Kirklees Metropolitan Council

By email only

Date: 11 April 2025

Dear Sir/Madam,

Town & Country Planning (Development Management Procedure) (England) Order 2015
Application Reference: 2025/90457
Site: 150, DENBY LANE, UPPER DENBY, HUDDERSFIELD, HD8 8UN
Proposal: Demolition of existing buildings and erection of two residential dwellings (Use Class C3) with associated parking and landscaping (within a Conservation Area)
Sport England Reference: PA/25/Y/KK/70281

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 paragraphs 104 and 200, 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 for the demolition of existing buildings and erection of two residential dwellings (Use Class C3) with associated parking and landscaping on a site adjacent to Denby cricket ground:



The views of the National Governing Bodies for Sport

As part of the assessment of this consultation, Sport England has sought the views of the following National Governing Bodies for Sport. These Governing Bodies act as Sport England's technical advisors in respect of their sport and their sport facilities. They also advise Sport England on issues such as ball strike.

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

- *The proposal is only 35m from the edge of the square to the boundary of the development site, which is well within the range ECB would ask for a risk assessment.*
- *Having spoken to the club, the ball goes into the current disused site on a regular basis.*
- *As per the planning statement, the current property and land is disused so there is no current risk. Once the new properties are built there is a risk to property and individuals on the site.*
- *A ball strike risk assessment by a qualified consultant should be obtained. If the report states that mitigation is required, details of the proposed mitigation should be provided with details of any management and maintenance contracts.*
- *Any mitigation should be sighted on the development site and not the cricket ground. Costs should be borne by the developers/residents and not the cricket club.*

Assessment against Sport England's Playing Fields Policy and NPPF

As can be seen from the comments of the ECB above, acting as Sport England's technical advisors in respect of cricket ball strike, the proposal is at risk of ball strike from cricket balls from the adjacent cricket ground. The ECB advise Sport England that cricket balls go into the current disused site on a regular basis.

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 and injury to both people and property in the proposed development.

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.

From the information available within the planning application documents, Sport England is unable to find any information that addresses the issue of ball strike and details of any mitigation that may be required.

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 and any other sports that are played on the adjacent cricket ground.

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.

It is acknowledged by Sport England that there are already existing land uses surrounding the cricket ground and these are at risk of ball strike. However, it should be noted that this is an existing situation, and this predates the East Meon and Crossflatts cases referenced above.

The planning application therefore introduces a new '*agent of change*' and 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 200 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."*

Sport England's position

In light of the above, Sport England **objects** to the application because of the prejudicial impact it could have on the adjacent cricket ground.

As a point of clarification: Sport England is not against new developments next to sport facilities provided that any ball strike mitigation is addressed.

There are numerous examples around the country where new housing can exist adjacent to sport facilities. Similarly, many sports clubs welcome new residential developments as this offers a potential supply of new members and also potential customers who can support club bars and club social events where they exist.

The sports club simply do not want to injure or damage their new neighbours, so mitigation is required to allow the sports club and the dwellings to exist without any conflict or danger.

Potential to overcome the objection

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, that examines the ball trajectory for cricket and any other sports that are played on the adjacent cricket ground. Any assessment should consider the correct level of play.
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/cricket ground and there should be no expectation that any maintenance and management is undertaken by the cricket club or other sport users. This should be undertaken by the applicant.

If the applicant does not wish to provide the above they should set out the reasons why, having regard to the judicial reviews, paragraph 200 of the NPPF and the comments of the ECB above. The Local Planning Authority can then consider the planning application giving the views of Sport England great and considerable weight and only departing form them for cogent and compelling reasons.

Should the applicant require any technical advice in respect of ball strike they should contact the ECB: richard.dixon@ecb.co.uk

The applicant should note that ECB can only provide technical advice, they cannot provide a planning judgement as that is a matter reserved for Sport England as the statutory consultee.

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

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