



Appeal Decision

Site visit made on 29 October 2024

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/W4325/W/24/3343878

Heswall Lawn Tennis Club, Quarry Road East, Heswall, Wirral CH60 6RB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by David Jones against the decision of Wirral Metropolitan Borough Council.
 - The application Ref is RVC/23/00460.
 - The application sought planning permission for the replacement of floodlighting on courts 1 and 2 with nine six-metre-high columns, erection of floodlights to courts 3 and 4 and extension of operating hours to allow floodlights to operate until 21.30 hours, without complying with two planning conditions attached to planning permission reference APP/2001/6622, dated 29 October 2001.
 - The conditions in dispute are conditions 4 and 5. These conditions state that:
 - 4) For 12 months from the bringing into operation of the proposed floodlights both the existing and proposed floodlights shall be switched off between 21.30 hours and 16.00 hours. After expiry of this period of floodlights shall be switched off between 21.00 hours and 16.00 hours.
 - 5) The floodlights shall not be illuminated on Sundays.
 - The reason given for both conditions is: In the interests of the amenities of the occupants of the adjoining residential properties.
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of floodlighting on courts 1 and 2 with nine six-metre-high columns, erection of floodlights to courts 3 and 4 and extension of operating hours to allow floodlights to operate until 21.30 hours at Heswall Lawn Tennis Club, Quarry Road East, Heswall, Wirral CH60 6RB in accordance with application reference RVC/23/00460 dated 2 February 2024, without compliance with conditions 4 and 5 previously imposed on planning permission APP/2001/6622 dated 29 October 2001, but subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Court of Appeal decision of *Finney*¹ has established that an application under section 73 of the Town and Country Planning Act 1990 cannot be used to amend or contradict the description of the development permitted by the original planning permission. As such, as a section 73 application tied to the original 2001 application, it would not be lawful to grant permission beyond 21:30 hours. The parties were requested for their comment on the implications of this caselaw on the appeal. I have assessed the appeal on this basis.

¹ *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868

3. Under application reference APP/14/00548, floodlighting operation hours were altered from the timings as listed in condition 4 in APP/2003/5028. This allowed the floodlighting to be used between 16:00 and 21:00 on all days, inclusive of Sundays. There is no dispute that a previous variation to this consent (APP/2014/0548) allows for the use of floodlights on Sundays. However, as condition 5 is under consideration in this appeal, I have assessed its implications as part of the main issue.

Background and Main Issue

4. The appeal seeks to vary conditions 4 and 5 to allow Heswall Lawn Tennis Club to operate the floodlights from 16:00 until 22:00 on all days, including on Sundays. The original permission (APP/2001/6622) to which conditions 4 and 5 relate to is the replacement of floodlighting on courts 1 and 2 with nine six-metre-high columns, erection of floodlights to courts 3 and 4 and extension of operation hours to allow floodlights to operate until 21:30. It is noted in condition 4 of this permission, the floodlights were only permitted to operate until 21:30 for 12 months following the bringing into operation of the floodlights. My determination of the appeal relates to the necessity of conditions 4 and 5. The reason given for these two conditions was in the interests of the amenities of the occupants of the adjoining residential properties.
5. It therefore follows that the main issue is whether the conditions are reasonable and necessary in the interests of safeguarding the living conditions of neighbouring occupiers with particular regard to light spill, noise and disturbance.

Reasons

6. Heswall Lawn Tennis Club is located off Quarry Road East. The site features a club house, a small car park and eight tennis courts. The four central courts in the site feature floodlighting. An additional four courts surround these central courts. These courts do not feature any floodlighting facilities and are located adjacent to the boundaries with neighbouring properties. The tennis club is located within a Primarily Residential Area. Several dwellings surround the site on Tower Road North and Quarry Road East. These properties either adjoin the boundary to the car park or are sited opposite to it.
7. During play at the extended time sought, noise would generally be experienced from the voices of players, the noise of rackets and balls and balls hitting the centre court netting and perimeter fencing, amongst other possible noise sources. The courts which host floodlighting are centrally located within the appeal site and, with the exception of 'Kinnaird', are a notable distance to neighbouring properties.
8. The Noise Assessment finds that, when taking into account road traffic noise, the noise experienced during play would be marginally above the recommended Sport England noise guidelines. However, the noise was measured from within the site and adjacent to the boundaries with neighbouring properties. The position of the courts and the distance to neighbouring receptors would limit the noise which would be experienced during play. As such, the noise level to these properties during play would not be harmful, even if a group or class was utilising the tennis courts during this time.
9. Outside of play, noise would likely occur from people leaving the site. This noise would include voices, the closing of both clubhouse and vehicle doors, the sound

of car radios and the movement of vehicles from the car park, amongst other things. At a minimum, tennis players would take a short time to leave the courts and walk to their vehicle. Additionally, players may enter the clubhouse, therefore taking longer to leave the site. Therefore, vehicle movements would take place later at night and beyond 21:30. The Noise Assessment finds that post-play noise is notably above the Sport England maximum suggested decibel level.

