

<b>AGENDA ITEM 4</b>	
<b>SSC/15/11</b>	
<b>Committee:</b>	<b>Safer and Stronger Communities Committee</b> <i>(Task and Finish Group of the Economic Development, Environment and Highways Policy and Scrutiny Committee)</i>
<b>Date:</b>	<b>9 September 2011</b>
<b>SCRUTINY REVIEW ON A-BOARD POLICY ON THE PUBLICLY MAINTAINABLE HIGHWAY (Minutes 55/October and 64/ December 2010)</b>	
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The objective of this scrutiny review is to 'consider the most appropriate approach to the management of A Boards on the publicly maintainable highway'.

At the Committee's meeting on 15 October (Minute 55) and 10 December 2010 (Minute 64) Members considered some of the issues that are posed by the presence of A Boards on the publicly maintainable highway, their regulation, and potential management. Subsequently at its meeting on 10 December 2010 (Minute 64) Members heard evidence from a representative of the Fair Access 2 Colchester Group, who provided a pedestrian's perspective on how A Boards may impede travel around local streets and, in particular, the added difficulties for disabled persons. Copies of the Minutes of both these meetings are attached at Appendix A for ease of reference.

In addition to these meetings evidence was sought last Autumn (2010) from Essex Borough and District Councils via a questionnaire seeking their perspective on A Boards in their areas. Replies were received from seven councils, which are reproduced at Appendix B. The responses confirm that there are diverging views upon the control of A Boards as well as differences in the approaches adopted in practice. They also re-affirm the overall complexity associated with managing A Boards across Essex, and the difficulties for the Committee in trying to reach some conclusions.

Those Local Councils who responded to the questionnaire have been invited to send representatives to this meeting as observers/ answer the Committee's questions. Mr

Lee who addressed the Committee in December on behalf of the Fair Access 2 Colchester Group has also been invited as an observer.

A briefing paper has been prepared by the County Highways Service and is attached at Appendix C that summarises the latest position on A Boards in Essex. It sets out three approaches to the management of A Boards (Zero Tolerance, Licensing , or Localism), and also contains a draft policy for the placement of A Boards on the highway.

**Action required by the Committee at this meeting:**

**The Committee is requested to consider the evidence it has received, and reach some conclusions that may be incorporated into a Scrutiny Report on the management of A Boards on the publicly maintainable highway in Essex.**

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**EXTRACT FROM MINUTES OF THE SAFER AND STRONGER COMMUNITIES  
POLICY AND SCRUTINY COMMITTEE MEETING HELD ON 15 OCTOBER 2010**

**Minute 55. Scrutiny Review on A Board Policy on the Publicly Maintainable Highway**

The Committee considered report SSC/16/10, which set out background on the regulation and management of A Boards on the publicly maintainable highway together with three draft policy practice options: Zero Tolerance, Licensing, and Localism.

Councillor R Walters, Deputy Cabinet Member for Highways and Transportation, and Vicky Duff, Traffic and Highways Safety Manager, attended the meeting to provide an overview on the current situation on A Board regulation across Essex and answer Members' questions.

On behalf of the Cabinet Member, Councillor Walters thanked the Committee for agreeing to consider A Boards as a scrutiny review and drew the following information to Members' attention:

- There has been discussion about an Essex County Council policy on A-Boards and Street cafes for some time.
- The County Council had never been involved in any litigation related to personal injury pertaining to A-Boards.
- A balanced view should take into account the need to promote local trade, especially during times of recession, as well as the need to ensure the publicly maintainable highway was not obstructed.
- The impact of any blanket ban on A-boards would need to be considered very carefully. The Chamber of Trade consider A-Boards to be important to trade in terms of foot fall and advertising local businesses. It was claimed that there was evidence that trade had been adversely affected in one area of Essex (Brentwood), where the local authority had banned A Boards.
- As Local Planning Authorities, the District and Borough Councils have wider planning powers that could be used to regulate A Boards and the street scene, and are responsible for litter picking, environmental health and licensing.
- There were some examples where other authorities had taken steps to regulate A Boards. For example in Kent a licence was required to be displayed in the shop window, and in Devon traders needed to ensure that boards were in front of their property with a clear 1.5 metre width clear access for pedestrians. Nevertheless the cost of introducing, licensing and policing these schemes could be prohibitive. Ms Duff agreed to obtain for the Committee the costs associated with the Kent scheme.
- While the County Council does have powers to remove obstructions from the publicly maintainable highway, it was pointed out that if it adopted a policy

to regulate A Boards then that policy would have to be applied unilaterally across Essex. This could be difficult given the diverse nature of the County and different characteristics of its towns and villages, and it would be inappropriate to allow A Boards in one area and enforce restrictions in another. Therefore, in the interests of localism the Committee would have to take into account the need for some local area discretion.

