



Report of: Head of Enforcement

Meeting:

Date of meeting:

SUBJECT: Free distribution of printed matter on designated land

This Report is for;

Discussion Only

Information Only

Advice/consideration
prior to taking a Key
or Major decision

Decision to be taken by:

Full Council	<input type="checkbox"/>	Corporate Governance and Audit Committee	<input type="checkbox"/>
Executive Board	<input type="checkbox"/>	Standards Committee	<input type="checkbox"/>
An Area Committee	<input type="checkbox"/>	Member Management Committee	<input type="checkbox"/>
A Regulatory Committee	<input type="checkbox"/>	A Director using delegated authority	<input checked="" type="checkbox"/>

Executive Summary

The distribution of printed materials (flyers) has caused significant littering problems in parts of the city, and can cause distress to passers by who have leaflets pushed at them whilst walking past the issuers.

The Clean Neighbourhoods & Environment Act 2005 introduces new powers to reduce the problems from such activities. This involves the Council declaring part or parts of the City as a designated zone, within which flyers can only be distributed with the consent of the council. Outside the zone, flyers can still be distributed and will remain controlled by existing policies. The consents will be subject to conditions and will be subject to an application fee of at least £75 per distributor.

This paper seeks recommendation to introduce a designated zone in the City Centre, extending along a wide corridor along the Otley road, ending at the Shaw Lane/Otley Road junction.

1.0 Purpose of This Report

This report seeks agreement to introduce a flyer designated control zone for part of the city.

2.0 Background Information

- 2.1 Flyering has routinely been of concern in parts of the city due to the quantity of litter created by people dropping them as litter. Existing controls have used a combination of statutory nuisance provisions and litter fixed penalty notices.
- 2.2 The Clean Neighborhoods and Environment Act 2005 provides specific provisions relating to the control of the distribution of free printed materials, including flyers. The introduction of this legislation places a precedent upon the Local authority to use these powers to deal with problems of litter caused by flyers in the future. The powers provide a presumption to allow flyering, but only under consents issued by the authority. Consents can include specific conditions to control problems arising from the consequences of issuing flyers. Breach of a consent is an offence.
- 2.3 The powers cannot be used until the Principal Litter Authority has designated land to which it applies.
- 2.4 The new powers do not apply to materials promoting charities; for religious purposes; or for political purposes. Existing provisions would remain in place for these.
- 2.5 The process is in three distinct parts – 1. The declaration by a principal litter authority that these provisions will be enforceable within specified parts of its area as they are being defaced by flyers;2 - the control of issuing printed materials through consents;3 - enforcement of non-compliance.
- 2.6 The consent fee has been calculated on a cost recovery basis on individual distributors, and does not subsidise the process.
- 2.7 The conditions contained within this paper will only apply once an area has been declared. It only applies to land owned by the council or to highways. If problems come to light in areas outside the declared area, current controls will be used and the area subsequently added to the Declared zone through a further declaration process.

3.1 Declaration of zone - Geographical Areas

- 3.1 The main areas currently identified as having repeated problems with flyers is delineated around the city centre and a wide corridor following Otley Road to the Shaw Lane/Otley Road junction, Headingley. The wide corridor provides a buffer between the main streets which suffer from flyering and the edge of the zone, in order to prevent persons benefiting from standing just beyond the boundary yet accessing the target audience. The area uses natural boundaries, such as major roads and railway lines where possible. The attached map shows this.
- 3.2 The principal litter authority shall issue a legal notice stating its intention to declare a zone on a stated date (not less than 28 days following advert). This is done by advert in a local newspaper and posting notices directly in the area.
- 3.3 Fourteen days are allowed to make objections. Each objection must be considered and, if rejected, reasons recorded for such rejection.
- 3.5 If the principal litter authority decides to go ahead, a further notice must be posted to announce this, together with the date of commencement.

- 3.6 Once declared, people need to be advised about the zone in future. A statement on the Leeds web site will be the main way this is carried out. Signs bearing the words:

Leeds Flyer Control Zone

The distribution of free printed material is not allowed without consent
www.leeds.gov.uk

will be placed in hotspots, although they would not appear in every street.

Consents

- 3.7 Consents would need to be issued in a consistent manner in order to ensure that the process is easily understood by members of the public. The general consent zone will include the city centre which currently has several identified event spaces identified within it.

