CORNWALL COUNTY COUNCIL

COMMUNITY LIFE POLICY
DEVELOPMENT AND SCRUTINY
COMMITTEE

ADVERTISING SIGNS ON, OR
ADJACENT TO THE HIGHWAY
SINGLE ISSUE PANEL

DRAFT REPORT

March 2005
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EXECUTIVE SUMMARY

Over the last 2-3 years there has been a notable increase in the amount of unauthorised advertising material being placed on, or adjacent to the highway. This varies from fly posting on the back of road signs, to trailers specifically designed to be left on, or adjacent to the roadside and has led to increasing concern within the County Council, district councils and from the general public.

The removal of unauthorised signing is a controversial service area. In the past, programmes of work to remove signs have generated adverse comments from businesses and events organisers. The organisers of smaller events in particular often feel aggrieved as the display of signs and or flyers in the locality are often the only publicity for their events.

At the present time the County Council does not have a formalised policy on the way in which it deals with advertising signs on or adjacent to the highway, and as a result officers instead adhere to a recognised working practice.

As a result, the Advertising Signs on, or Adjacent to the Highway Single Issue Panel was established to consider the issues surrounding unauthorised signs which would influence the development of the Council’s policy. These issues included the Councils current transportation policies, legal framework, planning issues and financial implications.

The Panel examined the written procedures of various authorities, including Cumbria and Plymouth, and identified that some of these procedures could be appropriate to form the basis of the Councils policy. The Panel also recommended additional factors that should be incorporated such as discontinuing the practice of charging for the storage of removed signs, further dissemination of complaints information to Members and that the recommended changes should all be achieved through the existing budget.

The Panel’s investigations quickly identified that although it was very important to formalise the Councils position on how it tackles unauthorised signs on the highway a sustained improvement in the situation could not be achieved in isolation. Improved communication and work with the 6 district councils in Cornwall was a key catalyst in ensuring that the issue was tackled effectively.

The Panel also acknowledged that there was a need for improved communications on this issue. It was felt that the members of the public were not aware of the legal position in regards to advertising signs and were confused about the processes for authorisation. As such, the Panel put forward recommendations which will go some way towards improving the publics understanding of the Councils position on unauthorised advertising signs.
PANEL’S RECOMMENDATIONS

The Advertising Signs on, or Adjacent to the Highway Single Issue Panel Recommends that:

Policy

- The current recognised working practices, incorporating the comments of this Panel form the basis of a draft policy which should be drafted and submitted to the successor Committee of the next County Council;
- Given the current efficiency savings that are being imposed throughout the Council, additional financial resources should not, at this time, be allocated to the removal of unauthorised signs;
- a sustained coordinated approach to the removal of signs should be adopted in collaboration with the district councils as as opposed to systematic clearance;
- local opinion needed to be monitored closely before enforcement and liaison with local businesses, town and parish councils should continue;
- Public safety is paramount and an immediate response should be given to the removal of unauthorised signs within the highway which constitute a significant obstruction, hazard or potential hazard to the public;
- The current practice of charging for the storage of signs is outweighed by the cost of administering collection charges and should not be continued;
- Local Members should be informed of all complaints relating to advertising signs in their area;
- Local Members should continue to be involved in decisions concerning the removal of advertising signs from their area;
- The progress of the Highway (Obstruction by Body Corporate) a Private Members Bill and other relative legislation should be monitored and if appropriate should be incorporated into the Councils policy and enforcement protocol.

Highway Roundabout Sponsorship

Authorisation of advertising signs on a highway roundabout should be continued in order to give recognition to those companies who through sponsorship, contribute towards improving the local environment provided that:

- the sponsorship signs remained in line with their current specification;
- a maximum of two signs be placed on any one roundabout; and
- a single logo or image of a predetermined size should be permitted provided that any use of colour is discreet.
- a detailed criteria be provided to the successor Committee along with the draft policy on advertising signs on, or adjacent to the highway.
Work Instructions

Alongside the Policy development there also needs to be a clear set of work instructions to give clearer guidance for those Council employees responsible for enforcement. After consulting those provided by other councils the ‘Employers Works Instructions’ from Cumbria were identified to be used as a guide (Appendix 4) to the formation of our own instructions and include:

