

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 23 August 2017**

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<b>APPLICATION REF. NO:</b>	17/00282/FUL
<b>STATUTORY DECISION DATE:</b>	26 May 2017
<b>WARD/PARISH:</b>	PARK WEST
<b>LOCATION:</b>	Darlington Cricket Club South Terrace
<b>DESCRIPTION:</b>	Construction of all-weather cricket practice area incorporating 2 No. lanes contained within cages and nets (Retrospective application)(Additional information received 10 June 2017 and 1 August 2017)
<b>APPLICANT:</b>	G S Johnson

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**APPLICATION AND SITE DESCRIPTION**

This is a retrospective planning application for the retention of an all-weather cricket practice area that has been erected on the southern boundary of the Cricket Club pitch without the benefit of planning permission. The practice area comprises two lanes of AstroTurf material which is fully enclosed by green netting. The lanes are fully enclosed by the netting apart from at one end (east). As well as the Cricket Club, the nets are made available for use by schools; the Cricket Club junior teams; other local clubs and their junior teams.

The Club has advised that there have been practice nets previously positioned on the south boundary of the cricket ground for many years but the previous nets had deteriorated and were in need of replacement hence the erection of the new nets. The Cricket Club also use mobile practice nets (mounted on wheels) that are positioned around the Ground.

The south boundary is now shared with twelve new dwellings on Greener Drive, which is part of the housing development that is currently under construction at the former Feethams Football Ground. The boundary consists of a brick retaining wall with pillars and metal railings above. The ground level of the gardens is at the same height as the solid part of the retaining wall and so the gardens are approximately 1.8m/2m higher than the ground level of the cricket ground and practice nets. There is a row of metal poles along this boundary that have protective netting running between them. The dwellings that are located along this boundary are a mix of 2.5 and three storey properties and their rear elevations have windows, balconies and gardens which have views across the cricket ground.

The erection of the nets were brought to the attention of the local planning authority by neighbouring residents who raised concerns over the close proximity of the nets to their properties and gardens; the noise that was generated by persons using the nets and observing their use; the number of persons that use the nets at any given time; loss of privacy and the hours that they were being used on an evening and on weekends.

Following the submission of the planning application, the Cricket Club has confirmed that if planning permission was granted, the nets would be available for use as follows:

- From 10:00 until 20:00 on a Monday
- From 10:00 until 20:30 on a Tuesday
- From 10:00 until 20:00 on a Wednesday
- From 10:00 until 20:30 on a Thursday
- From 10:00 until 18:00 on a Friday
- From 10:00 until 13:00 on a Saturday
- From 10:00 until 12:00 on a Sunday.

The Club has advised that the main coaching sessions take place on the Tuesday and Thursday hence the later finish. Match days are on a Saturday and on an evening during the week and the nets would be used, if required, by the players prior to the commencement of the match and not for any other practice purposes. On a Sunday the nets are used for Junior Coaching although at present children do begin arriving at 9:00am.

The nets would be erected in April and removed in September at the end of the cricket season.

If planning permission is granted subject to appropriate planning conditions to control the hours of use for the nets, the Club has advised Officers that all persons using the practice area would be made aware of the any planning conditions and the Club would accept full responsibility for ensuring that the use of the nets is properly supervised. The Club would publicise the time restrictions on the Club website; on the Club Notice Board; at the nets and by informing all coaches, groundsmen and parents.

There has been mention of the practice area using a bowling machine which has yet to be installed. The Club has advised Officers that noise emissions from their machine are low and it is used on an infrequent basis. The Club has also stated they could use the machine on their grass wicket when used by the senior players. This planning application is for the nets and surface only.

### **PLANNING HISTORY**

None relevant

### **PLANNING POLICY BACKGROUND**

The relevant planning policies are:

#### **Darlington Core Strategy Development Plan Document 2011**

CS2 - Achieving High Quality Sustainable Design

CS16 - Protecting Environmental Resources, Human Health and Safety

## RESULTS OF CONSULTATION AND PUBLICITY

Following the consultation exercise with local residents on the original planning application a total of six letters of objection were received from three dwellings and the comments can be summarised as follows:

- *The replacement nets are larger than the previous practice nets. They were shorter in length and height and they were positioned several metres north from the new location. The previous nets also ran at a 45 degree angle. The new nets now run parallel along the boundary and obscure views from the rear windows and gardens of the properties*
- *The nets are being used at any time and not as per the times on the planning application forms. There is an increase in noise affecting the quality and living standards of local residents*
- *There are other locations around the cricket pitches that the practice area could be sited away from the houses*
- *Power has recently been fed into the area to provide electricity to power an automated bowling machine. Will the Club intend to erect floodlighting in the future?*
- *The hours of use in the planning application are very ambiguous and does not preclude the use of the nets when matches are in play*
- *There are already other activities that take place at the Cricket Club such as festivals, competitions that increase noise levels notwithstanding spectators at the boundary line on match days*
- *Based on our experiences of last season we are concerned over noise from bat on ball, bats striking frames of the nets, noise from the effort or bowling and batting; and noise and foul language from patrons and observers*
- *The level of noise is dependent on the type of training and practicing being undertaken. Groups congregate around a bench at the bottom of the gardens and those not actively participating have in the past entertained themselves by kicking a football about or by trying to hit crickets balls into our gardens*
- *We cannot use our first floor balconies due to the noise*
- *The nets are within one metre of our garden but we cannot enjoy our garden due to the noise and also as the gardens are overlooked by the patrons and observers*
- *The nets were first erected in July 2016 and the Club were told to remove them as they did not have planning permission. However they reappeared in May 2017.*
- *One of the main reasons we bought the house was to enjoy watching the cricket but now we can no longer use our garden as there can be anywhere between 2 to 38 adults using the nets which is very intimidating. Adults and children have been practising practically every day until 8:30PM and we do not get any peace or quiet.*
- *We have to sit with our windows and patio doors shut when the nets are in use.*
- *The nets are an eyesore and limit my views of the pitches when games are in play and they are simply unpleasant the rest of the time*
- *We were lead to believe that the nets would be taken down after every time they have been used but they are a permanent structure*
- *When the cricket club host parties, the nets are used by children using Frisbees and playing football*
- *It is very petty of the Club to install the nets right in front of the our properties*
- *Under Section 82 of the Environmental Protection Act 1990 persons can take action in the Magistrates and County Courts if you can prove your health, comfort or convenience is affected by noise. An injunction can be taken out to stop the noise or claim damages from the person responsible. All residents affected by this will pursue this avenue of law if the nets are not removed;*

Following the submission of the additional information provided by the Club, a further two letters of objection has been submitted and the comments can be summarised as follows:

- *In effect the nets can be used everyday apart from Saturdays. However very thoughtful of the Club to suggest this but not considerate to take into account the months of noise we have endured to date*
- *The cost of the nets is immaterial*
- *They don't appreciate the noise generated by the ball hitting the bat or the metal struts*
- *Noise from dads shouting instructions are very loud. Noise generated by 20 - 30 children is very loud despite best efforts to keep them quiet*
- *A bowling machine throwing balls at 95MPH is silent. I don't think so*
- *The nets are used every Saturday this season and there are people practising in there all day. Children also play football against the nets and practice catching using the wooden slip contraption*
- *We have had no privacy and children are left unsupervised by their parents which creates incidents such as children climbing up boundary walls to retrieve balls*
- *Where children are concerned it is not noise from the ball hitting the bat but from noise when they communicate to each other, which includes shouting and screaming*
- *Residents will only be able to enjoy their properties after 2030 weekdays (1800 on a Friday); all day Saturday and on a Sunday afternoon. This falls below what a person can reasonably expect.*
- *Noise from those walking the pitch perimeter on matchdays should also be taken into consideration*
- *The issue with the bowling machine is not the noise per se, but the purpose for which it is used – bowling balls in quicker succession that that achievable through the use of a bowler. It would potentially increase the use of the nets as a batsperson would be able to practice without the need of an additional person*
- *Projectiles are not being stopped going over the boundary netting*
- *There are more suitable locations on the field to house this training facility rather than the back of houses which will affect the quality of enjoyment for the residents*

Following the submission of further information on 1 August 2017 a further five letters of objection have been received and the comments can be summarised as follows:

- *We have two young children who during the week are put to bed at 7.30pm. Whilst I appreciate the nets are scheduled to stop being used at 8pm, there will still be a congregation of people and activity in this areas for some time after which will cause disruption to our children.*
- *We strongly feel that the height of the nets are excessive. Whilst they are placed in the current location they directly affect the view enjoyed by the houses who overlook the cricket pitch at a time of the year (May to September) when the residents would like to enjoy their gardens and are an alteration to the boundary outlook. There are already some safety nets that are made from some finer material that do not obscure the view, could this have not been an option? The practice nets that were previously used do not rise above the height of the properties fences, could this not be a solution in another area of the field?*
- *The nets will now be used seven days a week as they are now intending to use the nets between 10am and 1pm on a Saturday. In addition to this they now indicate that the nets*

