



DEVELOPMENT CONTROL COMMITTEE

13th August 2009

Report of Head of Planning and Building Control

Illuminated sign, North Stand, Walsall Football Club, Bescot Crescent, Walsall

1.0 PURPOSE OF REPORT

To advise on an unauthorised sign.

2.0 RECOMMENDATIONS

2.1 Note the report.

2.2 Invite the Football Club to make a retrospective application.

3.0 FINANCIAL IMPLICATIONS

None arising from the report.

4.0 POLICY IMPLICATIONS

The degree to which the sign complies with policy depends on the judgement of its impact on amenity and safety.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising directly from this report.

7.0 ENVIRONMENTAL IMPACT

The report concludes this is within acceptable limits.

8.0 WARD(S) AFFECTED

Palfrey.

9.0 CONSULTEES

None.

10.0 CONTACT OFFICER

Bob Scrivens: 01922 652488

11.0 BACKGROUND PAPERS

Not published. Enforcement File.

D. Elsworthy
Head of Planning and Transportation

Development Control Committee
16th of July 2009

12 BACKGROUND AND REPORT DETAIL

- 12.1 An illuminated sign was erected in 2002, on the south facing edge of the roof of the north stand, inside the stadium. It can be seen from the M6, and also from houses adjoining the site. In subsequent dealings, the Club state that they were told, in 2002, by a planning officer, that the sign did not need permission
- 12.2 Objections about the sign began in 2004, from 2 residents (primarily concerned with the illumination). There were meetings and discussions, and the Club agreed to voluntarily limit the hours of illumination, turning off the sign after 10.00 p.m.
- 12.3 In about 2006, the Club began leaving the lights on until much later in the night / early morning. They advised that their contract with the advertiser required the signs to be illuminated later, and that they had to comply with this commercial commitment. They considered that because the sign is externally illuminated, it is less visually obtrusive than other internally illuminated signs in the area.
- 12.4 The Club have recently written, advising that they have now put have in place a new commercial agreement. This provides that the lights will be turned off at 11.00 p.m. They state:-
“ .. this commitment, which will cause a significant reduction in the club’s commercial income from the sign, will meet both the concerns that you have expressed, and those received from local residents.

In a difficult financial climate this is a gesture of goodwill from the Club ... “
- 12.5 The Ombudsman was asked, by a complainant, to investigate the Council’s actions, but after making preliminary enquiries of relevant services, decided not to pursue the matter further. However, there is an unresolved complaint, and it is important that the local planning authority make a conscious decision about this situation. The remainder of this report sets out the legal position, and the planning implications, to enable that judgement to be made.
- 12.6 Advertisements on enclosed land (such as inside a stadium) do not need express permission as long as *“The advertisement is not readily visible from outside the enclosed land “*. In this case, the advert can be easily seen from outside the stadium, given the height of the roof of the north stand (significantly greater than the other stands). Officers hold the view that this is a sign that needed express consent when it was erected. It did not have that consent, and has not had consent subsequently. The Club are open to prosecution for the unauthorised display of an advertisement.
- 12.7 The advice stated to be given to the Club in 2002 was wrong. However, there can be implications from such advice. There are situations where an officer of

the Council gives advice, and the Council can then be obliged to stand by that advice, irrespective of the real situation (known as “estoppel”). The implications of this are complex, and might affect possible legal actions in this case. However, before that needs to be considered, the planning issues (amenity and safety) should be considered, and judged. If it is properly concluded that the sign would have been approved had an application been made, there is no basis to mount a prosecution. If there is no prosecution, the implications of estoppel are irrelevant.

- 12.8 The sign is visible from a number of the houses in Britannia Road. It is also visible from the M6, over the top of the other stands. The size of the sign is such that its impact is equivalent to a poster hoarding. Members will be aware that there are a number of posters in the immediate area, and this sign is seen in the context of those others. Some are due to be removed. Others have been approved. Some have been approved but not yet erected. A summary of relevant cases is set out in the Appendix to this report.
- 12.9 The decision on whether this sign is acceptable must only be made on issues of safety and amenity. It also has to be made in the context of planning policy. The policy background is set out in the following passages.

