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## Appeal Decision

Site visit made on 28 February 2017

**by Beverley Doward BSc BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 March 2017**

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**Appeal Ref: APP/Y0435/H/16/3156604**

**Foodstore, South of Texel Close, Oakridge Park, Milton Keynes**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against conditions imposed when granting express consent.
  - The appeal is made by Asda Stores Ltd against the decision of Milton Keynes Council.
  - The application Ref 16/00877/ADV is dated 5 April 2016. The conditions in dispute are Nos 3 and 9 which state that: 'This permission does not extend to signs, L2, T1, MCS3 and MCS6 as outlined on drawing number 23489pl01' (Condition 3) and 'The illuminated adverts hereby permitted shall be switched off in their entirety outside of the following hours: 06:00-23:00 Mon-Sat and 10:00-17:00 on Sundays, unless otherwise agreed in writing by the Local Planning Authority' (Condition 9).  
The reasons given for the conditions are: 'The adverts, by virtue of their size (all), location (all) and levels of illumination (L2 & T1) would create a proliferation of signage, dominant in the surroundings and at odds with the residential character of the area. The adverts would be contrary to Saved Policy D1 (iii) of the Milton Keynes Local Plan 2001-2011 and Policy CS13 of the Milton Keynes Core Strategy 2013 (Condition 3) and 'In order to protect visual and residential amenity in accordance with Saved Policy D1 (iii, iv) of the Milton Keynes Local Plan 2001-2011 and Policy CS13 of the Milton Keynes Core Strategy 2013' (Condition 9).
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### Decision

1. The appeal is allowed and the advertisement consent Ref 16/00877/ADV for 5 fascia signs, 12 freestanding signs and 4 vinyl graphics to glazing (Signs L2, T1, MCS3 & MCS6 omitted by condition) at Foodstore, South of Texel Close, Oakridge Park, Milton Keynes granted on 2 August 2016 by Milton Keynes Council is varied by deleting conditions 3 and 9 and substituting for them the following conditions:
  - 1) This permission does not extend to signs, L2, T1 and MCS6 as outlined on drawing number 23489pl01.
  - 2) The illuminated adverts hereby permitted shall be switched off in their entirety outside of the following hours: 05:00-00:00 Mon-Sat and 09:00-18:00 on Sundays.

### Procedural Matter

2. The address in the heading above and in my formal decision is taken from the Council's decision notice and the appeal form which is more accurate than that detailed on the application form.
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## **Background and Main Issue**

3. Advertisement consent for various signs was granted, subject to conditions on 2 August 2016. The documentation submitted with the appeal indicates that the conditions in dispute are Nos 3 and 9.
4. Condition No 3 withholds advertisement consent on 4 signs (signs L2, T1, MCS3 and MCS6). The appellants indicate that since the submission of the appeal an alternative scheme of signage has been approved by the Council and that therefore in relation to Condition No 3 the appeal now relates only to the reference to sign MCS3.
5. Condition No 9 restricts illumination of the consented signage to the hours of 06:00-23:00 Mon-Sat and 10:00-17:00 on Sundays. These are the trading hours of the store. The appellants seek a variation of the hours of illumination to allow the signage to be illuminated an hour before and after trading.
6. The Town and Country Planning (Control of Advertisements) Regulations (England) 2007 (the Regulations) and the National Planning Policy Framework (the Framework) require that control over advertisements should only be in the interests of amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors. The main issues in this case are:
  - whether the disputed part of Condition No 3 which relates to sign MCS3 is necessary and reasonable in terms of the effect on amenity, with regard to the character and appearance of the area; and
  - whether disputed Condition No 9 is necessary and reasonable in terms of the effect on amenity, with regard to the character and appearance of the area and the living conditions of neighbouring residents.

