



DEVELOPMENT, ECONOMIC AND CULTURAL SERVICES

Control of Advertisements Enforcement Policy

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Development, Economic and Cultural Services
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EXECUTIVE SUMMARY

This Control of Advertisements Enforcement Policy provides guidance to officers, businesses and the general public on the range of options that are available to achieve compliance with advertisements legislation enforced by North Kesteven District Council.

This Policy addresses the Council's approach of enforcing breaches of advertisement control only. This Policy has been written in accordance with the Council's Corporate Enforcement Policy, and therefore general enforcement principles have not been included.

The Council's primary objective is to achieve regulatory compliance. Where it becomes necessary to take formal action against a land owner or advertiser, the Council will do so. There are a wide range of enforcement tools available to the Council to control unlawful advertisements, with prosecution being the most serious. The Council will always choose an enforcement method that is relevant and proportionate to the offence or contravention. The Council will also take account of an individual's or a business's past history when making the decision.

This policy is built around a process of escalation. The Council will normally only prosecute in circumstances where a defendant has acted wilfully and where their actions have caused or are likely to cause material loss or harm to amenity, or where they have ignored previous warnings or formal notices. Consideration will also be given to whether the defendant's actions have endangered the health, safety or well being of people or the environment; or assaulted or obstructed an officer in the course of their duties.

This Policy is designed to help you understand the Council's objectives and methods for achieving compliance, and the criteria which are considered when deciding the most appropriate response to a breach of advertisements legislation.

All of the Council's decisions will have regard to the following current statutory guidance and codes of practice:

- The National Planning Policy Framework (2012), and all associated Planning Practice Guidance
- The Saved Policies of the North Kesteven Local Plan 2007
- Planning Practice Guidance: Advertisements (2014)
- The Regulators' Code (2014)
- The Code for Crown Prosecutors (2013, and all future amendments)
- The Human Rights Act 1998
- The Equality Act 2010

1.0 Introduction to the advertisement control regime

1.1 The 'Consent' regime

Enforcement of the planning system in England and Wales can be divided into two parts:

- '*Permissive*' regimes such as development control – acceptable development that is unauthorised can be regularised by seeking retrospective planning *permission*. Unauthorised development may only become a criminal offence following non compliance with a formal notice.

- ‘*Consent*’ regimes such as advertisement control and listed building control – unlike unauthorised development, it is a criminal offence to undertake any works under these regimes without the prior *consent* of the Local Planning Authority. Contravention of a consent regime is always a criminal offence. There is therefore no such thing as ‘retrospective advertisement *consent*’. Consent can be sought for breaches of advertisement control, however any consent granted is only valid from the date of determination and the Council remains entitled to prosecute for the original offence.

1.2 Relevant legislation and guidance

1.2.1 Primary legislation

The primary legislation that concerns the control of advertisements is the Town and Country Planning Act 1990. Part VIII Chapter III (sections 220 to 225) of the Act deals with unlawful advertisements. Section 336(1) defines what constitutes an ‘advertisement’. It is an offence under section 224 of the Act to unlawfully display an advertisement. The maximum penalty for each offence on conviction is a level 4 fine (currently £2,500).

1.2.2 Secondary legislation

The primary legislation does not provide any further advice in relation to advertisement control. This is covered in the secondary legislation, the ‘Town and Country Planning (Control of Advertisements) (England) Regulations 2007’. The Regulations separate advertisements into three categories. Those advertisements that do not require the express consent of the Local Planning Authority are defined by ‘Classes’ in the following Schedules:

- Schedule 1 – advertisements that are exempt from control
- Schedule 3 – advertisements that have the benefit of deemed consent, subject to conditions

All advertisements that do not fit into the classes covered by the above Schedules require the express consent of the Local Planning Authority.

Schedule 2 provides five standard conditions that apply to all advertisements that require express consent or fall within Schedule 3. Non compliance with any of the standard conditions renders the advertisement unlawful.

1.2.3 National policy and Government guidance

National guidance on breaches of planning control do not apply to the control of advertisements. The National Planning Policy Framework (2012), and Planning Practice Guidance: Advertisements (2014) provides advice to Local Planning Authorities on how to apply the 2007 Regulations.

2.0 Enforcement tools for dealing with unlawful advertisements

The Council has a variety of enforcement powers available to address unlawful advertisements, including:

- No action/informal advice
- Formal written warning
- Removal or obliteration
- Discontinuance action
- Injunctive action
- Simple caution
- Prosecution
- Development management powers

Following an investigation of a breach of advertisement control, a decision will be made by the Council regarding the most appropriate enforcement action. In accordance with the Council's Corporate Enforcement Policy, enforcement decisions will be made based on the merits of each individual investigation. When a decision has been reached, Ward Members will be notified of the Council's intended course of action.