Unitary Development Plan (UDP)

- 12.10 GP2 and 3.6 state that the Council expects all development to make a positive contribution to the quality of the environment and will not permit development which would have an unacceptable adverse impact on the environment. Schemes should, as far as possible, help to improve the environment.
- 12.11 ENV32 states that poorly designed development which fails to take account of its context or surroundings will not be permitted.
- 12.12 ENV36 states that poster hoardings will not be permitted where they would have a detrimental effect on the amenity of the area and its residents or public safety. The most appropriate locations are likely to be areas of mainly commercial character. Hoardings are unlikely to be permitted on sites visible from motorways and on prominent sites on classified roads.

National Policy

- 12.13 Planning Policy Statement (PPS) 1: Creating Sustainable Communities indicates that planning policies should promote high quality design and that design which fails to take the opportunities available for improving the character and quality of an area should not be accepted.
- 12.14 Planning Policy Guidance 19: Outdoor Advertising states that advertisements should be considered only in terms of visual amenity and public safety. Paragraphs 15 and 16 suggest that ‘ *LPAs will consider the likely behaviour of drivers of vehicles who will see the advertisement ... the vital consideration in assessing an advertisement’s impact is whether the advertisement itself, or the exact location proposed for its display, is likely to be so distracting, or so confusing, that it creates a hazard to, or endangers people in the vicinity who are taking reasonable care for their own and others safety.*

- 12.15 Circular 3/2007 sets out the guiding principle that in making decisions on adverts *'Local Planning Authorities are required to exercise their powers under the Regulations with regard to amenity and public safety, taking into account relevant development plan policies in so far as they relate to amenity and public safety, and any other relevant factors'* (para.5)

Appendix B sets out relevant considerations to be taken into account with regards to the effect of advertisements on public safety. The key passages in the context of this application are:-

MOTORWAYS

6. Land alongside motorways is landscaped for reasons of safety and appearance. Only prescribed or authorised traffic signs are permitted on land acquired for motorways. Advertisements may, however, be permitted within a motorway 'service area'. Local Planning Authorities should ensure that on other land alongside motorways no advertisements which could adversely affect amenity, or constitute a danger to traffic are allowed...

148. As here are road safety issues in displaying advertisements alongside motorways and other trunk roads the Highways Agency is unlikely to support any application for an advertisement which could distract drivers. The road safety and amenity issues raised by these advertisements mean that it is unlikely that express consent to display them would be given '.

- 12.16 The Highways Agency have expressed serious concern in a number of poster cases in the following terms. They identify the implications of adverts for the safety of users of the M6. This urban stretch of motorway is elevated. It is one of the busiest in the country and is used by upwards of 150,000 vehicles per day (two way flow), which equates to a yearly total of 54.8 million vehicles and has a higher than average accident record. This a particularly complex and hazardous stretch of motorway where driver concentration is paramount. Adverts are deliberately designed to attract the attention of motorway users. They are a significant source of distraction to drivers. The introduction of this level of additional driver distraction into an already complicated and hazardous motorway section undermines highway safety and increases the risk of an accident occurring. Active Traffic Management will be implemented between junctions 8 and 10a, and therefore it is even more important on this section of motorway that drivers are not subject to external distraction. The greatly increased levels of instructional signage in such sections will also increase the potential for advertising to conflict with essential motorway signage.

- 12.17 They also argue that the Council's own UDP policy, and national policy in Circular 03/2007 makes it explicitly clear that advertisements by motorways that could constitute a danger to traffic should not be allowed. Annex B to the Circular lists the main type of advertisements that could cause a danger to road users. In such circumstances adverts should be opposed. They also point out that planning inspectors have concluded on at least three occasions in this vicinity that advert hoardings in comparable locations are detrimental to highway safety.

- 12.18 Turning to the issues on which a decision must be made, the first is amenity, and there are two aspects to this.

