



This Report will be made
public on 12 December 2016

Report **C/16/84**

To: Cabinet
Date: 20 December 2016
Status: Non-Key Decision
Head of Service: Sarah Robson, Head of Communities
Portfolio Holder: Councillor Stuart Peall, Cabinet Member for Environment

SUBJECT: FLY-POSTING PROTOCOL

SUMMARY: The purpose of this report is to provide details of progress and measures taken to reduce the impact of fly-posting in the district and to seek approval for the implementation of a fly-posting protocol to aid enforcement in this area.

REASONS FOR RECOMMENDATIONS: Cabinet is asked to consider the following reasons for recommendation:

- A fly-posting protocol encompasses the key factors and principles common to providing a Council led fly-posting enforcement service.
- It commits the Council to good practice and establishes the framework by which we will ensure a fair and consistent approach to the way that enforcement activities are undertaken.

RECOMMENDATIONS:

1. To adopt the Fly-posting Protocol.

1. BACKGROUND

- 1.1 In the Corporate Plan, the Council has made a commitment to support an attractive and vibrant place to live. Operationally, this commitment is met through a programme of grounds maintenance, waste services, community engagement, education, enforcement and ensuring it is easy for residents to report issues.
- 1.2 Fly-posting is generally regarded as any advertising material displayed on private and/or public property without the consent of the owner and that does not meet the requirements of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("COA Regulations"). Fly posters are generally used as a low cost advertising, used predominantly by the entertainment sector, small local businesses and to promote political or pressure groups.
- 1.3 The advertisements may be professionally produced or hand written on pieces of paper or banner signs and may be found pasted on buildings, attached to lamp-posts, hoardings, railings and street furniture, left under windscreen wipers on motor vehicles, and displayed on placards at roundabouts or along highway verges. In addition, 'A' boards situated on the public highway are also subject to the above COA Regulations and, if displayed without the necessary consents, constitute fly-posting.
- 1.4 Fly-posting is an illegal activity that is not only unsightly, but also gives an impression of neglect and can attract other forms of vandalism and anti-social behaviour leading to the decline of an area. The removal of fly-posting creates a drain on Council resources (both financially and in officer time) and an unwelcome expense for other landowners required to remove the advertisements from their property, whilst providing a very cheap form of advertising which puts those who advertise legally at an unfair disadvantage. It can also obscure important traffic signs or create an obstruction to pedestrians and/or motorists.
- 1.5 The Local Planning Authority (Shepway District Council) is responsible for the day-to-day operation of the advertisement control system and for deciding whether a particular advertisement should be permitted or not. However, in the case of fly-posting, the Council can use a number of enforcement legislation routes including the Town and Country Planning Act 1990 (S.224 and S.225), the Clean Neighbourhoods and Environment Act 2005 and the Anti-social Behaviour, Crime and Policing Act 2014.

2. PROPOSAL: FLY-POSTING PROTOCOL

- 2.1 In the past 6 months (from 1 April 2016), the two Council Environmental Enforcement Officers have spent nearly 140 officer hours (equating to just over £1,900 in officer costs) removing fly-posting, which is often not on Council owned land.

