

Newcastle-under-Lyme Borough Council

Policy on Fly posting within the Borough

1. This policy has been produced to show the council's commitment to ensure that the Borough remains a cleaner, greener and safer place to live and work. The purpose of this policy is to set out the council's approach in responding to fly posting within the Borough. In particular it is intended to ensure that the council follows a standard approach to fly posting and that any enforcement action taken is consistent, balanced, fair, transparent and proportional.

The council recognises that each case of fly posting is unique but the policy will set out the general principles that will be applied by the Council's officers.

This policy should be read in conjunction with the council's Enforcement Strategy.

2. What is fly posting?

The Town and Country Planning (Control of Advertisements)(England) Regulations 2007 state that fly-posting takes place when advertisements are displayed without the consent of the owner or occupier of the land or premises.

The Regulations state that such advertisements are entirely unauthorised; and their display entails liability not only on the person actively responsible for putting up the advertisement but also on the owner of the land and the person benefiting from the display.

Section 336(1) of the Town and Country Planning Act 1990 Act, as amended by section 24 of the Planning and Compensation Act 1991, defines "advertisement" as:

"any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used, or designed or adapted for use, and anything else principally used, or designed or adapted principally for use, for the display of advertisements".

3 Legislation

The main legislative powers in relation to unauthorised fly-posting are as follows:

3.1 Town and Country Planning Act 1990 Under Section 224 of the TCPA it is an offence for any person to display an advertisement in contravention of regulations. The relevant legislation is contained within the Town and Country Planning (Control of Advertisements) Regulations 2007.

Any person contravening the legislation is liable on summary conviction to a fine not exceeding £2500 and in the case of a continuing offence £250 for each day on which the offence continues after conviction.

Under Section 225, the local planning authority may remove or obliterate any placard or poster which is displayed in their area and which in their opinion is so displayed in contravention of regulations made under section 220. However, if the placard or poster identifies 'the person who displayed it or caused it to be displayed', the local planning authority has to give that person at least two days' notice that they plan to remove or obliterate the poster. In the first instance, the costs of removal are recoverable from the person identified in the poster or placard as having displayed it, or having caused it to be displayed. In the event that this person cannot be identified, section 225 permits the local authority to recover costs from an identifiable beneficiary of the illegal advertising (the person whose goods, services or concerns are publicised in the poster or placard).

3.2 Highways Act 1980

Under Section 132 of the Highways Act 1980 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, any tree, or structure without the consent of the Highway Authority. If guilty of an offence the person can be liable to a fine of up to £1000

3.4 Anti-Social Behaviour Act 2003

Under Section 43 of the Anti-Social Behaviour Act, an authorised officer of a local authority may give a fixed penalty notice to any person who is guilty of defacement of land and property by fly-posting. The fixed penalty is set at £75 (with a lesser amount of £50 if payment is made within 10 days of receipt of the notice) in accordance with the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006.

3.5 Clean Neighbourhoods and Environment Act 2005

The Clean Neighbourhoods and Environment Act 2005 introduced powers for local authorities to use fly-posting removal notices. If the fly-posting is not removed under the terms of the Notice, the council can remove it and recover the costs of doing so. An authorised officer of a local authority must be satisfied that the defacement is detrimental to the amenity of the area, or is offensive in nature before issuing a Notice.

4. The council's position

Fly-posting is illegal and the Council has a zero tolerance approach which means that enforcement action will be pursued where necessary and appropriate. The Council believes that fly-posting can be unsightly and make our towns, villages and other areas less attractive for residents and visitors alike. It can make an area feel unsafe and uncared for and impact negatively on people's perceptions of the area. It can also distract drivers or obscure road signs and be hazardous to members of the public. It can be costly to remove.

The Council believes that there are many legitimate ways for businesses and other organisations to promote their services, activities, etc without the need to resort to illegal fly-posting. The Council also believes that fly-posting can be bad for business and can discourage business investment. It can create a

less attractive environment for shoppers and disadvantage those businesses that choose to advertise their business in an appropriate and lawful manner.

