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# Report

**Report subject: Advertising on the highway in rural areas.**

**Report to: Planning & Economic Development Overview and Scrutiny Panel.**

**Date: 23<sup>rd</sup> October 2006.**

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## Introduction

This matter has been brought before the Panel as a result of a public question raised on behalf of Mere Town Council at the Western Area Committee on 28<sup>th</sup> September 2006, concerning the Council's attitude to unauthorised advertising on the highway, particularly in the form of A-boards.

The full text of the public question is attached as an Appendix. Councillor Edge asked that a report be made to the Panel regarding the key policies and issues concerning the display of such advertising in rural areas.

## Background

The display of advertisements is controlled by the Town and Country Planning (Control of Advertisements) Regulations. The Regulations exempt certain signage, including signs displayed on moving vehicles, traffic signs, national flags etc. from the Regulations and grants 'deemed consent' for the display of a wide variety of signage on business premises, so that express consent is not needed from the Council for their display.

In particular, Classes 5 and 6 of the Regulations grant deemed consent for the display of a wide variety of signs on business premises including on their forecourts, subject to certain conditions and limitations. "Forecourt" is defined in the Regulations and includes private land, but not public highway. One of the conditions of deemed (and express) advertisement consent however is that the sign cannot be displayed without the permission of the landowner. Most of the Salisbury District Council area lies within an Area of Special Control of Advertisements, however this has little effect on the Classes of deemed consent referred to above.

Signage which does not fall within the exemptions to consent or deemed consent however, requires express consent following an application to the Council, before the signs can be displayed.



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The seriousness with which the display of signage without consent is viewed by Government is that such matters are an offence, which can render the owner or occupier of the land or the person/company who benefit from the display of the signage liable to a fine of up to £1,000, which a further penalty of one-tenth of the maximum fine for each day of the display in the event of a second or subsequent conviction.

In the above regard, Members should be aware that there is little distinction in legal terms between the display of A-boards without consent and other forms of illegal advertising such as trailer advertisements or fly posting, save that the Council also have powers to undertake direct action to remove/obliterate the latter.

Moreover display of advertisements on the highway is in contravention of Section 132 of the Highways Act 1980 and it constitutes an offence to display a sign which impedes safety or is an obstruction. Section 132(2) allows the Highway Authority (WCC Highways) to remove such advertisements without giving any notice of their intention. To the author's knowledge WCC Highways have only exercised the power of removal lightly to date.

In 2004, in response to an enforcement enquiry from Amesbury Town Council querying the number of A-boards, the Council wrote to traders displaying signs on the highway within the town centre, advising them of the legal position as set out above, and inviting them to remove the signage voluntarily. Traders were on the whole very positive and most of the offending signs were removed without the need for further action.

One Amesbury trader who persistently displayed his sign on the highway notwithstanding the advice given, was subsequently successfully prosecuted and fined in the Magistrates Court. There was no reoccurrence of the display –the sign was relocated to within his forecourt area where its display did not need the Council's consent.

Traders displaying a number of A- boards adjacent to the A350 advertising businesses in the Semley area were also successfully prosecuted around this time, after the Enforcement Team had received enquiries about their display and the signs were not removed voluntarily.

In early 2005 with the prior agreement of the Portfolio Holder, the Enforcement Team proactively wrote to traders in the City Centre displaying A-boards again advising them of the legal position as set out above, and inviting them to remove offending signage voluntarily. This action also had the support of the Civic Society, the City Centre Manager and received positive coverage in the Salisbury Journal.

Once again traders were on the whole very positive once they were aware of the position and most voluntarily removed offending boards or modified their display to not contravene the Regulations. Again, one trader was subsequently prosecuted and fined in the Magistrates Court. Additionally the trader concerned subsequently had their illegal signage removed by the Highway Authority as it was deemed to be causing an obstruction.

During summer 2006 in response to enquiries the Enforcement Team has investigated the display of a number of A-boards on the highway in Downton as well as Mere and Wilton Town Centres. Both of the latter investigations have recently been concluded with all of the offending A-boards having been removed and the only boards displayed being those which benefit from deemed consent.

