



Report to Planning Committee 6 July 2023

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Report Summary	
Report Title	Update to Planning Enforcement Plan (PEP) to outline the approach to the enforcement of advertisements
Purpose of Report	Set out how planning enforcement will proactively approach the display and enforcement of illegal advertisements within the District.
Recommendations	<p>The report seeks</p> <ul style="list-style-type: none"> (a) endorsement from Planning Committee for the proposed updates to the Planning Enforcement Plan relating to advertisements; (b) for this and any amendments recommended to be forwarded to the Portfolio Holder for Economic Development and Visitors for adoption. <p>The PEP contributes toward assisting with:</p> <ul style="list-style-type: none"> • Continuing to maintain the high standard of cleanliness and appearance of the local environment; • Enhancing and protecting the district’s natural environment

1.0 Background

Following national guidance, a [Planning Enforcement Plan](#) (PEP) was produced and adopted in September 2020.

The PEP aims to give Members and the general public clearer understanding of how the Council will undertake the role of enforcing planning control and details how we manage enforcement proactively and in a way that is appropriate within the District. The plan sets out how we:

- monitor the implementation of planning permissions
- investigate alleged cases of unauthorised development
- prioritise alleged breaches of planning control
- take action where appropriate

The plan also briefly sets out the approach taken to the display of advertisements within the District. The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). There are 3 categories of advertisement consent:

1. Those permitted to be displayed without either deemed consent or express consent from the local planning authority;
2. Those which have deemed consent (granted by the Regulations); and
3. Those which require the express consent of the local planning authority (upon submission of an application for consent).

The Advertisement Regulations are complex and seek to control, amongst other things, the height, size and illumination of advertisements (although not the content).

From the perspective of enforcing planning control, critically the legislation is clear that anyone who displays an advertisement, without the consent required for it, is acting illegally. It is therefore open to the local planning authority to take immediate action against the display of an advertisement without consent, either by removing the illegal advert and/or by prosecution under the relevant legislation. The legislation not only covers the control of 'traditional' advertisements such as displayed on a business premises but also fly-posting including the display of posters, bills or stickers, usually advertising events, that are displayed without the property owner's permission, often on highway structures. Any form of fly-posting is an offence, which is open to prosecution or to removal or obliteration if the Council (as Local Planning Authority) decide to take such action.

At present the PEP outlines a generic approach to the enforcement of illegal advertisements, including setting out that action will be taken where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the local area. The PEP goes on to explain that in these instances, Officers will give the advertisers, where possible, 2 days notice that the advert should be removed. Where the advert is then not removed, Officers may then remove the advert.

2.0 Proposal/Options Considered and Reasons for Recommendation

Generally, the advertisements that are subject to the greatest number of complaints are those displayed on highway furniture which fall to Nottinghamshire County Council (NCC) to enforce. Action in relation to these, for whatever reason, can be slow in being resolved. In terms of the Regulations, there is nothing in law to prevent the District Council from taking action against these. For this reason, and notwithstanding the ability of NSDC to take enforcement action, engagement will be undertaken with colleagues at NCC to establish if an agreement/strategy can be formed, if Members agree this is the approach to take.

In addition, following the adoption of the PEP, some minor amendments are deemed would benefit the approach to advertisements. The updates that have been written to the PEP, therefore, outline in more detail the way in which the Council will enforce against unauthorised advertisements within the District.

The updates detail that the Planning Enforcement team will undertake proactive monitoring and enforcement work to identify key sites and locations where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the District, or are having a detrimental impact upon public safety. As is set out in the Town and Country Planning Act 1990, considerations of expediency in advertising controls relate only to matters of amenity and public safety and therefore complaints relating to matters such as competition

will not proceed beyond an initial assessment as to the impact upon the aforementioned aspects.

