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## Appeal Decisions

Site visit made on 19 July 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 October 2022**

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### **Appeal A Ref: APP/D3125/W/21/3283856**

#### **Beaconsfield Hall, Station Road, Shipton Under Wychwood OX7 6BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Wychwoods Lawn Tennis Club against the decision of West Oxfordshire District Council.
  - The application Ref 21/00261/FUL, dated 26 January 2021, was refused by notice dated 6 April 2021.
  - The development proposed is floodlights to provide lighting for two tennis courts.
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### **Appeal B Ref: APP/D3125/W/22/3294070**

#### **Tennis Courts, Beaconsfield Hall, Shipton Under Wychwood OX7 6BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Wychwoods Lawn Tennis Club against the decision of West Oxfordshire District Council.
  - The application Ref 21/03836/FUL, dated 25 November 2021, was refused by notice dated 14 February 2022.
  - The development proposed is erection of 9 lighting columns to provide floodlighting for tennis courts 1 and 2.
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## **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

## **Procedural Matters**

3. The appeals relate to alternative proposals for the same site. Both schemes would include nine 6 m high lighting columns in a similar arrangement to illuminate two tennis courts (court nos. 1 and 2) belonging to Wychwoods Tennis Club. However, the proposals would use different luminaires. Some of the Council's objections have fallen away for Appeal B, but the issues raised by interested parties are common across both appeals. I have therefore considered the cases together, making clear where I have reached different conclusions.
4. On the evening prior to my formal site inspection, I made an unaccompanied visit to Shipton Under Wychwood at dusk. I was able to familiarise myself with the village and make an assessment of the proposals in failing light conditions and in full darkness.

## **Main Issues**

5. Having regard to the reasons for refusal and the matters raised by interested parties, I consider that the main issues are:
- a) whether the proposals would preserve the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB);
  - b) whether the proposals would preserve or enhance the character or appearance of the Shipton Under Wychwood Conservation Area;
  - c) the effect of the schemes on the living conditions of nearby residents, with particular regard to light and noise;
  - d) the effect on protected species, including bats and great crested newts; and
  - e) whether other material considerations exist to outweigh any conflict with the development plan in relation to the above issues.

## **Reasons**

### *Cotswolds AONB*

6. The appeals relate to two out of the three outdoor tennis courts associated with Wychwoods Tennis Club. The courts are located adjacent to New Beaconsfield Hall which forms part of a larger recreation ground providing a children's play area and football pitch. There is a public footpath linking the southwest and northeast corners of the recreation ground and this runs along the southern edge of the tennis courts, inside the hedged boundary with Station Road.
7. There are a several illumination sources in the vicinity of the site, including wall mounted bulkhead lights on New Beaconsfield Hall and a single sodium lamp attached to a telegraph pole on the Station Road frontage. The wider area does contain street lighting, but the individual lamps are well-spaced to create localised pools of light. This lighting is restrained and commensurate with the status of Shipton Under Wychwood as a rural village.
8. Appeals A and B each propose a different specification of light fitting. The luminaires for Appeal B would result in a lower intensity of light overall (an average of 400 lux across the courts instead of 500 lux for Appeal A) and the horizontal spread of light outside of the two tennis courts would be reduced. However, both schemes would create a concentrated 'box' of light within which to play tennis. The floodlighting would appear significantly brighter than other light sources in the locality and it would be made more noticeable by the reflection off the green court surface to create a sky glow or halo effect.
9. The site lies in the Cotswolds Area of Outstanding Natural Beauty (AONB) which is of national importance for its landscape and scenic beauty. The Cotswolds AONB Management Plan 2018-2023 (MP) recognises that darkness at night is one of the key characteristics of rural areas and it represents a major difference between what is rural and what is urban. Policy CE5 of the MP states that proposals that are likely to impact on the dark skies of the AONB should have regard to these dark skies, by seeking to (i) avoid and (ii) minimise light pollution. Measures should be taken to increase the area of dark skies in the AONB by (i) removing and (ii) reducing existing sources of light pollution.

