

MANAGEMENT OF COMMERCIAL OBSTRUCTION ON THE PUBLIC HIGHWAY

APPENDIX 1 part 1

MONMOUTHSHIRE COUNTY COUNCIL

MANAGEMENT OF COMMERCIAL OBSTRUCTION ON THE PUBLIC HIGHWAY

1. Introduction

1.1 Monmouthshire County Council has a statutory obligation to provide 'unhindered access to the Highways', while this Duty needs to be managed it currently uses valuable Council resources to provide the service of approval, of advice and of enforcement. Unfortunately this service is not consistent throughout Monmouthshire. We currently licence and charge scaffold and skip hire companies for the use of the Highway space. This policy seeks to bring consistency, safety and clarity in this area.

1.2. What is Commercial obstruction of the Public Highway?

Commercial obstruction of the Public Highway can be defined as an obstruction created by the placement of an object on the public Highway, for the purpose of private gain, without consent. Commercial obstruction of the Public Highway can be divided into a number of categories –

- (i) Flyposting. Installing, usually short time, advertising on Highway Furniture without permission.
- (ii) 'A' Frames, installing, usually long time, advertising on the Public Highway for adjacent Businesses without permission.
- (iii) Table and Chairs. Can be seasonal, short term or long term placement of furniture on the Public Highway for the benefit of adjacent Businesses without permission.
- (iv) Ad-hoc Furniture. Can be seasonal, short term or long term placement of plants, sale items and sale rails on the Public Highway for the benefit of adjacent Businesses without permission.
- (v) Static Furniture. Usually a permanent feature such as a memorial bench or memorial tree for the benefit of the community and normally placed with permission.
- (vi) Verge Sponsorship. A new provision whereby Businesses can advertise from a static sign location, installed by Monmouthshire County Council, for business advertising. Dealt with under the Static Advertising Policy approved in 2015.

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1.3 The problems associated with Commercial obstruction of the Public Highway?

Apart from being illegal, Commercial obstruction of the Public Highway is also unfair on those companies who choose to trade legitimately. It also puts an additional cost on the Authority who are required to manage the Highway.

Commercial obstruction of the Public Highway places unnecessary strain and may pose additional risk to all users of the Public Highway, especially those who may have an additional need for unhindered access.

Monmouthshire County Council may be placed at risk of third party claims of personal injury, should an incident arise and Monmouthshire County Council has not acted upon its Duty of Care. Monmouthshire have to manage a robust policy in a way that limits risk and does not become burdensome.

1.4 Legislation

- (i) Under section 130 of the Highway Act 1980 (1) it is the Duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of the it.
- (ii) Under section 132 of the Highway Act 1980 it is an offence for any person to paint, inscribe or affix any picture, letter, or sign on the surface of a Highway, any tree, or structure without the consent of the Highway Authority.
- (iii) Under section 149 of the Highway Act 1980 (1) if anything is so deposited on a highway as to constitute a nuisance, the highway authority for the highway may by notice require the person who deposited it there to remove it forthwith.....
- (iv) Under section 149 of the Highway Act 1980 (2) if the highway authority for any highway have reasonable grounds for considering –
 - a. That anything unlawfully deposited on the highway constitutes a danger.....to the users of the highway, and
 - b. That the thing in question ought to be removed without the delay involved in giving notice.....Under this section,
the authority may remove the thing forthwith
- (v) Under section 50 of the New Roads and Street Works Act 1991.(1) The street authority may require the payment of—
 - (a)a reasonable fee in respect of legal or other expenses incurred in connection with the grant of a street works licence, and
 - (b)an annual fee of a reasonable amount for administering the licence;

and any such fee is recoverable from the licensee.

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2. Methods of Prevention

The Council aims to prevent infringement, and so protect legitimate Business, by enforcing the removal of any Commercial obstruction of the Public Highway that is placed without lawful authority or excuse.

Those activities listed as i to vii in section 1.2. above, will be licenced as this process and the Policy relating to them, those with no licence will be removed while following the enforcement process.