- Any Guidance that is adopted must be easily interpreted.
- It was anticipated that District and Borough Councils would find it difficult to enforce a licensing scheme due to the costs involved.
- During discussion Members raised the following matters for further consideration as part of the review:

- The perceived growth in the number of A-boards and other street furniture, and the implications for pedestrians particularly where streets are narrow.
- The issues that A Boards pose for disabled people. For instance aside from having to manoeuvre around an obstacle, the colour contrast and size of a board may cause additional difficulties for people with visual impairment in distinguishing an obstacle. The fact that boards are not fixed causes additional difficulties in negotiating a route that will change on a daily basis, and sometimes may interfere with other facilities designed to assist disabled people eg dropped kerbs for wheelchair users.
- Street furniture in general, of which some may belong to the County Council, may also cause an obstruction for those with visual impairment.
- The design of A-Boards eg if they are too flimsy they may fall over or if too heavy they could injure pedestrians.
- The need to consider wheelchair users and parents with children in buggies.
- The need for consistency in the regulation of A Boards so that the public understand what the situation is.
- The benefits that might accrue from A Boards in the street scene where they are well placed.

In response to a Member's question about pavement parking, the Chairman reaffirmed that parking issues were not being considered as part of this scrutiny review, and that parking issues fell within the remit of another Committee. Furthermore it was confirmed that parking on the pavement was a Police rather than County Council enforcement issue.

The Chairman thanked Councillor Walters and Ms Duff for their contribution to the meeting.

The Chairman confirmed that a questionnaire had been sent to all District Councils seeking their views on A Board regulation, and their responses would be reported to the Committee in due course. Witnesses would also be invited to address the Committee.

## **EXTRACT FROM MINUTES OF THE SAFER AND STRONGER COMMUNITIES POLICY AND SCRUTINY COMMITTEE MEETING HELD ON 10 DECEMBER 2010**

### **Minute 64. Scrutiny Review on A Board Policy on the Publicly Maintainable Highway**

The Committee considered report SSC/20/10 concerning this Scrutiny Review on the regulation and management of A Boards on the publicly maintainable highway.

As part of the evidence gathering process, Phil Lee, of Fair Access 2 Colchester Group, was welcomed to the meeting and invited to give that Group's perspective on A Boards. The Group is seeking to improve the quality of life for disabled and non-disabled people in the Borough of Colchester.

Mr Lee informed the meeting that in June the Group had conducted an extensive survey of 'obstacles' in Colchester town centre, based upon a mixture of pedestrianised areas and streets open to motor vehicles. He provided the data captured for the survey. It had revealed that there were approximately 300 obstacles in the survey area, which included a majority of A Boards, together with other street furniture and retail furniture such as clothes racks. It was noted that some businesses had multiple boards on display. He described the sorts of difficulties caused for pedestrians including wheelchair users who may get trapped by obstacles and the difficulties of manoeuvring away from those obstacles, and for blind people and their guide dogs. He confirmed that the Group's intention was not to put retailers at any disadvantage, but to find some consistent, sensible approach that would enable free and safe passage to pedestrians on pavements (and access to shops) for everyone. This view was echoed by Councillor Higgins, as a fellow member of the Group.

During the course of the debate that took place, the main points that arose from the Committee's cross examination of the evidence were as follows:

- A sensible approach needs to be taken around any proposals for regulation given the diversity of opinion as to what is and is not preferable in the way that A Boards may be placed in the street. At the meeting there were several suggestions for the regulation of A Boards including:
  - All boards be restricted to within a certain distance of the premises, or even flush against the actual wall where a footway was narrow.
  - Boards should not be placed in close proximity to other obstacles, and crossing points.
  - The colour of boards should be carefully considered so that they are more easily discernible to pedestrians.
  - The construction of boards should be carefully considered eg swing mechanisms can catch clothing, and their weight may/ may not be

conducive to pedestrians being hurt if they collide with them so that either the A board or the individual falls over.

- Restrict the number of boards a business may place in the highway.
- Another requirement might be to have the siting of a board marked out on the pavement, and to a consistent pattern. This would particularly help the blind and visually impaired to build up a mental map of the pavements.