1. clear instruction on when immediate removal should be authorised;

2. identification of what constitutes a legal sign and details of how to obtain consent e.g.
   - Local Planning Authority
   - Brown Tourism Signs
   - AA & RAC Road Signs

3. sign types, as identified by the Panel and detailed instructions on the tests applied to each i.e.
   - Commercial banners and signs
   - Community ‘One off’ events
   - Trailers and other vehicles
   - A-Frames
   - Flyposting on highway furniture and adjacent to the highway

4. Legal powers and the appropriate processes i.e. serving notice, to be taken.

Other Enforcement Organisations

The current practices adopted by the County Council are not able to deliver the required outcome in isolation. A more coordinated approach involving the district councils and the Police Authority would prove more effective through;

A countywide group being established which would aim to:

- improve communication and closer working with the 6 district councils in Cornwall;
- provide clearer guidance as to where the responsibility lies for the removal unauthorised signs;
- encourage local authorities to work together on enforcement issues;
- address the provision of formal sites for legal advertising;
- agree a policy to establish consistent byelaws throughout the County;
- investigate a ban on flyposting as a condition of granting licences to pubs and clubs, and hot food establishments throughout the County;
- encourage utility companies to remove posters from utility boxes;
- investigate whether CCTV footage could help identify those responsible for pasting fly posters in some areas;
- Produce a uniform countywide policy for ‘non commercial’ community advertising i.e. village fete;
- Agree a limit on the time local community events are allowed to be displayed;
- Identify a clear distinction between local community events and local community interest such as political pressure groups and election campaigning.
Communications

Further work needs to be undertaken in educating the public about the requirements and tolerances for advertising signs under current legislation through:

5. The production of an information leaflet which clearly explains:
   - What is an illegal advertising sign
   - The Law
   - The Councils Policy
   - Who to Contact (district councils and County Council)
   - Where to get more Information

6. Adding the leaflet to the County Councils website
1.0 INTRODUCTION

1.1 On 15 July 2004 the Community Life Policy Development and Scrutiny Committee considered the terms of reference for the establishment of a Single Issue Panel to address the issue of advertising signs on, or adjacent to the highway. As a result, the Advertising Signs on, or Adjacent to the Highway Single Issue Panel was established and met for the first time on 15 October 2004.

1.2 The Committee set out the following objectives for the Advertising Signs on, or Adjacent to the Highway Single Issue Panel:

1. To review current Transportation policies regarding unauthorised signing on or adjacent to the highway.

2. To consider the legal framework for dealing with signing, and current case law.

3. To consider the planning issues regarding unauthorised signs on or adjacent to the highway.

4. To consider the financial implications of any change to policy.

5. As appropriate, to recommend changes to current policy.

1.3 This report summarises the evidence gathered by the Panel and sets out the conclusions and recommendations that were drawn by Panel Members following their investigations.
2.0 THE PANEL’S FINDINGS

In order to fully investigate the issues surrounding unauthorised advertising signs on, or adjacent to the highway the Panel reviewed a multitude of information and evidence supplied by expert witnesses. The issue provides a number of complexities in terms of the law, the roles and responsibilities of various authorities and the costs incurred through implementation.

The Panel has, through their work identified and considered these complex issues and their findings, form the outline principles from which a detailed policy can be produced.

The key issues identified and examined by the Panel are detailed below:

2.1 What is an Advertising Sign?

Throughout the course of the investigations it became apparent that the type of signs commonly placed on or adjacent to the highway were not simply of one type. Photographic evidence of advertising signs throughout the County and publications such as ‘Outdoor advertisements and signs: a guide for advertisers’ prepared by the Department for Transport, highlighted to Members of the Panel, the variety of signs that were currently used to advertise.

Given the evidence received and the Panel’s purpose, it was decided to identify forms of advertising most commonly observed adjacent to the highway. Following a number of discussions the Panel grouped these signs into the following categories:

<table>
<thead>
<tr>
<th>KEY ISSUES IDENTIFIED</th>
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<tr>
<td>The Panel have identified the following categories of advertising signs:</td>
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<tr>
<td>• Commercial banners and signs</td>
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<td>• Community ‘One off’ events</td>
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<td>• Trailers and other vehicles</td>
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<td>• A-Frames</td>
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<td>• Flyposting on highway furniture and adjacent to the highway</td>
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2.2 Are all Advertising Signs Adjacent to the Highway Illegal?

