

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Neighbourhood and Community Services Scrutiny Panel      **DATE:** 5<sup>th</sup> December 2011

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**WARD(S):** All

### **PART I**

#### **FOR COMMENT AND CONSIDERATION**

#### **REGULATION OF DISTRIBUTION OF FREE PRINTED MATTER**

1. **Purpose of Report**

For the Scrutiny Panel to consider the Licensing Committee referral of a report regarding Distribution of free printed matter and to investigate a number of issues put forward by the Committee.

2. **Recommendation**

That Members consider the issues put forward, the responses to these issues and for comments to be reported back to the Licensing Committee to make a final decision on the recommendations in the original report.

3. **Community Strategy Priorities–**

- **Being Safe, Feeling Safe**
- **A Cleaner, Greener place to live, Work and Play**
- **Prosperity for All**

4. **Other Implications**

(a) Financial

It is proposed that a nominal charge of £25 shall be applied to each application for a consent. This charge is to cover the costs of accepting and processing each application.

Each consent will cover a period of 8 hours, after which, the applicant will need to reapply. Each application can be made for one designated area only. Additional permissions for other designated areas shall also be charged at £25.00. (Please refer to additional comments regarding fee setting at Point 5.9.5)

## (b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
From section 2 above	The approval of the proposals to regulate distribution of free printed matter would reduce the amount of waste printed material currently left in the areas around Slough.	All persons or organisation wanting to distribute free printed matter will need to apply for a consent and will be responsible for removing any left over litter once the activity has ceased. Any persons distributing free printed matter without a consent will be doing so illegally.

## (c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Part 1 and 11 of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to a peaceful enjoyment of his or her possessions including the possession of a licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal by law.

## (c) Equalities Impact Assessment

An Equality Impact Assessment screening has been completed and the conclusions are that there are no adverse or negative impacts of opportunity for any equality group or for any reason.

## 5. Supporting Information

5.1 On 5<sup>th</sup> October 2011 a report was put before the Licensing Committee requesting approval for a formal consultation to take place on proposals to implement the regulations regarding the control of the Distribution of free printed matter in designated areas. The original report of 5<sup>th</sup> October is attached at **APPENDIX 1**.

5.2 The committee decided and resolved that they had insufficient information to make an informed decision at the time and agreed to refer the matter to the Neighbourhoods and Community Services Scrutiny Panel to investigate a number of issues further:-

- *How were the areas referred to in the report identified as having a problem of litter by the distribution of leaflets - how information/evidence put together.*
- *Benefits of introducing the policy.*
- *Impact on small businesses.*
- *How would the policy be enforced and what would the penalties be for non-compliance – i.e. likelihood of individuals being prosecuted.*
- *Legal implications of introducing a policy specific to certain areas of the Borough – discriminating against businesses in specific areas?*

- *If introduced, what the fee should be set as and what time period this would cover.*

**5.3** In response to the above questions the following information is now provided.

**5.4** *How were the areas referred to in the report identified as having a problem of litter by the distribution of leaflets - how information/evidence put together*

5.4.1 It has been evident for some considerable time that the depositing of free printed matter initially mainly in the High Street and Town Centre area has been a problem and that there are no controls in place to combat this.

5.4.2 Initially areas were visited and inspected which identified the four areas as outlined in the report.

5.4.3 Officers then liaised with of the Neighbourhood Enforcement Team (NET) who are responsible for enforcement of litter and waste problems. NET agreed that the areas identified did in fact have a current problem. Mr Ian Blake, South Team - Team Leader of the Neighbourhood Enforcement Team who has previous experience of dealing with such matters in other local authority areas, was fully supportive of the proposals and forwarded a formal response contained at **APPENDIX 2.**

5.4.4 On 1<sup>st</sup> September and the 13<sup>th</sup> September an email was sent to all Ward Members for the four identified areas as part of an initial informal consultation, advising of the proposals and asking the following question "Although you as Ward Members will be formally consulted in due course, at this time I would ask for your views on whether you are of the opinion that there is such a problem in your Ward area, if the areas on the maps are sufficient to be designated and if you would be in support of the implementation of these controls". There were no formal responses back to these two emails.

5.4.5 In light of this the four areas identified remained in the report.

5.4.6 If these proposals are approved it would be subject of a full 3 month consultation with local businesses and residents, Ward Members, the Police and all relevant Council Service areas for their views and as to whether there is sufficient evidence of an existing problem for an Order to be made.

