



Executive
23 April 2012

**Report from the Director of
Environment and Neighbourhood
Services**

Wards Affected:
ALL

Control of distribution of free literature on designated land

1.0 Summary

- 1.1 This report recommends adoption of licensing powers to regulate the distribution of free literature (flyers/leaflets/newsletters/ newspapers), which causes significant littering problems and can impede passers-by who have literature thrust at them.
- 1.2 These controls are being sought now to assist with the effective control of literature distributors anticipated during the Olympic period in an attempt to reduce the amount of waste printed material deposited in certain areas of the borough.

2 Recommendations

- 2.1 Members agree to designate the following roads as places where free literature may not be distributed without the Council's prior written consent in the form of a licence as described in paragraph 3.2 :

Kilburn/Cricklewood – Kilburn High Road, Shoot-Up Hill, Cricklewood Broadway, Willesden Lane

Willesden/Harlesden – High Road (Willesden), Walm Lane, Craven Park Road, High Street (Harlesden), Dudden Hill Lane, Station Road (Harlesden).

Wembley – Bridge Road, Wembley Hill Road, Wembley Park Drive, Park Lane, Empire Way, South Way, Rutherford Way, Engineers Way, Olympic Way, Fulton Road, Brook Avenue, Great Central Way, First Way, Fourth Way, Fifth Way, High Road, Harrow Road, St John’s Road, Lancelot Road, Ealing Road, Ecclestone Place, London Road, Dagmar Avenue, Linden Avenue, Mostyn Avenue

Kingsbury/Kenton/Edgware – Kenton Road, Kingsbury Road, Edgware Road

- 2.2 Members agree the fees set out in paragraph 3.12
- 2.3 Members agree that the proposed licence conditions in Appendix 1 be applied to all licences.

3.0 Detail

- 3.1 Distribution of free literature has been of concern due to people dropping the printed material as litter. Current controls, namely, statutory nuisance provisions (which only apply to private land) and seizure and disposal of literature under London Local Authorities Act 1996 have had limited impact because the distributors return with more literature. Furthermore, there are no controls in place to limit the number of distributors or recover the cost of enforcement.
- 3.2 Section 23 of the Clean Neighbourhoods and Environment Act 2005 (“The Act”) (as inserted by section 94B and Schedule 3A of the Environment Protection Act 1990) provides specific provisions to control the distribution of free literature. The powers provide a presumption to allow distribution of free literature but only under consents (to be issued in the form of a licence) by the Council. The licence will include specific conditions to control problems arising from the consequences of distributing free literature. Breach of a licence is a criminal offence which could lead to prosecution.
- 3.3 The powers cannot be used until the Council hereinafter referred to as the (“Principal Litter Authority”) has designated land to which it applies. It only applies to land within the ownership of the Council or to Highways for which it is responsible as Highway Authority. It does not apply to private land.
- 3.4 These powers do not apply to materials promoting charities, for religious purposes or for political purposes.
- 3.5 The process comprises three distinct parts:
 - declaring that the provisions of The Act will be enforced in designated areas/roads;
 - controlling distribution of free literature through consents/ licenses
 - undertaking enforcement for non-compliance.

- 3.6 If problems come to light in areas outside the designated areas it can be added to the designated areas through a further declaration.

Adoption of controls

- 3.7 The main areas currently identified as having repeated problems with flyers are in town centres, around the National Stadium and Wembley Arena, as detailed in paragraph 2.1 above.
- 3.8 The Council will need to issue a legal notice stating its intention to designate areas/roads on a specified date (being not less than 28 days following the date of publication). Public notices will be advertised in a local newspaper for the relevant time period as well as posting notices directly in the area. It is important that the Council discharges its duty in this respect to avoid any possible challenge.
- 3.9 The consultation period is 14 days allowing for Objections. Any objections received during this time period must be considered and if rejected, reasons for rejection must be fully recorded
- 3.10 If the Council were minded to adopt the scheme by agreeing the proposed recommendations, a further public notice must be posted to announce this together with the date of commencement.
- 3.11 Once the areas/roads have been designated the public will be informed accordingly via the Councils website.

Licenses/Consents

- 3.12 Licenses will need to be issued in a consistent manner to ensure that the process is transparent and easily understood by members of the public. The Licence will be subject to:
- an application fee of £175 to cover administrative and part enforcement cost;
 - A £75 re-submission fee will be applied to cover administrative cost.
 - A discount of £25 will be applied to applicants that apply and pay on-line. The discount is applicable to both applications and re-submissions
 - A fee for each distributor employed for each day of £75 except where the distribution takes place after 1800 hours or before 0800 hours where the fee will be £100 per distributor per day, or for Sundays and bank holidays where the fee will be £165 per distributor per day.
- 3.13 The licence may be limited by:
- reference to the material to be distributed;
 - reference to a particular period, or particular times or dates;
 - reference to any part of the designated area/road; or
 - particular distribution.

- 3.14 Appendix 1 contains proposed licence conditions to be applied to all licenses. Additionally, officers may apply ad-hoc licence conditions as appropriate provided they are reasonable. Safer Streets within Environment and Neighbourhoods will carry out the license application process. In order to reduce the administrative burden on-line applications and payments will be encouraged through differential pricing.
- 3.15 A charge can be levied for licenses which will cover costs of issuing, then enforcing the process as well as a contribution to street maintenance needed to clean the streets when they are grade B and above in accordance with the Code of Practice on Litter and Refuse (April 2006) such government guidance issued by the Department for Environment Food and Rural Affairs from time to time under section 89 (7) of the Environment Protection Act 1990. Please note that 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.
- 3.16 Applications for consent will normally be considered within 14 days. Promotion company consents will be granted unless the applicant has three or more fixed penalty notices (FPN) or one or more prosecutions against them in the previous 3 years for distribution of flyers without consent.
- 3.17 The promotion company consent holder will be responsible for screening its staff. If an identified member of the leaflet distribution staff has received a FPN for littering in the previous year, the application will be refused resubmission will be at the resubmission fee rate as described above. Payment must be made with the application.
- 3.18 Application forms that fail to contain all the relevant details so as to allow the Principal Litter Authority to fully assess the application will be refused. Resubmission with correct details will be at the resubmission fee rate as described above. Payment must be made with the application.

