

## REPORT TO THE AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	25 June 2014
<b>Application Number</b>	13/05214/FUL
<b>Site Address</b>	Malmesbury Tennis Club Tetbury Hill Gardens Tetbury Hill Malmesbury SN16 9JP
<b>Proposal</b>	Additional Tennis Courts with Flood Lighting & Associated Works (Resubmission of 13/00526/FUL)
<b>Applicant</b>	Mr Miles Edmeston
<b>Town/Parish Council</b>	MALMESBURY
<b>Ward</b>	MALMESBURY
<b>Grid Ref</b>	392924 188118
<b>Type of application</b>	Full Planning
<b>Case Officer</b>	Lydia Lewis

### Reason for the application being considered by Committee

Councillor Killane has submitted a request for the planning application to be considered by the committee to allow Councillors to have the opportunity to hear neighbour concerns.

### 1. Purpose of Report

The main issues in the consideration of this application are the principle of development and the impact of the proposal on highways, residential amenity and ecology.

The application has generated objection from the Malmesbury & St Paul Without Residents' Association and letters of objection from 11 different properties. A petition in support has been submitted with 89 names. Letters of support have been received from Dyson, the Head of PE at Malmesbury Secondary school and the Headteacher of Malmesbury Church of England Primary School. Individual letters of support have been received from 26 different properties.

### 2. Report Summary

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

### 3. Site Description

The site is roughly 'L' shaped and is situated at the end of Tetbury Hill Gardens, a narrow private access road in poor condition with no footpath. The existing club benefits from three tennis courts, a clubhouse and a car park with space to park 8 vehicles.

### 4. Planning History

N/01/02272/FUL Erection of floodlighting for tennis courts – Permitted.

Condition 3 of the consent states:

*'The flood lights hereby permitted shall not be used before 09:00 hours nor after 21:00 hours on any day.'*

*Reason: In the interests of residential amenity.'*

N/13/00526/FUL Proposed replacement clubhouse, additional tennis courts, installation of additional flood lighting and associated works - Withdrawn

### 5. The Proposal

The applicant seeks consent for 2 additional full sized tennis courts and 1 mini court with flood lighting for each of the new courts and associated works including a new practice wall. Each tennis court would measure approximately 11 metres wide and 23.5 metres deep and be orientated on a north – south axis. The proposed mini court would be orientated on an east – west axis and measure approximately 5 metres wide and 10.5 metres deep. The practice wall would be situated to the west of the proposed mini court and would comprise a concrete block wall 10 metres wide, 2.5 metres high, painted green.

The previously withdrawn application included an extension to the car park facilitated by the demolition of the existing clubhouse and its re-siting elsewhere on site. These aspects of the proposal have now been removed.

The proposed use is for the members of the tennis club and Malmesbury Primary School. At present years 3 and 4 use the facilities, the school Head wishes to increase the age group and numbers of pupils using the coaching programme to include all age groups. Currently the junior programme takes up all the court space at present from 4:00 pm to 7:00 pm week days and all day Saturday, leaving limited play for adults. There has been an increase in the demand at all levels for tennis and the club has reached its capacity.

## **6. Planning Policy**

Saved policies from the North Wiltshire Local Plan 2011 (NWLP) represent the adopted development plan. Relevant policies include:

C3 – Development Control Policy

NE9 – Protection of Species

NE14 – Trees and the Control of New Development

NE18 – Noise and Pollution

T1 – Minimising the Need to Travel

CF2 – Leisure Facilities and Open Space

Draft Wiltshire Core Strategy Submission Document (July, 2012):

- Core Policy 60: Sustainable Transport
- Core Policy 62: Development Impacts on the Transport Network

The National Planning Policy Framework (hereafter referred to as NPPF).

## **7. Consultations**

Ecology – It is noted that the proposals for the additional courts are similar to the previously withdrawn application, but that the new club house and parking have been dropped. In this respect, no objection to the application is raised on ecological grounds subject to a suitably worded condition to address the potential impact of the tennis courts upon foraging bats.

Land Drainage Engineer – There are no known land drainage issues that require comment.

