

Section 73 application to vary conditions (27) and (28) of planning permission TW/10/4051 to allow alternative floodlighting specification to floodlit MUGA on Site 1 at The Skinners Kent Academy, Tunbridge Wells – TW/12/1694 (KCC/TW/0192/2012)

A report by Head of Planning Applications Group to Planning Applications Committee on 24 July 2012.

Section 73 application to vary conditions (27) and (28) of planning permission TW/10/4051 to allow an alternative floodlighting specification relating to the previously permitted floodlit Multi Use Games Area on Site 1 at The Skinners Kent Academy, Blackhurst Lane, Tunbridge Wells, Kent, TN2 4PY - TW/12/1694 (KCC/TW/0192/2012).

Recommendation: Planning permission be granted subject to conditions.

Local Member: Mr. J. Tansley

Classification: Unrestricted

Site Description and Background

1. Members of the County Council's Planning Applications Committee will recall that they resolved to grant planning permission for the redevelopment of Skinners Kent Academy (SKA), subject to conditions, at their Meeting on 15 March 2011. A decision notice granting planning permission was issued in accordance with Members' resolution on 30 March 2011. The planning consent contains some 41 planning conditions covering, amongst other matters, the control of development, the submission of details for prior approval of the County Planning Authority, the timing of works, off site highway junction improvement works, the specification for floodlighting associated with the Multi Use Games Area (MUGA) on Site 1 and hours of use of Academy and community facilities. Members may also recall that they resolved to approve details relating to the heights of ground levels and a scheme of surface water drainage of the development on Site 2 at the Meeting of the Planning Applications Committee on 6 September 2011 and details of site fencing, gates and railings, hard surfaces and acoustic fencing of the development on Site 2 at the Meeting of the Planning Applications Committee on 14 September 2012.
2. Skinners Kent Academy is situated just north of the Pembury Road (A264), the main arterial route connecting Tunbridge Wells town centre with the A21, Pembury Village and other outlying villages further east of the town centre. The site is accessed principally from Blackhurst Lane, with a secondary entrance off Sandown Park. Both are residential roads leading north from Pembury Road. The centre of Tunbridge Wells is located some 2.4km west where Tunbridge Wells railway station is located, whilst the suburban centre of High Brooms and its railway station are located some 2.7km north west. The A21 is situated approximately 1.6km to the east of the application site and provides the only direct road access to the M25 from Tunbridge Wells.
3. The SKA site, extending to approximately 5.3 hectares in total area, is split into two distinct areas, known as "Site 1" (the main campus containing old school buildings due to be demolished, the new Academy building currently under construction and a newly built floodlit Multi Use Games Area) and "Site 2" (a sports field where a recently constructed All Weather Pitch has been constructed as part of the Academy redevelopment). Additional land owned by the Academy is located to the south of

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Pembury Road (known as “Site 3”). The matters which are the subject of this Committee Report relate to the specification of floodlighting associated with the newly constructed Multi Use Games Area on Site 1.

4. Construction works on the Academy redevelopment are now well underway with the contractor, Willmott Dixon, having commenced activities at the site in late July 2011. The main structure of the new Academy building on Site 1 is nearing completion with the roof and windows soon to be finished making the building watertight. A new floodlit Multi Use Games Area on Site 1 has been completed but to date has not yet been able to be used during night time periods for sports activities owing to issues with the floodlighting specification, the subject of this report. A new non-floodlit All Weather Pitch has been constructed on Site 2 together with the installation of associated ball-stop and acoustic fencing. Further works on Site 2 are being progressed, including the levelling and seeding of a grass sports pitch and running track. Works to upgrade an existing underground subway between Sites 2 and 3 are shortly due to commence.
5. Prior to the start of construction activities on Site 1, the County Planning Authority received and considered (including a period of public consultation) details required by the planning permission relating to (amongst other matters) external materials for the new buildings, ground levels and finished floor levels of the development on Site 1, details of a foul and surface water drainage scheme, ground contamination, a Code of Construction Practice, details and specification of acoustic fencing surrounding the MUGAs on Site 1 and a programme for the implementation of off-site highway junction improvement works. Those details were formally approved under delegated powers on 14 July 2011 prior to the commencement of construction activities. Details of the ground levels and a scheme for the disposal of surface waters, both relating to Site 2, were approved at the Meeting of the Planning Applications Committee in September 2011, whilst details of site fencing, gates and railings, hard surfaces and acoustic fencing of the development on Site 2 at the Meeting of the Planning Applications Committee on 14 September 2012.
6. Members may recall that as part of the Academy redevelopment proposals (permitted at the Meeting of the County Council’s Planning Applications Committee in March 2011) permission was given for the replacement of old existing sports pitch lighting for a new Multi Use Games Area. This element of the wider Academy redevelopment proposals proved controversial and attracted a significant number of objections. Controls were placed on the planning consent stipulating that the specification of the floodlighting to be installed could only be that approved, that the applicant had to undertake post-installation lighting testing to ensure that the lighting levels as installed met those set out in their application and controls on the hours in which the MUGAs could be used. There are a number of specific conditions attached to the Academy redevelopment consent (reference TW/10/4051) which are worthy of note here, as set out below:

Condition (24) states that: *“The floodlit Multi Use Games Areas (Site 1) shall only be used between the hours of 08:00-22:00 Monday to Friday; 08:30-21:00 Saturday; and 08:30-20:00 Sunday and Bank Holidays”.*

Condition (27) states that (in summary): *The floodlighting associated with the Multi Use Games Area (Site 1) shall be installed and set up as detailed in the application and before it is first brought into use it shall be checked by an independent lighting engineer to ensure compliance with the approved scheme [...] and before it is first*

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brought into use the County Planning Authority shall be provided with written evidence that the lighting meets the requirements of the approved lighting scheme.

Condition (28) states that: "The lighting illumination and spill levels associated with the Multi Use Games Area (Site 1) shall not exceed those specified within the planning application.

