

**REPORT TO:** Planning Committee  
**MEETING DATE:** 6 February 2024  
**BY:** Executive Director for Place  
**SUBJECT:** Application for Planning Permission for Consideration

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***Note:** This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: This has been a contentious planning matter for some time...there remain unresolved concerns for some of the community most closely impacted. I feel it would be beneficial for all sides to have an opportunity to be heard and for the application to be decided upon by Councillors.*

***Note:** This application has been called off the Scheme of Delegation List by Councillor Collins for the following reason: To allow full discussion with local residents.*

Application No.     **23/01207/P**

Proposal             Installation of floodlighting

Location            **Winterfield Tennis Courts  
North Road  
Dunbar  
East Lothian  
EH42 1AU**

Applicant            East Lothian Council

Per                    Halliday Lighting

**RECOMMENDATION**            Consent Granted

## **REPORT OF HANDLING**

### **SITE CONTEXT**

This application relates to the three northernmost tennis courts (tennis courts 4, 5 and 6) of the six tennis courts of Dunbar Tennis Club, which are located on a southern part of Winterfield Park and, thereby, on the north side of North Road.

The courts, which are the subject of this planning application, comprise the northern three tennis courts of the block of six tennis courts that are enclosed by high wire mesh fencing that is green in colour. Additionally, there is a dividing length of fencing along the southern side of courts 4, 5 and 6; between those courts and courts 1, 2 and 3 to the south of them. The tennis courts are part of the large area of recreational and amenity open space of Winterfield Park. They are bounded to the north and east by other parts of the recreational and amenity open space of Winterfield Park. Further to the east is a row

of residential properties that have frontages with North Road. To the west of the tennis courts is the tennis club pavilion. Beyond that is a vehicle access, a car park and the residential property of Rowan Cottage. Beyond them are other parts of the recreational and amenity open space of Winterfield Park. To the south is the public road of North Road beyond which there are neighbouring residential properties.

There are trees and shrubs along the southern roadside boundary of the tennis courts with North Road. There are also trees along the western side of the block of 6 tennis courts.

The tennis courts and pavilion are within the Firth of Forth Site of Special Scientific Interest and the Belhaven Bay Special Landscape Area.

The nearest residential properties are Westwynds some 28 metres to the west, Forth View some 25 metres to the east and the properties of Aytonlea, Warkworth House and Greenbank that are some 9 metres to the south, on the south side of North Road.

## **RELEVANT PLANNING HISTORY**

In May 2012, planning permission (Ref: 12/00065/P) was granted for the installation of floodlighting for tennis courts 1, 2 and 3. The approved scheme consisted of a floodlight being positioned in each of the northwest, northeast, southeast and southwest corners of the block of the three tennis courts 1, 2 and 3 and 2 floodlights being positioned along each of the northern and southern sides of that block of three tennis courts. Planning permission 12/00065/P lapsed on 25th May 2017 without it having been implemented.

In April 2019, planning permission (Ref: 19/00141/P) was again granted for the installation of floodlighting for tennis courts 1, 2 and 3 in the same positions that were approved by planning permission 12/00065/P. Planning permission 19/00141/P has been implemented. Condition 1 of this planning permission states:

"The lamps on top of each of the eight lighting columns hereby approved shall at all times be positioned, directed and shielded so as to focus the light from them downwards onto the surface of tennis courts 1, 2 and 3 to the satisfaction of the Planning Authority. The lighting shall thereafter be maintained as such unless the Planning Authority gives written consent to any variation.

The design and construction of any proposed floodlighting shall take account of the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. In particular, the floodlighting hereby approved shall at all times comply with the following criteria:

Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of nearby residential properties, the character and appearance of the area."

In July 2023, planning permission (Ref: 22/00277/P) was refused for the variation of condition 1 of planning permission 19/00141/P to increase the amount of light trespass onto windows of neighbouring residential properties from not exceeding 5 Lux to not exceeding 10 Lux. Planning permission 22/00277/P was refused for the reasons outlined

below:

1. The increase in light spill levels from not exceeding 5 Lux to not exceeding 10 Lux is harmful to the amenity of nearby neighbouring residential properties. The proposed variation of condition 1 is therefore contrary to Policy 11 of NPF4 and Policy DP2 of the adopted East Lothian Local Development Plan 2018; and
2. The increase in light spill levels from not exceeding 5 Lux to not exceeding 10 Lux has a harmful impact on surrounding biodiversity and will not be minimised through careful planning and design. The proposed variation of condition 1 is therefore contrary to Policy 3 of NPF4 and Policy NH3 of the adopted East Lothian Local Development Plan 2018.