- 2.2 In order to improve the Council's response and enforcement of fly-posting a Fly-posting Protocol has been drafted (see Appendix 1). It outlines the proactive and reactive measures that will be used to control fly-posting throughout the district.
- 2.3 The Protocol clarifies the Council's 'zero-tolerance' approach to fly-posting and outlines the law relating to the display of outdoor advertisements and what this means for businesses and individuals. It is not intended to be prescriptive, but provides a basic guide on the types of advertisements that are permitted and explains how the Council works with its partners and other agencies to tackle illegal advertisements.
- 2.4 The Protocol provides a corporate response supporting both preventative and enforcement measures for fly-posting on district council owned land and a referral process for fly-posting on private land, including highways and utilities land. The Council's Environmental Enforcement and street cleansing staff will remove any illegal advertisements on Shepway District Council owned land or property, which they come across during the course of their programmed enforcement or cleaning activities or in response to ad-hoc reporting. Fly-posting outside of Shepway District Council owned land/property will be notified to the relevant landowner e.g. Kent Highways etc. to action and remove.
- 2.5 As part of the Council's prevention work, it will focus on education and promotion to discourage illegal advertising, utilising its events administration function to reduce fly-posting and work with neighbouring authorities to tackle persistent offenders.
- 2.6 Formal enforcement action may be taken in respect of fly-posting and any other advertisements that do not have deemed consent or express consent from the Planning Authority and those that do not fall within the category of advertisements outside our control. The Council's Planning Enforcement Officer will liaise with other departments, including Environmental Enforcement, Community Safety, Grounds Maintenance and Legal Services, where necessary, to tackle fly-posting problems in a uniform and consistent way.
- 2.7 The Council has the following legal powers available to deal with fly-posting:
- **The Highways Act 1980 (S.132):** It is an offence for any person to paint or in any way inscribe or affix any picture, letter or sign on the surface of a highway or on any tree or structure without the consent of the Highways Authority. Currently anyone found guilty of an offence is liable to a fine of up to £1,000 and, in the case of a second offence, up to £2,500.
 - **The Town and Country Planning Act 1990 (S.224 and S.225):** It is an offence for any person to display an advertisement in contravention of the regulations. Any person contravening the legislation is liable on summary conviction to a fine (currently) not exceeding £2,500.
 - **Anti-social Behaviour, Crime and Policing Act 2014:** This Act empowers local authorities to issue a fly-posting removal notice on the owner of a relevant surface, and a fixed penalty notice where the offender can be identified.
 - **The Clean Neighbourhoods and Environment Act 2005:** This Act sets the range of fines for a fixed penalty notice at £80 and makes it an offence to give a false name and address to an authorised officer proposing to issue such a

notice. It also limits the defences available to companies benefiting from fly-posting.

2.8 Many local community groups currently fly-post in order to advertise local events. Whilst fly-posting is an illegal activity, the Council does recognise that it has many active community groups across the district. Therefore, the Council will work in partnership with Kent Highways and local community groups to consider the provision of permitted advertising signage that could be used by community groups and small local businesses alike. Advertising fees would need to be considered and could include the sponsorship of signage on district council and highways assets e.g. verges, roundabouts etc. to advertise legally in the locality.

3. CONCLUSION

3.1 The introduction of the Protocol will:

- Ensure good practice and a consistent approach across all services with responsibility for fly-posting enforcement activity (see Appendix 2 - DCLG: Fly-posting - A Good Practice Guide). The draft Protocol will be more effective in identifying circumstances when a sanction is likely to be applied and the matters that will be taken into consideration when enforcement decisions are made.
- Reduce the drain on Council resources to remove fly-posting, by clarifying the Council's response to fly-posting depending on where it is sited e.g. on council land/property or private land/property.
- Make it easier for enforcement and prosecuting staff, legal representatives and those who have breached legislation to understand why the Authority is taking the action it is.
- Provide a transparent approach for those people, businesses etc. that may be subject to enforcement action and those matters that are taken into consideration when determining what action is to be taken.

4. RESOURCE IMPLICATIONS

4.1 **Resources** - There are no resource implications that are not covered within existing budgets.

5. Risk Management Issues

5.1 Perceived risks as follows:

Perceived Risk	Seriousness	Likelihood	Preventative Action
Failure to adopt the protocol will put any action taken in relation to fly-posting enforcement by the Council at risk.	High	Medium	To adopt and follow the protocol.

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments

Legal Services have advised on the contents of the draft 'Fly Posting Protocol' attached to this report and consider that there are no additional legal implications arising directly out of this report.

6.2 Finance Officer's Comments

The creation of a protocol with regards to Fly-posting has no impact on the financial powers available to the Council neither does the introduction of the protocol require additional resource.

6.3 Diversities and Equalities Implications

It is believed that the protocol does not disproportionately affect any specific group of people as it ensures a fair and consistent service for all.

6.4 Communications implications

We already have the ability to report fly posting on our website, but if a protocol is put in place we will need to be very clear with people what the protocol means if they intend to fly post and encourage more people to report instances. The communications team will need to work with service area to put a communications plan in place to help deliver service priorities.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

None.

Appendices:

Appendix 1: Shepway District Council Fly-posting Protocol (draft)

Appendix 2: DCLG: Fly-posting - A Good Practice Guide