## Considerations

### Why are the Planning Enforcement Team investigating these matters?

With the exception of the City Centre exercise in 2005, the Enforcement Team has only investigated A-boards where their display has been drawn to the Council's attention as a result of an enquiry from a member of the public. The Council is bound to investigate any breach of planning control drawn to its attention, and make a determination on the expediency of enforcement action to remedy the breach. Failure to do so has been held to be maladministration by the Local Government Ombudsman.

Failure to take action against offending signage could also be viewed as the Council 'condoning' an offence and could prejudice prosecution proceedings in relation to other signage on grounds of abuse of process as a result of inconsistency.

In practice there is therefore little discretion which can be exercised in these matters.

Additionally, the possible public safety implications of a failure to investigate and the Council's increased exposure to the risk of legal action in the event of individual(s) injuring themselves as a result of an illegal display of an A-board on the public highway, must also be borne in mind.

In the course of an investigation Officers also cannot in fairness ignore adjacent/nearby traders also displaying such signage without consent; indeed in some cases the trader displaying the sign the subject of an initial inquiry has made specific reference to other signs displayed in the vicinity, meaning Officers have had to widen their investigation.

Officers are sensitive to issues regarding rural businesses and sustaining the rural economy, but also have to bear in mind that an offence has been committed. The Enforcement Team's approach adopted in these cases has therefore been pragmatic and similar to that outlined above: to write to the traders drawing attention to the legal position, asking for a voluntary cessation of the display in question and referring to the guidance available on alternative signage which may not require consent or may be more acceptable in the event of an application; as opposed to adopting a more 'robust' legalistic position.

### Planning considerations

It would be open to traders to apply to the Council for specific consent to display the signs. Under the Regulations, such applications can only be considered in terms of their effects on 'amenity' and 'public safety'. Salisbury District Local Plan policy (G11) can only therefore be given very limited weight in deciding applications. National Guidance on outdoor advertisement control can be found in PPG 19. This recognises the essential role of signage in promoting businesses. The commercial or other 'need' for a sign is not to be considered as it is accepted that a sign will only be displayed if a business considers it necessary. The guidance also gives a more detailed explanation of the considerations of "amenity" and "public safety."

The principal concerns arising from display of A-boards on the highway are the visual 'clutter' created by the indiscriminate display of large numbers of individual boards, all of different designs and styles, and adverse effect on the character and appearance of the local scene, in particular in historic towns or attractive rural areas which characterise much of Salisbury District.

Additionally the adverse effects on pedestrian and vehicle safety through the inconsiderate siting of A-boards which obstruct pedestrian footways, visibility and junctions and so on, are an issue.

Notwithstanding the issues surrounding visual clutter and public safety referred to above which would in most cases lead to a likely recommendation for refusal of an application, it should also be noted that

without the permission of the landowner (i.e. WCC Highways) to display the signage, any advertisement consent granted by the Council would be of no effect.

### The Way Forward

Members will be aware that the Council's Enforcement Team is relatively small and deals with approaching 1000 enquiries annually. This has the effect that investigations are prioritised according to their seriousness. The Council's Enforcement Policy which sets out priorities for enforcement investigations was adopted in 1999, at a time when enquiries were approximately half the current number and substantially the same Officer resource was available.

Officers have been undertaking a review of this policy, which will be brought before Members for their consideration in due course in the near future after a period of public consultation. The draft replacement enforcement policy is likely to suggest that, apart from cases where there is immediate harm to public safety or signage in Conservation Areas/AONBs enforcement investigations in relation to unauthorised advertisements would be recategorised as a low priority matter.

The above could, if accepted by Members, result in a 'lighter touch' being adopted in relation to the illegal display of such signage than at present apart from where there are clear 'public safety' issues or there are sensitive townscape/landscape concerns. (Members should also be aware that this would be inclusive of all signage and not just A-boards).

Additionally Officers of different services (including Development Services) are in the process of preparing a draft prosecution policy for future consideration by Members. This would provide more clarity in relation to situations when it would or would not be in the public interest for the Council to initiate prosecution proceedings and will include the priorities for such action. The current draft policy is likely to indicate that, where the public interest is in favour of prosecution, such cases will be fourth in the six priorities for action in relation to planning offences.

Both of the above policy documents, once adopted, could help address the concerns outlined above in relation to the exercise of any discretion in investigating allegations of illegal signage on the highway and having them remedied, although it should also be stressed that the prioritising of enforcement investigations and prosecutions will under no circumstances condone the commission of an offence.

