

KNOWSLEY COUNCIL FLY POSTING POLICY

Introduction

Knowsley Council aims to have safe, attractive and sustainable neighbourhoods. Maintaining and improving the physical appearance and condition of the local environment enhances the quality of life of our residents and helps to support this aim. Fly posting undermines this objective, and can be a blight on an area. The presence of fly posting encourages a spiral of decline, which can undermine community cohesion, the related efforts of public agencies, and the reputation of the Council. Furthermore, it is an illegal activity. The Council therefore aims to control fly posting throughout the Borough through education and - when necessary - enforcement.

The purpose of this document is to set out how the Council will respond to incidents of fly posting in the Borough. This document should be read in conjunction with the Council's Enforcement Policy Statement.

Scope

The information in this Policy applies to all land and property within the Borough, including both public buildings and structures as well as private property, unless the private owner has sanctioned the display and, where necessary, obtained the relevant advertisement consent or deemed consent under the relevant Advertisement Regulations. Further advice on deemed consent and the relevant Advertising Regulations can be found via the following links:-

http://www.planningportal.gov.uk/uploads/1app/guidance/guidance_note-advertisement_consent.pdf

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

There are other types of unauthorised advertisements (such as hoardings) which fall outside the normal definition of fly posting and will be controlled using provisions set out in the relevant Advertisement Regulations.

What is fly posting?

The Department for Environment, Food and Rural Affairs describes fly posting as *‘the commercially driven defacement of the local environment through the display of advertising material on buildings and street furniture without the consent of the owner, contrary to the provisions of the Regulations.’* Fly posting is often divided into three categories:-

- Advertising, primarily for local events and businesses, and often put up in large numbers on a regular basis. Such posters might advertise bands playing in pubs, car boot sales, local events, local businesses and services, or carnivals and fairgrounds. They may be attached to lampposts, railings and street furniture, or pasted onto buildings;
- Posters advertising products of large organisations and put up by professional poster companies; and,
- Posters displayed by pressure groups or political bodies. These are generally ad hoc and sporadic with no clear pattern to their locations.

Why Fly Post?

Fly posting can be cost-effective, can have a high impact, and is often regarded as creating and reflecting a particular image for a product. For small local events and businesses, fly posting on street furniture can provide a cheap and effective way of getting publicity. Fly posts are often placed in urban areas - on main arterial transport routes, in industrial and business parks, or areas near to town centres - in order to gain maximum publicity.

Fly posting is also used to target particular markets and give a product a particular image. The slightly risqué nature of fly posting is regarded by some as a positive feature of this form of advertising when compared with more mainstream/legal advertising media.

The Problems of Fly Posting

Fly posting is not only illegal, it is also unfair to those organisations which choose to advertise legitimately. Fly posting also puts an additional cost on the local authority and other landowners, who then have to remove fly posters from their street furniture and property.

Fly posting can have a severe effect on the "Local Environmental Quality" of an area. This can act as an anti-social magnet, which encourages a social downward spiral, and can lead to an increase in local residents' fear of crime.

The Legal Framework

There are a number of pieces of legislation under which fly posting can be controlled. The principle mechanism is Sections 224 and 225 of the Town and Country Planning Act 1990. However, other powers exist under the Highways Act 1980 and other legislation (summarised in Annex 1).

Prevention of Fly Posting

The Council aims to prevent fly posting through a number of methods. These are classified as internal (within the Council) and external interventions.

The Council recognises that, as a landowner, it has the ability and duty to take steps to prevent the illegal advertising of events, which it is hosting, and/or which are being held at Council venues or on Council-owned land.

In order to prevent advertising through fly posting, the Council will:-

- Ensure that fly posters are not used to promote a Council event, or events associated with the Council; and,
- Take action to ensure that other persons hiring Council venues do not fly post. This will be facilitated through the use of education and the use of “no fly posting” clauses in hiring contracts. For example, clauses may be used to require deposit monies, which would become forfeit if an organiser undertakes fly posting activity.

Fly Posting on the Public Highway, Street Furniture and Council-owned Land and Property

Fly posting is not permitted on the public highway, street furniture or Council-owned land and property. This includes, but is not limited to, political advertising, travelling circuses, and local event promotions.

Where posters are placed on the public highway or street furniture, the Council will make all reasonable efforts to contact the person(s) responsible and advise them to remove the fly poster(s). The Council will however reserve the right to remove the poster(s) with immediate effect under the following circumstances:-

- where a poster is deemed to be offensive in nature or content;
- where the beneficiary cannot be identified; and/or,
- when a poster is located in such a way that it causes a road safety concern.

