

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

16 SEPTEMBER 2015
LADYWOOD

**DISTRIBUTION OF FREE PRINTED MATTER – RESULTS OF CONSULTATION
AND PROPOSALS FOR THE BROAD STREET AREA**

1. Summary

- 1.1 This report is the second report to your Committee in relation to proposals to re-introduce a free printed matter consent area for Broad Street and surrounding streets where the distribution of free printed matter is controlled using powers under Section 94B and Schedule 3A to the Environmental Protection Act 1990.
- 1.2 Your Committee are asked to note the comments that have been received in response to the statutory consultation exercise undertaken by your Officers (Appendix 2).
- 1.3 Members are to note that further survey work undertaken by your Officers has highlighted an improvement in the condition of the street scene compared with conditions found during initial survey work in February and March 2015.
- 1.4 Your Committee are asked to note the use of an alternative enforcement approach which is being used by your Officers to directly target the small number of businesses responsible for the defacement of the street scene using new powers under the Anti-Social Behaviour, Crime and Policing Act 2014.

2. Recommendation

- 2.1 That committee agrees that the street scene in the Broad Street Area is not sufficiently defaced to enable the declaration of a Free Printed Matter Consent Scheme in the surveyed area.
- 2.2 That the report be noted and referred to the Cabinet Member for Transportation and Street Services for information.

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Originating Officer: Russell Davey, Environmental Health Officer

3. Background

- 3.1 This report constitutes the second report to your Committee [the first report came before your Committee on 18th March 2015] on a proposed consent scheme whereby the distribution of free printed matter (e.g. newspapers, leaflets, pamphlets, stickers or other literature which no charge to the public is made) would be controlled using powers under Section 94B and Schedule 3A of the Environmental Protection Act 1990.
- 3.2 In April 2015, a statutory consultation process was commenced. This involved the installation of street signage in the proposed consent area, a public notice in the Birmingham Post and advertising on the City Council's free printed matter and consultation webpages. An example of the public notice that was used is shown in Appendix 1. Officers also made direct contact with residents associations and business groups operating in the area and sort feedback on the proposal.
- 3.3 In addition to the above statutory notification proceedings the proposed scheme also received publicity in the Birmingham Mail.

4 Results of Consultation

- 4.1 During the consultation period a total of 9 responses were received from interested parties in relation to the proposed scheme. Appendix 2 of this report outlines the responses received from the consultees. The majority of responses were in support of a scheme that controls the litter problem associated with distribution of free printed matter within the proposed consent area.
- 4.2 Of the responses received, the most detailed response came from a trade group and as such represented the view of a significant proportion of business operating within the proposed consent area. The group advised that free printed matter is only used by a small proportion of businesses in their trade sector and that should a scheme be introduced their members would in all likelihood cease using free printed matter and move to direct marketing approach as a way to promoting their businesses. The group also advised of the negative impact the major development works that are being carried out in the city are having on their business.

5. Survey of "relevant land" to identified defacement

- 5.1 For a Local Authority to introduce a free printed matter consent scheme it must be satisfied that the land is being defaced from time to time by "the discarding of free printed matter which has been distributed there."
- 5.2 In March 2015 on the evidence of your Officers your Committee were satisfied that land within the proposed consent area (as illustrated in Appendix 3) was defaced from time to time by free literature.

- 5.3 Throughout the consultation period your Officers have continued to survey the proposed consent area in order to identify defacement. From the ongoing survey work that has been undertaken your Officers have identified a significant improvement in the overall street scene in the proposed consent area. Where defacement was found the majority originated from 3-4 companies based within the proposed consent area. The majority of free printed matter found related to fast food premises and was being distributed and discarded in close proximity to the businesses that was being advertised.

6. Review and evaluation

- 6.1 For a free printed matter consent scheme to be sustainable the City Council are reliant on receipts received from the issuing of consents to underwrite the cost associated in enforcing and administering the scheme. Unlike the City Centre retail free printed matter consent scheme which issues consents to a wide range of business and marketing agencies based both within the consent area and across the UK, there is a limited number of businesses and organisations who choose to hand out free printed matter in the Broad Street area. Consultation has shown that the number of companies currently handing out free printed matter are likely to decrease if a scheme was introduced. As such receipts received for issuing consents in the Broad Street area are likely to be significantly lower than in other areas of the City. As a result a Broad Street Free Printed Matter Consent Scheme is likely to put an additional financial burden on your Department's resources if it is to be administered and enforced effectively.
- 6.2 Local authorities are under a duty to use the most appropriate legislation available to them to resolve issues that affect its area or citizens. On reviewing the responses received to the public consultation exercise and from the ongoing survey work that has been undertaken, your Officers are of the opinion that a more appropriate enforcement approach is available to control the litter problem caused by the discarding of free printed material. This method uses new notices called Community Protection Notices that have been made available to your Officers under the Anti-Social Behavior, Crime and Policing Act 2014.
- 6.3 Community Protection Notices are designed to deal with particular, on-going, instances of environmental anti-social behavior (i.e. litter clearance or removal of graffiti or fly posting). They can be used against individuals over 16, businesses or organisations, and can be issued by the police, council officers or staff of social housing providers.
- 6.4 Using Community Protection Notices your Officers can require business owners to take responsibly for litter picking and disposing of free printed matter and other litter that has been discarded in the area outside their business up to a distance of 100 metres in each direction. Unlike the free printed matter consent areas this enforcement approach directly targets businesses whose leaflets or flyers are causing a litter problem and does not adversely affect businesses that choose to distribute leaflets in a responsible manner.

