

Application Number	2022/2434/VRC
Case Officer	Nikki White
Site	Millfield School Butleigh Road Street Somerset BA16 0YD
Date Validated	15 December 2022
Applicant/ Organisation	Mr Craig Richardson Millfield School
Application Type	Variation or Removal of Conditions
Proposal	Application to vary conditions 2 (Plans List) and 5 (Floodlights - Hours of Illumination) of planning approval 2019/1949/FUL.
Division	Street Division
Parish	Street Parish Council
Recommendation	Refusal
Divisional Cllrs.	Cllr Simon Carswell Cllr Liz Leyshon

3. **What3words:**

The application site can be found by entering the following into <https://what3words.com/>

brush.gymnasium.capillary

Scheme of Delegation:

In accordance with the scheme of delegation, this application has been referred to the Chair and Vice Chair of the Planning Committee. This is because the application is recommended for refusal and the Town Council supported the application. The Ward/Divisional Members made no comments as part of the consultation process.

Following referral, the Chair of the Planning Committee confirmed the application should be determined at committee.

Description of Site, Proposal and Constraints:

This application relates to the variation of conditions 2 (Plans List) and 5 (Floodlights - Hours of Illumination) of planning approval 2019/1949/FUL. 2019/1949/FUL permitted replacement floodlights on 20.11.2019. The floodlights serve the athletics

track, which is to the east of the senior school campus and west of Butleigh Road. The proposal seeks to extend the hours of use for the lights from 8am until 10pm as permitted under 2019/1949/FUL to 6am until 10pm – allowing 2 extra hours of light in the mornings. The proposal also seeks permission to add further lighting to poles T4, T5 and T6 on the south side of the athletics track to light the football pitch to the south.

Hedgerow, which is a priority habitat, is located on the northern, southern and eastern boundaries of the site. There is a bank between the athletics track and the football pitch, meaning these features sit at different levels. The agent summarises the proposed changes to the lighting poles thus:

“3.1 The proposal is for the addition of new lights to the rear of poles T4, T5 and T6 on the south side of the athletics track to provide illumination of the grass football pitch and enable it’s use during the winter periods of shorter daylight hours. Given the varying levels these additional lights would be at 13.28m height above the football pitch ground level and at 18.3m above the athletics track level. They would be shielded LED lights with a cut-off of upward light as shown in the submitted documents and as per the specification of the existing floodlights at the site.”

In terms of planning constraints, the site is part of the Millfield Senior School playing fields, and it is included in the Greenspace SPD. Trees and hedgerows run along the south and east of the site, which are a Priority Habitat. The site falls within the SSSI Impact Risk Zone. The southern part of the site is within Flood Zone 2 and 3. The site is within the Somerset Levels and Moors Ramsar Risk Area.

Relevant History:

There is extensive planning history at this site, including many applications for minor works and advertising. Key decisions relevant to this application include:

- 009837/008 - Proposed improvements to floodlighting to existing playcourt. Approved with conditions 03.12.1987.
- 101250/037 - Formation of all-weather floodlit athletics track with lavatory facilities & judges hut. Approved with conditions 08.12.1987
- 2014/0772/FUL - Proposed car park alterations and extension, reconfiguration of access approach, installation of external lighting and creation of a new field access gate. Approved with conditions 09.10.2014.

- 2015/1143/FUL - Proposed Car Park Alterations & Extension, Reconfiguration of Access Approach, Installation of External Lighting & Creation of A New Field Access Gate. Approved with conditions 03.07.2015.
- 2019/1949/FUL - Replacement floodlights - Approved with conditions 20.11.2019

Summary of Ward Councillor Comments, Town Council Comments, Representations and Consultee Comments:

Divisional Members: no comments received

Street Parish Council: support

- As there would be minimal disturbance to the ecological environment and while the Environment and Community document referred to measures the Council may take under Statutory Nuisance provisions of Part III of The Environmental Protection Act 1990 and the provisions of the Anti-social Behaviour, Crime and Policing Act 2014, if the lighting were to encourage any unwanted behaviours, it was unanimously approved.

Environmental Protection: no objections

- We have no objections to this proposal, however, the applicant is reminded that compliance with the conditions attached to this consent or the legitimate use thereof, does not preclude the Council from taking action under legislation intended to protect quality of life including inter-alia; the Statutory Nuisance provisions of Part III of The Environmental Protection Act 1990 and the provisions of the Anti-social Behaviour, Crime and Policing Act 2014.

Somerset Ecology Services: objection (summary of comments, including written and verbal comments)

- The Illumination Summary lighting assessment does not demonstrate that areas to be lit will not disturb or prevent bats using their territory (hedgerow, trees and woodland edge). In addition, the proposed lighting does not provide enough buffer between the boundary habitats (hedgerow, trees and woodland edge).
- The use of asymmetric beam floodlights orientated so that the glass of the luminaries is positioned parallel to the ground is recommended. Lighting levels of 3 Lux or less where feasible and 0.5 lux where directly adjacent to woodland hedgerow and tree lines, so as not to have a negative impact on

foraging and bats (or dormice). Further guidance is given in Step 5 of Guidance Note 08/18- bats and artificial lighting (ILP and BCT 2018).

