

Shepway District Council Protocol for Tackling fly-posting in the Shepway District

Introduction

This document clarifies the Council's 'zero-tolerance' approach to 'fly-posting' (see below) and briefly 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.

What is fly-posting?

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").

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.

The problems associated with fly-posting

- Fly posting is an illegal activity which 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.
- It creates litter which spoils the 'clean and green' environment the Council is seeking to maintain.
- It is a drain on local authority resources and an unwelcome expense for other landowners required to remove the advertisements from their property.
- It is a very cheap form of advertising which puts those who advertise legally at an unfair disadvantage.
- It can obscure important traffic signs or create an obstruction to pedestrians and/or motorists.
- It can cause injury if a placard or heavier-type sign dislodges from its fixings.

How advertisements are controlled

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. The rules are set out in the COA Regulations.

Some advertisements are excluded from control, whilst others benefit from deemed consent (see Appendices 1 & 2).

In addition, the Local Planning Authority may grant express consent for individual advertisements on application (in the same way as for Planning Applications).

ALL forms of advertisements (including those with deemed consent and those excluded from control) MUST comply with the following standard conditions:

1. Be kept clean and tidy
2. Be kept in a safe condition
3. Have the permission of the owner of the site on which they are displayed including the Highways Authority (Kent County Council) if the sign is to be placed on highways land
4. Not obscure or hinder the interpretation of official highway, rail, waterway or aircraft signs or otherwise make hazardous the use of these types of transport or hinder the operation of any security or surveillance device
5. Following removal of the advertisement, the site shall be left in a clean, tidy and safe condition

What we mean by zero tolerance

This simply means that the Council will not tolerate any illegal fly-posting.

The legal powers available to deal with fly-posting

Where a person displays an advertisement in contravention of the COA Regulations, the local authority has powers to take action against those responsible, including those who benefit from the advertising and the owner/occupier of the property where the fly-posting occurs. The legislation that applies is as follows:

- **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 payable 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.

Reporting fly-posting

Incidents of fly-posting can be reported in a variety of ways:

- By telephone to the Council's Customer Services Centre on 01303 858660
- By e-mail to customer.service@shepway.gov.uk
- On-line through the Council's website at www.shepway.gov.uk

Recording reports of fly-posting

Details of fly-posting reports are logged on the Council's reporting system and referred to the appropriate officer(s) for action. A database will be maintained by the Environmental Health (Pollution) team of those issued with consent to display advertisements, as well as those issued with warning letters or notices.

How we respond to reports of fly-posting

The Council responds to reports of fly-posting in different ways depending on where it is sited e.g. on council land/property, on private land/property, etc. (see the flow chart at Appendix 3). The Council's Environmental Enforcement and street cleansing staff 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.

The steps we will take to prevent fly-posting

The Council will:

- Focus on education and promotion to discourage illegal advertising
- Publicise enforcement action taken to deter other potential offenders
- Include a 'no fly-posting' clause in all events applications and public hall hire contracts
- Request applicants for Temporary Event Notices to give an undertaking not to fly-post
- Refer any entertainment venues that habitually flout fly-posting legislation to the Licensing Team as persons 'not suitable' to hold a premises licence.
- Use anti-vandal paint where appropriate to make it difficult to affix posters
- Work with neighbouring authorities to tackle persistent offenders
- Obliterate or remove fly-posters where appropriate to negate any advertising benefit

How we will enforce the law

Formal 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. Enforcement will be a staged approach as set out in Appendix 4.

How the Council will work across departments

An effective approach relies on good communication between those departments that have the powers to enforce legislation relating to fly-posting. 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.

How the Council will work with external partners and agencies

Responsibility for the removal of fly-posting on strategic routes rests with Kent Highways. Fly-posting is not as prevalent in the Shepway District as in other parts of the country, but we would work together with the police and neighbouring authorities and other agencies if necessary to tackle persistent offenders.

We will inform utility companies of any fly-posters seen on their property and will remove them where they are readily accessible and have been given permission to do so. The Council has the power to serve notice on the utility companies to remove fly-posting from their property, although this course of action would only be taken if informal approaches failed.

Parish/Town Councils are encouraged to discourage and report fly-posting.

