

SUBJECT ENFORCEMENT REPORTS

ITEM 7

REPORT OF Head of Planning & Building Control

FILE REF.	NE97/081
FILE TYPE	Enforcement
PARISH	Waterstock
WARD MEMBER(S)	Cr. John Nowell-Smith
OWNERS	Wyatt Brothers (Oxford) Ltd.
SITE	Waterstock Golf Club, Waterstock
DEVELOPMENT	Golf Range Shelter and Practice Range
GRID REFERENCE	462973/205020
OFFICERS	Adrian Duffield / Rob Cramp

1.0 INTRODUCTION

1.1 The purpose of this report is to consider a request from the Waterstock Parish Meeting for a discontinuance order in respect of the floodlit driving range at the Waterstock Golf Club, Waterstock. This request is supported by a number of organisations and the owners/occupiers of various properties alleging light nuisance from the driving range floodlights. The lights have been installed with the benefit of planning permission (P93/N0704) and should be regarded as lawful under the Town and Country Planning Act 1990.

1.2 A discontinuance order pursuant to section 102 of the Act may be issued by the Council to require the discontinuance of a use, the imposition of conditions, or the alteration or removal of a building or works, if having regard to the development plan and to other material considerations it is considered by the Council expedient in the interests of proper planning of the area to do so. Such an order would only come into effect if confirmed by the Secretary of State. Members will recall at their meeting on 21 November 2007 (following a site visit) considering a report in connection with this matter, including an explanation of discontinuance action, a chronology of key events and details of current action aimed at resolving this matter.

1.3 This report summarises the history of the development and the investigations that have been undertaken by the Council since the request for discontinuance was first made in 1998. The extent of the nuisance caused by the lighting is also considered together with various alternative courses of action to address the matter. The report concludes with a recommended course of action by the Council.

2.0 THE SITE

2.1 The Waterstock Golf Club is situated in the open countryside just north east of the M40 and A40 interchange; and south west of the settlement of Waterstock in the Oxford Green Belt. Access to the site is gained via the roundabout where the A418 meets the south bound exit ramp at junction 8 of the M40.

2.2 Part of the golf course facility, representing an area of approximately 2.5ha, is used for the purpose of a golf driving range. The driving range is set on a north/south axis and is some 250 metres in length. The driving range shelter which measures approximately 60m long x 6m wide, accommodates 22 north facing driving booths. The shelter sits at the top of rising land with a drop of about 5 metres to the furthest end of the range. **Appendix 1** contains a location map of the driving range facility.

2.3 Mounted on the roof of the driving range shelter and also facing north are a total of nine high-pressure sodium lights, including five main lights with an output of 1000W and four secondary lights with an output of 150W. This development benefits from a planning permission (P93/N0704) and is in accordance with a lighting scheme which has been approved in accordance with the conditions of the above planning permission.

3.0 **DEVELOPMENT HISTORY**

3.1 Planning permission (P89/N0692/O) for the construction of a golf course and club house at Waterstock was first granted in October 1989. Since that time there have been numerous applications for the ongoing development of the golf course and its associated facilities.

3.2 In December 1993 the Council received an application (reference P93/N0704) for a “*golf range shelter and practice range with long range low level lighting*” on part of the golf course site. The plans showed eight high-pressure sodium lights on the roof of the shelter, including four main lights with an output of 1000W, and four ‘secondary’ lights with an output of 150W. Predicted levels of light output on the driving range and the impact of light spillage outside of the range were provided with the application. These details included a plan showing in cross-section an arc of light with a maximum height of 20 metres above the ground tapering to 8 metres at the end of the range. [Note:- A later assessment of this information by the Council’s lighting consultants DPA in 1999 would find this information to have been “totally misleading”.]

3.3 The application was recommended for refusal but the Northern Area Planning Sub-Committee (NAPSC) considered that planning permission should be granted. The application was then referred to the Planning Committee at its meeting on 22 March 1994 for determination as a departure from the development plan. The Planning Committee resolved, contrary to the officer’s recommendation, to grant planning permission for the driving range development. A planning permission (P93/N0704) was subsequently issued on 20 April 1994. Condition 2 of the above planning permission required as follows:

“The design, layout and erection of any floodlighting system provided to illuminate the golf driving range shall be in accordance with a detailed scheme and specification to be agreed with the Local Planning Authority in consultation with the Department of Transport.”

The stated reason for this condition was: *“To avoid light spillage or dazzle to drivers on the A418 road and the M40 motorway.”*

3.4 Details of a lighting scheme were submitted in September 1994 as required by Condition 2 above. The scheme provided for a total of nine high-pressure sodium lights on the roof of the shelter, including five main lights with an output of 1000W, and four ‘secondary’ lights with an output of 150W. These details were approved by officers of the Council on 11 November 1994, subject to a night-time inspection to identify whether detailed adjustments might be required to avoid glare to motorists on the M40. Following a night-time inspection carried out on 7 December 1994, the Oxfordshire County Council as Highway Authority confirmed that shields were needed

to avoid glare to motorists, or substantial fencing erected on the west side of the golf course. Shields were subsequently fitted to the lights and these were confirmed to be satisfactory by the County Council in December 1995. The existing floodlighting is therefore in full accordance with the conditions of planning permission P93/N0704.

- 3.5 The Waterstock Parish Meeting (the Parish) first raised concerns regarding the environmental and amenity impacts of the floodlighting in December 1994. In 1997 the Parish asked to see the details of the lighting scheme that had been approved by the Council and subsequently wrote to the Council on 20 October 1998 through Harbottle and Lewis (solicitors) to request that a discontinuance order be issued in respect of the driving range development. This request was based on their perception that the amount of light spillage from the driving range vastly exceeds that shown on the plans accompanying the original planning application. It was further suggested that the terms of the planning consent were not sufficiently precise. The absence of any restriction upon the hours of usage was also noted.
- 3.6 Other representations have been received in support of the Parish's request for discontinuance action, including letters from Waterperry and Thomley Parish Council, Holton Parish Council, The Ramblers Association, The Oxford Green Belt Network, The Oxford Preservation Trust, The Campaign to Protect Rural England and some 20 local residents. Correspondence has also been received from former MP Michael Heseltine and the Ward Member for Horton-cum-Studley (Cherwell DC). One letter from the owners of Waterperry House dated 18th January 1997 included reports from two separate lighting experts, recommending alternative lighting schemes both utilising lights mounted on 8 metre high columns. **Appendix 2** contains a copy of a report from the Waterstock Parish Meeting received on 4 April 2008 outlining their case for the issuing of a discontinuance order.