Although there are a large number of unauthorised and thus illegal signs, the Panel recognised that some signs have permissions and are therefore legal.

When these signs have been erected through the appropriate channels then largely there is no reason for concern. The Panel identified the following recognised channels for obtaining consent.

Local Planning Authority

To obtain consent to put up an advertisement or sign an application must be made to the planning authority for the area where it will be displayed.
In order for consent to be granted signs the sign must meet an identified criterion. The overall size, text size, location, and display duration are all considered before consent is granted and the applicant must pay a charge for the application.

In Cornwall, the local planning authorities who hold the power to grant consent for advertising signs are:

- Caradon District Council
- Carrick District Council
- Kerrier District Council
- North Cornwall District Council
- Penwith District Council
- Restormel Borough Council

**Brown Tourism Signs**

The Brown Tourism Sign scheme is administered by Cornwall County Council and there are two types of premises which can be considered for direction signing: tourist attractions and tourist facilities.

Applications are made to the County Council where each application is considered on its merits. Factors taken into account include specific local conditions and the balance between tourism industry interests and traffic management, road safety and environmental factors.

**AA & RAC Road Signs – yellow/ blue signs**

Although these organisations are not able to grant consent themselves they do, for a fee provide a service which enables clients to erect signs which comply with all relevant legislation.

The types of signs erected tend to include temporary directional signs, housing development signs as well as traffic management signs.

Their service includes the following:

- Survey of the site
- Liaison with local highway authority
- Manufacture of signs
- Installation and removal of signs and equipment
- Maintenance cover, if required

**KEY ISSUES IDENTIFIED**

The Panel identified the following recognised channels for obtaining consent:

- Local Planning Authority
- Brown Tourism Signs
- AA & RAC Road Signs
2.3 What is the County Councils Legal Position?

The Highway Authority (Cornwall County Council) has a responsibility to keep the public highway clear of obstruction and encroachments which may affect the safety of the public when using the highway.

Under these responsibilities, the County Council has the power to remove or to take action against anyone who persists in placing unauthorised advertising signs on, or adjacent to the highway. The Panel was advised that these powers are set out though the following Acts and Regulations:

- The Highway Act 1980 (Sections 130, 132, 137, 143, 148, 149, 152, 154, 161, 178)
- Town and Country Planning (Control of Advertisements) Regulations 1992 (Section 224/225)
- Disability Discrimination Act 1995

The Panel was informed that some legislation allowed immediate action to be taken and with others notice had to be served before removal of a sign was permitted. In some instances fines could be imposed in the courts but in most cases there was no provision to recover expenses incurred in removing the signs.

An additional complication identified by the Panel was surrounding who had the power to take action; the County Council as Highway Authority or the District Council as Planning Authority.

District Councils are able to issue Anti Social Behaviour Orders (ASBOs) against those engaged in illegal flyposting and also hold powers under the Environmental Protection Act 1990 for the offence of leaving litter. There are also powers under the Disability Discrimination Act 1995 where the placement of physical features would make it impossible or unreasonably difficult for disabled persons to access services.

The Panel noted the often difficult requirement to identify the person who had actually put up any unauthorised sign in order to prosecute and questioned what that would achieve if the instruction had been given by a corporate organisation through a contract to undertake the work. However, the Highway (Obstruction by Body Corporate) a Private Members Bill, has received its second reading in the Lords. This attempts to hold corporate bodies accountable for some specified offences rather than the actual person who had posted the unauthorised sign, which is the current position. Although this Bill has not yet been passed the Panel considered it to be an interesting development and that the progress of this Bill should be monitored.

The Panel also recognised the difficulties involved in securing public support for the enforced sign removal. Businesses often used A-frame signs outside of there premises and local community groups often used them as an inexpensive way of publicising ‘not for profit’ events.

The general policy held by the County Council was to pursue prosecutions even if the wrong was righted before the court hearing. Although the Panel agreed that in some instances prosecution may be necessary it was, deemed more
appropriate that resources were directed towards educating the public through publicity about what would be tolerated.