7. The Multi Use Games Areas on Site 1 were constructed as one of the first stages of the wider Academy redevelopment, comprising the laying of a new porous macadam pitch surface, ball stop and acoustic fencing and the installation of 16 (8 metre high) flood lighting columns with flat glass type fittings specified to minimise light spill. After the construction works associated with the MUGAs were completed the applicant arranged for the installed floodlights to be tested by a lighting engineer, with testing taking place in December 2011. The results of the post-installation lighting testing (as required under the terms of condition 27 of planning permission TW/10/4051) were provided to the County Planning Authority for approval shortly after the testing. However it soon became apparent that when comparing the details of the permitted floodlighting scheme to that installed on site there were a number of key differences. These differences included an alternative specification of lighting column/lamps to those previously permitted, resulting in variations to the previously approved lighting levels across the MUGA pitch surface and the spill levels beyond the perimeter of the edge of the pitches. As a result of these changes, it was concluded that the matter could not be dealt with by an approval pursuant to the terms of condition (27) given that the lighting levels differed, albeit not substantially, from those specified within the planning application, therefore contrary to the terms of planning condition (28).
8. Following the identification of a number of differences between the "as-permitted" and "as-installed" lighting schemes discussions took place between the applicant and County Planning Authority as to an appropriate course of action to rectify the breach of planning control. The applicant undertook to make additional adjustments to the installed floodlights, by way of the installation of shields (on 6 lighting columns adjacent to Blackhurst Lane) to prevent the back-spill of light towards Blackhurst Lane and The Lodge – a problem which was identified by the occupier of The Lodge when the new floodlights were first switched on. Further adjustments were made to the angle of the lighting units to overcome concerns expressed by residents in Ospringe Place regarding 'glare' issues. Whilst these technical adjustments made have gone a considerable way to resolving some of the issues raised by residents, the changes between the "as-permitted" and "as-installed" floodlighting meant that an approval could not be issued pursuant to the terms of condition (27) of the main planning consent simply due to the fact that the luminaires installed were not those originally granted permission for. The resulting impact meant that whilst the pitch was fully constructed, it could not be used for floodlit sports games as the applicant was not able to demonstrate compliance to the County Planning Authority that it had met the illumination and spill levels as specified by the planning permission. Taking this factor into account, the applicant was advised on the best way to proceed in planning terms. It was requested that either the applicant revert to the previously permitted lighting scheme by removing the current lighting equipment and installing that previously permitted, or they formally apply to vary the lighting details by a fresh planning application. The applicant has chosen to proceed with the second option, and submitted a planning application in May 2012 to allow an alternative floodlighting specification to be retained.

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9. A consultation with key stakeholders (including the Borough Council and our own Lighting Engineer) was undertaken on the new planning application, together with the notification of all properties which shared a common boundary with this site. This application has met with concerns from the local community, as set out in paragraphs (22) below and is therefore being reported to the Planning Applications Committee due to these objections.
10. Members should be aware that this Report considers only the merits of the alternative floodlighting scheme associated with the MUGA on Site 1. It does not consider any other matters which were considered by this Committee under the main planning consent. These are not matters that Members can reconsider as part of this determination.
11. A site location plan identifying Sites 1, 2 and 3 together with the key landscape and heritage designations can be found on page D4.5. Plans showing light spill details associated with the current proposals are also attached to this report. Copies of these plans will be available at a larger scale for Members to view at the Committee Meeting itself.