4.0 **COUNCIL INVESTIGATION**

- 4.1 The Parish's request for discontinuance was considered by the former Planning (Appeals and Enforcement) Sub-Committee (the A/E Sub-Committee) on eight different occasions between September 1999 and May 2001. A summary of each report and the decision taken is included at **Appendix 3**. As a result of these deliberations a number of studies were undertaken to investigate the extent of the lighting impacts and to consider possible alternative options to address the lighting problem.
- 4.2 The first piece of work was undertaken in September 1999, when a study was undertaken at the Council's request by DPA Lighting Consultants. The views of the consultants were sought regarding the lighting installation and any proposals which might be considered to address any adverse impacts. The consultants concluded that:
- ".....the location of this development on top of a hill in a rural setting with lights facing towards populated villages, which are also on hills, creates a highly detrimental situation with significant negative effects on the visual environment."*
- 4.3 The report listed a number of options which might be considered to reduce the impact of the lighting, but concluded:
- "In our opinion, the installation of any conventional floodlighting system that provides sufficient light for the driving range to function properly in this location, will have a detrimental effect on the surrounding environment. If it is not possible to remove the lighting altogether, a detailed study should take place to ascertain the extent to which any consideration of our suggested improvements will provide the least intrusion on the rural environment by this floodlit facility."*

- 4.4 As a result of the above report, discussions were initiated with the golf club proprietors regarding the possible trial of alternative forms of lighting. At the same time, the Council's landscape architects (Machin Bate Associates) were also asked to consider the potential for landscape measures to reduce the impact of the lighting.
- 4.5 After much negotiation the lighting trials eventually took place in March 2001. DPA assessed two alternative schemes, which involved the substitution of the 5 x 1000Watt high pressure sodium lamps with lamps of different specification including 1000Watt metal halide lamps; and 400Watt high pressure sodium lamps. Particular regard was given to the impact of the alternative schemes on four properties in the locality from which the driving range could be seen most clearly. A report by DPA regarding the outcome of the trials concluded that they had unfortunately offered no real solution to the problems that had been identified in their earlier report and that the influence on the four neighbouring properties was still "*wholly unacceptable*".
- 4.6 The report suggested three further alternatives:
- re-design the lighting scheme along the same lines as that previously recommended by the consultant employed by one of the objectors, recognising the potential disadvantage of having to utilise unsightly 8 metre poles with the prospect of further ground level uplighting to illuminate the trajectory of driven golf balls;
 - build high banks with evergreen planting to shield neighbours;
 - re-position the driving range so it does not face any neighbouring property.
- 4.7 The preliminary report on landscaping by Machin Bate Associates dated May 2001 advised that if earthworks alone were to be used to screen the lights from neighbouring property, earth bunds of some 7-8 metres height would be required. The report identified that there may be potential for lower bunding to supplement ground planting, but pointed out that this would take some time to become effective and that the degree of effectiveness would also be dependent on the species used (evergreens not being universally welcomed). The resulting landform would also appear alien and intrusive in the Green Belt.
- 4.8 A draft report on discontinuance action was prepared in July 2002 for the consideration of the Northern Area Planning Sub-Committee (NAPSC). Legal advice obtained in December 2002, however, advised that it would be premature to present the report to NAPSC, particularly having regard to a planning application being considered by the Oxfordshire County Council (OCC) for an extension to the golf course involving ground modelling in the vicinity of the driving range.
- 4.9 Discussions were held with OCC from 2002 through to 2005 with a view to resolving the driving range lighting problems as part of proposals by the golf course owners to retain some unauthorised fill on the site for an extension to the golf course. Two applications for planning permission (P01/N0417/CM & P02/N0837/CM) to retain the unauthorised fill in connection with a nine-hole golf course proposal, including bunding to address the impact of the lights, were refused by OCC in May 2002 and May 2003 respectively. An appeal lodged against the refusal of planning application P01/N0417/CM was subsequently dismissed in September 2003. In reaching his decision the Inspector considered that the proposed landform would "*introduce an intrusive alien feature into the locality*". The Inspector also acknowledged "*just how serious the light pollution problem is, not just for individual properties ... but in the surrounding rural landscape.*" However, he considered it unreasonable for the appeal application to be expected to solve that problem.

- 4.10 In January 2003 a briefing of District Councillors took place, following which Machin Bate Associates were requested to undertake a more detailed study on the potential for landscaping measures to reduce the impact of the driving range lights. This study was concluded in April 2005, followed a further night time inspection and consultations with the Golf Club and the County Council. Machin Bate advised against the use of bunding and warned of the difficulties in using planting as an effective measure, particularly in the short term. The County Council advised SODC that some 7,000 tonnes of topsoil would need to be imported onto the site to form the mounding discussed in the Machin Bate report. This would contravene enforcement notices already in place and would not be supported by OCC.
- 4.11 In June 2006 an investigation was undertaken by the Council's Environmental Health Team, following changes to the legislation on statutory nuisance. The officer concluded that the driving range is a source of 'light pollution' but that it does not give rise to a statutory 'artificial light nuisance'. As a result of this work it has been concluded that any concerns about the impact of the lighting should not be dealt with under the statutory nuisance regime.
- 4.12 It is apparent from the above that considerable time and resources have already been expended in trying to find a negotiated and amicable solution to the problem of light spillage from the driving range, with no clear solution emerging. This has led to understandable frustration on the part of some of the objectors, as a result of which a complaint has also been lodged with the Local Government Ombudsman regarding the time taken by the Council in its assessment of this matter. This Ombudsman's investigation remains ongoing, however the Ombudsman has set a deadline for the Council to make a final decision on the matter before the end of April 2008. It has therefore become a matter of some urgency that the Council finalise its consideration of this matter by the adoption of an appropriate course of action at the earliest possible occasion.
- 4.13 On 19 November 2007 members of the Planning Committee undertook a night time visit to the facility to view it in operation. At its meeting on 21 November 2007 the Planning Committee subsequently considered an information report outlining the history of the development and the request for a discontinuance order. At that time the Planning Committee was informed that:
- "Considerable time has lapsed, however, since the Council engaged DPA (lighting consultants) to investigate possible alternative lighting schemes (March 2001). Before making any final decision regarding whether or not to issue a discontinuance order therefore, it is considered prudent on the Council's part to update its knowledge of any recent innovations in golf driving range lights. To this end DPA has been engaged to undertake a current search of the market to see if there exist any new lighting technologies that might adequately address existing lighting problems."*
- 4.14 DPA has since completed the above investigation identifying 4 options for the lighting of the driving range facility as alternatives to the existing 'end of range system' currently employed. A description of each of the above options together with a visual representation of each option is included at **Appendix 4**. Of these 4 options, DPA Lighting recommended the further investigation of 2 options only, being:
- **The BERM range mounted lighting solution**, which combines a series of roof mounted lights (angled down so as to light the area immediately in front of the tee only) and a series of ground mounted lights distributed throughout the range (located so as to be concealed by an area of raised ground); and

