

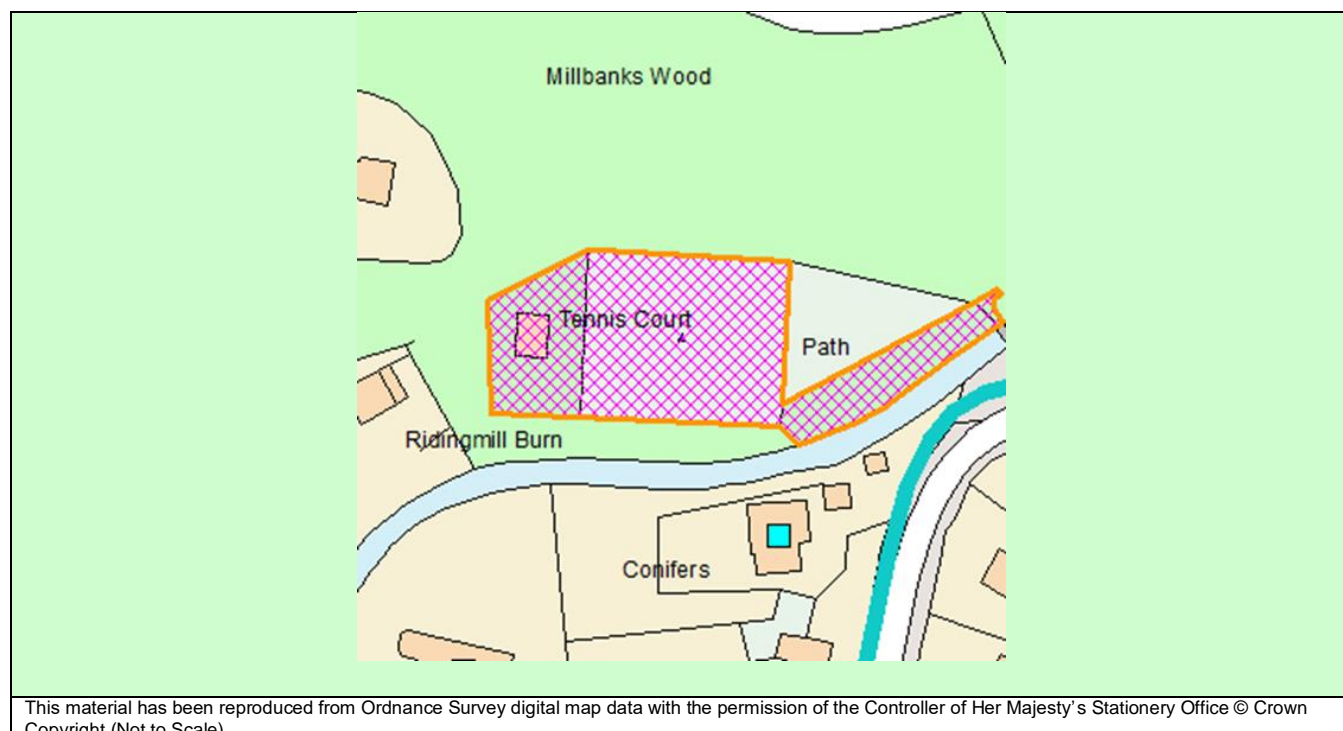


Northumberland County Council

Tynedale Local Area Council Planning Committee 10 October 2023

Application No:	23/01947/FUL		
Proposal:	Resubmission - Tweener fence lighting with mesh screening installed to north and south court fence		
Site Address	Tennis Court North Of The Conifers, Millfield Road, Riding Mill, Northumberland NE44 6DL		
Applicant:	Riding Mill Tennis Club Millfield Road, Riding Mill , Northumberland, NE44 6DL	Agent:	Mr Ross Breen Marchburn View, Marchburn Lane, Riding Mill, Northumberland NE44 6DN
Ward	Stocksfield And Broomhaugh	Parish	Broomhaugh And Riding
Valid Date:	24 May 2023	Expiry Date:	19 July 2023
Case Officer Details:	Name: Miss Stephanie Milne Job Title: Senior Planning Officer Email: Stephanie.Milne@northumberland.gov.uk		

Recommendation: That this application be REFUSED permission



1. Introduction

1.1 The application has been referred to the Director of Planning and Chair and Vice-Chair of the Tynedale Local Area Council under the Council's delegation scheme due to the significant level of representations in support and objection that has been received. It has subsequently been agreed that the application should be determined by Committee.