- Where town centres are being redeveloped, the needs of the disabled pedestrian should be taken into account so that any placing of street furniture does not cause undue difficulties. There was discussion about the ways that street cafes are set out and, in some cases, the use of barriers to delineate an area of tables and chairs from the through flow of pedestrian traffic. It appeared that barriers have to be put into place where a premises may be licensed to sell alcohol, and there could be some planning requirements to be adhered to.
- There is inconsistency across Essex in the way that A Boards are managed and regulated. Each District Council appears to have a different approach. Mr Lee hoped that if consistency could be achieved it would give disabled pedestrians greater confidence to visit more towns, because the way any obstacles would be placed and managed would be familiar. It would be useful if any guidance could set out good practice for local councils to refer to. The Governance Officer confirmed that a questionnaire had been sent to the twelve Essex Borough/ District Councils. Of the eight Councils that had responded, it supported the view that individual approaches were in place across the County.
- It was acknowledged that not all pavements outside shops are public highway, and may be maintained by private landowners. However, where pavements are maintained by the Highways Authority it may impose requirements upon their use. While there seemed to be some justification for the Highways Authority to take a lead on this issue, in order to achieve some consistency across the County, Members were mindful that there will be some legal considerations to be taken into account. Therefore it was agreed that legal advice would be needed on this.

At the conclusion of discussion, the Chairman thanked Mr Lee for attending the meeting.

The Committee will undertake further evidence gathering as part of this scrutiny review at a future meeting.

**Responses from Essex Borough and District Councils**

*NB No replies were received from following Councils: Basildon, Castle Point, Epping Forest, Harlow and Maldon.*

Question 1

**Does the District Council exercise its planning function to control the street scene? If so, please provide examples.**

<b>Braintree</b>	Braintree District Council (BDC) is a Local Planning Authority and therefore deals with all planning applications for Deemed Advertisement Consent; BDC also exercises its statutory duty in respect of breaches of the Advertisement Regulations which occur and includes those within the publicly maintainable highway.
<b>Brentwood</b>	We do not use our planning powers to control A boards
<b>Chelmsford</b>	<p>The Council's Planning Enforcement team exercises powers under section 225 of the Town and Country Planning Act (TCPA) to remove or obliterate unlawful advertisements wherever they may be displayed and we may also choose to prosecute. At present we routinely respond to complaints relating to unlawful advertisements, many of which are displayed from the highway or highway furniture, and we have also taken action against trailer advertisement stationed on highway land. We also deal with advertisements on private land including estate agents boards.</p> <p>The Council's Environmental Services team have powers to issue Fixed Penalty Notices against individuals caught in the act of fly posting.</p> <p>The Planning Enforcement Team believes the Highways Authority take no action to address incidences of unlawful advertising or fly posting. In the case of the Chelmsford borough, these tasks have been addressed by the local planning authority.</p> <p>In respect of removing unlawful advertisements, section 225 of the TCPA allows local authorities to remove or obliterate posters or placards; no mention is made of portable structures</p>

	such as A-Boards. The standing legal advice that we are in receipt of is that this legislation would not extend powers to the summary removal of A-Boards.
<b>Colchester</b>	Yes, via planning applications, master plans, design briefs, recently adopted public realm strategy and through the enforcement process where unauthorised advertising is being displayed on buildings. We have not enforced unauthorised signage on the highway because this is first and foremost an ECC function and we would not wish to expose ECC to the threat of prosecution as land owner in the event that the advertiser chooses not to remove the signage when requested.
<b>Rochford</b>	The question is ambiguous and unclear. Rochford District Council uses the planning control system to generally control the appearance of signs and other development in the street scene and on occasions too numerous to list. If we're only talking about "A" boards on the public highway then that would be a matter for the highway authority to administer in the first instance and no planning permissions have been granted for such.
<b>Tendring</b>	TDC has been pro-active in approach to the display of illegal advertisements within its area and recently removed a number of advertisements displayed within the highway advertising business activities. The Council is also an active participant on the Frinton Town Centre Trading group that meets regularly at your offices in Colchester, which focuses on signage and trading issues on the highway.
<b>Uttlesford</b>	Yes. Unauthorised advertisements are dealt with through the planning system; advertisers are contacted advising their board or sign should be removed because it does not have express advertisement consent. Advertisers are given seven days within which to remove the board or sign and failure to comply would result in enforcement action being taken through the Magistrates' Courts.