10. The proposal under Appeal A would be more harmful to the AONB due to the extent of horizontal light spill, but both schemes would introduce a new urbanising feature into what is presently a dark rural area. The floodlighting would be visually incongruous and intrusive in local views from Station Road, public rights of way across the recreation ground and nearby residential properties. The prominence of the lighting would be greatest when the trees and hedges are not in leaf; that is the time of year when the lighting would be in use. The appellant has argued that the public footpaths are not used at night, but I saw a number of dog walkers within the recreation ground after dusk and also persons using the footpath link from Meadow Close.
11. Policy EH8 of the West Oxfordshire Local Plan 2031 (WOLP) has a direct bearing on both appeals. This policy states that the installation of external lighting, particularly those in remote rural locations, will only be permitted where the means of lighting is appropriate, unobtrusively sited and would not result in excessive levels of light and the proposal would not have a detrimental effect on local amenity, character of a settlement or wider countryside, intrinsically dark landscapes or nature conservation.
12. Although the appeal site is not remote, it is in a highly visible position at the edge of the settlement. This is more sensitive in landscape and visual terms than the Wychwood Primary School site where permission has previously been granted for a floodlit Multi Use Games Area (MUGA). That site, which I visited with the parties, is better contained and visually less prominent. It also has fewer (4) luminaires compared to the ten being proposed under the appeal schemes. The schemes are not directly comparable and as such the MUGA does not set a precedent for floodlighting at the tennis club.
13. The majority of the lighting columns would be hidden behind New Beaconsfield Hall in views from the surrounding countryside. Intervening tree cover would also provide mitigation at certain times of year. However, the columns would be visible from certain angles on the approach to the village along the A361 and the light they produce would be quite different in character to the more dispersed pattern of mainly point sources from buildings and streetlamps.
14. Each planning application was accompanied by a detailed Report of Landscape and Visual Matters. These are tailored to the proposal in question, but both conclude that the developments would not have a significant adverse impact on wider surrounding area but would result in a few, very localised visual effects. This understates the likely impacts which I consider to be significant for certain visual receptors, particularly users of the A361 and those village residents using the recreation ground and living in the vicinity of the site.
15. The Cotswold AONB does not stop at the edge of the built-up area; it washes over the settlement. It is common ground that the AONB as a whole is large and that not every part will be as important to the purpose of the designation. Nevertheless, I am not convinced that the appeal site is any less sensitive due to its location or status as a recreation facility. I have assessed the proposals on their merits, but have concluded in each case that the introduction of floodlighting to this site would cause material harm to the landscape and scenic beauty of the AONB. Both schemes would be detrimental to local amenity and the character of the settlement and wider countryside.
16. I therefore conclude that there would be conflict with WOLP Policies EH1, EH8 and OS2 insofar as they seek to ensure that external lighting does not have

adverse impacts, including on the Cotswolds AONB. Policy EH1 is consistent with the National Planning Policy Framework ('the Framework') in stating that, for proposals within the AONB, great weight will be given to conserving and enhancing the area's natural beauty, landscape and countryside.

### *Conservation area*

17. The site lies within the Shipton Under Wychwood Conservation Area. The boundary of this designation extends beyond the built-up area to take in open fields and other undeveloped land at the edges of the settlement. The special architectural and historic interest of the conservation area is derived from its character as a traditional Cotswolds village. Open spaces are part and parcel of this character, in addition to the low key street lighting which complements the tranquil nature of the area after dark. The recreation ground contributes positively to the character and appearance of the conservation area, despite the presence of security lighting on New Beaconsfield Hall.
18. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision-makers to pay special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. I have made my determinations with this duty in mind.
19. The Council raises a heritage objection in relation to Appeal A only. It is not clear from the evidence whether the concerns relate solely to the physical infrastructure, or whether the lighting itself is also an issue. The columns and fittings would create a degree of visual clutter during daylight hours, especially the luminaires which would be large and clumsy structures. This would detract from the appearance of the area. Perhaps more significantly, the illumination of the tennis courts at dusk and after dark would introduce an alien and intrusive feature in the historic setting of this Cotswolds village. The adverse impacts would be exacerbated by the site's elevation above Station Road and the deciduous nature of the hedging on the roadside boundary. This would increase the visibility of the light source and the concentrated 'box' of light around the tennis courts, particularly in views from Church Walk.
20. The lighting columns for Appeal B would be of greater diameter, but they would be painted dark green and the fittings would be more compact with lower overall luminance and reduced light spill beyond the tennis court fencing. The Conservation Officer did not object to this scheme, partly on the basis of the mitigation measures being proposed; this included single court lighting, motion sensors which switch off the lighting when the courts are not being used and a dimmer setting for coaching. These measures would combine with the more directional lighting to reduce the adverse impacts on the conservation area. However, they would not offset them completely, despite the visual improvements arising from the smaller luminaires.
21. In both cases, the introduction of sports floodlighting into this location would fail to preserve the character and appearance of the Shipton Under Wychwood Conservation Area, contrary to the historic environment objectives set out in Policies EH9 and EH10 of the WOLP. The impacts in respect of Appeal B would be of lesser magnitude, but not to the extent that would make the proposal acceptable. Both proposals would cause less than substantial harm to the conservation area; paragraph 202 of the Framework states that, in such circumstances, this harm should be weighed against the public benefits. I shall return to this later.