KEY ISSUES IDENTIFIED

Through their discussions the Panel concluded that:

- some legislation allowed immediate action to be taken and with others notice had to be served before removal of a sign was permitted. Clear work instructions needed to be produced to give clearer guidance for those Council employees responsible for enforcement;
- District Councils should be encouraged to issue Anti Social Behaviour Orders (ASBOs);
- Resources need to be directed towards educating the public through publicity about the requirements and tolerances for advertising signs under the Disability Discrimination Act 1995 and other legislation; and
- The progress of the Highway (Obstruction by Body Corporate) a Private Members Bill should be monitored and if passed should be incorporated into the Councils policy and enforcement protocol.

2.4 When is a sign not the responsibility of the County Council?

Cornwall County Council is the Highway Authority for Cornwall meaning that it is the body responsible for maintaining the highway where it is maintainable at public expense.

There is no comprehensive statutory legal definition of a highway but the limited definition in section 328 of the Highways Act 1980 defines it as:

\textit{whole or part of a highway other than a ferry or a waterway, including bridges or tunnels that are maintainable at the public expense.}

The Panel identified that although the County Council was responsible for the County’s roads, verges and footways adjacent to the highway, this did not enable the Council to enforce removal on signs which had been erected on private property adjacent to the highway i.e. in fields.

The Panel heard that the County Council had not direct control over the removal of these signs and that these signs would need to be tackled by the district councils under their planning powers as these signs were located on private property and required planning permission.

Throughout the course of the Panels investigations it became apparent that there was some confusion between the districts and the County Council as to who was responsible for the removal or enforcement of removal in some areas. If signs were placed adjacent to the highway then it could be addressed by either the County Council or the respective district/borough council. It was often the case that due to this uncertainty each assumed the other would take action and in some instances this resulted in no action be taken by either authority.
Panel Members felt concerned that these unclear boundaries were actually enabling unauthorised signs to be freely erected without any consequence, and felt that it was of utmost importance that a dialogue should be established with the district councils to try to establish the best methods of identifying responsibility and taking action.

### KEY ISSUES IDENTIFIED

Through their discussions the Panel concluded that:

- The issues surrounding enforcement by the County Council as Highway Authority or the District Council as Planning Authority need to be clarified;
- There is a need for improved communication and closer working with the 6 district councils in Cornwall; and
- The roles of the County Council and district councils in enforcing the removal of unauthorised signs need to be clearly communicated to the public.

### 2.5 What is the Councils Current Enforcement Position?

The removal of unauthorised signs on, or adjacent to the highway is primarily the responsibility of the Area Surveyors and highway officers.

Reports of hazardous signs are received through a variety of methods, including complaints from the public, officers travelling through the county on other business or Local Members.

Before an officer removes any sign a number of tests must be satisfied in terms of effect on road safety, causing an obstruction to the highway or a footpath, there was a perceived public nuisance or removal had been requested by the Local Member. The aim is to provide a consistent approach and local support is usually sought before signs are removed. The procedures and reporting mechanisms adhered to by the Area Surveyors and CORMAC are important as if necessary, these procedures provide evidence should prosecutions be pursued at a later date.

There are of course resource implications resulting from the removal of unauthorised signs on, or adjacent to the highway. The costs incurred depend on how quickly the removal work needs to be carried out and the number of times a sign needed to be removed.

In some instances the offending signs can be removed using an appropriate officer’s vehicle but on other occasions CORMAC is required to carry out the removal under existing contract arrangements. The removal of these signs need to be undertaken carefully, as does storage, as owners of the offending signs are entitled to reclaim them. Some Councils charge a ‘storage fee’ of £25; however Cornwall has not made such a charge as the administrative costs could be significant. Legislation at this time does not permit the Council to charge for the
removal of signs and it has been found that often a reclaimed sign was replaced by the owner in the same position.

The current practice is to deal with unauthorised signs on a case by case basis and take action where there was no doubt about evidence should the matter be pursued through the courts.

Where there is a persistent offender then the Council has taken action through the Magistrates Court. The two of the most recent examples of court action taken included a case in Wadebridge where the judge ruled that there was no evidence of the obstruction causing a nuisance and a case in Newquay which had been won at the Magistrates Court but taken to appeal. Although the appeal judge found in favour of the authority he stated that he considered it had not been in the public interest to bring the case to court.

