

**Sent:** 22 December 2023 09:47

**Subject:** App Ref: 2023/62/93121/W - 11 & 13, BOWNESS DRIVE, DALTON, HUDDERSFIELD, HD5 9PY - Sport England Ref: PA/23/Y/KK/66400

Thank you for consulting Sport England on the above application.

### **Sport England – Statutory Role and Policy**

It is understood that the proposal prejudices the use, or leads to the loss of use, of land being used as a playing field or has been used as a playing field in the last five years, as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (Statutory Instrument 2015 No. 595). The consultation with Sport England is therefore a statutory requirement.

Sport England has considered the application in light of the most recent version of the National Planning Policy Framework (NPPF), particularly Paragraphs 103 and 193, and Sport England's Playing Fields Policy, which is presented within its 'Playing Fields Policy and Guidance Document', which can be viewed on this [link](#).

Sport England's policy is to oppose the granting of planning permission for any development which would lead to the loss of, or prejudice the use of, all/part of a playing field, unless one or more of the five exceptions stated in its policy apply.

### **The Proposal and Impact on Playing Field**

The proposal is for the erection of detached garages and demolition of existing garages. This will be on a site that is adjacent to a playing field that is used cricket.

As part of the assessment of this consultation, Sport England has sought the views of the England Cricket Board (ECB). The ECB act as Sport England's technical advisors in respect of their sport, their sport facilities including ball strike.

The comments of the ECB have been summarised as:

- *The proposal will be at risk of ball strike*
- *This could result in damage to the garages, any cars parked in front of the garage and any pedestrians walking towards the garage.*
- *The applicant should obtain a ball strike risk assessment from a qualified consultant.*

### **Assessment against Sport England Policy/NPPF**

As can be seen from the comments of the ECB above, the proposal is at risk of ball strike from cricket balls.

It is considered that the proposed development gives rise to a potential conflict with the use of the playing field for cricket. Balls are likely to leave the playing field and land on the application site when matches are being played. This could lead to damage to both people and property.

Such ball strikes have the potential to constitute a nuisance under the Environmental Health legislation and as such could prejudice the sporting use of the playing field. This was the case in *Miller -v- Jackson* [1977] QB 966 where cricket balls from a village green kept going into a nearby house. The proposal could therefore prejudice the use of the playing field.

Sport England recognises similarities with previous planning cases that have been considered by the Courts in respect of ball strike:

In the *East Meon Forge and Cricket Ground Protection Association v East Hampshire District Council* [2014], an assessment undertaken on behalf of the Cricket Club found that cricket balls commonly travel in excess of 70 metres, at all levels and abilities. It was found to be unreasonable to expect residents to live behind shutters during summer weekends or to stay out of their gardens or away from other amenity areas. Additionally, the occupants and visitors to dwellings will be at risk of injury when entering or leaving premises during cricket matches. In the *East Meon* case, Sport England advised that the proposed mitigating measures (removable shutters) were unenforceable and a permanent ball-stop fence was required. Mrs Justice Lang considered Sport England's representations to be sound and planning permission was quashed.

In a more recent case in 2021, planning permission was quashed by the High Court for a development in Bradford adjacent to a cricket ground where ball strike was not adequately addressed: *The Trustees of the Crossflatts Cricket Club v City of Bradford*

Metropolitan Council (2 December 2021). The reasons for quashing this permission were that the Defendant's decision to grant planning permission provided legally inadequate reasons for departing from the expert advice received in relation to the risk of ball-strike; and the Defendant failed to have regard to other significant material considerations which had been raised by Sport England about the likely effect of the proposed development on the Claimant cricket club being (amongst other matters) health and safety concerns from ball-strike.

From the information available within the planning application, Sport England is unable to find any information that addresses the issue of ball strike.

The applicant will therefore need to undertake a ball strike risk assessment to gauge if ball strike is likely to be an issue for cricket. If it is identified as an issue, then appropriate ball strike mitigation will need to be provided based upon any risks identified. Any ball strike mitigation should not be placed on the existing playing field nor have any encroachment onto the playing field and any management and maintenance should be the responsibility of the applicant and not any sports club. See Sport England's later comments on '*agent of change*'.

Any ball strike risk assessment will need to consider both current and future levels of play for cricket.

Whilst the ball stop netting/fencing could be dealt with by way of a planning condition, Sport England is aware from experience elsewhere that the ball stop netting/fencing can be up to 25 metres in height and this has caused concern for the Local Planning Authority from an amenity perspective. For this reason, Sport England considers that the matters of the design, specification and height of any required ball stop mitigation should be resolved prior to permission being granted in order for it to be acceptable to the planning authority.