2.1 Highways activity

The Authority's Highways division has two existing policies and one guidance note that cover their activities around controlling fly posters and advertising on their property. These are –

- a. POLICY : 'Control of Goods Displayed on the Public Highway' policy, adopted and effective from 1 April 2002. This covers aspects such as displaying of goods and advertising hoardings on public footways. The intention is to ensure a consistent approach, to ensure Highways Officers are clear when endeavouring to determine whether an obstruction is acceptable or not. This policy covers issues such as obstruction, for example where 'A boards' may cause an obstacle for people with disabilities (including the visually impaired) and people with pushchairs to negotiate. There is also reference here to the Council not adopting a rigid ban on street advertising. The policy refers to 'trader's livelihoods could be damaged by the imposition of a rigid ban. Some displays are considered to add colour and vibrancy to the street scene of our towns and are an accepted component of some retail businesses'.

It should be noted the policy was agreed following extensive consultation with the Town Councils covering Abergavenny, Monmouth, Chepstow, Caldicot and Usk, their respective Chambers of Commerce and CAIR (Monmouthshire Disablement association). Each trader potentially affected by the policy received a letter and background information prior to 1 April 2002.

- b. POLICY : 'Tourism signing' policy, adopted and effective from 19 May 2006. This policy sets about making it easier for visitors to find facilities and attractions, thereby enhancing the local economy,. notably in the run up to the Ryder Cup in 2010. It encourages the removal of illegal and shabby signs, through a grant scheme to replace with better standard and legal signage. It also encourages the removal of too many signs in certain locations.

Consultees included 260 tourism businesses across the County, all Community and Town Councils, and the Monmouthshire Tourism Alliance.

- c. GUIDANCE : control of goods displayed on the Highway. A board Guidance. The Council introduced guidance to control the placement of goods and advertising hoardings on town pavements. It recognises that a limited amount of street advertising and display gives colour and vibrancy to the street scene and adds to the character and atmosphere of our towns and villages, but it also has a statutory duty under the Highways Act (section 149) to maintain the footways primarily for the unhindered passage of pedestrians. In an effort to acknowledge these conflicting interests the Council has adopted a

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guidance to allow traders to display goods and advertising hoardings on street footways on the understanding that they comply with stipulated criteria

Highway undertake regular, low level, enforcement against those who obstruct the public highway for Commercial benefit. This would typically be objects projecting too far into a pavement or tables and chairs obstructing the pavement, and preventing the 'the use and enjoyment of a highway'. This enforcement is carried out under the Highway Act 1980 section 149, it currently exceeds 80 occasions a year and continues to be a drain on resources.

3. Our Approach

- 3.1 This Authority recognises and supports the need and indeed the desire of Business to use the public Highway as opportunity to increase revenue through sales and advertising. However the Authority must adopt and manage a robust policy to ensure that the public and the Authority have adequate safeguards. This policy would cover the various occasions when a Business wants to use the Public Highway for reason of benefit to that company. We currently licence and charge scaffold and skip hire companies for use of the Highway space. This review seeks to bring a consistency to the policy, both within MCC processes and the wider Local Authority community.
- 3.2 The Authority will seek to licence those Business', companies, Charities or individuals who seek to take advantage of this policy by placing an object for their gain or purpose on the Public Highway. These licences will be considered in the following processes
 - a. A ' FRAMES : An advertising board displayed on a pavement outside business
 - b. FLYPOSTER : An advert displayed on highway usually away from business
 - c. COMMUNITY ACTIVITIES : Memorial benches planting areas notice boards & pitch booths
 - d. COMMERCIAL ACTIVITIES : Café tables etc 'Sale rails' 'Planters' or adhoc spaces
- 3.3 This Authority recognises the need for some obstructions, for example for village fetes, charitable events, 'Give Blood', temporary road safety awareness signs, etc. but also the desire to increase the vibrancy of the street scene through 'alfresco opportunities', sales pitches, memorial provision or advertising. It does not therefore seek a 'zero tolerance' approach, recognising the difficulties this would present to businesses, charitable groups, statutory bodies and others. To provide guidance to the public, businesses, charities and other event organisers, a leaflet has been produced. A copy of the leaflet is provided as Attachment 5 at the end of this policy document.
- 3.4 Any complaints / enquires regarding Commercial Obstruction on the Highway will in the first instance be recorded at our One Stop Shops. A 'process map' outlining the procedure for dealing with Commercial Obstruction on the Highway is provided in Attachment 1. Staff at the OSS's will be updated to reflect recent

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changes in both legislation and personnel (notably in Highways). Highways would be the first point of reference for any Commercial Obstruction on the Highway complaints, referring to colleagues in other teams where the situation demands – as outlined in Section 2 above. The 'one point of reference' will allow the Authority to measure numbers of complaints, any trends, and our effectiveness.