Environmental Health – Would consider supporting that the floodlighting on existing courts continue to go off at 9pm and new courts 9:30 pm subject to a condition if a guarantee can be provided from the applicants that these lights are on a timer that in no circumstances can be altered / extended by club members / players. Currently residents complain that lighting times can be overridden and sometimes stay on until 22:30/23:00 which is not acceptable. A noise report to satisfy that nearby residents will not be adversely affected by the newly created practise wall has not been submitted. Even though one wall has been removed from the plan such a report would still be expected. Alternatively, the Council could grant a temporary 12 month permission for the practise wall and 21:30 light curfew on the new courts to test the impact. A condition relating to hours of construction is recommended.

Tree officer – No objection subject to conditions.

Highways – Objections were initially received due to the increased use of a substandard access track, with no passing places and a substandard junction onto the C68 (Tetbury Hill). However, following lengthy negotiations, highways have now confirmed that the submitted travel plan is acceptable and addresses previous concerns.

## 8. Publicity

The application was advertised by site notice and neighbour consultation.

Letters of objection have been received from 11 different properties. The concerns raised are summarised as follows:

- The documentation highlights the fact that Malmesbury Primary School will allow parking and access to the tennis courts using the schools' car parking facilities. Surely this will only be available in term time and could be withdrawn at any time;
- Where will additional cars park, if on Tetbury Hill this would be dangerous, especially around school drop off / pick up times;
- Tetbury Hill Gardens lane is an unadopted lane / track that has an uneven potholed surface and is not suitable for parking;
- Tetbury Hill Gardens exit onto Tetbury Hill is dangerous and is not suitable to have an increase in traffic;
- Planning permission was refused in 2001 (ref: 01/02266/OUT) and dismissed at appeal in 2004 (ref: 04/02000/OUT and APP/J3910/A/04/1167307) for further dwellings on Tetbury Hill Gardens due to highway safety;
- Increase in light pollution from the proposed floodlights;
- The existing floodlights are often operated until 10 pm and later than they have permission for;
- Increase in noise pollution;
- Impact on animals that inhabit the area;
- Trees were removed when the club bought the land;
- Proposed 8 foot high walls across the whole frontage of The Cott will dramatically alter the existing eco-system which has been cultivated over many years;
- Damage to the countryside to the west of Malmesbury. The proposal will disturb this distinctive rural area and dark environment;
- The use of practice walls would be uncontrollable by the club, as the courts are left unlocked with gates often ajar at present, and are accessible by youths even if locked;
- Although reference to additional car parking has been removed from the application, the gravelled areas within the club have been widened and resurfaced and is available for overflow parking;
- Cars may drop players off and then depart, returning later to collect them, doubling the number of journeys along the track;
- There are no street lights, drainage system or pavements in Tetbury Hill Gardens;
- The use of the 5 full size tennis courts at Malmesbury School should be investigated;
- Roe Deer make their home in the immediately adjacent land to the north as well as badgers and foxes. Roe Deer are often seen in the neighbourhood. Pairs of deer are often observed feeding and walking slowly across the site of the proposed expansion of the tennis club;
- The travel plan encourages extra parking on a dangerous stretch of road, relies on voluntary compliance, and is not enforceable in the long term;
- On average, 90% of players travel to Malmesbury Tennis Club by car, alone;
- Sunday club mornings and club evenings produce the heaviest traffic volumes; and
- Insufficient parking.

Letters of support have been received from 26 different properties. The points raised are summarised below:

- Malmesbury has very limited sporting facilities for the number of people in the town and surrounding area. Would allow the club to grow in line with recent residential development;
- The facilities offered are used by a large number of people of all ages, including the Malmesbury Schools;
- The tennis walls are a good way for beginners to practice and for warming up;
- The club has been at the site since 1934;
- Would allow for less waiting time for players, more coaching opportunities and reduce travelling 12 miles or more to a bigger club;
- The Wiltshire Core Strategy defines Malmesbury as a Market Town that ‘will continue to serve as an important service and employment centre for the community area.’ The expansion of the club is consistent with this Strategy and is explicitly endorsed by the Neighbourhood Plan;
- The club has achieved the Lawn Tennis Association Clubmark accreditation;
- The club is committed to creating solutions to the neighbouring residents’ concerns; and
- There are already 2 courts with floodlights so 2 more further away from the residents’ dwellings cannot pose a problem.

A petition in support of the application with 89 names has been received.

Letters of support have been received from Dyson, the Head of PE at Malmesbury Secondary school and the Headteacher of Malmesbury Church of England Primary School.