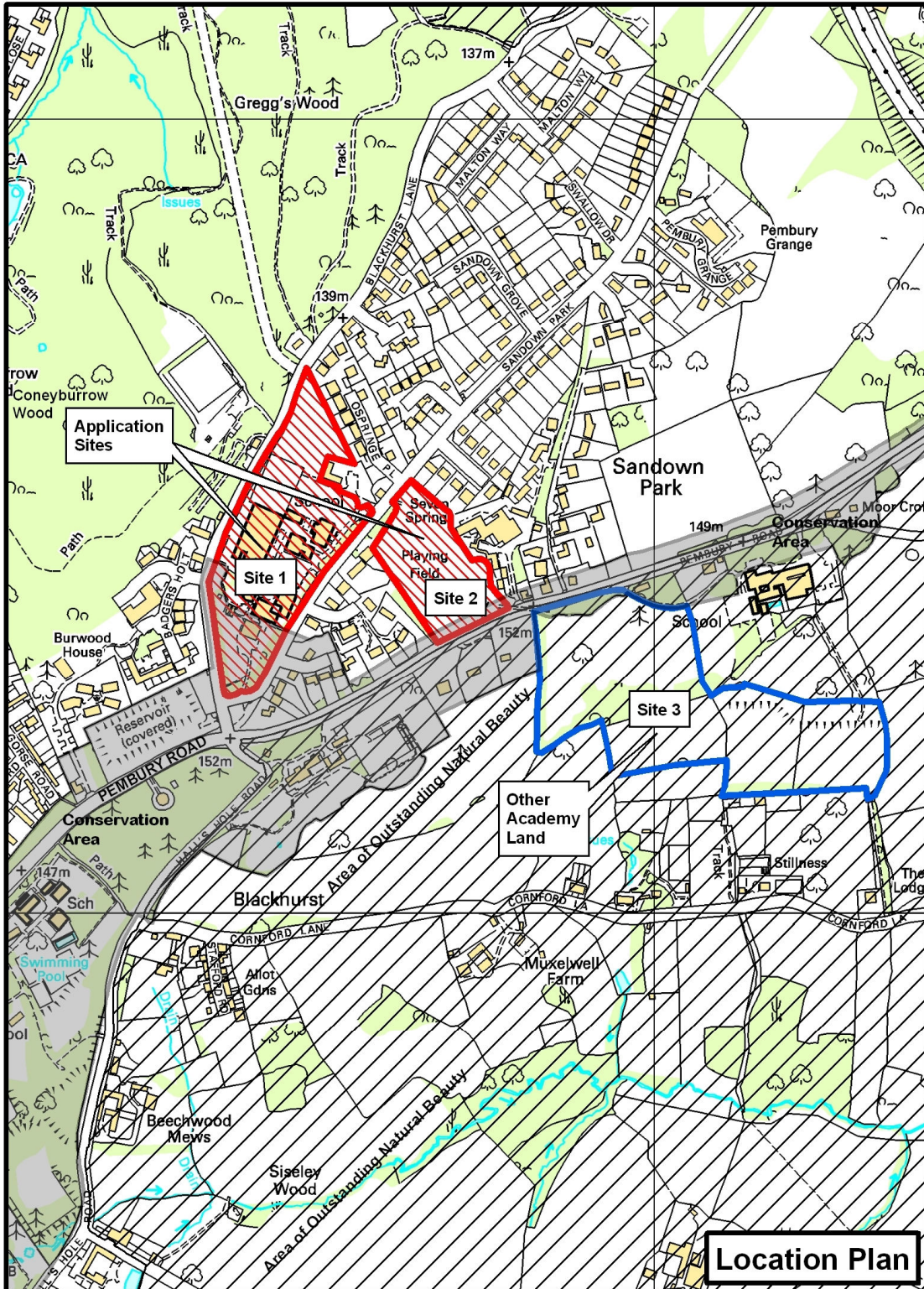
Proposals

12. As detailed above, this matter relates to an application to allow an alternative floodlighting specification to be retained on Site 1 in connection with the recently constructed Multi Use Games Area (MUGA). This situation has arisen as a result of a different specification of floodlighting equipment being installed by the construction contractor to that permitted by the main Academy redevelopment consent without the prior knowledge of the County Planning Authority. Specifically, the proposals seek permission to formally vary the terms of conditions (27) and (28) of the main Academy redevelopment planning permission (TW/10/4051) which, as set out above, state that the floodlighting installed on site should only be in accordance with those details permitted within the planning consent.
13. This report considers the merits of the retention of the alternative specification of floodlighting only, and does not consider other matters relating to the wider redevelopment project, as previously considered in determining the main planning application. The principle of floodlighting associated with the MUGAs and their hours of use is already established within the base permission.
14. The application details that the lighting specification and output of the installed floodlighting differs slightly from the detail that was approved by the main Academy redevelopment consent in the following ways:
 - a. the original lighting specification approved showed the lighting columns located within the court. This presented a safety issue for users and a maintenance issue in terms of the potential for damage whilst the courts are in use. It is a standard requirement that no luminaires should be positioned over the principal area for tennis and for netball above a 4 metre diameter circle around the baskets. The lighting columns have therefore been located outside of the courts rather than within;
 - b. the fittings installed are from a different manufacturer to those approved. Sharp cut-off luminaires are preferable for tennis court floodlighting because they include accurate light output control, a restriction in light overspill and a reduction in direct

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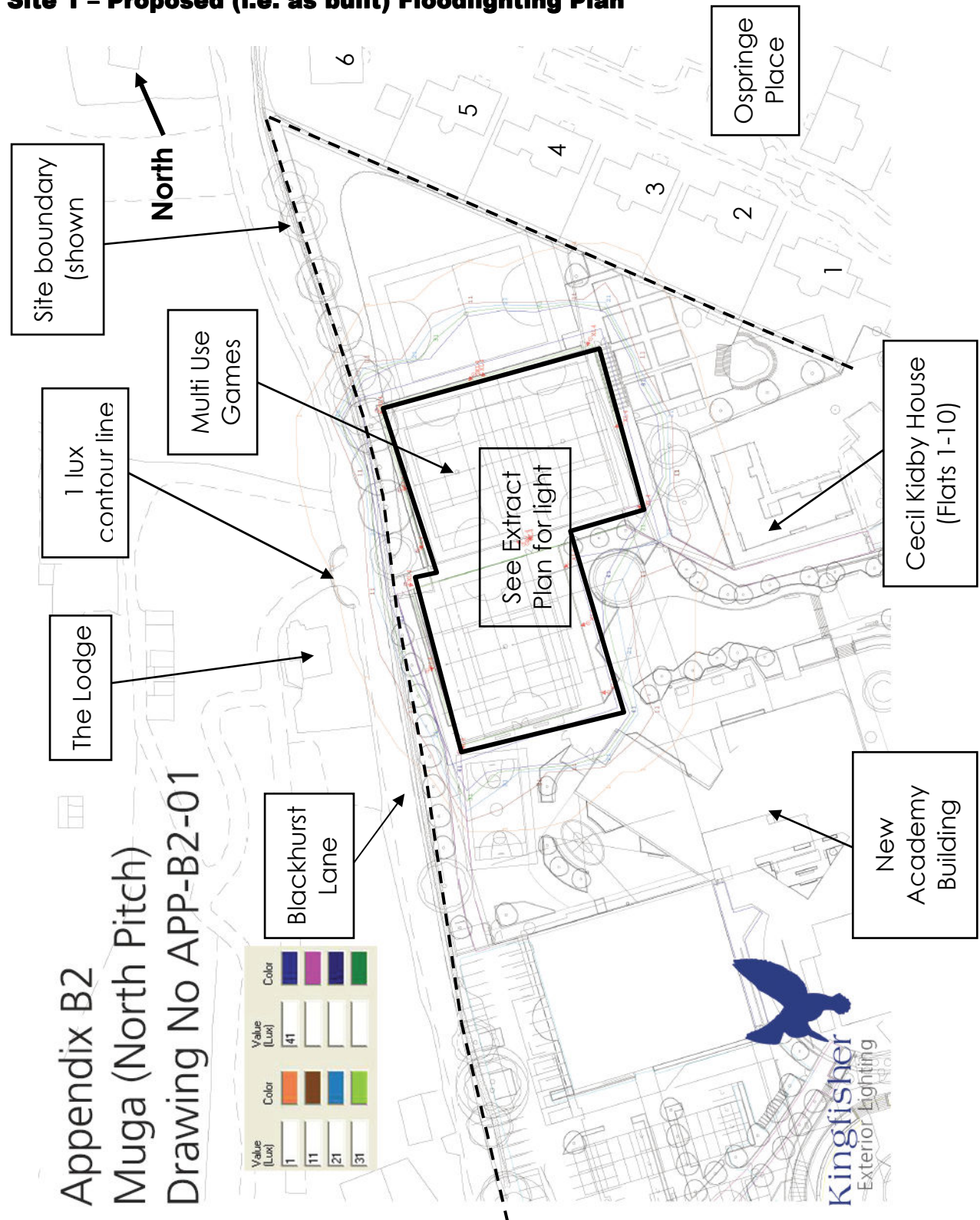
Site Location Plan



Item D4

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Site 1 - Proposed (i.e. as built) Floodlighting Plan

