



COUNTY COUNCIL

Cumbria Highways

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21 August 2006

Mr Clinton Boyce
Legal Services
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Dear Sir

**HIGHWAYS ACT SECTION 151
AUTHORISATION OF STREET CAFÉS ETC.**

Enclosed is a copy of the County Council's Employers Works Instruction No. 09/011 which deals with unauthorised obstructions in the Highway. Your attention is drawn to Sheet 8, Para 4.14 to 4.17..

Whilst Section 115 of the above Act empowers both District and County to authorise such obstructions, the enclosed EWI is written in such a way that only the District authorities would grant such authorisations, albeit after consultation with the County Council as highway authority.

This is intended to deny the opportunity for operators to play one authority off against the other and to ensure consistent standards within each District.

To avoid confusion, I propose to add the following text to the EWI as para 4.17:-

"For the sake of clarity, all licence applications under Section 115 should be dealt with by the relevant District Council who shall consult the County Council as highway authority before granting any such licence. The consent of the County Council shall not be unreasonably withheld".

A charge may be levied for the processing of any applications under Section 115 by the authority processing the application. I would appreciate your Authority's views on the desirability or otherwise of making such charges and also the level of this charge. Furthermore, the County Council would expect a portion of charges to cover the costs of any site inspections etc. needed. I would suggest a figure of £20 for the County Council per application.

It is my intention to re-issue this EWI as a countywide procedure, so would welcome your view on the proposed procedures. Once all the District's views are to hand, I will produce a final draft for approval by all seven authorities before issuing the final version.

Please let me have you comments before Friday 15 September.

Yours faithfully

John Robinson
Highways Network Engineer

cc: Barry Devlin, Legal Services





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SERVICE PROCEDURE

UNAUTHORISED SIGNS AND OTHER OBSTRUCTIONS IN THE HIGHWAY

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UNAUTHORISED SIGNS AND OTHER OBSTRUCTIONS IN THE HIGHWAY

1 A SUMMARY OF WHAT TO DO

- 1.1 If you find an unauthorised sign, or some other unauthorised obstruction placed in the highway so as to be a significant obstruction or danger or potential danger to highway users, then you should seek to remove it. If the only objection to the sign is the way it looks, let the Planning Authority sort it out, using its own powers, if it wants to.
- 1.2 If you can find the owners, explain the situation and ask them to remove it. If they refuse, or it re-appears in a place where it is still a significant obstruction or danger or potential danger to highway users, do whichever of the following is appropriate (Appendix A, Section 5 gives more guidance on the legal aspects):
 - 1 If it is a danger that should be removed without delay, such as an "A-board" dangerously sited in a footway or a sign likely to distract drivers' attention at any but the quietest of junctions, remove it. Seek further advice on recovering costs of removal from owners and/or disposing of it.
 - 2 If there is no immediate danger but it can be fairly easily moved, return it to its owner with a warning that replacement will result in its removal and possible legal action leading to a fine.
 - 3 If removal by the owner is desirable because it is more permanently fixed or a more substantial structure, ask Legal Services to issue a notice requiring the owner to remove it.
- 1.3 The ways in which a sign or obstruction can affect the safety and convenience of highway users include the following:
 - 1 Obstructing the visibility at junctions, bends etc.
 - 2 Obstructing free passage along the highway (including footways) by reducing the available width or height (this could particularly affect the safety of blind or partially-sighted people).
 - 3 Blocking the view of authorised traffic signs.
 - 4 Distraction and confusion of road users, especially drivers.
 - 5 Causing drivers to make dangerous last-minute manoeuvres.
 - 6 Construction or fixing which is structurally unsafe.
- 1.4 Offenders should be clearly told that what they are doing is illegal and that if any accident resulted from the presence of the unauthorised sign or obstruction they could be sued for damages by the injured party.

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- 1.5 Action should be considered when an unauthorised sign or object might cause damage to or interfere with the maintenance of the highway and infrastructure.
- 1.6 Action should always be taken to remove something attached to the Highway Authority's property in the highway in such a way as to damage it.
- 1.7 There are no powers to destroy signs and it would be unlawful to do so unless it was clear that the owner had abandoned a sign, for example by the expiry of adequate notice to come and collect it. Only sections 143 and 149 allow the recovery of the reasonable costs of the Highway Authority.
- 1.8 The organisers of short-term events should be reminded of the possibility of seeking permission to erect temporary direction signs under the Traffic Signs Regulations.