2.6 Has the Council Undertaken any Work with the District Councils?

Members were informed that in December 2003 a clean sweep programme of work to remove unauthorised signs from the highway. This programme of work was undertaken by the County Council, the District/Borough councils and Devon and Cornwall Police with the co-operation of traders and Parish or Town Councils.

**KEY ISSUES IDENTIFIED**

Through their discussions the Panel concluded that:

- the current practices adopted by the County Council are not able to deliver the required outcome in isolation. A more coordinated approach involving the district councils would prove more effective;
- Local Members should be informed of all complaints relating to advertising signs in their area;
- Local Members should continue to be involved in decisions concerning the removal of advertising signs from their area;
- Public safety is paramount and an immediate response should be given to the removal of unauthorised signs within the highway which constitute a significant obstruction, hazard or potential hazard to the public;
- Charging for the storage of signs is outweighed by the cost of administering collection charges and should not be adopted.
- Clear work instructions on the tests applied to signs need to be produced to give clearer guidance for those Council employees responsible for enforcement;
- The Panel's disappointment at the lack of support being received from Magistrates over enforcement issues be noted;
- The current practice incorporating the comments of this Panel form the basis of a draft policy to be submitted to the successor Committee of the next County Council; and
- Given the current efficiency savings that are being imposed throughout the Council, additional financial resources should not, at this time, be allocated to the removal of unauthorised signs.
In some areas however, this systematic clearance was not supported because of the effect on local business which relied on advertisements or display of items for sale outside of their premises to attract customers. Additional problems arose in areas where the extent of the highway was not clear and confusion arose where some advertisements were allowed to remain because they were on a private forecourt which could not be distinguished from the adjoining highway. This led to complaints about unfair competition.

It was noted that as a result, this proactive approach had not been adopted in recent years because of the difficulties and opposition encountered.

**KEY ISSUES IDENTIFIED**

Through their discussions the Panel concluded that:

- local opinion needed to be monitored closely before enforcement. Liaison with local businesses, town and parish councils should continue;
- improved communication of the issues surrounding the display of signs or merchandise on the highway is needed with local traders and businesses; and
- a sustained coordinated approach to the removal of sign should be adopted as opposed to systematic clearance.

### 2.7 Sponsorship signs on highway roundabouts

It is the County Council's existing policy to authorise, through the planning process, small advertising signs on a highway roundabout where the advertiser makes an annual contribution to the maintenance and aesthetical enhancement (planting) of that particular roundabout.

The production and manufacture of these signs is carried out by Cornwall County Council to ensure uniformity and compliance with appropriate size, text size and layout.

The Panel considered whether or not this policy was appropriate. It was recognised that the sponsorship of roundabouts in Cornwall helped contribute towards improving their aesthetical appeal which in turn helped raise the appeal of the surrounding area. Members noted that unless some incentive could be offered to companies to sponsor a roundabout then it would be likely that these companies would not be willing to contribute.

The Panel examined pictorial evidence of signs throughout the County as well as images of signs used throughout other authorities across England. It was noted that other authorities, unlike Cornwall, allowed the sponsor to include logos or images on their signs. When Members questioned this they were advised that the Council's policy had been questioned by the sponsors who also wished to display their logos.
2.8 Evidence from other Organisations

2.8.1 EnCams

The Panel heard that EnCams, campaign on environmental issues, run the Keep Britain Tidy campaign and are responsible for organising the beach awards such as Blue Flag. Their mission is:

‘to be a recognised leader in generating excellence in local environmental quality, sustainable resource use and reducing antisocial behaviour’.

EnCams conducted environmental surveys throughout 11,000 sites in England and it was discovered that approximately 50% of respondents wished to see more resources made available for tackling flyposting. The main concerns were that it could lead to disintegration of the area, increase fear of crime and create a generally untidy feel which was detrimental to both business and tourism. EnCams had encountered various methods for dealing with flyposting including the following:-

- prevention by used of stippled paint on street furniture which had been used to varying degrees of success;
- providing formal sites for legal flyposting which could look untidy but cleaned up other areas;
- prosecution with fines of up to £1000, with additional fines for each day that posters were not removed of up to £100;
- Highways Authorities could remove flyposters without giving notice;
- Antisocial Behaviour Orders (ASBO) had been used with a fixed penalty notice of £50 which would go to the local authority towards the cost of removal; and
- use of wardens who were provided with graffiti removal kits.

