

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet

DATE: 15th November 2021

SUBJECT: Digital Signage Project

CHIEF OFFICER: Savio DeCruz – Associate Director Place Operations

CONTACT OFFICER: (01753) 875668

WARD(S): All

PORTFOLIO: Financial Governance, Economic Development & Council Plans
– James Swindlehurst

KEY DECISION: YES

EXEMPT: NO (except for Appendix 5 which is exempt under paragraph 5 of Schedule 12A Local Government Act 1972 on the basis that it contains information in respect of which legal professional privilege could be claimed),

DECISION SUBJECT TO CALL IN: NO

APPENDICES:

- Appendix 1 – Proposed Asset List
- Appendix 2 - Risk Register.
- Appendix 3 Proposed Asset locations map (to follow)
- Appendix 4 Example of advertising signage (A & B)
- Appendix 5 Exempt Legal Advice (Part II Report)
- Appendix 6 – Advertising Policy

1 Summary

- 1.1. Like many other Local Authorities, the Council is mindful of the potential to utilise highway, Council owned land and other assets in the best way possible to benefit the Borough as a whole. This project has also investigated other existing similar smaller contracts/arrangements in place, such as roundabouts and Borough gateway signage to align the approaches being taken; furthermore the study has looked into the advertising provisions in place in some other local authorities.
- 1.2. This report sets out the potential for reviewing existing arrangements and enhancing Slough Borough open spaces, land and highways by the use of digital signage advertising contracts which include public information services as an integral part of the arrangements, and granting licences for highway land for the purpose of Digital Signage advertising.

- 1.3. This report also identifies a potential future policy direction in respect of advertising and public realm sponsorship in the borough and outlines a future strategy to make best use of the Council's public realm assets to maximise the visual amenity of public spaces. Please note attached Appendix 6 '**SBC Advertising Policy**' which will act as the key guidance document for the Strategic Director for Place when exercising the delegated authority sought in this report. This will ensure due-diligence is followed when granting permission to third parties for provision of advertisement on highway land and other Council owned assets.

2. Recommendations & Project Targets

2.1 The Cabinet is requested to resolve:

- (a) That the advertising policy attached at Appendix 6 be approved.
- (b) That the use of Slough Borough Council owned Land Assets and highway land listed in Appendix 1 be approved for advertising and public realm sponsorship to make best use of the Council's assets in accordance with the policy at Appendix 6 and subject to following statutory processes and obtaining relevant statutory consents (e.g. planning approval).
- (c) That delegated authority be given to the Strategic Director for Place to:
 - (i) Seek and select suitable third party providers for each of the advertising and public realm sponsorship opportunities identified in Appendix 3 in compliance with the Council's Contract Procedure Rules and any applicable procurement regulations.
 - (ii) Grant permission under the Highways Act 1980 ("HA 1980") to third party providers to erect advertising hoardings on highway land and to place advertising on existing structures on a case by case basis in accordance with the policy at Appendix 6 and subject to following the statutory processes and obtaining all relevant consents including compliance with any necessary planning conditions.
 - (iii) Enter into appropriate lease or licence arrangements with third party providers for the provision of suitable advertising displays at specified locations identified in Appendix 3 to facilitate the policy intentions set out in Appendix 6.
 - (iv) Make necessary amendments to the contractual arrangements entered with providers.

2.1.3 *Project Targets*

- a) Make better use and enhance highway land.
- b) Promote information sharing through both advertising space but also for information sharing of essential notices to local residents and business.
- c) Promote inclusion and equality across the borough by linking in to charities, community groups & small businesses.
- d) Ensure any advertising used matches the Borough's forward plan and ideals.

- e) Ensure mixed sizes of spaces and design are available to meet a variety of needs.
- f) Where possible and following guidance provided aid the Borough's financial recovery.

