

WEST NORTHAMPTONSHIRE COUNCIL CABINET

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PORTFOLIO HOLDER FOR ENVIRONMENT, TRANSPORT – COUNCILLOR PHIL
LARRATT

Report Title	Procurement of bus shelter advertising franchise contract
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Appendix A: Advertising policy

1. Purpose of Report

- 1.1 To seek approval for the procurement of a new franchise contact for the provision and maintenance of bus shelters using advertising.

2. Executive Summary

- 2.1 The Council owns or has under contract a little over 200 bus shelters. The majority of these are provided under a contract originally entered into between AdShel and Northampton Borough Council (NBC), which has reached the end of its term. The remainder were formerly owned by Northamptonshire County Council (NCC) or Daventry District Council, with a few owned directly by NBC. Those under the AdShel contract are maintained by AdShel, with the remainder maintained by the Council.
- 2.2 Given the expiry of the AdShel contract it is necessary to come to new arrangements for maintenance of the shelters provided under it. It would also be sensible to include all shelters the Council controls under one contract, ideally fully funded by advertising.
- 2.3 A new contact also offers the Council the opportunity to improve outcomes, including by putting shelters in the places where they are most useful, increasing use of solar electricity, and supporting biodiversity.

3. Recommendations

- 3.1 It is recommended that the Cabinet:
 - 3.1.1 Authorises procurement of a new bus shelter advertising contract.
 - 3.1.2 Endorses the proposal that WNC funds the provision of new shelters, subject to the Director of Finance approving the use of capital once the actual costs are known.

4. Reason for Recommendations

- 4.1 To provide one consistent approach to providing and maintaining bus shelters.
- 4.2 To maximise the potential for advertising revenue whilst respecting the Council's advertising policy, which seeks to balance commercial and policy (particularly public health) objectives.
- 4.3 To comply with public procurement law.
- 4.4 To enable the Council to add or remove bus shelters when it considers it needs to do so.

5. Report Background

- 5.1 The Council has around 221 bus shelters it owns or are provided under a contract with it. These are all in Northampton except for three at Daventry Bus Station. Other bus shelters in West Northamptonshire are provided by parish councils.
- 5.2 The majority of the Council's shelters were provided by the former Northampton Borough Council (NBC) under a contract with AdShel, which maintains them using advertising revenue. These are owned by AdShel. That contract is now at an end but continues to operate until replacement arrangements are made. Others, previously owned by the former Northamptonshire County Council (NCC), are maintained by the Council's Highways & Transport

service, and those at Daventry Bus Station by the Assets & Environment service; in both cases there is limited resource for this.

- 5.3 The AdShel contract requires AdShel to remove all of its shelters and reinstate sites at its end. However, AdShel may consider that it does not want to incur this expense. Therefore, dialogue is underway to agree what should happen. This may result in all AdShel shelters remaining (and becoming WNC property), all AdShel shelters being removed, or some point between these two extremes. Until this is resolved, the uncertainty needs to be allowed for in the procurement and resulting contract.
- 5.4 In order to bring order to the situation and have all shelters under a common contract, it is proposed to procure a new advertising-based franchise contract. Pre-procurement engagement with potential operators has taken place to seek to understand operators' perspectives and how to maximise the attraction of the opportunity to them. The proposed aims of the contract, which would be used to score tenders, are to:
 - 5.4.1 Provide good quality bus shelters in the locations where they are most needed.
 - 5.4.2 Optimise income from advertising opportunities.
 - 5.4.3 Support design quality in the urban environment, including preserving and restoring any existing shelters (such as former tram shelters) of quality or local importance.
 - 5.4.4 Incorporate design approaches which support the character and distinctiveness of West Northamptonshire.
 - 5.4.5 Support biodiversity, including the provision of 'buzz stop' green roofs.
 - 5.4.6 Support net zero carbon in manufacture, construction, installation, maintenance, use, and removal/repurposing of structures.
 - 5.4.7 Receive a cash income.
- 5.5 Parish councils in West Northamptonshire were contacted to see if any of these would like to be included within the contract. At this point, only one, Daventry Town Council (DTC), has asked to be included. DTC owns 23 shelters.
- 5.6 The Council needs to be able to require changes to shelters, including addition or removal of shelters, to reflect its policy goals and service needs. For example, to support new or enhanced bus routes, or where a street is subject to major works. It would, however, be unreasonable to expect the chosen operator to take the risk of such changes, as they are totally out of their control. Therefore, it is proposed to seek as part of tenders:
 - 5.6.1 Costings for providing and maintaining different types of shelter.
 - 5.6.2 Income per-shelter, based on the location of shelters (as this is what drives advertising income, rather than type of shelter).
- 5.7 With this information provided in tenders, adjustments to revenue received from, or paid to, the operator would be adjusted when the Council requires changes to shelters. Provision would also be made for the operator to propose new shelters on its own initiative, where it considers advertising income would justify this. If the Council approved such proposals, the revenue impact for the Council would only vary if in a beneficial direction.