- 3.8 City Centre event spaces

Currently there are event spaces within the City Centre which require paid consent for use. Event space consents will be continue to be issued by City Centre Management for Briggate, Dortmund Square, Central Square, Albion Place, Bond Court and Chancellor Court. Learning and Leisure will continue to issue event space consents for Millenium Square and Victoria Gardens. The event space consents will include the ability to flyer within the overall event space in accordance with the general conditions referred to in this report. The event space application fee will include the flyer consent cost to avoid an applicant having to apply for 2 consents. This additional cost will be clearly explained so that applicants not using flyers will not have to pay extra. The existing event spaces are available for hire Monday – Saturday 8.00am – 6.00pm, therefore the same timings will apply to the consent for flyers across the city.

- 3.9 Should an applicant hire an event space, but also wish to flyer outside of this area, an application for general consent should be submitted in addition to the event space hire.
- 3.10 An event space consent will enable any number of people associated with that promotion to be engaged in flyering activity within that even space, and they need not carry the photo identification required of general consentees.

General consents

- 3.11 Consents may be limited by reference to the material to be distributed; by reference to a particular period, or particular times or dates; by reference to any part of the designated land; or to a particular distribution. Appendix 2 contains proposed consent conditions to be applied to all consents. The Enforcement division will carry out this consent application process for non city centre event spaces.
- 3.12 A charge can be levied for consents which will cover costs of issuing, then enforcing the process and a contribution to street maintenance needed to clean streets when they are grade B and above of the Code of Practice on Litter & Refuse (cleaning of areas which fail to meet grade B will be subject to an additional charge for extra cleaning on a case by case basis).

- 3.13 Appendix 1 details the costs of carrying out the process. It is not known how many applications are expected, but this is an additional area of work and services will need to employ additional staff to cover this. All costs will need to be covered as it is not proposed to subsidise this service.
- 3.14 Applications for consent will normally be considered within 14 days. Promotion company consents will be granted unless the applicant has 3 or more flyering fixed penalty Notices or 1 or more prosecutions against them in the previous 3 years.
- 3.15 It will be incumbent upon the Promotion Company consent holder to screen its staff. If an identified member of flyering staff has received 1 FPN for littering in the previous year, the application will be refused and resubmission will be accepted at the reduced application fee of £50 (to cover resubmission administration costs only)
- 3.16 Application forms not containing all the relevant details will be refused. Resubmission with correct details will be accepted at the reduced application fee of £50. Payment must be made with the application, and should the payment fail (eg. bounced cheque) after the consent has been issued, the consent will be deemed to be automatically revoked.

Enforcement

- 3.17 Once declared, it is an offence to distribute printed materials in an area without consent. Distribution includes putting items on display for collection, putting bundles in phone boxes etc, and putting leaflets on vehicles.
- 3.18 The distributor and the consentee will both be liable to prosecution. All materials will also be seized, but will be kept for 6 months and returned on proper application.
- 3.19 Prosecutions carry a maximum penalty of £2500, although the offence can be discharged by the payment of a fixed penalty notice of £75.
- 3.20 For offences where consent conditions have been breached, the consent will be revoked in writing on the spot by an authorized officer. If the issuer is not the consent holder, but is an identified distributor for the consent holder, he will be advised to immediately contact the consent holder to advise of the revocation. The authorized officer will ring the telephone number contained on the ID badge to similarly advise that this is the case. Subsequent flyering activity will be prosecuted as if a consent did not exist.
- 3.21 For offences of not having consent, a prosecution will be taken against the distributor and consentee (where one exists). The opportunity to discharge the offence using FPNs will be offered to both, together with an instruction to the issuer to tidy up any litter created forthwith. If the area has deteriorated beyond grade D in the Code of practice, the use of FPNs for the consentee would not be appropriate and prosecutions will be used.

- 3.22 If an appeal against either a refusal to grant consent or a revocation of consent is made to the Magistrate's Court then the distributor will not be able to lawfully distribute material until the court either determines that consent should be granted or quashes the revocation of consent. If the distributor distributes material pending the outcome of the appeal he will not be issued with a FPN but will be prosecuted for the offence, following the determination of the appeal.
- 3.23 LeedsWatch will contribute to enforcement by noting flyering activity outside normal hours, especially at night, and if littering is resulting, retaining the film with image of the distributor for further investigation.
- 3.24 Enforcement of the flyering conditions in City Centre event spaces will be carried out by the City Centre senior liaison officer who will be authorized to issue consent revocations, FPNs and recommend legal action. Enforcement in other areas will be through wardens, enforcement staff and other employees.
- 3.25 Enforcement observations could be through direct interaction with the distributor, through LeedsWatch CCTV or by other observation techniques. The applicant must assume that any Council staff member is able to report back contraventions or compliance, but not all will be trained to answer questions or deal with contraventions. Contraventions will be dealt with through direct interaction.
- 3.26 An application for review of a "premises license" can be requested by an interested party, such as Environmental Health Services, in the event that any of the relevant licensing objectives i.e. Public Safety or Prevention of public nuisance are being compromised. Persistent breaches promoting specific licensed premises will be considered for action using these provisions.