Options Considered & Project Benefits

- 2.4 The Digital Signage Working Group has currently identified between new 60-70 Asset locations across the Borough within 19 separate locations that are suggested for the use of Lease or licence arrangements for the purpose of providing digital signage advertising to enhance the Council's highway and other land assets. These are highlighted in appendix 1 many of which cover prominent locations e.g. the M4 Motorway, the A4 and the main gateways into Slough. It is suggested that these are grouped into key lots for auction for a 5 year period with the option to extend for further identifiable periods. Please note that all energy costs will be covered by the media companies that win the allocated lots as well as all costs for replacement/repair of the advertising units and any assets which they utilise.
- 2.5 A separate phase of this project will also be to work with existing users of spaces to see how these opportunities could be developed. An example of this would be the Clear Channel (Adshel) contract which although expired in 2018 requires further Capital investment by Clear Channel and therefore they currently require a further 5 year period to recover costs and also to pay Slough revenue.
- 2.6 The group has worked to identify a range of different digital advertising signs ranging from the smaller free standing units often found in areas such as High Streets through to large digital billboards, advertising towers, lamp column mounted signs and even gantry style advertising signage. This wide variety of signage maximises the appeal to potential bidders as it provides signs in all shapes and sizes across key locations in the borough as well maximising the locations where important information can be displayed. Signage locations have been determined along all major traffic corridors across the borough where they are likely to be seen and have the maximum impact/be most effective. Due consideration has been given to ensure the signs are not in locations where they will detract from the amenity value whilst also ensuring they do not pose an excessive distraction to road users, ensuring road safety has been given the necessary consideration. A study has been taken in regard to use of similar signage used in other parts of the Country without issues to also mitigate risk. A list of advert sites is attached in Appendix 1 as well as some advert examples in Appendix 2 and a map of the borough showing the locations in Appendix 3.
- 2.7 In addition, interested parties for the small-scale opportunities will be offered lamp posts to attach advertising banners. These will be a helpful additional for local businesses as the experience obtained from other authorities is that most local businesses are unable to afford other advertising media. Street Lamp banners, gateway signs and roundabouts provide an alternative mechanism for local businesses at a lower cost and enhance opportunities to smaller parts of the community including marginalised groups. This form of advertising can also be a useful resource for community and charity events as they provide high profile messaging to a wide audience.
- 2.8 It is worth noting that before any new advertisement hoardings can be installed; planning permission will need to be obtained. Where this cannot be obtained through the Officer Delegation process it will be determined by Planning Committee with each individual site being considered on its own planning merits.

It is suggested that a Soft Marketing Day is set up which will enable to the Group to gauge an increased understanding of the Market Place and identify potential key interested parties and gauge the best way forward to develop and successfully enhance these areas of land.

Implications should the Project not Proceed.

- 2.9 *This would not provide the best use of the Council highway and other land and would not be maximising the benefits that can be derived in terms of improved messaging, supporting local businesses and enhancing wider community enhancements.*
- 2.10 The advertising and asset sponsorship review has identified that other Councils, particularly those in London (Hammersmith and Fulham) are maximising the use of existing highway and other land to enhance the amenities and public provisions within their boroughs and it is considered the Council could adopt a similar approach subject to following all statutory processes. If the Council does not follow a similar approach it could be considered that the Council is not currently managing its existing land appropriately and most importantly to the benefit of residents. In addition, local businesses would not be provided with a potential advertising source that is considered to be affordable.

3. Background

During 2020 with Covid and into 2021 the new operating model has helped officers to challenge the way of working, collaborate and drive through an expedited approach to realising the benefits of some of the Council's land assets and highway. This innovative and collaborative approach has helped to identify significantly more assets and allowed officers across departments to share experience and knowledge to obtain a programme of sites for auction.

- 3.1 Through early engagement with external Digital Advertising Specialists and our own officers, it has highlighted opportunities to utilise the Borough's Highway spaces using both existing locations of which the borough is not currently utilising to best use but also to identify further locations which the borough could licence for Digital Billboard advertising space and to utilise other areas such as key corporate buildings. Please see Asset List within Appendix 1.
- 3.2 Following the soft market testing various Media companies will be approached via the council's procurement portal to bid via an auction for sites; subject to the interest officers will then report back to Cabinet for agreement to sign contracts per individual or collective lots.
- 3.3 This report seeks delegated authority for the Strategic Director for Place to grant permission to erect advertising hoardings and place advertising on highways land on a case by case basis subject to meeting the statutory requirements for erecting such hoardings on highway land as highlighted in Appendix 6 – SBC Advertising Policy and entering appropriate licence arrangements.
- 3.4 This would give the third party provider the necessary permission to erect and maintain suitable advertising displays at specified locations. The Council would then grant permission to the third party with appropriate conditions including applying for and securing of planning consent, the payment of a reasonable charge, a condition that public and council information will be displayed for set periods throughout the year

and an indemnity in relation to injury, damage or loss arising out of granting the permission.

