

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	PLANNING COMMITTEE	24 MAY 2017	5
UNAUTHORISED ADVERTISING ENFORCEMENT			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

A number of local councillors have been concerned for some time about unauthorised advertising.

Advertising is controlled by specific regulations. Traditionally, these regulations are enforced when there is a complaint. This means that there is little objective overview of advertising enforcement. Prosecution of advertising offences is resource-intensive and often does not result in a significant sanction.

The report proposes a consultation exercise leading to the development of an action plan to target enforcement to the areas or types of advert that are regarded as most problematical. It also recommends that the council use alternatives to prosecution such as direct action and community protection notices with fixed penalties as more effective alternatives to prosecution.

RECOMMENDATIONS

1. Consult local people and businesses about what the council should do about unauthorised advertising, including the matters summarised in paragraph 17 of the report.
2. Report the results of the consultation to a future meeting of the committee.
3. Where appropriate, use direct action powers under the Town and Country Planning Act 1990 or community protection notices under the Anti-Social Behaviour Crime and Policing Act 2014 to deal with unauthorised advertising where informal engagement has proved impractical or ineffective.

SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	
Working with all partners (Vibrant Economy)	
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

BACKGROUND AND DESCRIPTION

1. Some members of the council have been concerned that there is too much unauthorised advertising in parts of the borough and that in some areas it detracts from the community work taking place to make locations look good for In Bloom and other awards. They feel that traditional approaches to enforcement have not been effective. Some of the advertising is attached to highway structures such as lamp posts. Lancashire County Council, as highway authority, give little priority to advertising enforcement, even where the advertising obstructs the highway. This report considers the scope of the problem and proposes some responses to it.

SCOPE OF THE PROBLEM

2. The display of advertisements is subject to a separate consent process within the planning system. An advertisement is unlawful if it requires, but does not have, consent under the Town and Country Planning (Control of Advertisements) Regulations 2007. Advertisements are controlled with reference to their effect on amenity and public safety only, so the regime is lighter touch than the system for obtaining planning permission for development.
3. The definition of “advertisement” is very wide. For planning purposes, ‘advertisement’ is defined in section 336(1) of the Town and Country Planning Act 1990 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.”

Some additional detail on the meaning of the term ‘advertisement’ is provided in the Regulations.

4. A comprehensive approach (that is, zero tolerance of all unlawful advertising) would be impossible, even if it were desirable.
5. The traditional approach is to only take action against unlawful advertising if a complaint is received from a member of the public, and, if informal warnings are not effective, to prosecute those responsible for the unlawful advert through the magistrates’ court. This traditional approach brings problems both at the instigation stage (deciding whether to take action) and at the determination stage (the final outcome of the process).
6. **Problems at the instigation stage:** Not acting unless there is a complaint from a third party leads to uncoordinated action. The fact that one person is motivated to complain about a particular advert does not mean that that advert is necessarily more damaging to amenity than other unlawful advertising. Nor does a lack of public complaint about a particular advert mean that it is not damaging to amenity or public safety. Relying on public complaints does not allow an objective view of the impact of an unlawful advert, or a cluster of unlawful advertising. Nor does it adequately safeguard against complaints which are motivated by commercial or other irrelevant considerations.
7. **Problems at the determination stage:** Prosecutions are resource-intensive. They must be prepared on the basis that the prosecuting authority will have to prove its case in court. The prosecutor cannot assume that the defendant will plead guilty. Prosecutions require meticulous preparation of evidence and representation in court by a solicitor or barrister. Witnesses, such as the planning enforcement officer, must be available to attend court and give evidence. This takes time and preparation, which in turn keeps those officers from other tasks.
8. Penalties for unauthorised advertising offences in magistrates’ courts are usually light or nominal. Magistrates spend much of their time dealing with crimes of violence and dishonesty. It is difficult to persuade them that displaying an unauthorised advert is a serious matter. Even if they plead guilty, defendants invariably mitigate by drawing attention to comparable unauthorised advertising which has been displayed without attracting enforcement action. It is very uncommon for an offence to be met with a substantial fine: conditional discharges or minimal fines are more usual.

