UNAUTHORISED SIGNS
AND
ADVERTISEMENTS
Working Practice

November 2013
Version 2.1
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1. **BACKGROUND**

1.1 This document sets out the Council’s priorities for controlling unauthorised adverts on private land and the public highway. It represents a balance between the Council’s resources for enforcement, wider economics and the negative aspects of advertisement signing.

1.2 This document supersedes any previous Council or District documents relating to unauthorized signs.

2. **INTRODUCTION**

2.1 Advertisements are an important part of the local scene. Well designed advertisements can add brightness and bustle to commercial areas. However, cluttered, poorly designed, overlarge or brightly-lit advertisements can have an adverse effect on the environment and public safety.

2.2 In Cornwall there are vast numbers of unauthorised advertisements. This procedure note has been produced in response to the proliferation of unauthorised signs and sets out how the Council will deal with them.

2.3 Many signs can be displayed without express consent; the Council has powers to control the most prominent outdoor advertisements under the Town and Country Planning (Control of Advertisements) Regulations 2007. In addition to the 2007 Regulations, the Council has Common Law powers and powers under the Highways Act 1980.

2.4 Cornwall Council has a duty to keep the public highway clear of nuisance obstructions and to protect the rights of the public for the use and enjoyment of the highway.

2.5 The Council may remove obstructions or take action against individuals who persist in placing unauthorised advertising signs on or adjacent to the highway.

3. **ENFORCEMENT PRINCIPLES**

3.1 Cornwall Council is committed to the principles of the Enforcement Concordat agreed between Central and local Government:

3.2 These principles are:

- **Openness:** The provision of information and advice and a dialogue on general issues, specific compliance, failures or problems.

- **Helpfulness:** To actively work to advise and assist with compliance.
- **Proportionality:** Action taken is proportionate to the risks and is in the best interest of the public.

- **Consistency:** To carry out our duties in a fair, equitable and consistent manner.

- **Accountability:** Provide a complaints procedure that is readily accessible to the public.

4. **HOW THE ADVERT CONTROL SYSTEM WORKS**

4.1 The planning authority is responsible for the day-to-day operation of the advertisement control system and for deciding whether a particular advertisement should be permitted or not. The Highway Authority is largely responsible for dealing with signing within the highway corridor. In both cases the authority responsible is Cornwall Council.

4.2 The advertisement control system in England and Wales consists of rules made by the First Secretary of State and the Welsh Assembly Government, which are part of the planning control systems. The current legislation is the Town and Country Planning (Control of Advertisements) Regulations 2007, which have been in force since 6 April 2007.

Advice is also given in Paragraph 67 of the National Planning Policy Framework which states "Control over outdoor advertisements should be efficient, effective and simple in concept and operation. Only those advertisements which will clearly have an appreciable impact on a building or on their surroundings should be subject to the local planning authority’s detailed assessment. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."

The principal legislation dealing with unauthorised advertisements, including those on or near the highway, is:

- Town and Country Planning Act 1990
- Highways Act 1980
- Road Traffic Regulation Act 1984

4.3 The advertisement control system covers a very wide range of advertisements and signs including (but not limited to):

a) posters and notices
b) placards and boards
c) fascia signs and projecting signs
d) pole signs and canopy signs
e) advance signs and directional signs (not including highway signs)
f) estate agents' boards

g) captive balloon advertising (not balloons in flight)

h) flag advertisements

i) price markers and price displays

j) traffic signs (not including highway signs)

k) town and village name-signs

l) Vehicular mounted signs (including those painted on the side of a vehicle or mounted on a trailer)

4.4 Some areas are especially vulnerable to the visual effects of outdoor advertisements. Planning authorities have three special powers with which to achieve stricter control over advertisements. These powers are:

a) to define an Area of Special Control of Advertisements (ASCA); at present a large part of Cornwall is covered by ASCA and generally affects the rural rather than urban parts of the County. ASCAs control limit the sizes and types of signs that can normally be displayed under deemed consent which gives the Council greater control over what signs can be displayed.

b) to remove from a particular site or area the benefit of deemed consent; and

c) to require a particular advertisement, or the use of a site for displaying advertisements, to be discontinued.

The Secretary of State must approve proposals to use the a) and b) powers above. There is a right of appeal to the Secretary of State against the planning authority's use of the third power (a 'discontinuance notice').

4.5 Planning authority consent is not required if:

a) the effect of the rules is to exclude it from control entirely; or

b) it comes within the provisions of one of the 16 classes of deemed consent specified in the rules set out in the Town and Country Planning (Control of Advertisements) Regulations 2007.