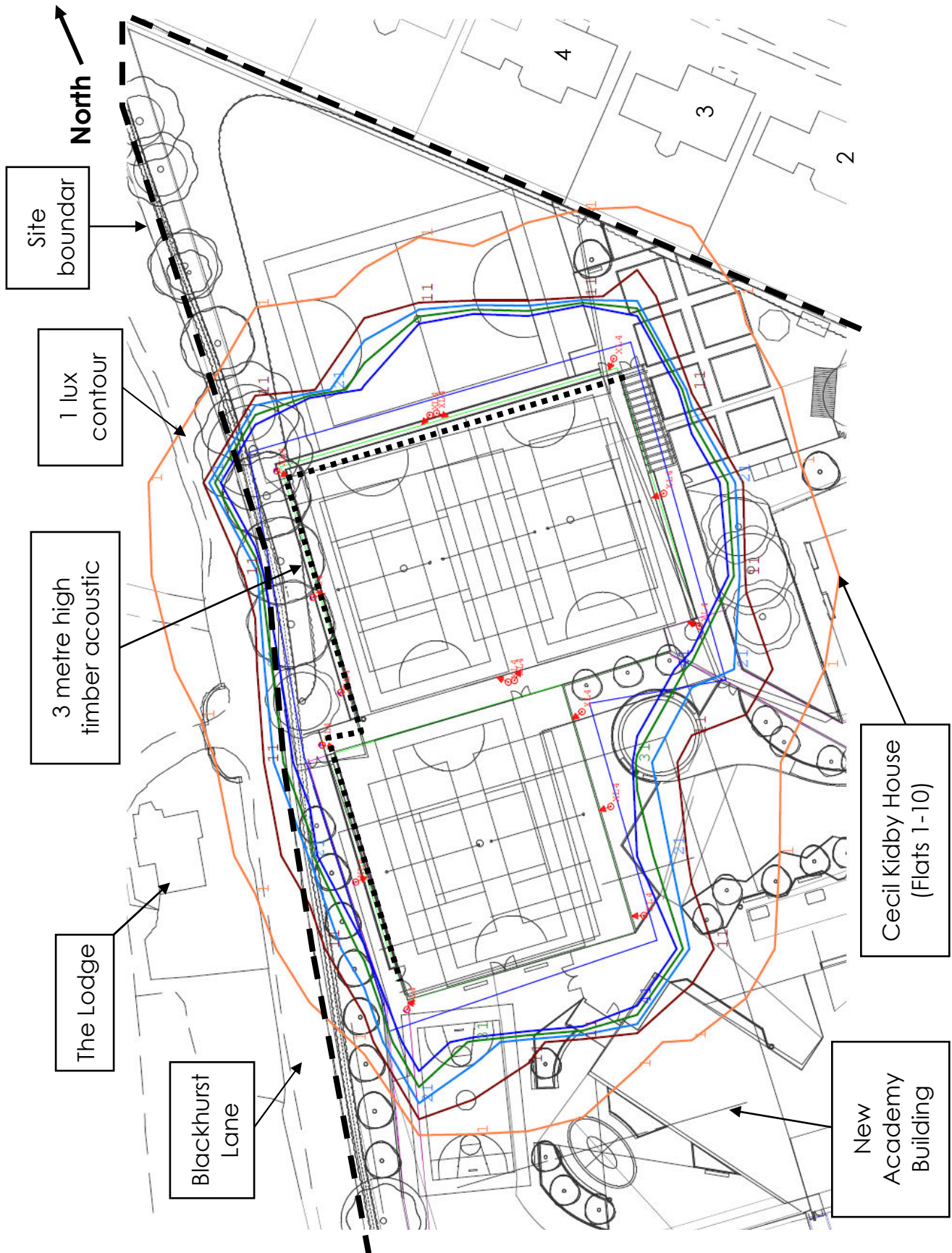


Site 1 - Extract from Proposed (i.e. as built) Floodlighting Plan

Ospridge Place

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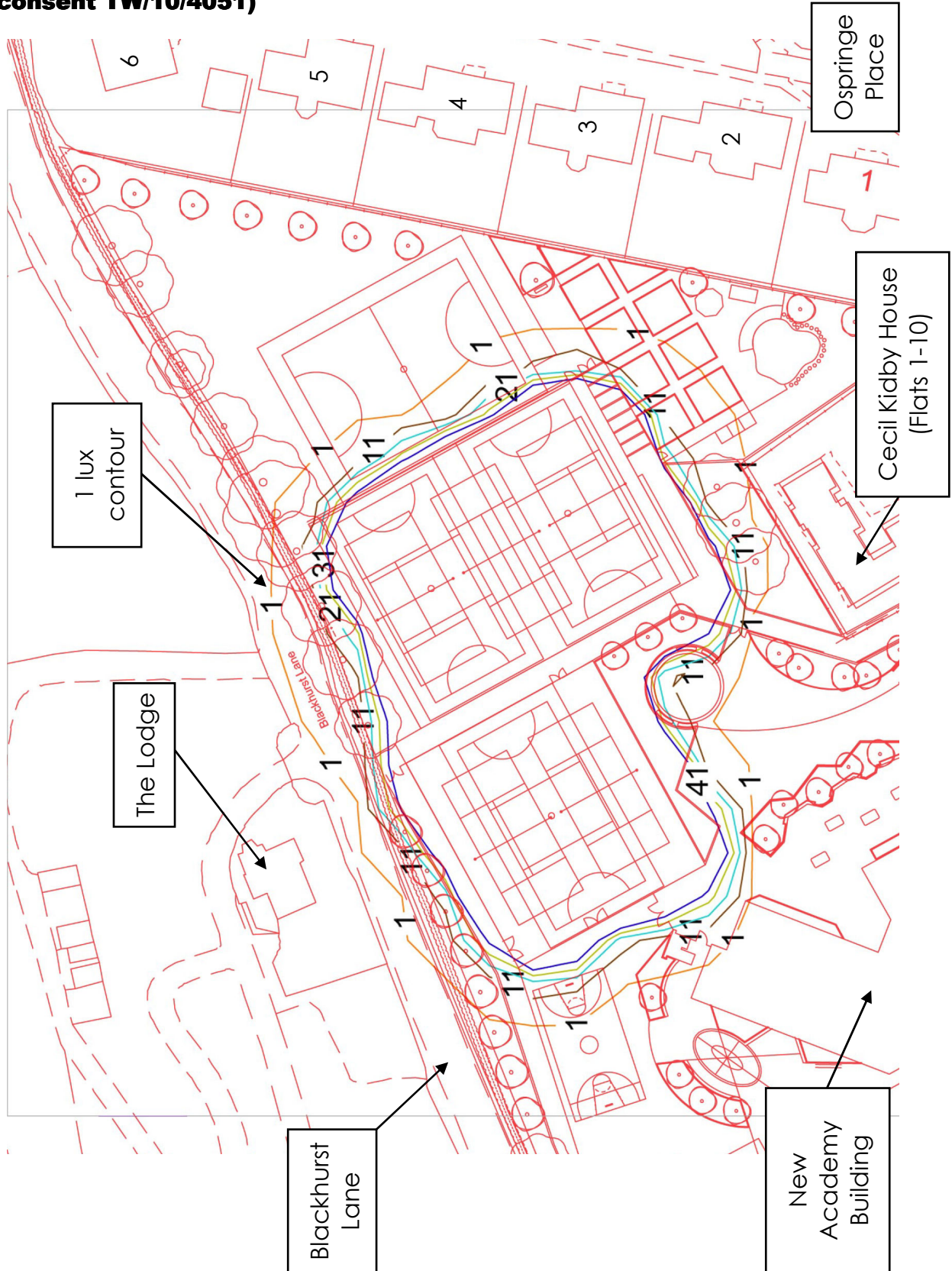
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Item D4

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Site 1 - Previously approved floodlighting spill levels (as permitted under consent TW/10/4051)



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glare from players. The approved SILL fittings have been replaced with Kingfisher fittings because they meet these criteria but distribute light more evenly than the SILL fittings. The Kingfisher fittings have similar properties to the SILL fittings and comparable output with more even light distribution characteristics and indeed have been successfully used in other floodlit sports facilities at Kent schools. Technical information supplied with the planning application shows that whilst the two light fittings are not exactly the same, the two fittings are very similar;