- **the GlowBall® golf system**, which consists of golf balls that are made to glow by a photo-luminescent pigment to which an electrical charge is applied and that does not therefore require the driving range to be lit (only the distance markers).

4.15 In the first instance DPA recommended a site visit to existing facilities employing the above technologies and then a site trial if deemed appropriate. Pursuant to the above recommendation the following investigations were undertaken into the above alternative options:

BERM range mounted lighting solution

4.16 A lighting design was obtained from the suppliers of the BERM technology, Abacus Lighting Limited for the Waterstock Driving Range. The design provided for 10 x 150 Watt roof mounted lights angled downwards in order to light the area in front of the tee; and 20 x 400 Watt lights mounted at ground level throughout the range. These range mounted lights (or BERM units) are arranged in 10 pairs with one light in each pair aimed directly forward to light the ground in front of the unit and the other light angled skyward to illuminate the golf ball in flight. Each of the ground mounted units would be situated behind a berm or earth mound thus concealing the unit from view of the driving range tee and protecting the lights from the impact of golf balls.

4.17 On 28 January 2008 a site visit was undertaken by Council officers to the Hedge End Driving Range at Southampton to view the BERM lighting system in operation. In summary the following observations were made.

Advantages:

- the facility appeared popular and well patronised having particular regard to the time of year;
- when viewed from the driving range tees the effect is quite attractive, with gentle pools of light scattered throughout the range well illuminating the ball throughout its flight;
- there appeared to be no significant sideways spillage of light;
- the lights are scattered throughout the range rather than being concentrated at one end;

Disadvantages:

- when viewed from the opposite end of the range (looking back towards the tee) there was still considerable glare from the lights;
- although the individual lights are of a lower wattage than those currently employed on the Waterstock site, the total number of lights is considerably greater resulting in an overall greater use of power (approximately 70% more);
- the implementation of this technology on the Waterstock site would result in some of the lights being closer to some of the complainant's properties than the existing end of range lighting;
- given that half of the ground mounted lights are angled upwards into the sky, this technology is not likely to improve the sky glow affect and may even increase sky glow (Note: It was not possible to distinguish the sky glow effect of the driving range lights at Southampton from the general light spillage from surrounding land uses including the motorway and nearby superstore car park, the site being in a more urbanised setting than Waterstock);

Conclusion

- The circumstances of the Hedge End Driving Range were not sufficiently comparable to the Waterstock site to draw any reasonable conclusions regarding the implementation of this technology on the Waterstock site. In particular, the lay

of the land, the size of the development, its more urbanised setting, its proximity to other significant light sources as well as the nature and proximity of surrounding land uses were not sufficiently comparable to the context of the Waterstock site.

- 4.18 A partial trial of the BERM lighting system on the Waterstock site was subsequently undertaken on 5 March 2008 with the full cooperation of the Waterstock Golf Club. Four pairs of the ground mounted lights (i.e. 8 x 400Watt lights) were laid out along the length of the driving range representing 40% of the ground lights otherwise required in a fully implemented scheme. [Note: the 10 x 150Watt roof mounted lights were not otherwise included in the trial]. Members of the Planning Committee were also invited to attend the evening trial.
- 4.19 Council officers were accompanied by lighting consultants from DPA to view the lights from each of the four main affected neighbouring properties. **Appendix 5** contains a copy of DPA's conclusions based upon their observations of the trial. In summary they conclude as follows:

"...the lighting trial conducted on 5th March 2008 suggests that while the BERM ground mounted lighting system is in our opinion likely to cause a significant degree of light pollution in the form of sky glow, the system may provide a degree of mitigation against the direct glare currently suffered by the residents at the four receptor locations. It is our considered opinion, however, that the degree of detrimental environmental impact caused by the BERM ground mounted lighting system is still likely to be such as to render this an unacceptable long term floodlighting solution for the driving range given the rural context within which the range is situated."

- 4.20 Representatives of the golf club were also present during the trial expressing the following concerns regarding the BERM system:
- the golf ball did not remain clearly visible over the entire length of its travel, particularly when landing in pockets of shadow discouraging patronage by serious golfers (Note: this may have been due in part to the partial nature of the trial);
 - the presence of earth berms and lighting units on the range would not be conducive to the mowing of grass by existing machinery and would therefore increase the ongoing costs and resources required to maintain the driving range;
 - the presence of the earth berms and lighting units on the range would also inhibit the mechanised collection of balls from the range and would therefore increase the ongoing costs and resources required to operate the facility.
- 4.21 Comments received from Waterperry Parish Council and Waterstock Parish Meeting with regard to the above trial can be summarised as follows:
- the partial trial (40%) was totally inadequate to assess the full impact of the lighting scheme;
 - the roof mounted lights, which were not included in the trial, would have a significant impact by themselves even without the ground mounted lights;
 - the clear weather conditions were not conducive to an assessment of the sky glow impacts of the lighting scheme;
 - notwithstanding the above inadequacies of the trial, the berm lights were still considered to be totally unacceptable with regard to both residential and environmental harm;
 - glare from the ground mounted lights were still unacceptably intrusive.
- 4.22 Although this technology is likely to reduce the direct glare to some of the worst affected neighbouring properties, it is not otherwise likely to improve and may even exacerbate the sky glow impacts of the development if implemented. Any possible

advantages this lighting system might have over the existing end of range lighting system are not considered sufficient to justify its implementation.