Question 2

**Does the District Council issue licences to control local business activity such as advertising and permitting other temporary furniture in the street? Does it consider licences to be an effective method for regulation, and are there any other mechanisms that have proven successful?**

<b>Braintree</b>	BDC issues licences in respect of the placing of temporary furniture (tables and chairs for café's and public houses) in the street. This is not however considered to be an effective regime in that BDC do not have the associated delegated powers necessary to deal with either unlicensed activity nor where a licence has lapsed and not renewed.
<b>Brentwood</b>	We do issue licences for temporary furniture on the street. As far as I am aware these are the only mechanisms to allow temporary furniture on the street and they are an effective method of regulation.
<b>Chelmsford</b>	We do not issue licenses in respect of advertisements though we do for chairs and tables stationed on highways land. This is considered a preferable method of regulation as opposed to the more formal and costly route of seeking planning permission for use of the land.
<b>Colchester</b>	I am led to believe that ECC took over licensing of these activities from CBC when it was discovered it was an income generator, this activity is a change of use of the highway and would require planning permission/advert consent and failure to obtain the correct planning permission/consent could result in planning enforcement action or prosecution.
<b>Rochford</b>	In relation to "A" boards we don't issue licences to control these on the highway. Most such signs on business forecourts (i.e. <b>not</b> the highway) do not require LPA consent. Other licences e.g. for persons selling their wares are not administered by the planning department.
<b>Tendring</b>	Planning Services have investigated a number of breaches of planning control and determined each case on its merit. Where express consent is required and could be recommended applications have been requested. We have

	<p>not investigated issues relating to Café Culture trading or the display of goods for sale on the highway as very few complaints about these uses have been received. These are issues discussed at the Frinton Town Centre Trading group though. There are some examples where licences have been issued for tables and chairs to be put on the highway and there are also a large number of examples of furniture being put within private forecourts.</p>
<b>Uttlesford</b>	<p>Yes. The Council consider licences to be an effective method for regulation, as there have been instances where proposals have been amended in the light of comments made by consultees.</p>

Question 3

**What are the implications for the District Council if it extended the exercise of its statutory planning powers to cover A-Boards on the publicly maintainable highway?**

<b>Braintree</b>	BDC already have such statutory planning power to cover A Boards on the publicly maintainable highway however resource levels are such that A Boards are generally tolerated in close proximity to premises.
<b>Brentwood</b>	The only planning power available (aside from the removal of posters and placards – which in my view would not apply to A boards) is prosecution. I consider that taking these matters through the Courts is likely to be a cumbersome and potentially costly procedure and that the removal of A boards as a trespass on the highway is a quicker and more effective remedy.
<b>Chelmsford</b>	<p>It would be beneficial for the Council to be able to exercise powers under the Highways Act to remove items such as A-Boards and trailer advertisements from the highway without the need to pursue a prosecution.</p> <p>On the down side, there would also be an expectation that the Council would have to respond to such complaints and take action across the Borough, not just in the centre of Chelmsford. The removal of the aforementioned items would likely require the use of a dedicated vehicle and additional man power and could prove costly.</p> <p>We would be interested to know whether the County Council would be intending to provide funding to the districts for carrying out these Highway Authority functions. Training for districts as to the implementation of the Highways Act in this area would also be required.</p>
<b>Colchester</b>	<p>It would require the following:</p> <p>Delegated powers under the Highways act          Extra resources: Extra Staff, Training, Software, Technical Support, Legal Support (Highway specialists), General on-costs, Access to ECC records (Maintainable Highway maps for the Borough). This above list is just shows the basic requirements, I am sure that it would grow.</p>

<b>Rochford</b>	If the LPA considered applications for signs on the highway then it would need to consult wider, taking into account issues such as the views of those using the highway, partially sighted people, persons in wheel chairs, etc. etc. as well as the highway authority itself. There may be claims for injuries, etc. but the LPA's considerations for such proposals is limited by law to issues of amenity and public safety. Would have staff implications for the LPA e.g. different types of licences will need to be issued presumably so additional bureaucracy; who's going to regularly check the High St for unlicensed signs or make sure they're taken in every night?
<b>Tendring</b>	The Council's Planning Enforcement Service has limited resources and our pro-active approach to advertisement control has resulted in two cases being referred to the Courts for the illegal display of advertisements on the public highway. If additional workload was forthcoming as a result of this consultation this would impact on our resource where priorities are already set.
<b>Uttlesford</b>	The Council do not have the resources to extend the use of the statutory powers beyond the limited activity currently undertaken. The Authority is only able to act on a reactive rather than proactive basis due to the constraints on resources.

Question 4

**Has the District Council had to take any enforcement action if a local trader has failed to comply with a licence or other means of regulation? How successful has enforcement action been?**

<b>Braintree</b>	No
<b>Brentwood</b>	I know of no cases where formal enforcement action has been taken against non compliance with a licence. This is perhaps not surprising as the use of planning enforcement powers would require the service of enforcement notices on the public body responsible for the publicly owned land.
<b>Chelmsford</b>	The Chelmsford Borough Licensing department believes A Boards are not a licensable activity under the Licensing Act 2003.  Chelmsford Borough Council Town Centre Management has written to street traders who do not comply with Street Trading policy/procedure, and all issues have been resolved successfully.
<b>Colchester</b>	Refer to ECC licensing as they took the licensing function away from the CBC.
<b>Rochford</b>	In relation to "A" boards the LPA hasn't taken any planning enforcement action in recent times.
<b>Tendring</b>	As in answer 1 and 3 above
<b>Uttlesford</b>	To date enforcement has been effective, we are currently pursuing a prosecution in respect of street furniture.

