

Site Address: Easington Sports and Social Club

13/00036/F

Ward: Banbury Easington

District Councillor: Fred Blackwell, Kieron Mallon and Nigel Morris

Case Officer: Rebekah Morgan

Recommendation: Approval

Applicant: Mr Richard Meadows (Easington Sports and Social Club)

Application Description: Erection of spectator stand. Erection of 4 no. floodlight columns and associated brick electricity supply cubicle. 0.9m wide concrete hardstanding around pitch. Retrospective hardstanding (existing car park area).

Committee Referral: Major

1. Site Description and Proposed Development

- 1.1 The application site is an existing football ground with a single pitch, small club house and existing car park.
- 1.2 The application site is located within a residential area of Banbury. It is adjacent to a large secondary school and has residential properties along two of its boundaries.
- 1.3 The application seeks consent for:
 - Spectators stand measuring approximately 9.4m x 2.2m with a maximum height of 2.7m. The stand has a seating capacity of 56.
 - 4 no. floodlight columns with a maximum height of 18.3m
 - Electricity cubicle
 - 0.9m wide strip of hard standing around the edge of the pitch
 - Retrospective consent for an area of hard standing that forms the existing car park

2. Application Publicity

- 2.1 The application has been advertised by way of neighbour letter, site notice and press notice. The final date for comment was the 14th March 2013.

15 letters have been received. The following issues were raised:

- Traffic congestion
- Highway safety
- Only access to the football club is from Addison Road (residential area)
- The access road to the football club is very narrow
- Concerns regarding emergency access if the road is congested
- Existing parking by residents/visitors/school users/football club users means the street is often effectively single lane
- Traffic has already increased over the years with the expansion of the school
- Existing condition of the road surface is poor
- Light pollution to the rear of the residential properties
- Due to the height of the columns it would be difficult to control light spill
- One neighbour is an amateur astronomer and is concerned about the impact of the lights on his hobby
- Increased evening activity on the site is not compatible with the residential area
- Potential increase in levels of anti-social behaviour (residents believe existing problems are linked to the football club)

- Concerned that matches will be played until 9:30pm and the clubhouse could be open for sometime after the game finishes
- Floodlights would be out of character with the area
- The proposed spectator stand is very ugly
- Environmental concerns
- Impact on house prices
- The statistics and estimates provided by the club contradict themselves
- Limited amount of information provided in the neighbour notification letter is insufficient

3. Consultations

- 3.1 **Banbury Town Council:** Object – 18m columns are too high. Light pollution causes adverse impacts on amenities of neighbouring properties.

Cherwell District Council Consultees

- 3.2 **Anti-social Behaviour Manager:** Two issues of concern arise from the consideration of this application. The first being the impact of the proposed lighting installation on nearby dwellings and the second being the noise impact arising from the extended hours of use that can be made of the site once the playing surface is floodlit.

Considering first the issue of the floodlighting there are two elements to the consideration of any lighting scheme. The first and arguably the simplest to assess is the technical performance of the system against nationally recognised standards. This assessment is objective and is based on a comparison of the proposed scheme with the guidance contained in the Institute of Lighting Practitioners document '*Guidance notes for the reduction of obtrusive light*'. The document sets out best practice for the design of lighting installations and provides performance standards for such installations in different locations. The second area for consideration is from a purely aesthetic perspective and is by its nature highly subjective. The kind of factors to be considered here are the effects the installation will have on the nighttimes environment when viewed from distant and nearby perspectives. This subjective analysis is beyond the scope of this input.

From an objective point of view the proposed lighting installation is to a high specification capable of being finely tuned to minimise light trespass (unwanted light falling on premises, usually dwellings). By using a combination of correctly specified poles and individual luminaries that are adjustable for aim and spread compliance with the standards suggested in Table 2 of the guidance can be achieved.

It should be noted that this level of performance is specific to the installation specified and if this planning application were to be approved using lighting to the submitted specification would need to be conditional.