- c. the combination of moving the columns outside of the courts and the installation of the Kingfisher light fittings (as opposed to approved SILL fittings) means that the resultant lux levels on the courts is inevitably different to the originally approved details. The original details indicated that lighting would present a maximum of 300 lux average across the MUGA court (within the perimeter fencing), whilst the “as-installed” lighting presents a maximum average of 276 lux taking into account maintenance and depreciation factors in the same way as the originally approved details did. The overall change in light spill levels (beyond the edge of the MUGA perimeter fencing) result in a 1 lux spill level extending further northwards across Blackhurst Lane towards The Lodge, and further eastwards towards Cecil Kidby House, and further eastwards towards Ospringe Place with the 1 lux contour dropping off just within the rear garden of No. 3 Ospringe Place and just inside the driveway to The Lodge. Members should note that copies of drawings comparing light spill levels between the lighting scheme previously permitted and that now the subject of this application will be available at the Committee Meeting itself.
15. In its justification for the retention of the alternative floodlighting specification, the applicant details that the light readings do not exceed 5 lux, the originally approved planning application requirement and the recommendation of the Institute of Lighting Engineers’ Guidance on Obtrusive Light. The applicant has also demonstrated that by installing shielding plates on all lights along Blackhurst Lane they have delivered a significant reduction in lux readings from the back-spill of light towards Blackhurst Lane and The Lodge. Whilst the applicant appreciated that it is not possible for the requirements of conditions (27) and (28) of the main planning consent to be met as the lighting installed presents different column locations, light fittings and resultant changes to on-court lux levels and off-court light spill, they claim that the effect of the new light fittings is not significantly different to that originally approved. Furthermore, the applicant considers that that when applying the six tests of a planning condition in Circular 11/95 [necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects] it would be unreasonable for conditions (27) and (28) to continue in their current form on the basis that they have demonstrated a safety need to change the locations of the lighting columns and that the new lighting specification would present the same or an improved impact upon neighbouring residential properties as the specification originally approved.

Planning Policy

16. The key National and Development Plan Policies most relevant to the proposal are summarised below:
- (i) **National Planning Policy Framework (March 2012)** sets out the Government’s planning policy guidance for England and as guidance is a material consideration for the determination of planning applications. It does not change the statutory status of the development plan which remains the starting point for decision

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making. The NPPF replaces the majority of the Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs).

The NPPF contains a presumption in favour of sustainable development. The new Framework also refers to the UK Sustainable Development Strategy 'Securing the Future' which sets out 5 guiding principles for sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly. In terms of the planning system, the NPPF identifies that there are three dimensions to sustainable development which create three overarching roles in the planning system - economic, social and environmental. These roles are mutually dependent. Within the over-arching roles there are twelve core principles that planning should achieve. These can be summarised as:

- be genuinely plan-led;
- a creative exercise in finding ways to enhance and improve the places people live their lives;
- proactively drive and support sustainable economic development;
- secure high quality design and a good standard of amenity;
- take account of the different roles and character of different areas, including protecting Green Belts, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities;
- support the transition to a low carbon future, taking account of flood risk and coastal change and encourage the reuse of existing resources and the development of renewable energy;
- contribute to conserving and enhancing the natural environment and reducing pollution;
- encourage the effective use of land by reusing brownfield land, providing that it is not of high environmental value;
- promote mixed use developments;
- conserve heritage assets;
- manage patterns of growth to make fullest use of public transport, walking and cycling; and focus significant development in locations which can be made sustainable; and
- take account of strategies to improve health, social and cultural well being, and deliver sufficient community and cultural facilities and services to meet local needs.

In terms of delivering sustainable development in relation to this development proposal, the following NPPF guidance is particularly relevant:

- Chapter 7 (Requiring good design);
- Chapter 8 (Promoting healthy communities); and
- Chapter 11 (Conserving and enhancing the natural environment).

The Framework also requires that local planning authorities should look for solutions rather than problems. It states that those determining applications should seek to approve applications for sustainable development where possible.

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(ii) The **South East Plan (2009)** – the most relevant policies are:

- Policy CC1** Seeks to achieve and maintain sustainable development in the region.
- Policy CC6** Promotes the creation of sustainable and distinctive communities that respect the character of settlements and landscapes, and achieve a high quality built environment.
- Policy S1** Supports measures for developing and shaping healthy sustainable communities, including: community access to amenities such as open spaces and physical recreation activity; and healthier forms of transport.
- Policy S3** States that, local planning authorities, taking into account demographic projections, should work with partners to ensure the adequate provision of pre-school, school and community learning facilities.
- Policy S5** Increased and sustainable participation in sport, recreation and cultural activity should be encouraged by Local Authorities.
- Policy S6** Encourages the mixed use of community facilities in order to make effective use of resources and reduce travel and other impacts, and requires community facilities to be located and designed appropriately.

Important note regarding the South East Plan:

Members will already be aware of the relevant South East Plan (SEP) policy considerations in relation to the proposed development, in that The Plan was revoked and later reinstated pending the enactment of the Localism Bill. Members will also be aware that they have to have regard to the policies in the SEP and the Government's intention to abolish the Regional Spatial Strategies (RSS) as material considerations. However the weight to be accorded is a matter for the decision makers. Members will note that the Localism Bill has now been enacted; however the SEP remains in effect until such time as the Government complete the formal process of revoking the Plan.

(iii) The **Tunbridge Wells Borough Core Strategy (2010)** – the most relevant policies are:

- Policy CP5** Requires all new development to employ sustainable design and construction standards and techniques and to make efficient use of water resources, comply with the sequential test set out in PPS25 in respect of reducing flood risk, have regard to and implement the renewable energy and energy efficiency targets sets out in the South East Plan, manage and seek to reduce air, light, soil and noise pollution and be designed to reduce waste creation and disposal. Developments should also be of high-quality design which will create safe, accessible, legible and adaptable environments, and conserve and enhance the public realm.
- Policy CP8** Seeks to maintain and enhance where appropriate the capacity, quality and accessibility of community facilities and importantly pledges specific support for the provision of additional facilities where there is a continuing demonstrable need and this will be provided on a single site or provide multi-use facilities.

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Policy CP9 Reaffirms the priority of conserving the town's built and natural heritage and landscape assets. Requires new development to respect and where necessary contribute to an integrated approach to improving movement into and around the town including promoting improved cycling and walking routes and increase use of public transport.

(iv) The **Tunbridge Wells Borough Local Plan** (Saved Policies) – the most relevant policies are:

Policy EN1 Requires all proposals for development to satisfy certain criteria, including: no unacceptable loss of/effect on amenity; respect for the context of the site; no loss of significant buildings, related spaces, trees, shrubs, hedges or other features important to the character of the area; no significant adverse impact on highway safety; services for foul and surface water sewerage and water supply have sufficient capacity/can be improved; no significant adverse effect on any features of nature conservation importance; and design, layout and landscaping take account of the security of people and property.