Question 5

**Does the District Council have any evidence to suggest that there needs to be greater control of A-Boards in the street based upon any public engagement that it may have undertaken or public views that have been expressed to it?**

<b>Braintree</b>	There have been infrequent complaints of A Boards causing obstruction to the highway. These have been dealt with on an informal basis by requesting the premises to move A Boards or the complainant referred to Essex Police to deal with as a matter of Obstruction under the Highways Act.
<b>Brentwood</b>	The public do express concern about A boards and there may be a need for greater control. The Council considers that this should be in the context of an agreed policy, hence the work being carried out by Elizabeth Moon.
<b>Chelmsford</b>	The council has received many verbal and e-mail complaints from members of the public, about the usage of A Boards within the town centre, especially from members of the Chelmsford Area Access Group. In addition, Essex Access Forum have continued to campaign for a zero usage policy, to be enforced throughout the county for some time.
<b>Colchester</b>	New central government policy wishes to clear street clutter, and there is a growing campaign from the mobility society to clear A boards and street furniture to allow them to have access in the Highway.  We constantly are receiving complaints about obstructions on the Highway and illegal advertisements in the Highway and we also receive complaints that there is no easy way to report these complaints to ECC.
<b>Rochford</b>	We have occasional complainants from parish/town Councils and some individuals that "A" boards are causing an obstruction to the public footpath
<b>Tendring</b>	The Council has no evidence to support greater control of 'A' boards, but its attendance at the Frinton Town Centre Trading group meetings where 'A' boards and street trading issues are key is evidence of the growing concern over these matters.

<b>Uttlesford</b>	Yes. We have noticed an increase in the number of complaints regarding unauthorised A boards on the highway.

Question 6

Given the District Council's role in town management and its relationship with local shopkeepers, what are the general views of local traders upon the use of A Boards and their regulation?

<p><b>Braintree</b></p>	<p>As advised above, A Boards are tolerated within Town centres as it is acknowledged that there is an economic benefit to small businesses, A Boards on private forecourts are course permitted by virtue of Class 6 of the Deemed Consent provisions of the Regulations.</p>
<p><b>Brentwood</b></p>	<p>The evidence of A boards on the pavement indicates that some traders are in favour of their use. Others complain about them. This is why we need a clear policy.</p>
<p><b>Chelmsford</b></p>	<p>A-Boards have been on the agenda at many previous Town Centre Liaison Group meetings organised by Chelmsford Town Centre Management and are attended by town centre businesses and other representatives. The views of those at the meetings are mixed and Town Centre Management have always wanted to strike a balance between supporting businesses who benefit from the use of A-Boards, and still have a paramount duty to protect the safety of users of the High Street.</p> <p>In response to your letter, Town Centre Management has sent out surveys to town centre businesses regarding the use of A-Boards. 49 completed surveys were received back in time for your deadline:</p> <ul style="list-style-type: none"> <li>• 35 of those businesses use A-Boards to advertise their business, offers or events.</li> <li>• 32 businesses were not aware of any regulations regarding the display of A-Boards.</li> <li>• 6 businesses said they thought that A-Boards were only allowed to be displayed on their forecourt, or next to their shop front.</li> <li>• 50% of businesses said it was the decision of their Head Office to use A-Boards.</li> <li>• 24 businesses said it would have a negative impact and a reduction in custom if A-Boards were not allowed to be displayed. The remaining businesses were unsure of the impact.</li> <li>• 30 businesses said they would be interested in using alternative advertising options.</li> </ul>

	<p>Town Centre Management has noticed a significant increase in the use of A-Boards in the town centre and would like them to at least be regulated. Some businesses have multiple A-Boards several yards away from their business, which does not complement the appearance of the High Street and can be a hazard for pedestrians.</p> <p>Town Centre Management would be keen to investigate alternative advertising options for businesses on the High Street. As this is a Highway it would be need to be the decision of Essex County Council Highways.</p>
<b>Colchester</b>	Unable to comment
<b>Rochford</b>	It is not uncommon for traders to place A-boards on their own frontage. If the A-board is on the public highway, then we would tend to report to highways, and expect a decision to be taken on retention based on highway safety.
<b>Tendring</b>	Shopkeepers have not been surveyed on the use of 'A' boards, but it is considered many would consider the use of such advertisements essential in the current economic climate. The Council doubts many traders consider planning regulations prior to displaying 'a' boards.
<b>Uttlesford</b>	None have been expressed.