4.1 *Charities and Community Groups*

The District Council recognises the difficulties that its policy towards fly-posting will present to charity and community groups. Whilst we are working towards being a co-operative council, there are requirements that charities and community groups must adhere to.

In such circumstances all such groups, if seeking to display any advert or placard, should before displaying contact the Council to check whether planning consent is required and in any event:

- comply with the relevant restrictions on size, placement, illumination, timescales, etc as described in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, which include, but are not limited to, the following:
- advertisements for community and charity events should not exceed 0.6 of a square metre, should not be displayed more than 28 days before the event begins and must be removed within 7 days after it ends.
- have the permission of the owner of the site before placing any signage on it (this includes the Highway Authority if the sign is to be placed on highway land, including street furniture such as roadside railings, lampposts, etc). The Borough council must then be provided with written confirmation should permission be granted by the owner.
- consider alternative ways of advertising that does not involve fly-posting;
- avoid placing any signage at road junctions, on roundabouts, pelican crossings or traffic lights, where they may cause a hazard by distracting the road user;
- avoid obscuring, or hindering the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport;
- avoid putting signs up in sensitive locations or where they could possibly cause offence;
- avoid putting up signs with wording or imagery that could be reasonably considered to be offensive to members of the general public;
- avoid putting up an excessive number of signs;
- make sure that the signage is not a hazard to pedestrians, cyclists, etc (eg it should be firmly attached and should not be at a height where a pedestrian could walk into it);
- keep signs clean, tidy and in a safe condition; and
- remove them carefully when required to do so.

If advertisements for community or charity events (or those relating to an election or referendum - see below) are placed in inappropriate locations, or are of an inappropriate nature, then the Borough Council will normally contact the organisers, where known, and ask for the posters, banners, etc to be removed. If the organisers cannot be identified, or immediate removal of the

signage is required (eg for health and safety reasons or because they are deemed offensive (or potentially offensive)), then the signage will be removed and retained at the Borough Council's Offices for 28 days for collection by the organisers. After this time period, the Borough Council will assume that the advertising material is no longer needed and will dispose of the material. If community or charity event organisers repeatedly place advertisements in inappropriate locations, or repeatedly ignore requests to remove inappropriate advertisements, then the Borough Council may choose to take enforcement action to resolve the problem.

4.2 Circuses and Fairs

With the agreement of the landowner concerned a travelling circus or fair will be allowed to advertise on the site of the circus or fair for a limited period. If however notices or signs are placed on other private land enforcement action will be taken if the poster is not classed as having deemed consent under the provisions of the Advertisement Regulations.

Temporary notices or signs announcing the visit of a travelling circus or fairs should not exceed 0.6 of a square metre must not be displayed more than 14 days before the opening of the circus or fair and must be removed within seven days afterwards. The local planning authority must be told 14 days beforehand of the sites of the notice.

Note:

It should not be presumed that the Borough Council will automatically permit or disregard the illegal advertising of community events, charity events, travelling fairs or travelling circuses, and it reserves the right at all times to exercise its powers to prevent fly-posting where it deems it appropriate to do so. In all cases, advertisements should not be displayed without the permission of the owner of the site.

4.3 Political Parties

The Borough Council recognises that most candidates and parties would want to display campaign material relating to a pending Parliamentary, European Parliamentary, or local government election (or a referendum). Any parties and candidates wishing to do so should take account of the most current guidance from the Electoral Commission. Guidance from the Commission states that no advertisements should be displayed without the permission of the owner of the site or anyone else with an interest in the site (ie no fly-posting), should not interfere with or impede traffic or other road users, and should be removed within 14 calendar days after the election. It is important that the Borough Council remains impartial during elections and referenda. For this reason, the Borough Council will not give candidates and parties permission to display their campaign material on land or buildings owned by the Council. If material is placed in such locations, the Borough Council will normally contact the relevant candidate or party to ask them to remove the material or, if they cannot be contacted, a Borough Council officer will remove the material and retain it for collection for a period of up to 28 days (after which it will be disposed of).