## **PROPOSAL**

Planning permission is now sought for the installation of floodlighting for tennis courts 4, 5 and 6.

As is proposed, the four southernmost floodlights (numbered M1 to M4 on the submitted site plan drawing) currently serving courts 1, 2 and 3 would be re-located to serve courts 4, 5 and 6 in a position along the most northern part of those tennis courts. Moreover, the remaining four floodlights (numbered M5-M8) which are located along the northern most end of courts 1, 2 and 3 would be re-positioned some 180 degrees to serve courts 4, 5 and 6.

No other changes to the existing floodlights are proposed.

## **DEVELOPMENT PLAN**

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018.

Policies 3 (Biodiversity), 4 (Natural Places), 6 (Forestry, woodland and trees), and 21 (Play, recreation and sport) of NPF4 are relevant to the determination of this application. Policies OS1 (Protection of Open Space), NH2 (Protection of Sites of Special Scientific Interest and Geological Conservation Review Sites), NH3 (Protection of Local Sites and Areas), DP2 (Design) and DC9 (Special Landscape Areas) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of this application.

## **REPRESENTATION**

Five objections and one representation to this application have been received. The main grounds of objection are:

- (i) the existing lights were extremely bright, totally out of keeping with the surrounding neighbourhood, in breach of the conditions imposed on the original consented planning application (Ref: 19/00141/P) and seriously affected the mental health, wellbeing and quality of life for many of the local residents;
- (ii) it has now been established, through the refusal of planning application 22/00277/P, that the brightness of the existing floodlights are causing unacceptable levels of light

pollution to surrounding properties and wildlife;

(iii) the re-location of the existing floodlights will still result in light pollution and light intrusion that will impact neighbouring residential properties in what is currently a dark area;

(iv) the glare and Lux intrusion that comes from the existing floodlights is unacceptable and thus, if re-located, they must be pointed downwards onto the tennis courts and not angled towards neighbouring properties;

(v) any baffles and cowls to reduce light spill should remain in place and put on all of the correct floodlights e.g. cowls on the furthest away floodlights and baffles on those nearest to neighbouring residential properties;

(vi) re-locating the floodlights further into Winterfield Park will have a greater impact on existing wildlife to the detriment of their natural feeding and breeding cycles, habitats and behaviour;

(vii) very few people benefit from using floodlights to play tennis in comparison to the number of people impacted by the light pollution;

(viii) this application should be subject to a full environmental impact study, modelling of light pollution levels, test and trials at key properties to ensure light levels are acceptable before any work commences;

(ix) consideration should be given to restrictions on the hours of use, limits on overall duration of use and the latest time the floodlights can operate that is controlled by a timing switch should planning permission be granted;

(x) other organisations use Winterfield Park (such as Friends of Winterfield, Cricket club, rugby and football training) and they should be consulted on this planning application;

(xi) if the application is to be approved conditions should be imposed to ensure that the lights cannot be used after 9pm and that the light spillage outside the actual tennis courts is kept to an absolute minimum; and

(xii) should the floodlights be re-located to serve courts 4, 5 and 6 assurances will need to be given to ensure that the light spill levels have been thoroughly checked and verified before they are used.

The representation received to this application raises concerns to the proposal to move the existing floodlights and fittings to a different section of the tennis courts to which it is claimed will only result in the same issues being displaced elsewhere. It states that should planning permission be granted it should be made a condition that (i) the light fittings be positioned, directed and shielded so that they focus downwards onto the courts; and (ii) that there is a restriction on light spill onto residential properties of no more than 5 Lux for most of the day and a lower reading e.g. 1 Lux for overnight. The hours considered as night-time might be from say 10pm to 7am.

## **COMMUNITY COUNCIL COMMENTS**

Dunbar Community Council, as a consultee to this application, state that they are aware of, and fully appreciate, the damaging impact that the current lighting arrangement, and the poor management of same, has had over the past years on some neighbours who live close to the tennis courts. They also state that they equally appreciate that many of the 250+ tennis club members, including juniors, rely upon artificial light to enable them to play and train during the darker months and the positive health and wellbeing impacts that this activity has.