Planning authority consent must be sort before a sign can be displayed unless it satisfies either of the criteria above.

In all cases, if the advert is on a listed building, then consent is required.

5 ILLEGAL ADVERTISEMENTS

Anyone who displays an advertisement, uses an advertisement site or knowingly permits someone else to do so, without appropriate consent is acting illegally. It is then immediately open to the planning authority to bring a prosecution in the Magistrates' Court for an offence under section 224 of the Town and Country Planning Act 1990.
It is illegal to display any advertisement (even if it has deemed consent) without first obtaining the permission of the owner of the site, or any other person who is entitled to grant permission.

Fly-posting is an offence which is immediately open to prosecution and or to the removal or obliteration of any fly-posting material by the Council.

In the case of a placard or poster, if the material identifies the advertiser displaying it, the Council must give two days' written notice of the intention to remove or obliterate it. This advance notice gives the advertiser the opportunity to contest the Council's proposed actions. If the advertiser cannot identified a placard or poster may be removed or obliterated immediately. In addition Section 127 of the Localism Act allows Councils to serve Action Notices on landowners in fly-posting hotspots to secure the removal of posters and placards. These notices must allow a minimum of 27 days compliance period and there is a right of appeal to the Magistrates Court. If an Action Notice is not complied with then the Council has the option to take direct action.

Unless an offence is especially flagrant or repeated, the Council may not consider it necessary to prosecute for an advertisement offence. Instead, the advertiser may be invited to apply for the appropriate consent. If consent is refused there is a right of appeal to the Secretary of State. The continued display of any advertisement after consent has been refused, and any appeal dismissed, may well result in prosecution. The maximum fine on conviction of an offence is presently £2,500, with an additional daily fine of one-tenth of the maximum penalty on conviction of a continuing offence.

Officers will utilise the enforcement guidance documents in Appendix A to determine when action should be taken and under what legislation.

6 PRIORITIES

6.1 The Council will take a pragmatic approach to enforcement against illegal adverts and will only take action where an advert clearly harms public safety or visual amenity and where it is in the interest of the public to do so. Guidance documents in Appendix A will be used in determining any Council enforcement actions.

Priority will be given to removing signs that are a danger or hazard to highway users (including where they are an actual nuisance or driver distraction) and those within the highway corridor on rural principal roads.

The Council will prioritise its resources to take action against unacceptable signs on the principal road network before other quieter, less busy roads.

7 COUNCIL RESPONSES

7.1 The following paragraphs set out the Council’s proposed response to the most common types of unauthorised adverts.
7.2 **Adverts displayed by travelling circuses and fairs**

A number of travelling circuses and fairs annually visit the county for a short period. Advertising is essential for the success of these businesses. The Regulations permit them to display advertising material without formal application providing the following criteria are met:

a) No advertisement may exceed 0.6 square metres in area.

b) No advertisement may be displayed earlier than 14 days before the first performance or opening of the entertainment at the place specified.

c) The advertisement shall be removed within 7 days after the last performance or closing of the specified entertainment.

d) At least 14 days before the advertisement is first displayed, the local planning authority is to be notified in writing of the first date on which, and of the site at which, it is to be displayed.

e) Illumination is not permitted.

f) No part of the advertisement may be more than 4.6 metres above ground level, or 3.6 metres in an area of special control.

Most circuses and fairs keep to the above criteria apart from agreeing sign locations 14 days in advance. No action will be taken on technical breaches of planning control unless signs cause severe visual harm or harm to highway safety. Signs are often placed on lampposts and other highways furniture this will be discouraged. Where this causes a safety issue (e.g. loading on columns, severe distraction etc) the Council may take remedial action including immediately removing the signs and or legal action for which the Council may recover all costs.

7.2.1 Where their signs have not been removed within 7 days of an event finishing the Council will take whatever action it deems fit which can include removing the signs and or legal action (this may include recovery of all costs).

7.3 **Hoardings, posters and banners on private land**

In recent years there has been a significant increase in the display of hoardings and posters, particularly in the rural environment (often in Areas of Special Control) as landowners are looking to seek additional income or lend their support to local events. This type of advertising is often out of place in the open countryside. Where these signs cause severe harm to amenity or public safety the owner and benefactor of an advert will be sent a warning letter (see examples warning letters at Section 8) seeking its removal. If the advert is not removed within the prescribed timescale then prosecution action will be commenced. There
may be occasional, temporary exceptions e.g. hoardings advertising agricultural shows and similar events; action will not normally be taken against these providing they;

- do not harm public safety;
- are not displayed more than a month before the event;
- form part of an agreed traffic management plan; and,
- are removed within fourteen days after the event.