Question 7

**What is the District Council’s views upon the three draft Policy Practice options attached (Zero Tolerance, Licensed, and Localism)? What is the District Council’s view upon the proposal set out in the Localism Option in terms of exercising its planning and licensing functions?**

<p><b>Braintree</b></p>	<p><b>(i) Zero Tolerance</b>  As identified, this would not bring about a complete removal of A Boards due to the Class 6 deemed Consent provision (and therefore may be perceived by some traders as being unfair) although it would provide a clear method to deal with all perceived obstruction of the publicly maintainable highway. Would still not prevent some complaints from public re obstruction as they may still believe A Board to be on highway even though may subsequently be proved (after delay of at least 10 days ) to be on private land. Enforcement is however difficult due to evidential need to prove obstruction</p> <p><b>(ii) Licensing</b>  Whilst a clear procedure and policy criteria to deal with A Boards it is wholly reliant upon availability of resources. Still leaves the question of perceived obstructions which may in fact be on private frontages as indicated above.</p> <p><b>(iii) Localism</b>  As above but shifts the resource problem to the Local Authority.</p>
<p><b>Brentwood</b></p>	<p>Brentwood embraces “localism”, hence our strategy to bring forward a local policy.</p>
<p><b>Chelmsford</b></p>	<p>This would need more internal discussion as to which area precisely would be responsible for issuing licenses. There is logic however to these powers being delegated to the local planning authority as we do regulate advertisements in all other events.</p>
<p><b>Colchester</b></p>	<p>From a planning enforcement perspective:</p> <p>Now that central government wishes to clear street clutter, and the growing campaign from the mobility society to clear A boards and street furniture from the highway, I personally think that ECC have realised the enormity of this task in the way of</p>

	<p>resources, training, support, and implementation should you wish to achieve any kind of long term A board enforcement.</p> <p>The above activities should be a licensed activity in conjunction with a planning permission to allow the change of use of the highway and advertisement consent where appropriate.</p> <p>If ECC wish local authorities to take on this enforcement role on, then they would need to bank roll the resources shown in answer to Q3 on an annual basis.</p> <p>I also understand that there might be further complications in that ECC do not have up to date mapping of the maintainable Highway of the Borough/s and also that any data that they did have is with a third party?</p>
<b>Rochford</b>	<p>a) <b>Licensed Policy</b> - Bearing in mind the generous allowances for all sorts of advertisements on business premises, I don't see why the business needs of an area should result in the obstruction of the highway - mainly the public footpath in these cases. That having been said, it would be possible to contemplate a policy that accepted A boards in locations that did not obstruct the highway, not least for disabled people..</p> <p>b) <b>Localism Policy</b> – I don't see why it would not be possible to work a licencing arrangement through localism – there would need to be agreement about fees.</p> <p>c) <b>Zero Tolerance</b> – A somewhat draconian option given that A boards can be accommodated in some locations without issue. The important point is that the arrangements for licencing must be clear.</p>
<b>Tendring</b>	<p>The Council's planning service is of the opinion that the control of 'A' boards, in today's climate should be via the 'Licensing' option. This would permit appropriate signage in suitable locations whilst protecting the safety of pedestrians in others. It also provides guidelines on the format of advertisements that would be acceptable</p>
<b>Uttlesford</b>	<p>Your draft policies were not attached to your letter. However I can advise you that the Council do not have the resources for zero tolerance. With regard to the Localism Option, the</p>

	Council have yet to take a view.

## **Scrutiny Review on A Board Policy on the publicly maintainable highway.**

Briefing paper prepared on behalf of Paul Bird, Director of Highways and Transportation by Vicky Duff, Traffic and Highways Safety Manager

### **Background**

An Essex County Council policy on A Boards has been under discussion for some years now. The lack of a clearly defined County Council policy on the treatment of A-Boards is preventing some Borough and District Councils from taking enforcement action in their areas.

The fact that the County Council does not have a published policy is not a bar to enforcement where there is a clear case of obstruction to the public highway. However, prosecuting obstruction of the highway by items such as A-Boards or merchandise displays is notoriously difficult, and recent case law has shown courts favouring the defendant while acknowledging the legality of the prosecution argument.

