to a COMAH site in Kent.

**46. Dates of Future Meetings**

The Committee noted that the next meeting would take place on **Friday 18 November 2011**.

There being no urgent business the meeting closed at 11.25 am

Chairman