2.1 No action/informal advice

For minor breaches of the law the Council may give verbal or written advice. The Council will clearly identify the offence and give advice on how to put them right, such as submitting an application for advertisement consent or requiring removal of the unlawful advertisement(s). Such action will include a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of non-compliance. Failure to comply could result in an escalation of enforcement action.

2.2 Formal written warning

In certain circumstances, minor breaches of advertisement control may not warrant any formal enforcement action. Such a decision may be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their wellbeing or would not be in the public interest. In these circumstances it may be more proportionate to issue the offender with a formal written warning. This warning would be recorded on the Council's enforcement database, and taken into account should the offender commit further offences. Failure to heed this warning could result in an escalation of enforcement action.

2.3 Removal or obliteration

The Council has powers under section 225 of the Act to remove or obliterate some forms of unauthorised advertisements. If the advertisement contains details of the advertiser or business involved, the Council must notify them and allow them 2 clear days to remove or obliterate the advertisement voluntarily. Failure to comply with the notification may result in the Council carrying out the necessary works in default, and the recipient of the notification is liable for any costs reasonably incurred.

The Council is permitted to remove or obliterate any relevant advertisement that does not contain contact information without first giving notice of its intentions.

2.4 Discontinuance action

The Council has powers to require land owners, businesses or advertisers to remove any advertisement that has the benefit of deemed consent, by way of a discontinuance notice. A discontinuance notice may only be served if an advertisement is adversely affecting amenity, or is a risk to public safety.

Discontinuance action can also be taken to prohibit the use of an area for the purposes of displaying advertisements.

Any recipient of a discontinuance notice has a right to appeal, subject to certain criteria.

2.5 Injunctive action

Where offenders are repeatedly found guilty of similar offences, or an advertisement poses a severe and imminent risk to public safety the Council may wish to take injunctive action.

In cases where an offender persistently targets an area with unlawful advertising, this may constitute antisocial behaviour. In these circumstances the Council will liaise with its Anti-Social Behaviour team to determine the most appropriate course of action. There is a variety of powers available to the Council under with the Antisocial Behaviour, Crime and Policing Act 2014.

2.6 Simple caution

In some instances the Council may have sufficient evidence to prosecute an individual or business for unlawful advertising, yet the case may not past the 'public interest test'. Where this applies, the Council may offer a simple caution to the offender(s). A simple caution is not a criminal conviction, rather an admission of guilt, and remains on the Council's Cautions Register for three years. If further similar offences are committed within this three year period, the Council is permitted to bring the caution to the attention of the Court on conviction. This may result in a harsher sentence for the latter offence(s).

If any individual or business refuses to accept a caution, the Council will review the case and prosecution may ensue.

2.7 Prosecution

A prosecution will normally ensue where the individual or organisation has:

- Deliberately, negligently or persistently breached advertisement legislation resulting in harm to local amenity;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the health, safety or well being of people or the environment; and/or

- Assaulted or obstructed an Officer in the course of their duties.

Prosecution may also be the most appropriate course of action in other circumstances.

2.8 Development control powers

Some unlawful advertisements may also constitute unauthorised development. In these circumstances the Council may consider it expedient to resolve the matter by way of planning enforcement action, rather than as a breach of the advertisement consent regime.

3.0 Prioritisation of complaints

The Council is committed to enforcing against breaches of advertisement control. However some unlawful advertisements cause substantially more harm than others, therefore complaints must be prioritised accordingly.

The Council considers the following advertisements to be a higher priority. Please note this list is not exhaustive:

- Unlawful advertisements affixed to or affecting the setting of listed buildings
- Unlawful advertisements in conservation areas
- Unlawful illuminated advertisements

The Council will investigate unlawful advertisements on private land, and unlawful advertisements on its own land. The Council will refer complaints regarding advertisements on Highways Authority land, and Highways Agency land to these organisations. We would normally expect these organisations to take action in these circumstances. This includes the siting of 'A-boards' on highway verges, and advertisements affixed to public street furniture. These organisations, in addition to their civil rights as a land owners have powers under the Highways Act 1980 to remove or curtail the display of unlawful advertising.

4.0 Legal Status of this Policy

4.1 This Policy was approved by the Council's Executive Board on 06 October 2011, and was most recently reviewed on 26 July 2017.

4.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

5.0 How to obtain a copy of the Policy or make comments

5.1 This Policy is available on the Council's website at:

www.n-kesteven.gov.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- e-mail: customer_services@n-kesteven.gov.uk
- telephone: 01529 414155
- in writing to the Compliance and Enforcement Team Leader, C/o Development, Economic and Cultural Services, North Kesteven District Council, Kesteven Street, Sleaford, Lincs, NG34 7EF

6.0 Review of this Policy

6.1 This Policy will be reviewed annually.