

**Agenda Item No: 5**

<b>Report To:</b>	<b>Overview and Scrutiny Committee</b>
<b>Date:</b>	<b>28th January 2014</b>
<b>Report Title:</b>	<b>Fly Posting and Graffiti – Powers and Obligations for the Council</b>
<b>Report Author:</b>	<b>Development Control Manager and Assistant Health Parking &amp; Community Safety Manager</b>
<b>Summary:</b>	<b>The council has a number of preventive opportunities and reactive controls to limit the impact of fly posting and graffiti which are explained in the report.</b>
<b>Key Decision:</b>	<b>No</b>
<b>Affected Wards:</b>	<b>All</b>
<b>Recommendations:</b>	<b>The O&amp;S Committee notes the report and supports the actions currently being undertaken and proposals for the future.</b>
<b>Policy Overview:</b>	<b>N/A</b>
<b>Financial Implications:</b>	<b>None resulting from this report</b>
<b>Risk Assessment</b>	<b>N/A</b>
<b>Equalities Impact Assessment</b>	<b>None</b>
<b>Other Material Implications:</b>	<b>As noted in the report.</b>
<b>Exemption Clauses:</b>	<b>N/A</b>
<b>Background Papers:</b>	<b>None</b>
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## Overview and Scrutiny Committee

### Fly Posting and Graffiti – Powers and Obligations for the Council

#### What is Fly-posting?

- 1 There is no formal definition of fly-posting. However, it is generally taken to be:

*the display of advertising material on buildings and street furniture without the consent of the owner, contrary to the provisions of the Regulations.*

- 2 In practical terms, fly-posting can be divided into three broad types, each with particular characteristics:
  - a) Advertises primarily for local events, often photocopies put up in large numbers on a regular basis. These may advertise bands playing in pubs, car-boot sales and fairgrounds. They may be attached to lampposts, railings, and street furniture or pasted on buildings.
  - b) Posters advertising products of large organisations and put up by professional poster companies. These are usually larger (8/16 sheet), higher quality, colour posters, such as for record releases or national events. These are often pasted on vacant buildings and signal control/telecoms boxes.
  - c) Posters displayed by pressure groups or political bodies. These are generally ad hoc and sporadic with no clear pattern to their location.
- 3 There are other types of unauthorised advertisements (such as hoardings, A boards and business cards displayed in telephone boxes) which fall outside the normal definition of fly-posting.

#### Controls over Fly-posting

- 4 The principal controls over fly-posting are in sections 224 and 225 the Town and Country Planning Act (TCPA) and the Clean Neighbourhoods and Environment Act 2005 (CNEA).
- 5 The TCPA makes it an offence for any person to display an advertisement which is not permitted by the Town and Country Planning (Control of Advertisements) Regulations 1992 and which has not been specifically permitted by the council. As a result certain types of advertisements which fall into the three groups above may not be illegal because they are allowed

by the advert regulations. Good examples of this are posters and signs announcing any local event of a religious, educational, cultural, political, social or recreational character as long as it is not an event promoted or carried on for commercial purposes. This would allow signs for the local village fete but not for events such as commercial boot fairs.

## **Practical Solutions**

- 6 Under the TCPA and as part of any action relating to unauthorised signage we have to make sure we consider whether the signs are causing any harm to public amenity or highway safety. It would not be appropriate to remove signs which are acceptable just because they do not have consent. Another important consideration can be the role of the sign in promoting or directing people to local businesses. In some cases the harm may outweigh the benefits to the local economy and action may not be appropriate.
- 7 To limit the impact of fly-posting we try a number of solutions. These include
  - a. Prevention - working with pubs, outlets etc. to discourage and identify other ways of advertising for example via Ashford Voice and Community web pages, for example Ashford.gov.uk, tenterdentown.gov.uk or parish council web sites .
  - b. Negotiation with the owner/beneficiary of the sign, if known, to have it removed.
  - c. Negotiation with the owner of the site which has been fly-posted to have the signs removed
  - d. Removal by ABC - to do this we have to serve a written notice letting the person displaying the advert or the people whose goods/ event are advertised know that we intend to remove it and give them at least 2 days to remove it themselves. If we damage property when removing signs then we can be liable to compensate the land owner. The Clean Neighbourhoods and Environment Act 2005(CNEO) now allows us to recover any costs of removal but for removal of a small number of signs for any one event this is unlikely to be cost effective. The highway authority also has powers to remove signs under the Highways Act 1980.
- 8 Where we can prove that fly-posting has been carried out by an individual or company or that people have benefitted from the advertisements, then we can prosecute in the Magistrates Court. If they are found guilty then they can be fined up to £2,500 and, in the case of a continuing offence, £250 for each day during which the offence continues after conviction.
- 9 Where people are seen putting up signs then we are able to issue fixed penalty notices under the Anti Social Behaviour Act 2003. Wider use of these powers will be implemented later in the year.

## **What is Graffiti ?**

- 10 Graffiti is drawings, pattern, scribbles or messages, painted written or carved on walls and other surfaces. Graffiti blights many of our streets and if they are left untouched their presence often encourages more graffiti, dumping and anti-social behaviour and discourages people from visiting the area.
- 11 It is illegal - graffiti is vandalism and a criminal act which can result in the offender being arrested. We liaise with the Police as appropriate and look for constructive solutions with offenders, such as Restorative Justice Orders.

## **Controls over Graffiti**

- 12 We currently remove all graffiti from council-owned property including litter bins, council houses and playgrounds. Any graffiti on private property or parish council owned land is the proprietors' responsibility.
- 13 Under S215 of the TCPA we can serve an untidy site notice if the site is causing "substantial harm to public amenity". This notice sets out the work the landowner is required to do to tidy up the site. The notice can include removal of graffiti. The more common use of such notices has been repairs to buildings and clearance of overgrown gardens. Failure to comply with the notice can lead to prosecution in the courts but is more likely to result in the council carrying out the work and charging the landowner.
- 14 Under the Anti Social Behaviour Act 2003 and the CNEA we can issue defacement removal notices on the owners of "relevant surfaces" requiring the removal of graffiti within 28 days. Relevant surfaces include the surface of structures on any street and the surface of any land owned by a statutory undertaker.
- 15 It also allows defacement removal notices to be served for fly posting.

## **Practical Solutions**

- 16 To limit the impact of graffiti we try a number of solutions. These include
  - a. Prevention - working with young artists to put designs onto the areas that are being cleaned so to prevent issues in the future
  - b. Removal by the Town Centre Action Team (T-CAT) on public buildings in the borough and as a paid service offered to private landowners
  - c. Use of S215 notices for persistent graffiti sites
  - d. Defacement notices to require removal
  - e. Later in the year wider use will be made of enforcement powers including fixed penalty notices.