2 FURTHER INFORMATION AND GUIDANCE

- 2.1 The rest of this instruction contains more detailed information about the County Council's official policy and what legal powers are available and gives detailed advice about what to do and what is required in order to monitor implementation. It is arranged in the following appendix:-

Appendix A – Detailed Information and Guidance comprising

- 1 The Policy
- 2 What Signs and Obstacles the Policy covers
 - What is an obstruction?
 - Traffic Signs
 - Advertisements
 - Forecourts
- 3 Deciding when to act
 - What is "Significant"
- 4 What Legal Powers can you use
 - The Highways Act 1980
 - A way of giving Authorisation
 - Which Legal Power to use

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APPENDIX A

1 THE POLICY

1.1 On 25 March 1993 the Highways and Transportation Sub-Committee reaffirmed the Council's current policy, established on 31 October 1980, that:-

- action by the Highway Authority to secure the removal of unauthorised signs within the highway should be confined to those cases which, in the opinion of the County Surveyor and Bridgmaster, constitute a significant obstruction, hazard or potential hazard to users of the highway.
- any action to secure the removal of any other unauthorised sign (eg. on amenity grounds), whether within or outside the boundaries of the highway, be left to the Planning Authority to be dealt with as considered necessary under planning powers.

1.2 The stated policy only refers to "signs" but seeks to remove those which "constitute a significant obstruction". It can be assumed that the policy should also apply to other unauthorised objects in the highway, whether or not they be signs, unless they are already covered by some other policy or procedure.

1.3 Much of the impetus for the policy comes from Section 130 of the 1980 Highways Act which makes it the duty of the Highway Authority to assert and protect the rights of the public to the use of the highway, including any roadside waste which forms part of it, and to prevent the obstruction of the highway.

1.4 It should be noted that visual amenity is not a criterion under the present policy, although the County Council is obliged by Section 11 of the Countryside Act 1968 to have regard to the desirability of conserving the natural beauty and amenity of the countryside. On the other hand, Section 37 of the same Act requires having regard for the needs of agriculture and forestry and the social and economic interests of rural areas.

1.5 Neither is there any reference in the policy to something being attached to the Highway Authority's property in the highway in such a way as to damage it. Action should be taken in such circumstances regardless of whether a specific policy exists.

1.6 On 5 April 2005, Cabinet resolved that:-

- Obstructions will only be permitted to reduce the footway width below the guidelines set out in Inclusive Mobility (see 3.5 below) where the new structure is for road signing and lighting that is essential for safety purposes and where there is no practical alternative. In addition non-fixed floor mounted obstructions should abut the relevant property.
- Where obstructions not falling within the permitted guidelines are brought to the attention of the Highway Authority they will be removed.

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2 THE RELEVANT SIGNS AND OBSTRUCTIONS WHAT (AND WHERE) ARE THEY?

2.1 This guidance covers:

- signs advertising and/or giving directions to an event or place.
- goods displayed for sale.
- any other objects which have not been authorised under separate County Council procedures, such as those for skips, scaffolding, overhead bunting and seasonal decorations.

What is an obstruction?

2.2 Whether something is an obstruction will depend on the facts of each case. It may not be necessary to show that an obstruction has actually obstructed anything. A judgement in case law says "it is perfectly clear that anything which substantially prevents the public from having free access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction" (Chief Justice Lord Parker of Waddington, *Seekings v. Clarke* (1961)).

2.3 But there can be exceptions, one being with regard to the "de minimis" principle (*de minimis non curat lex* – the law is not concerned with trivia). A shop display projecting two feet six inches over a pavement sixteen feet wide and a display projecting eleven inches over a pavement seven feet nine inches wide were found by the courts to be unlawful obstructions which could not benefit from the *de minimis* principle. On the other hand, a rack of newspapers displayed by a newsagent, which projects only fractionally, was cited by the Court of Appeal as something to which *de minimis* could apply. As a guideline, no action should be taken against projections of 100mm or less.

Traffic Signs

2.4 Most signs in the highway are authorised by and in accordance with the Traffic Signs Regulations and General Directions 2002. These include temporary signs described in Section 6 Direction 53, for which there is a separate County Council procedure and signs to new housing developments referred to in Directions 13(3) and 38(2) and Diagram 2701.

2.5 Traffic mirrors in the highway are illegal obstructions unless specifically site-authorised by the Department for Transport. This control is considered necessary because their use can prove hazardous.

Advertisements

2.6 The enormous variety of signs with an advertising content are the concern of the Town and

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Country Planning (Control of Advertisements) Regulations 1992. There are many classes which may be displayed with deemed consent but all are covered by standard conditions which include:

- No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission (ie. the Highway Authority in the case of a highway).
- No advertisement shall be sited or displayed so as to obscure or hinder the ready interpretation of any road traffic sign or so as to otherwise render hazardous the use of any highway

2.7 Department of the Environment Circular No 5/92 gives advice about the above Regulations, including a reminder of the District Council's power under Section 225 of the 1990 Town and County Planning Act "to remove or obliterate any placard or poster", subject to giving written notice. Appendix B of the Circular contains comprehensive advice about circumstances where advertisements might cause danger to road users, including advertisements which "... invite drivers to turn, but are sited so close to the turning that there is not enough time to signal and turn safely".