10. However, the car park is relatively small and limited to a modest number of spaces. The manoeuvres and movements which would be experienced at any time would be limited due to the minimal space of the car park. This would reduce the overall noise of a vehicle which is likely to be moving at slow speed. Vehicles may also be parked on the road, or some players may use public transport. However, these vehicle movements would be small, and would only take place for a short period.
11. When walking to their vehicles or other means of transport, players may create noise through conversation. Whilst noise may be experienced through communication, this would be on the walk to each private vehicle or way home. As such, this would again be for a brief period, before the tennis players would leave the area.
12. I am also mindful that this car park and highway does not appear to be restricted in its operation. As such, during the time of year when days are lighter into the evening, users of the tennis club can already use the courts without floodlighting until the hours of darkness. In this context, users would be able to access the courts, the clubhouse and the carpark, beyond the current floodlighting hours. Therefore, this noise can be made without the assistance of floodlighting in lighter evenings. The Council note that numerous other uses, such as public house beer gardens and school playgrounds are more active in certain parts of the year than others. However, this does not take the use of external lighting, heat lamps and covered spaces into account which would allow for users of these examples to utilise these spaces in all parts of the year.
13. Turning to the effect of lighting beyond 21:00, the tennis courts in question are located centrally to the site. Therefore, the courts would be visible from neighbouring properties which surround the appeal site and some light could be reflected towards neighbouring properties due to their overall size and possible light intensity.
14. The property of 'Kinnaird' in particular is located close to the floodlighting. However, owing to the downward facing position of the lighting and the boundary treatments which surround the appeal site, I find that these considerations would reduce the effect of any possible light spill to a satisfactory level.
15. With regard to the other dwellings which surround the site, the downward lighting position, the boundary treatments such as the use of fencing and tall trees in places, and the significant distance to the lights, would reduce their overall effect. As a result, the extension of the floodlighting operation hours would not be at undue detriment to the living conditions of neighbouring occupants with regard to disturbance from light.
16. The extension of the operation hours of the flood lights would not adversely affect the living conditions of neighbouring occupiers. In light of decision APP/2014/0548, there is no reason to prevent their operation on Sundays.

Therefore, I conclude that the two disputed conditions as originally worded are not reasonable or necessary, in the interests of safeguarding the living conditions of neighbouring occupiers with particular regard to light spill, noise and disturbance. As such, there would be compliance with Policies HS15 and RE9 of the Unitary Development Plan (adopted February 2000). These policies state that proposals for floodlighting at sporting facilities will be assessed against their impact on residential amenity, which should not cause nuisance, particularly in respect of noise and disturbance, amongst other things.

Other Matters

17. Interested parties have commented that ecology, with specific regard to bats, could be harmed as a result of this proposal. In my assessment of this matter, I find that the proposal would not have a harmful effect on ecology.
18. Furthermore, any breach of planning conditions is a matter for the Council.

Conditions

19. The effect of allowing the appeal would be to grant a new planning permission separate from the original permission. Any conditions which were attached to the original permission would not automatically be carried over. I have considered the Council's suggested conditions and have had regard to these conditions in my decision. The wording to these previously imposed conditions has been amended where necessary as the floodlighting and associated apparatus has been installed. Comments on this matter were requested from both parties.
20. The first condition from the original permission, which relates to the timeframe in which the development should have begun, has not been included as it is no longer relevant. The work has been completed. It is necessary to attach a condition to reflect the new floodlight operation hours. I have restricted the hours of operation to 21:30, but on any day to reflect my findings above, whilst also complying with the Finney judgment. Conditions 1, 2, 4 and 5 are necessary for the reasons as stated on the original decision notice. I have however amended their wording because the floodlighting has been installed.

Conclusion

21. For the reasons set out above, I conclude that the appeal should succeed.

J Smith

INSPECTOR

Schedule of Conditions

- 1) The floodlights shall not be adjusted, with regard to their horizontal and vertical angles from those previously approved.
- 2) Replacement bulbs of different burning characteristics, different output, intensity, or reach to those previously approved, shall not be used.
- 3) The floodlights shall be switched off between 21:30 hours and 16:00 hours.
- 4) The lighting poles shall be painted hollybush green as indicated in the documents submitted under application APP/2001/6622 and shall be retained as such thereafter.
- 5) The type of lighting poles shall be in accordance with the details submitted under application APP/2001/6622.

End of Conditions