Policy EN8 Proposals for new outdoor lighting must present the minimum lighting necessary and should be unobtrusively sited or well screened by landscape or other site features. The specification of the lighting should minimise glare and light spillage having regard to local character, visibility of the night sky, residential amenities of surrounding and adjoining occupiers and public safety.

Policy EN14 Development proposals which would affect the habitat of a protected species will only be permitted where it would not have a detrimental effect on the nature conservation of the site.

Policy RF1 Land to the north east of Site 1/Blackhurst Lane is identified on the Proposals Map as Rural Fringe.

Consultations

17. **Tunbridge Wells Borough Council:** raises no objections to the proposals subject to: -

- additional tree planting (along the boundary of the acoustic fencing facing Blackhurst Lane and Ospringe Place);
- all other terms and conditions as set out in the original planning consent (TW/10/4051);
- subject to the views of the County Council's Lighting Advisor regarding the acceptability of the light spillage calculations and observations; and
- all landscaping works being carried out in accordance with the approved details and implemented prior to the first use of the MUGAs (or in accordance with a timescale agreed in writing by the County Planning Authority).

18. **County Council's Lighting Advisor:** raises no objections to the proposals, making the following key points: -

He notes that the revised lighting scheme involves changes to the lanterns and reposition of the columns, however considers that this is not significantly different to the original proposal. The relevant British Standard for Sports Lighting recommends average

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lighting levels of 300 lux for tennis and 200 lux for basketball for club standard competition.

The average lighting levels (as granted permission by the main Academy redevelopment consent) were shown to be 290 lux for the basketball courts and 300 lux for the tennis courts. The currently installed lighting specification is shown to deliver a maintained lighting level of 255 lux to 276 lux, based on actual site readings and applying a maintenance factor of 0.71. He considers that the maintenance factor of 0.71 applied by the applicant is reasonable and is based on the reduction in light output of a lamp through service and the degradation of the lantern output caused by dirt and ageing of reflective materials. He notes that whilst this maintenance factor can change based on lamp cleaning and bulb changing, 0.7 is a typical factor that is commonly applied to sports floodlighting and considers that it would have been the figure applied to the lighting within the original planning application documents.

He notes that steps in lighting requirements for outdoor lighting for changing standards are about 50% in street lighting and at least 50% in sports lighting as the eye does not see much difference in lesser step changes due to its adaptability to very large changes in lighting levels.

He notes that in this instance there is an increase in spill light outside the playing areas, however the spill light is reduced to 5 lux part way across Blackhurst Lane (towards The Lodge), 1 lux at the driveway to The Lodge and 1 lux just inside the boundary of the garden of the nearest property in Ospringe Place (No. 3 Ospringe Place). These levels are below the recommended levels set out in the Institute of Lighting Engineers best practice.

Considers that the lighting levels proposed on the playing surface are acceptable, noting that they are actually lower (on average) than those previously approved. Also notes that the source intensity in the direction of adjacent properties is shown to be less than half the recommended limit and in most cases about a third of the maximum value.

He notes that the calculations provided in respect of this application have been carried out assuming no barriers other than the 3 metre high timber acoustic fencing around the MUGAs. However, The Lodge on Blackhurst Lane, which is single storey, has a substantial hedge along the roadside and the front of the house is actually set at right angles to the pitches. On the school side of the road there are also substantial existing trees providing screening. He considers that all of these barriers will lessen the spill and visibility of the lights to a greater or lesser degree depending upon the season.

He notes that concerns have been raised regarding the direct view of a couple of floodlights when driving out of The Lodge and considers that additional screening would help minimise this isolated issue.

19. Kent Highways and Transportation: raises no objections to the revised floodlighting scheme.

Local Member

20. The recently elected local County Member, Mr. J. Tansley was notified of the application on the 20 June 2012.

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Publicity

21. The application was publicised by the posting of three site notices and the individual notification of 19 neighbouring properties. A copy of the application was sent to the Sandown Park and Blackhurst Lane Local Community Group, as well as being made accessible online for inspection via the County Council's website.

Representations

22. To date I have received 4 letters of objection to the planning application. The main points of objection are summarised below:

- as the lights have hardly been on so far (not at all since January) it is very difficult for residents to comment and as we are not lighting specialists it is even more difficult to understand the impact these changes would in fact have;
- request that a report be produced by an independent lighting engineer, with full practical testing of the lights, who could then properly assess the effect of this new lighting proposal on nearby residents, detailing exactly how much variation there is from the original planning permission;
- in their letter of support of the application the contractor assures us that the changes would still keep within the conditions set out in the original planning permission with regard to spill and glare – if this is so why is there any need to change conditions (27) and (28)?
- if the light spill/glare/lux/trespass exceeds the parameters set down by the planning permission it is completely unacceptable to us residents to increase the light intensity we are going to have to live with;
- it would appear that the lux levels will be increased by around 10% - we find it hard to understand how this will not impact on us. We understand that the point of the changes is to increase the intensity of the light falling directly on the courts but surely there is a direct correlation between the brightness of the light and the area it lights up?
- at the Planning Applications Committee last year [March 2011] residents were given assurances by the Head of Planning that this lighting scheme would be 'much better' than the old one – it would seem that this will now not be the case;
- the supporting paperwork suggests that the luminaire maintenance factor is calculated at 71%. This implies that the light spill could be considerably in excess of the design calculations for a very long period of time which would be a totally unacceptable position for residents. From reading the details submitted, the light spill into some residential gardens is already in excess of the original application and they are relying on the maintenance factor to reduce this – from our understanding this will take over 4,000 hours to achieve. Even if the lights were on for 6 hours a day this would take over 650 days to reach and when you considered that the lights are not used in the summer, this equates to about 4 years and then we assumed the light bulbs would be replaced and the whole process of brighter lights starts over again;
- have no objection to the lighting columns being located outside of the acoustic fence as consider this to be much safer for users of the MUGAs;
- already the residents of Ospringe Place have to deal with building noise and dust right next to us and have experience of noise from the playing fields. We now have the extra worry of glare from bright floodlights;
- during the pre-application exhibition, post application exhibition and the consultation period of the original planning application concerns were expressed to Skinners Kent Academy, Max Fordham (the applicant's lighting engineers), Willmott Dixon and Kent

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County Council (as the Applicant and Planning Authority) that the floodlighting on Site 1 was too close to nearby properties (specifically being directly opposite The Lodge and its vehicular entrance) and Blackhurst Lane. All parties gave assurances that the latest technology luminaires, reflectors, hoods and canopies would be used and promised that the application specification would be met. The Planning Authority imposed two planning conditions to ensure that this was the case;

- quite clearly, due to the extreme close proximity of this installation to boundary trees, Blackhurst Lane and The Lodge, the promised specification and therefore conditions (27) and (28) of the planning permission cannot be complied with, confirming initial concerns expressed previously. Bearing in mind that the County Planning Authority imposed these conditions to protect amenity of neighbouring properties, it would be wholly and fundamentally wrong for them to relax them now. This would increase the impact on The Lodge and further erode the enjoyment of this property;
- the current installation directly opposite the vehicular entrance to The Lodge onto Blackhurst Lane has a cluttering effect when in use at night causing disability glare and impairing vision when manoeuvring a vehicle from the private driveway onto Blackhurst Lane – this has serious road safety implications for vehicles leaving The Lodge or for any pedestrians or motorists on Blackhurst Lane in the vicinity of the floodlights. I am sure that you are aware that it is an offence under the Highways Act to knowingly impair the vision of a motorist.