3.5 It is the view of Officers in Highways, Planning and Environmental Health, that they deal with their elements of existing legislation, due to professional and competency issues. Thus Highway Engineers will determine compliance with the Highways Act provisions, Planning with Town & Country Planning Act etc. However, that does not preclude better joint working, with improved communication between the three teams. So, for example, Environmental Health have two Environmental Wardens who, if instructed, can remove / report infringements while out on the district. Similarly they could contact Planning for any breaches they see during their routine activities. It is the intention to provide a quicker response to infringement.

3.6 Businesses or organisers benefiting from unapproved Commercial Obstructions will be warned of the consequences by letter. Repeat offenders will be referred to our Legal Services Section by a Planning Enforcement officer, with a view to prosecute.

Our staged approach to action will be by way of standard letters. In appropriate circumstances, names and addresses will be traced, but it must be noted that companies are aware that it can be difficult to trace a 'responsible' person or company when they display limited information.

3.7 Highways staff, in the interests of clarity, will adopt the following prescribed approach:

Permitted Obstruction in the Highway -

All local businesses, organisations, national or local charities or individuals can with approval participate in this policy providing their activities :

- do not cause offence
- do not cause a traffic or pedestrian hazard or safety issue in any way
- do not damage hardware by their presence
- are of presentable quality and not excessive in number
- are present in an agreed location
- are removed by the organisations concerned when required by an Officer of this Authority, an Officer of the Emergency services or an Officer of the Statutory undertakers who requires access.
- Are licensed on all occasions and that that licence is displayed, where required at the location
- Meet the general list of criteria, as noted in licence, standard permission but may change with local conditions for the activity that they are undertaking
- All fees are paid in relation to the application and those fees are applicable to the period licenced. These fees will be in line with the actual Licence type sought and the criteria relating to each application.
- The fees are outlined in the Policy for each process.
- These fees may change from time to time, as agreed by Cabinet members, under the relevant approval process.

Approved Organisations

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Approved organisations, determined by the Highways Section, shall have, but not be limited to the following

Be in possession of an up to date, and applicable licence, with all monies paid, or arrangements made to pay all fees in connection with the application.

Third party public liability insurance, of a value current to time and duration of application

Applicants may be expected to demonstrate that they have no other reasonable way of undertaking their business. Regard will also be made to the 'purpose when determining applications, for example advertising near to the premises of a similar business may not be permitted or permission for alfresco arrangements when an adjacent business has already made arrangements and further development will, at the discretion of the Authority, cause a greater risk will not be permitted High impact events may require special consideration

The following organisations are expressly not permitted to erect signs:

Those not in possession of an up to date, and applicable licence, with all monies paid, or arrangements made to pay all fees in connection with the application.

Those without suitable third party public liability insurance of a value current to time and duration of application

Those without public liability which do not have the full support of the Authority or local council, their liability would be encompassed by the Authority

Party political organisations

- 3.8 Approved organisations who fail to observe the Council's conditions may have their permit withdrawn and may risk prosecution.

4. Outcomes

- 4.1 The outcome sought is threefold :-

1. to ensure the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway, by consistent licencing, engagement and enforcement.
2. to protect Monmouthshire County Council and its stakeholders from the expense relating to failures to manage the unhindered access to the highway
3. to ensure a quick and effective response to illegal obstructions. By consistent recording of incidents, working together better with early intervention, problems associated with Commercial Obstructions will be reduced.

- 4.2 Officers involved with the policy will ensure all relevant Officers, including One Stop Shop staff, are aware of the content of this policy and monitor compliances, to update their procedures and provide some training.