Generally, not more than five signs advertising an event should be displayed and these should be within a five-mile radius (as the crow flies) of the event venue. However, the Council will use its discretion on enforcement provided there are reasoned traffic management arguments to justify additional signage.

The organisers of events may seek permission to erect temporary direction signs as part of an Event Plan (or traffic management plan). All the event signs must be agreed through the Streetworks Team; additional signs for such an event will not be permitted.

7.3.1 In a commercial or residential area, buildings may be large enough to accommodate adverts without harming visual amenity. Where unauthorised signs exist in these areas action will only be taken against the ones that cause severe harm to visual amenity or public safety.

7.3.2 Banners and bunting extending along or over the highway (including the footway), may only be used where authorised by the Streetworks Team, whether or not attached to private property. If these are placed in areas where they are (or become) a hazard or danger to highway users the Council will secure their immediate removal. The Council may recover costs for taking this action.

7.4 Advance directional signs on private land

Another common type of unauthorised advertisement is advanced directional signage. In rural areas signs are frequently erected directing people to tourist facilities, local farm shops etc.

The 2007 Regulations (Paragraph 153) advise that councils’ should bear in mind that effective sign posting is often a vital way of attracting potential customers to such facilities and thus benefits the local economy. The Regulations advise that if consent has to be refused efforts should be made to suggest an alternative site or sign that would be acceptable.

Consideration will be given to the Council’s signing strategy and Brown Tourist Signs policy.

6.4.1 Action will be taken in accordance with section 5.1 of this document and only against those businesses displaying advanced directional signs in a rural location where their signs harm public safety or cause severe harm to visual amenity. Where a sign does cause harm prosecution will be a last
resort; the Council will work with advertisers to find mutually acceptable alternatives. Prosecution action will be taken in cases where there is harm to public safety or amenity, and the signs are not removed through negotiation or after written warning.

Generally, large trailer signs parked in fields adjoining the highway require consent and are usually considered to be harmful to public safety/amenity. The Council will prosecute if the offender does not remove a structure after a written warning or a Removal Notice is served.

7.4.2 In urban areas prosecution action will only be taken (after a warning letter) where signs cause severe harm to amenity or adversely affect public safety.

7.5 **Fly posting on private or highways land**

7.5.1 The Clean Neighbourhoods Act 2005 and the Town and Country Planning Act 1990 allow the Council to take direct action against flyposting. The Council will only take action where it causes harm to amenity or public safety. If the beneficiary of an advert is known then 2 days written notice will be given advising that if the advert is not removed the Council will remove or obliterate it. If the beneficiary is not known then the advert can be removed or obliterated.

The Council will consider serving an Action Notice on landowners of flyposting hotspots.

7.6 **Advertisements on the highway**

Adverts sited on the public highway can be dealt with under planning or highways legislation. The Council will use the most effective legislation to expediate the removal of unacceptable signs.

7.6.1 Using Common Law powers the Council will remove immediately any actual obstruction/nuisance or significant hazard on the highway.

7.6.2 Where owners can be traced, they will be asked to remove the sign. If they refuse, or it re-appears in a place where it is still a hazard or potential hazard, the Council will do whichever of the following is appropriate:

a) Where a sign is a danger it will be removed without delay e.g. such as an “A-board” sited on a footway that significantly reduces the available width, or a sign likely to obscure visibility at a junction. As a priority it will be removed to the local highway depot. Prior to removal, if possible, photos will be taken showing the sign in-situ (and the extent of the problem), the condition of the sign and a record made that it has been removed.

b) Where a sign is of no immediate danger and it can be fairly easily moved, it will be returned it to its owner with a warning of the potential
consequences should it be replaced. A record of the conversation will be made.

c) If a sign is not a safety concern, but interferes with the enjoyment of the highway, the owner will be requested to remove the sign. If the owner does not co-operate the Council may remove the sign and/or prosecute under planning or highways legislation.

7.6.3 Offenders will be advised that placing an unauthorised sign in the highway is an offence and that if any accident resulted from (or was made worse by) its presence they could be liable for damages by the injured party.

7.6.4 All permanent signs, i.e. those of robust construction that are removed from the highway will be taken to the local depot for storage. Signs will be retained for collection for two weeks, after which they will be disposed of. Those signs that are of a less permanent nature (e.g. poster on wooden stake) will be disposed of immediately after removal.