GlowBall® golf system

- 4.23 A proposal was obtained from the supplier of the GlowBall® system. This product is available on the basis of a 3 year lease. The balls and equipment remain the property of the supplier who is also responsible for the ongoing maintenance of the equipment during the term of the lease. The technology employs golf balls that are made to glow by a photo-luminescent pigment to which an electrical charge is applied and that does not therefore require the driving range to be lit (with the exception of the distance markers). The suppliers claim that the advantage of their system over previous illuminated golf ball systems is that the golf balls match the quality of the ‘standard’ golf ball whereas past attempts at this technique have utilised balls which do not fly as straight or as far as normal balls due to their adaptation.
- 4.24 In recommending this product for further investigation DPA indicate as follows:
- “The system has extremely low environmental impact from a lighting perspective when compared with traditional floodlighting approaches of any variety. We are unable to comment on the suitability of this approach from an operational viewpoint as we are not experts in the field of golf practice.”*
- 4.25 Having regard to the above it was recommended that a site visit be undertaken to an existing facility to view the product. However, although this product was installed at the Horsham Golf and Fitness Centre since March 2007, it has recently been removed from that facility and is not available to be viewed in operation anywhere else. It should also be noted that the Horsham Golf & Fitness Centre is/was a facility owned by a director of GlowBall® Golf Ranges Ltd (i.e. the owner and supplier of the product). Although this product would address existing light pollution problems, it does not appear to have been enthusiastically embraced by the golfing industry. The product therefore remains untested in the market place.
- 4.26 The owners of the Waterstock Driving Range understandably hold strong reservations regarding this product and were not agreeable to a demonstration of the product on the site. Their concerns are considered justified and in the circumstances the GlowBall® golf system is not considered to be a viable alternative to the existing flood lit system, although it would probably be acceptable on environmental grounds.

5.0 POLICY & GUIDANCE

- 5.1 The development plan has been up-dated since the original planning application for the driving range was considered. The planning policies that are relevant to a current assessment of the development are as follows:

Oxfordshire Structure Plan 2016 – G1, G2, G4, G5, T1, EN1 and R1

South Oxfordshire Local Plan (SOLP) 2011 – G1, G2, G3, G4, G6, C1, C4, GB2, GB3, GB4, EP1, EP3, D1, D2, R1, R5 and T1.

5.2 Government Policies

- PPS1 - Delivering Sustainable Development
- PPG2 - Green Belts
- PPG4 - Industrial and Commercial Development and Small Firms
- PPS7 - Sustainable Development In Rural Areas
- PPG17 - Planning for Open Space, Sport and Recreation
- PPS23 - Planning and Pollution Control

6.0 **PLANNING CONSIDERATIONS**

- 6.1 A discontinuance order may be issued by the Council if having regard to the development plan and to any other material considerations it appears to the Council expedient to do so in the interests of the proper planning of the area (including the interests of amenity). An understanding of the extent to which the driving range development conforms to relevant planning policies is therefore appropriate to the Council's consideration of this matter. In assessing the appropriateness of the development, the material planning considerations are:
- (i) the impact of the development on the Oxford Green Belt;
 - (ii) the impact of the development on the rural surroundings;
 - (iii) the impact of the development on neighbour amenity;
 - (iv) the effect of the development on highway safety and convenience;
 - (v) the extent to which the development is supported by policies on recreation; and
 - (vi) other material considerations.

Green Belt

- 6.2 Policy GB2 of SOLP 2011 confirms the type of development that may be considered acceptable in the Green Belt, including "essential facilities for outdoor sports and recreation".
- 6.3 PPG2 – Green Belts, gives advice on the type of recreational facility that might be appropriate as follows:

"Essential facilities should be genuinely required for uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. Possible examples of such facilities include small changing rooms or unobtrusive spectator accommodation for outdoor sport, or small stables for outdoor sport or recreation."

- 6.4 The driving range shelter is a sizeable structure measuring some 60m x 6m and is situated on a hill-top. It is not part of a group of other buildings and has an immediate impact on the openness of the Green Belt. Its impact is exacerbated at night-time when the driving range is lit and the intensity of the illumination draws obvious attention to itself over a wide area.
- 6.5 The driving range is within the area for which the playing of golf was originally permitted by planning permission (P89/N0692/O). A practice area may, with some justification, be considered an essential part of a golf club. However, a formal driving range is clearly aimed at attracting a wider pattern of use and is not considered essential to the functioning of a golf club. In this particular case the size of the structure, together with its isolated and exposed location, leaves it well outside the type of development that might otherwise sit comfortably within the definition of appropriate development within the Green Belt. The driving range building and flood lighting is therefore considered to be 'inappropriate development' in the Green Belt. Inappropriate development should only be permitted where 'very special circumstances' exist justifying the departure from the development plan. It is considered that no such justification exists in the circumstances of the present case.

Countryside Impacts

- 6.6 Policy G4 of the SOLP 2011 seeks to protect the countryside for its own sake. Policy C1 seeks to conserve and where possible enhance the landscape of the District; and further provides that development that would adversely affect the distinctive features of the landscape character areas will not be permitted. Policy C4 similarly requires that development which would damage the attractive landscape setting of a settlement will not be permitted.