*will be erected in the month of April and removed in the month of September so they could erect them on the 1<sup>st</sup> April and remove them 30 September where previously they had indicated mid April and mid September*

- *They have indicated that children will start to arrive at 9am on a Sunday which is an increase from the 9:30 time previously indicated*
- *I would also like to raise some added issues which have come to light in the 4 months that the nets have been erected. The current location of the nets is attracting individuals to the area to carry out a variety of activities including playing football which includes constantly kicking a football against the wall of the garden. This is directly below where we would sit in the garden due to the nature of the raised gardens. So the concerns I have about the cricket nets is now not only in relation to the purpose for which they are intended, cricket practice, but the added activities that they seem to be attracting. We have had people sit on the bench at the bottom of our garden invading our privacy and a bin full of rubbish which hasn't been emptied (which I feel should be passed to the relevant department) as I am concerned about the attraction this may have to rats and flies. You may also recall I sent a picture of someone trespassing on our property to retrieve a ball which had been hit into our garden from the Cricket pitch.*
- *The Club should have consulted the local residents on the location of the nets and then sought planning permission*
- *Are we to merely assume that there should be no practice in the nets when an evening match is on progress and that in their opinion a bowling machine would not create any noise. Again we would point out that 30 to 40 children and adults make more than enough noise without bat hitting balls. Does this mean that when cricket matches are being played during the day when most people are wishing to enjoy their gardens, Members are allowed to practice in the nets?*
- *They are wanting more practice time than before with the nets being used on a Saturday. They have changed the times when children will arrive on a Sunday and also when the nets will be removed*
- *They want to practice 55 hours every week for 27 weeks which equates to 1485 hours or 61.87 days or two months non stop. Do the Cricket Club not realise the extent of their proposal?*
- *There are children practising at the nets virtually every day and we and our neighbours have no peace and quiet and have a total lack of privacy. What we do have is constant whack of bat on ball which sounds like a rifle going off*
- *At least twice a week there are up to 30 people practicing in the nets and they all congregate in front of our garden. We feel intimidated and we cannot sit in our own back garden when these large numbers of adults and children are so close to our boundary.*
- *There have been occasions when men have changed into and out of their protective pads at the nets and we have heard foul language and swearing which is not something my wife, daughter or granddaughter want to see or hear*
- *There has been children playing football against the nets and the neighbouring boundary walls and a rubbish bin that never gets emptied*
- *Whilst we note the Club's publication of conditions, who is expected to monitor that these conditions are adhered to?*
- *The best solution is to simply relocate the nets to the empty part of the ground which runs alongside the access road so they can practice 24 hours a day*
- *We should not be the subject of this nuisance and have a legal right to privacy and to be able to relax in our back garden*
- *Clearly the Club have no regard or respect from the owners of the neighbouring properties or abide by the rules and regulations*

- *Tonight (10<sup>th</sup> August) there were between 25-30 children and adults using the cricket nets. They have just left 8.10pm. It was absolute bedlam with screaming and shouting. We had to increase the volume of our TV to hear it. It was an absolute disgrace the amount of noise they generated. Even when we stepped onto our balcony at 8PM, the adults in charge saw us and did not say or do anything to the children with regards the noise. One of the adults just glared straight at me, continuously as I had my I Pad in my hand. Quite intimidating to be honest. I feel that it is absolutely shocking, that myself and our neighbours have already complained to "environmental health" about the noise and lack of privacy and they have informed me, that they have told the cricket club about our concerns, but nothing has been done about it. That was proved tonight. I do hope that this gives you an insight of the daily onslaught of noise and lack of privacy that we have to endure.*

One of the objectors has submitted photographs of the nets in use and also kept a log of the number of people using the nets over a period of time (April to August) to support their comments.

The log shows that at the moment, the nets are being used almost everyday of the week with the latest time being up to 21:00 (twice on Tuesday (11<sup>th</sup> and 17<sup>th</sup> July) and once on a Sunday – 16<sup>th</sup> July) and up to 1600 on a Sunday (6<sup>th</sup> August) and 1800 on a Saturday. The number of persons recorded as using the nets varies greatly between 2 people up to 42.

### **Consultee Responses**

The Council's Highways Engineer has raised no objections

### **PLANNING ISSUES**

The main issue to be considered here is whether or not the nets are acceptable in the following terms:

Residential Amenity

Visual Impact

Highway Safety

#### **Residential Amenity**

The new dwellings that are located on the southern boundary of the Cricket Ground were designed to benefit from and enjoy views across the cricket pitch, The rear gardens are enclosed by metal railings (rather than solid walls or fences), the three storey properties incorporate first floor level balconies and the 2.5 storey dwellings have balconies within the rear roof slope. The rear gardens are approximately 1.8m/2m above the ground level of the nets.

