



Application Site Address	Cary Park Tennis Club Cary Avenue St Marychurch Torquay TQ1 3NQ
Proposal	Erection of three 6.7m high lighting stanchions, each with one LED luminaire, to provide lighting to Court 3. Replacement of the twelve existing luminaires for Courts 1 and 2 with eleven new LED luminaires. Provision of one courtesy luminaire to Court 4. (Proposal/description amended on 03.04.2020.)
Application Number	P/2019/1230/PA
Applicant	Cary Park Tennis Club
Agent	N/A
Date Application Valid	11.12.2019
Decision Due date	05.02.2020
Extension of Time Date	28.04.2020
Recommendation	That Planning Permission be granted, subject to the condition detailed below, and that the final drafting of conditions and the addressing of any further material considerations that may come to light be delegated to the Assistant Director of Planning and Transport.
Reason for Referral to Planning Committee	In accordance with the Council's constitution, which states that an application pertaining to land that is registered as a Torbay Council asset and to which one or more objections have been received, must be referred to the Planning Committee for determination.
Planning Case Officer	Craig Davies

# Location Plan



## **Site Details**

The application site relates to three tennis courts situated on the south side of Cary Avenue that are part of the Cary Park Tennis Club. To the west of the site is a bowling green. To the south is an area of open space and the rear of properties in St Georges Crescent. There is a hedge along the boundary of the site with Cary Avenue. On the opposite side of Cary Avenue there is an area of public open space. In terms of the designations contained within the Development Plan, the site is located within the Cary Park Conservation Area and forms part of the Cary Park Urban Landscape Protection Area.

## **Description of Development**

The proposal is for improvements to the lighting of tennis courts at the Cary Park Tennis Club, comprising:

- The erection of three additional 6.7m high lighting stanchions, each with an LED luminaire, to provide lighting to Court 3.
- The removal of twelve existing luminaires providing lighting to Courts 1 and 2 and their replacement with eleven new LED luminaires.
- The provision of one courtesy luminaire providing low-level background lighting to the remaining unlit courts.

For the avoidance of doubt, the proposal would therefore result in a change from the existing lighting configuration which comprises twelve luminaires supported by nine 6.7m high lighting stanchions serving Courts 1 and 2, to a new lighting configuration which would comprise fourteen LED luminaires supported by twelve 6.7m high lighting stanchions serving Courts 1, 2 and 3, as well as a single courtesy luminaire providing low-level background lighting to the remaining unlit courts.

After the advertising period, it was realised that although the applicant's Design & Access Statement correctly described the proposed provision of a single courtesy luminaire providing low-level background lighting to the remaining unlit courts, this courtesy luminaire was incorrectly omitted from the advertised plans. It was also realised that although the plans accurately indicated the proposed fourteen LED luminaires supported by twelve 6.7m high lighting stanchions serving Courts 1, 2 and 3, the applicant's Design & Access Statement incorrectly indicated that there would be a total of eighteen LED luminaires serving Courts 1, 2 and 3. To rectify this, the applicant has provided written confirmation that the proposal is as described above, and has submitted revised plans that include the single courtesy luminaire. For the reasons set out below, it was not deemed necessary to re-advertise the application:

- Although the single courtesy luminaire was omitted from the advertised plans, it was clearly included within the Proposal Description that was stated on the on-site notice and on the neighbour notification letters, and was also described in the advertised Design & Access Statement.
- The proposed courtesy luminaire would only be a 30 watt light providing low-level background lighting to the remaining unlit courts, would be directed towards the southeast where the nearest neighbouring property is more than 60 metres away, and would therefore not have any significant impact on external parties. The proposed courtesy luminaire would have a similar impact as that of an external light affixed to the outside of a dwellinghouse, for which planning permission would not be required (notwithstanding that Listed Building Consent could potentially be required if the external lighting was being affixed to a Listed Building).

- Although the proposed number of LED luminaires serving Courts 1, 2 and 3 was overstated in the advertised Design & Access Statement, the proposed lighting for these courts was accurately indicated on the advertised plans. The proposed lighting for Courts 1, 2 and 3 would be fewer than what was indicated in the advertised Design & Access Statement and would therefore have a lesser impact on external parties.