Moving on to the noise issue the applicants clearly wish to maximise the week day use of their facility by seeking permission to use the ground on two nights per week between 18:00 and 22:00 hrs. I would not have concerns over the frequency of the use but the duration of the use until 22:00 hrs does raise concerns. As you move later into the evening so the potential any given noise has to cause disturbance rises. In this case the nearest dwellings are very close to the boundary of the playing surface and with this in mind I would suggest that a latest hour of use of 21:00 hrs would be more appropriate in this location.

- 3.3 **Environmental Protection Officer:** No comments received

- 3.4 **Ecologist:** With regard to the above application, I have no objection to the spectator stand aspect of the application however there is a record of a Pipistrelle bat within the adjacent school BGN School as well as one 500m to the West and 500m to the East and therefore it is possible that this species roosts within the building or its vicinity and forages in this area. The impact that the proposed lighting may have on roosting bats in the area has not been addressed at all within the application. Lighting can cause bats to desert roosts and reduces the time for foraging. I understand that the lighting will not be on for prolonged periods such that dark conditions will be maintained much of the time however this will be a regular disturbance and 'disturbance' of this type to a European Protected Species can constitute an offence. Therefore whilst I do not object entirely to the installation of the lights I think this aspect needs to be looked into and a statement as to the likelihood of bat disturbance and its acceptability submitted. In particular it appears that the small wooded area to the East may be lit with quite a high lux level compared to current conditions.

Addition information was submitted by the applicant following the receipt of the above comments. The following are the **Ecologist's additional comments:**

This additional information is useful and thorough and I am satisfied that impacts on any bats at important times have been considered and will be minimised. I am assuming there is some way of ensuring that the general schedule outlined (in terms of dates of use throughout the year) is stuck to by condition? If so I have no further objections with regards to bats.

Oxfordshire County Council Consultees

- 3.5 Highways Liaison Officer: No objections subject to conditions

4. Relevant National and Local Policy and Guidance

4.1 Development Plan Policy

Adopted Cherwell Local Plan (Saved Policies)

- C28: Layout, design and external appearance of new development
- C31: Development which is not compatible with residential character
- ENV1: Development likely to cause noise, pollution etc...

4.2 Other Material Policy and Guidance

National Planning Policy Framework

Proposed Submission Local Plan Incorporating Proposed Changes (March 2013)

The draft Local Plan has been through public consultation and although this plan does not have Development Plan status, it can be considered as a material planning consideration. The plan sets out the Council's strategy for the District to 2031.

5. Appraisal

5.1 The key issues for consideration in this application are:

- Visual Amenity
- Neighbouring Amenity
- Highway Safety
- Ecology

Visual Amenity

- 5.2 The application site is located to the rear of residential properties along Addison Road and Grange Road, with only limited views into the site at the access point. Some further distance views can be obtained from the adjacent secondary school and the footpath (Saltway) to the south, however, existing mature vegetation would limit the views from the footpath.
- 5.3 The proposed spectator stand, brick electricity supply cubicle and proposed areas of hard standing would not be visible from the wider residential area. Although the would be partially visible from the footpath and the adjacent school site, these types of development are typically associated with playing pitches and would not cause harm to the visual amenities of the area.
- 5.4 The proposed floodlights would have the greatest impact on the wider area; with a proposed height of 18.3m, the four columns would be clearly visible above the adjacent residential properties. Their prominence would be significantly increased when in use as the light would make them more noticeable and visible to a much wider area.
- 5.5 The fact that a proposed development would be visible isn't itself a reason for refusal. Therefore, careful consideration has to be given to the potential harm that would be caused by the development.
- 5.6 The sports ground has been in its current location since the development of the adjacent residential properties, therefore development associated with its use, would not appear completely out of keeping, given the context and the local community links.
- 5.7 The average height of the adjacent residential properties (based on recent application drawings for 52 Grange Road) is 7.5m; therefore the floodlight columns would extend approximately 10m above the properties.
- 5.8 Consideration has to be given to previously approved development (2004) at the adjacent school site for a multi-use games area (MUGA) with associated floodlights columns. The approved columns are 12m in height, situated further away from residential properties and more substantially screened by the school buildings.
- 5.9 During the evening hours when the floodlights were in use, they would be more visible than those on the school site due to their additional height and proximity to the neighbouring properties. However, the proposed use of the lights is only for two evenings a week for four hours each, and Saturdays for two and half hours.
- 5.10 The majority of the surrounding area is residential streets; with the floodlights positioned behind dwellings any view from the immediately surrounding streets is likely to be limited. Any visual impact is likely to be localised
- 5.11 On balance, the benefits of allowing an existing sports club to make better use of its facilities for extended periods of time would outweigh the limited visual harm that may be caused by the siting of the four floodlight columns. Therefore the proposal would not have a detrimental impact on visual amenity and accords with Policy C28 of the adopted Cherwell Local Plan and government guidance contained within the NPPF.