It is acknowledged by Sport England that there are already existing buildings and structures surrounding the cricket field and these are at risk of ball strike. However, it should be noted that this is an existing situation and these buildings pre date the East Meon and Crossflatts Cases referenced above. The planning application introduces a new '*agent of change*' and therefore the applicant will need to address the issue of ball strike through a risk assessment to identify if ball strike is a risk that needs to be addressed through appropriate ball stop mitigation.

The requirement for a ball strike risk assessment and any associated ball stop mitigation required is in accordance with Paragraph 193 of the NPPF states:

*“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”*

## Conclusion

In light of the above, Sport England **objects** to the application because it is not considered to accord with any of the exceptions to Sport England’s Playing Fields Policy or with Paragraph 99 of the NPPF.

## Possible resolution

Sport England would be pleased to review the objection with a view to considering potentially withdrawing it if the applicant can provide the following:

1. A ball strike risk assessment, undertaken by a suitably qualified consultant or person, that examines the ball trajectory based on current and future levels of play for cricket.
2. If ball strike is identified as an issue, then details of the design, specification and layout of any ball strike mitigation (for example ball stop fencing) should be provided. This should also include details of how any ball strike mitigation will be managed and maintained. Any ball strike mitigation provided should not have any encroachment onto the existing playing field.

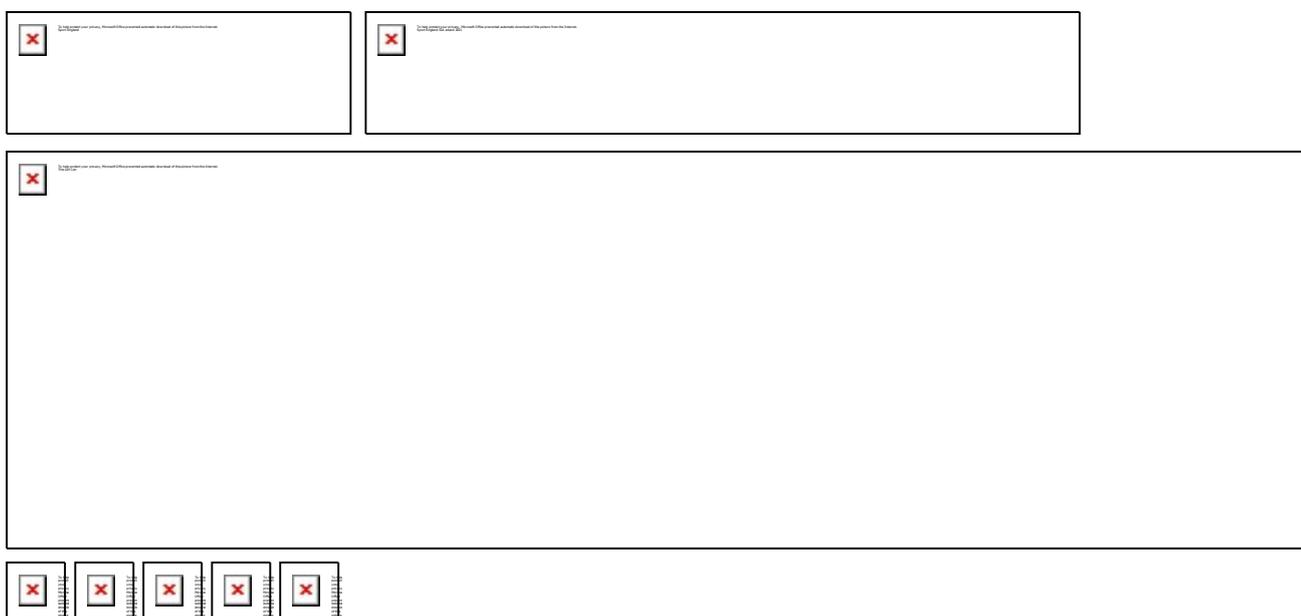
Should the applicant require any technical advice in respect of the ball strike they should contact the ECB: [richard.dixon@ecb.co.uk](mailto:richard.dixon@ecb.co.uk). The applicant should note that ECB can only provide technical advice and cannot provide a planning judgement as that is a matter reserved for Sport England as a statutory consultee.

If the applicant does not wish to address the above, they should provide a response to the Local Planning Authority setting out the reasons why. The Local Planning Authority can then consult Sport England who can provide a final substantive response. The Local Planning Authority can then consider determining the planning application having regard to the judicial reviews above and the views of Sport England.

**In providing any further information, Sport England would ask that the applicant submits this to the Local Planning Authority and not to Sport England directly. That way it forms part of the planning application submission and its associated audit trail. The Local Planning Authority can then consult Sport England on receipt of this information.**

Yours sincerely,

**Richard Fordham BA(Hons), DipTP, MTP, MRTPI, AIPROW**  
Planning Manager



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