

# REPORT



REPORT OF	MEETING	DATE	ITEM NO
DIRECTOR OF STRATEGIC DEVELOPMENT	PLANNING POLICY SCRUTINY COMMITTEE	9 <sup>TH</sup> OCTOBER 2008	4

## PROLIFERATION OF ILLEGAL SIGNAGE

### **Public Item**

This item is for consideration in the public part of the meeting.

### **Summary**

The report aims to examine the roles and responsibilities of the Council and its partners in connection with graffiti, fly-posting and illegal signage in the Borough. The report also aims to identify the various relevant legislation and statutory powers available to the Council to deal with the removal of such signage.

### **Recommendation**

1. To consider and comment on the introductory report with a view to establishing a task and finish group, to include Members and representatives from all relevant service areas, to review the Council's current roles and responsibilities with regard to fly-posting, graffiti and illegal signage.

### **Cabinet Portfolio**

The item falls within the following Cabinet portfolio:

Planning and Development: Councillor Trevor Fiddler

### **Report**

#### **1.0 Introduction**

The Scrutiny Management Board has agreed to review the proliferation of illegal/commercial signage in the borough following a request for scrutiny made by Councillor Harper on behalf on one of her constituents. The scrutiny request form is attached at Appendix A for reference.

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The Technical Services Manager has coordinated the production of this introductory report and it has become clear that this subject cuts across many service areas that will require wider consultation across the Council to inform the development of this scrutiny review.

## 2.0 Background

Graffiti may be defined as words or drawings that are written, painted, sprayed or scratched on the surface of any property.

Fly-posting, although difficult to define, is generally taken to be the display of advertising material on buildings and street furniture without the consent of the owner.

The term 'illegal signs' refers to any notices that are put up on the public highway without prior permission. These may be 'A' boards advertising businesses which are on the pavement or notices tied to lamp-posts and railings.

Street furniture is a common target for fly posting and graffiti and powers are available to a local authority to deal with its removal when required.

Fylde Borough Council is responsible for removing unsightly graffiti and fly-posting from council property and council owned street furniture located on the public highway.

Graffiti and fly-posting are both criminal offences carrying large fines given by the magistrate's court, or up to £80 fixed penalty notice issued by the local authority or police.

## 3.0 Primary Legislation

Powers are available to the Council under the following legislation –

- Clean Neighbourhoods and Environment Act 2005
- Environmental Protection Act 1990
- Town and Country Planning (Control of Advertisements)(England) Regulations 2007
- Highways Act (s132) 1980
- Anti-social Behaviour Act 2003

The main route for fly-posting prosecutions by local authorities is under section 224 of the Town and Country Planning Act 1990. This makes it an offence for any person to display an advertisement in contravention of the Regulations. Authorities may prosecute those involved in putting up posters where caught 'red-handed' but more often action is taken against 'beneficiaries' - those people/organisations whose products are advertised or in some other way derive benefit from having the product advertised.

Under the Anti-social behaviour Act 2003 a person caught in the act of fly-posting can be issued with a £75 fixed penalty notice.

Under section 132 of the Highway Act 1980 it is an offence for any person to paint or in anyway inscribe or affix any picture, letter, or sign on the surface of a Highway, any tree, or structure without consent of the Highway Authority. If guilty of an offence the person can be liable to a fine of up to £1000, in the case of a second offence up to £2500. Authorities have the power to remove posters without notice.

Powers under the Anti-Social Behaviour Act 2003 can be used to issue anti-social behaviour Orders (ASBO's) to those responsible for fly-posting.

#### 4.0 What do FBC do?

Initial scoping has identified the following roles and responsibilities across the Council and initial comments from Officers have been received on what we currently do as follows.

#### 4.1 Operational Services – Senior Operations Manager

We don't routinely undertake any enforcement or removal of illegal signage. We do monitor fly posting as part of the National Cleanliness Indicator NI195. The level is very low and was 0% last year.

We remove graffiti (but not from private land / buildings) – we try to remove offensive graffiti within 24 hours. It is also monitored as part of the National Cleanliness Indicator NI195 and was 1% last year.