The Council will also follow the procedure set out above in relation to any fly posting on its own land or property.

In all situations where the Council removes fly posters, the material will be disposed of without prior notification or recompense to the person(s) who carried out the fly posting or the beneficiaries of the illegal advertising.

Fly Posting on Assets which are within the scope of the Council's Street Lighting and Traffic Signs Private Finance Initiative

Under the contractual terms of the Council's Street Lighting and Traffic Signs Private Finance Initiative, attachments can only be displayed if prior Council approval has been secured under a Section 178 License (under the Highways Act 1980). Examples of attachments which are usually approved include fire hydrant signs, bus stop signs, neighbourhood watch signs, closed circuit television equipment, and police signs.

Where unauthorised attachments are identified (which may include fly posting), the Private Finance Initiative Service Provider will make all reasonable efforts to contact the person(s) responsible and advise them to remove the attachments prior to taking further action as deemed appropriate as the owner of the asset.

Fly Posting on Private Property and Land

A significant amount of fly posting occurs on private property. Therefore, the Council is to some degree reliant on other property owners to take responsibility for their own properties.

In certain circumstances, posters can with the landowner's permission be erected on private land under the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. In such circumstances, the Council would not take action. However, the Council will take action to have posters removed in the following circumstances:-

- where a poster is deemed to be offensive in nature or content; and/or,
- when a poster is located in such a way that it causes a road safety concern.

Fly Posting of Election Material During an Election Period

The purpose of this section of the policy is to show how the Authority intends to deter and respond to the illegal use of the public highway and other locations for election related fly-posting during an election period (i.e. from the date the Notice of Election is published). The policy will apply to local elections and by-elections and any other election for which Knowsley MBC has responsibility. It will apply only during an election period (i.e. from the date the Notice of Election is published). Any illegal use of the public highway and other locations for election related fly-posting outside of this period will be dealt with in accordance with the usual enforcement arrangements of the Council's fly posting policy.

This policy will also ensure that the Authority follows a standard approach in responding to election related fly-posting within the Borough. In particular it is intended to ensure that a balanced and consistent approach is taken and any enforcement decisions are reasonable and proportionate.

The Authority's position – Election Material

The Authority recognises that most candidates and parties will want to display campaign material relating to an upcoming election or referendum. Any parties and candidates wishing to do so should take account of the most up-to-date guidance from the Electoral Commission. Current Electoral Commission Guidance states that election related material:

must:

- i) be removed within 14 calendar days after the election; and
- ii) comply with the planning rules relating to advertising hoardings and large banners of the local authority concerned.

must not:

- i) be displayed without the permission of the owner of the site; and
- ii) interfere with or impede traffic or other road users.

It is important that the Authority remains impartial during elections and referenda. For this reason, the Authority will not give candidates and parties permission to display their campaign material on land or buildings owned by the Authority.

Enforcement – Election Material

During an election period, the Authority will take action to immediately remove and destroy the material and will aim to prosecute offenders where fly-posting occurs on Authority owned land. The costs for this removal may be charged to the person, candidate and/or party responsible. The Authority may also consider recovering the costs of removal of the fly-posting from the person(s) named in the notice. In all cases, the authorised officer will photograph the fly-posting prior to removal in order to record details about the sign and to aid any prosecution.

Enforcement Approach

Under fly posting legislation, the Council has powers to take action against:-

- Any company benefitting from the advertising;
- Any person erecting fly posting; and/or,
- The owner of, or occupier of, the building/property where the fly poster is placed.

Where fly posting is reported to the Council and/or where witnessed by Council officers during their daily visits, the Council will adopt the following procedures:-

Enforcement against the Beneficiaries of the Poster

The Council will operate a “staged” approach to enforcement:-

First Offence

When the Council encounters fly posting on either private or public land, it will attempt to contact the company/organisation benefitting from the poster by telephone in order to give them 48 hours to remove the fly poster. The Council will at the same time issue a Written Warning to the company/organisation. This Written Warning will explain the law in relation to fly posting, give advice on proper advertising, and, where appropriate, outline methods on how businesses can protect themselves from being the victim of fly posting. It will also explain that, should they fail to remove the fly posting, legal proceedings may be commenced.

Repeat Offences

If further posters are then erected by the same company/organisation, evidence will be taken.

