

NEWARK & SHERWOOD DISTRICT COUNCIL
GRAFFITI POLICY

1.0 PURPOSE OF POLICY

- 1.1 The purpose of this Policy is to set out Newark & Sherwood District Council's approach for the management of graffiti which is to be done through education, enforcement and prevention.
- 1.2 The overall aim of the Policy is to ensure that graffiti is removed as quickly as possible and appropriate enforcement action is taken against offenders.

2.0 BACKGROUND

- 2.1 Graffiti is defined as unauthorised writing, drawing or scratches that are scribed, painted or engraved upon walls and other surfaces. It is a crime and is punishable under the legislation listed in Appendix A.
- 2.2 Graffiti can be generally placed into the following categories:
- Obscene, racist or threatening;
 - Political commentary;
 - Gang related graffiti marking territory, and
 - 'Tags' – the most prominent form within the district
- 2.3 The Cleaner, Safer, Greener strategy has identified graffiti as one of the key environmental issues across the district due to the adverse effects it can have on areas. The presence of graffiti is unsightly and may also contribute to the decline of an area, which can undermine community cohesion and the efforts of public agencies. It can be costly to remove, increase the fear of crime, decrease local investment in regeneration and cause depreciation of property values. It can be particularly distressing for those whose property is defaced by graffiti, especially if of an offensive nature and can also have a negative impact upon the vitality and viability of business. The tackling of graffiti and other environmental crime in a positive way in other areas has sent a clear message to communities that societal improvements can be achieved, thereby boosting the strength of local cohesion and demonstrate that the Council is committed and serious about resolving such matters.

3.0 SUMMARY OF NEWARK & SHERWOOD DISTRICT COUNCIL'S POWERS AND RESPONSIBILITIES

- 3.1 The Council is responsible for removing graffiti from Council owned properties, parks and the highways. Graffiti removal from street furniture such as telephone boxes, bus shelters and utility cabinets remains the responsibility of the relevant private company. With regards to private and commercial property, the removal of graffiti is generally the responsibility of the owner although the Council can undertake this work with their approval.

3.2 In relation to graffiti, the Council's powers include:

- The removal of graffiti from privately owned or commercial property following a request from the owner;
- The issue of 'Defacement Removal Notices' under section 48 of the Anti-social Behaviour Act 2003, requiring the person responsible for the 'relevant surface' to remove the defacement within a period specified in the notice being not less than 28 days beginning with the day on which the notice is served, where the defacement is detrimental to the amenity of the area or is obscene, racist or threatening;
- Where the recipient of a Defacement Removal Notice fails to comply with the requirements of the Notice, an authorised officer of the Council may enter land to the extent necessary to enable him/her to remedy the defacement and may recover expenditure reasonably incurred in exercising this power;
- The issue of Fixed Penalty Notices where an authorised officer has reasonable grounds to believe that an offence of criminal damage/graffiti has been committed, and
- The initiation of prosecution proceedings where appropriate. The relevant legislation is listed in Appendix A.

4.0 OBJECTIVES

4.1 Newark & Sherwood District Council's graffiti objectives, taking into account its powers identified above, are as follows:

- To encourage the reporting of graffiti;
- To remove reported graffiti promptly from Council property and other domestic property (where owner approval is obtained);
- To work in partnership with statutory undertakers and other agencies to secure the prompt removal of graffiti from commercial properties;
- To engage with local communities to provide education with the aim of reducing the occurrence of graffiti, and
- To take enforcement action where considered appropriate to do so.

4.2 The following sections provide further detail regarding each of these objectives.

5.0 REMOVING GRAFFITI PROMPTLY FROM COUNCIL PROPERTY AND OTHER DOMESTIC PROPERTY

5.1 For Council owned property, including highway infrastructure (for example, bridges and highway signs), it is intended that any graffiti deemed racist, threatening or obscene (Level 1) will be removed or painted over within 36 hours of it being reported. It is intended that all other graffiti (Level 2) will be removed or painted over within 14 days of it being reported. It should be noted that these are target timescales and there may be situations where their achievement may not be possible, for example, on high speed routes or railway land where special traffic management measures might first need to be established.

Level 1 Graffiti

- Graffiti that is calculated to offend, intimidate or incite hatred. This would clearly include graffiti aimed at race, religion, sexual orientation or ethnic group, etc but would also include graffiti aimed at other groups, such as citizens from other countries or the

police. Graffiti containing humiliating or offensive remarks about named individuals could also be included

Level 2 Graffiti

- Graffiti that tends to despoil and degrade the built environment.
- This would include casual graffiti, graffiti “art” and tagging. Graffiti showing support for a football team would normally fall within this category, but graffiti displaying membership of a “gang” will be treated more seriously if the intension is to intimidate or encourage criminal activity.

