

<b>Agenda Item</b> A18	<b>Committee Date</b> 28 September 2009	<b>Application Number</b> 09/00681/RCN
<b>Application Site</b> Bowerham Tennis Club Barton Road Lancaster Lancashire	<b>Proposal</b> Removal of condition 4 on application 08/01007/FUL relating to screen fencing	
<b>Name of Applicant</b> Bowerham LTC	<b>Name of Agent</b> Mr Christopher Adams	
<b>Decision Target Date</b> 28 September 2009	<b>Reason For Delay</b> Committee cycle	
<b>Case Officer</b>	Mr Martin Culbert	
<b>Departure</b>	No	
<b>Summary of Recommendation</b>	Refusal	

## **1.0 The Site and its Surroundings**

1.1 The site is located at the east side of Burrow Beck, to the rear of residential properties fronting Barton Road and Brookside. To the north lies a house in large wooded grounds, while to the east and south the site is bounded by woodland and open fields.

## **2.0 The Proposal**

2.1 This proposal is a full application to remove condition number 4 on planning permission 08/01007/FUL. That permission relates to the erection of floodlights to courts 3 and 4 at Bowerham Tennis Club, Barton Road, Lancaster and was granted by Committee in October 2008 subject to a number of conditions. These were intended to minimise the impact of the lights and the resultant increase in the use of the courts on the amenities of the neighbouring residents. Condition number 4 requires a screen fence/noise barrier be erected along the entire back side of both western courts before the development is brought into use, in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority, and thereafter retained.

2.2 This screen was thus intended to run along the entire length of the courts, between them and the adjacent Burrow Beck Watercourse, to screen the courts from the neighbouring houses and gardens.

2.3 As can be seen from the response of the Environment Agency, they would not allow the fence to be constructed. Hence the applicants are seeking the removal of this condition.

## **3.0 Site History**

3.1 The site has a long established use as a tennis club for over 80 years and in 1987 permission 01/87/0079 was granted for the floodlighting of courts 1 and 2. This involved four 10m high columns

supporting twin 400w sodium lights per column and was granted subject to an evening use limit of 11:00 pm. This lighting was in place until earlier this year and gave rise to considerable impact on the neighbour's residential amenity through light spill.

3.2 Permission 08/01007/FUL was granted in October 2008 for the floodlighting of courts 3 and 4 with lower and better designed lights with considerably less spill and impact on neighbouring amenities. This permission was implemented earlier this year and the floodlights on courts 1 and 2 changed to match at the same time to reduce the overall impact of the club's floodlighting to modern standards. All conditions have been complied with other than condition number 4.

#### **4.0 Consultation Responses**

4.1 The following responses have been received from statutory consultees:

<b>Statutory Consultee</b>	<b>Response</b>
<b>Environmental Health Service</b>	In view of the content of letters objecting to this proposal, the EHS object to the removal of condition 4, relating to screen fencing.
<b>Environment Agency</b>	Burrow Beck is designated Main River and EA consent is required for any works within the 8m casement. In this case they require clear, unimpeded access to the water course (in the limited space currently available) and consent would NOT be granted (for the screen fence required by the condition).
<b>County Highway Authority</b>	No Comments.

#### **5.0 Neighbour Representations**

5.1 The 10 neighbouring dwellings adjacent to courts 3 and 4 were consulted regarding this proposal. Objections were received from three adjacent properties whose rear garden boundaries lie opposite to the northern two thirds of the length of the courts 1 and 3 adjacent to the beck. Only two other neighbours have boundaries contiguous with the beck and this close to the remaining length of the courts.

5.2 The majority of neighbours directly affected by this proposal have therefore objected on the following grounds:

- Prolonged nuisance from the loud noises, arguments and swearing and loss of privacy from increased use due to additional floodlighting;
- Inadequate effort has been made to find an alternative solution which would be acceptable to the Environment Agency;
- The existing screening does not stop noise but does give privacy and this at least should be retained as a last resort. However a more sound deadening, flexible screen on the line of or attached to the existing netting to stop directed verbal abuse and give visual privacy, should be pursued with the Environment Agency and provided if possible.

#### **6.0 Principal Development Plan Policies**

6.1 The site is within an area allocated as Urban Greenspace in the Lancaster District Local Plan.

#### **7.0 Comment and Analysis**

7.1 The statements contained in the application relating to a previous consultation exercise do not appear to be entirely accurate, given that the majority of those consulted did not respond, but were directly affected by this particular issue and proposal. The statements are therefore to some extent misquotes. There clearly is a problem in achieving a solution to the requirements of condition 4 which is acceptable to the Environment Agency. However, no information has been provided to show what, if any, alternatives to the erection of a solid timber screen fence along the side of the beck have been properly investigated in terms of availability and consultation and explored with the Environment Agency.

7.2 In these circumstances therefore, it is considered that the lifting of Condition 4 cannot be justified in the face of the representations from neighbours and the advice from the EHS. Further more, it should be noted that the removal of this condition would allow the removal of the existing experimental screen netting which already exists opposite those properties who have objected to this proposal. The neighbours clearly consider this protection to be better than nothing and that it should be retained if no other more substantial solution can be achieved.

## **8.0 Conclusions**

8.1 In the light of the evidence provided and the representations of neighbouring occupiers, there is no adequate justification for the removal of this condition. In reaching this recommendation Officers have also considered the impact of the increased use of the courts as a result of the installation of additional floodlighting, and therefore it is such that condition 4 should be retained and the best possible solution obtained before the condition can be discharged.

8.2 It is considered therefore, that this proposal should be resisted.

## **Recommendation**

That Planning Permission **BE REFUSED** for the following reasons:

1. The retention of the development approved under application no 08/01007/FUL without compliance with the requirements of Condition 4 would be detrimental to the amenities of neighbouring residential occupiers. The Local Planning Authority do not consider that sufficient evidence has been put forward to show that compliance with the requirements of the condition cannot be achieved in some acceptable and worthwhile manner or that compliance with the condition is not necessary to safeguard neighbouring residential amenities. In these circumstances the Local Planning Authority do not consider that in this case such injury to interest of acknowledged importance can be justified.

## **Human Rights Act**

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

## **Background Papers**

1. None.