Malmesbury & St Paul Without Residents’ Association – The Association as a general rule tries to support the clubs and organisations in the town, however on this particular occasion the Association believes the impact upon local residents’ amenity and the deterioration in the highway safety environment that would occur if this proposal went ahead, leads them to register their opposition to the application. The draft Neighbourhood Plan suggests that land reassembly options exist in the vicinity of the Club that could both assuage the local residents’ amenity concerns and improve the traffic access issues and the Neighbourhood Plan should guide any redevelopment of the Club.

## **9. Planning Considerations**

### Principle of Development

Policy CF2 of the Local Plan states that proposals for leisure facilities and open space within or adjoining the Framework Boundaries of Towns and Villages as defined on the Proposals Map will be permitted. The reasoned justification to this policy makes it clear that proposals, no matter how desirable from a social and community point of view, will need to be sympathetically designed to take account of adjoining properties and the area in general.

Paragraph 70 of the NPPF states that to deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: plan positively for the provision and use of shared space, community facilities (such as sports venues) the sustainability of community and residential environments; and ensure that established facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community.

The draft Malmesbury Neighbourhood Plan makes it clear that a key objective for play parks and leisure facilities is to support Malmesbury Tennis Club expansion and ensure this

expansion is in harmony in both size and build with the development and also the Primary School extension.

The application site adjoins the defined Settlement Framework Boundary for Malmesbury. The proposal relates to an existing tennis club which has a long established use on this site and from the letters of support received it can be seen that it is an important facility for youth activity and sport development.

### Impact on Highways

Policy C3 of the Local Plan states that new development will be permitted subject to a number of criteria, including amongst other things: have a satisfactory means of access, turning, car parking and secure cycle storage and not result in a detrimental impact upon highway or pedestrian safety.

A letter has been received from Dyson stating that they support plans to increase the availability of tennis facilities to all members of the local community. It further states that they will give permission for tennis club members to use its Beuttell Way car park on Saturdays and Sundays until further notice. However, Dyson accept no responsibility for any loss or damage that may arise from the use of the car park by those attending the tennis club. If necessary, Dyson may revoke permission to use the car park at any time and without notice (though there are no current facts which lead Dyson to believe that the permission will be so revoked).

A travel plan has been submitted in support of the application. This confirms that membership is just under 200 and over 50% of the club's members live within 15 minutes walking distance of the club. It is anticipated that the club membership may grow by 50% in 5 years, however the majority of these are likely to be people joining who already use the facility as non-members.

A traffic survey was undertaken to inform the travel plan and identify the busiest and most concentrated events that result in movements to and from the Club:

- Saturday morning pay and play sessions;
- Holiday tennis camps; and
- Weekday junior coaching.

The travel plan outlines that to reduce the number of traffic movements, the Club intends to lock the car park for the Saturday pay and play sessions and holiday tennis camps.

In terms of the weekday coaching, the Club intend to stagger lessons, with a 15 minute gap between the end of one lesson and the beginning of another reducing the number of cars driving in opposite directions down the lane. The Club is also in negotiations with the burial board to provide a third passing place.

All new members of the Club will be encouraged to use the nearby long stay pay and display car park (approximately 560 metres to the south east) or the Primary School car park ensuring that an off-site parking habit is established from the outset of any new membership.

On balance, when weighed against the wider community benefit that would arise from the proposal, it is not considered that the introduction of a further 2 full sized tennis courts and 1 mini court would exacerbate the existing situation in respect of the private road to such an extent as to create material harm to highway safety or warrant refusal of planning permission.

### Impact on Amenity

Policy C3 of the Local Plan considers that new development will be permitted subject to a number of criteria, including amongst other things: avoid locations that would generate, or be subject to, a detrimental effect upon public health or pollution to the environment by the emission or production of excessive noise, light intrusion, smoke, fumes, effluent, vibration, waste or litter.

Policy NE18 of the Local Plan states that development will only be permitted where it would not generate, or itself be subject to, harm upon public health or cause pollution to the environment by the emission of excessive noise, light intrusion, smoke, fumes, other forms of air pollution, heat, radiation, effluent or vibration.

The original proposals included an additional practise wall to the north of the existing courts. Following concerns raised by the Environmental Health team, this wall has been removed from the proposals. A practise wall is still proposed to the west of the site, approximately 110 metres from the nearest residential property. No noise survey has been submitted. The Environmental Health team have recommended that in the absence of a noise report, a temporary 12 month permission be granted.