Advertising a community/local event

a) Events held for commercial purposes

Signs advertising local events for commercial purposes are subject to formal advertisement consent. Those wishing to advertise should look on line on the Planning Portal

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>; or contact the Council's Planning Duty Officer for advice (see contact details below).

b) Performances held by travelling circuses, fairs or similar travelling entertainment

Temporary signs advertising such performances do not require formal consent from the Council provided the advert meets the following criteria:

- It does not exceed 0.6 m² in overall size;
- It is not illuminated
- It is not displayed earlier than 14 days before the opening or first performance
- It is removed within 7 days after closing or the last performance
- At least 14 days before any advert is displayed the Council's Planning Team is notified in writing of the first date the advert(s) is to be displayed and the site where it is to be displayed
- No part of the advert is more than 4.6 metres above ground level, or 3.6 metres in an area of special control for adverts
- The advert complies with the standard conditions (see page 2 of this Protocol)
- The written permission of the landowner on whose land the advertisement(s) is displayed is obtained

c) Events held for charitable or non commercial purposes

Temporary signs advertising local events for charitable or non commercial purposes do not require formal consent from the Council provided the advert meets the following criteria:

- It does not exceed 0.6 m² in overall size;
- It is not illuminated
- No character or symbol is more than 0.75m in height or 0.3 metres in an area of special control for adverts
- No part of the advert is more than 4.6 metres above ground level, or 3.6 metres in an area of special control for adverts
- The advert complies with the standard conditions (see page 2 of this Protocol)
- The written permission of the landowner on whose land the advertisement(s) is displayed is obtained

Definition of 'charitable' purposes: In this context, 'charitable purposes' includes events organised by scouts (and similar youth groups), schools, churches, voluntary organisations and other **not for profit** organisations.

The majority of the northern part of Shepway District is an area of special control for adverts and the boundaries can be found on the proposals map of the Shepway Local Plan Review on the Council's website. Alternatively please call the Planning Duty Officer (see contact details on page 6 of this Protocol).

d) Displaying signs on the public highway

If you wish to display the advertisement(s) on highways land (e.g. roadside verge), **written permission** must be obtained from Kent County Council Highways who will agree with you an appropriate location for the signs. A copy of which should be sent to the Council's Planning Team.

In considering any request, Kent County Council Highways will need details of the event to be advertised, the period over which the advertisement(s) is to be displayed, the proposed location of the advertisement(s), the type of sign proposed (e.g. poster, banner, staked board) and the name and contact details of the person who will take responsibility for removing the sign(s) once the event has taken place.

Events advertised on the public highway may be displayed for a maximum of 14 days in advance of the event and must be removed within 3 days of the event taking place.

Permission will not be granted to display advertisements to announce births, birthdays, anniversaries, weddings, engagements, valentine's messages, directional signs to parties and other signs of a similar nature on any part of the public highway.

Further information

The legislation that applies to advertising is complex and, if in any doubt, you are advised to seek advice from the Planning Team on what steps you need to take to ensure that you are acting within the law.

For further information, please look on line on the Planning Portal
<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>;

or contact the Council's Duty Planning Officer on 01303 853538
or visit the planning pre application advice pages on the Council's website
www.shepway.gov.uk

Appendix 1: Advertisements excluded from control

Class 1: advertisements by public bodies

The Council, public utilities and public transport operators can erect notices and adverts, timetables, warning notices, byelaw signs etc. providing:

- 1) Illumination is not permitted unless reasonably required for the purpose of the advertisement.
- 2) No advertisement may exceed 1.55 square metres in area'.

Class 2: miscellaneous advertisements

This gives consent for three types of small notices and signs on any premises. In all cases no letters or symbols on the signs may be over 0.75m in height but only signs for medical services can be illuminated.

- **Class 2(A)** permits house numbers or names and signs no bigger than 0.3sqm like '**Shut the Gate**', '**Beware of the Dog**' or '**No Parking Please**'.
- **Class 2(B)** permits signs or brass plates stating company names. Again they must not exceed 0.3sqm but if there are separate entrances on different road frontages, a 0.3sqm sign can be displayed on each frontage.
- **Class 2(C)** permits a signs not exceeding 1.2sqm which name institutions; public houses, hotels, blocks of flats, clubs, etc. If there is more than one entrance to the premises on different road frontages, a sign of 1.2sqm can be displayed on each frontage.

Class 3: temporary advertisements

Class 3 gives consent for six types of temporary notices and signs.

- **Class 3(A)** permits estate agents boards. For agricultural or commercial premises the board must not exceed 2sqm or if two boards are joined together to form a single advertisement, a surface area of 2.3sqm. For residential property or housing developments, the advertisement board must not exceed 0.5sqm or a total area of 0.6sqm if two boards are joined together.