5.2 For private owned buildings and or domestic property, where appropriate approval is attained, graffiti will be removed in accordance with the timescales identified in paragraph 5.1 above. However it should be noted that the time will start from the date of signed approval. A disclaimer notice is attached as an appendix of this policy.

5.3 Where the owner/person responsible for the property upon which the defacement has occurred does not consent to the removal of graffiti, Newark & Sherwood District Council will exercise its statutory powers under section 48 of the Anti-Social Behaviour Act 2003 to remove the graffiti. However, in cases where the graffiti is considered racist, threatening or obscene the Council will also continue to liaise with the owner with the objective of securing the removal of the graffiti at the earliest opportunity.

5.4 For absent owner properties, Newark & Sherwood District Council will contact the property owner with a view to removing the graffiti as soon as possible if there is no prior agreement in place between the property owner and the Council. In cases where Newark & Sherwood District Council has a working partnership with the property owner, removal will be prioritised according to the nature of the graffiti. If after several attempts the owner of a property cannot be reached or identified, Newark & Sherwood District Council will exercise its statutory powers to remove it. Prompt action will be taken where the graffiti is offensive in nature.

5.5 It should be noted that there may be occasions where the removal of some incidents of graffiti will have to be suspended due to unforeseen circumstances such as emergencies on site or inclement weather. Graffiti removal relies heavily on the use of high pressure water which cannot be used in snow or sub zero temperatures.

6.0 REMOVAL OF GRAFFITI FROM STATUTORY UNDERTAKER INFRASTRUCTURE AND OTHER COMMERCIAL PROPERTY

6.1 Street furniture infrastructure such as telephone boxes, bus shelters, post boxes and utility cabinets are often the responsibility of private companies. However Newark & Sherwood District Council aims to form effective working partnerships with the relevant owners so that graffiti is removed from these items in a prompt and efficient manner. Newark & Sherwood District Council will only remove graffiti from, for example items of street furniture, where given permission to do so, where a partnership is in place, or where there has been a failure to comply with a defacement notice in accordance with section 48 of the Anti Social Behaviour Act 2003. In instances where companies choose to remove graffiti themselves, contact details will be obtained so that the owner can be promptly contacted.

- 6.2 In respect of commercial property, the Council will engage with the owner with a view to seeking the removal of the graffiti within the timescales referred to in paragraph 5.1. Where the owner of the property upon which the defacement has occurred does not consent to the removal of graffiti, Newark & Sherwood District Council will exercise its statutory powers under section 48 of the Anti-social Behaviour Act 2003 to remove the graffiti.
- 6.3 It is to be noted that for 5 and 6 above the Waste & Transport management team will be responsible for deciding on all aspects of graffiti treatment. There will be occasions where it is not feasible to remove or cover graffiti at a particular time (footfall, traffic, weather etc.). In addition there will be occasions where particular pieces of graffiti are to be left in situ. These will mainly be when the graffiti is in areas that are too financially onerous to remove (in particular where the graffiti is in areas not accessed by the public) or the graffiti is on property that will itself be removed from the public space (skips, "to let" boards, porta-cabins etc.)

7.0 ENCOURAGE THE REPORTING OF GRAFFITI

- 7.1 Through appropriate communications campaigns, citizens will be encouraged to report graffiti. The Council will establish and maintain a database for recording the occurrences of graffiti.

All reported graffiti will be added to the database which will then generate graffiti removal requests to the Council's graffiti removal resources. Both 'before removal' and 'after removal' photographs will be recorded in the database. These will not only validate completion of work, but be used as evidence to aid in prosecution of persistent offenders. The database will facilitate the sharing of information with enforcement agencies including the police.

- 7.2 Additionally, an online form to report graffiti will be provided as a link from the Council's Graffiti web pages on its website.

8.0 COMMUNITY ENGAGEMENT, EDUCATION AND PREVENTION

- 8.1 If appropriate, Newark & Sherwood District Council will support applications from residents and residents' groups who would like to manage graffiti displaying a mural/public art in a specific location. This would have to be relevant to the community and not contain any threatening themes, with local community meetings deciding on the content. Using a commissioned artist is a plausible option. This would be particularly relevant to areas where there is a history of tagging.
- 8.2 Newark & Sherwood District Council will provide appropriate support to residents and residents' groups in tackling graffiti problems in their area by way of community clean ups.
- 8.3 Newark & Sherwood District Council will engage with residents and businesses to encourage reporting of graffiti, and provide advice with regards to graffiti prevention and removal so that incidences are dealt with as promptly as possible.
- 8.4 Newark & Sherwood District Council will monitor incidences of graffiti according to area and schedule regular removal from hotspot areas across the district.