- 3.5 As it is likely that these contractual arrangements will be long term agreements, due to the high capital costs involved in providing the new digital displays, it is also important that the delegated authority extends to allowing amendments, including introducing suitable additional sites, within the term of the agreements.

4. Implications of the Recommendation

4.1

Financial implications

There are no negative financial implications expected as a result of this project. The digital advertising signs will be erected, maintained and operated by the media companies who take on the sites; they will also be responsible for upgrading and maintaining any Council assets directly affected by their proposals.

The licensing contract when completed will be managed within the existing Council's procurement processes, contract arrangements, financial regulations and existing revenue.

4.2 Legal implications

The report proposes use of a mix of sites for digital advertising some of which are designated as public highway. As such, there are specific statutory requirements that apply when utilising land designated as highway for erecting advertisement hoardings and display of advertisement.

Sections 115B and 115E of the Highways Act 1980 ("HA 1980") give a highway authority power to grant permission to a third party to place objects or structures on, in or over certain types of highway for the purpose of enhancing the amenity of the highway and its immediate surroundings or for providing a service for the benefit of the public or a section of the public.

The powers set out in sections 115B and 115E only apply to highways where vehicular traffic is prohibited such as footpaths, bridleways, restricted byways and footways where no pedestrian planning order or traffic order is in place.

If the Council proposes to grant permission to a third party to place an object on a highway for a purpose which will result in the production of income, it must first obtain the consent of the frontagers with an interest to the placing of the object, the purpose of which it is placed and the proposed grant of permission.

Also if the Council does not own the subsoil beneath the highway in question, it cannot charge more than the a standard amount to the person it is granting the permission to.

Where there are already existing objects or structures on a highway, section 115E of the HA 1980 permits the Council to grant permission to a third party to use such existing objects or structures for purposes which will result in income generation or for the purpose of advertising.

Before granting permission to place objects or structures on a highway, the Council must publish a notice by affixing it in a conspicuous place near to the proposed location and serving a copy of the notice on the owner and occupier of any premises appearing to the Council to be likely to be materially affected. The notice must give a minimum 28- day period within which representations may be submitted to the Council and the Council must then consider the responses to any representations received before exercising the power/granting permission.

From a procurement perspective, it is considered that the contract to be entered with advertising providers:

- will not qualify as a public services contract as the advertising providers will not be providing services to the Council and the Council will pay no consideration to the advertising provider;
- will not fall under the land exemption Regulation **10(1)** of PCR2015 because the Council is not “buying” or looking to “lease” anything. In this instance the Council is leasing (“selling”) land or granting a right to exploit a public infrastructure (Bus shelters, etc.) it manages/owns, for consideration. This transaction would be subject to the Subsidy rules under the TCA and section 123 of the LGA1972. The risk of the Council under the TCA’s subsidies rules and under s.123 LGA 1972 is firmly in the hands of the Council to minimise by ensuring that the contracts they enter into with the advertising providers are market based and bring to the Council Best Value for the leasing/licensing of its land assets and highway land.
- is not a services concession despite the fact that it very much looks like one. The reason for this is that the advertising provider is not providing as such a service to the public to assist the public with a need they have (such as , for example, the operation of a toll motorway or a bridge, or operation of motorway services or the operation of kiosk at a park selling ice cream and sandwiches to the visitors of the park).

The Court of Appeal and Justice Coulson drew the distinction in the case of *Ocean Outdoors V Hammersmith & Fulham Council*. Coulson LJ, disagreed [with appellant (Ocean)]. *As the CCRs were concerned solely with public bodies, it naturally followed that the services in question must be services to or for the public, which the authority would otherwise have to provide itself. This view was also supported by the use of the word ‘entrust’ in Regulation 3(3) and by Recital 11 of the Concessions Directive, that contracting authorities must ‘always obtain the benefits of the works or services in question’. Though there were no judgments directly, the views of the Advocates General in Gemeente Arnhem v BFI Holding BV [1998] 1-ECR 6821, Helmut Muller [2010] 3 CMLR 18 and Promoimpresa Srl [2017] 1 CMLR all offered supporting authority too.*

Accordingly, in entering into contracts with advertising providers, the Council need not worry about the application of Public Procurement Law and the Concession Contracts Regulations 2016.