There is an FBC internet online graffiti reporting system available.

#### 4.2 Planning – Planning Enforcement Officer

Any person who displays an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, including any person whose goods or services are given publicity in the advertisement shall be guilty of an offence and liable to summary conviction to a fine not exceeding level 4 on the standard scale and, in the case of continuing offence, one-tenth of level 4 for each day during which the offence continues after conviction. Level 4 of the standard scale is currently £2500.

Information from the Planning team is available explaining how various advertisement structures are controlled in terms of planning legislation. Basically there is advertising that is classed as 'deemed consent', i.e. is permissible without the requirement for planning permission. Then there is the 'express consent' classification relating to advertising features that require planning consent.

#### 4.3 Legal Services

The legal team, acting on instructions from the planners, will advise on and, in appropriate circumstances, prosecute those responsible for displaying illegal advertisements.

By 'illegal' it is interpreted as advertisements that contravene the Town and Country Planning (Control of Advertisements) Regulations 2007. All fly-posting contravenes the regulations, because it is carried out without the consent of the owner of the property on which an advertisement is displayed.

Legal Team has worked with planning to prosecute persons responsible for illegal trailer adverts along the M55 - only one such advert remains in our area.

In a crackdown on 'illegal' advertisements, our role would be to evaluate evidence gathered by planning or other enforcement officers and to prosecute offenders, as well as advising enforcement officers on the legislation

#### 4.4 LCC - Area North Highway Manager

The County Council has powers to remove graffiti/fly-posting from its own property / structures / street furniture, but it only exercises these powers when the content is racist / abusive / offensive or, in the case of traffic signs, obscures a regulatory sign such that it is ineffective.

## 5.0 Clean Neighbourhoods and Environment Act 2005

The measures within the Act are designed to strengthen existing powers and provide for improvements in the enforcement regime to secure a more effective impact. A report on the impact of this Act was taken to the Community Outlook Committee in June 2005 by the Consumer Wellbeing Unit Manager. In order to enforce these powers it will be necessary to include the Act within the Council's Constitution and for the relevant Director(s) to be authorised under the Approved Scheme of Delegation to administer the functions on behalf of the Council.

Generally, the Act amends several pieces of existing legislation incorporating the scope for the Council to issue Fixed Penalty Notices (FPN's) rather than pursuing the more time consuming route of prosecution. Provision is also made for the income from FPN's to be re-invested in the area of service in which it was generated. Furthermore it enables Councils to determine the appropriate level of penalty for a range of offences.

The Clean Neighbourhoods and Environment Act 2005 brought about several changes to the available powers as follows -

- Strengthens the legislation to make it harder for beneficiaries of fly-posting to evade prosecution.
- Enables local authorities to recover the costs of removing illegal posters.
- Extends graffiti removal notices introduced under the Anti Social Behaviour Act 2003, to include fly-posting.
- Improves local authority's powers to tackle the sale of spray paints to children.

Under this legislation the Council and a Parish or Town Council can adopt powers to issue Fixed Penalty Notices for fly-posting.

### Task and Finish Group

A suggested scope for any agreed establishment of a Task and Finish Group as follows –

- Extent of the problem
- Effects of the illegal signage
- Current action being taken by the Council
- Current resources available and being utilised by the Council
- Adequacy of the current legislation and Council policies
- Changes proposed to improve or remedy the situation

IMPLICATIONS	
Finance	None arising directly from this report

Legal	None arising directly from this report
Community Safety	None arising directly from this report
Human Rights and Equalities	None arising directly from this report
Sustainability and Environmental	None arising directly from this report
Health & Safety and Risk Management	None arising directly from this report

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List of Background Papers		
Name of document	Date	Where available for inspection
Policy and Service Review Community Forum Report- Implementation of the Clean Neighbourhoods and Environment Act 2005	6.10.05	Consumer Wellbeing Office and website

### **Attachments**

### **Appendix A – Scrutiny Request Form – Illegal Signage**