

Meeting: SOUTHPORT AREA COMMITTEE

Date of Meeting: 6 JANUARY 2010

Title of Report: REMOVAL OF GRAFFITI ON NON-COUNCIL OWNED LAND AND PREMISES

Report of: Caroline Elwood
Legal Director

Contact Officer: Peter Cowley
Principal Solicitor
(Telephone No.) 0151 934 2250

This report contains	Yes	No
CONFIDENTIAL Information/		√
EXEMPT information by virtue of paragraph 5.of Part 1 of Schedule 12A to the Local Government Act, 1972 (If information <u>is</u> marked exempt, the Public Interest Test must be applied and favour the exclusion of the information from the press and public).		√
Is the decision on this report DELEGATED?		√

Purpose of Report

At the meeting of this Committee on 30 September 2009, the Committee resolved that, "the Legal Director be requested to submit a report on the legal position of graffiti removal on non-Council owned land and premises".

Recommendation

That the report be noted.

Corporate Objective Monitoring

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1.	Creating a Learning Community		√	
2.	Creating Safe Communities		√	
3.	Jobs and Prosperity		√	
4.	Improving Health and Well-Being		√	
5.	Environmental Sustainability		√	
6.	Creating Inclusive Communities		√	
7.	Improving the Quality of Council Services and Strengthening local Democracy		√	
8.	Children and Young People		√	

Financial Implications

There are no financial implications arising directly from this report.

Departments consulted in the preparation of this Report

Environmental Protection Department.

List of background papers relied upon in the preparation of this Report

Section 48 - 52 of the Anti-Social Behaviour Act 2003.
Defacement Removal Notices Guidance DEFRA April 2006.

SEFTON M.B.C.

REMOVAL OF GRAFFITI ON NON-COUNCIL OWNED LAND AND PREMISES

1.0 Legal Position

1.1 At the meeting of this Committee on 30 September 2009, the Committee resolved that “the Legal Director be requested to submit a report on the legal position of graffiti removal on non-Council land and premises”.

1.2 The legal position is as follows:-

The Local Authority is responsible for removing graffiti from Council owned buildings, monuments or street furniture such as benches. Other items such as telephone boxes, bus shelters and electricity boxes are the responsibility of the Company that place them there, for example, British Telecom, Adshel or the Utility Companies. Statutory undertakers, such as Railway Operators, are responsible for land and buildings in their ownership.

1.3 Sections 48-52 of the Anti-Social Behaviour Act 2003 (as amended by The Clean Neighbourhoods and Environment Act 2005) enable a Local Authority to serve a “Defacement Removal Notice” on the owners, occupiers, operators of “relevant surfaces” whose property is defaced with graffiti and/or fly-posting.

1.4 In relation to fly-posting, Defacement Removal Notices may be used to deal with old posters and remnants of fly-posting but where new cases occur, action should be taken against the offender, wherever possible, using the Town and Country Planning Act 1990 to pursue the beneficiaries or those responsible for the fly-posting.

1.5 The Act states that Local Authorities must have regard to the guidance issued under Section 50(1) when exercising powers under the Act.

1.6 In particular, Local Authorities are required to make reasonable attempts to enter into partnerships with property owners. All parties should work in constructive partnership to remove graffiti and fly-posting within agreed times and minimise the need for removal notices. Requests for graffiti and fly-posting cleaning should be necessary and proportionate.

1.7 The guidance states that partnership arrangements are developed voluntarily and their existence and nature will vary based on local circumstances and the scale of the problem caused by graffiti and/or fly-posting.

1.8 A pilot scheme was carried out across 12 Local Authority areas. The pilot scheme found that the most successful graffiti removal was through co-operative partnerships where all parties had a clear understanding of their responsibilities to remove graffiti. Government guidance seeks to make it clear that Defacement Removal Notices should only be used as a last resort.

2.0 Access to Railway Property

- 2.1 The Government has issued guidance on the operation of the provisions relating to the removal of graffiti from railway property. The advice is that the safety of staff cleaning railway property and of the general public is paramount. Local Authorities should work with the Railway Authorities to ensure that health and safety obligations are met.
- 2.2 The removal of graffiti from surfaces belonging to railway operators may require the carrying out of special safety procedures including temporary track closures. The work may fall to be co-ordinated with other activities in order to avoid excessive costs.
- 2.3 In the case of railway land, Local Authorities must not, under any circumstances, enter nor purport to authorise entry by any person. Only the railway undertaker concerned is in a position to authorise entry by persons in possession of appropriate railway safety certification. A failure to comply with this instruction is likely to place the Local Authority concerned in breach of its own duties under the Health and Safety At Work Etc. Act 1974. Any person purporting to authorise entry onto railway land may render themselves liable to prosecution in their personal capacity.
- 2.4 Government guidance requires that where there is graffiti on railway land (other than on a surface fronting a street) the Local Authority should seek to enter into partnership arrangements with the railway undertaker.

3.0 Recommendation

It is recommended that this report be noted.