**5.5** *The benefits of introducing the policy.*

5.5.1 There are several benefits of introducing the policy.

5.5.2 By the making of an Order this will ensure the control of the depositing of such material by members of the public and those persons distributing the free printed matter who will sometimes just abandoned the leaflets in the street. The overriding factor is that the designated areas are no longer defaced with free printed matter being deposited and to ensure that they are a clean and safe environment.

5.5.3 Section 1 sub-section (6) (a) of Schedule 3A also stipulates that the provisions also governs the distribution of free printed matter by 'placing it or affixing it to vehicles'. This is a particular problem area where members of the public remove the free printed matter and discard it in the street. The introduction would therefore restrict this type of activity unless consent has been applied for.

- 5.5.4 It will ensure, as outlined by the Neighbourhood Enforcement Team, that these areas are maintained to a high standard and that they remain a clean and safe environment. In addition controls will be in place to ensure that those persons distributing the matter are responsible for removal of any litter and that those persons that have not applied for consent will be operating illegally and subject of enforcement action.
- 5.5.5 Furthermore the introduction would ensure that any free printed matter which is deemed to be racist, sexist, offensive, encouraging criminal behaviour or promotes the irresponsible use of alcohol e.g. happy hour advertisements or money-off offers would be not be permitted and would be in breach of the proposed 'Consent Terms and Conditions'.
- 5.6 *Impact on small businesses***
- 5.6.1 It is not considered that there would be any impact or adverse impact on small businesses.
- 5.6.2 By limiting the number of persons or organisations distributing free printed matter in a particular area at anyone time, this would enable local businesses to promote their business in a clearer manner and members of the public would be to able to digest the information provided more readily, rather than be persistently inconvenienced by a number of distributors in the area at the same time. It is believed that this would enhance local business sales and profits.
- 5.6.3 It is also paramount that priority for the issue of Consents should be given to **local business and organisations** to be able to enhance and promote their services.
- 5.7 *How would the policy be enforced and what would the penalties be for non-compliance – i.e. likelihood of individuals being prosecuted.***
- 5.7.1 If the proposals are implemented, it is proposed that the Committee would designate **All** officers of the Neighbourhood Enforcement Team including Community Wardens and officers of the Licensing Team as Authorised Officers under the Act to carry out enforcement.
- 5.7.2 In addition Section 6 of Schedule 3A provides Authorised Officers with powers of seizure where an offence is being committed and Section 7 details the penalty for committing an offence.
- 5.7.3 The penalty for unauthorised distribution of free printed matter will be by way of a Fixed Penalty Notice for an amount specified by the authority, or in accordance with Schedule 3A where there is no amount specified, it will be £75.00 and provisions may be made for a lesser amount to be paid if done so within a specified period.
- 5.7.4 Both sections in full are contained in **APPENDIX 3**.
- 5.7.5 There is already provision on the current Fixed Penalty Notices used for litter offences, to also be used for "Unauthorised Distribution of Free Literature" offences, albeit the provision for these offences are not yet in force. These Fixed Penalty Notices are for a maximum fine of £75.00 to be paid within 14 days of issue or £50.00 to be paid within 10 days of issue.

**5.8** *Legal implications of introducing a policy specific to certain areas of the Borough – discriminating against businesses in specific areas?*

5.8.1 The Act at Section 2 subsection (3) clearly states that “A Principle Litter Authority” i.e. Slough Borough Council may only designate land where it is satisfied that the land is being defaced by the discarding of free printed matter which has been distributed there”.

5.8.2 In essence this means that there has to be an existing problem in the identified area for an order to be made. If there is not an existing problem then an order cannot be made. In addition the ‘land’ designated can only be relevant land for which the authority is responsible.

5.8.3 Blanket Orders, for instance an order to cover the whole of the authority area cannot and should not be made. There has to be an exiting problem in any identified area to be designated.

5.8.4 It is not considered that the introduction of this policy would discriminate against businesses either local or otherwise. It would if anything give local businesses the opportunity to promote their business, and restricting larger national organisations from operating in the area if applications are made early. This would not in way discriminate against any other national organisation as applications could be made for any day at any location subject of an order, where other applications have not been made.

**5.9** *If introduced, what the fee should be set as and what time period this would cover.*

5.9.1 **FEES** – Schedule 3A states as follows:-

**Fees**

*4(1) A principle litter authority may require the payment of a fee before giving consent under paragraph 3 above.*

*(2) The amount of a fee under this paragraph is to be such as the authority may determine, but may not be more than, when taken together with all other fees charged by the authority under this paragraph, is reasonable to cover the costs of operating and enforcing this Schedule.*

5.9.2. As outlined in the original report a nominal fee of £25.00p was proposed to cover the cost of accepting and processing each application. It would also cover the cost of enforcing either compliance or non-compliance.