7.7 Obstructive signs

7.7.1 Whether something is an obstruction will depend on the facts of each case. A test will be applied that considers:

- The nature of the highway.
- The use or likely use of the highway.
- The nature of the sign or object.
- Whether the use of the highway is ‘unreasonable.’
- Whether it is in the best interest of the public to take action.

The principle of *de minimis* applies, i.e. action will not be taken against trivial or insignificant obstructions e.g. a sign or a rack of newspapers displayed by a newsagent; or a sign that was back against the building line on a footway that was several metres wide. The principles outlined relate to signs on the highway and cannot be applied to private land adjoining the highway e.g. shop forecourts. The existence of highways rights will be established before taking action.

7.7.2 A sign may not actually be an obstruction e.g. when a sign or notice is pasted or painted onto a litterbin. The Council will use appropriate legislation relative to the nature of sign, its location and surrounding environment.

7.8 Fascia signs and projecting signs

Within Town Centres a large number of premises display unauthorised fascia signs and projecting signs (some being illuminated). A large number of these cause no harm to amenity or public safety. The Council will take no action against these. In the harmful cases the Council will negotiate with interested parties to seek alternative acceptable signs.
Prosecution will only be taken as a last resort after there is failure to comply with a warning letter.

7.9 **Pole and canopy signs**

Adverts of this nature are generally found on the forecourts of existing businesses such as petrol stations, fast food outlets etc. The Council will only take prosecution on pole and canopy signs where they are excessive in size or height and therefore harm amenity or public safety (after there is failure to comply with a warning letter).

7.10 **Lasers, search lights, beams of light, projected illuminated advertisements**

Adverts of this nature are very rare. Such adverts are unacceptable and are likely to harm public safety and amenity. In these cases a warning letter shall be sent to the advertiser and if the advert is not removed prosecution action will be taken.

7.11 **Captive balloon advertisements**

Advertisements of this nature are rare. They are normally displayed at high level, visually are often unacceptable and could affect highway safety. In these cases a warning letter will be sent to the advertiser and if the advert is not removed prosecution action will be taken.

Balloons advertisements more than 60 metres above ground level require the Civil Aviation Authority’s and the Police consulted. If such an advert is displayed, joint authority action should be taken. If the Police confirm that permission under the Air Navigation Order has not been granted the Council will report the matter to the Civil Aviation Authority. Should an advertisement be acceptable a retrospective Advertisement Consent Application will be invited.

7.12 **Flag advertisements**

Adverts of this nature are generally found on the forecourts of existing businesses such as hotels and car sales forecourts. The Council will only take prosecution action where they are excessive in numbers, size or height and therefore harm amenity or public safety after there is failure to comply with a warning letter.

7.13 **Advertisements in conservation areas and on listed buildings**

In Conservation Areas and on Listed Buildings it is reasonable that more exacting standards of advertisement control are used. However, many of our Conservation Areas have a thriving commercial heart where you would expect to see various forms of advertising. Where an unauthorised advert is erected on a Listed Building or in a Conservation Area, the Council will work to remedy the breach voluntarily through negotiation and examination of alternative options. Where they harm the character and
appearance of Conservations Areas or Listed Buildings and no alternative 
sign is appropriate, the Council will prosecute after there is failure to 
comply with a warning letter.

8. **DISCONTINUANCE ACTION**

At present there are 16 categories of adverts that fall within ‘deemed 
consent’. This means that to display certain adverts the submission of an 
advertisement consent application is not required. In addition signs that 
have been granted express consent fall within the deemed consent 
category after the permission has expired; which is usually five years. The 
Advertisement Regulations give Councils the power to take discontinuance 
action if the Local Authority is satisfied that it is necessary to remedy a 
substantial injury to the local amenity or a danger to members of the 
public.

Historically there are many adverts in the County that have been granted 
express consent, however, such adverts would probably not obtain 
consent today on amenity or public safety grounds.

8.1 Where the Council identifies historic signs causing harm they should 
consider taking discontinuance action to secure the signs removal.
9. **EXAMPLES OF STANDARD LETTERS.**

9.1.1 Example warning letters

Dear

**Unauthorised Display of Advertisement @**

**Town & Country Planning (Control of Advertisements) (England) Regulations 2007**

I write to advise it has been recorded that the above sign, referring to …………………………… is being displayed on land at ……………………………

The display of this advertisement does not benefit from exemption or deemed consent under the above Regulations, and is therefore unauthorised.