- 6.7 The site occupies a prominent position on high ground, immediately to the south of the River Thames in the Oxford Heights landscape character area. A public footpath crosses the golf course at the north end of the driving range. The driving range shelter can be viewed from junction 8 of the M40, from several properties to the north of the site and from the road between Waterperry and Holton. Other views of the building may be more long distant, but the prominence of the building is magnified considerably at night time when the driving range is lit, as the sky-glow confirms the presence of the building from locations where in day-time it might not otherwise be noticed. The studies undertaken by DPA (Lighting Consultants) and Machin Bate (Landscape Consultants) confirm this.
- 6.8 It is considered that the building intrudes into the rural landscape and that it dominates the locality when lit. This is detrimental to the rural character of the area and harmful to the landscape settings of the villages of Waterstock and Waterperry, contrary to policies G4, C1 and C4 of SOLP 2011.
- 6.9 Policy EP3 of SOLP 2011 deals with light pollution, and also confirms that such development should not be permitted where it has an adverse effect on the rural character of the countryside. In this regard the supporting text to policy EP3 at paragraph 3.133 specifically acknowledges the harmful affect that lighting can have on the character of the countryside by making it appear more urbanised.

Neighbour Amenity

- 6.10 The driving range causes no material harm to neighbouring properties during daylight hours. However, the impact is quite different when the driving range is lit. In this regard policy EP3 of SOLP 2011 requires as follows:

“Proposals for new floodlighting and other external lighting that would have an adverse effect on neighbouring residents, the rural character of the countryside or biodiversity will not be permitted, unless effective mitigation measures will be implemented.”

- 6.11 Assessments of the impact of the driving range lights on neighbour amenity has largely focussed on four properties most affected by the lighting (Waterstock Mill, Waterstock House, Waterperry House and South Lodge). **Appendix 6** contains a plan showing the location and approximate distance of these properties from the driving range shelter and lights. These four properties are located at different heights, distances and compass bearings to the driving range. The impact of the lighting in each circumstance therefore varies as the detailed assessment at **Appendix 7** shows.
- 6.12 The impact of the driving range is most intrusive at South Lodge, and in this case the impact could reasonably be described as un-neighbourly in planning terms. The extent to which the driving range has a direct affect on the reasonable enjoyment of Waterstock House, Waterstock Mill and Waterperry House is not as significant, but the fact that the driving range can be clearly seen from these three properties lends weight to the view that its impact on the rural character of the area and the landscape setting of the villages of Waterstock and Waterperry is unacceptable.
- 6.13 The development can therefore be said to have an effect on the amenity of all four properties, but the main issue is whether this is materially harmful to the occupiers' residential amenity. Such a conclusion may be open to argument in the case of Waterperry House where the property is in institutional, rather than residential use. Notwithstanding this, the owners have pointed out that the site is used from time to time for residential courses, and a sizeable petition against the lights has been submitted from these visitors to the site.

- 6.14 The Council's Environmental Health officers have assessed the impact of the lighting on these four properties and have concluded that the driving range is a source of "light pollution" although it does not amount to a statutory nuisance. However, a consideration as to whether there is "an adverse effect on neighbouring residents" under policy EP3 of SOLP 2011 is not necessarily limited to an assessment of statutory nuisance.
- 6.15 In the opinion of the Council's lighting consultants (DPA) the impact of the driving range lights on all four properties is "wholly unacceptable". Your planning officers agree with this opinion and believe the impact of the driving range lights to be materially harmful to the amenities of the occupiers of all of the above properties.

Highway Safety and Convenience

- 6.16 The development was originally the subject of an objection from the Highway Authority but following advice from the Department of Transport the objection was withdrawn, subject to the imposition of condition 2 of planning permission P93/N0704 (see paragraph 3.3). As mentioned earlier in this report, the Highway Authority has confirmed that the lighting installation was satisfactory in highway terms in 1995.

Recreation Policies

- 6.17 The Structure Plan recognises the important role that recreation plays in the well being of the community and the need to maintain the level of existing facilities. Policy R1 of the Structure Plan supports opportunities to create new outdoor recreation facilities that are appropriate in scale and sensitive to a rural location.
- 6.18 Policy R1 of SOLP 2011 envisages that facilities for outdoor sport to serve local needs will be permitted in, or adjacent to, settlements provided that there are no overriding amenity, environmental, green belt, transport or agricultural objections. Policy R5 supports the provision of golf courses subject to a number of provisos, including that the only new buildings that will normally be allowed are a clubhouse and a maintenance building. The supporting text at paragraph 5.89 of SOLP 2011 mentions driving ranges in the following terms:

"Proposals for golf driving ranges may include an element of floodlighting. These will be considered in relation to Policy EP3. Where such proposals are acceptable, the impact of lighting emissions should be minimised by use of shielding and screening and by the selection of an appropriate intensity of lighting."

- 6.19 According to the golf club owners, the driving range provides an essential facility for the club, providing members with a practice and teaching facility and is valuable in attracting new members to the club. As it is a 'pay as you play' facility, the club also points out that it offers a practice facility for casual golfers in the locality and that it is used by some 40,000 golfers per year (of a total of 100,000 visits to the club generally).
- 6.20 Casual observation suggests that the level of night-time use may be lower than suggested by the golf club. A considered attempt was made to record the level of evening usage over a five-day period in January 2002, where the level of use appeared to be little more than 110 visits for the five days (18:00 to 21:30).
- 6.21 Nevertheless, it is not disputed that the driving range is a valued facility for the golf club and that it provides an opportunity for recreational use by local golfers (both club members and general public). As such, it is the type of facility that might normally be supported by policy R1 of the Structure Plan and R1 of the Local Plan, if appropriately sited. In the circumstances of this case, however, the facility is situated in a sensitive

rural location and any value to be attributed to the facility is not considered sufficient to outweigh the adverse impacts of the lighting on the rural character of the area or the amenities of the occupier of nearby properties.

- 6.22 Further, the site is in the Green Belt and the general thrust of the policies contained in the Local Plan, including those relating to recreation, is to give priority to the need to ensure that only development that is recognised as appropriate in the Green Belt is allowed to take place.

Other Material Considerations

- 6.23 A material consideration relevant to the Council's assessment of the current request for a discontinuance order is the circumstance surrounding the Council's original decision to grant planning permission.