Plymouth City Council had been extremely proactive in combating flyposting and had secured £10,000 funding to look at the different issues and clean up the worst affected areas. The City Council had also invited graffiti artists to create murals on designated sites and this had resulted in an estimated total saving of £100,000 in cleansing costs. EnCams suggested that in order to monitor the success of any policy it would be necessary to conduct research into the extent of the problem throughout the county.

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KEY ISSUES IDENTIFIED

The Panel concluded that:

- As long as the sponsorship signs remained at their current size the policy should be continued in order to give recognition to those companies who through sponsorship, contribute towards improving the local environment;
- That a maximum of two signs be placed on any one roundabout; and
- That a single logo or image of a predetermined size should be permitted provided that any use of colour was discreet.
EnCams are already working with Kerrier, North Cornwall, Penwith and Restormel and have suggested that it would be beneficial to form a Countywide working group to tackle the problems.

Issues which EnCam suggested could be addressed by a Countywide group included:

- a ban on flyposting as a condition of granting licences to pubs and clubs, and hot food establishments had been required to keep the surrounding area clean and free of litter as a condition of their licence to operate.
- Fairgrounds had deemed planning permission to display advertisements but often failed to remove them afterwards.
- The County Council only had authority to act in regards to flyposting on the highways although District Councils had powers under the ASBO Act and therefore all local authorities needed to work together on enforcement.

- There was a need for all the District Councils to agree a policy and ensure that byelaws were consistent throughout the County.
- The imminent Clean Neighbourhoods Bill would be addressing some of the problems with flyposting.

### KEY ISSUES IDENTIFIED

- use of stippled paint on street furniture (this was considered but deemed not to be cost effective)
- public concerns that flyposting could detract from the visual aesthetics of the area, increase fear of crime and create a generally untidy feel which was detrimental to both business and tourism.
- providing formal sites for legal flyposting
- district council use of Antisocial Behaviour Orders (ASBO)
- £10,000 funding had been secured by Plymouth City Council to combating flyposting and look at the different issues and clean up the worst affected areas.
- Formation of a Countywide working group to tackle the problems.

### 2.8.2 Member of the Public

A member of the public was asked by the Panel to submit evidence in light of their independent monitoring and recording of illegal advertising signs throughout the County over a number of years.

The Panel received a submission of a significant body of evidence which comprised of images showing illegal advertising throughout Cornwall. In addition the Panel received a written submission which included the following observations:

- Penwith District Councils licensing of public entertainment venues links licensing with fly-post prevention thus an offending entertainment venue risks revocation of their licence if they fly post within the District. It was suggested that often this link between planning and licensing is ignored and as such Penwith’s licensing requirements should be held up as model of best practice.
• A multi agency approach is vital if the issue is to be addressed successfully
• The Council should give consideration to resisting removal of any advertisement to allow for:
  1. Informing the advertisers of the laws being broken
  2. Inviting the advertisers to remove the advertisement
  3. Threatening legal action if they do not remove the advertisement
  4. Being prepared to pursue legal action in default
• Identification of those responsible for pasting fly posters should be possible in some areas through CCTV footage.

**KEY ISSUES IDENTIFIED**

- Penwith’s licensing requirements should be held up as model of best practice.
- A multi agency approach is vital if the issue is to be addressed successfully
- Identification of those responsible for pasting fly posters should be possible in some areas through CCTV footage.
- Better communication of the Council’s position on unauthorised signs

### 2.8.3 Senior Planning Officer (Restormel Borough Council)

A representative from Restormel Borough Council (Senior Planning Officer) reported that Restormel Borough Council had historically not been proactive in removing illegal signs but had reacted to complaints received. In recent years Restormel had taken a hard line on illegal advertising, as a result, the Borough Councillors received numerous complaints from advertisers unhappy at having their signs removed.

It was thought that the main problems that were experienced as a result of advertising signs on or adjacent to the highway were in relation to highway safety, through the obstruction or distraction of drivers as well as the impact on the environment.