4.0 Conclusions

- 4.1 Leeds has habitually had problems from litter arising from flyering activities. Existing approaches have been robust but have been superseded by the Clean Neighbourhoods & Environment Act 2005 provisions. It is very unlikely that flyering can be conducted without creating litter to some degree. A consent zone will help to control the problem created by flyering in that area. Problems arising outside the area will continue to be enforced using existing processes.

Appendix 1 –costs

To cover the costs of this process, a fee has been calculated based upon each distributor employed and on a daily rate. The fee covers consents for normal day time operation, Monday to Saturday. Applications for issuing flyers after 1800hrs or before 0800hrs, and on Sundays will attract a premium fee to cover the additional enforcement costs.

It will cost an applicant £75 per person employed or used to distribute printed material per day that they issue material.

The premium fee for applications which carry over after 1800hrs or before 0800 hrs will be £110 per person employed or used to distribute printed material per day that they issue material.

The premium fee for applications which include Sundays will be £165 per person employed or used to distribute printed material per day that they issue material.

The fees will be reviewed when salary costs are changed by pay rises or government employer duties and changes notified on the application forms.

Appendix 2 – Consent Conditions

All consents will also be subject to the following standard conditions. Consents may also be subject to specific conditions based upon the application details.

1. All staff engaged in the distribution of free literature shall wear an authorization badge with photograph of the distributor issued by the City Council bearing the number of the consent and showing the name, address and contact telephone number of the consent holder so that it is clearly visible. (A city centre consent will cover all distributors and will not require photographs)
2. The above authorization shall be produced on demand to an authorized officer of the Council or other relevant agency, such as the police.
3. All staff engaged in the distribution of free literature shall wear a hi-visibility safety tabard provided by the consent holder and marked authorized distributor. These will not be required for consents covering City Centre event spaces.
4. No free literature shall be left unattended by staff for the general public to take at their discretion.
5. All places in which free literature is being distributed must be kept free of discarded literature so that the area does not fall below grade B of the Governments Code of Practice on Litter and Refuse at any time. If an authorized officer of the council judges that the standard has been breached as a consequence of the distribution of free materials, his judgment will be definitive at the time. Challenges to that assessment will only be accepted through the formal appeal process.
6. The free literature must bear the name and address of the consent holder who is responsible for its distribution unless exemptions have been agreed previously by the Council.
7. Applications for consent must be made not less than 14 days before the required date for the distribution of free literature.
8. Consents will be subject to the payment of a fee to be paid at the time of the application.
9. No free literature shall be placed on parked vehicles, attached to parked vehicles or fixed to parked vehicles.
10. No free literature which encourages irresponsible consumption of alcohol can be issued. This includes examples of: offering free alcoholic drinks; drink vouchers; discounted drink offers; all in bar offers; unduly cheap sales; happy hours and similar promotions. It is recommended that responsible promotions for alcohol also carry the Drink Aware message.
11. If an authorised officer requests the consented staff to pick up discarded literature, the staff member shall do so immediately, providing that it is safe to do so.
12. If litter is created which is need of urgent clean up, the consent holder will pay the full costs of the necessary street cleaning operation.
13. Flyers cannot be issued in City Centre event spaces (Briggate, Dortmund Square, Central Square, Albion Place, Bond Court, Chancellor Court, Millenium Square and Victoria Gardens) unless an event space consent is held.
 - Promotion company consents will not be granted if the applicant or company has 3 or more flyering fixed penalty Notices or 1 or more prosecutions against them in the previous 3 years.
 - It will be incumbent upon the Promotion Company consent holder to screen its staff. If an identified member of flyering staff has received 1 FPN for littering in the previous year, the application will be refused and resubmission will be

accepted at the reduced application fee of £50 (to cover resubmission administration costs only)