Of course it should still also be recalled that in all instances, WCC Highways could prosecute and/or remove offending signs on the highway at any time under the Highways Act without prior notice.

PPG 19 suggests that businesses in rural area should combine to erect joint signage as opposed to proliferation of individual advanced signs. Guidance on the wide range of signs which can be displayed lawfully by businesses can be found in the DCLG publication "Outdoor Advertisements and Signs" copies of which are available at the Planning Office. More information on how shops can advertise is also featured in the Council's publication 'Shopfront and Advertisement Design'.

Planning Officers are also pleased to give specific advice to traders on the requirement for advertisement consent.

### **Conclusion**

In summary the legal position is that the display of A boards on the highway is an offence under planning and highway legislation; additionally WCC Highways can remove the signage although this power has to date not been regularly used.

The Council has a duty to investigate alleged breaches of planning control; Officers dealing with such enquiries have adopted a 'reasonable' approach with rural businesses, offering guidance in the first instance, whilst being mindful that offences have been committed. Prosecutions have only been initiated as a last resort where negotiations have failed and the offence has continued.

There is limited scope to resolve breaches through the advertisement consent process, principally due to the problems associated with the display of A- boards on the highway and unless WCC Highways gave its permission the display.

The review of the Council's Enforcement Policy may assist in future if Members wished to regulate A - boards and other advertisements with a lighter touch outside of sensitive areas or where there is no public safety concern. The proposed prosecution policy under preparation would also assist in clarifying situations where it would be in the public interest to prosecute and the relative priority afforded to such cases.

In view of all the above traders are also encouraged to examine alternative forms of advertisement display, some of which may not require consent from the Council and the helpful guidance available in various publications. Planning Officers are also able to give site-specific advice on proposals.

**RECOMMENDATION: That Members note the contents of the report.**

**Implications:**

- **Financial: None directly arising from the recommendation.**
- **Legal: Detailed in the report.**
- **Environmental implications: Detailed in the report.**
- **Council's Core Values: Protecting the environment.**
- **Wards Affected: All.**
- **Human Rights: The control of advertisements is a power exercised by the Council in the public interest. Any interference in any individual's Article 1 (1) rights as a result of the use of the powers as outlined in the report is minor and proportionate.**

Mr C Hazzard of Mere Parish Council asked the following question:

“Mere Parish Council is a strong and vocal supporter of our local businesses. As you all know, running any business is not easy these days and the Parish Council does not want to see more businesses and shops disappear from Mere. Mere used to have considerably more shops along Salisbury Street and Castle Street, which, over the years have been closed and converted to residential houses. We as a Parish Council do not want to see this trend continue as we believe that Mere is currently at a minimum level of self-sufficiency and therefore sustainability. As you are all well aware, one of our most prominent local businesses, the Old Ship Hotel, has recently closed and its future is uncertain and this is causing deep concern to the whole community.

Some shops and businesses not in the main street through Mere, find attracting custom from passing motorists and visitors difficult and therefore they have put up 'A' frame advertising boards on the traffic islands in order to attract custom. Whilst the Parish Council is keen to keep Mere as beautiful and clutter-free as possible, it seems a small price to pay to have a few 'A' frames around the centre of Mere if it means the survival and prosperity of local businesses.

It has come to my knowledge that in recent weeks the District Council has written to two businesses in Mere - our fish and chip shop and our new Walnut Tree Public House - telling them to remove their 'A' frame advertising boards or face a £1000 fine. Both businesses are off the beaten track and in particular, the Walnut Tree, which the Parish Council, Duchy of Cornwall & even HRH The Prince of Wales fought hard to retain, need to direct visitors to their premises. We are delighted to see that the new public house is thriving and becoming a vibrant facility, offering quiz nights, music nights and excellent food - none of which would be possible without the hard work of the hosts in their advertising and publicity.

We desperately want these businesses and all businesses in Mere to remain viable and prosperous. Indeed, we would reiterate the vision in our Parish Plan that we want a prosperous central shopping centre and local enterprises. I would therefore ask the District Council to support the sustainability and prosperity of Mere and help us to seek a solution to this advertising dilemma.”