No board is allowed to project more than one metre from a building. In all cases only one board may be displayed on premises and this must be removed 14 days after completion of sale or letting.

- **Class 3(B)** permits advertisements announcing sales and auctions on land or premises. This would include house auctions and livestock sales. The board must not exceed 1.2sqm and be at the place of the sale.
- **Class 3(C)** permits construction contractors boards while works are actually taking place. A main contractor can display a 2sqm board but then every additional contractor or consultant can only have an extra panel of 0.4sqm. But, if the development project is known by a particular name, the size of the main advertisement board may be increased by a further 20 per cent to enable the name to be displayed.

If more than 10 metres away from a highway, the board can be 3sq m plus a further 0.6sqm for additional firms. If the board is already being displayed other names can

be displayed on separate boards for up to three months, provided that they are no larger than 0.5sqm on each road frontage.

- **Class 3(D)** permits temporary notices no larger than 0.6sqm for local charity events. These are adverts for church bazaars, fetes, a charity road race, amateur sports events but no commercial events.
- **Class 3(E)** permits temporary notices no larger than 1.2sqm advertising some sort of agriculture demonstration on land for up to six months.
- **Class 3(F)** permits notices for a circus or fair. These must not be displayed more than 14 days before opening and must be removed within seven days after closing. The Council must be told 14 days beforehand where the notices will be sited.

Class 3 adverts must not be illuminated, not have any letters or symbols over 0.75m tall and barring estate agents boards on taller buildings, be over 4.6m high. Also if the board relates to a sale or event it must not appear 28 days before the event and must be removed within 14 days after.

Class 4: Illuminated advertisements on business premises

Class 4 permits adverts with illuminated letters on a non-illuminated background provided:

- there is no intermittent light source, moving feature, animation or exposed cold cathode tubing;
- must consist of one fascia with one projecting sign at right angles on the wall with the shop window;
- must be at least 2.5m above ground level at its lowest point;
- the fascia panel must not project more than 0.25m from the wall;
- if a projecting sign, this must not exceed 0.25m between the two sides,
- class 4 does not include any adverts in a Conservation Area.
- **Class 4(A)** permits internally or halo illuminated adverts on premises within a retail park but only on a frontage which faces or overlooks a communal car park. A projecting sign on these premises must not exceed 1sqm, project more than 1m from the wall or be more than 1.5m deep.
- **Class 4(B)** permits internally or 'halo' illuminated adverts on other business premises if they relate wholly to the business conducted. A projecting sign must not exceed 0.75sqm in area, project more than 1m, exceed two thirds of the width of the pavement below it or be more than one sixth of the frontage measured to the top of the advertisement. Maximum levels for luminance can be applied if challenged.

Class 5: other advertisements on business premises

Class 5 gives consent for the usual signs you see on business premises but they must only refer to the business and the goods for sale at the premises. These signs must not have letters over 0.75m in height or be more than 4.6 metres above ground level. They must not be above the level of any first floor window in the wall where the advertisement is situated and only signs for medical services can be illuminated under this class. For shops, an advertisement may be displayed only on walls that have shop windows. Apart from that there are no restrictions on number.

Class 6: advertisements on forecourts of business premises

Class 6 gives consent to display adverts referring to the business, on forecourts such as the area in front of a newsagent's shop, the pump area of a petrol filling station or a terrace in front of a café. A forecourt does not include areas of pavement forming part of the highway, which means that 'A' boards on pavements in the highway are not permitted by this section.

Any of these adverts must be at ground level and the total area for all these adverts on a forecourt must not exceed 4.5sqm. A building with two forecourt frontages can have up to 4.5sqm of adverts on each frontage. Forecourt advertisements must not be illuminated.

Class 7: flag advertisements

- **Class 7(A)** Permits one advertisement flag on one flagpole, fixed upright on the roof of a building. There is no height limit for this but the flag itself must not exceed 2sqm in area and may only have the name or trade mark of the building occupants. Flags are not permitted to advertise products, unless there is specific consent.
- **Class 7(B)** permits the display of advertising flags on housing development sites and where new houses remain available for sale. The rules for class 7(B) are that each flag must be on a single vertical flagpole. There may be one flag on a site with up to 10 houses and two flags on a site with between 11 to 100 houses, over 100 homes may have three flags. Each flagpole must not exceed 4.6m and they must be removed within one year of completion.

