

**SUBJECT: MANAGING OBSTRUCTIONS IN THE HIGHWAY – REVIEW OF THE POLICY**

**MEETING: Strong Communities Select Committee**

**DATE: 30<sup>th</sup> July 2018**

**DIVISION/WARDS AFFECTED: All**

**NON-PUBLICATION: Not applicable**

## **1. PURPOSE:**

After extensive consultation with members, local councils, chambers of commerce and community groups such as CAIR and visually impaired, in January 2018 the Cabinet approved a new policy to manage obstructions in the highway. As a result of the consultation exercise and scrutiny by this select committee Cabinet approved the withdrawal of any charge for the display of A boards and reduced the charge to businesses for the use of tables, chairs and displays in the public highway.

The policy is being implemented throughout the county but opposition from the business community to some aspects of the policy has been encountered. This includes:

- a) from businesses seeking to occupy an area of the public highway greater than the maximum 18 sq metres allowed in the existing policy.
- b) from businesses complaining that the charge for displays is unreasonable particularly for small businesses and at a time when the retail industry is under increasing financial pressure.
- c) That the policy of permitting individual businesses to display A boards, displays, tables and chairs etc. should be withdrawn completely and a 'common sense' approach be adopted.

This report summarises the background to the opposition and asks members to consider what amendments to the existing policy they would wish to recommend to Cabinet.

## **2. RECOMMENDATIONS:**

- 2.1 That this committee recommends to Cabinet that charges for permits for displays, tables, chairs be withdrawn but that charges arising from non-compliance with the permit scheme (as detailed within the existing policy) remain.
- 2.2 That this committee recommends to Cabinet that additional criteria be added to the existing policy to allow businesses to occupy an area greater than 18 sq metres where this can be achieved without compromising safety or causing an unacceptable obstruction in the highway.
- 2.3 That permits for areas greater than 18 sq metres are to be based upon additional multiples of 6 sq metres with an additional charge being levied in accordance with the charges already approved within the existing policy. Subject to any decisions surrounding charging for displays, tables, chairs etc. (ref 2.1 above)

- 2.4 That any request from a business to occupy an area greater than 18 sq metres be approved by the County Highways Manager or Head of Service in consultation with the local member and Cabinet Member for Operations.
- 2.5 That this committee recommends to Cabinet that the permit scheme for individual premises as described within the existing policy remain in place.(the withdrawal of the scheme leaving businesses with no authority to place any item in the public highway and leaving the authority with no agreement upon which to monitor compliance).

### 3. KEY ISSUES:

- 3.1 In September 2017 the Strong Communities Select Committee received a report proposing that the policy for obstructions in the highway be amended and in particular that the charges be reviewed to reflect the Council's acknowledgement of increased financial burden upon businesses arising from the increase in business rates.

Below is a link to the September 2017 Select Committee agenda, reports and minutes:

<http://mcc-modgov/ieListDocuments.aspx?CId=139&MId=2288>

The recommendations from the Select Committee subsequently went to the Cabinet meeting in January 2018 at which it was approved that charges for A boards be withdrawn and proposed charges for displays, tables, chairs be halved with a further review of the policy in twelve months time.

Below is a link to the January 2018 Cabinet meeting with agenda, reports and minutes:

<http://mcc-modgov/ieListDocuments.aspx?CId=144&MId=2176>

- 3.2 The policy has initially been introduced in the South of the county with some adverse comments but with permits being agreed with various businesses.

However when the scheme was introduced in Abergavenny representation was made by members and directly by businesses.

In the first instance representation was to relax the policy to allow businesses to occupy an area greater than 18 sq metres. This was particularly in relation to St John's Square, Abergavenny.

The square is a relatively large public open space where members of the public have enjoyed food and drink for many years. Currently at least one business has placed tables and chairs on an area larger than 18 square metres so strict adherence to the new policy would require that some of the tables and chairs be removed.

Representation suggests that removing the chairs and tables would be to the detriment of the general ambience prevalent in the square so officers have examined how the policy might be amended to accommodate businesses occupying an area greater than 18 square metres.

