

# North Tyneside Council

## Report to Vivienne Geary

### Head of Law and Governance

Date: 01 March 2018

<b>Officer Delegated Power Report (non executive decisions)</b> Title of Report: Authority to serve Removal Notice under S225A of The Town and Country Planning Act 1990 and subsequent actions
---

---

#### Report from Service

Area: Environment Housing and Leisure (Planning Enforcement)

Responsible Officer: Jackie Palmer - Planning Manager

Tel: (0191) 6436336

Wards affected: All

---

## PART 1

### 1.1 Executive Summary:

This is one of two reports relating to actions required to progress the removal of unauthorised signage located on the highway at Whitley Road, North Tyne Industrial Estate. The removal of the signs is a two stage process. The first stage is to serve notice (under sections 225 & 225A of the Town and Country Planning Act 1990) on the owner of the signs to advise of the Authority's intention to remove them, and recover removal costs, if not removed within a specified period (not less than 22 days). Authorisation for the service of the notice falls within the remit of the Head of Law and Governance. Authorisation for its removal falls to the Head of Environment, Housing & Leisure and is subject of a separate report.

The first stage falls within the remit of the Head of Law & Governance, where the Authority's Officer Delegation Scheme (LG 52) grants the power to "serve, vary or withdraw advertisement removal or defacement notices". This report seeks authority to serve the Removal Notice. Approval for both stages is sought concurrently so that steps can be taken quickly to remove the signs and structures to which they are fixed as soon as the specified time period has expired.

The unauthorised signs are business adverts which are being displayed in contravention of Regulations (The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 made under section 220 Town and Country Planning Act 1990. To secure their removal authorisation is sought to invoke Sections 225 and 225A of the Town and Country Planning Act 1990 which allows the Authority to write to the person responsible for the advert(s), give them a time frame for removal. If it is not removed the Authority will remove and destroy the advert. The costs of removal and destruction can be reclaimed from the person responsible. The notice also relates to the removal of the structures to which the adverts are fixed.

### 1.2 Recommendation(s):

It is recommended that the Head of Law and Governance authorise the issue and service of removal notices under Section 225 and 225A of The Town and Country Planning Act 1990 (as amended) and to undertake further associated actions.

### **1.3 Forward Plan**

This is a confidential report regarding the commencement of legal proceedings in relation to a planning enforcement matter and therefore does not appear of the forward plan.

### **1.4 Council Plan and Policy Framework**

This report links to the 'Our North Tyneside' Council Plan 2018-20, including:

- Our people - will be listened to
- Our places - will be great places to live, provide a clean, green health attractive safe and sustainable environment.

Local Plan policy relating to the display of advertisements seeks to ensure that advertisements and signs are appropriate to their local settings in terms of location, scale, design, colour, materials and illumination and do not have a detrimental impact, either individually or cumulatively, on visual amenity, character, public safety or the natural environment.

### **1.5 Information:**

#### **1.5.1 Background**

1.5.2 The display of adverts can constitute development under section 55 of Town and Country Planning Act 1990. Where the display is in accordance with the Control of Advertisement Regulations 2007 planning permission is deemed to have been granted under s222 Town and Country Planning Act 1990.

1.5.3 Where adverts do not benefit from deemed consent and no specific advertisement consent has been sought and granted, adverts are unauthorised. Planning enforcement legislation includes a number of provisions for formal action to secure the removal of unauthorised advertisements, including prosecution in the Magistrates Court or taking steps to remove the advertisements.

1.5.4 The Planning Enforcement Team (PET) received complaints relating to a number of advertisements displayed by various businesses across the Borough and primarily companies operating from Industrial Estates. Standard letters were issued to owners advising them their signs were unauthorised and seeking removal voluntarily. The vast majority of offenders complied with the request and removed their adverts.

1.5.5 A number of the complaints related to unauthorised advertisements displayed along Whitley Road, adjacent to North Tyne Industrial Estate. Two companies, Excel North East Ltd and The Door and Window People Ltd display a number of signs adjacent to the highway advertising their businesses. A site location plan is attached as Exhibit KL1.

1.5.6 These companies did not respond to the informal request to remove their signs and both continue to display adverts without consent. Photographs taken 23<sup>rd</sup> January 2018 are attached as Exhibit KL2 showing the signs in situ.

1.5.7 Over time, Excel North East Ltd and The Door and Window People Ltd have displayed various different signs on structures in this location to promote their businesses. The display of advertisements along a grass verge is a distraction to highway users and is therefore a road safety concern. Furthermore the continued display of illegal advertising can lead to a proliferation of advertisements increasing the risk to road safety and affecting visual amenity.