However, the Council is subject to an obligation under s.123 of the GLA1972 to obtain “Best value” for the leasing or licensing of its land assets and highway land.

4.3 Risk management implications

4.3.1 A separate risk register has been developed as part of this scheme of which includes the following keys areas.

Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Planning permission not granted	The team has engaged Daniel Ray within planning early within the process to by carrying out a pre-app submission to ensure there are no obstacles with the full submission.	Probability 3 Impact 2 Overall Risk Score 6 – currently highlighted as a low Risk.	Market Testing And continuous engagement of planning authorities including Highways England.
Interest of Lease of Land Spaces not as high as expected.	Market Testing Day suggested and Early Engagement with existing users. Early interest through Communications Team would suggest interest is high.	Probability 4 Impact 3 Overall Risk Score 12 Currently highlighted as a medium risk but with transfer and mitigation measures can be moved to lower risk	Market place to be tested based on similar local authorities i.e. Reading Investigate asset list thoroughly to ensure the proposed assets and signage are best fit for use.
Environmental Factors of noise and light pollution/danger to drivers/resident complaints.	Carry out detailed desk top survey off identified spaces. Carry out site visits to potential sites of concern. Early engagement with surrounding occupants.	Probability 3 Impact 2 Overall Risk Score 6 Currently highlighted as a medium risk but with transfer and mitigation measures can be moved to lower risk	Ongoing management of and interaction with companies to manage usage. Ongoing risk assessments as part of Management process. Taking guidance from the Digital Advertising and Proposed Best Practice 2013.

<p>Legal challenge- Use of land not permitted and inappropriate guidance gaged causing challenges to the Borough</p>	<ul style="list-style-type: none"> Form part 1 & 2 reports to open up the proposal to members of the public and to gain members supports. Ensure proposals meet the interest of public and enhances public land. 	<p>Probability -3 Impact – 3 Overall Score risk 9. The overall risk is medium but using the mitigation measures proposed and by remaining transparent the overall risks can be significantly reduced.</p>	<ul style="list-style-type: none"> Ensure designated areas take into account public and member engagement. Ongoing guidance from HB Law.
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4.4 Environmental implications

4.4.1 The working group has established an asset list which aims to have the least impact on residents, businesses and road users whilst balancing this with locations that are likely to most enhance the local spaces. Environmental impacts will be mitigated using the pre-app and planning application process to ensure all asset locations are fit for use and do not have any adverse harmful effects.

4.5 Equality implications

In exercising any of its functions, the Council has a duty under section 149 of the Equality Act 2010 (“the Act”) to have due regard to the need to eliminate discrimination, advance equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and those who do not share it.

The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation.

It is considered that the project will not adversely impact on persons within the protected characteristics. Any structures or objects to be erected for advertising will be positioned to ensure that it will not impact negatively on people with disabilities, older people, pregnant women and children.

Further, the sites identified will be subject to individual planning applications with the successful bidder required to meet all necessary planning restrictions to reduce any impacts associated with the development of the infrastructure.

It is also noted that the types of messaging used on the signage has been discussed in detail within the Project Meetings and in terms of contract will ensure that it meets the following criteria.

- Is fit for use both for the location in terms of environmental impact for homes, businesses and impact on drivers.

- Does not promote any views, opinions or beliefs that may cause offence to any particular group
- Does not promote any kind of hate
- Is suitable for all audiences which may be targeted in the allocated location.
- Provides public information updates of use to the local community.

4.6 Procurement implications

As indicated in the legal implications section above, this project does not involve the procurement of any works, goods or services. The Council will simply grant a lease or licence to an advertising company who will then procure the necessary equipment and installation.

Plots are to be leased or licensed upon a public sale or independent market valuation of pre-determined lots based on the gauged interest from the Soft Market Testing day which will take place in Autumn 2021. Public Auction process to be confirmed.

4.7 Workforce implications

None currently identified.

4.8 Property implications

4.8.1 The long term lease of Council land and grant of licences over highway asset locations.

5. Background Papers

None