The issue of advertising signs promoting local community events was thought to be politically contentious and guidance was needed on this issue. There should be a limit to the life of these posters and this also needed to be clear. It was also considered necessary to distinguish between local community events and local community interest such as political pressure groups and election campaigning.

Concern was expressed in regards to brown tourist signs. The understanding was that these were granted on condition that all other directional signs be removed and this was not being enforced.

The combined programme of work to clear unauthorised signs from the highway in December 2003 had in Restormel, not resulted in a significant change in the number of unauthorised signs, as December was a relatively quiet month for advertising of this kind. The majority of illegal signs in the Borough were related to tourism and seasonal events during the summer.
The County Council's work in the removal of advertising signs could better support the work undertaken by the enforcement team through setting up a countywide group. This group could help with:

- the development of clearer guidance as to where the responsibility lies for removal, for example, on grass verges which are often not dealt with by either party due to each assuming the other will take responsibility.
- enforcement of conditions which could be imposed under new licensing legislation. Such conditions could prevent public entertainment premises from using certain types of advertising such as flyposting.
- the responsibility for removing posters from utility boxes. This lies with the utility companies but could possibly be undertaken by the districts as part of the street cleaning service for a fee.

**KEY ISSUES IDENTIFIED**

- clearer guidance as to where the responsibility lies for removal
- enforcement of conditions which could be imposed under new licensing legislation
- responsibility for removing posters from utility boxes
- Raising awareness of the Councils position on unauthorised signs
- advertising signs promoting local community events need a limit on time allowed to be displayed
- policy needs to distinguish between local community events and local community interest such as political pressure groups and election campaigning.

2.8.4 Devon and Cornwall Police

- There appeared to be little evidence to show that advertising signs on the highway were causing a distraction to drivers.
- If evidence from EnCams supported the view that flyposting increased the fear of crime then Community Officers may take a greater interest in the issue.

2.9 Conclusions

It became evident through the course of the Panels investigations that addressing the issue of unauthorised advertising signs was not something that the County Council could carry out in isolation.

The overlapping responsibilities for enforcement and the complexities of dealing with signs whether they be on the highway or private property are all barriers to effectively managing unauthorised signs in Cornwall.

However, the first stage in addressing any problem is to establish a current position. The Panel’s investigations into this issue have identified the Council's current status, the difficulties and proposed measures to improve the way in
APPENDIX 1 - SUMMARY OF THE TERMS OF REFERENCE

1. To review current Transportation policies regarding unauthorised signing on or adjacent to the highway.
2. To consider the legal framework for dealing with signing, and current case law.
3. To consider the planning issues regarding unauthorised signs on or adjacent to the highway.
4. To consider the financial implications of any change to policy.
5. As appropriate, to recommend changes to current policy.

Terms of Reference prepared by:
M. Stephenson, Network Manager

Terms of Reference agreed by CLPDSC:
Approved by Community Life Policy Development and Scrutiny Committee on 15 July 2003

Panel structure:
7 Members – To be appointed

Background:
Over the last 2-3 years there has been a notable increase in the amount of unauthorised advertising material being placed in, or adjacent to the highway. This varies from fly posting on the back of road signs, to trailers specifically designed to be left on the roadside. On 11 September 2003 this committee agreed that this should be added to the Community Life work programme.

Approved policies already exist for the signing of tourist attractions and facilities, temporary events and new housing developments, however there is a cost implication for event organisers, and often it is perceived as more cost effective to place unauthorised signing for a one off event. At present the removal of unauthorised signs is undertaken when there are road safety implications from there positioning within the highway, or a severe nuisance is caused. There is no specific budget for this work and funding comes from the highway maintenance budget, and whilst costs could be recovered from those locating the signs, it is often uneconomic to recover these costs.

The removal of unauthorised signing remains a controversial service area, and adverse comment from businesses and event organisers occurs whenever a programme of work to remove signs is undertaken. The organisers of smaller events in particular often feel aggrieved as flyers in the locality are often the only publicity for their events. With the Council elections due in 2005 it should be noted that political signs should be subject to the practice approved by the Single Issue Panel.
In December 2003 a combined programme of work to clear unauthorised signs from the highway was undertaken by the County Council, the District Councils and Devon and Cornwall Police. This brought about a temporary improvement to the street scene, however it is anticipated that as the peak summer period approaches the occurrence of flyposting in particular will increase.