- 6.24 The original decision to grant planning permission was made by the Council's Planning Committee contrary to the officer's recommendation. In this regard the application had been recommended for refusal for the following reasons:

- that the proposed practice range and shelter with floodlighting would be contrary to the Green Belt;
- that the proposed facility would be damaging to the rural character of this area.

- 6.25 The Planning Committee approved the application following a recorded vote; the minute of the meeting confirms that nine Members were in favour of approval, and eight against. The minutes do not record the reason(s) why the Committee considered that planning permission should be granted.

- 6.26 In arriving at the decision to grant planning permission members would have relied upon information submitted with the application regarding the impact of lighting that ultimately proved to be inaccurate. It appears that the impact of the driving range floodlighting on residential properties and the wider environment was not at the time considered to be problematic based upon this information.

- 6.27 The Council's original decision is also a reflection of the quality of the information and guidance that was available at the time regarding the assessment of lighting impacts. The impact of lighting, particularly in countryside locations, is an issue that is better understood today. Among other things a definitive statement of Government policy entitled "*Lighting in the Countryside – Towards Good Practice*" was published in 1997. This document contains a section on Sports Facilities in which the authors state:-

"Extensive floodlighting is now an accepted part of larger sports complexes, many of which are on the fringes of urban areas and have an influence on the surrounding countryside. However, even relatively minor village sports pitches may be floodlit and there is often particular concern about the lighting associated with golf driving ranges in rural areas."

- 6.28 The authors stress the complex and technical nature of lighting design, that this should be considered much more critically than it has in the past and '*that environmental considerations should be given greater weight*'. They encourage the production of schemes that are of higher quality than those used in the past, and advise that '*...there will also be opportunities to remove or redesign existing lighting that is inappropriate to a rural setting; these opportunities should be recognised and exploited wherever possible*'.

- 6.29 It is difficult to judge the Planning Committee's original decision to grant planning permission to the floodlighting to have been grossly wrong at the time, given:
- the inadequacy of the information submitted with the application regarding the impacts of the lighting, upon which the Committee no doubt sought to rely;
 - the changes that have occurred to planning policy and Government guidance since the application was determined; and
 - the advances in the quality of information on outdoor lighting design and assessment that have occurred since the time of the original application.

7.0 **POSSIBLE COURSES OF ACTION**

7.1 As already pointed out, the driving range has been built with the benefit of and in accordance with the conditions of planning permission (P93/N0704). Any discrepancies between the dimensions of the driving range shelter as built and the plans as approved are considered minor only. In any event the shelter has remained 'in situ' for some 14 years and should be regarded as lawful under the Town and Country Planning Act 1990 (the Act). There is therefore no breach of planning control as the basis for enforcement action.

7.2 The Council has been requested by the Waterstock Parish Meeting and other local residents to issue a discontinuance order in respect of the driving range pursuant to Section 102 of the Town and Country Planning Act 1990, which provides as follows:

"If, having regard to the development plan and to any other material consideration, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity) –

(a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed, they may by order –

(i) require the discontinuance of that use, or

(ii) impose such conditions as may be specified in the order on the continuance of it, or

(iii) require such steps as may be so specified to be taken for the alteration or removal of the building or works,

as the case may be."

7.3 If the Council decides to issue a discontinuance order, such an order would not take effect unless it is confirmed by the Secretary of State. The Secretary of State's confirmation of an order would be required even if the order was not opposed by the golf course operator. An objection to the order would almost certainly lead to the holding of a public inquiry. A discontinuance order would require the payment of compensation by the Council to any person who suffers damage in consequence of the order by depreciation in the value of his land or by being disturbed in his enjoyment of land; and in respect of expenses incurred in carrying out works in compliance with an order. In deciding whether or not to issue a discontinuance order, however, the amount of possible compensation and/or the Council's ability to pay such compensation is not a relevant consideration. If the Council is influenced in any way by financial considerations in reaching its decision as to whether or not to serve a discontinuance notice, the decision could be flawed and open to challenge in the Courts.

- 7.4 In considering the request for a discontinuance order pursuant to section 102 of the Act, consideration should be given to the following possible alternative courses of action:
- (i) the removal of the driving range in its entirety;
 - (ii) alternative lighting options;
 - (iii) imposition of a cut-off time for the use of the present lighting;
 - (iv) repositioning & reorientation of the driving range to avoid neighbouring properties;
 - (v) landscape measures;
 - (vi) removal of the lighting and a prohibition upon the use of the driving range as a floodlit facility; and
 - (vii) take no formal action.

7.5 The purpose of this section is to evaluate each of the above alternative options.

Removal of Driving Range Entirely

7.6 It does not appear necessary to give detailed consideration to whether the driving range in its entirety should be removed altogether. To do so where no representations of this nature have been made might be regarded as a disproportionate response. Although the driving range shelter does conflict with Green Belt policy, the most significant harm to the environment and neighbour amenity arises from the associated floodlighting. Apart from the lighting, the impacts of the driving range shelter are not considered sufficient basis to warrant the discontinuance of the facility in its entirety.

Alternative Lighting Options

7.7 Different forms of roof-mounted lighting have been tested and found to be unacceptable by the Council's own lighting consultants DPA. Where a lower level of illumination was used this was unacceptable to golfers. The local residents who commented on these schemes also felt that the alternative lighting still created an unacceptable impact on their properties, and DPA agreed with this assessment. Significantly, the existing levels of illumination were found by DPA to be below those recommended by The Chartered Institute for Building Services Engineers (CIBSE) for a driving range facility, suggesting that if anything the intensity of lighting should be greater for golfers. This would obviously generate even greater concerns for local residents and the environment generally.

7.8 Other forms of illumination involving the use of pole mounted lighting have also been considered. However the environmental damage in daylight hours caused by 8 metre high lighting columns would be unacceptable to the character of the rural setting and of the Green Belt. Although these options would likely result in a reduction in sky glow, they also have a greater potential to cause distraction and glare to local residents and motorists. The Council has previously required the removal of 8 metre high lighting columns from the car park of Waterstock Golf Club as a result of enforcement action (NE95/058A). The planning justification for this enforcement action was primarily due to the visual impact of these columns.