- The agent's late suggestion of potentially amending the scope of the proposal to exclude the additional lighting and propose additional hours of use only would still require the applicant to demonstrate the proposal would be acceptable in ecological terms, which has not been achieved.

Local Representations:

No other representations have been made.

Full details of all consultation responses can be found on the Council's website www.mendip.gov.uk

Summary of all planning policies and legislation relevant to the proposal:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

The Council's Development Plan comprises:

- Mendip District Local Plan Part I: Strategy and Policies (December 2014)
- Mendip District Local Plan Part II: Sites and Policies – Post JR Version (December 2021)

The following policies of the Local Plan Part I are relevant to the determination of this application:

- CP1 - Mendip Spatial Strategy
- CP3 - Supporting Business Development and Growth
- CP7 - Glastonbury Town Strategy
- DP1 - Local Identity and Distinctiveness
- DP4 - Mendip's Landscapes
- DP5 - Biodiversity and Ecological Networks
- DP6 - Bat Protection
- DP7 - Design and Amenity of New Development
- DP8 - Environmental Protection
- DP16 - Open Space and Green Infrastructure

- DP17 - Safeguarding Community Facilities
- DP23 - Managing Flood Risk

Other possible Relevant Considerations (without limitation):

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG) including Light Pollution
- Landscape Assessment of Mendip District (1997)
- Mendip District Landscape Character Assessment (2020)
- ILP Guidance Note 01/21 'The Reduction of Obtrusive Light' (2021)
- ILP Guidance Note 08/18 'Bats and artificial lighting in the UK' (2018)
- Information from the Bat Conservation Trust on Bats and artificial lighting in the UK, and Eurobats Guidelines for consideration of bats in lighting projects
- The Chartered Institution of Building Services Engineers (CIBSE) – Society of Light and Lighting (SLL) Code for Lighting
- The Chartered Institution of Building Services Engineers (CIBSE) – Society of Light and Lighting (SLL) Lighting Guide 6: The Exterior Environment
- Conservation Area Assessment of Glastonbury (2010)
- Mendip Greenspace SPD (February 2023)

Assessment of relevant issues:

Principle of the Use:

S.73 of the Town and Country Planning Act (1990) states that, "on such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted". A wider reassessment of the scheme as a whole is therefore unnecessary and beyond the scope of this application. The only matters that may be considered in respect of the current application therefore are those planning issues raised by the amendments which in this case relate to conditions 2 (Plans List) and 5 (Floodlights - Hours of Illumination) of planning approval 2019/1949/FUL.

Core Policy 1 (CP1) of the adopted "Mendip District Local Plan - Part 1" says that to enable the most sustainable pattern of growth for Mendip District, the majority of development will be directed towards the five principal settlements (Frome, Shepton Mallet, Wells, Glastonbury and Street).

The application site is within the development limits of Street within a well established school site. The application relates to lighting which has already been

permitted. The principle of development (changes to the conditions) is therefore acceptable.

There are no other conditions which would in principle prohibit the change of conditions as proposed.

Character and Appearance:

Documents permitted as part of 2019/1949/FUL include 3 different plans for lighting relevant to this application, including 198936P1 (1), 198936P1 (2) and 198936P1 (3). These all show an 18.3m tall pole with 6 lights set horizontally being positioned at varying angles. The proposed revised plan, which is described in the application submission as having additional lights, shows:

- 4 lights in a row in one view (assumed north towards athletics track) – it is unclear why 6 lights are not shown as permitted under 2019/1949/FUL
- 3 attached to the pole in different directions in another view
- 1 in a third view (assumed south facing football pitch)

Following a request for clarification, the agent has responded as follows:

“The submitted plan (L-R) shows:-

- *Left - Existing floodlights on north side of poles illuminating athletics pitch*
- *Centre – Single light and existing lights viewed from a roughly east direction (where you would see the profile of the all lights – front and back)*
- *Right – Appearance of single light to illuminate football pitch (as viewed from south direction)*

The new single lights fixtures would be mounted at the top of the existing 18m pole but due to the height difference between the 2 fields we show that the actual elevation of what is light is 13.28, so about a 5m difference between the two pitches.”

The plans and supporting information remain unclear in relation to the details of the changes and the associated specifications. As this application is recommended for refusal (see below) further clarification has not been sought in this case. Should the applicant resubmit another application in future, they are advised to include clear plans, supporting information and specifications.

Notwithstanding the above, the application confirms there would be no proposed increase to the height of the floodlights, additional lighting is proposed, and

increased hours of use in the mornings are proposed (starting from 6am rather than 8am).

On balance, due to the context of the site, the scale and scope of changes in the proposal are concluded to be acceptable in relation to impact on the character of the area.

Ecology:

The application has been accompanied by an Ecological Assessment (EA) prepared by Richard Green Ecology, which includes a bat survey. This considers implications for the development as proposed as well as another proposal for a new pedal court, which does not form part of this application.