### *Living conditions*

22. The first scheme (Appeal A) attracted an objection from the Environmental Health Officer on the basis that it would potentially create a statutory nuisance for occupiers of dwellings surrounding the tennis courts, particularly to the west and along Station Road. It is not for me, in the context of a s78 appeal, to make judgements on matters relating to statutory nuisance. Nevertheless, there are residential properties facing the courts and those on Station Road (notably Nos 1 and 2 Vant Well Place) are set at a lower level than the appeal site, meaning that the light source is likely to be visible and intrusive. The proposal would adversely affect the living conditions within those properties and for that reason there would be conflict with Policies OS2 and OS4 of the WOLP insofar as these seek to ensure that development does not harm the use or enjoyment of land and buildings nearby, including living conditions in residential properties.
23. The second scheme (Appeal B) has sought to address the shortcomings of the first proposal. The fittings proposed would be more directional and they would reduce the horizontal light spill. This would improve the situation as regards the effect on surrounding dwellings; the outlook for these neighbours would change, as there would be views of the brightly illuminated playing surfaces, but it would not give rise to a level of glare that would justify dismissal of the appeal on living conditions grounds. There would be no conflict with the development plan in relation to the amenity of neighbours. The objective should always be to minimise adverse impacts and therefore the availability of a technically superior scheme lends weight to my finding that Appeal A is unacceptable.
24. I note that there have been no recorded complaints in relation to noise from the tennis club. The courts can already be used during light evenings when residents are most likely to be enjoying their gardens. The playing of tennis during the colder, winter months is unlikely to give rise to any greater degree of noise disturbance. Consequently, this matter does not weigh against either scheme.

### *Protected species*

25. The red line boundary follows the edge of the tennis court surfacing and thus the site does not contain any wildlife habitat. However, both appeal schemes have the potential to affect biodiversity and protected species nearby.
26. Although sparse in places, the existing hedgerow along the western boundary of the recreation ground aids connectivity for wildlife and provides opportunities for foraging and commuting bats. The Council did not request a bat survey, but it is prudent to adopt a precautionary approach. Prior to the application for Appeal A there were discussions between the applicant and the Council's ecologist regarding additional planting which would thicken the hedge and deliver biodiversity enhancement. However, the land is owned by the parish council which has since indicated that it would not be agreeable to the proposed landscaping scheme. There is no realistic prospect of the landscaping taking place and therefore it would not be reasonable to secure the planting by condition.
27. The appellant has committed to a package of mitigation measures for Appeal A, which include restricting the use of the floodlights to between 1<sup>st</sup> October and 15<sup>th</sup> May, limiting the hours of use to no later than 2130 hours and using warm white light<sup>1</sup> (3000k). However, in the absence of reinforcement planting for the

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<sup>1</sup> Guidance from the Bat Conservation Trust recommends a warm white spectrum of ideally 2700k, but it does not make this a stipulation and I note the Council ecologist has previously indicated 3000k to be acceptable.

hedgerow, there is a significant risk of disturbance to bats, due to the extent of the light 'back spill' outside of the tennis court fencing.