- 4.3 The policy will be reviewed after 12 months to determine whether it assists in reducing conflicts and achieving its aims in Monmouthshire. Reviewed every 3 years after.

5. Report Contributors

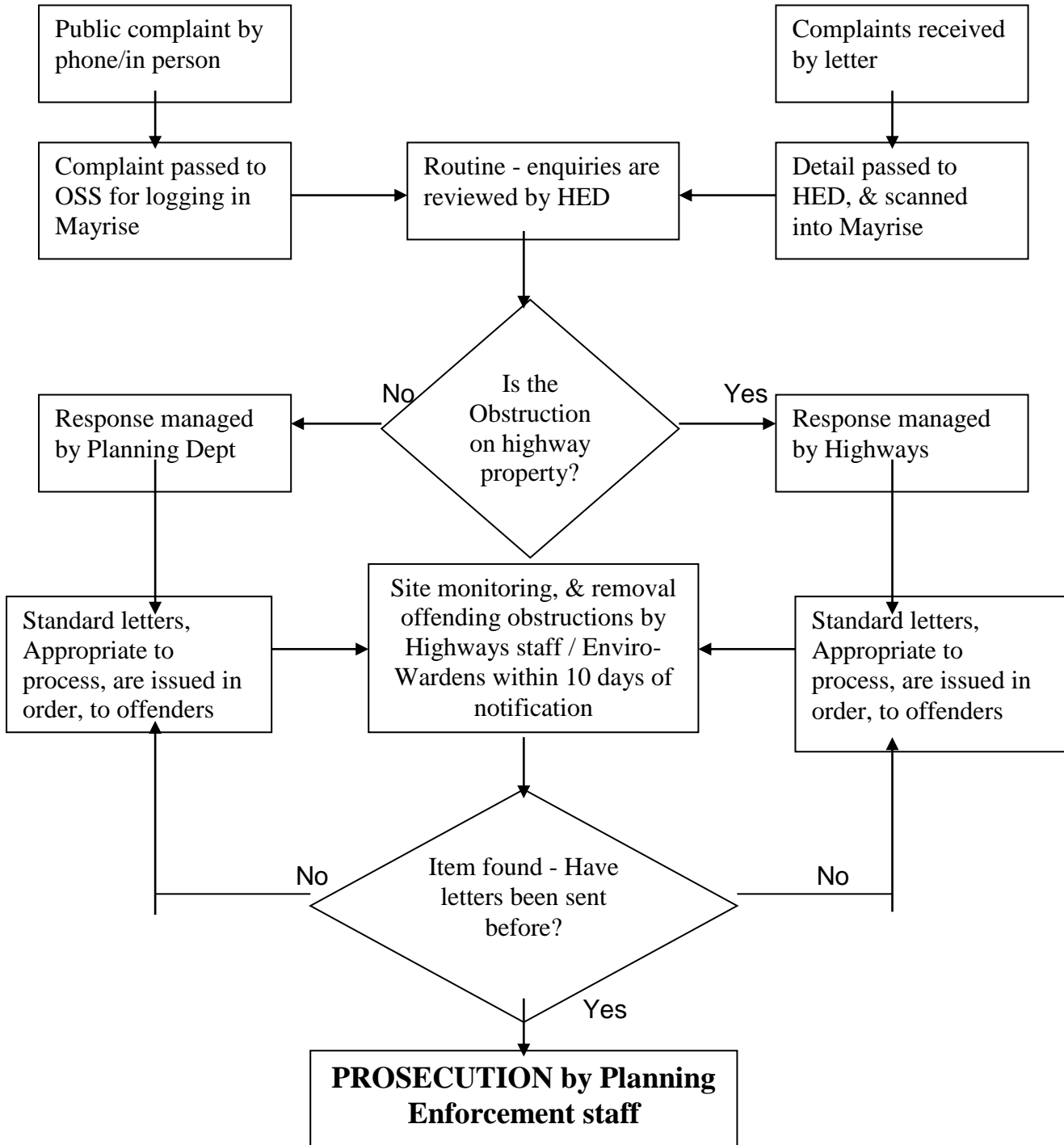
6. Report Authors –

Steve lane
Highway Manager
Highways Operations

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Attachment 1
Monmouthshire County Council
Highways Operations