AN ALTERNATIVE APPROACH

9. An alternative approach would look at targeted enforcement and non-court based disposal.
10. **Targeted enforcement:** Instead of being driven by complaints, enforcement would be driven by a hierarchy of priorities: or, to put it more simply, by hotspots. An action plan would set out where the need for enforcement was strongest. The action plan should be developed with the community and elected members, so that the priorities it identifies would command wide support. Priorities might be identified by types of advert (for example, A-boards), or by specific areas (for example, the Square), or by types of advert in specific areas (for example, A boards in the Square)¹. The narrower the focus, the more targeted the enforcement. The focus should be informed by the mischief which is sought to avoid (for example, damage to amenity by proliferation of signs, danger to pedestrians etc.).
11. Targeted enforcement would enable officers to give advance warning of formal action over the targeted area, explain why enforcement action is to be taken and justify why a particular advert is the subject of enforcement.
12. **Non-court based disposal:** Two alternatives to court-based disposal exist which avoid the cost, complexity and length of prosecutions. These are **Direct Action** to remove or obliterate the advert, and **Community Protection Notices**.
13. The local planning authority can take **Direct Action** pursuant to section 225 of the Town and Country Planning Act 1990, to remove or obliterate any placard or poster which is displayed in contravention of the regulations. The authority must give two days' notice of its intention to do so. Direct Action powers (with different notice requirements) also exist² in relation to structures used to display advertisements, walls or building persistently used to display advertisements and other surfaces visible from places to which the public have access.
14. **Community Protection Notices**, pursuant to sections 43 and 53 of the Anti-Social Behaviour Crime and Policing Act 2014, can be served on anyone whose behaviour has a detrimental effect on the quality of life of those in the locality, is of a persistent or continuing nature, and is unreasonable. This could, in appropriate circumstances, include unlawfully displaying an advert. A Community Protection Notice could require the person responsible to remove the offending advert. If a Community Protection Notice is breached (and has not been appealed), failure to take the action required by it (for example, remove unauthorised advertising) can result in the issue of a fixed penalty notice of £100.
15. Both of these alternatives to court-based disposal are speedier and less resource-intensive than prosecution, and are likely to be more effective. Of course, prosecution is always an option, and failure to pay a fixed penalty notice can be met by prosecution.

NEXT STEPS

16. Under the new approach, prioritisation of advertising enforcement should reflect community concerns. There therefore needs to be meaningful consultation with local people and businesses about unauthorised advertising. The consultation could cover:
 - Whether there is a significant concern about advertising
 - What types of advertising cause the most concern
 - Which places where advertising is present cause the most concern
 - What the effect of increased enforcement would be on businesses
 - Whether there is a wish to see more formal enforcement
17. Consultation would be mainly online, but other media could be employed as well. As businesses would be most affected by any enforcement activity, it will be particularly important to engage businesses, particularly

¹ The identity of the advertiser or the goods and services promoted by an advert are not relevant in terms of the regulations, so an action plan could not take account of those matters.

² Town and Country Planning act 1990, section 225A.

those that might be directly impacted, in the consultation exercise preferably using existing networks or business partnerships.

18. The results of the enforcement exercise will be reported back to a future meeting of the committee, with (if the consultation suggests it is appropriate) recommendations about the content of an action plan. The action plan would then be drafted and presented for consideration and adoption by another meeting of the committee.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report
Legal	The council has a power, but not a duty, to take action as outlined in the report to deal with unauthorised advertising.
Community Safety	None arising from this report
Human Rights and Equalities	Taking enforcement action against adverts may engage article 10 of the European Convention on Human Right (freedom of expression). The right protected by article 10 is a qualified right and public authorities can interfere with it if they can show that their action is lawful, necessary and proportionate in order (among other things) to protect public safety, prevent disorder or crime or protect health.
Sustainability and Environmental Impact	None arising from this report
Health & Safety and Risk Management	None arising from this report

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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		