5.9.3 The fee was based on the cost of officer time and that of fees charged for similar applications / consents i.e.

Daily Street Trading Consents £25.00 and £30.00 respectively

Transfer of a Premises Licence £23.00

Application for an Interim Authority £23.00

Application to vary a DPS £23.00

Application for removal of a DPS £23.00

Application for a personal Licence £37.00

- 5.9.4 Members have the discretion to approve the proposed fee or to set an alternative fee however it must be reasonable to ensure cost recovery.
- 5.9.5 Having reviewed the fee setting in a number of other local authorities, fees range from £25 or £30 up to £200 or more for Consents and that those fees are for each person involved in the distribution, making the prospect of promoting local businesses unviable due to the cost involved.
- 5.9.6 The Licensing Team are of the opinion that the fees as outlined above are somewhat disproportionate and the proposed fees are only for the application for the Consent and not for each individual involved in the distribution. The regulations are clear in that the fee can only be reasonable to cover the costs of operating and enforcing this Schedule.
- 5.9.7 **CONSENT LIMITATIONS** – Schedule 3A states as follows:

**Consent and Conditions**

*3 (1) A principle litter authority may on the application of any person consent to that person or any other person (identified specifically or by description) distributing free printed matter on any land designated by the authority under this Schedule.*

*(2) Consent under this paragraph may be given without limitation or may be limited-*

*(a) by reference to the material to be distributed;*

*(b) by reference to a particular period, or particular times or dates;*

*(c) by reference to any part of the designated land;*

*(d) to a particular distribution.*

- 5.9.8 Again as detailed in the original report and the 'Consent Terms and Conditions', the proposal is that each consent will cover one day only, will cover a period of no more than 8 hours with proposed hours being 07.00am to 3.00pm and shall take place for no more than three hours during this period, either continuously or intermittently.
- 5.9.9 In addition each application can be made for one designated area only. Additional permissions for other designations shall also be charged at the proposed fee.
- 5.9.10 These limitations have been proposed to ensure that any distributions are controlled and regulated, that members of the public are not inconvenienced for prolonged periods of time in one area and that those conducting the distributions are not in any particular area for again prolonged periods of times which can sometimes be in adverse weather conditions.
- 5.9.11 Again members have discretion on this matter, however these proposals are deemed to be reasonable and proportionate for all concerned.
- 5.10** It is also necessary to re-iterate the fact that free printed matter distributed on or behalf of a Charity or where the distribution is for political purposes or for the purpose of a religion or belief, are exempt under the Act.

## **5.11 What is free printed matter.**

### **5.11.1 Examples of free printed matter include (this is not an exhaustive list)**

- Leaflets of any description (other than those exempt under the regulations)
- Printed balloons
- Printed stickers
- Printed carrier bags
- Printed wristbands
- Printed T shirts/ clothing
- Printed baseball caps / paper hats cardboard hats or similar

Examples of some activities that would be covered are given below.

- A promoter owner for a nightclub, public house, restaurant etc giving out flyers to passing members of the public promoting an event at a venue
- The owner of a shop giving out leaflets to passing members of the public promoting sale of goods at their premises
- An estate agent who leaves a box of property newspapers on the street at the entrance to their premises
- A pile of flyers left on top of a piece of street furniture or a window ledge for passing members of the public to pick up
- A promotional stand set up in the street promoting an activity from which free leaflets are available
- A promoter placing leaflets under the windscreen wipers of parked cars in a car park or in the street

## **6. Comments of Other Committees**

The original report was put before the Licensing Committee on 5<sup>th</sup> October 2011 and the resolution is as detailed at **Point 5.2** above

## **7. Conclusion**

That Members consider the issues and comments put forward by the Licensing Committee, the responses to these issues as contained in this report and for the comments of the Scrutiny Panel to be reported back to the Licensing Committee in order to make a final decision on the recommendations as detailed in the original report.

## **8. Appendices Attached**

- '1' - Report to the Licensing Committee of 5<sup>th</sup> October 2011
- '2' - Written response from Mr Ian Blake Team Leader (NET)
- '3' - Copy of Schedule 3A – Environmental protection Act 1990

## **9. Background Papers**

- '1' - Section 94B and Schedule 3A of the Environmental Protection Act 1990.