2.8 If all else fails, the Highway Authority can secure the removal of direction signs on private land under the powers of Section 69 of the Road Traffic Regulation Act 1984 which provides:

- "The Traffic Authority may by notice in writing require the owner or occupier of any land on which there is an object or device (whether fixed or portable) for the guidance or direction of persons using the road to remove it".
- "If a person fails to comply with such a notice, the Traffic Authority may themselves effect the removal, doing as little damage as possible and the expenses incurred by them in doing so shall be recoverable by the from the person in default.....".

Section 71 empowers the Highway Authority to enter land in order to remove signs under Section 69.

2.9 An unauthorised sign in the highway may not actually be an obstruction, for example when a sign or notice is pasted or painted onto an existing surface. Different legal powers may apply in different cases, depending largely on the physical form of the sign or obstruction, in particular how portable or fixed it might be (see Section 5 on Legal Powers).

Forecourts

2.10 It is often debatable whether a forecourt which is not maintainable at public expense forms part of the highway. To avoid being drawn into contentious and time-consuming debate, objects on forecourts should be excluded from consideration unless they are a danger to the public.

3 DECIDING WHEN TO ACT

3.1 The policy is (briefly) to remove those unauthorised signs or objects which constitute a significant



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obstruction, hazard or potential hazard to highway users.

- 3.2 Action should also be considered when an unauthorised sign or object might cause damage to or interfere with the maintenance of the highway and its infrastructure.
- 3.3 In the great majority of cases it is necessary for staff to exercise professional judgement before deciding whether to act. This is unavoidable. There are so many variables to take into consideration in each particular case that it is not practicable to devise a "formula" approach to decision making. It is an art, not a science.

What is "Significant"

- 3.4 Anything placed in a highway verge close enough to the carriageway that it might cause or aggravate injuries to the road user, including cyclists, in the event of an accident, is a significant potential hazard. What the appropriate distance from the carriageway might be in each case is a matter for judgement.
- 3.5 **Department of Transport Guidance for Inclusive Mobility provides the following guidance:-**

Widths

2000mm under normal circumstances to allow two wheelchairs to pass.

1500mm should be regarded as the minimum in most circumstances allowing a wheelchair and walkers to pass.

1000mm should be the absolute minimum where there is an obstacle. The maximum restricted length should be 6m.

Heights

2300mm should be the minimum vertical clearance under normal circumstances.

2100mm minimum clearance is acceptable under a suspended sign.

- 3.6 Signs or obstructions which might distract road users are a potential hazard, depending on how powerful a distraction they are and what task the road user may be doing at the time. This too is a matter of judgement. It is arguable that some existing advertisements on bill boards and vehicles already go beyond what is reasonable and should not be regarded as a yardstick of acceptability
- 3.7 The nature and speed of traffic on a road are obviously factors which need to be considered. A sign that causes little concern about safety on a back lane could be a significant potential hazard on a high-speed inter-urban road. This aspect is reflected in the Department for Transport's firm stated policy of removing all unauthorised signs and other obstructions from its trunk roads and motorways.
- 3.8 Of course, practitioners must consider what resources are available. This implies the prioritisation



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and programming of action (although it should be urgent where there is a clear safety risk). If resources are too few for action to be universal, then it should at least be seen as consistent, logical and fair, for example by targeting problem areas in turn, or tackling the most serious hazards/obstructions before less serious ones.

- 3.9 Practioners should avoid being drawn into openly admitting that the County Council's policy is to "turn a blind eye" in cases that do not meet its criteria for removal action. Enquirers should simply be told that no unauthorised signs should be placed in the highway because doing so would be illegal and might cause the highway authority or planning authority to expend scarce resources on securing their removal.
- 3.10 If applying the other criteria still leaves you uncertain whether to act, then you should ask yourself the fundamental question "Which serves the public interest more, tolerating this or removing it?"
- 3.11 Not taking action because a limited budget has been spent on cases with a higher priority should never be allowed to be construed as condoning the offence.