Discussion**Introduction**

23. This application seeks planning permission to retain an alternative specification of lighting units to that previously permitted under the main Academy redevelopment planning consent, granted by the County Council's Planning Applications Committee in March 2011. The variation in the specification of lighting units has occurred as a result of a difference between the specification of lighting which planning permission was granted for and what the applicant's contractor installed on site. This difference was first highlighted to the County Planning Authority when a post-installation lighting test report was submitted to the Planning Authority by the applicant with a view to them trying to satisfy their requirement to demonstrate full compliance with the approved lighting scheme specified under the main planning consent. As a result of the information submitted at that time, a number of key changes between what was approved and what had been installed were identified. A new planning application was submitted by the applicant to rectify the breach of planning control, seeking to retain the lighting equipment that had been installed. The application is being reported to the Planning Applications Committee for determination as a result of the local residential objections received (as outlined in paragraph 22 above). These primarily relate to the principle of varying the lighting specification, difficulties in comparing what was previously approved to what is now in situ and issues of 'glare' and associated road safety concerns when exiting The Lodge by vehicle traffic.
24. In considering this application, regard must be had to the base permission for the redevelopment of Skinners Kent Academy, specifically in relation to the principle of floodlighting associated with the MUGAs on Site 1 together with the hours of use set down by that consent. Regard must also be had to the most relevant Government Guidance contained in the National Planning Policy Framework and adopted Development Plan Policies as outlined in paragraph (16), together with any other key material planning considerations relevant to take into consideration in the decision

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making process. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

25. As part of the consideration of this application, Members should be aware that it is only the merits of the alternative technical specification of the floodlighting that is being tested. The principle of floodlighting of the MUGAs and their associated hours of use have already been established in planning terms and are not subject to further consideration as part of this application. The key planning land use considerations in this particular case can be categorised under the following headings:
- consideration of the alternative floodlighting specification (as currently installed on Site 1) including how that differs from what was previously permitted by the main Academy redevelopment consent, specifically in terms of light intensity on the MUGA surface and light spill beyond the edge of the MUGA perimeter;
 - impacts on residential amenity arising from the alternative specification of floodlighting; and
 - any other relevant considerations as raised by consultees and/or local residents.
26. Members will also be aware that this application needs to be considered solely on its planning merits and not on a preference for a particular scheme.

Alternative floodlighting specification

27. The key differences between the originally approved lighting specification and that installed on site are identified in paragraph (14) above. In essence, these changes amount to different light fittings made by an alternative manufacturer, columns located outside of the MUGA surface and acoustic fencing, and a resultant variation in the luminance levels across the MUGA surface and spill levels beyond the boundary of the pitches. The key determining factor here is the nature of the difference between what was originally permitted and what is now on site in terms of luminance levels across the pitch surface and spill levels beyond the boundary of the pitches, in terms of acceptability in land use planning terms and upon surrounding residential amenity.
28. Luminance levels associated with the 'as-built' lighting specification are demonstrated in the planning application to be a maximum average of 276 lux over the entire MUGA area. When comparing these to the previously approved average levels across the MUGA pitch surface (300 lux) it is noted that the lighting levels are actually slightly lower than previously approved and not increased by around 10% as has been suggested. Both of these figures presented are average figures for lighting across the pitch surface, taking into account a standard 'maintenance' factor of (0.71) which the County Council's Lighting Advisor considers is a reasonable figure to apply to sports pitch lighting. The 'maintenance' factor is essentially a standard prediction on the reduction in light output of a lamp through service and the degradation of the lantern output caused by dirt and the ageing of reflective materials. Whilst it is acknowledged that at times (such as when a new bulb is installed or cleaning of the lanterns take place) lighting levels would exceed these 'maintained' levels, it is the purpose of an average figure to provide just that – an average light reading. I note that the County Council's Lighting Advisor has suggested that an increase of less than 50% in the brightness of outdoor sports lighting would not normally be easily identifiable by the human eye. In this instance however, I note that there is actually a small reduction in

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average maintained lighting levels across the pitch compared to the approved scheme and would therefore not raise any objection to this aspect of the proposals.

29. In terms of light spill levels beyond the edge of the MUGA surface (commonly referred to as the 'back-spill' of light) the application recognises that light spill levels are slightly increased towards Blackhurst Lane (and The Lodge) and towards Ospringe Place. To this effect, it should be noted that the 1 lux contour line extends to the driveway of The Lodge, whereas under the approved lighting scheme it only extended to mid-way across Blackhurst Lane. Similarly, the 1 lux contour line extends just inside of the rear garden of No. 3 Ospringe Place whereas under the approved lighting scheme the 1 lux contour fell away mid-way between the MUGA boundary and the rear boundary of properties in Ospringe Place. The application details that 'back-spill' light levels would range between 11 and 1 lux across Blackhurst Lane (moving away from the site boundary) whereas levels previously permitted were typically closer to 1 lux.
30. It should be noted however that the figures used as part of the lighting assessment rely on visual attenuation of the 3 metre high acoustic fencing running around the northern and western boundaries of the MUGA, yet does not consider visual screening afforded by existing trees along the site boundary with Blackhurst Lane. It should also be noted that the nearest residential property (The Lodge) is a single storey dwelling, has a substantial hedge along the roadside and that the front of the house is set at right angles to the pitches. The County Council's Lighting Advisor considers that all of these barriers which are not specifically referred to in the light spill assessment would deliver further reductions to lessen the spill and visibility of the lights to a greater or lesser degree depending upon the season.
31. Based on professional advice provided by our Lighting Advisor, I am satisfied that the increase in light spill, over-and-above that previously permitted, is acceptable in planning terms and would not give rise to an overriding or undue harm to surrounding residential amenity. The advice received from my Lighting Advisor is that the scheme as proposed (i.e. as installed) meets with the terms of best practice guidelines issued by the Institute of Lighting Engineers and therefore is acceptable in planning terms. I note that the Borough Council has raised no objection to the new floodlighting specification and that the Borough's Environmental Health Officer was involved with adjustments made to the lighting specification after it was first installed on site.
32. A site visit was undertaken to inspect the current floodlights on Wednesday 4 July 2012 between 22:00 and 23:00 hours, with an officer from Tunbridge Wells Borough Council's Planning Team also being present. That visit proved useful to witness first-hand the impact of the floodlighting in the context of the site's surroundings and nearby sensitive receptors. Photographs taken during that visit will be available for Members to view as part of the Officer introduction to the scheme at the Committee Meeting itself. As part of that visit light spill levels were witnessed between the edge of the MUGA and Ospringe Place, Cecil Kidby House and along Blackhurst Lane (particularly in the vicinity of The Lodge). The concerns raised by the owner of The Lodge in respect of 'glare' issues when exiting his drive were explored during that visit, and it was observed that two lighting units (located in the centre of the largest MUGA some 40 metres away and facing back towards The Lodge) were just visible above the top of the 3 metre high acoustic fencing and between the existing boundary tree screening. It is likely that these two lighting units are those which are resulting in the claimed 'glare' and 'serious highway safety' issues by the owner of The Lodge when exiting his property during night time periods. Having sought advice from my Lighting