28. There is also the possibility that the lighting being proposed under Appeal A would have an adverse impact on great crested newts (GCN) within the garden of Elmdene, which lies beyond the boundary hedge. Sightings of GCN have been recorded at the Thames Valley Environmental Records Centre. The computer modelling within the technical report is not sophisticated enough to take account of vegetation but there is a high probability that the area in the vicinity of the garden pond would be illuminated to some degree. There are differing opinions on the extent to which GCN are sensitive to light; however, I cannot be satisfied that harm to this protected species would not occur.
29. The lighting design for Appeal B was developed in response to the decision on the first application. The technical evidence, which the Council does not dispute, shows that light back spill would be much reduced through the use of different luminaires. Lighting levels at the hedgerow would be low (2 lux at the boundary fence with Elmdene) and there would be no illumination of the garden pond. Appeal B is accompanied by a Biodiversity Mitigation Strategy (BMS) which makes provision for 3000k warm white light and a shorter curfew (2100 hours on weekdays and 1900 hours at weekends). It also includes measures such as individual court controls (which ensure that light emitted is restricted to the occupied court only), automatic non-activity sensors (which switch court lights off if a court is vacated early) and a setting which allows certain tennis activities such as coaching and non-competitive play to be carried out at a reduced light level of 300 lux. In my judgement, the lighting design and BMS for Appeal B would be sufficient to prevent unacceptable impacts on protected species. There is no conflict with Policy EH3 of the WOLP insofar as this seeks to protect and mitigate for the impacts on protected species.
30. As regards Appeal A, this proposal does not adequately avoid, mitigate or compensate for the adverse impacts on protected species. As such, it does not secure compliance with WOLP Policy EH3. That there is an alternative, and ecologically preferable, scheme available to the appellant under Appeal B is further evidence to demonstrate that the proposal is unacceptable.

### **Other Material Considerations**

31. Principal amongst the other material considerations are the benefits the proposals would bring in terms of enhancing tennis facilities within the District. The health benefits of exercise, including to mental well-being, are well documented, and it is common ground that improving sporting facilities is a general good so long as any negative impact is minimised or avoided. Whether or not the users of the floodlit courts at Wychwoods Tennis Club would live locally is to some extent immaterial. The proposals would bring social and community benefits to the populous of West Oxfordshire, including the residents of Shipton Under Wychwood, and this would be at no cost to the taxpayer.
32. The proposals would increase playing capacity at the tennis club and provide opportunities for the coaching of young people. In this respect, the scheme would accord with the objectives of Section 8 of the Framework to enable and support healthy lifestyles through the provision of sporting facilities. They would also contribute to meeting the Council's priorities, set out within WOLP Paragraph 2.42, to reduce obesity in children and adults and increase physical activity. I have attached these benefits significant weight.

33. The appellant has drawn my attention to other planning permissions for sports floodlighting. I have explained the reasons why the MUGA at Wychwood School is not comparable. The scheme at Lyneham was allowed on appeal, but each case is site specific and fact sensitive. The Lyneham site does not lie in a conservation area and it can be distinguished from the Beaconsfield site by its topography, site levels and the scope for new planting. I have therefore considered the schemes before me on their own merits.

## **Planning Balance and Conclusions**

### *Appeal A*

34. The sporting and health benefits attract significant weight in favour of the scheme. Against this, I must balance the harms to the Cotswolds AONB, the Shipton Under Wychwood Conservation Area, protected species and the living conditions of neighbours.
35. It is important to foster the economic and social well-being of people living in the Cotswolds AONB, including their recreation, but this is only in so far as is consistent with the overriding requirement, set out within paragraph 176 of the Framework, to give great weight to the conservation and enhancement of the landscape and scenic beauty. The conservation and enhancement of wildlife is also an important consideration in these areas but there are additional legal obligations in relation to protected species.
36. The Framework explains that less than substantial harm to a designated heritage asset should be weighed against the public benefits. Whilst the public benefits in this case are significant, they do not outweigh the harm to the conservation area. The implication of the s72 duty is that this factor must be given considerable importance and weight.
37. The proposal conflicts with the development plan as a whole in relation to its impacts on landscape, heritage, biodiversity and residential amenity. Whilst I have given careful consideration to the comprehensive case put forward by the tennis club in relation to sporting matters, the totality of the harm in the case of Appeal A is such that material considerations do not justify a decision otherwise than in accordance with the development plan.

### *Appeal B*

38. This proposal is a material improvement over Appeal A. It would cause no demonstrable harm to biodiversity or the living conditions of neighbours. Although the lighting design is technically superior to that put forward under the first appeal, there would be adverse impacts on the Cotswolds AONB and the Shipton Under Wychwood Conservation Area. These are objections to which substantial weight should be attached as a matter of policy and law. The scale of the sporting and health benefits mean that the decision is more finely balanced, but my overall finding is that the combined landscape and heritage harms would outweigh the sporting and health benefits. I therefore conclude that, whilst there are material considerations in favour of the scheme, these do not outweigh the conflict with the development plan.

39. For the reasons given above I conclude that the appeals should be dismissed.

*Robert Parker*

INSPECTOR