The existing tennis courts which are situated approximately 23 metres from the nearest residential property at their closest point benefit from existing floodlights, which have consent through application reference 01/02272/FUL to be operated until 21:00 pm. The proposed tennis courts, would be situated approximately 62 metres from the nearest residential property at their closest point and seek consent to operate until 21:30 pm. This is a reduction from the 22:00 pm originally proposed. A lighting survey has been submitted in support of the application.

The Council's Environmental Health team have stated that they would consider supporting that the floodlighting be turned off at 21:30 pm on the new courts if the applicants can guarantee that these lights are on a timer that in no circumstances can be altered / extended by club members / players.

The agent has confirmed that the proposed floodlights would be turned off at 21:30 pm and the existing floodlights by 21:00 pm by timer, these times will not be altered or extended by players or club members. They have also confirmed agreement to the practise wall and 21:30 light curfew being given a 12 month temporary permission to test the impact. It is recommended that conditions to this effect are attached to any planning consent.

### Impact on Ecology

An Extended Phase 1 Habitat Survey has been submitted in support of the application. The Council's Ecologist has reviewed this and has confirmed that no objection is raised on

ecological grounds subject to a suitably worded condition to address any potential impacts on bats.

## **10. Conclusion**

The proposed additional tennis courts, practice wall and floodlights would create additional traffic movements, and result in a degree of noise and light pollution. This must be weighed against the wider community benefit that would arise from the proposed development and on balance it is not considered that the harm caused would (subject to the necessary conditions) cause such significant harm as to warrant the refusal of planning consent. With regards the practice wall and floodlights it is recommended that these are approved on a temporary 12 month basis to test the impact.

## **RECOMMENDATION**

To recommend that planning permission be GRANTED subject to the following conditions:

- 1 The development of the tennis courts and mini court hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2 The practice wall and floodlights hereby approved shall be discontinued and the land restored to its former condition on or before a date 12 months from the date of this permission in accordance with a scheme of work, including a timetable for restoration, first submitted to and approved in writing by the Local Planning Authority.

REASON: The use may be potentially detrimental to the amenities of neighbouring occupiers in terms of noise and light pollution, but there is insufficient evidence to enable the authority to be sure of its effect.

- 3 The floodlights hereby approved shall not be illuminated outside the hours of 09:00 to 21:30 on any day and shall be controlled on a timer.

REASON: In the interests of residential amenity.

- 4 During the construction phase no machinery shall be operated, no process shall be carried out and no delivery shall be taken or dispatched from the site outside of the following hours; Monday to Friday 07:30 to 18:00, Saturday 08:00 to 13:00, nor anytime on Sundays or public holidays.

REASON: In the interests of residential amenity.

- 5 All development shall be carried out in accordance with the recommendations set out in Section 4 of the submitted Ecological Appraisal (Clarke Webb Ecology Limited, 8th November 2012), unless otherwise agreed in writing with the Local Planning Authority.



REASON: To safeguard protected species during the construction phase of development.

- 6 No demolition, site clearance or development shall commence on site until an Arboricultural Method Statement (AMS) prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees shall be submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following: -

" A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2012 and a plan indicating the alignment of the protective fencing;

" A specification for scaffolding and ground protection within tree protection zones in accordance with BS5837:2012

" A schedule of tree works conforming to BS3998.

" Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;

" Plans and particulars showing the siting of the service and piping infrastructure this should also include details of the floodlighting;

" A full specification for the construction of any no-dig specification and extent of the areas to be constructed using a no-dig specification;

" Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and

" Details of all other activities, which have implications for trees on or adjacent to the site.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

- 7 (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

(b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

(c) No equipment, machinery or materials shall be brought on to the site for the purpose of the development, until a scheme showing the exact position of protective fencing to enclose all retained trees beyond the outer edge of the overhang of their branches in accordance with British Standard 5837 (2012): Trees in Relation to Construction, has been submitted to and approved in writing by the Local Planning Authority, and; the protective fencing has been erected in accordance with the approved details. This fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later.

REASON: To enable the local planning authority to ensure the retention of trees on the site in the interests of visual amenity.

8 The development hereby permitted shall be carried out in accordance with the following approved plans:

- 3684/05 - Site location plan, date stamped 22nd October 2013
- Tree Constraints Plan, May 2014
- 3684/51 Rev C - Existing and proposed site layouts & existing photographs, received 2nd April 2014
- Malmesbury Tennis Club Travel Plan, received 3rd June 2014

REASON: For the avoidance of doubt and in the interests of proper planning.

INFORMATIVE:

Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