Class 8: poster hoardings around temporary construction sites

Class 8 permits the display, for three years only, of poster hoardings used to screen construction sites during construction. This consent is limited to land for commercial development, not any residential development sites.

Not allowed until three months before commencement, they may not be more than 3.1m high or 12.1m long each. They are only allowed for three years and the advertiser must notify Council at least 14 days before display quoting the planning permission for the site. There may however be a reasonable level of illumination.

Class 9: four-sheet poster panels displayed on purpose designed highway structures

Class 9 enables the smallest standard size of poster panel (known as four-sheet) to be displayed on structures in the highway with the Council's approval under the Highway Act 1980 (section 115E). The rules for class 9 are that the structure, such as a bus shelter or kiosk must be purpose designed for displaying this size of poster panel and it must not exceed 2.16sqm in area. No illumination is permitted. This exclude bill posting.

Class 10: Neighbourhood Watch Signs

Class 10 allows for Neighbourhood Watch and similar signs provided the signs are not over 0.2sqm, no higher than 3.6 metres above ground level but if the signs are in the highway you must obtain road traffic permission. If the scheme ceases to operate, the sign must be removed within 14 days.

Class 11: directional advertisements

Class 11 permits house builders to put up temporary directional signs for new development. The rules are that signs must not exceed 0.15sqm or be above 4.6 m high. Lettering must be between 40 mm and 250 mm high, no reflective material should be used and it must not look like a traffic sign.

The sign can be near to but not in the highway and should not be within 50 metres of an official traffic sign facing in the same direction. No sign may be more than two miles from the site entrance. 14 days before any sign is put up the local planning authority must be told where it is to be displayed and no sign may be displayed two years after development is completed.

Class 12: advertisements displayed inside buildings

Class 12 permits advertisements to be displayed inside a building if they are illuminated like a sign inside a chemists window.

Class 13: sites used for displaying advertisements on 1st April 1974

This class allows these signs to remain but does not permit a change to the extent of the use of the site.

Class 14: advertisements displayed after the expiry of express consent

This is a technical approval to allow signs with temporary consent to stay in position unless the Council seeks their removal. Express permissions usually have consent to stay for only five years so this class allows them to stay until specifically challenged.

For further information, please look on line on the Planning Portal

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>;

or contact the Council's Duty Planning Officer on 01303 853538
or e-mail planning@shepway.gov.uk

Appendix 2: Advertisements which are excluded from direct control

There are 9 different classes of advertisement which are excluded from the direct control of the planning authority provided certain conditions are fulfilled. These categories are:

1. Advertisements displayed on enclosed land. These would include advertisements inside a railway station forecourt, or inside a bus station or sports stadium or shopping mall.
2. Advertisements displayed on or in any vehicle or vessel which is normally moving
3. Advertisements which are an integral part of a building's fabric
4. Advertisements in the form of price tickets or markers, trade-names on branded goods, or displayed on petrol pumps or vending machines. These advertisements must not be illuminated, nor exceed 0.1 square metres in area.
5. Advertisements relating specifically to a pending Parliamentary, European Parliamentary, or local government election or a referendum. These advertisements must not be displayed more than 14 days after the close of the poll.
6. Advertisements required by any Parliamentary Order, or any enactment, to be displayed.
7. Traffic signs. Any traffic sign (as defined in section 64(1) of the Road Traffic Regulation Act 1984).
8. A national flag of any country, the flag of the European Union, the Commonwealth, the United Nations, English County flags and saints' flags associated with a particular county. Any national flag may be flown, so long as it does not have anything added to the design of the flag or any advertising material added to the flagstaff.
9. Advertisements displayed inside a building. These advertisements must not be illuminated or displayed within one metre of any window or other external opening through which they can be seen from outside the building.