### **Pre-Application Enquiry**

N/A

### **Relevant Planning Policy Context**

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Torquay Neighbourhood Plan ("The Neighbourhood Plan")

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Relevant Planning History**

P/2016/1076 - Provision of court lighting consisting of nine 6.70 m columns with 1 kw light fittings (variation of condition 1 of original planning permission P/2009/0550) to change hours of illumination to 9pm Monday - Friday (proposal / description amended 7 October 2016). Approved 24.11.2016.

P/2009/0550 - Provision of court lighting consisting of nine 6.70 m columns with 1 kw light fittings. Approved (Committee) 07.08.2009.

### **Summary of Representations**

1 letter of objection was received in which the following matters were raised:

- The proposal would have a negative impact on the wildlife and the peace and quiet of Cary Park.
- The proposal would contribute to the ongoing urbanisation of Cary Park.
- The proposal would exacerbate existing light and noise pollution.
- The putting course at Cary Park has not been maintained which is contrary to the tennis club's lease. (It should be noted that this is not considered to be a material planning consideration in relation to the proposal under consideration.)

### **Summary of Consultation Responses**

**Senior Environmental Health Officer:** "I would confirm that I have read the applicant's submission and I have no objections. Essentially the lighting is being replaced with an LED system and the design information provided by Luminance Pro Lighting Systems provides reassurance that the new lighting will not have a significant impact on nearby residents.

“The lighting has been designed to be directed downwards onto the surface in such a way as to minimise spill light beyond the boundary of the courts and therefore the possibility of unreasonable intrusion into neighbouring properties. The level of illuminance from the courts at a distance of approx. 20m (half way to the rear of the nearest residential properties) is predicted to be at or below 1 Lux (equivalent to the amount of light falling on a surface 1m away from a candle).”

**Torquay Neighbourhood Plan Forum:** No response received.

### **Key Issues/Material Considerations**

1. Principle of Development.
2. Visual Impact.
3. Impact on Residential Amenity.
4. Ecology
5. Flood Risk and Drainage

### **Planning Officer Assessment**

#### **1. Principle of development.**

The proposal is for improvements to the lighting facilities of a tennis club as described in detail above.

Policy SC1 of the Local Plan seeks, amongst other things, to promote healthy, safe and active living for all age groups. Policy SC2 of the Local Plan seeks, amongst other things, to improve access to sport, leisure and recreation facilities, particularly in locations that are accessible, subject to compliance with other policies in the Development Plan including those relating to residential amenity. The proposal would improve the facilities of an existing tennis club that is sited close to the Babbacombe Local Centre in an area that is accessible, including by public transport and by non-motorised transport. These improvements would increase the capacity for the tennis club to be used in the evenings during winter months, thereby making a small but positive contribution to the promotion of healthy, safe and active living. The proposal is considered to be consistent with Policies SC1 and SC2 of the Local Plan.

There are no Development Plan policies indicating that the proposal is not acceptable in principle.

#### **2. Visual Impact**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that 'good design is a key aspect of sustainable development, creates better places in which to live and work, and helps make development acceptable to communities'. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy SS10 of the Local Plan states that proposals within Torbay's Conservation Areas will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's Conservation Areas whilst allowing sympathetic development within them. Policy TH8 of the

Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings. Policy C5 of the Local Plan states, amongst other things, that development within Urban Landscape Protection Areas (ULPAs) will only be permitted where it does not undermine the value of the ULPA as an open or landscaped feature within the urban area.

Given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality, the Cary Park Conservation Area, or the Cary Park ULPA. While the proposed additional stanchions and the proposed LED luminaires would be visible from Cary Avenue due to their height, the proposal would amount to a small-scale increase to the current lighting provisions. The green colour of the proposed stanchions and luminaires would match that of the existing light stanchions as well as the existing fencing that bounds the tennis courts, and would help the proposal to blend in with the site's verdant setting. In addition, given that the proposed replacement LED luminaires would result in certain stanchions that currently have two luminaires per stanchion only requiring a single LED luminaire per stanchion, the proposal would rationalise and simplify the lighting provisions to some extent.