- 6.5 Non-compliance with a Community Protection Notice for an individual can result in prosecution with a fine on conviction of up to £2,500 in court. However, if a CPN is issued on a corporate body the maximum fine threshold is increased to £20,000. In addition to the potential for prosecution proceedings, in appropriate circumstances the court can order that certain requirements are met and failure to meet these requirements (court order) is contempt of court and carries up to 3 months imprisonment.
- 6.6 To date four written warnings have been issued to businesses within the proposed Broad Street consent area with regards to defacement caused by the distribution of free printed matter and other litter. This has resulted in the service of three Community Protection Notices where businesses have failed to put in place measures to control their leaflet distribution and litter. Officers are continuing to monitor the situation to ensure compliance with the Community Protection Notices.
- 6.7 In the opinion of the officers the levels of defacement do not meet the minimum standard to declare the area defaced from time to time and that during the consultation the situation improved leaving 3 or 4 premises that need to be tackled specifically.

7. Implications for Resources

- 7.1 The Community Protection Notices that have been served have been delivered within the Committees existing budget.
- 7.2 A free printed matter consent area for Broad Street is unlikely to be self-funding as the defacement seems to relate to 3 or 4 businesses and there were few on-street distributors of free literature noted during March to August surveys. The scheme is reliant upon selling consents to make revenue to enable enforcement patrols to ensure distributors meet the conditions of the consents.

8. Implications for Policy Priorities

- 8.1 The proposals set out in the report are consistent with the City's Policy Priorities on promoting and securing a greener City.

9. Public Sector Equality Duty

- 9.1 No specific implications have been identified.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: Nil

ENVIRONMENTAL PROTECTION ACT 1990

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

Section 94B Free Distribution of Printed Matter

Schedule 3A Distribution of Printed Matter on Designated Land

Notice is hereby given that the Council of the City of Birmingham ("Birmingham City Council") propose by virtue of Section 94B and Schedule 3A, paragraph 2 of the Environmental Protection Act 1990 ("The 1990 Act") (as inserted by the Clean Neighbourhoods and Environment Act 2005) and subject to considering any objections received, to designate certain places and streets where the distribution of free printed matter is prohibited without the consent of Birmingham City Council and subject to the following proposed conditions of consent.

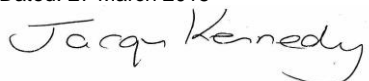
The places and streets it is proposed to designate are as follows:

Berkley Street, Bishopsgate Street (Broad Street to Tennant Street), Bridge Street (Broad Street to Holliday Street), Brindley Place, Broad Street, Brunswick Square, Brunswick Street, Cambridge Street, Centenary Square, Centenary Way, Cumberland Street, Essington Street, Friston Avenue, Gas Street, Granville Street (Broad Street to Holliday Street), Grosvenor Street West, Grosvenor Terrace, Holliday Street (Granville Street to Suffolk Street Queensway), Islington Row, King Edward's Road, Ladywood Middleway (Friston Avenue to Five Ways), Oozells Square, Oozells Street, Oozells Street North, Ruston Street (Friston Avenue to Grosvenor Street West), Ryland Street (Grosvenor Street West to Broad Street), Sheepcote Street, St Martin's Street, St Vincent Street (Sheepcote Street to King Edwards Road), Tennant Street, Upper William Street.

Birmingham City Council proposes to adopt the provisions of Section 94B and Schedule 3A of The 1990 Act by 1st September 2015. The section does not apply to the distribution of free printed matter by charity, by or on behalf of a political organisation or for the purpose of a religion or belief (Section 94B and Schedule 3A, paragraph 1(4) of The 1990 Act). Free printed matter which directly relates to reducing crime and disorder is also exempt from proposed scheme. The Act should be consulted for full details. More information on the proposed scheme can be obtained by telephoning 0121 303 5932 or by visiting www.birmingham.gov.uk/freeliterature.

Any objections to the proposal should be sent by letter or by e-mail no later than the 30th April 2015 to the Head of Environmental Health, Regulation and Enforcement, Birmingham City Council, PO Box 16978, Birmingham, B2 2AX or by e-mail to cs.environmentalcrime@birmingham.gov.uk.

