



# *Oadby and Wigston Borough Council*

## **TO COUNCILLOR:**

G S Atwal  
L A Bentley  
A R Bond  
G A Boulter (Chair)  
J W Boyce

Mrs L M Broadley  
F S Broadley  
D M Carter  
K Chalk  
Miss M V Chamberlain

Mrs S Z Haq (Vice-Chairman)  
T Khong  
K J Loydall  
R H Thakor

Dear Sir/Madam,

I hereby summon you to attend a meeting of the **SERVICE DELIVERY COMMITTEE** to be held in the Council Offices, Station Road, Wigston on **TUESDAY, 13 OCTOBER 2015 at 7.00 pm** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices  
Wigston

Chief Executive

## **A G E N D A**

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# **OADBY & WIGSTON BOROUGH COUNCIL**

## **DRAFT GRAFFITI POLICY**

## 1. Policy Statement

OWBC is committed to maintaining a clean and safe environment for the benefit of everyone in the Borough.

The presence of graffiti detracts from the environment, creates a perception of degeneration and a lack of pride in the area and contributes to a fear of crime and is an example of anti-social behaviour. OWBC actively works in partnership with the Police and other partner agencies to create a safer environment and to provide services that respond to the needs and aspirations of our communities.

OWBC recognises our responsibility to keep the streets and local environment clear of litter, obstructions and other local environmental quality issues as set out in the ***Anti Social Behaviour Act 2003***, which was amended by ***The Clean Neighbourhoods & Environment Act 2005***. Under this legislation, fixed penalty notices can be issued to perpetrators of graffiti.

## 2. Definitions of Graffiti

For the purposes of this policy, we differentiate between ***Graffiti*** which is generally considered to have a negative impact and ***Street Art/Graffiti Art*** which is generally regarded as a more artistic and considered intervention.

2.1 ***Graffiti*** is the illegal or unauthorised drawing, scribbles, messages, tags, etchings or designs that are painted, written, sprayed, etched, pasted or otherwise affixed to a surface such as walls, street and park furniture or other edifice or structure without the property owner's consent.

2.2 ***Offensive Graffiti*** may be defined as graffiti as above but contains some or all of the following:

- Offensive language, language of a politically, racially, religiously insulting or inciting nature
- Hate statements
- Graphically explicit images
- Images that are textually or visually offensive in context
- Libellous or potentially libellous statements

2.3 ***Street Art/Graffiti Art*** may be defined as art; specifically visual art developed in public spaces ("in the streets") though the term usually refers to unsanctioned art as opposed to government sponsored initiatives. It can include painting, writing, murals that are painted, written, sprayed, etched or carved on the surface of buildings, walls, street and park furniture or other edifice or structure.

Street Art may be deemed to have a positive impact on the local environment, subject to other relevant considerations. It may, however, also fall into the categories of offensive graffiti as above.

As well as causing detriment to the environment, graffiti and street art/graffiti art can, under certain circumstances, amount to a criminal offence under the ***Criminal Damage Act 1971***.

Where the value of the criminal damage exceeds £5,000 the maximum penalty is a fine not exceeding the Statutory maximum and/or 6 months imprisonment. Where the damage does not exceed £5,000, the maximum penalty is £2,500 and/or 3 months imprisonment.

### 3. Conservation Areas

**There are a number of conservation areas with the Borough, details of which can be found on the Councils' website.**

A Conservation Area is defined as “an area of special architectural or historic interest, the character and appearance of which it is desirable to preserve or enhance” according to the ***Planning (Listed Building and Conservation Areas) Act 1990***. Under S71 (1) of the Act, it is the duty of the Planning Authority to formulate and publish proposals for the preservation and enhancement of conservation areas.

Graffiti Art/Street Art will not normally be considered acceptable in a conservation area as it is:

- a) Not generally appropriate to the character of the historic environment
- b) Potentially damaging to the historic fabric of buildings, particularly stone and brickwork
- c) Would obscure details/features that make a positive contribution to the character of the local area.

#### Exceptions

In exceptional circumstances, where buildings have been empty or derelict for some time and are contributing to a reduction in the quality and character of the conservation area, street art/graffiti art may be acceptable. This must, however be on a temporary basis, eg. on temporary hoardings and not on the historic fabric of the building.