The proposal is considered to be in accordance with Policies DE1, SS10 and C5 of the Local Plan, Policy TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

### **3. Impact on Residential Amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of residential amenity.

Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours in terms of their privacy, outlook, or access to natural light, and would not result in any unacceptable exposure to noise or light pollution.

The application has been assessed by the Council's Senior Environmental Health Officer who has indicated no objection to the proposal, noting that the lighting has been designed to be directed downwards onto the surface in such a way as to minimise light spillage beyond the boundary of the courts and therefore the possibility of unreasonable intrusion into neighbouring properties. With regard to the potential for noise disturbance, it is noted that while the proposal would provide lighting to an additional tennis court, only three of the six tennis courts at the site would be lit, thereby limiting the number of users on the site after dark. (In this regard it should be noted that the courtesy luminaire serving the three remaining unlit tennis courts would only serve to provide low-level background lighting for health and safety reasons and to allow users of Courts 1-3 to collect stray tennis balls.) Given that the site comprises a public park, it is to be expected that recreational activities would be carried out that would result in some noise generation, and it is considered that the proposal would not result in any unacceptable increase in noise emanating from the use of the site. In line with existing conditions of approval applicable to the site, the use of the proposed lighting would continue to be restricted to up until 9pm on Mondays to Fridays only.

The proposal is considered to be in accordance with Policy DE3 of the Local Plan and the guidance contained within the NPPF.

#### **4. Ecology**

Policy NC1 of the Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity. Given that the site is not in close proximity to any protected sites (including the South Hams Special Area of Conservation for Greater Horseshoe Bats, noting that the site is outside of the Sustenance Zone and the Landscape Connectivity Zone), it is considered that the detailed assessment of illumination included in the applicant's submission provides adequate information to inform an assessment of the ecological impacts of the proposal in a manner that is proportionate to the scale of the proposal. It is considered that the proposal, which amounts to extending the lighting provisions to 1 additional tennis court with no change to the permitted hours of operation, would not result in any unacceptable ecological impacts, and that the proposal is therefore consistent with Policy NC1 of the Local Plan.

#### **5. Flood Risk and Drainage.**

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. Given the nature of the proposal, and the fact that the proposal would not result in any increase to the impermeable built footprint of the site, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

#### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

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.

#### **Local Finance Considerations**

**S106:** Not applicable.

**CIL:** N/A

## **EIA**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

## **Planning Balance**

The proposal would result in improvements to a recreational facility in an accessible location that would allow for a small increase in the number of people that are able to make use of the tennis courts after dark on weekdays up until 9pm. The proposal would therefore make a small but positive contribution to the promotion of healthy and active living. Subject to the planning condition detailed below, no unacceptable material planning harm has been identified and the proposal is in accordance with Development Plan policies.

## **Conclusions and Reasons for Decision**

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, heritage assets, or local amenity; and provide acceptable arrangements in relation to access flood risk, and ecological constraints. The Torquay Neighbourhood Plan, and all other material considerations.

## **Officer Recommendation**

That planning permission be granted, subject to the condition detailed below, and that the final drafting of conditions and the addressing of any further material considerations that may come to light be delegated to the Assistant Director of Planning and Transport.

## **Conditions**

### **Hours of Use**

The lights hereby approved shall be used only between the hours of 15.00 and 21.00 on Mondays to Fridays and at no time on Saturdays or Sundays.

Reason: In the interests of residential amenity, in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

## **Informatives**

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

## **Relevant Policies**

### **Torbay Local Plan Policies**

SC1 – Healthy Bay.

SC2 – Sport, leisure and recreation.

DE1 – Design.

SS10 – Conservation and the Historic Environment.  
C5 – Urban Landscape Protection Areas.  
DE3 – Development Amenity.  
NC1 – Biodiversity and Geodiversity.  
ER1 – Flood Risk.  
ER2 – Water Management.  
SS3 – Presumption in favour of Sustainable Development.

**Torquay Neighbourhood Plan Policies**

TH8 – Established Architecture