7.9 Most recently the Council has investigated and trialed the BERM lighting system employing ground mounted lights scattered throughout the range (see paragraphs 4.16 – 4.22). Although this technology is likely to reduce the direct glare to some of the worst affected neighbouring properties it is not likely to improve and may even exacerbate the sky glow impacts of the development if implemented. The relative advantages of this lighting system over the existing end of range lighting system are not considered sufficient to justify its implementation.

- 7.10 The GlowBall® golf system, employing glowing golf ball was also investigated (see paragraphs 4.23 – 4.26). This product, however, is untested in the market, having recently been removed from the only driving range facility to have employed it. The owners of the Waterstock Driving Range understandably hold strong reservation regarding this product and their concerns are considered justified. In these circumstance the GlowBall® golf system is not considered to be a viable alternative to the existing flood lit system.

Cut-off Time for Use of Existing Lights

- 7.11 Representations from the Parish have drawn particular attention to the fact that no condition was placed on the original planning permission to restrict the hours during which the driving range may remain lit. If the Council was to seek to impose a condition restricting the hours of use of the lights through a discontinuance order, such conditions would need to comply with the tests imposed by Government Circular 11/95 including the need to be precise, fair, enforceable and reasonable.
- 7.12 In particular it should not be so restrictive so as to make worthless the value of a floodlit facility (as would probably be the case with a requirement to switch off the lights at 7:00 p.m. each evening). A cut-off time linked to sun set times or the setting of different standards for weekdays and weekends is considered too complex and difficult to enforce. It is considered that it would be difficult to impose any cut-off time earlier than 9:00 pm and the environmental damage caused by the lighting installation before this time, during the darker months particularly, would still be considerable. For the above reasons the imposition of a condition restricting the hours of use of the lights is not considered to be a satisfactory solution in itself.

Repositioning & Reorientation of Driving Range

- 7.13 The repositioning/reorientation of the driving range facility does not warrant serious consideration for the following reasons:
- the existing driving range facility faces north (as advocated by Sports Council guidelines) to avoid facing into the sun at any time during the day;
 - to move the building to the other end of the range would leave it equally intrusive in daylight hours and remote from the golf course reception and car park facilities;
 - the repositioned facility would remain equally intrusive in terms of sky glow at night;
 - the reorientation of the driving range to face south would place another adjoining residential property in the direct line of lighting; and
 - the reorientation of the driving range in any other direction would not be possible within the area covered by the original planning permission.

Landscape Measures

- 7.14 Much thought has already been given to the potential for landscape measures to be used to help mitigate the impact of the lighting facility. Although a scheme has been prepared by Machin Bate (landscape consultants), it is unlikely to have any effect for a period of at least 10 years. The level of success of such schemes cannot be predicted with any certainty - being totally dependent on careful implementation and management.
- 7.15 Problems relating to the levels of the land around the driving range as a result of unauthorised fill have been on-going for some years and continue to be the subject of legal action which is not within this Council's control. Any landscape solution would require the further importation of earth fill onto the site contrary to enforcement notices already in place which would not be supported by OCC.

- 7.16 Any effective landscaping solution is likely to result in an alien and intrusive landform, which would of itself be damaging to the openness of the green belt and the landscape quality and character of the surrounding area. It is unlikely that landscaping measures alone would adequately deal with the problems identified, particularly the sky glow impacts.

Removal of Lighting and a Prohibition on Floodlighting

- 7.17 Removal of the lights altogether should only be pursued if other alternative measures to mitigate the effects of lighting prove impractical. Section 4 of this report summarises the efforts that have already been put forward over an extended period of years to find an amicable and negotiated solution to the problems created by the lighting. However, no clear practical solution has emerged from these efforts.
- 7.18 In the event that the Planning Committee concludes that the light emissions from the driving range are unacceptable and that discontinuance action is warranted, then the removal of the floodlighting would appear to be the most appropriate form of action to take.
- 7.19 In reaching such a conclusion the Committee should have regard to the impact that a discontinuance order may have upon the business itself (see more detailed comments at paragraph 8.5). In particular consideration should be given to a reasonable period for compliance with any discontinuance order (say 12 months) in order to give the Golf Club an opportunity to consider and arrange its business activities to adjust for the loss of the lighting from the driving range facility and/or to put forward a scheme of its own for the lighting of the facility.

Take No Formal Action

- 7.20 In considering a request for a discontinuance order the Planning Committee might take the view that the light emissions from the driving range are acceptable and that no formal action is warranted in the circumstance of the case. The exercise of the Council's discretion not to issue a discontinuance order is considered in more detail in the following section.

8.0 THE TEST OF EXPEDIENCY AND THE COUNCIL'S DISCRETION

- 8.1 In deciding whether or not to issue a discontinuance order the Planning Committee needs to apply itself to the statutory test set out in section 102 of the Act, namely whether it appears "*expedient in the interest of the proper planning of their area (including the interests of amenity)*" to make such an order.
- 8.2 No government policy guidance appears to have been published to assist local authorities in the exercise of their powers under section 102, which is perhaps regrettable. However, the words of section 102 clearly allow discretion to be exercised in deciding whether or not an order should be made. It is not a mandatory requirement for an order to be made in every case where development is found to be in conflict with the development plan. However, the degree of discretion might be narrowed by the extent to which a development is found to conflict with the development plan and/or affects the wider public interest; or the extent to which the original decision to grant planning permission is judged to be grossly wrong.
- 8.3 In exercising its discretion the Planning Committee may take the view that:
- (i) the impact of the lighting on the amenities of four neighbouring properties is not sufficient to warrant the discontinuance of a development which provides a wider public community service and is presently operating as a legitimate part of an

established business; and

- (ii) the impact of the lighting on the character of the Green Belt, the surrounding countryside and the landscape setting of nearby settlements when balanced against the public benefit of the facility is similarly not sufficient to justify such action.