In all cases the PEP outlines that Officers will attempt to work positively and pragmatically with all businesses that are identified to be advertising without consent. As part of any initial contact, Officers will attempt to resolve any breaches by working with the businesses to provide guidance and advice about how they may continue to advertise their business within the scope of legislation, and along with the need to preserve the amenity and safety of the environment for the public. This advice will include initial advice on possible alternative forms of advertisement along with guidance on the submission of applications for express consent.

However, where an unauthorised advertisement is identified, and has been assessed to detrimentally impact upon amenity and/ or public safety, Officers will serve advance written notice to anyone who can be identified as the person responsible, that in the Council's opinion, has displayed the advert or sign illegally. They will be advised:

- The advert must be removed.
- The Council intends to remove the advert after the expiry of a period [specified in the notice] if the business has not already been done so.
- The cost to reclaim the advert if it is removed by Officers (a fee will be charged for each day the advert is stored by the Council).
- The timescale in which they have to claim the advert.

The update outlines that where an advertiser has been given notice that an advert should be removed and has failed to remove the advert within the time frame as advised, Officers will seek to, where possible, remove unauthorised advertisements. In the case of illegal placards and posters, the Council may, if it is not possible to remove the advert, obliterate placards and posters with the use of measures such as tape with the wording 'advert cancelled'.

In the event that Officers remove an unlawful advert, the advert will be stored (when appropriate) by the Council for a period of up to 10 working days after which time officers will destroy the advert. An advert will only be released back to the advertiser upon the Council recovering the costs incurred by removing the advert. This cost has been calculated at £20 (for 2023/24) per day per advertisement that the Council is required to store the advert prior to its recovery or disposal. The advert will be stored for up to 20 days. These costs will also be sought for those advertisements not reclaimed, due to the costs incurred by the Council for their storage.

This approach will improve the character and cleanliness of the District in accordance with one of the aims of the Community Plan. However, it will be used pragmatically, for example in instances where there is a proliferation of placards and posters in a prominent location, or where numerous and unsightly advertisements have been displayed throughout the District by a particular advertiser. It is not proposed to immediately take enforcement action in instances where the adverts relate to community or charity events and will be displayed for a relatively short period in the run up to an event and in a safe manor.

Additionally, when advertisement consent is granted, the Regulations only permit the sign to be displayed for 5-years, prior to which if there is a desire to continue to display the sign, consent should once again be sought. Legally therefore, it would be possible to enforce against any advertisement that was being displayed beyond this time period. However, whilst a proactive enforcement service will be delivered, there will also be pragmatism in this regard too. Only where a sign is considered to be damaging to the character and appearance of the

District will we look to enforce. However, as appropriate, we will highlight to the relevant party, the requirements of the Regulations for their awareness.

The PEP with the suggested amendments, set out in red text, is attached to this agenda.

3. Implications

In writing this report and in putting forward recommendations, officers have considered the following implications:

Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment below where appropriate.

Financial Implications (FIN23-24/8261)

The 2023/24 fees and charges agreed by Full Council on 9th March, 2023 include a charge of £20 per day for advertisement storage. The PEP suggests that storage should be for up to 20 days or until the advert is collected and paid for. The storage charge will be applicable even if the advert is not collected. Therefore, for each advert, up to £400 will be receivable.

To date, proactive enforcement of illegally posted advertisements has not been undertaken by NSDC. It is therefore not known at this stage what the workload or revenue implications might be.

In terms of staff time at this stage any additional duties will be absorbed within the Planning Development Business Unit. Any additional costs such as court costs would be covered by existing budget and any additional income received. Anything over and above will need to be dealt with on a case-by-case basis until it is understood what costs are involved, at which time future budgets can be updated.

Legal Implications

The legal framework for the powers are set out extensively in the report and the annex hereto. Attention is drawn to the requirement for Officers to include a link to the 'Guide for Advertisers' in correspondence, including notices, when dealing with advertising control breaches. No further comment from Legal.

Whilst costs are recoverable, if they require a court order, in rewarding these the Court has discretion so the amount and scope is not guaranteed.