Kirklees Council

By email only

Date 16 August 2024

Dear Sir/Madam,

Town & Country Planning (Development Management Procedure) (England) Order 2015

Application Reference: 2024/91998
Site: ALMONDBURY SPORTS CENTRE, ALMONDBURY SPORTS CENTRE ALMONDBURY COMMU... HD5 8PQ
Proposal: Erection of special educational needs and disabilities school (Use Class F1), comprising educational buildings, roof mounted photo-voltaic panels, sensory garden spaces, multi- use games areas, landscaping, hardstanding areas, car parking, access with secure fencing and associated ancillary development
Sport England Reference: PA/24/Y/KK/68310

Thank you for consulting Sport England on the above planning application.

Sport England – statutory consultee role and policy

We understand that you have consulted us as a statutory consultee in line with the above Order. Therefore, we have considered the application in light of the National Planning Policy Framework (NPPF), in particular paragraph 103, and Sport England's Playing Fields Policy, which is presented within our 'Playing Fields Policy and Guidance Document': www.sportengland.org/playingfieldspolicy

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 or any part of a playing field, or
- land which has been used as a playing field land remains undeveloped, or
- land allocated for use as a playing field

unless, in the judgement of Sport England the development as a whole meets with one or more of five specific exceptions. The exceptions are provided in the Annex to this response.

The proposal and impact on playing field

The proposal is the erection of special educational needs and disabilities school (Use Class F1), comprising educational buildings, roof mounted photo-voltaic panels, sensory garden spaces, multi-use games areas, landscaping, hardstanding areas, car parking, access with secure fencing and associated ancillary development.

The plans show that the proposal has an area of playing field to the east and a cricket ground to the west:

The views of the National Governing Bodies for Sport

As part of the assessment of this consultation, Sport England has sought the views of a number of National Governing Bodies for Sport. These Governing Bodies act as Sport England's technical advisors in respect of their sport and their sport facilities and ball strike.

The comments of the Football Foundation (FF), who provide observations to Sport England on behalf of the Football Association (FA), have been summarised as:

- *The proposal will encroach on to the east playing field including potentially the pitch marked North to South. The FF would expect to see a pitch plan to understand the impact of the development as without this it is hard to determine the impact in relation to the playing field, football pitch(es) and their 3 meter safety run off margin.*

- *FF consulted West Riding County Football Association who advised the latest affiliation data suggests that there are no current community football teams accessing these football pitches. In 2018/19, five teams at various age groups used pitches providing playing opportunities for 7v7, 9v9 and 11v11 formats of the game. Since that season, the hire of these pitches reduced significantly to one team in 2019/20 and again in 2021/22. It appears from affiliation data that teams from these clubs now use pitches at nearby Longcroft Playing Fields (HD5 8XW) and Almondbury Recreation Ground (HD5 8XD).*
- *Without a pitch plan, it is hard to determine whether the new development may be at risk of ball strike as the positioning of the pitches is unknown. The current building is circa 25 meters away from the pitches, however given the encroachment and potential change in pitch location, it is unknown.*
- *Depending on the location of the pitches from the pitch plan, a Ball Strike Trajectory Assessment would help to understand the level of risk and what mitigation could be required. If ball stop netting is required, the applicant should provide further detail of how the ball stop netting will be maintained, how regularly and at the responsibility of whom.*
- *The playing field between the school and cricket field do not appear to have been marked for pitches through aerial imagery. The playing field configuration do not measure large enough to configure Football Association recommended Mini-Soccer U7 and U8 pitches (5v5) 37 x 27m (43 x 33m including safety run-off area) and appear to have been used for more recreational and athletics provision.*

The comments of the England Cricket Board (ECB) have been summarised as:

- *With regards to ball strike, the distance from the closest track to the development boundary is approximately 50 meters and therefore within the distance we would ask for a ball strike risk assessment to be undertaken by a qualified consultant.*
- *Almondbury Cricket Club play in the Huddersfield Cricket League which allows tier 5 professionals to play and therefore the assessment should detail mitigation at both recreational and professional levels.*
- *The ball strike risk will always have been there given the age of the previous buildings and the cricket club, but the risk will not have been assessed. The new building gives us the opportunity to assess the risk and put required mitigation in place.*

The comments of England Athletics have been summarised as:

- *Currently there is the ability to mark a seasonal grass oval track, javelin runway/landing area and shot circle/landing area.*
- *In addition, there is a permanent long jump facility*

The comments of the Rugby Football Union (RFU) have been summarised as:

- *The proposed site plan shows the proposal will encroach onto the playing field land however, as far as the RFU is aware the encroachment comes from the proposed plants and trees as opposed to the building itself.*
- *This will not impact on Rugby Union and the rugby pitch providing a 5-meter run of is retained as shown on the site plan.*
- *The school could be at risk of ball strike however, the RFU does not believe this risk differs from the existing building.*
- *As far as the RFU is aware the playing field land between the existing school and the cricket club has not been used for any formal rugby union activity.*

The views of the Lawn Tennis Association (LTA) have been summarised as:

- *The LTA notes that the existing Almondbury Sports Centre site, has provision of 6 tennis courts (4 of which are multi-lined), with the new proposal only retaining two dedicated tennis courts. There is therefore an impact on tennis provision, however, In the education setting it is likely that two courts would be sufficient provision. The LTA would be keen to work with the school to introduce accessible tennis programmes at the site.*
- *However, if there are plans for the facility are for it to be used by the wider community, the LTA would encourage the courts to be floodlit and also add tennis court markings to the MUGA, area which currently has 3 tennis courts marked.*

Assessment against Sport England's Playing Fields Policy and NPPF

Sport England notes in the planning history, the Prior Notification Application for the demolition of the school including the built sporting facilities and that this has been approved on the 31 July 2024. As such, as Sport England has no comments to make on the loss of the built sport facilities that are to be demolished. Sport England does note that a sports hall and changing are proposed as part of the new building.

There are four issues that are relevant to Sport England in the assessment of this consultation, and they are:

1. The loss of the playing field to the west of the existing buildings.
2. The loss of the tennis court.
3. The impact on the playing field to the east of the existing buildings
4. Ball strike.

Issue 1: The loss of the playing field to the west of the existing buildings

The plans show that an area of playing field to the west of the existing buildings will be lost to landscaping, paths/access routes and other structures:

Sport England's policy to protect playing fields covers the entire playing field site and not just the areas currently marked out with a pitch. This is because playing field is seen as a resource for pitches to be marked out on, pitches to be changed from one pitch sport type to another, or to allow areas of the playing field to rest from over play. It also allows the potential for non-pitch sports such as athletics to be marked out. If it had been Government's intention that planning policy should protect just pitches and not playing field, then The Town and Country Planning (Development Management Procedure) Order could have been readily drafted in that manner to make it specifically clear.

Aerial images of this part of the playing field show that while it has not been marked out with a pitch, it has been used for athletics:

As such, the proposal will result in the loss of an area of playing field that has been used for athletics and sport.

In cases of redevelopment and/or change of use of playing fields for non-sporting development, Sport England looks at two exceptions to policy to assess if either are applicable. These are: E1 (surplus to requirement); and E4 (replacement).

Exception E1 and E4 also reflects paragraph 103 a & b of the NPPF which states:

"Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:
a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use."

<u>E1 – Surplus to Requirement</u>
The applicant has not provided any evidence by reference to robust and up to date Playing Pitch Strategy (PPS) that the playing field is surplus to both current and future sporting needs. This would not just be the pitch sports/athletics that are played, or last played on the playing field, but all pitch sports and athletics that could be accommodated on the site, as playing field is a resource for different pitches/sports to be marked out on.

E4 – Replacement

Sport England's Playing Field Policy Exception E4 states:

'The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- *of equivalent or better quality, and*
- *of equivalent or greater quantity, and*
- *in a suitable location, and*
- *subject to equivalent or better accessibility and management arrangements.'*

From the information available forming part of the planning application, Sport England is also unable to find any details that the playing field that will be lost to the proposal will be replaced.

For clarity, making out pitches or athletics facilities on the existing retained playing field would not be considered as replacement, as there would be a net loss of playing field with no new replacement provision in area terms.

As such, the loss of this playing field does not accord with any of the exceptions in Sport England's Playing Fields Policy.

Issue 2: The loss of the tennis court

Sport England sought a legal opinion on the definition of the 'the whole of the site' in respect of playing field as defined in the Town and Country Planning (Development Management Procedure) (England) Order. It was held that any outdoor sport facility that in physical and function terms formed part of the wider playing field fell under this definition. Therefore, sport facilities such as artificial grass pitches, tennis courts and athletics fall under the definition of playing field and consequently, Sport England's Playing Fields Policy is applicable to the non-grass sport facilities as well as the grass playing field.

