

REPORT TO: Environment and Urban Renewal Policy and Performance Board

DATE: 18 September 2019

REPORTING OFFICER: Strategic Director – Enterprise, Community and Resources

PORTFOLIO: Physical Environment

SUBJECT: Control of Advertisements

WARDS: All

1.0 PURPOSE OF THE REPORT

- 1.1 There are occasions when the placement of adverts, banners, and fly posting cause highway safety issues and can affect the amenity of an area. Powers are available under section 224 and 225 of the Town and Country Planning Act 1990, together with other legislation, to control such advertisements
- 1.2 The powers available are an effective means of controlling unauthorised advertisements and fly posting that can affect the amenity of an area. When taking regulatory action it is imperative that the Authority must always be prepared to follow up on enforcement action, including taking court action. In this way the service of enforcement notices remains a credible threat to achieve environmental improvements.
- 1.3 The purpose of this report is to appraise the Board of the available powers, so they remain up-to-date on the purposes and implications of taking enforcement action under these powers.

2.0 RECOMMENDATION: That the Board

- 1) identify priority areas for action; and**
- 2) consider the implications of the approach.**

3.0 SUPPORTING INFORMATION

- 3.1 For planning purposes, 'advertisement' is defined in section 336(1) of the Town and Country Planning Act 1990 (as amended) as:

“any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure

used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements”

- 3.2 There are 3 categories of advertisement consent:
- Those permitted without requiring either deemed or express consent from the local planning authority;
 - Those which have deemed consent;
 - Those which require the express consent of the local planning authority.
- 3.3 All advertisements, whether requiring consent or not, are subject to the standard conditions in Schedule 2 to the Regulations. These are:
- a) No advertisement is to be displayed without the permission of the owner of the site on which they are displayed (this includes the highway authority, if the sign is to be placed on highway land);
 - b) No advertisement is to be displayed which would obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport;
 - c) Any advertisement must be maintained in a condition that does not impair the visual amenity of the site;
 - d) Any advertisement hoarding or structure is to be kept in a condition which does not endanger the public; and
 - e) If an advertisement is required to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.
- 3.4 Anyone who displays an advertisement in contravention of the Regulations commits an offence. For example, by displaying an advert without the necessary consent, or without complying with the conditions attached to that consent. It is open to the local planning authority to bring a prosecution in the Magistrates’ Court for an offence under section 224 of the Town and Country Planning Act 1990. The penalty on conviction for the offence is at level 4 on the standard scale (current maximum £2,500) and in the case of a continuing offence a further daily fine of up to a maximum of one tenth of that amount (£250) until the contravention ends.
- 3.5 There are several provisions under which unauthorised advertisements can be controlled by local planning authorities. The principal mechanisms are in section 224 and section 225 of the Town and Country Planning Act 1990 (as amended). Local planning authorities have specific powers to deal with:
- illegal hoardings;
 - fly-posting;

- graffiti; and
 - unauthorised advertisements alongside highways.
- 3.6 Section 225A of the 1990 Act (as amended) allows local planning authorities to remove and dispose of any display structure – such as an advertisement hoarding – which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to a structure in a building to which the public have no right of access.
- 3.7 Before taking any action, the local planning authority must serve a ‘removal notice’ on the person responsible for the erection and maintenance of the structure, provided they can be identified. If not, the local planning authority must fix the removal notice to the structure or display it in the vicinity and serve a copy on the occupier of the land, if one is known, or if one can be identified. If the removal notice is not complied with, within the time allowed (at least 22 days beginning with the date of the notice), the authority may remove the structure and recover expenses reasonably incurred in doing so from anyone served with the removal notice.
- 3.8 There is a right to appeal to the Magistrates’ Court against a removal notice, both for a person on whom the notice was served (whether this is the person who appears responsible for the erection or maintenance of the display structure, or the occupier of the land on which a display structure is situated) and the owner or occupier of land upon whom no notice has been served.

Fly Posting

- 3.9 Local planning authorities can take action against persistent unauthorised advertisements on ‘surfaces’. Action can be taken against those responsible for fly-posting, the beneficiaries of fly-posting and the owners of surfaces that are the subject of fly-posting. Local planning authorities are able to recover their costs of removing fly-posting by direct action.
- 3.10 Section 225 of the 1990 Act enables a local planning authority to remove or obliterate any placard or poster displayed illegally in their area. Before this power can be exercised, advance written notice must be given to anyone who can be identified as the person responsible for the display, that:
- in the local planning authority’s opinion it is displayed illegally; and
 - the local planning authority intends to remove or obliterate it after the expiry of a period specified in the notice.
- 3.11 At least 2 clear days after the date when the notice is served must be allowed before a local planning authority proceeds to remove or obliterate the display. A local planning authority need not give notice where the placard or poster does not give the address of the person

displaying it and the local planning authority does not know that address, and is unable to ascertain the relevant address after making reasonable inquiry.