Process Commercial Obstruction in the Carriageway complaints



Notes:

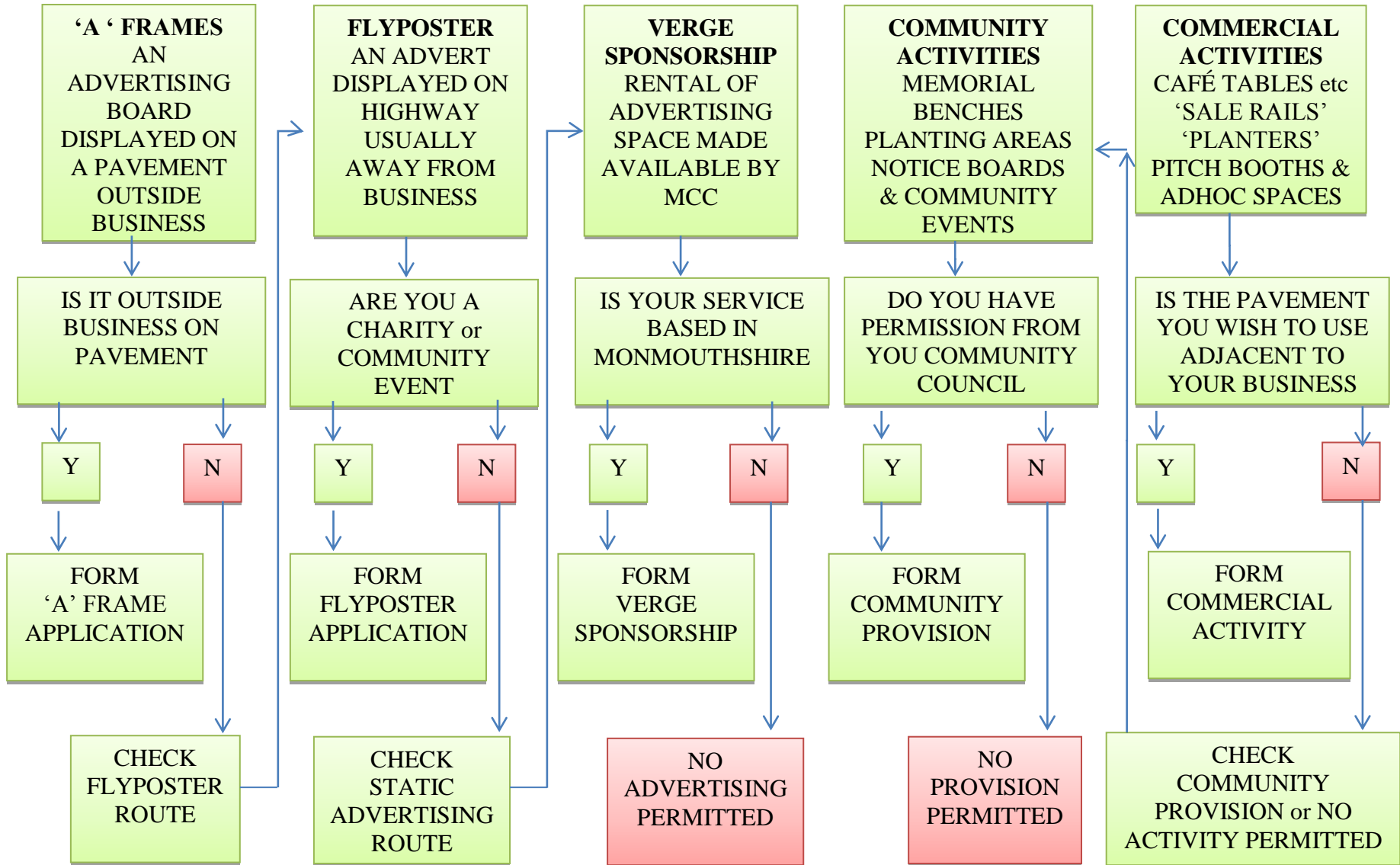
Mayrise = Highways enquiry system

HED = Highways Enquiry Desk

OSS = One Stop Shop

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1:1 : NEW OVERALL FLOW



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