Graffiti Art/Street may be considered acceptable where it is:

- a) Of exceptionally high artistic quality
- b) Does not impact negatively on the wider conservation area, and
- c) Does not damage or obscure the historic fabric of the building or environment

#### Street Art/Graffiti Art on Listed Buildings

Under the provisions of Section 9 of the ***Planning (Listed Buildings and Conservation Area) Act 1990***, the application of graffiti to a listed building without the required Listed Building Consent is a criminal offence if it is considered to be an alteration which would affect its character as a building of special architectural or historic interest.

Listed Building Consent for street art/graffiti art would require the notification of the property owner.

Graffiti Art/Street Art will not normally be conserved acceptable on a listed building. Exceptions as above.

#### 4. Summary of our Powers and Responsibilities

The Council is responsible for removing graffiti from Council owned properties and street furniture, parks and the highways. However, items such as telephone boxes, Network Rail property and structures, and electricity boxes are the responsibility of the private companies.

In regard to private and commercial property, the removal of graffiti is generally the responsibility of the owner although the Council will exercise its discretion and provide graffiti removal services for which a charge may be made. The Council has the power to, amongst other things:

- Remove graffiti from privately owned or commercial property following a request from the owner and subject to the receipt of a signed indemnity form.
- Charge for this service, although in most cases it is offered for free.
- Issue Graffiti Removal Notices under Section 43 of the **Anti-Social Behaviour Act 2003**, requiring the person responsible for the “relevant surface” to remove the defacement within a period of 28 days where the defacement is detrimental to the amenity or the area or is offensive.
- Where the recipient of a Graffiti Removal Notice fails to comply with the requirements of the Notice, an authorised Officer of the local authority may enter the land to the extent necessary to enable it to remedy the defacement and may recover expenditure reasonably incurred in exercising this power.
- Issue Fixed Penalty Notices where an authorised Officer has reasonable grounds to believe that an offence of criminal damage/graffiti has been committed.
- Initiate prosecution proceedings where considered appropriate to do so under Section 215 of the **Town and Country Planning Act 1990**. In addition the Council, as a Public Body, has a number of obligations which include, among other things:
  - The Equalities Act 2010, the Council, in carrying out its functions, has an obligation to have due regard to the need to eliminate unlawful discrimination.

#### 5. Graffiti Removal Policy

##### Objectives

- a) OWBC will seek to keep the Borough safe, clean and green
- b) OWBC will endeavour to remove unwanted and offensive graffiti and street art
- c) OWBC will support the right for property owners not to have unwanted graffiti or street art on their property. A Graffiti Removal Request form is attached at Appendix A and will be available on the Council’s website

- d) OWBC will endeavour to achieve targets of cleanliness along the principles of the former National Indicators (NI195) which were the government guidelines that compare one council's performance with another and sets targets for improvement on graffiti levels by:
  - i) removing graffiti promptly
  - ii) working in partnership with Council services, schools, external agencies and voluntary and community organisations to prevent and tackle graffiti
  - iii) engaging local residents to tackle graffiti using graffiti prevention methods best suited to their area
  - iv) taking enforcement action where considered appropriate to do so in the form of, among other things, service of Statutory Notices, Prosecutions and/or Fixed Penalty Notices.

OWBC will aim to deliver these objectives through:

#### Reporting

- a) Encouraging the reporting of graffiti through the OWBC customer service centre, customer service points and web-based reporting
- b) Encouraging the reporting of graffiti as criminal damage to the Police
- c) The promotion of the graffiti removal service and publicising successful local solutions

#### Removal

- a) Removal of any racist or offensive graffiti/street art by the end of the next working day after being reported. With or without signed indemnity.
- b) Removal of non-offensive graffiti where the owner/person responsible has requested us to do so within 5 working days of being reported. We will prioritise the removal of such graffiti based on the size of the area covered, location and content whilst taking local pressures and opinions into account so as to make the best use of graffiti removal resources, accompanied by a signed indemnity form.
- c) Schedule regular removal of graffiti from hotspot areas, with sensitivity to local situations.
- d) Where the owner/person responsible for the property upon which the defacement has occurred does not consent to the removal of the graffiti, we will exercise our statutory powers under Section 48 of the **Anti Social Behaviour Act 2003**, save for in cases where, for example, the graffiti is offensive and the exercise of such powers would cause unnecessary delay in the removal of such graffiti.