2. Description of the Proposals

2.1 Planning permission is sought for the installation of tweener fence lighting and mesh material light screens to the north and south fence of the Tennis courts as described above and as set out in the plans submitted to the local planning authority. The site is located next to the Riding Mill Burn and woodland.

3. Planning History

Reference Number: 20/01237/ADE

Description: Advertisement consent for 1 x entrance sign and 1 x banner sign

Status: PER

Reference Number: 22/01737/FUL

Description: Floodlights to be installed at the double courts

Status: WDN

4. Consultee Responses

Environment Agency	No response received.
Highways	No Issues arise from the proposal
Lead Local Flood Authority (LLFA)	As the site is in flood zone 3 the Environment Agency should be consulted
Broomhaugh And Riding Mill Parish Council	<p>In coming to a view on any planning application, we are conscious that there is a need to balance benefits and harms. In the case of the tennis club lighting proposal, we can see several potential harms, including impact on wildlife, impact on residents' peace and quiet, impact on flooding and impact on parking. We also recognise that there could be advantages in encouraging more people to exercise and building a viable tennis club which is an asset to the village.</p> <p>Given that some of the specialist advice is not yet in the public domain, and given that we do not have expertise in these areas, we are not in a position to do any more than communicate the views of the village. We therefore wish to take a neutral stance and rely on the Planning Department to make a considered decision based on the relevant information and in the context of the planning and regulatory framework.</p> <p>The parish council has noted the considerable number of comments online, and has also been inundated with letters of support and objection. This is an emotive issue within the village, and the local view is of a divided village with strong feelings on</p>

	<p>either side. We should state, for transparency, that the Parish Council is the landlord of the tennis court site (of which the tennis club is the tenant).</p> <p>Of the 420 households in Riding Mill (population 990), there have been 25 letters of support from 15 households and 97 letters of objection from 84 households, although in both cases only a small number of arguments were put forward. No doubt you will consider our emerging Neighbourhood Plan (soon to go to referendum) and objectives 2 and 5 are particularly relevant here.</p>
Public Protection	The Environmental Protection Team object to this proposal on a technical matter which may be resolved by the submission of additional information
County Ecologist	Objection – the application is not supported by detailed and accurate information on lighting impacts, and the resultant impacts on Habitat of Principal Importance Deciduous Woodland and associated protected species. As such, refusal is recommended in accordance with Policy ENV2 of the Northumberland Local Plan and paragraph 180a of the NPPF.
Natural England	No objection
Environment Agency	No response received

5. Public Responses

Neighbour Notification

Number of Neighbours Notified	177
Number of Objections	133
Number of Support	54
Number of General Comments	2

Notices

General site notice, 27th June 2023
No Press Notice Required.

Summary of Responses:

133 Objections have been received.

The main issues raised are:

- Impact of lighting/light bloom on local wildlife/biodiversity
- Proposal would exacerbate an existing car parking issue along Millfield Road
- Impact of lighting/light bloom on the visual amenity of the surrounding area

- Impact of lighting/light bloom on the visual amenity of the wider landscape surrounding Riding Mill, and on the Dark Sky Park
- Impact of lighting/light bloom on the amenity of neighbouring residents

54 Letters of support have been received

The main issues raised are:

- The proposal would support the existing tennis club, which is a valued local community facility
- The proposal would increase footfall for nearby businesses/shops
- The proposal would not lead to any unacceptable impacts