- 5.8 Having the information referred to in 5.6 would then allow the Council to choose to provide capital funding for all new shelters. This would reduce costs an operator had to bear, and therefore should make the net income payable to the Council higher (or net cost payable by the Council lower). Additionally, to this benefit, it would allow effective management of the uncertainty over whether the AdShel shelters are retained. Clearly, the risk on this would need to be carried by the Council, as operators would have to price a very high risk premium if they were to be asked to carry it, to the extent they may well refuse to tender at all.
- 5.9 The contract would include requirements for an initial programme of work, which would address outstanding issues with shelters and the Council's bus strategy. This would include provision of new shelters where justified under the bus strategy, provision of 'buzz stop' roofs, photovoltaic roofs, restoration of the historic tram shelters, and removal of shelters no longer required.

6. Issues and Choices

- 6.1 There are a wide range of choices open to the Council, but the main ones can be summarised as follows.
- 6.2 Option 1: Take no action. This would involve leaving shelters under their current arrangements, including the expired AdShel contract (or alternatively definitively ending that contract and leaving any remaining shelters for WNC to maintain).
- 6.3 Option 2: WNC providing shelters itself, and separately selling advertising space. To be attractive, this would require WNC to be as efficient in delivering and maintaining shelters as the operators are, and as effective at selling advertising as the operators. This appears unlikely.
- 6.4 Option 3: Procuring an advertising concession contract as set out above. This appears capable of delivering the service with the greatest efficiency. There are two sub-options which need consideration:
- 6.5 Option 3A: WNC does not fund shelter provision except where it instructs new shelters not proposed by the operator. This would require operators to fund all capital costs, reducing revenue benefits. It would also leave unresolved the issue of managing the risk of the need for mass replacement of AdShel shelters.
- 6.6 Option 3B: WNC funds all new shelter provision (including the mass replacement of AdShel shelters if required). This should maximise revenue benefits, and also provides a simple mechanism to address the risk of needing to replace the AdShel shelters.
- 6.7 Option 4: Procuring several contracts. There is no obvious benefit of operating more than one contract. Such an approach would be likely to reduce operator interest and lose economies of scale.
- 6.8 It is therefore proposed that Option 3B is taken forward.

7. Implications (including financial implications)

7.1 Resources and Financial

- 7.1.1 Currently maintenance of the former NNC shelter is funded by AdShel from advertising revenue. The former NCC shelters have no defined maintenance budget and accordingly receive only limited attention, but what work is done is a cost to WNC, carried in the Highways & Transport Service. Maintenance of the other shelters (e.g. at Daventry Bus Station) is carried out by the Assets & Environment service from maintenance budgets it holds.
- 7.1.2 It is hoped that the result of the procurement will be a contract which removes the cost of maintenance from the Council, thereby delivering a small saving, as well as ensuring the assets are maintained in a good position. Ideally, there will be a net income, reflecting operator's views on the available advertising income as against the costs of maintenance.
- 7.1.3 To maximise the revenue benefits, as outlined in the body of the report, it is proposed that the Council funds the initial provision of new shelters. This would be a capital investment. By doing this, the Council would avoid the need for the operator to meet these costs from its future revenue. This should minimise the risk of the Council needing to make a revenue contribution and maximise the chance of it receiving a revenue income.
- 7.1.4 Once tenders are received and evaluated, a decision would be taken on authorising the use of WNC capital. A budget proposal has been included in the budget to cover off a reasonable worst case situation, but it is expected the actual requirement would be lower.

7.2 Legal

- 7.2.1 The Council can provide bus shelters on highways it is the highway authority for, and on land it owns, such as in bus stations. Parish councils can also provide bus shelters with the consent of the highway authority on whose highway they propose to locate them. If it is proposed to locate a shelter on land the council is not highway authority for, consent of that highway authority is required (for WNC, this only relates to a few roads such as the A5 for which National Highways is the highway authority).
- 7.2.2 Under the proposed contact, the operator would be acting as WNC's agent, with the legal authority coming from WNC.
- 7.2.3 Procurement of the operator would currently fall under the Concession Contracts Regulations 2016 but when the relevant provisions of the Procurement Act 2023 come into force these would replace the 2016 Regulations (but this would only affect this procurement if it had not started by that time). The substance of the provisions is similar, requiring notification of opportunities over a threshold value and a fair process of selecting operators and, if applicable, negotiating the terms of the concession. As it is difficult to estimate the value of the contact, and because there is no real disadvantage in doing so, it is proposed to use the highest value procurement route.