**NB:** all graffiti is to be removed in accordance with Health and Safety limitations and within removal guidelines according to the surface, ie. graffiti at certain levels, eg. higher than 2.1 metres may not be possible to remove; graffiti to be removed from surfaces only where the surface material permits; and subject to receipt of indemnity form from property owners except in the case of offensive graffiti (see examples above).

### Recording

The Council will gather detailed information on graffiti, from the first report through to removal as evidence and to aid the removal prioritisation process.

The Council will gather and store photographic evidence to support legal cases against graffiti offenders and share intelligence where appropriate with other enforcement agencies, including the Police.

### Street Art/Graffiti Art

Where murals or street art is deemed to make a positive contribution to the local environment and where the property owner has raised no objection, the Council can make the decision not to exercise our discretionary enforcement powers and/or powers of removal. In such a case, specific consultation may be carried out internally with the Planning department and externally with local residents and the owner of the property.

### Community Engagement

OWBC will support applications from residents and residents' groups who would like to manage graffiti by displaying a mural in a specific location through a process of consultation and gaining permission from property owners for the artwork. This particularly applies in areas where there is a history of graffiti and tagging.

Support residents and residents' groups in creating alternative diversions to tagging and graffiti problems, such as community clean ups and preventative planting schemes.

Engage young people through an ongoing programme of education and diversionary techniques, including through schools and organised youth activities.

Work in partnership with Services across the Council through the Corporate Enforcement Team to deliver diversionary art projects such as self-managed legal walls and workshops.

### Dealing with Offenders

OWBC will work closely with the Police, Network Rail, Schools and Colleges and local communities to identify tags and the taggers, collect evidence and pursue court action as appropriate.

OWBC recognise that Graffiti is Anti-Social Behaviour (SAB) as well as a crime. We also recognise that perpetrators of ASB can be innovative when perpetrating ASB. For this reason, this policy is intended to be flexible allowing for innovative solutions to be applied quickly to tackle the problem. Where perpetrators are young or living with parents, we may consider tenancy warnings or action against the tenant in cases where the perpetrator lives with or visits a Council tenant.

We may also consider the use of parenting classes or acceptable behaviour contracts and or restorative community based remedy approaches to address the problem.  
Support restorative justice approaches for offenders.

#### Support restorative justice and/or community remedy approaches for offenders

Where appropriate we may work with a variety of partner agencies such as The Office of the Police and Crime Commissioner, Leicestershire Youth Offending Team and The National Probation Service to include young offenders and others who have been convicted, cautioned, conditionally cautioned or reprimanded (or suspected but have agreed restorative resolution) of graffiti vandalism by involving them in diversionary art projects, educational workshops and/or in graffiti removal or other restorative disposal deemed appropriate. When considering Community Remedy approaches, our aim is that these approaches will have a:-

- punitive element by reflecting the effects on the victim and the wider community or,
- reparative element by achieving appropriate restitution/reparation or,
- rehabilitative element which will help address the cause of the perpetrators behaviour, or
- combination of these.

#### Monitor and Review

Monitor incidences of graffiti according to area and direct resources where most needed.

Develop relationships with Officers from other authorities, "Keep Britain Tidy", central government and other agencies to share information on successes and failures in combating graffiti.

## **6. Resources Committed**

The Council's Clean and Green service has the lead responsibility for dealing with graffiti for which provision for costs of removal are made within the budgetary process.

<b>GRAFFITI REMOVAL REQUEST</b>
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Name:	
Address:	
Daytime Telephone No:	

I request Oadby & Wigston Borough Council to arrange the removal of the graffiti at the above address/address below (please delete as appropriate)

Address:	
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Location of the graffiti (eg. side wall)	Nature of the graffiti (eg. Tag, Racist, etc.)
Approx. Area of graffiti (eg. 1 sq. Metre)	Type of Surface Graffiti Is on (eg. open brickwork)

Note: if attaching a photograph of the graffiti would be helpful, if

**Disclaimer**

I understand that the process of graffiti removal involves the use of high pressure water and chemicals that may result in damage to certain surfaces. I confirm that Oadby & Wigston Borough Council will not be held liable for any loss or damage caused to my property as a result of the process.

Signature: ..... Date: .....