They state that they see the current proposal as one that will ensure that light levels will be less than 5 Lux when the light spill reaches neighbouring properties and North Road and thus they support this application but ask that consideration be given to minimising potential of negative impacts through the imposition of the following conditions on a grant of planning permission:

- (a) the applicant to be obliged to meet or improve upon the designed light contour profiles, as submitted with the application;
- (b) the lights to be shrouded to ensure that the light is focussed on the playing areas and that side 'spill' outwith the court area is kept to an absolute minimum;
- (c) the Tennis Club provide assurances as to the way in which the lights are used to ensure that the minimum number of lights is used;
- (d) lights are not left on when there is no play; and
- (e) a curfew be agreed that would include a time for close of play and, possibly, at least one 'rest day', when there would be no evening play.

The matter of the light levels is addressed in the planning assessment below. With regards the Community Council suggestion that a curfew be agreed that would include a time for close of play and possibly at least one rest day with no evening play, as the lux levels of the proposed flood lights would not harm the residential amenity of neighbouring residential properties and are therefore acceptable, there is no justification for the imposition of a condition requiring a curfew or a rest day when the floodlights are not operated.

## **PLANNING ASSESSMENT**

Policy 21 of NPF4 seeks to encourage, promote and facilitate spaces and opportunities for play, recreation and sport. Policy OS1 states that such recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area.

By being part of the larger recreational and amenity open space area of Winterfield Park, all of the six tennis courts of Dunbar Tennis Club are covered by Policy 21 of NPF4 and Policy OS1 of the adopted East Lothian Local Development Plan 2018. However, the proposal the subject to this current application would not change the existing leisure and recreational use of the tennis courts at Dunbar Tennis Club. Rather, the installation of the floodlights for tennis courts 4, 5 and 6 would facilitate the continued use of the existing recreational facilities of Dunbar Tennis Club and thus the recreational use of this part of the land of Winterfield Park. Accordingly, the proposal does not conflict with Policy 21 of NPF4 or with Policy OS1 of the adopted East Lothian Local Development Plan 2018.

The floodlights would have a narrow, slim-line form and would measure some 10 metres high. When viewed from public places to the north, south, east and west they would be seen in the visual context of the tennis courts that they would serve and in the context of the existing trees and planting that are to the west and south sides of the block of six tennis courts. In this context, the proposed floodlights would not be inappropriate to their place from where they would not be unduly prominent, intrusive or incongruous features in their setting. A condition can be imposed on a grant of planning permission to require that if the proposed floodlights are to be painted, the colour of paint to be applied to them should be agreed in advance by the Planning Authority. Subject to this control, the proposed floodlights would not be harmful to the character and appearance of the tennis courts and would, by their architectural forms, scales, positions and external finishes, be compatible with their surroundings. They would not be harmful to the landscape character and appearance of the area and would not have an adverse impact on the Belhaven Bay Special Landscape Area. Accordingly, the proposal does not conflict with Policies DP2 and DC9 of the adopted East Lothian Local Development Plan 2018.

The applicant has confirmed that the floodlighting would be directed downwards onto the surface of tennis courts 4, 5 and 6. The nearest neighbouring residential properties are Westwinds some 35 metres to the west, Forth View some 40 metres to the east and the

properties of Aytonlea, Warkworth House and Greenbank some 52 metres to the south on the southern side of North Road. The trees along the south and west sides of the block of six tennis courts would provide some screening of the proposed floodlights when viewed from those residential properties to the west and south.

The **Council's Senior Environmental Health Officer** advises that, in order to overcome concerns associated with the proposed development and to ensure that the use of the floodlights do not result in a loss of amenity to the occupiers of neighbouring residential properties, it is recommended that light trespass from the proposed floodlights should not exceed the criteria contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. This would ensure that light trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700. This can be secured by a conditional grant of planning permission for the proposed development. It would also be prudent to exercise planning control to ensure that the lighting is directed downwards onto the surface of tennis courts 4, 5 and 6 so that it does not spill onto any neighbouring land and/or neighbouring residential property. Furthermore, the Council's Senior Environmental Health Officer also recommends that a lighting validation report be submitted to and approved in advance by the Planning Authority prior to the floodlights becoming operational. He advises that the validation report shall confirm that light trespass onto windows of neighbouring residential properties complies with the criteria set out above and, if necessary, shall specify mitigation measures to ensure that this criteria can be met. Subject to these recommended planning controls being made a condition on a grant of planning permission the Council's Senior Environmental Health Officer is satisfied that the proposed floodlights to serve tennis courts 4, 5 and 6 would not result in a loss of amenity to the occupiers of any neighbouring residential properties.