The above is a summary of the comments. The full written text is available on our website at:

<http://publicaccess.northumberland.gov.uk/online-applications//applicationDetails.do?activeTab=summary&keyVal=RV9BCHQS0MK00>

6. Planning Policy

6.1 Development Plan Policy

STP 1 - Spatial strategy (Strategic Policy)

STP 2 - Presumption in favour of sustainable development (Strategic Policy)

STP 3 - Principles of sustainable development (Strategic Policy)

STP 5 - Health and wellbeing (Strategic Policy)

QOP 1 - Design principles (Strategic Policy)

QOP 2 - Good design and amenity

TRA 1 - Promoting sustainable connections (Strategic Policy)

TRA 2 - The effects of development on the transport network

TRA 4 - Parking provision in new development

ENV 1 - Approaches to assessing the impact of development on the natural, historic and built environment (Strategic Policy)

ENV 2 - Biodiversity and geodiversity

WAT 3 - Flooding

6.2 National Planning Policy

NPPF - National Planning Policy Framework (2023)

6.3 Neighbourhood Planning Policy

Broomhaugh & Riding Neighbourhood Plan has passed independent examination and will be proceeding to referendum. The Referendum will be held on Thursday 5th October 2023. The Plan can be afforded significant weight in decision-making.

Policy BR2 – Design

Policy BR3 – Natural Environment

7. Appraisal

7.1 In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case the development plan comprises of the Northumberland Local Plan 2022 (NLP) The National Planning Policy Framework (NPPF) (2023) and Planning Practice Guidance (PPG) are material considerations in determining this application. The Broomhaugh & Riding Neighbourhood Plan is proceeding to referendum and is given significant weight in decision making.

- Principle of development;
- Design and visual character;
- Residential amenity;
- Ecological impacts;
- Highway safety;
- Flood risk

Principle of development

7.1 Policy STP 1 of the NLP, read in conjunction with the Policies Map which accompanies the Plan, identifies main towns, service centres and service villages across the county where sustainable development can be located.

7.2 The application site is located within the defined settlement boundary of Riding Mill and would be small scale, limited to the existing tennis courts on site. The principle of development is therefore acceptable.

Design and Visual Character

7.3 The proposal is for the installation of lighting to the existing double tennis court which will allow for increased usage in winter months. The applicant has advised that they have assessed various options for lighting the courts and suggests the proposed fence mounted lighting would provide for adequate light while minimising impacts to the surrounding landscape from light pollution and glare and disturbance to biodiversity.

7.4 The lighting is proposed to be fitted to the north and south existing fence lines serving the courts. The 'tweener' track light system will be fitted to the upper most part

of the fencing to provide light across both courts. A mesh material light screen is also proposed to these fence lines to mitigate light spill.

7.5 In terms of design and visual impacts of the proposal, the design and positioning of the lights and mesh fencing would not be considered to result in any significant impacts to the character and appearance of the surrounding area. The courts are relatively well screened from the street scene by the existing tree cover and would be typical of what would be expected within a tennis court setting. As such the proposal would comply with the requirements of the QOP2 of the NLP and BR2 of the Broomhaugh and Riding Neighbourhood Plan.

Impact on Residential Amenity

7.6 The site is located adjacent to residential properties along Millfield Road. The closest property is Conifers which is positioned immediately south of the existing courts. There is some tree cover between the tennis courts and Conifers and the applicant has proposed a mesh material light screen to reduce light spillage. Consultation has been carried out with the Council's Public Protection Team who assess any potential harm to neighbouring occupiers from aspects such as light spillage. Public Protection have assessed the applicants submitted information and note that the Lighting Report referred to in the Planning Statement has not been submitted. Therefore they have requested that this report is made available so that they can assess any impacts from the proposed lighting. Public Protection therefore object to this application on a technical matter due to insufficient information. The applicant as therefore failed to demonstrate that the proposal would not lead to an unacceptable impact on amenity and the proposals therefore does not comply with the requirements of QOP2 of the NLP and BR2 of the Broomhaugh and Riding Neighbourhood Plan.