Enforcement

- 3.19 Once the areas/roads have been designated, it is a criminal offence to distribute printed materials in the areas without a valid licence issued by the Principal Litter Authority. The definition of distribution has a wide meaning under the Act. Examples of distribution include, but are not limited to putting items on display for collection or on vehicles and in telephone boxes giving rise to a nuisance.
- 3.20 The distributor and the licence holder may both be liable to criminal prosecution. All materials may be seized and if so will be kept for 28 days and returned on proper application. Materials unclaimed after the 28 day period will be destroyed without further notification.
- 3.21 For offences where licence conditions have been breached, the licence may be revoked in writing on-the-spot by a duly authorised officer of the Council. If the issuer is not the consent holder, but is an identified distributor for the licence holder, the duly authorised officer of the Council immediately contact

the licence holder to advise of the revocation. Subsequent leaflet distribution activities may result in prosecution.

- 3.22 Prosecution may be taken against the promoter who should have sought a licence (where one exists) as well as the distributor. The opportunity to discharge the offence using FPNs may be offered to both, together with an instruction to the distributor to remove and lawfully dispose any litter created forthwith. If the area has deteriorated beyond grade D in the Code of Practice, the use of FPNs would not be appropriate in these circumstances, therefore prosecution action would be the appropriate enforcement option.
- 3.23 Where a person is to distribute commission or pay for the distribution of free printed matter without the Council's prior written consent in a designated area he commits an offence and shall be liable on summary conviction in the magistrates court to a fine not exceeding level 4 on the standard scale currently £2,500. FPNs can be discharged by payment of £75.
- 3.24 If an appeal against either a refusal to grant a licence or a revocation of a licence is made to the Magistrates' Court then the distributor will not be able to lawfully distribute material until the court either determines that the licence should be granted or quashes the revocation of the licence. If the distributor distributes material pending the outcome of the appeal he will not be issued with a FPN but may be prosecuted for the offence, following the determination of the appeal.
- 3.25 All enforcement decisions and actions will be in accordance with the Councils Enforcement Policy acting reasonably.

4.0 Financial Implications

- 4.1 The fees have been set to recover all the Council's costs of licensing administration, enforcement and where necessary remedial cleansing. The proposed regime is expected to be cost neutral in terms of costs to the Council.
- 4.2 The following fees will apply:
- Application fee of £175 will cover the expected cost of processing and enforcement. The fee covers licence for normal day time operations, Monday to Saturday.
 - A re-submission fee where needed of £75.
 - It will cost an applicant £75 per person employed or used to distribute printed material per day that they issue the material and a fee of £110 will apply where distribution takes place after 1800 hours or before 0800 hours. A premium fee of £165 per person will apply for printed materials issued on Sundays and bank holidays.
 - A discount of £25 will be given for each submission or re-submission where the application and payment is made on-line.

5.0 Legal Implications

- 5.1 The actions proposed in this report are in essence to regulate the distribution of free printed matter, for the advertisement to be published and to authorise a formal consultation to be conducted in accordance with the statutory framework provided for in the Clean Neighbourhoods and Environment Act 2005

6.0 Diversity Implications

- 6.1 The proposals contained in this report have been examined and are not considered to have any equalities implications. There is a fourteen day consultation period where objections can be made.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None

Background Papers

The Clean Neighbourhoods and Environment Act 2005
Code of Practice on Litter and Refuse (April 2006) issued by DEFRA
Brent Councils Enforcement Policy

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Appendix 1

Licence conditions for leaflet distribution:

All licences will be subject to the following standard conditions. Licences 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 authorisation badge with photograph of the distributor issued by Brent Council bearing the licence number and showing the name, address and contact telephone number of the licence holder so that it is clearly visible.
2. The above authorisation shall be produced on demand to an authorised 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 licence holder and marked 'Authorised Distributor'.
4. No free literature shall be left unattended by staff for the general public to take at their discretion.
5. All places in the vicinity of free literature distribution, must be kept free of discarded literature so that the area does not fall below grade B of the Government's Code of Practice on Litter and Refuse at any time. If an authorised officer of the council judges that the standard has been breached as a consequence of the distribution of free materials, his judgement 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 licence holder who is responsible for its distribution unless exemptions have been agreed 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. Licences 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, attached to, affixed to vehicles, buildings, street furniture, telephone boxes or structures.
10. No free literature which encourages irresponsible consumption of alcohol can be distributed. This includes examples of: offering free alcoholic drinks; drink vouches; discounted drink offers; all in bar offers; unduly cheap sales; happy hours and similar promotions. It is recommended that responsible promotions for alcohol 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.
12. If litter is created which is in need of urgent clean up, the licence holder will be liable for the full cost of the necessary street cleaning operation.

13. All staff engaged in the distribution of free literature must not cause obstruction to pedestrian movement and shall at the request of authorised officers or the police must move to areas where obstruction does not take place. This may apply during Stadium Event days.
14. Promotion Company consents will not be granted if the applicant or the company has three or more leaflet distribution FPN or one or more prosecutions against them in the previous three years.
15. It will be incumbent on the Promotion Company consent holder to screen its staff. If an identified member of the distribution staff has received one Fixed Penalty Notice for littering in the previous year, the application will be refused.