Neighbouring Amenity

- 5.12 In terms of the physical development proposed on the site, the spectator stand, brick electricity supply cubicle and areas of hard standing would not cause harm to neighbouring amenity. These elements of the proposal are set away from the neighbouring properties and would not appear either overly dominant or overbearing

when viewed from the neighbouring properties.

- 5.13 The proposed flood light columns have three potential impacts on neighbouring amenity; the physical structure, light issues and the extended hours of use that the lights would enable.
- 5.14 The width of the columns range from approximately 3m (at the base) to 1m (at the top). The greatest potential impact would relate to the properties along Addison Road and these would be the closest. The neighbouring properties have large rear gardens (approximately 20m in length) therefore the two columns on the north side of the pitch, would be positioned approximately 22m from the dwellings.
- 5.15 The columns would be visible from the residential properties, but due to the form of development (narrow columns), it is your officers' opinion that the columns would not appear overbearing or overly dominant. There would be some impact on current views from the rear of the properties, but this would not cause significant harm.
- 5.16 With regards to the actual lights, the technical data submitted has shown that there would be a limited amount of light spill into the gardens of the neighbouring dwellings. The Council's anti-social behaviour manager has advised the proposed lighting installation is to a high standard and could be finely tuned to minimise light trespass on the neighbouring dwellings. Therefore, the technical information is considered to be acceptable.
- 5.17 The visual impact of the lights on neighbouring properties is more subjective. The area to the rear of the properties is currently very dark in the evenings and this would clearly change when the floodlights were in use. Given the change, there could be the perception of light trespass, even with luminescence levels within the acceptable standards.
- 5.18 The final point is the extended hours of use that the proposed lights would enable. The applicant seeks consent to use the floodlights on two evenings a week (until 10pm) and on Saturdays until 6pm (during daylight saving months).
- 5.17 This increased use in the evenings would also result in increased noise levels. Although the application only seeks to use the lights on two evenings a week, if approved, it could be difficult to resist further applications to increase the usage on week day evenings.
- 5.18 The application site has a very close relationship with the neighbouring dwellings; two of the site boundaries are shared with residential properties and the access adjacent to a dwelling on Addison Road.
- 5.19 The Council's anti-social behaviour manager has advised that use of the floodlights should be restricted to 9pm at the latest (this would be inline with the floodlights on the adjacent school site). The applicant has advised that reduced hours of usage would not be possible due to kickoff times set by the league.
- 5.20 The use of the floodlights would allow an existing community sports facility to expand. Paragraph 70 of the NPPF suggests that planning policies and decisions should take a positive approach to the provision of community facilities (including sports venues), and there are clear benefits to allowing improvements to an existing facility. In this case, the club is located in a very sustainable location in the heart of the local community.
- 5.21 However, the core principles of the NPPF state that planning should 'always seek to secure high quality design and good standard of amenity for all existing and future occupants of land and buildings'.