4.4 Council Owned Land

The Borough Council recognises that as a landowner it has the ability and duty to take steps to prevent the illegal advertising of events held at Council venues and on council owned land. In order to prevent advertising the Council will:

- Make sure that fly-posting is only used to promote council events or events associated with the Council (this includes public notices, planning notices and other 'functional advertisements' for events managed by the Borough council or advertising on formally managed and approved notice boards and hoardings).
- Make sure that anyone hiring council venues does not fly-post. This will be achieved through education and the use of 'no fly posting' clauses in hiring contracts.

4.5 Public Bodies etc

Advertisements which are needed by public bodies (such as government departments and local authorities, the public utilities and public transport operators) to give information or directions about the services they provide are considered to have deemed consent provided that the display conforms entirely to all the relevant provisions of Class 1 under the Town and Country Planning (Control of Advertisements) Regulations 2007.

5. The Council's approach to Enforcement of fly posting

The Borough Council has adopted a twin-track approach to control fly-posting:

- Seeking to provide legitimate sites where charities and community groups can advertise their events; and
- Taking action to remove notices and prosecute offenders where fly-posting occurs.

Where fly-posting occurs on street furniture, the fly-posting will normally be removed by the Borough Council's authorised officers and retained for collection by the person who put up the sign or the beneficiary of the illegal advertisement. A fixed penalty (or penalties if there is more than one offence) will normally be issued and the Borough Council may also consider recovering the costs of removal of the notice(s).

If signage is erected illegally in other places, and the poster identifies the person who displayed it or caused it to be displayed, the Borough Council will normally write to the named person and give them two days' notice of its intention to remove or obliterate the sign. If no such person can be identified, then the Borough Council will proceed with the removal/obliteration of the sign. As above, a fixed penalty will normally be issued and the Borough Council may also consider recovering the costs of removal of the notice(s).

In all cases, the authorised officer will photograph the fly-posting in situ prior to removal and record details about the sign in their notebook (eg location, time of removal, how and where it was attached, etc).

Where someone is caught in the act of erecting signage then the authorised officer will normally issue a fixed penalty notice in person. If further checks are

required before issuing a fixed penalty notice then the officer will record the details and issue a fixed penalty notice at a later date by recorded post.

Any signage that is removed will be retained at the Borough Council's Offices for 28 days for collection by the owner. After this time period, if it has not been reclaimed then the Borough Council will assume that the advertising material is no longer needed and will dispose of the material.

There are a number of situations when the Borough Council would consider that the issuing of a fixed penalty notice may not be appropriate and the Borough Council would seek to prosecute under the Town and Country Planning Act or other relevant legislation. This includes:

- Large scale commercial fly posting, which is commercially motivated and expensive to remove and repair;
- When the offence is too large/serious in its effect on the community;

When the offence is committed by someone that has previously received a fixed penalty notice for the same offence; and

- Where the fly-posting is motivated by hostility towards a racial or religious group (or towards a person based upon their membership (or presumed) membership of such a group).

The Borough Council will also not normally take action when the offence that has been committed is so small or trivial in its effect that action might not be in the public interest (eg notifications of missing cats, birthday greetings, etc).

An information booklet, "*Outdoor Advertisements and Signs: a guide for advertisers*", has been prepared by the department for Communities and Local Government and is available at:

www.communities.gov.uk/documents/planningandbuilding/pdf/326679.pdf.

Reporting Fly-Posting

www.newcastle-staffs.gov.uk

Telephone: 01782 717717

Useful web sites

www.communities.gov.uk/publications/planningandbuilding/outdooradvertisements

www.communities.gov.uk/documents/planningandbuilding/pdf/156909.pdf

<http://www.keepbritaintidy.org/>