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Enforcement Report

Report subject: Freestanding directional sign on the south side of the A303, Charnage Down, Mere

Report to: Western Area Committee

Date: 13th November 2008

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Report Summary

To update Members in relation to progress regarding discontinuance action in relation to the use of this site for the display of advertisements and to seek the Committee's further instructions.

Introduction

Members will recall that the site relates to part of a field immediately adjacent to the westbound carriageway of the A303, to the north of West Hill Farm, close to the junction with the lane leading to Charnage, where a large sign, advertising Wookey Hole showcaves in Somerset, is currently displayed. Until around two years ago, the site had been used to display a similar sign for the Old Ship Hotel in Mere for many years.

The site is within the Cranborne Chase and West Wiltshire Downs AONB and in an Area of Special Advertisement Control. The site is actually in the Parish of West Knoyle, close to the boundary with that of Mere.

Members will also recall that, following an earlier report considered at the July 2007 meeting, at the December 2007 meeting they authorised action to secure the discontinuance of the use of the site for the display of advertisements. This would have entailed permanent removal of the current sign displayed at the site, itself a replacement for an earlier, larger and much bolder sign advertising Wookey Hole caves.

The site of the sign has 'deemed consent' to display advertisements, having regard to the previous use of the site for more than ten years, provided any new sign displayed is materially similar in terms of size, height and method of display, to that displayed historically. However discontinuance action would also prevent the lawful display of future signage on the site without first obtaining the Council's express consent.



Awarded in:
Housing Services
Waste and Recycling Services



The Notice was originally served in April this year, however this was subsequently withdrawn in June due to drafting errors. The latest Notice was served in July.

Since serving the Notice, the landowner has approached the Council to examine whether the existing sign could be retained and to avoid appealing against the Notice. Recently, the owner has submitted a draft Section 106 which he wishes to enter into with the Council, in the event that the Council withdrew the Notice, the effect of which would be to recognise that new signage in future required the Council's consent, whilst allowing the existing sign to remain in situ.

The Notice was originally due to take effect on 6th October; however to allow the above negotiations to be concluded, and having regard to the concerns expressed by several Members in relation to this matter, the Head of Development Services using his delegated powers extended the period before the Notice took effect by a further eight weeks, to 1st December.

Considerations

The offer by the landowner to enter into a legal agreement with the Council in the broad terms outlined above, gives the Council the option of pursuing the two alternative courses of action, set out below.

Option 1 -to maintain the Discontinuance Notice.

Unless an appeal is made beforehand, the Notice will take effect on 1st December and the use of the site for the display of advertisements would have to cease by permanently removing the sign, on or before 23rd February 2009. The reasons stated in the notice are:

"The sign, by reason of its prominent siting, size and height of display and its use of bold and strident colours, pays little regard to the naturalistic landform or muted colours of the surrounding countryside, which lies within the Cranborne Chase and West Wiltshire Downs Area of Outstanding Natural Beauty and appears as an unduly alien and discordant feature in the otherwise attractive rural surroundings, seriously detracting from the visual amenities of the locality. To retain the sign would also therefore conflict with the objectives of policies G11, C2, C4 & C5 of the adopted Salisbury District Local Plan. Furthermore the sign represents an undue distraction to drivers and as such, it is considered that its continuing presence represents a danger to highway safety conditions on the A303. The Local Planning Authority are therefore satisfied that it is necessary to serve the Notice so that the use of the site for the display of an advertisement with deemed consent under Class 13 of Schedule 3 to the Town and Country Planning (Control of Advertisements) Regulations 2007 is discontinued."

The likelihood is that the owner will appeal the Notice before the above date however, and Members should note the relevance to any appeal of the following factors. First, the AONB Officer has previously stated publicly that the current sign is much more appropriate than the previous (Wookey Hole) sign displayed and he is satisfied that the current display is a reasonable outcome bearing in mind the site's existing use rights for display of advertisements .

Members should also be aware that the Highways Agency have previously expressed highway safety concerns as a matter of principle concerning the display of a sign at or near this location, and a proliferation of what they consider is non-essential signage along the A303 corridor in general, rather than an objection based on firm evidence of harm to highway safety caused by the use of this specific site to display signs.

The Council would be required to produce evidence at an appeal that the damage to amenity and road safety from the sign was significant. Both of the above parties would be requested by the Council to give evidence to support the Council's case at appeal.

Furthermore the legal position is not entirely straightforward and this adds an element of risk to any appeal.

The above presents several risks to a successful outcome in the event an appeal were made. Additionally, Members may wish to consider whether a complex and protracted appeal (and possibly further legal action at a later date to secure compliance with an upheld Notice, when similar issues could be rehearsed before the Court) would be disproportionate in terms of the resources and Officer time devoted to it in relation to the subject matter.

Option 2 -to enter in a Section 106 Agreement with the landowner in accordance with the heads of terms set out above.

The effect of entering into a Section 106 Agreement with the landowner would be for him to surrender any existing use rights to display signs at the site whilst the Council would consent to the continued presence of the *existing* sign only. Display of any future signs, or significant changes to the existing display, would then require consent from the Council. However, the presence of a sign on the site would also then be a material consideration in any future application for consent to display an alternative sign by, for example, a local business.

Notwithstanding the latter point Members should have regard to the fact that the *identity* of the business displaying the sign is not a matter the Council can consider when exercising advertisement controls.

The above option would nevertheless allow a degree of control to be exercised over the display of signage at the site in future, whilst avoiding an appeal against the Notice.

Conclusion

It is open to Members to continue to support discontinuance action, to secure the cessation of the use of the site for the display of advertisements which could in turn secure removal of the current display. Although this option continues to have merit, the above report sets out the associated risks.

By following option 2, Members could secure the discontinuance of the use of the site for displaying advertisements whilst allowing the existing sign to remain. By doing so, it would still give the Council the opportunity to review proposals for future signage on the site on their individual merits, whilst increasing the weight given to the prior existence of signage in any future application for a replacement sign.

RECOMMENDATION: THAT THE COUNCIL ENTERS INTO A SECTION 106 OBLIGATION WITH THE LANDOWNER/ADVERTISER IN ACCORDANCE WITH OPTION 2 ABOVE, THE EFFECT OF WOULD BE THAT ANY FUTURE CHANGE TO THE SIGN CURRENTLY DISPLAYED, I.E. ITS REPLACEMENT WITH ANOTHER SIGN OR ALTERATIONS TO ITS SIZE, LOCATION OR METHOD OF DISPLAY OR USE OF COLOUR AND GRAPHICS, SHALL NOT BE CARRIED OUT UNLESS IT HAS FIRST BEEN AGREED IN WRITING BY THE COUNCIL; AND THAT CONCURRENT WITH COMPLETION OF THE SECTION 106 AGREEMENT, THE DISCONTINUANCE NOTICE DATED 14TH JULY 2008 IS WITHDRAWN.

Implications

- **Financial:** There could be a costs implication in the event of the Council having been found to have behaved unreasonably following any subsequent appeal proceedings, particularly if the Council is unable to substantiate its case at appeal.
- **Legal:** Detailed in the report.
- **Environmental implications:** Detailed in the report.
- **Council's Core Values:** Excellent service; fairness and equal opportunity for all.
- **Wards Affected:** Knoyle.
- **Human Rights:** Detailed in the report.