- 5.22 It is your officers' opinion that the increased use of the club in the late evenings and the associated noise would cause harm to residential amenities due to the proximity of the application to the dwellings. On balance, the benefits of the proposal do not outweigh this harm.
- 5.23 The football club can continue to operate as it currently does. The proposed spectator stand and car park improvements are considered acceptable; therefore the local authority would encourage a revised application to be submitted to allow these works to proceed.
- 5.24 The proposed flood lights would enable longer hours of use and therefore result in unacceptable activity/noise levels at the site during late evening hours which would cause harm to residential amenity contrary to Policy C31 of the adopted Cherwell Local Plan and the core principles of the NPPF

Highway Safety

- 5.25 The neighbours have raised a number of issues relating to highway safety. The main points of concern include traffic congestion, existing access point and its width, existing problem with traffic from the football club and the adjacent school, existing poor condition of the road surface, and potential access problems for emergency services.
- 5.26 The Local Highway Authority has assessed the application in terms of highway safety and has made the following comments:

' The Sports and Social Club site currently consists of pitch, pavilion and car park, and is accessed via Addison Road. The road also serves residential properties and a school. The existing car park/private access road will be retained and will continue to serve as the vehicular access to the new pitch-side car park and as pedestrian access to the pitch and pavilion.

It is proposed that the new hard-standing adjacent to the pitch will accommodate 26 vehicles. A total of 45 off-street car parking spaces will therefore be provided. The majority of the residential properties on Addison Road have off-street parking. At the time of the site visit, there were cars parked on street but there was spare capacity for additional on-street parking. However, there was evidence of vehicles parking/driving on the highway verge and wooden posts were in place to prevent this at certain points along the road. The additional car park will help to reduce parking pressure on Addison Road that is created by the sports club.

The proposed floodlights are likely to increase the hours of use of the pitch. The presence of the mini grandstand, pitch-side hard-standing, and additional car parking within the site may also increase its attractiveness and therefore its use. However, the traffic generation associated with the proposed development is unlikely to be significantly greater than that which could be generated by the existing facility; the number of pitches is not increasing and neither is the size of the existing pavilion/club house. Additional vehicle movements may occur in the evenings due to the presence of the floodlights. However, the overall capacity of the site at any one time will not be significantly increased.

The additional traffic associated with the proposed development is unlikely to have a significant impact on the highway, or cause severe harm to highway safety. The provision of the parking area within the site is likely to alleviate parking pressure on Addison Road, whilst the presence of some parked cars on the road will act as traffic calming to reduce vehicle speeds.

The vehicular access into the pitch area is only wide enough for one vehicle. Given

that vehicular movements are likely to be tidal, and the pinch point will reduce vehicle speeds where there will also be pedestrians entering the site, the width of the access is considered to be acceptable. However, the creation of a passing place within the existing car park (between Addison Road and the entrance to the pitch) must be provided so that vehicles do not need to reverse out of the access onto Addison Road.

Details of the parking layout have not been provided, and must be submitted for approval. It is also recommended that one or two minibus parking bays (and/or a coach parking bay), are included within the layout. Turning space for these larger vehicles must be provided and demonstrated on plan. Appropriate marking of parking bays, passing bays and signage must also be implemented. These details must be submitted for approval.

The private access road through the existing car park would benefit from being upgraded. Detailed specification of the access, parking and turning areas, including markings and signage, must therefore be submitted to and approved by the local planning authority.

It is intended that the club will be used as a community facility. Secure, covered and well-lit cycle parking must therefore be provided within the site. Details must be submitted for approval.

- 5.27 All of the issues raised could be dealt with by way of planning condition. Given the above comments, the proposal would not have a detrimental impact on highway safety and complies with government guidance on promoting sustainable transport contained within the NPPF.