The plans show the retention of two of the three multi use games areas (MUGAs). However, the single court MUGA will be lost to play equipment. As such, a formal sport facility will be lost.

The LTA have provided comments on the loss of the tennis courts and comment that if the plans for the facility are for it to be used by the wider community, the LTA would encourage the courts to be floodlit and also add tennis court markings to the MUGA

Notwithstanding the comments of the LTA above, Sport England would expect that any loss of a sport facility would accord with either Exception E1 or Exception E4 of our Playing Field Policy as explained above.

From the information available forming part of the planning application, Sport England is unable to find any reference to a robust and up to date Playing Pitch Strategy that provides clear evidence and specifically names the sport facility as being surplus. Sport England is also unable to find any details that the sport facility that will be lost to the proposal will be replaced.

For clarity, replacing the MUGA on the existing retained playing field would not be considered as replacement, as there would be a net loss of playing field with no new provision.

As such, the loss of this MUGA does not accord with any of the exceptions in Sport England's Playing Fields Policy.

Issue 3: The impact on the playing field to the east of the existing buildings

The red edge of the location plan shows an encroachment onto the playing field to the east with landscaping and trees proposed. There is also an indication of contour lines.

The FF, acting as Sport England's technical advisors in respect of football have commented above that the proposal will encroach on to the east playing field including potentially the pitch marked North to South. The FF would expect to see a pitch plan to understand the impact of the development as without this it is hard to determine the impact in relation to the playing field, football pitch(es) and their 3 meter safety run off margin.

Sport England notes that a plan has been provided showing the proposal and the red edge in relation to the pitches and athletics track. This plan shows contour lines. However, it is unclear whether there is any land profiling and alterations to the levels proposed onto the playing field and if so, what impact this has on the playing field. and whether the existing layout of the pitches on the retained playing field will be altered as a result.

There is currently insufficient information provided in order for Sport England (and the FF) to assess any impact that the proposal may have on the playing field to the east of the existing buildings.

As such, it is not possible to assess the impact that this part of the proposal may have on the playing field and whether this accords with any of the exceptions in Sport England's Playing Fields Policy.

Issue 4: Ball Strike

Sport England isn't just a statutory consultee on planning applications which directly lead to the loss playing field, we are also a consultee on planning applications that could prejudice the use of playing field.

The FF, in their comments above have stated that without a pitch plan, it is hard to determine whether the new development may be at risk of ball strike as the positioning of the pitches is unknown. The current building is circa 25 meters away from the pitches, however given the encroachment and potential change in pitch location, it is unknown.

The ECB have commented that in respect of ball strike, the distance from the closest track to the development boundary is approximately 50 meters and therefore within the distance ECB would ask for a ball strike risk assessment to be undertaken by a qualified consultant. Almondbury Cricket Club play in the Huddersfield Cricket League which allows tier 5 professionals to play and therefore the assessment should detail mitigation at both recreational and professional levels.

The application site is adjacent to a cricket ground, and as can be seen from the comments of ECB, the proposal will be at risk of balls strike.

The plans show that the areas of playing field that will be lost to the proposal that are adjacent to the cricket ground will be landscaped and incudes what appears to be paths or circulation space. As the planning application is for a special educational needs and disabilities school, this could put the pupils and visitors of the new school at risk of ball strike and pose a serious health and safety risk.

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.

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.

The applicant will therefore need to undertake a ball strike risk assessment by a suitably qualified person, to gauge if ball strike is likely to be an issue. 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 have any encroachment onto the playing field and any management and maintenance should be the responsibility of the applicant and not any sports club or sporting users. See Sport England's later comments on 'agent of change'.

Any ball strike risk assessment will need to consider the correct levels of play for cricket. It should also consider the current pitch layout and also consider any other pitch configurations that could take place on the playing field, as the pitches can be reconfigured or changed at any time. Therefore, any ball stop mitigation (if required) needs to safeguard the playing field for all levels of play and all pitch configurations and not just the current situation. This will ensure that the playing field is not prejudiced by the proposed development should pitches be reconfigured or changed.

It is acknowledged by Sport England that there are already existing buildings and structures surrounding the cricket ground 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.