7.3 Risk

- 7.3.1 The main risks associated with undertaking the procurement and then implementing a contract are as follows.
- 7.3.2 R1: The number, location, and condition of existing bus stops is not well documented. This risk has largely been overcome. It is possible a small number of additional shelters may be identified, but the proposed form of contract would allow for these to be brought in with a clear framework for price/value adjustment.
- 7.3.3 R2: The advertising market is undergoing change, which may make it hard for operators to judge their likely income. Pre-procurement engagement suggests operators are reasonably confident in their understanding of the market.
- 7.3.4 R3: The requirement for bus shelters is likely to vary as the Council's plans for bus services, and those of commercial operators, develop over time. For these and other reasons, the Council may need to change the location of assets during the life of the concession contract, or to remove advertising from them. This risk is proposed to be managed by provisions in the contract which allow the Council to require these changes with a clear framework for price/value adjustment.
- 7.3.5 R4: Advertisements on the Council's assets may carry messages the Council does not wish to be associated with; conversely, having control over advertising messages may place the Council in difficult situations, where it is perceived as acting as a censor. These risks are proposed to be managed by setting out the Council's guidelines which the operator must comply with, but the Council playing no role in judging the desirability of advertisements which comply with the guidelines.
- 7.3.6 R5: Insufficient market interest. In the worst case this would leave WNC with no advertising income and the cost of maintaining the shelters. Given the degree of interest to date, this seems an unlikely outcome, even given the move of much advertising online.
- 7.3.7 R6: The costs of maintaining the shelters not previously covered by the AdShel contract is too large to be covered, in operators' estimation, by advertising income. This would result in the Council needing to make a net payment for maintenance. This risk would be minimised by setting realistic requirements, adopting clear and fair risk apportionment, and the proposed use of Council capital for the provision of new shelters.
- 7.3.8 The risks of not undertaking the procurement are principally of a challenge to the continued extension of the AdShel contract without any form of competitive process to justify this.

7.4 Consultation and Communications

- 7.4.1 Pre-procurement engagement has taken place with companies which may wish to provide the service. This has helped shape the form of procurement proposed.

7.4.2 Parish councils were approached to see if they would like their bus shelters included within the contract. To date only one, Daventry Town Council, as indicated it would like to do this. However, the proposed terms of the contact would allow other parish councils' shelters to be added in the future if they wanted to do this.

7.4.3 Once an operator is selected, public communications would explain what was going to happen and the benefits of it.

7.5 **Consideration by Overview and Scrutiny**

7.5.1 None.

7.6 **Climate Impact**

7.6.1 Provision and maintenance of good quality bus shelters should support people's decisions to use buses, thereby indirectly supporting lower-carbon forms of transport.

7.6.2 Carbon emissions from the shelters themselves would form part of the procurement objectives and scoring.

7.6.3 Wherever it made sense, shelters would be required to include solar (photovoltaic) panels and a proportion to have 'buzz stop' roofs designed to support insect life.

7.7 **Community Impact**

7.7.1 The contract should enable the provision and maintenance of good quality bus shelters throughout the relevant parts of West Northamptonshire. This should assist in reducing the risk of anti-social behaviour.

7.7.2 The contract is also proposed to include provision for refurbishing and then maintaining the two historic tram shelters, thus helping to secure the heritage of those parts of West Northamptonshire.

8. **Background Papers**

8.1 None.

Appendix A: Advertising guidance

1. Introduction

Like most other local authorities, West Northamptonshire Council has a challenging financial outlook with diminishing governmental support and increasing costs.

As part of its work to minimise the impact on taxpayers, the council is seeking to find new funding streams to support its vital services. Consequently, it would like to attract revenue from advertising and sponsorship, wherever possible, subject to the terms defined below.

This guidance is intended to provide guidance on any form of advertising or sponsorship channelled through West Northamptonshire Council publications, promotional materials, events, council property or the website.

2. Prohibited products, services, and advertisers

Our basic approach is to maximise the number of advertisements and advertisers and minimise the number that are prevented from doing so by any controls or restrictions. To this end, most products and services will be permissible, though there are some types of organisation and categories of product or service which are felt inappropriate for promotion on at council-hosted advertising sites, defined in the list below.