Ecology

- 5.28 NPPF – Conserving and enhancing the natural environment requires that “the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures” (para 109).
- 5.29 Paragraphs 192 and 193 further add that “The right information is crucial to good decision-taking, particularly where formal assessments are required (such as Habitats Regulations Assessment) and that Local Planning Authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question”. One of these requirements is the submission of appropriate protected species surveys which shall be undertaken prior to determination of a planning application. The presence of a protected species is a material consideration when a planning authority is considering a development proposal. It is essential that the presence or otherwise of a protected species, and the extent to that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. This is a requirement under Policy EN23 of the Non-Statutory Cherwell Local Plan 2011.
- 5.30 Paragraph 18 states that “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:
if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”

- 5.31 Paragraph. 98 of Circular 06/05: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system states that, “local planning authorities should consult Natural England before granting planning permission” and paragraph 99 goes onto advise that “it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.”
- 5.32 Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must in exercising its functions, must have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity” and;
- 5.33 Local planning authorities must also have regards to the requirements of the EC Habitats Directive when determining a planning application where European Protected Species (EPS) are affected, as prescribed in Regulation 9(5) of Conservation Regulations 2010, which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.
- 5.34 Articles 12 and 16 of the EC Habitats Directive are aimed at the establishment and implementation of a strict protection regime for animal species listed in Annex IV(a) of the Habitats Directive within the whole territory of Member States to prohibit the deterioration or destruction of their breeding sites or resting places.
- 5.35 Under Regulation 41 of Conservation Regulations 2010 it is a criminal offence to damage or destroy a breeding site or resting place, but under Regulation 53 of Conservation Regulations 2010, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:
- 1) is the development needed for **public health or public safety** or **other imperative reasons of overriding public interest including those of a social or economic nature** (development).
 - 2) Is there any **satisfactory alternative**?
 - 3) Is there **adequate mitigation** being provided to maintain the favourable conservation status of the population of the species?
- 5.36 Therefore where planning permission is required and protected species are likely to be found to be present at the site or surrounding area, Regulation 53 of the Conservation of Habitats and Species Regulations 2010 provides that local planning authorities must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions and also the derogation requirements (the 3 tests) might be met. Consequently a protected species survey must be undertaken and it is for the applicant to demonstrate to the Local planning authority that the 3 strict derogation tests can be met prior to the determination of the application. Following the consultation with Natural England and the Council’s Ecologist advice given (or using their standing advice) must therefore be duly considered and recommendations followed, prior to the determination of the application.
- 5.37 In respect of planning applications and the Council discharging of its legal duties, case law has shown that:
- 1) if it is clear/perhaps very likely that **Natural England will not grant a licence** then the Council should refuse planning permission

- 2) if it is likely that **Natural England will grant the licence** then the Council may grant planning permission
- 3) if it is **unclear/uncertain** whether Natural England will grant a licence then the Council must refuse planning permission (Morge has clarified Woolley)

[R (Morge) v Hampshire County Council – June 2010 Court of Appeal case]
[R (Woolley) v Cheshire East Borough Council – May 2009 High Court case]

NB: Natural England will not consider a licence application until planning permission has been granted on a site, therefore if a criminal offence is likely to be committed; it is in the applicant's interest to deal with the 3 derogation tests at the planning application stage.

- 5.38 In respect of this application, additional information regarding the potential impact of the proposal on bats has been submitted. A sufficient level of information has been submitted and the Council's Ecologist has advised she is 'satisfied that any impacts on any bats at important times has been considered and will be minimised'. Planning conditions would be required to ensure the proposed times of use were adhered to.

Engagement

- 5.39 With regard to the duty set out in paragraphs 186 and 187 of the Framework, additional information was sought from the applicant during the application process. This was necessary to overcome a number of technical concerns raised in consultation responses. It is considered that the duty to be positive and proactive has been discharged through effective communication with the applicant and the efficient determination of the application.

6. Recommendation

Refusal,

REASON(S) FOR REFUSAL

1. The proposed floodlights would allow the use of the football club for extended hours. By virtue of the close proximity of the site to residential dwellings, it would result in unacceptable levels of noise and disturbance in the late evening causing harm to residential amenity contrary to Policy C31 of the adopted Cherwell Local Plan and the National Planning Policy Framework.

STATEMENT OF ENGAGEMENT

In accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No 2) Order 2012 and paragraphs 186 and 187 of the National Planning Policy Framework (March 2012), this decision has been taken by the Council having worked with the applicant/agent in a positive and proactive way as set out in the application report.