Dated: 27 March 2015



Jacqueline Mary Teresa Kennedy
Director of Regulation and Enforcement

Proposed Conditions of Consent:

1. Any person engaged in the distribution of free printed matter shall wear a clearly visible authorisation badge issued by the City Council.
2. The above authorisation shall be produced on demand to an authorised officer of the Council or a Police Constable/Police Community Support Officer.
3. No free printed matter shall be left unattended by consent holders for the general public to take at their discretion.
4. All places in which free printed matter has been distributed are to be cleansed forthwith by the consent holder to a radius of 50 metres from the distribution point of any litter caused by the distribution of the said printed matter.
5. The free printed matter must bear the name and address of the consent holder who is responsible for its distribution.
6. Applications for consent must be made not less than seven days before the required date for the distribution of free printed matter.
7. Consents will be subject to the payment of a fee based on the number of distributors per application.
8. Any person engaged in the distribution of free printed matter shall provide on demand to an authorised officer of the Council or a Police Constable/Police Community Support Officer any information reasonably required to enable compliance with consent conditions to be verified. This may include:
 - their full name and address
 - details of any person(s) commissioning them to distribute free literature [where applicable]
 - details of their employer or agent [where applicable]

Proposed Cost of Obtaining Consent:

An annual consent fee of £260 per person has been proposed which allows the distribution of free printed matter in any of the designated areas.

Summary of key points from responses to the consultation process:

Please note: these are verbatim comments from respondees and details of individuals and organisations have been deleted for reasons of data protection and confidentiality.

I have been asked on behalf of a number of XXX members to lodge an official objection to the proposed changes to regulations regarding the distribution of free printed matter.

1. The members are concerned that they are being unfairly targeted as most of the venues that would be affected by the changes no longer distribute printed matter; relying on direct contact and guest lists, there are currently only two venues that use printed matter and both of them have stated that they will stop and use the same method as the other clubs and bars.
2. The members feel that there should be some provision for the use of printed matter for specified promotions, Christmas and New Year, summer and special events for example, this would be done in a responsible manner taking into consideration the concerns of the council.
3. The members feel that the bulk of free printed matter found on Broad Street and the surrounding area, comes from independent promoters and the teams employed by them to promote artists, bands and events which may take place in the city, they are not associated with the venues they stand outside but undue pressure will be put on the venues to manage these people and the activities even though it has nothing to do with the venues in question.
4. The bulk of litter found on Broad Street comes from fast food venues, the printed matter they use to promote the business and drive trade and also the packaging they use.
5. The members feel that Broad Street and the entertainment sector of the city is being unfairly targeted by proposals as the main retail areas of the city have not been included in the proposal, New Street, Corporation Street, Victoria Square, Union Street, Bull Street, St Phillips Square, Colmore Row have all been excluded.
6. The members feel with the current level of disruption in the city and around Broad Street in particular the redevelopment of Paradise Circus, the work on the tram which is due to start in the near future, the work on New Street Station and John Lewis combined with the road works which have had a major effect on the traffic flow and footfall in and around the area businesses need to be able to promote themselves and the proposed changes will further make it difficult for the businesses that form a large part of the night time economy in the and around the city.

Excellent! More of these sorts of schemes should be introduced to generate money from the cause of the problem. It's a shame that it doesn't cover religious material. I

am fed up of walking through the city centre and being preached at. I have no issue with anyone practising any religion that they want, but it shouldn't be detrimental to mine, and others', enjoyment of the city in peace. I actively avoid the city centre on weekends and the distribution of printed materials is part of the problem.

It's about time, you need to extend it to more areas.

I have no objections as its only advertising that gets put on the floor.

What a rubbish (please excuse pun) consultation.

It will be ineffective (I've already thought of a way round it) It will be a waste of resources.

This consultation doesn't state what the penalty is for ignoring the order. (A proper consultation would also have asked for comments about any proposed penalties).

Will it be an arrestable offence? If not how will it be enforced?

If an arrestable offence don't you think the police have better things to do with their time?

Given the problems Birmingham currently has I don't think wasting officer's time and resources (especially legal officers) on this can really be justified.

In principle I support this move.

My concerns are twofold

The new area is large and restricts a freedom to hand out materials to passers-by over a significantly large portion of the city centre; a creeping loss of freedom

The requirement to give 7 days' notice, with leaflets with the named person, will affect more spontaneous activities, for example a group trying to publicise the plight of a 'good cause' in response to a news item. Many of these types of activity would fall outside the charitable or political definitions. There should be a mechanism in place for shorter notice, particularly as printed materials can be churned out quickly at home these days whereas in the past printer's deadlines meant a week was reasonable.

Personally, I object to the many evangelical groups accosting me, but they are exempt from this rule.

I agree - but why in the centre and not the suburbs?

I think that it is a good idea, but points 4 and 5 (4. All places in which free printed matter has been distributed are to be cleansed forthwith by the consent holder to a radius of 50 metres from the distribution point of any litter caused by the distribution of the said printed matter. 5. The free printed matter must bear the name and address of the consent holder who is responsible for its distribution.) should apply to all groups (i.e. charities and organisations should not be exempt), and I would further propose that the radius of the area that should be cleansed should be extended and further enforced. So often when people are giving out leaflets you find a trail of them on the floor littering the streets for far more than 50 metres, and it should be the distributor's responsibility to clear it up. I would also recommend a reduced consent fee for those using 100% recycled printing materials.

No objections to the proposed plans but must make sure any waste is cleaned up in timely manner.