Essex County Council is the Highway Authority in Essex, and has various powers and duties to maintain the safe passage of the public on the highway. These powers extend to the publicly maintainable highway only, which is not always the full extent of the available pedestrian space. The County Council cannot take action against obstructions on private land which is open to the public, such as private forecourts or commercially built shopping areas.

There are national planning and advertisement guidelines, which give powers to Planning Authorities to manage and control A-Boards that diverge from defined parameters. In Essex, the Planning Authority is not the County Council but the local Borough or District Council.

Mobility and access groups are lobbying for the removal of all A-Boards and similar obstructions, and for action to make town centres accessible to all highway users regardless of vision or mobility issues.

In the current economic climate, many small businesses see A-Boards as a simple and effective means of supporting their livelihood.

Any policy adopted by the County Council would have to be implemented across the highway network in Essex, and not just in high foot traffic, high focus areas. It would include local shop parades and countryside verges.

### **Legal Considerations**

There is little clarity to be found in the plethora of Highways legislation. It is almost certainly an offence to place A-boards on the footway by virtue of section 28 of the Town and Police Clauses Act 1847. This Act is not available to the County Council to use but to the Borough and District Councils. Sections 137, 143, 148 and 149 of the Highways Act 1980 relate to the depositing or placing of items within the highway, and give Essex County Council as a Highway Authority certain powers to exercise their control. Contra to this as a source of information it could be argued that A-Boards might be permitted under Part VIIA of the Highways Act 1980 as information features.

There appears to be no enabling power for A –Boards to be placed in the highway and, in order for them to gain acceptance and not to be classed as a nuisance covered by the provisions in the Highways Act 1980 mentioned above, a clear policy approved by the County Council is required setting out under what circumstances it is that A-Boards may be placed.

Three policy options were originally investigated following discussions with Essex Borough and District Councils as well as neighbouring County Councils. Three different approaches to the management of A Boards are described below:

- Zero tolerance
- Licensing
- Localism

### **Zero Tolerance**

Zero tolerance means that A-Boards would not be permitted to be placed on the highway in Essex.

This option recommends following the same procedure as other highway obstruction enforcement – a letter requesting removal by the owner, followed up by seizure of the item by County Council staff, and cost recovery.

Issues to consider:

- The County Council does not have the staff resource to undertake the significant enforcement that this option would create.
- A ban on A-Boards on the public highway will not result in the absence of A-Boards from town centres, as many areas are, despite appearances, privately owned.
- Enforcement procedures cannot begin until a highway boundary check has been carried out, which can take up to 10 working days and has a staff resource implication. This would make emergency removal for reasons of public safety problematic, as the Council would be acting without proof that the offending item was within Council jurisdiction.
- The Council would also require a robust defence for the presence on the highway of litter bins, CCTV masts, concrete planters, benches and street markets in the same area.

- Storage facilities for seized A-Boards would have to be identified and managed, with access for owners to reclaim their property.
- Payment collection and processing procedures would have to be set up with the associated revenue cost implications.
- The Council would need to resource an enforcement and collection team available to make regular visits. In high pedestrian traffic areas this would need to be daily.

## **Licensing**

Essex could operate a licensing process for the use of A-Boards on the Highway.

Issues to consider:

- The Council would need to resource an enforcement and collection team available to make regular visits across the County. In high pedestrian traffic areas this would need to be daily, and the financial resource required would be significant at a time of dwindling budgets.
- Essex County Council would be unable to regulate A-Boards on private land.
- Enforcement procedures cannot begin until a highway boundary check has been carried out, which can take up to 10 working days. This would make emergency removal for reasons of public safety problematic, as the Council would be acting without proof that the offending item was within Council jurisdiction.
- The Council would have to have robust evidence that the A Board constituted an obstruction to the highway that could not reasonably be avoided
- The Council would also require a robust defence for the presence on the highway of litter bins, CCTV masts, concrete planters, benches and street markets in the same area.
- License format and processing procedures would be needed, along with sufficient resource to operate the system.

## **Localism**

The third option 'localism' suggests a procedure whereby responsibility is devolved wholly to the planning and licensing functions of the Borough and District Councils.

The County Council would endorse a Policy setting out the criteria to be followed should an individual district authority decide that it wishes to facilitate the use of A-Boards within its area.

If an individual district authority did not wish to facilitate the use of A-Boards that authority would in the first instance use its legislative Planning powers to facilitate removal. This would not prevent the County Council from taking action against persistence offenders and it would support the Borough and District Councils through the expertise offered by its Enforcement Officers based at Trading Standards as part of the regulatory enforcement services. Borough and District Councils will be able to

investigate the use of licensing within their areas to ensure traders adhere to good practice.