Ecological Impacts

7.7 Under a previous application for the same proposal (22/01737/FUL) the County Ecologist advised that nocturnal species would be present on site and it is highly likely that protected and nocturnal animals use the site based on the habitat types present and local records. The applicant was therefore requested to submit further information in relation to the proposed lighting. The application was subsequently withdrawn by the applicant on the 21 November 2022. This current application is a resubmission and seeks to address the previous objections raised by both Public Protection and Ecology.

7.8 The Environment Act 2021 has introduced a strengthened duty for public authorities to consider what they can do to conserve and enhance biodiversity. Under S.40 of the Natural Environment and Rural Communities (NERC) Act as amended, the local planning authority has a duty to take action to conserve and enhance biodiversity. S.40(3) states the action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of—

- (a) conserving, restoring or otherwise enhancing a population of a particular species, and
- (b) conserving, restoring or otherwise enhancing a particular type of habitat.

7.9 S.41 requires the Secretary of State (SoS) to publish a list of habitats and species to which this particularly applies, and these are referred to as habitats and species of

principal importance. This includes widespread but declining species and habitats such as hedgehog, common toad, house sparrow and intact native species hedgerows. The list of species and habitats is available online;

<https://www.gov.uk/government/publications/habitats-and-species-of-principalimportance-in-england>

7.10 Natural England's published 'standing advice', which is a material planning consideration for LPAs, states that they must have regard for the conservation of S.41 species as part of making a planning decision (<https://www.gov.uk/guidance/protected-plants-fungi-and-lichens-advice-formaking-planning-decisions>)

7.11 The Northumberland Local Plan Policy ENV2 Biodiversity and Geodiversity expects the ecosystem approach to be applied in development through the conservation, restoration, enhancement, creation and/or (where appropriate) the re-creation of priority habitats and the habitats of priority species. The approach taken by the LPA is detailed in Policy ENV1 of the Northumberland Local Plan and at Policy ENV2 where explicitly:

"Development proposals affecting biodiversity and geodiversity, including designated sites, protected species, and habitats and species of principal importance in England (also called priority habitats and species), will:

- a. Minimise their impact, avoiding significant harm through location and/or design. Where significant harm cannot be avoided, applicants will be required to demonstrate that adverse impacts will be adequately mitigated or, as a last resort compensated for;
- b. Secure a net gain for biodiversity as calculated, to reflect latest Government policy and advice, through planning conditions or planning obligations."

7.12 The Local Plan policy is in accord with paragraph 180(a) of the NPPF which states that: "When determining planning applications, local planning authorities should apply the following principles:

- A) if significant harm to biodiversity 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;"

7.13 Planning authorities are competent authorities under the Habitats and Species Regulations (2017, as amended) and therefore have legislative duties to fulfil with respect to these species, to ensure that they are protected and their conservation status is maintained. ODPM Circular 06/05: biodiversity and geological conservation provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England. Paragraph 99 states "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. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances" development under the Conservation of Habitats and Species Regulations 2017 (as amended).

7.14 Following consultation with Ecology Officers, it is considered that despite previous responses detailing the information that would be required, basic requirements for information have not been met under this current application. The Ecology Officer also notes that Public Protection have objected to the application due to lack of information regarding the impacts from lighting to residents. The applicant's reports on lighting prepared by Bill Owen to support the previous application and this application (although those have not been provided for this application) lacks a sound evidence base and is largely comprised of assertion or comparisons of the proposed system to more traditional floodlighting. This is a flawed approach as the baseline at this site is no lighting, and no detailed modelling or assessment of the proposed scheme is provided. There is no adequate light modelling which assesses the light spill through vertical and horizontal planes or adequate evidence of the mitigation measures proposed. Additional measures such as screening or cowls have not been modelled at all, nor the use of different coloured lighting.