Repeat Offences on Private Land - In the case of posters which have been erected on private land, organisations will be issued with a Notice requiring them to remove the poster within 48 hours. A sticker will be placed on the face of the poster and a photograph will be taken.

The fly poster will then be checked upon the expiry of the notice period - if the poster has not been removed, then evidence will be taken to support a potential prosecution and the poster will be removed or obliterated.

Repeat Offences on Council-owned Land/Street Furniture - In the case of posters occurring on the public highway, street furniture and/or Council-owned land and property, the poster will be removed immediately and the offender will be invited in for a Formal Interview. If there is appropriate evidence to prove an offence has been committed under the Highways Act 1980, the case will be submitted for a potential prosecution.

Serial Offenders

In the case of serial offenders, evidence will be gathered with the view to obtaining an Anti-Social Behaviour Order against the company directors responsible or benefitting from the fly posting. The Council will also consider the use of Civil Injunctions if appropriate.

Enforcement against Individuals erecting Fly Posters

If individuals are caught in the act of carrying out fly posting, the Council may issue them with a Fixed Penalty Notice to give them the opportunity to discharge their liability. Fixed Penalty Notices will only be used for minor acts of fly posting and will not be used in relation to multiple incidents. Repeat and more widespread fly posting does not warrant the opportunity to receive a fixed penalty and therefore prosecution will be used for persistent offenders or for those who make it clear to officers that they will not comply with the relevant legislation.

In cases where an individual prolifically fly posts, evidence will be gathered with a view to taking an Anti-Social Behaviour Order or Civil Injunction against the individual.

Enforcement against Property Owners

A significant amount of fly posting occurs on private property. Whilst the Council will take all reasonable measures to remove fly posting from its own property, the Authority is reliant on other property owners to take responsibility for their property.

When such fly posting occurs, the Council will notify the property owner and provide advice on fly posting issues with a view to working together to take enforcement action against the individual or company benefitting from the poster.

Ultimately, where the Council receives insufficient co-operation from the land owner, it will consider taking legal action to formally require the property owner to remove the poster.

Recovery of Costs

The Clean Neighbourhoods and Environment Act 2005 amended Section 225 of the Town and Country Planning Act 1990 in order to allow the recovery of the costs of removing illegal fly posting. Costs can and will be recovered where the Council has removed a poster after serving notice on the person who displayed the advertisement or caused it to be displayed and who failed to remove or obliterate it. If it is not possible to identify the person who displayed the advertisement/caused it to be displayed, the legislation allows for the costs to be recovered from the person whose goods, services or concerns are publicised.

Sections 132 and 143 of the Highways Act 1980 allow the costs for removal of illegal fly posting to be recovered (as set out in Annex 1).

Comments on this Policy

This Policy will be reviewed on a regular basis. Individuals and organisations who wish to comment on the Policy are invited to send their comments in writing to:-

Environmental Health and Consumer Protection Service
Second Floor
Yorkon Building
Huyton
Knowsley
L36 9FB

Town and Country Planning Act 1990

Under Section 224 of the Town and Country Planning Act 1990, it is an offence for any person to display an advertisement in contravention of the Regulations. The relevant legislation is contained within the Town and Country Planning (Control of Advertisements) England Regulations 2007. Any person contravening the legislation is liable on summary conviction to a fine not exceeding £2,500 and, in the case of a continuing offence, £250 for each day on which the offence continues after conviction.

Under Section 225 of the Town and Country Planning Act 1990, the Council may remove or obliterate any placard or poster which is displayed in its area and which in its opinion is so displayed in contravention of the Regulations made under Section 220 of the same Act. Usually, the Authority will give a minimum of two days written notice of its intention to remove/obliterate the poster and to recover the cost of doing so either to the person who has displayed the placard or poster or to the beneficiary of the illegal advertising. If neither of these persons can be identified or traced, the Authority is not required to give this notice.

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 Council. If guilty of an offence, the person can be liable to a fine of up to £1,000.

Under Section 143 of the Highways Act 1980, where a “structure” has been erected or set up on a highway otherwise than under a provision of that Act or some other enactment, the Council may by notice require the person having control or possession of the structure to remove it within such time as may be specified in the notice. If the structure is not removed within the time specified in the notice, then, one month after serving the notice, the Council can remove the structure and recover the expenses reasonably incurred. This provision is relevant to this Policy as a “structure” includes any post (which are often used to mount fly posting material) or other object of such a nature as to be capable of causing obstruction, and a structure may be treated for the purposes of this section as having been erected or set up notwithstanding that it is on wheels.