## **Reasons**

7. The appeal site is located on the corner of Newport Road and Selkirk Drive within the local centre which forms part of the Oakridge Park development on the north east edge of Milton Keynes. There are areas of residential development to the east and to the south across Newport Road. To the west there is a Country Park.
8. The site is within an area defined as an Area of Special Advertisement Control (AoSAC). However, both parties indicate that since that designation, there has been a material change in circumstances, the site having been identified in the Saved Milton Keynes Local Plan 2001-2011 as a strategic housing site and local centre; development which is now built out. The Council indicates that the site can no longer be considered rural in character and that the reason for designating the site as an AoSAC is no longer valid. I see no reason to take an alternative view. Therefore, in the light of the change in circumstances little weight is afforded to the AoSAC in my consideration of this appeal.
9. Sign MCS3, for which permission has been withheld by virtue of Condition No 3, is a post mounted banner sign which would be positioned towards the front of the site on Selkirk Drive. The sign would be of a simple design and although it would be over 6m in length it would be low level with a maximum height of 1.65m above ground level. Despite being located opposite residential properties the sign would be sited some distance from them across Selkirk

Drive and would not be illuminated. The sign would be seen in the context of the supermarket, car park and wider local centre within which it is located. Accordingly, I am satisfied that it would not appear visually intrusive or cause harm to the character and appearance of the area even when taken together with the other signage which has been approved in the area.

10. I note that the minutes of the meeting of the Council's Development Control Panel indicate that particular concern was expressed that the sign would be promotional rather than informative. However, as indicated above advertisements should be subject to control only in the interests of amenity and public safety. There is no indication in the Regulations, the Framework or the Planning Practice Guidance that any other factors such as the content of the advertisement can be taken into account. Having regard to the above therefore I consider that the reference to sign MCS3 in Condition No 3 is neither necessary nor reasonable in terms of the effect on amenity, with regard to the character and appearance of the area.
11. The proposed signs would support the convenience store on the site and would be visible in the context of the store building, the local centre and the adjacent busy road. However, I am mindful that the site is also located at the entrance to a residential estate. In the light of this therefore I agree with the Council that it is necessary and reasonable in terms of amenity to ensure that the proposed illuminated signs are not illuminated unnecessarily beyond the trading hours of the store in order to protect the living conditions of nearby residents and to protect the character and appearance of the wider area.
12. The condition in dispute restricts illumination of the signs to the trading hours of the store. However, customers are likely to arrive at the store shortly before opening and leave just after it has closed. Therefore, it seems to me that the hours of restriction imposed by the disputed Condition No 9 are overly restrictive and are not reasonable in terms of the effect on amenity. The variation of the condition as sought by the appellants would be reasonable and would also ensure that the signs would not be illuminated unnecessarily beyond the trading hours of the store so as to protect the living conditions of nearby residents and the character and appearance of the wider area.
13. I have taken into account policy D1 of the Milton Keynes Local Plan 2001- 2011 and policy CS13 of the Milton Keynes Core Strategy 2013 in so far as they are material in this case. These policies seek to protect against unacceptable visual intrusion and light pollution and ensure that the design of all new development makes a positive contribution to the character of the area within which it is located.
14. There is nothing in the evidence before me that leads me to conclude that there is a need to vary any of the other conditions attached to the express consent. My decision alters the express consent that has been granted and should be read alongside it.

#### *Other matters*

15. The reasons for the disputed conditions do not relate to matters of public safety and the Council has not raised any concerns in this respect. From my site visit and the evidence before me I see no reason to take an alternative view.

16. Representations have been raised by interested parties regarding the need for the signs, unauthorised adverts elsewhere, the level of traffic and litter. However advertisements are subject to control only in the interests of amenity and public safety.

### **Conclusions**

17. To conclude therefore, I have found that the disputed part of Condition No 3 which relates to sign MCS3 is neither necessary nor reasonable in terms of the effect on amenity. Accordingly, I will delete the condition and replace it with one that excludes the reference to sign MCS3. I have also found that whilst it is necessary in terms of amenity to restrict the hours of illumination of the signs, the hours included in Condition No 9 are unreasonable. Therefore, I will delete the condition and replace it with one that restricts the hours of lighting to those sought by the appellant.
18. For the reasons given above, I conclude that the appeal should be allowed and the express consent should be varied as set out in the formal decision.

*Beverley Doward*

INSPECTOR