As part of the bat survey, activity from 9 bat species was recorded across 2 detector locations. The EA also identifies trees to the north of the athletics tracks with moderate potential for roosting bats; confirms the hedgerows provide landscape connectivity for bats; and confirms the hedgerow provide potential foraging areas for bats. Bats are a statutorily protected species.

Extract from EA:

“Of the areas surveyed using static detectors, the link road hedge showed the highest levels of bat activity, indicating that this hedgerow with mature trees forms a screen and barrier to the street lighting and noise from the link road. The hedgerow and mature trees to the north of the athletics track is likely to provide good cover for commuting and foraging bats, and direct roosting habitat may be provided by mature trees. The hedgerows to the east and south of the athletics track and playing field were shorter, it is likely that these hedges are used for foraging.”

In relation to hazel dormice, the EA concludes:

“There are records of hazel dormouse in a hedge approximately 700 m to the west of the athletics track. The hedgerows on the site are somewhat connected to the wider hedgerow network, and it is possible that hazel dormice are present on the site. However, considering the availability of more suitable habitat in the wider area, the site is considered to be no more than local ecological value for hazel dormouse, if present.”

The EA concludes there would be low risks/impacts to hedgehogs, badgers, amphibians and great crested newts. This has not been disputed by the Somerset Ecologist.

In relation to invasive species, the EA confirms species are present on the site, and recommends removal. The recommendation to remove invasive species is supported.

“There was one small patch of montbretia Crocosmia x crocosmiiflora along the wire fence to the north of the athletics track, and another small patch of montbretia at the base of the hedgerow to the south of the playing field. There was also cotoneaster Cotoneaster horizontalis along the fence to the west of the athletics track.”

Proposed mitigation as set out in the EA includes enhanced planting in the hedgerow to the east of the athletics track to increase foraging opportunities for bats, birds and dormice; installation of 1 bat box; and invasive species removal and disposal.

A lighting assessment prepared by Musco Lighting has also been submitted which includes light spill figures. This also shows coloured isolux contour lines. The Somerset Ecologist has referred to Guidance Note 08/18- bats and artificial lighting (ILP and BCT 2018) and confirmed *“Lighting levels of 3 Lux or less where feasible and 0.5 lux where directly adjacent to woodland hedgerow and tree lines have been previously recommended, so as not to have a negative impact on foraging and bats (or dormice).”* At the southern boundary of the site, the lighting assessment shows levels would be at as high as 37lux.

Following several rounds of consultation with the Somerset ecologist, and several submissions of justification reiteration from the applicant and their consultant ecologist, the Somerset Ecologist has maintained an objection to this proposal. Lighting levels remain at significantly above 3lux.

Following confirmation of the recommended refusal, the agent has suggested the application could be amended to remove the proposed additional lighting and apply to only extend the operating hours. Another consultation discussion was therefore undertaken with the Somerset Ecologist to consider this. This confirmed such an application would still need to demonstrate floodlighting at for longer periods would be acceptable in ecological terms, and this has still not been demonstrated.

Following lengthy discussions with the agent and Somerset ecologist, this application (which was not subject to pre application) should now be determined.

In conclusion on this matter, this application cannot demonstrate that suitable lighting levels can be achieved, which would not harm protected species. Surveys have shown bats use this rural area for commuting and foraging, with potential roosts sites nearby. The proposal is therefore contrary to Local Plan Part 1 policies DP1 and DP2 as well as part 15 of the NPPF.

Impact on Residential Amenity:

Due to the scope of the development proposed and the distance from residential properties, this proposal is considered acceptable in relation to the amenities of any occupiers or adjacent occupiers through loss of light, overshadowing, overbearing impact, loss of privacy, noise, odour, traffic or other disturbance. The proposal accords with Policy DP7 of the adopted Local Plan Part 1 (2014) and Part 12 of the National Planning Policy Framework.

Environmental Impact Assessment:

This development is not considered to require an Environmental Assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Equalities Act:

In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Conclusion:

The application is concluded to represent harm to protected species (bats and dormice) due to the high lighting levels in areas likely to be used for habitat, commuting and foraging. The proposal is therefore contrary to local and national policy, and recommended for REFUSAL.

Recommendation

Refusal

1. The proposal, due to its light spill in area known bat commuting and foraging habitat would result in an unacceptable impact upon the Favourable Conservation Status of protected species (namely bats as well as dormice) and the Mells Valley Special Area of Conservation, and therefore the proposal is not compliant with the Conservation of Habitats and Species Regulations 2017 (as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019). Furthermore, the development conflicts with Policies DP5 and DP6 of the Mendip District Council Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and Part 15 of the National Planning Policy Framework 2021.

Informatives

1. In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Policy Framework. The submitted application has been found to be unacceptable for the stated reasons and having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision.
2. This decision relates to the following documents, all received 14.12.2022:
 - o 198936P1 - POLE CONFIGURATION DRAWING
 - o EXISTING SITE PLAN
 - o LOCATION PLAN
 - o PROPOSED SITE PLAN
 - o LIGHT STRUCTURE SYSTEM