Subject to compliance with the above recommended conditions, the proposed floodlights would not harm the amenity of neighbouring land uses or any neighbouring residential properties.

The **Council's Biodiversity Officer** advises that the conditions recommended by the Council's Senior Environmental Health Officer will adequately mitigate the impact on the adjacent habitats and any wildlife within the vicinity and thus raises no objection to this planning application. Accordingly, the proposal does not conflict with Policy 3 of NPF4 or with Policy NH3 of the adopted East Lothian Local Development Plan 2018.

The **Council's Landscape Officer** advises that a condition was imposed on the grant of planning permission 19/00141/P to ensure that a method statement and arboricultural watching brief was agreed prior to the commencement of works to ensure that the cabling routes avoid cutting through any of the existing tree roots of the trees that run north to south adjacent to the western boundary of the application site. Accordingly, the Council's Landscape Officer advises that the same condition would again be relevant to this planning application. Subject to this recommended planning control, the proposed floodlights would not result in harm to the nearby trees.

The **Council's Sport, Countryside & Leisure Service** advise that the proposed floodlighting at Winterfield Tennis Courts will enhance the opportunity and development for tennis within the town and wider county. They state that it will support tennis at all levels and for all age ranges and as they support this application for the active and wellbeing opportunities it supports.

The **Council's Road Services** note that this proposal moves the existing lighting

arrangements further away from the public road and thus they raise no objection to this planning application.

The application site is within the Firth of Forth Site of Special Scientific Interest (SSSI). At this location, the SSSI is designated for its special geodiversity features - a series of extensive shore platforms, some of which predate the last glaciation. NatureScot, as a consultee to this planning application, advise that they have no comments to make on this proposal relating to the flood lighting placement and that there is no predicted impact on the SSSI from this proposal. Accordingly, it can be reasonably deduced that the proposal does not affect the SSSI and does not therefore conflict with Policy 4 of NPF4 or with Policy NH2 of the adopted East Lothian Local Development Plan 2018.

On these considerations, the proposed floodlights are consistent with Policies 3, 4, and 21 of National Planning Framework 4 and Policies OS1, NH2, NH3, DP2 and DC9 of the adopted East Lothian Local Development Plan 2018. Therefore, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

#### **CONDITIONS:**

- 1 The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason:

Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- 2 If the floodlighting columns and/or lamps are to be painted, a sample of the paint colour(s) to be applied to them shall be submitted to and approved in advance by the Planning Authority and thereafter the paint colour(s) applied to the floodlighting columns and/or lamps shall accord with the sample so approved unless otherwise approved by the Planning Authority.

Reason:

In the interests of preserving the character and appearance of the area.

- 3 The lamps on top of each of the eight lighting columns hereby approved shall at all times be positioned, directed and shielded so as to focus the light from them downwards onto the surface of tennis courts 4, 5 and 6 to the satisfaction of the Planning Authority. The lighting shall thereafter be maintained as such unless the Planning Authority gives written consent to any variation.

The design and construction of any proposed floodlighting shall take account of the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. In particular, the floodlighting hereby approved shall at all times comply with the following criteria:

Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of nearby residential properties, the character and appearance of the area.

- 4 Prior to any use being made of the floodlights hereby approved a lighting validation report shall be submitted to and approved in writing by the Planning Authority. The validation report shall confirm that light trespass onto windows of neighbouring residential properties

complies with the criteria set out in condition 1 and, if necessary, shall specify mitigation measures to ensure that this criteria can be met. The floodlights shall thereafter operate in accordance with the details and, if relevant, mitigation measures so approved.

Reason:

To safeguard the privacy and amenity of neighbouring residential properties in accordance with condition 3.

- 5 Prior to commencing the works the Council's tree officer shall be informed of the start date. The applicant and/or their contractor shall arrange a site meeting with the Council's tree officer prior to breaking ground and to agree a method statement and arboricultural watching brief throughout all trenching works. The applicant and/or their contractor shall accord with the Council's tree officer's instructions in respect of all works that may affect the existing trees and their roots.

Reason

To safeguard the existing trees and their root plates.