It is also acknowledged that there are trees between the application site and the playing field. However, trees themselves cannot be considered as a permanent

ball stop solution. Trees can be cut down, become diseased, or die from natural causes or even be felled by a storm. Storm Arwen, for example, in 2021 affected trees that do not normally have to yield to strong winds due to blowing in a different direction and many fell as a consequence of the storm. Even if the trees are subject to a Tree Preservation Order, this does not protect them from damage or felling due to natural causes. Protected trees can also be felled or pruned with the appropriate permission.

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.

Sometimes, ball stop fencing is not considered appropriate by the Local Planning Authority, and a secure ball drop zone is provided instead, therefore the layout has to be altered. 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.

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."

From the information available, Sport England is unable to find any assessment that considers ball strike and details of any mitigation proposed if this is required. As such, the proposal will have a prejudicial impact on the adjacent cricket ground and possibly on the football pitches to the east (subject to further clarification – see Sport England's later comments).

Sport England's position

Given the above, Sport England raises a **statutory objection** to the application because it is not considered to accord with any of the exceptions to our Playing Fields Policy or paragraph 103 and 193 of the NPPF.

Potential to overcome the statutory objection

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

1. In respect of the loss of the playing field and MUGA, provide evidence by reference to a robust and up to date Playing Pitch Strategy that provides clear evidence that the playing field and MUGA are surplus – we would expect such an evidence base to specifically name and identify the site as surplus. For clarity, any evidence of surplus would not just be for the sports that were last played on the site but for all sports that could be accommodated on the playing field, as playing field is a resource for different pitches and sports to be marked out on.
2. If the applicant cannot evidence E1, then they should explore options to meet E4, where the playing field and MUGA needs to be replaced within the locality. Replacement must represent a genuine replacement i.e. creation of a new playing field. Improvements or marking out pitches, athletics or creating a new MUGA on existing playing field do not represent a genuine replacement because the quantity element of the exception has not been addressed only the quality element.
3. Provide plans of the proposal in relation to the playing field to the east of the existing school buildings showing the proposal in relation to the pitches/sports markings. This should include plans of the existing layout with the existing pitches and athletics, and plans of the proposed layout including contour lines and cross sections of any land profiling proposed. Clarification should be provided on whether any pitches and sports markings on the retained playing field are being altered to accommodate the proposal/encroachment onto the playing field. The plans should clearly annotate the dimensions of the pitches/athletes and their safety margins.
4. In respect of ball strike, Sport England would suggest that the applicant resolves the planning policy issues relating to playing field loss and MUGA first and wait for clarification from the FF on whether football ball strike is an issue will need to be considered, before addressing the technical issues that may arise from any ball strike. However, if the applicant would like to address ball strike at this stage, they are welcome to do so. The applicant will need to provide a copy of a ball strike risk assessment that considers balls strike from the adjacent playing field and cricket ground at the correct level of play. 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/cricket ground.

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 any further information.

Yours sincerely,

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

Annex

The Five Exceptions to Sport England's Playing Fields Policy

Exception 1
A robust and up-to-date assessment has demonstrated, to the satisfaction of Sport England, that there is an excess of playing field provision in the catchment, which will remain the case should the development be permitted, and the site has no special significance to the interests of sport.

Exception 2
The proposed development is for ancillary facilities supporting the principal use of the site as a playing field, and does not affect the quantity or quality of playing pitches or otherwise adversely affect their use.

Exception 3
The proposed development affects only land incapable of forming part of a playing pitch and does not:

- reduce the size of any playing pitch;
- result in the inability to use any playing pitch (including the maintenance of adequate safety margins and run-off areas);
- reduce the sporting capacity of the playing field to accommodate playing pitches or the capability to rotate or reposition playing pitches to maintain their quality;
- result in the loss of other sporting provision or ancillary facilities on the site; or
- prejudice the use of any remaining areas of playing field on the site.

Exception 4
The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- of equivalent or better quality, and
- of equivalent or greater quantity, and
- in a suitable location, and
- subject to equivalent or better accessibility and management arrangements.

Exception 5
The proposed development is for an indoor or outdoor facility for sport, the provision of which would be of sufficient benefit to the development of sport as to outweigh the detriment caused by the loss, or prejudice to the use, of the area of playing field.

The full 'Playing Fields Policy and Guidance Document' is available to view at:
www.sportengland.org/playingfieldspolicy