It is my duty to advise that under Section 224 of the Town & Country Planning Act 1990, it is an offence to display any sign in contravention of the Advertisement Regulations. The offence is subject to a maximum fine of £2500 upon summary conviction in the Magistrates Court, with a continuing daily fine of £250 for failing to remove the unauthorised sign.

To render such serious action unnecessary, the advertisement must be completely removed from the land within 3 days of today’s date, failing which prosecution action will commence without further notice. The site will therefore be monitored, and in the event the advertisement has not been removed, you will be requested to submit to an interview. The interview will be held under formal caution and you are entitled to seek legal advice in respect of this.

You are not obliged to submit to such an interview, but it is an opportunity to put forward your reasons for consideration as to why prosecution action should not proceed.

I therefore trust you will take immediate steps to remove the unauthorised advertisement, and to ensure that, neither this, nor any other unauthorised sign, shall be displayed at any location within the control of Cornwall Council. In the event of future breaches of the Advertisement Regulations, prosecution action will commence without further warning or opportunity to remove the unauthorised signs.

Yours sincerely

Cc Planning Enforcement
Highway Client
9.1.2

Dear

**Unauthorised advertisement (brief description) placed in/adjacent to the highway known as ??? (brief description)**

I refer to the above advertisement which has been erected without consent and is considered to be interfering with the right of the highway users in that the structure/advertisement is causing a:

- Danger
- Obstruction
- Distraction
- Directs traffic
- Damaging the local amenity

Choose next paragraph (a or b) as appropriate (delete the other):

(a) In light of the above you are required to remove the advertisement within ??? days of the date of this letter. Failure to do may result in the Council taking legal action which will include the recovery of costs.

(b) In light of the above the Council has removed the offending sign(s). Re-placement of the sign(s) will result in the Council taking legal action which will include recovery of costs.

Details of the Council’s unauthorised sign working practice and relevant legislation can be found on the reverse of this letter.

If you have any queries please contact ???

Yours sincerely

Cc Planning Enforcement
Highway Client

---

**Reverse of this letter:**

Details of the Council’s Illegal Signs Working Practice can be found on our web site.

Applicable legislation:

- Highways Act 1980
- Road Traffic Regulation Act 1984
- Town & Country Planning Act 1990
- Town and Country Planning (Control of Advertisements) Regulations 2007
10. **APPENDICES**

10.1 Appendix A - Flow charts (enforcement/legislation)
Unauthorised signs - Whether to take enforcement action

Sign is dangerous, significant hazard or offensive → Y → Immediate enforcement

N → On or adjacent to Principal road network

Y → Inside 30mph speed limit or urbanised area

N → No action unless valid complaints received or part of wider street de-cluttering activity - enforcement must be proportionate to issue and in the public’s best interest

Y → Sign type

1. Over highway?

N → Enforcement or invite Planning application

Y → Refer to Streetworks

1. Over highway?

N → Refer to Planning who will instruct CORMAC as required

Y → Refer to Streetworks

2. Streetworks approved event signage?

N → Enforcement with discretion

Y → Refer to Streetworks

3. Refer to Planning who will instruct CORMAC as required

4. Enforcement with discretion

5. Enforcement by CORMAC or other Council officers

6. Enforcement

1. Banner or bunting

2. Event

3. Trailer or vehicle mounted

4. Commercial advert exc "A" frame

5. "A" frames within highway limits

6. Fly-posting

Unauthorized signs policy EC02 v2 Nov 2013
Unauthorised signs - Enforcement and legislation

Planning Enforcement

Private Land: Immediate danger or hazard?

- N
  - Directing traffic (could be mistaken for highway sign)?
    - N
      - Can signs be removed without entering private land or damage to private property (other than clips or chains)?
        - N
          - Start legal action to secure removal & prohibition of replacement
        - Y
          - Immediately seek injunction for removal & prohibition of replacement
          - Standard letter** sent to controller, benefactor of sign and or land owner. Sign removed with due expedition?
            - N
              - END
            - Y
              - Start legal action to secure removal & prohibition of replacement

- Y
  - Unauthorised sign: Where is it located?
    - Highway corridor: Immediate danger/hazard?
      - N
        - Standard letter* passed to controller or benefactor of sign. Sign removed with due expedition?
      - Y
        - Letters to be used:
          * - Letter 9.1
          ** - Letter 9.2

Highways Enforcement

Immediate removal to nearest highway depot. Advise owner sign taken and send standard letter**. Same or similar sign put out again?

- N
  - End
- Y
  - Letters to be used:
    * - Letter 9.1
    ** - Letter 9.2

Unauthorised signs policy EC01 v2 Nov 2013