4 WHAT LEGAL POWERS CAN YOU USE?

- 4.1 This is just a brief summary. Before taking any actions, practioners should refer to the wording of the actual legislation, to encyclopaedias such as Sweet & Maxwell, or to the Legal Services Unit for further advice as necessary.
- 4.2 Reference has already been made earlier to the Traffic Signs Regulations and General Directions 2002 and to the Town and Country Planning (Control of Advertisements) Regulations 1992. Their role is to control and authorise traffic signs and advertisements.
- 4.3 Other powers, such as Section 69 of the Road Traffic Regulation Act 1984, also mentioned earlier in respect of land off the highway, enable enforcement action to be taken. The main source of these is the Highways Act 1980.
- The Highways Act 1980**
- 4.4 The Act includes a reminder that common law is also available **Section 333** makes it clear that the various provisions of the Act do not affect the Highway Authority's common law right to remove an obstruction from the highway or otherwise abate a nuisance.
- 4.5 **Section 130** makes it the duty of the Highway Authority to assert and protect the rights of the public to use and enjoy the highways for which it is responsible.
- 4.6 **Section 132** makes it an offence to paint, inscribe or affix any picture, letter, sign or other mark on the surface of a highway or on any tree, structure or works in the highway.
- 4.7 **Section 137** makes it an offence to obstruct the free passage along a highway.
- 4.8 **Section 143** empowers the Highway Authority to require the removal of unauthorised structures

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within the highway.

- 4.9 **Section 148** makes it an offence to deposit things within the highway without authority. **Section 149** deals with their removal.
- 4.10 **Section 152** empowers both the local authority and the Highway Authority to serve notice requiring the removal of projections (including signs etc) from buildings, which obstruct safe and convenient passage along a street.
- 4.11 **Section 154** deals in a broadly similar way with obstruction or danger caused by an overhanging hedge, tree or shrub.
- 4.12 **Section 161** makes it an offence for a person to deposit anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered.
- 4.13 **Section 178** prohibits the fixing or placing of rails, beams, wire etc. (which includes banners and projection from buildings) over, along or across the highway without the Highway Authority's permission.

A Way of giving Authorisation

- 4.14 The Local Government (Miscellaneous Provisions) Act 1982 Schedule 5 introduced part V11A into the Highways Act 1980. The new sections 115A to K deal with the provision of amenities on parts of the highway where vehicular traffic is prohibited, including pedestrian areas and footways.
- 4.15 There are several places in the County where goods are displayed for sale on the footway, particularly outside florists or greengrocers and have been for decades without lawful authority. Retailers argue that they trade in highly perishable goods which customers expect to see displayed outside, flowers last longer when kept outdoors, trade can drop considerably when displays are removed from the highway.
- 4.16 Such displays are good for the local economy and can enhance the vitality and interest of the street scene, as can furniture placed in pedestrian areas for the consumption of food and drink outside cafes and public houses. Provided they are attractive and do not endanger or inconvenience pedestrians or impede the movement of vehicles there are benefits in the District Council authorising them by issuing licences under Section 115E.
- 4.17 Power to grant the Highway Authority's consent and impose requirements in connection with these matters is delegated to the Director of Client Services. Suggested guidelines for granting consent to Section 115E licences are that:
 - both Councils involved be indemnified by the licensee against claims.
 - the remaining usable footway width must be at least 2.5m where peak pedestrian flow reaches 500 per hour and at least 1.8m elsewhere.
 - the appropriate maximum projecting width of each display of goods for sale be decided by officers, with a desirable maximum of 0.6m and an absolute maximum of 1.0m
 - the display be placed at the rear of the footway.



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- a guardrail of approved design, identifiable by pedestrians especially the partially sighted, be placed at each end of the display.

Which Legal Power is Appropriate

4.18 Clearly there are a variety of powers that can be used. For example, the Highways Act 1980 can be used to remove "A-boards" under Sections 132 (if "affixed" to something; no need for notice), 143 (notice required), 149 (remove forthwith if a danger); Section 333 reminds us that the common law can be used. There is conflict between the need for expediency and the need to avoid accusations of unfairness.

4.19 *The advice of this document is:*

- *use Section 149 for immediate removal, with oral warning to offender where possible, if the thing constitutes a danger, such as an "A-board" in a footway or a sign likely to distract drivers' attention at a junction.*
- *use Section 132, with oral or written notification as appropriate, to remove immediately graffiti or a sign fixed to something in the highway which can be fairly easily removed.*
- *use Section 143 for free-standing signs and where removal by the owner is desirable because it is more permanently fixed or a more substantial structure.*
- *use common law power to remove a nuisance (including a free-standing "A-board") if neither of the above is appropriate or sufficiently expeditious.*
- *encourage district councils to licence obstructions using Section 115E if they meet the criteria and serve the public interest.*

4.20 A failure to notify because an offender cannot be identified, as in many cases of "fly posting", should not be a reason for inaction.