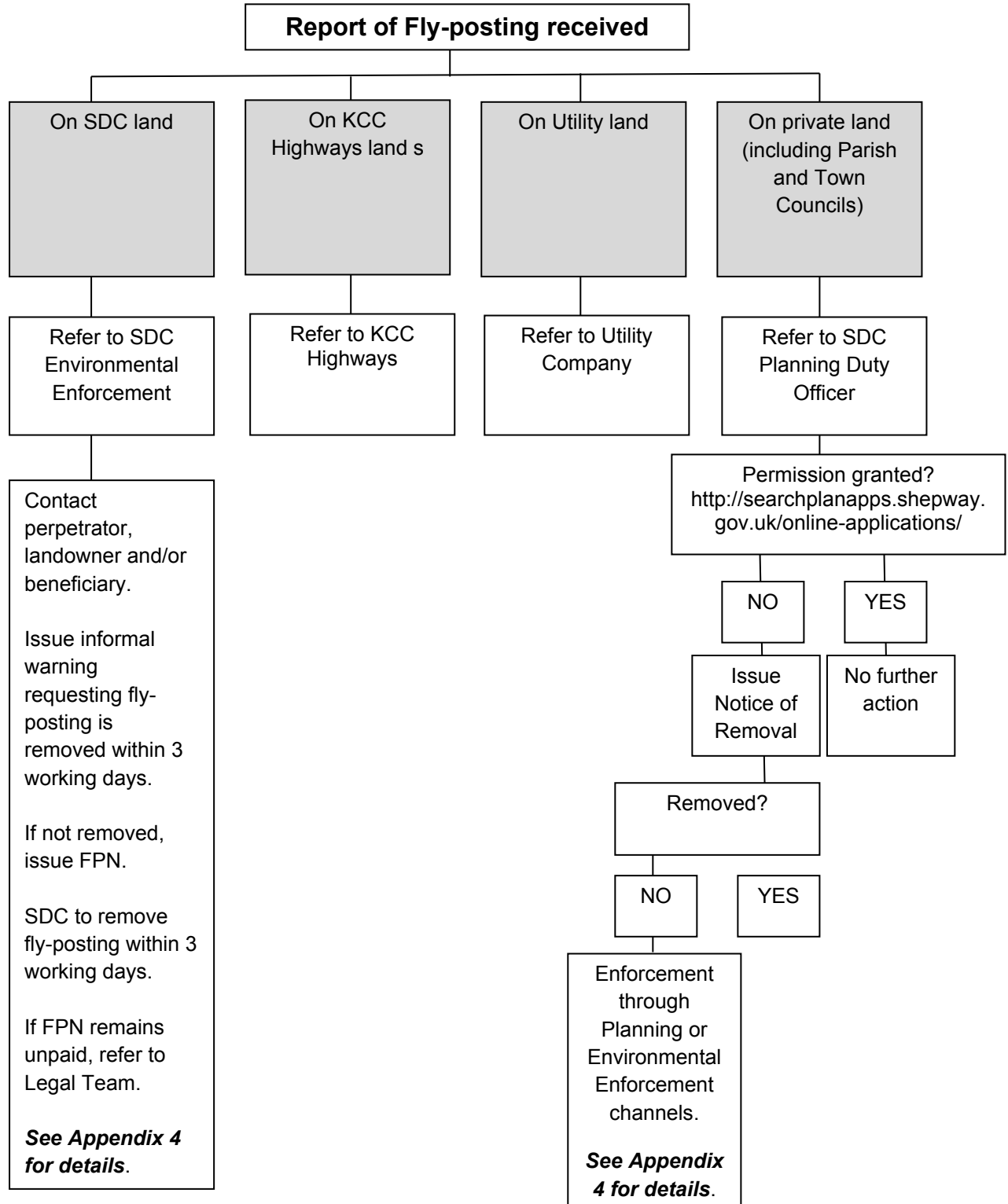
For further information, please look on line on the Planning Portal

<https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers>;

**or contact the Council's Duty Planning Officer on 01303 853538
or e-mail planning@shepway.gov.uk**

Appendix 3: Responding to reports of fly-posting

The following process should be used to respond to incidents of fly-posting without consent or where consent provided, but the fly-posting remains in situ within 7 days after closing or final performance (or as agreed with the Council)



Appendix 4: Fly-posting enforcement

	Perpetrator	Landowner	Beneficiary
Stage 1	Informal warning and seek co-operation to remove poster(s)	Notify property owner and seek co-operation to remove poster(s)	Notify beneficiary and seek co-operation to remove posters
Stage 2	Issue FPN if fails to remove fly-poster(s) or continues to fly-post	If co-operation not forthcoming, pursue legal action to 'require' removal of poster(s)	If co-operation not forthcoming, pursue legal action to 'require' removal of poster(s)
Stage 3	Prosecute persistent offenders (where identified)	Prosecution	Prosecution
Stage 4			Civil injunction

October 2016