- Political publicity and any political or quasi-political organisations, including pressure groups (following guidance outlined in our Media Protocol, provided separately on request). *[The Media Protocol is not relevant here.]*
- Legal or quasi-legal organisations which limit their services to a specific area of law (for example claims relating to personal injury).
- Credit providers offering short-term, high interest loans. Credit advertisements must comply with all legal and regulatory requirements in force at the time of publication, including the Consumer Credit (Advertisements) Regulations 2010 where applicable.
- Gambling or organisations associated with gambling. The only exceptions to this are:
 - The National Lottery which finances the National Heritage Lottery Fund to support key projects across the area.
 - Any local lotteries which might be set up by charities or the council to support initiatives in the area.
- Organisations simply offering entry into a competition following completion of a form containing any personal information or similar are not considered appropriate.
- Promotion of prejudice, and any organisation that promotes prejudice, including but not limited to racism, sexism, homophobia and transphobia, and religious discrimination.
- Tobacco, vaping and other non-medically licensed nicotine containing products, and manufacturers of such products. Promotion of access to stop smoking services as part of ours or the Government's smoking cessation campaigns is permissible. Where smoking cessation campaigns explicitly focus on vaping this will not be carried out within 400 metres of schools and, where possible, will avoid digital advertising at times when children are travelling to and from school (7-9am and 3-5pm).
- Weapons or direct manufacturers of weaponry end products.

- Advertising for alcohol must adhere to the strict guidance set out by the Advertising Standards Authority and must also highlight the Drinkaware campaign. Operators must also avoid placing advertising for alcohol, or manufacturers of alcohol, within 400 metres of schools and, where possible, avoid digital advertising at times when children are travelling to and from school (7-9am and 3-5pm).
- Pornography or nudity, or organisations associated with or promoting adult industries.
- Organisations in legal or financial conflict with the council. *[The Council will provide the details of any organisations falling into this category as they arise.]*
- Operators must avoid placing advertising for food and drink that is high in sugar, salt and fat (as outlined in the Department of Health guidance), or brands producing such food and drink, within 400 metres of schools. They must also, where possible, avoid digital advertising for this type of food and drink, and these companies, at times when children are travelling to and from school (7-9am and 3-5pm).
- Organisations providing residential, nursing or domiciliary care and support services must offer proof of CQC registration.
- Advertising for educational establishments is limited to those within the West Northamptonshire area or those providing further education which can reasonably demonstrate that they serve residents within that catchment.

3. Style and content of advertising

We expect all advertising placed to fall within the guidelines of the Advertising Standards Authority (ASA), specifically the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing – otherwise known as the Committee of Advertising Practice (CAP) Code. It is the advertiser’s or operator’s responsibility to be aware of the code as well as Consumer Protection from Unfair Trading Regulations and any changes/updates to them.

All advertising must also adhere to the latest Code of Recommended Practice on Local Authority Publicity.

Advertising content must be legal, decent, honest and truthful, and be prepared with a sense of responsibility to consumers and to society as a whole.

We are open to a variety of styles in advertising, but will not consider content that:

- Violates the topics outlined in section 2 above.
- Uses the council’s logo without consent in writing from the communications team.
- Does not clearly state who the advertiser is.
- Is not clearly identifiable as an advertisement.
- Infers a connection with an organisation that does not exist.
- Is not suitable for family viewing.
- Presents unsubstantiated statements as fact.

We retain the right to require removal of advertising at any site which breaches this guidance or advertising operation agreement. We will agree with those operating our advertising sites, in advance, the nature and content of the publicity and will retain the right to approve advertising material should the need arise. *[The prior approval referred to here is that provided by the contract and does not mean*

the Council wishes to judge the desirability of specific advertisements – see [relevant contractual provision]. It may, if requested, confirm if an advertisement does comply with the Requirements – see [relevant contractual provision].]

Advertising does not represent endorsement of any organisation, product or offer by the council, or imply that the council is responsible for the advertiser's quality and reliability.

All advertising operators will be required to sign an advertising agreement which reflects the terms stated in this guidance before any advertising commences. *[This is covered by the contract, nothing further is required.]*

We accept no liability for any loss or damage arising out of or in connection to any external advertisement placed. As part of the booking agreement, all advertising operators must indemnify the council against any claims, damages, losses etc arising out of any advertising placed. *[This is covered by the contract, nothing further is required.]*

(Note: the guidance also contains a section on sponsorship of Council activities, which is not relevant here.)