- 3.12 Local planning authorities may serve a community protection notice under Section 43 of the Anti-social Behaviour, Crime and Policing Act 2014, to require statutory undertakers and others responsible for street furniture and 'relevant surfaces' to remove fly-posters, and where street furniture and relevant surfaces are defaced by fly-posters in a manner that is detrimental to the amenity of the area or is offensive. If a community protection notice is not complied with, a local planning authority can remove fly-posters and reclaim the costs of doing so.
- 3.13 If the local planning authority decides to take action against the owner of a surface that is the subject of fly-posting, it may serve an 'action notice' under section 225C on the owner or occupier of the land where the surface is situated if they are known or can be discovered. If this is not possible after reasonable enquiry, it may fix the notice to the surface.
- 3.14 The action notice requires the owner or occupier to take any specified measures (provided these are reasonable) to prevent or reduce the frequency of the unauthorised advertisements on the surface concerned. At least 28 days must be allowed for action to be taken.
- 3.15 If action is not taken, the local planning authority may take the specified action itself and recover expenses reasonably incurred from the owner or occupier. If, however, damage is caused to land or chattels, compensation may be recovered by any person suffering the damage, but not if the damage was reasonably caused in carrying out the action.
- 3.16 Expenditure cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwelling house or forms part of a flat.

Advertisements alongside highways

- 3.17 Section 132 of the Highways Act 1980 enables the highway authority to remove unlawful advertisements such as pictures or signs attached to any trees, highway signs, structures or works in the highway.
- 3.18 Rural areas are often included in areas of special control, which means that advertisement hoardings alongside motorways, trunk roads and railways in these areas are prohibited. Advertisement hoardings in other areas require express consent before they can be lawfully displayed. Any advertisement, including any advertisement in the deemed consent classes, which does not comply with the conditions and limitations for its class also requires express consent.

- 3.19 Advertisements on vehicles or trailers parked in fields, on verges or in lay-bys require express consent. Only when the vehicle is used as a moving vehicle and is not used principally for the display of advertisements is any advertisement on it lawful without express consent. The site where the vehicle is parked for any length of time becomes a site for the display of advertisements. The 'site' can be regarded as all the land owned by the owner of the site, or the length of the highway in the local planning authority's area.
- 3.20 As there are road safety issues in displaying advertisements alongside motorways and other trunk roads, the relevant highway authority must be consulted on certain applications for express consent. The highway authority is unlikely to support any application for an advertisement which could distract drivers. The road safety and amenity issues raised by these advertisements mean that it is unlikely that express consent to display them would be given.

4.0 POLICY IMPLICATIONS

Use of Powers

- 4.1 The use of the powers to remove advertisements can have a beneficial impact on the look and appearance of the Borough. However, on occasion, the removal of advertisements can result in accusations of officers being 'anti-business'. However regulatory activity is focused on areas where multiple signs have been erected and are affecting the amenity of the area.

5.0 OTHER IMPLICATIONS

Financial Implications

- 5.1 Currently the costs of regulatory activity is met within existing budgets. However, where the Council steps in to undertake removal or resorts to court action, then costs can increase substantially. Regulatory work has to be prioritised to remain within set budgets.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

None identified

6.2 Employment, Learning and Skills in Halton

None identified

6.3 A Healthy Halton

None identified

6.4 A Safer Halton

Improvement of untidy sites can improve perceptions of safety within an area.

6.5 Halton's Environment and Regeneration

Regulatory activity is an effective tool to improve the appearance of an area and can help support regeneration.

7.0 RISK ANALYSIS

7.1 As with most Local Authority enforcement activity, there is a right of appeal for the person served to be able challenge the notices. This can delay the enforcement, increase costs, and may result in matters going before Magistrates.

7.2 There are powers for the Authority to carry out works in default, however the cost of carrying out these works must be met by the Authority in the first instance.

8.0 EQUALITY AND DIVERSITY ISSUES

None identified

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Town and Country Planning Act 1990	Municipal Building	Andrew Plant