- 8.5 Newark & Sherwood District Council will engage with young people through a programme of education and diversionary techniques, including through schools and organised youth activities.
- 8.6 Newark & Sherwood District Council will constantly seek to find new preventative measures, such as the use of sacrificial coatings (where appropriate) and natural screening in areas persistent to graffiti attack.

9.0 ENFORCEMENT

9. Newark & Sherwood District Council opposes unauthorised writing, drawing or scratches that are scribed, painted or engraved upon walls and other surfaces. The Council will take action against those responsible for graffiti, and seek to recover its costs from the person(s) responsible through avenues such as the small claims court in cases where Council property has been targeted. Appropriate enforcement action will therefore be taken whenever it is considered that sufficient evidence exists to achieve a successful outcome. The Council will work closely with the police to identify tags and the 'taggers', and collect evidence to take action as appropriate so that offenders are dealt with swiftly.
- 9.2 Newark & Sherwood District Council supports restorative justice for young offenders and will work closely alongside the Police and Youth Offending Teams so that young offenders and probationers who have been convicted of graffiti vandalism can be involved in diversionary art projects and supervised clean ups and community payback.
- 9.3 Newark & Sherwood District Council will work in partnership with other organisations on diversionary art projects and workshops, particularly in relation to murals and public art which make a positive contribution to the area, reflect the community and discourage tagging.

10 CHARGING FOR GRAFFITI REMOVAL

- 10.1 Subject to the receipt of owner approval, the Council will remove graffiti free of charge from both privately and commercially owned domestic premises up until 31 March 2021 when this will be reviewed.
- 10.2 However, as stated in paragraph 5.3, where the owner/person responsible for the property upon which the defacement has occurred does not consent to the removal of graffiti, the Council will exercise its statutory powers under section 48 of the Anti-Social Behaviour Act 2003 to remove the graffiti and recover its expenditure reasonably incurred.

11.0 MONITORING AND REVIEW

- 11.1 This Graffiti Removal Policy shall be reviewed and updated as required on a regular basis. It is intended that the next formal review be undertaken and reported to the Council by 31 March 2020.

RELEVANT LEGISLATION

Graffiti is a crime and Newark & Sherwood District Council has the powers to prosecute offenders under the following legislation:

- **Criminal Damage Act 1971.** The police have powers to prosecute for graffiti. The local authority may also prosecute. Graffiti is criminal damage under section 1 of the Criminal Damage Act 1971. If the value of criminal damage exceeds £5,000 the maximum penalty for those aged 18 or over is 10 years imprisonment, for those aged 12-17 year the maximum custodial penalty is a detention and training order of up to 24 months. Where the damage is less than £5,000 the maximum sentence is three months imprisonment or a fine of £2,500 for adult offenders.
- **The Anti-Social Behaviour Crime and Policing Act 2014** provides the Council with powers to deal with graffiti on private property by means of a Community Protection Notice (CPN). A CPN can be issued to an individual aged 16 or over if an authorised person is satisfied that:
 - a) The conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality
 - b) The conduct is unreasonable

Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a FPN or prosecution.

- **The Highways Act 1980 Section 132** states “if any person without consent of the Highway Authority paints or otherwise affixes any picture, letter, sign or other mark upon the surface of the Highway is guilty of an offence and liable to a fine not exceeding level 3 (£2500) the standard scale”.

Where there is evidence of repeat offences the Council could apply for an injunction against the person responsible. In exceptionally high impact cases the Council could also consider prosecution of the person responsible under the **Local Government Act 1972 (s222)**

The Town & Country Planning Act 1990 Section 215 states that “if it appears to the local planning authority that the amenity of a part of their area, or adjoining land, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section”

Section 216 states “If any owner or occupier of the land on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding Level 3 on the standard scale”.

Section 219 states “IF, within the period specified in the notice under Section 215 and steps required by the notice to be taken have not been taken, the local planning authority who served the notice may :

- a) Take any reasonable steps to enter the and take those steps;
 - b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them for doing so.
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- **It should be noted that the above policy is to be adopted following a district wide project that will be designed to address much, if not all of the graffiti currently on display. For many years the Council has had a policy of only removing Level 1 graffiti and the impact of Level 2 graffiti has traditionally been minimal. The recent upsurge in graffiti around the district together with the renewed Cleaner, Safer, Greener emphasis and the feedback from Residents Surveys has called for this policy shift. It is foreseen that there will be the requirement of a dedicated team working for approximately 3 months to bring us back to a base where the day to day operation can cope with any future incidents.**

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