**Issues to be addressed**

- Rationalising the County Council policy on unauthorised signing.
- To identify the likely costs in providing an enhanced service to remove flyposting.
- The role of other authorities in contributing to the removal of unauthorised signs.
- Updating the guidance for signing to temporary events.

**Consultation/Evidence**

**Portfolio Holder(s)**
R E Hichens - Strategic Planning and Transport

**Others**
To be confirmed

**Site Visits:**
None envisaged.

**Key Documents/ Background Data / Research**
To be identified.

**Methods of Working**
Members of the Panel will be briefed on the current policy, legal framework and practice regarding unauthorised signing on or, adjacent to the highway as well as the role of other agencies which will be examined in detail.

**Timescale**
It is envisaged that the Panel will need to meet on three occasions. Reports detailing the findings of the Panel will be submitted to the Community Life Policy Development and Scrutiny Committee on 16 December 2004 with recommendations to an appropriate meeting of the Executive Committee in 2005.

**Outputs**
Updated and revised policy to deal with unauthorised signing on or adjacent to the highway.
APPENDIX 2 - PANEL MEMBERS AND MEETINGS

W H Roberts (Chairman)
R E Ellison (Vice-Chairman)
B J Higman
S D Mennear
Mrs J M Mepsted
Mrs S M J Oliver
M J Payne

The Panel met on the following occasions:

<table>
<thead>
<tr>
<th>Date</th>
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<tr>
<td>15 October 2004</td>
<td>Received background data on:</td>
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<tr>
<td></td>
<td>• current practice</td>
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<tr>
<td></td>
<td>• legislation</td>
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<td></td>
<td>• powers of removal</td>
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<td>• costs</td>
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<tr>
<td></td>
<td>and considered photographic evidence of unauthorised signs throughout Cornwall</td>
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<tr>
<td>10 December 2004</td>
<td>Reviewed the role of other authorities within the County and received evidence from:</td>
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<tr>
<td></td>
<td>EnCAMS</td>
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<td></td>
<td>Restormel Borough Council</td>
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<td></td>
<td>Devon and Cornwall Police</td>
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<tr>
<td></td>
<td>A Member of the Public</td>
</tr>
<tr>
<td>26 January 2005</td>
<td>Considered the evidence received and drew together the Panel’s recommendations</td>
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APPENDIX 3 – WITNESSES

<table>
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<th>Name of Witness</th>
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<tr>
<td>Hannah Stanek</td>
<td>EnCAMS</td>
</tr>
<tr>
<td>Pat Whymer</td>
<td>Senior Planning Officer - Restormel Borough Council</td>
</tr>
<tr>
<td>Andrew Hamilton</td>
<td>Assistant Inspector - Devon and Cornwall Police</td>
</tr>
<tr>
<td>Anonymous</td>
<td>A Member of the Public</td>
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Appendix 4 – Employers Work Instructions – Cumbria County Council

Unauthorised Signs and Other Obstructions in the Highway

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<th>ISSUE NO.</th>
<th>DATE</th>
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<td>2 of 8</td>
<td>3</td>
<td>July 2003</td>
<td>RJR</td>
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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
APPENDIX A

THE POLICY

1.1 On 25 March 1993 the Highways and Transportation Sub-Committee reaffirmed the Council’s current policy, established on 31 October 1990, 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 Bridgemaster, 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.

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 39(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 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 5/82 gives advice about the above Regulations, including a reminder of the District Council's power under Section 225 of the 1990 Town and Country 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 1991 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 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 For guidance, anything which is sited on a footway and leaves a residual width of less than 1.8 metres is a significant hazard.
### UNAUTHORISED SIGNS AND OTHER OBSTRUCTIONS IN THE HIGHWAY

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<td>APPROVED:</td>
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#### 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 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
Practitioners 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 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.

### WHAT LEGAL POWERS CAN YOU USE?

#### 4.1
This is just a brief summary. Before taking any actions, practitioners 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 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 projections 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 Community, Economy and Environment. 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.
- 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 expedient.
- 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.