Issues to consider:

- The Borough and District Councils have powers to regulate advertising on public highway and private land.
- Enforcement could take place immediately, once a local policy is agreed without the need for research into the highway boundary.
- The Borough and District Councils are responsible for matters such as fines for littering or dog fouling, and therefore generally have a regular presence within the main high footfall areas.
- The Borough and District Councils are in a much better position to understand and balance within their areas the business/trade needs and mobility group's requirements.
- The county would produce a policy that would identify the circumstances under which an A-Board may be placed on the highway,
- The County would support the Borough/District Councils in dealing with persistent offenders.
- This option enables determination at a local level taking account of local circumstances.

### **Current Position**

Several Borough/District Councils have pressed for clarification on the County Council's stance on A-Boards due to continuing pressure from mobility impairment groups and traders. The lack of a clear protocol is creating frustration where local measures have been agreed.

The following is an overview of the approaches that are proposed/ have been taken by various councils on the control of A Boards.

#### **Brentwood Borough Council**

Brentwood Borough Council has already produced in liaison with The Essex Design Initiative "Planning and Design Guidance on A-Boards and Hanging Signs for Brentwood Town Centre".

Brentwood in this document has taken the decision that hanging signs are preferable to the use of A-Boards. Any A-Boards that are approved will have to follow the strict guidelines as set out in the Planning and Design Guidance. Brentwood is, however, awaiting the decision of Essex County Council on its deliberations over A-Boards before formally adopting this document.

The following is a link to the Brentwood document: <http://www.the-edi.co.uk/brentwoodhighstreet.php>

### Southend on Sea Unitary Authority

The neighbouring authority of Southend on Sea has also introduced a Policy to control the number and quality of A-Boards that are placed on its public land/highway. This policy includes a voluntary code that all premises are asked to adhere to.

### Colchester Borough Council

Colchester Borough Council has initiated consultations as part of its public realm strategy. Although these are at an early stage the suggestion that a full ban on A boards was being considered provoked a strong debate in the local paper. Traders were concerned that a negative impact would be felt by their businesses at a time of great financial hardship. The Chairman of the campaign group Fair Access to Colchester was quoted as waiting for Essex County Council to introduce a county-wide policy on A-Boards, which would work for traders and people with disabilities.

### Uttlesford District Council

Uttlesford District Council is pro actively seeking authority from the County Council to deal with unauthorised advertising signs on the highway.

### Nottinghamshire County Council

Have produced a guide to strike a reasonable balance between the needs of traders, creating an ambience that makes shopping areas attractive and that is sensitive to the needs of users. (Localism)

### Cambridgeshire County Council

Cambridge City has adopted a Zero Tolerance approach so that advertising signs should not be permitted on the highway (2006).

Shop owners in Cambridge can only have an A-board if it is situated on private land and not on the highway, or pavement.

### Hertfordshire County Council

Non-Highway related signs may be placed on the highway under license or by Agreement. An application has to be made to the County Council for consent. (Licensing)

### Kent County Council

There is a licensing scheme in Maidstone to monitor and regulate the use of A-Boards

## **Conclusion**

Essex is a diverse county with Borough and District Council areas where very different socio-economic and geographic conditions exist. Localism would enable the local Borough/District Council to consider the local needs of its area, and to self determine the approach to be adopted by tailoring it to those needs.

If the decision is taken by a Borough or District Council to permit the use of A-Boards the County Council's Policy would have to be adhered to. The draft policy attached at the Annex to this briefing note would ensure that A Boards are appropriately placed so as to ensure a minimum clear zone for pedestrian and mobility vehicle use.

Anyone that places an item on the highway is potentially liable to any person who suffers an injury caused by that item. Therefore traders are advised to consider obtaining public liability indemnity insurance in the event of any claim.

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# DRAFT

## Essex County Council Policy for the Placement of A-Boards on the Highways

A-Boards should be no larger than the standard A1 size (637x1100x800 mm)

A minimum of 2 metres unobstructed footway width must be maintained between the edge of carriageway and the A-Board. In exceptional circumstances and only with the agreement of the Borough/District Council for the location and following discussions with the appropriate Access mobility groups a minimum clearance of 1.5 metres will be considered.

The A board should be positioned against the property to which it relates

Only one A-Board per business will be allowed

A-Boards in certain areas (conservation) will be at the discretion of the Borough/District Council

Sufficient public liability insurance should be in place

The A Board will not:-

- prevent access to bus stops, taxi ranks or other frontages
- prevent access to any service covers or apparatus
- be placed on or near to tactile paving or dropped kerbs
- obscure the visibility of highway users on or near a junction
- obscure any traffic signs or road markings

Draft September 2011