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Advisor on this particular aspect, he considers that additional tree screening would help minimise this isolated issue. Additional tree planting between the acoustic fencing and the site boundary to bolster existing tree screening in this location would need to be of heavy standard (3.5 metre in height) to deliver any significant benefits. I have discussed this particular point with the applicant and they have agreed in principle to plant a couple of interspersed evergreen trees (Leyland Cypress) along this boundary of heavy standard (at least 3.5 metres in height) to help assist the concerns raised by the owner of The Lodge in this instance. I further note that the Borough Council's formal consultee response is that it raises no objection to the proposed floodlighting subject to (amongst other matters) additional landscape planting along the site boundary with Blackhurst Lane.

33. I propose that this additional interspersed tree planting be secured through the site wide landscaping scheme which is required to be agreed pursuant to the terms of condition (16) of the main planning consent. I have received a commitment from the applicant's agent that they are willing to undertake this additional planting, and therefore recommend that this be secured accordingly in any decision to grant planning permission. I recommend that this planting takes place during the first available planting season (generally between Autumn 2012 and Spring 2013) but would not require this prior to the first use of the MUGA.
34. Concerns have been raised by neighbouring residents that it is very difficult to comment on the proposals since the lights have been on very little since it was first installed, and that they are not qualified lighting engineers themselves to understand the key differences between what was permitted and what has now been installed. Requests have also been made as to whether an independent lighting engineer could properly assess the lights. It is noted that the lights have been on very little since they were originally installed, but this is due to the fact that the lights which were installed did not comply with the terms of the original planning consent and therefore the County Planning Authority was not able to agree to the School using the lights without first seeking a formal variation. I would also point out that any lighting report(s) produced by the applicant are customarily independently assessed by both the County Council's Lighting Advisor and the Borough Council in its statutory consultee role.
35. In respect of the earlier assurances given by the Head of Planning that the original lighting scheme (as approved at the Planning Applications Committee in March 2011) would be 'much better' than the old one which was in-situ at that time, it is still the case that the variant lighting scheme now being considered is of modern-type with flat glass type fittings designed to reduce the back-spill of light and light glare, and it remains a much preferable lighting scheme than the previous unshielded one that was in use prior to the Academy redevelopment and formed part of the then sports centre on site. Whilst it is acknowledged that the proposed lighting scheme as installed is proven to deliver a slight reduction in average lux levels across the MUGA surface and an slight increase in light spill beyond the edges of the MUGA, based on the professional advice provided to me I am satisfied that the lighting scheme proposed is acceptable in planning terms and therefore could be used by the Academy (and for wider community use) as currently set-up subject to planning permission being granted. In particular, I am wholly confident that had the currently installed lighting scheme been proposed at the outset, I would have recommended that planning permission be granted, and assessed the lights as notably more efficient and environmentally friendly than the former installation on the site.

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Conclusion

36. Having considered the key differences between the previously permitted and now proposed floodlighting schemes, the material planning considerations raised by surrounding residents and the technical and professional advice provided by consultees, I am satisfied that the proposed floodlighting scheme is acceptable in land use planning terms and would not cause overriding undue harm to surrounding residential amenity. I am therefore satisfied that the floodlights could now be used by the Academy (and for wider community use in accordance with the terms of the original planning consent) as currently set-up subject to planning permission being granted. Whilst it is acknowledged that the proposed lighting scheme would deliver a reduction in the average lux levels across the pitch surface and an increase in light spill beyond the edges of the pitch, based on the professional advice received I am advised that these lighting levels accord with best practice set down by the Institute of Lighting Engineers. Based on this scenario I accept the proposed lighting scheme as being suitable in this instance, and consider that it would be unreasonable to insist the applicant reverts to the previous lighting set up given this set of circumstances. Whilst noting the concerns of the residents, I would also point out that it is disappointing that the applicant chose to install a variant lighting scheme from that approved by the County Council without first seeking its approval.
37. Furthermore, I consider that the addition of interspersed evergreen heavy standard tree planting along the boundary with Blackhurst Lane would help in minimising the specific concerns raised from The Lodge in this instance. I therefore recommend accordingly as set out in paragraphs (38) and (39) below.

Recommendation

38. I RECOMMEND that PLANNING PERMISSION BE GRANTED for the alternative floodlighting specification, SUBJECT TO conditions (27) and (28) of planning permission TW/10/4051 being amended to read as follows: -

Condition (27)

The floodlighting associated with the Multi Use Games Area (Site 1) hereby approved shall be maintained at all times as currently set up and as detailed in the application. Should it subsequently be deemed necessary the applicant shall adjust the set up of the floodlighting and/or fit cowls, hoods, shades, shields and/or louvres, in agreement with the County Planning Authority, and thereafter the lighting shall be maintained as agreed;

Reason: In the interests of protecting surrounding residential amenity and pursuant to South East Plan Policy NRM10 and Local Plan Policies EN1 and EN8;

Condition (28)

The illumination and spill levels associated with the Multi Use Games Area (Site 1) shall not exceed those specified within this planning application;

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Reason: In the interests of protecting surrounding residential amenity and pursuant to South East Plan Policy NRM10 and Local Plan Policies EN1 and EN8;

AND that all other controls placed on planning permission TW/10/4051 remain unchanged, save for where they have since been updated by subsequent planning approvals.

39. I FURTHER RECOMMEND that the applicant BE REQUIRED to carry out additional interspersed landscape planting consisting of a couple of heavy standard evergreen trees (at least 3.5 metres high) along the site boundary with Blackhurst Lane. The final specification of this additional tree planting shall be agreed pursuant to the terms of a site wide landscaping scheme under the main Academy redevelopment consent and shall be implemented within the first available planting season following the date of this permission.

Case officer - Julian Moat 01622 696978
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Background documents - See section heading
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