7.15 In order to meet the need identified, the courts would have to be lit enough to see to play, and at the times which are most sensitive for nocturnal species (i.e. the twilight/dusk period and immediately after, when nocturnal animals are feeding or commuting to foraging areas). The EclA is clear that the Ridingmill Burn and the woodland are functionally linked habitats to other watercourses and woodlands which are shown through local biodiversity centre records to be significant for biodiversity. Therefore, impacts are not just limited to the immediately adjacent habitat but to interconnected habitats. The information available presents a strong risk that flightlines and commuting corridors will be significantly impacted and potentially severed by the development.

7.16 The modelling provided by the manufacturer (as assessed in the EclA at section 8.3)) is not specific to this location, but does show that 1lux (the level at which impacts on nocturnal species are likely) is achieved at 30m from the court, which is an unacceptable level of light spill into sensitive ecological receptors before that lux level is achieved. This modelling shows that there will be unacceptable levels of light spill into the majority of the Habitat of Principal Importance woodland, even with mesh screening to the courts.

7.17 The Council's Ecologist concludes that there is a lack of robust evidence to suggest that nocturnal and protected species would not be harmed as a result of the proposed lighting. The application is not supported by detailed and accurate information on lighting impacts, and the resultant impacts on Habitat of Principal Importance Deciduous Woodland and associated protected species, therefore the proposal would be contrary to the requirements of Policy ENV2 of the Northumberland Local Plan and Policy BR3 of the Broomhaugh and Riding Neighbourhood Plan.

Highways

7.18 The application proposals would result in the potential intensification of the use of the tennis courts for a longer period of time, after sunset, and therefore consultation has been carried out with Highways Development Management (HDM). HDM have assessed the proposals and consider that there would be no issues arising to the local highway network. The application therefore complies with the requirements of TRA2 and TRA4 of the Northumberland Local Plan.

Flood risk

7.19 Consultation was carried out with the Lead Local Flood Authority due to the developments close proximity to the Riding Mill Burn and the sites designation in Flood Zone 3. The LLFA raised no concerns but advised contacting the Environment Agency due to the site being in Flood Zone 3. The EA have not responded to the consultation, however officers consider that the proposals would not result in an increase in flood risk to the site or surrounding properties. The proposed mesh would be permeable and therefore any water would be able to pass through and across the courts as currently is the situation. The proposals would therefore be considered to accord with NLP WAT3 and the NPPF.

Equality Duty

The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

Crime and Disorder Act Implications

These proposals have no implications in relation to crime and disorder.

Human Rights Act Implications

The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

8. Conclusion

8.1 The principle of development is supported by Policy STP1 and there would be no significant harm to the visual amenity or character of the area due to the proposed lighting. However, the application fails to provide adequate information to demonstrate that there would be no harm to residential amenity or Habitat of Principal Importance Deciduous Woodland and associated protected species contrary to the requirements of QOP2, and ENV2 of the Northumberland Local Plan and BR2 and BR3 of the Broomhaugh and Riding Neighbourhood Plan. The proposal is therefore recommended for refusal.

9. Recommendation

That this application be REFUSED permission subject to the following:

Reason

1. Insufficient information has been submitted to allow officers to fully consider the ecological impact of the proposal in regard to detailed and accurate information on lighting impacts, and the resultant impacts on Habitat of Principal Importance Deciduous Woodland and associated protected species. The application has not clearly demonstrated that there would be no adverse impact on biodiversity, conflicting with Policy ENV2 of the Northumberland Local Plan, and paragraph 180a of the National Planning Policy Framework.
2. Insufficient information has been submitted to demonstrate that there would be no adverse impacts to residential amenity as a result of the proposed works contrary to the requirements of Policy QOP2 of the Northumberland Local Plan and the NPPF.

Background Papers: Planning application file(s) 23/01947/FUL