8.4 Before reaching such a conclusion, however, the Planning Committee should carefully weigh in the balance the following factors:

- the original decision to grant planning permission was made contrary to the officer's recommendation that the application be refused on the basis that the development was contrary to Green Belt and countryside policies;
- the Council's own lighting consultants (DPA) are of the opinion that the impact of the driving range lights on all four properties is "*wholly unacceptable*";
- the Council's Environmental Health officers have concluded that the driving range is a source of "*light pollution*" albeit not a statutory nuisance; and
- a Planning Inspector has similarly acknowledged "*just how serious the light pollution problem is, not just for individual properties... but in the surrounding rural landscape.*"

8.5 When considering enforcement action in relation to a small business, PPG4 advises local planning authorities to consider with the utmost care the likely effect of enforcement action on the operation of the business. Although discontinuance does not strictly constitute an enforcement matter in terms of the Town and Country Planning Act 1990, the Council should nevertheless give similar consideration to the effect that a discontinuance order is likely have on the operation of the Golf Club business. In this regard the Council's Economic Development Manager has advised as follows:

*"1) **Impact on business** - I would have concerns over the loss of the facility and indeed the impact on the business itself. Given that the driving range has been established for over 14 years this would suggest that the facility is operating viably and a discontinuance order would have a major effect on the business and its long term viability. It is likely that most of the range's trade will be after work and in evenings and therefore without lighting the range will become unviable. The council's current strategic objective 6 states the need "to maintain and improve the economy". Under the new strategic priorities, objective 3 is "supporting economic growth" and the corporate priority includes "promote business growth and creation of new jobs". I would therefore be concerned of the impact on the potential loss of a business in South Oxfordshire and the associated loss of employment.*

*2) **Impact on users** - given the established nature of the facility it suggests that it is well used by local residents. The loss of the facility will have a detrimental impact on residents of South Oxfordshire and will result in users having to travel elsewhere outside the district to use driving range facilities. This has obvious sustainability issues.*

[Note:- In giving regard to the above comments it should be pointed out that the Council has no detailed information regarding the extent to which this facility is used, particularly during evening periods when the facility is floodlit. The Golf Club has previously declined all requests for such information which may be of a commercially sensitive nature. Any suggestion regarding the impact of a discontinuance order for the remove of the floodlight on the viability of the business therefore remains a matter of supposition.]

8.6 The issues which are described and considered in this report in a planning context should also be viewed in the context of rights contained in the Human Rights Act 1998.

In particular, Article 8 provides a right to respect for private and family life (a right which would be enjoyed by local residents). Article 1 of the First Protocol also provides that every natural or legal person (which would include not only local residents but the golf course operators as well) is entitled to the peaceful enjoyment of his possessions. Both of the above rights are not unqualified however and in general terms in the context of this case a proper and proportionate exercise of the Council's discretion under section 102 of the Town and Country Planning Act (within the parameters set out above) should not bring it into conflict with the general balancing exercise required to be undertaken in the context of the Human Rights Act.

8.7 It might also be observed that the Secretary of State also has the power to issue a discontinuance order himself if requested to do so.

9.0 **CONCLUSION**

9.1 The lights have been installed with the benefit of planning permission (P93/N0704) and should be regarded as lawful under the Town and Country Planning Act 1990. There is therefore no breach of planning control as the basis for enforcement action. The Council may, however, decide to issue an order for discontinuance pursuant to Section 102 of the Act, if it considers it expedient to do so in the interest of the proper planning of the area (including the interests of amenity).

9.2 Section 4 of this report summarises the efforts that have been put forward over an extended period of years to find an amicable and negotiated solution to the problems created by the lighting. However, no clear alternative solution has emerged from these efforts.

9.3 Section 6 of this report highlights the extent to which the driving range development and particularly the floodlighting represent a departure from relevant planning policies.

9.4 Sections 7 and 8 of this report describe how the Committee should consider and approach its decision as to whether or not to issue a discontinuance order. To summarise, it is not a mandatory requirement for a discontinuance order to be made in every case where development is found to be in conflict with the development plan. In reaching its decision, however, the Planning Committee should have regard to the extent to which the development conflicts with the development plan and the wider public interest; and the extent to which the original decision to grant planning permission is judged to be grossly wrong (see also paragraph 6.29). Although discontinuance may well involve the payment of compensation by the Council, the amount of such compensation or the Council's ability to pay are not relevant to the Council's deliberations.

9.5 On balance it is the opinion of the Council's officers that formal action by way of a Discontinuance Order pursuant to Section 102 of the Town and Country Planning Act 1990, requiring the removal of all lighting from the driving range shelter and imposing a prohibition on its future use as a floodlit facility is warranted in the circumstances of the case. This conclusion has been reached having particular regard to the extent to which the lights result in a departure from the development plan, adversely impacting upon the amenity of neighbouring properties and detracting from the rural character, appearance and landscape quality of the Green Belt, the countryside and the setting of nearby settlements. Consideration has also been given to the expert opinions of DPA (lighting consultants) and Machin Bate Associates (landscape consultants) acting on behalf of the Council. These considerations have been balanced against the benefits that the facility provides to the public and the impact that a discontinuance order is likely to have upon the business itself.

10.0 **RECOMMENDATION**

10.1 **That the Planning Committee resolve as follows:-**

1. That the Head of Planning and Building Control be authorised to take all steps necessary in order to issue a Discontinuance Order under Section 102 of the Town and Country Planning Act 1990, to require the removal of all lighting from the driving range shelter at the Waterstock Golf Club, Waterstock and prohibit the future use of the driving range as a floodlit facility (the precise wording of the order to be drawn up in consultation with the Head of Legal and Democratic Services).

Reason: - The golf driving range including existing lighting represents inappropriate development in the Green Belt contrary to policies GB2 and GB3 of the South Oxfordshire Local Plan 2011; and the development when lit gives rise to serious detriment to the amenity of neighbouring residents, the rural character of the countryside and the landscape setting of the settlements of Waterstock and Waterperry contrary to policies G4, C1, C4, EP3, R1 and R5 of the South Oxfordshire Local Plan 2011.

2. That the discontinuance order include a 12 month compliance period from the date that the order takes effect.

Author	Robert Cramp
Contact No.	01491 823096
Email Add.	robert.cramp@southoxon.gov.uk

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