The Club has confirmed that practice nets have historically been located on this boundary for many years but it has to also be acknowledged that this boundary is now shared with residential dwellings rather than stands/buildings associated with the adjacent site's former use as a football ground.

It also has to be acknowledged that the occupiers of the new dwellings should expect some level of noise and overlooking as the properties back onto an operational sports facility which includes pitches and a clubhouse. The planning application is for a sport related development within the curtilage of an existing sporting facility.

It is evident that the amenities of the dwellings have been affected by the use of the nets by noise, disturbance and overlooking from, at times, a large group of patrons and observers at various times during the day and night, seven days a week since they were erected. The nets are currently used by persons outside of the times that the Cricket Club are putting before Officers and Members for consideration.

The main consideration here is whether a compromise/solution can be reached over the extent of the usage of the nets and if an acceptable balance can be reached between residential amenity and the Club's ability to function and also contribute towards the wider sporting benefits of the community.

Due to the how the boundary is laid out around the edge of the cricket pitch for the playability of the three wickets in the centre it is difficult to relocate a permanent practice area on any of the other site boundaries or re-site the area at a different angle. Locating the practice area along the south boundary appears to be the only possible position where such a feature can go and there are dwellings all along the said boundary. Therefore it is through controls of the usage of the nets through planning conditions that Officers consider to be the appropriate method of striking a balance between residential amenity and the sporting function of the Club. For the avoidance of doubt, on match days the nets would not be used for practice but they would be used by players partaking in the match only, if required.

If planning permission was refused and the area and nets was removed, the area could be replaced by the existing mobile nets that the Club also use elsewhere in the site and these moveable structures and the usage of them would be outside of the control of the local planning authority and therefore this proposal would give the Council more control of usage in the interests of amenity.

The Club has stated that the nets would be removed outside of the cricket season and over the ground could be covered to prevent the area still being used, Officers consider that the removal and management of the area once the nets have been removed is a matter for the Club and it is an element that would be difficult to control by the imposition of planning conditions.

Officers consider that the proposal is acceptable in residential amenity terms subject to the planning conditions that are listed below but as previously stated there is a great emphasis placed on the Club to enforce and ensure that the conditions are fully adhered to.

### **Visual Impact**

Whilst nets are in close proximity of the dwellings, it is a structure that would be commonly found in other Cricket facilities and it would be difficult to recommend refusal on the grounds of visual amenity even if the nets were in place all year round.

### **Highway Matters**

This new facility is a replacement to the existing facilities and is an ancillary use to the Cricket ground. The high boundary netting to protect the highway has been installed in accordance with the original planning permission therefore the Council's Highways Engineer has raised no highway objection to the proposal

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on,

and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **CONCLUSION**

It is considered that with the imposition of planning conditions to control the extent of the usage of the nets, the proposal is acceptable compromise in residential amenity terms and allow reasonable activity within this sporting location. The proposal would not raise any highway safety concerns nor harm the visual appearance or character of the surrounding area.

## **RECOMMENDATION**

**PLANNING PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The practice area shall be used for cricket purposes only and for no other purpose unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of residential amenity

2. The practice area shall not operate outside of the following hours:

- a. 10:00 until 20:00 on a Monday
- b. 10:00 until 20:30 on a Tuesday
- c. 10:00 until 20:00 on a Wednesday
- d. 10:00 until 20:30 on a Thursday
- e. 10:00 until 18:00 on a Friday
- f. 10:00 until 13:00 on a Saturday
- g. 10:00 until 12:00 on a Sunday.

REASON: In the interests of residential amenity

3. Notwithstanding condition 2, the practice area shall not be used for practice purposes on match days other by persons directly involved in the match

REASON: In the interests of residential amenity

4. There shall be no external floodlighting erected in association with the practice area.

REASON: In the interests of residential amenity and the visual appearance of the locality

5. No means of amplification of sound associated with the use of the practice area shall be permitted including the use of loud speakers and public announcement systems without the prior written approval of the Local Planning Authority.

REASON: In the interests of residential amenity

6. In the event of the installation of any plant or machinery associated with the practice area, prior consent in writing by the Local Planning Authority must be obtained.

REASON: In the interests of residential amenity

**THE FOLLOWING POLICIES AND DOCUMENTS WERE TAKEN INTO ACCOUNT WHEN ARRIVING AT THIS DECISION:**

### **Darlington Core Strategy Development Plan Document 2011**

CS2 - Achieving High Quality Sustainable Design

CS16 - Protecting Environmental Resources, Human Health and Safety