- 1.5.8 In this context, PET have been writing to the Director of Excel North East (Neil Little) since February 2016. PET have sought to negotiate the removal of signs and structures without formal action and used stickers, drawing attention to the offence, to obliterate information on the signs. The stickers have been removed and signs remain in situ. In addition, adverts for other businesses have now also been placed at the same site.
- 1.5.9 There continue to be complaints from members of the public, local Councillors and other businesses who consider it unfair that offenders have the benefit of unauthorised adverts. Local Councillors wish to see the area free of the distraction of the unauthorised adverts.
- 1.5.10 In this context, this continued breach of control involving the display of advertisements and the erection of structures is considered to justify formal enforcement action. Taking action is consistent with guidance contained within the Authority's Statement of Enforcement Policy. The development fails to comply with the National Planning Policy Framework and is considered to be contrary to Policy DM6.3 of the North Tyneside Local Plan (2017) for the reasons outline in para. 1.4.7. Action is therefore deemed necessary to protect the integrity of the development plan, alleviate highway safety concerns and improve local amenity.
- 1.5.11 Historically the Authority has pursued action against unauthorised adverts via the prosecution of offenders in the Magistrates Court, where a fine can be imposed. Whilst this has resulted in some success, where signs have been removed to avoid further financial penalties, this method has not consistently resulted in the quick removal of unauthorised adverts and many have either remained on site or been re-erected after a short period of time.
- 1.5.12 In this case, given the owners clear reluctance to remove the signs, rather than prosecute against the offences committed, removal of the structures and signs is considered a more appropriate form of action resulting in a more effective and immediate outcome, securing the removal of the signs and their disposal.
- 1.5.13 Once notice has been served on the owner in accordance with the relevant legislation (pursuant to the authorisation of the Head of Law and Governance) if the signs have not been removed voluntarily and no appeal has been lodged with the Magistrate against the notice, the Highway Delivery Manager would be commissioned to remove the signs.
- 1.5.14 It is estimated that the cost of removal will be less than £400 and will be covered by highways who will issue an invoice to the owner of signs to recover the costs of removal. Unpaid invoices would be subject of the normal debt recovery process administered by finance.

## **1.6 Decision options:**

The following decision options are available for consideration:

### Option 1

The Head of Law and Governance can agree to the procedure under s225 and 225A Town and Country Planning Act 1990 being used by the Authority to secure the removal of adverts and their structures.

### Option 2

Do not agree the recommendation set out at paragraph 1.2 of the report and instead pursue action via prosecution in the Magistrates Court.

Option 1 is the recommended option.

### **1.7 Reasons for recommended option:**

Option 1 is recommended for the following reasons:

The display structures, by reason of their size, number, and positioning are visually inappropriate and incongruous resulting in unacceptable harm to the amenity of the surrounding area.

The prominent positioning of the unauthorised display structures constitute an unduly dominant feature resulting in loss of visual amenity for the surrounding area, creating unnecessary clutter and constituting a potential danger to the safe operation of the road network.

The unauthorised display structures are therefore contrary to policies. The owner has not removed them voluntarily and removal with cost recovery is considered to offer the best outcome in terms of removing the adverts from the highway.

### **1.8 Appendices:**

Appendix 1: Site plan (scale 1:200) and location plan scale 1:1250)

Appendix 2: Photographs taken by KL on 23.1.2018

### **1.9 Contact officers:**

Jackie Palmer, Planning Manager tel. 0191 643 6336

Kevin Logan, Planning Enforcement Officer, Capita, tel. (0191) 643 6305

Tessa Crowe, Solicitor, Law and Governance, North Tyneside Council, tel. (0191) 643 5335

### **1.10 Background Information**

Case officer file ref: 16/00063/ADVERT 16/00062/ADVERT

Members Enquiry ref: 163712

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

Costs incurred through removal and disposals are recoverable from the offender.

### **2.2 Legal**

Due to the fact that previous negotiations have failed it is necessary to invoke a procedure which allows the Authority to remove and destroy the advert along with the

structure to which it is attached. Providing the Authority has an address of responsible person it has the power to recover the costs of this process.

The legal position in relation to the action proposed is set out in the body of this report.

## **2.3 Consultation/community engagement**

### **2.3.1 Internal Consultation**

None undertaken.

### **2.3.2 External Consultation/Engagement**

None undertaken. The matter is confidential.

## **2.4 Human rights**

Consideration has been given to Articles contained within the European Human Rights Act 1998. The action recommended is believed to be compatible with the HRA 1998 as the action proposed is necessary to alleviate the detrimental impact of the development upon amenity and safety in the public interest.

## **2.5 Equalities and diversity**

There are no direct equalities and diversity implications arising directly from this report.

## **2.6 Risk management**

There are no risk management implications arising directly from this report.

## **2.7 Crime and disorder**

There are no crime and disorder implications arising directly from this report.

## **2.8 Environment and sustainability**

There are no environment and sustainability implications arising directly from this report.