The recommendations (2.2, 2.3 and 2.4) are a simple extension of the existing policy working in multiples of 6 square metres should charges remain over and above the areas and charges reflected in the current policy or an agreement of a specific area (not necessarily in multiples of 6 sq m) should charges be withdrawn.

It should be noted that whilst this proposal to relax the maximum area is as a result of representation from a business in St Johns Square, Abergavenny any such amendment to the policy would apply county wide so applications may be forthcoming from businesses elsewhere in Abergavenny or the county more generally. As a result the policy becomes 'open ended' within the context of how much of the public highway and business may occupy. It is considered onerous for the highway inspector to negotiate in isolation such an agreement for areas above 18 sq metres so it is proposed that the County Highway Manager or Head of Service, in consultation with the Cabinet member and local member, agree the permit.

- 3.3 Since then at a wider level representation have been received from various groups within the towns complaining that the charges associated with the issuing of permits for displays, tables, chairs, etc. places an unreasonable financial burden upon businesses, in particular smaller independent businesses, that are finding trade difficult in the current financial climate.

The representation was initially organised through social media and in particular by traders in Church Street Monmouth. However the campaign has become wider and representation has also been made on behalf of businesses in other towns within the county.

The policy requires officers to work with individual businesses so the administrative burden is greater than the previous 'blanket policy' scheme. The charge was included within the current policy to offer a contribution towards the additional demand upon staff resources. It is estimated it will generate approximately £2,600 per annum so should the charge be withdrawn it is not a major impact upon the highways budget overall and the loss would be absorbed in the wider highways budget.

- 3.4 Finally there were suggestions that the scheme should be withdrawn completely and a common sense approach adopted. Although the concept was not expanded upon it would seem reasonable to interpret this as no permit scheme and officers simply responding to complaints. In terms of staff resource this has much to commend it but it does mean that what is common sense or reasonable does rely upon the opinion of individual officers, members and businesses with no structure to any scheme.

With no individual permit system in place businesses will not be authorised by the highway authority (MCC) to place an item in the highway. The concept behind the permit is to obviate the Council and business of the need to maintain the highway clear of any obstructions (Highways Act 1980) which, in the absence of a policy, would take

precedence so without such a policy both the business and council could be construed as acting ultra vires. Although accidents (and potential claims) are few and far between the lack of any policy to rely upon may make insurance null and void (enquiries to date have not offered a clear opinion on this).

#### **4. OPTIONS APPRAISAL**

The report and recommendations concentrate on the major themes of feedback arising from correspondence, from members and from the public meetings.

The recommendations address these matters (charge, area and withdrawal of scheme in total) and provide options that members may wish to consider.

#### **5. EVALUATION CRITERIA**

Evaluation will depend upon the policy adopted but the major test of compliance will be the number of businesses that either contravene the policy or number of complaints in the event of the policy and permit scheme being withdrawn.

Officers will monitor this on an ongoing basis bringing cases of enforcement to the attention of the County Highways Manager. Where agreement cannot be achieved the matter will be highlighted to the head of service, cabinet member and local member.

#### **6. REASONS:**

The report and recommendations are as a result of representation from members, businesses and members of the public.

#### **7. RESOURCE IMPLICATIONS:**

Depends upon the recommendations from the scrutiny committee and decisions of cabinet but the withdrawal of charges would reduce income by an estimated £2,600 per annum.

#### **WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING):**

As provided to Cabinet in January 2018, link below:

<https://democracy.monmouthshire.gov.uk/ieListDocuments.aspx?CId=144&MId=2176&Ver=4>

#### **8. CONSULTEES:**

Public meetings held in Monmouth and Abergavenny  
Correspondence from other interested bodies

APPENDIX 1 PROVIDES A SUMMARY OF FEEDBACK FROM THE PUBLIC MEETINGS AND OTHER CORRESPONDENCE FROM INTERESTED BODIES

**9. BACKGROUND PAPERS:**

Reports to Strong Communities Select Committee and Cabinet referenced in the report above.

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