- 12.19 The key complaint in this case has been from residents, that the light levels are excessive and that the sign is detrimental to their amenity, as it illuminates their rear gardens. In response to the invitation to the Ombudsman to investigate, Environmental Health officers visited the key complainant. They concluded that the light levels from the sign were comparable to street lighting. On that basis, the Ombudsman, while initially concerned, chose not to pursue the complaint of maladministration.
- 12.20 The sign can be seen from a sizeable number of dwellings that back onto the club. The level of illumination, comparable to a street light, is not seen as having any effect on amenity. In addition, the appearance of the sign (even when not illuminated) has an effect on the residents, as it is part of their outlook. However, it is a commercial installation on a large commercial building. The change in the impact of the club on the residents resulting from this sign is not seen as significant and would not justify opposing the sign..
- 12.21 The Club have also volunteered to restrict the hours of illumination of the sign, further reducing its effects.
- 12.22 The amenity of the wider area is another aspect. There are a number of poster displays in the immediate vicinity. The north stand sign is seen in that context. The presence or absence of the north stand sign will have no significant effect on the amenity of the area, given that context.
- 12.23 The second determining issue is public safety. In general, officers share the concerns of the Highways Agency, and have recommended a number of posters for refusal, on safety grounds. That position continues to be held. However, in the present case, the location of the north stand sign, among a number of other signs, is such that the potential for additional distraction resulting from this display is negligible. There is no justification to oppose the north stand sign on that basis.

Conclusion

- 12.24 For the reasons set out, officers conclude that the sign does not have significant adverse effects on amenity or safety. It follows that had an application been made for the sign, it would have been approved.
- 12.25 On that basis, there is no justification to prosecute for the unauthorised display. The recommendation is to note the position. It is also recommended that the Club be invited to make a retrospective application.

APPENDIX – RELEVANT PLANNING HISTORY

To the north west, near the gas holders,

BC57202P Four illuminated pole mounted poster hoardings.
Refused 2001

02/1925/AD/W3 - 96 sheet illuminated hoarding.
Granted 2002

06/0445/AD/W5 Erection of two no. internally illuminated adverts.
Refused 2006
Appeal dismissed 2006

07/0176/AD/W5 1 no. internally illuminated 96 sheet advertisement.
Refused 2007

09/0006/AD - 96 sheet illuminated hoarding.
Refused March 2009.
Appeal lodged but not yet determined.

09/0458/AD 96 sheet illuminated hoardings -on a monopole
Granted 2009

To the southeast, the Middleton Paper Company

05/0928/AD/W4 two poster hoardings on building.
Refused 2005

05/2280/AD/W5 vertical format illuminated hoarding 12 by 10 metres on building
Refused 2006

06/1857/ AD/W4 vertical format illuminated hoarding 7.5 by 5 metres on monopole
Refused 2006
Appeal dismissed 2007

08/0191/AD illuminated poster hoardings 7.5 by 5 metres on monopole
Approved 2008

08/1800/AD illuminated poster hoardings on a monopole
Approved 2009

At The football club

BC35622P - First pair of roof mounted poster hoardings
Approved 1992

BC46756P - Second pair of roof mounted poster hoardings
Approved 1996

BC47418P - Third pair of roof mounted poster hoardings
Approved 1996

(All three of these are to be removed by September this year, following an approval for a different display on the south car park).

BC43256P – on car park – 96 sheet illuminated posters on a monopole
Approved 1995

BC45136P – on car park – 96 sheet illuminated posters on a monopole
Approved 1998

03/2212/AD/W4 hoarding 65 metres by 12 metres on proposed south stand
Approved 2004 (not implemented)

07/1871/AD/W3 illuminated poster hoardings 12m by 30 metres and 12m by 35 m
Approved 2007 (subsequently quashed and replaced by the following item)

07/2586/AD/W1 illuminated poster hoardings 12m by 30 metres and 12m by 35 m
Approved 2008.

Other sites in the vicinity

02/1905/AD/W3 - south of James Bridge - 96 sheet illuminated monopole.
Approved 2002

02/0718/AD/W4 - factory opposite the football club – 96 sheet illuminated poster on a monopole
Approved 2002

04/2486/AD/W5 - at the rear of the building opposite the football club - illuminated hoarding on monopole
Approved 2005
(amended by next item)

05/0519/AD/W5 – at the rear of the building opposite the football club – 6.75 by 4.5 metres illuminated hoarding on monopole
Approved 2005

08/0448/AD - factory opposite the football club – 9m by 9m illuminated hoarding on a monopole.
Refused 2008