

HORSHAM DISTRICT COUNCIL LOCAL PLAN 2023 TO 2040

Hearing Statement Prepared by Sport England

Matter 6 – Infrastructure, Transport and Healthy Communities

Matter 6, Issue 1 – Whether the approach to infrastructure provision is legally compliant, justified, effective, consistent with national policy and positively prepared?

Q6. *Is Policy 28: Community Facilities, Leisure and Recreation sound?*

- a) *Does this policy apply only to land and buildings that are publicly accessible? Is this policy consistent with paragraph 99 of the NPPF?*

Sport England is the brand name of the English Sports Council, which was established in January 1997 in succession to the Sports Council. Sport England is charged by Royal Charter to take the lead in all aspects of sport and physical recreation which require administration, co-ordination or representation in England. The object stated in the Charter is to.

‘foster, support and encourage the development of sport and physical recreation and the achievement of excellence therein among the public at large in England and the provision of facilities thereof.’

In furtherance of its role, Sport England works within and seeks to influence the land use planning system in order to protect existing sites and promote the allocation of new sites where required, for the development of sports activities.

Since August 1996 Sport England (then the Sports Council) has been a statutory consultee on any planning application for development which,

- (i) Is likely to prejudice the use or lead to the loss of use of land being used as a playing field, or is on
- (ii) Land which has been
 - (aa) used as a playing field at any time in the 5 years before the making of the relevant application and which remains undeveloped, or

- (bb) allocated for use as a playing field in a development plan or in proposals for such a plan or in proposals for such a plan or its alteration or replacement, or
- (iii) Involves the replacement of the grass surface of a playing pitch on a playing field with an artificial, man-made or composite surface.

Sport England assesses proposals affecting playing fields on which it is consulted in accordance with its own Playing Field Policy (PFP) and the NPPF. Its Playing Field Policy is in broad accordance with paragraph 99 (now 103) of the NPPF * and is attached at Annex 1. The full policy and guidance document is available to view at [Planning for sport | Sport England](#)

Paragraph 99 of the NPPF relates to the full range of open space, sports and recreation not only playing fields. It 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, building 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.

Where Sport England is consulted on development affecting playing field land last used more than five years previously it assesses such proposals against its PFP. All proposals involving the loss of existing open space and sport and recreation uses, or the loss of land and buildings previously in those uses and remaining undeveloped should be assessed by the planning authority in accordance with paragraph 99.

Sport England's applies its policy consistently across all types of land ownership including public, private, institutional or educational. Paragraph 99 also does not differentiate between different types of ownership. The assessment of proposals for the loss of private playing field land, not providing community access and remaining disused for substantial periods of time against both the PFP and Paragraph 99 has been endorsed in numerous appeal decisions, including the one attached to Sport England's objection to Policy 28 that is now attached at Annex 2 to this statement.

*Exception 4 of Sport England's Playing Field Policy (PFP) reflects Paragraph 99 (b) of the NPPF however, following the Mapledurum High Court decision *R(Brommell) v Reading Borough Council* [2018] EWHC3529 (Admin) it has been established that while the PFP requires that any playing field land to be lost is replaced with both at least equivalent quality and quantity of new playing field land, that in applying paragraph 99b) both quantity and quality are relevant in the overall judgement that the new provision is equal or better. In appropriate cases, one can be offset against the other.

Neither Sport England's PFP or Paragraph 99 identify factors such as feasibility, marketing or viability as matters to be assessed in establishing demand for sport and recreation land and buildings.

The relevant test provided by Paragraph 99 in relation to all such uses is whether a robust and up to date assessment of supply and demand has been carried out that clearly shows that the facility is surplus to requirements (PFP exception 1, Paragraph 99a). The attached appeal decision at Annex 2 confirms these considerations in paragraphs 25 and 29. Concluding paragraph 104 is also relevant, stating, *'The protection of open space, sports and recreational land is a key policy of the Framework which carries significant weight in the balance. The relevant development plan policies which resist the loss of sports facilities are consistent with the Framework and should similarly carry weight even though they are deemed out-of-date.'*

A further recent appeal decision relating to a disused speedway track is attached at Annex 3, it discusses the matters of whether the facility is surplus to requirements and viability separately in some detail within paragraphs 26 to 59. At paragraph 29, it endorses Sport England's method for assessing the need for facilities.

Sport England objected to Policy 28, part 3 b) because, by including sport and recreation land and buildings in a much wider category of community facilities the continued feasibility and need for which is to be established through a range of factors including appropriate active marketing and viability it goes beyond and is not consistent with Paragraph 99.

It is acknowledged that in respect only to open space, presumably including playing fields, but not including other land and buildings in sport or recreation use, the Council has proposed a modification to Policy 28. However, for the reasons discussed above, this is not acceptable to Sport England as the policy as a whole, remains inconsistent with Paragraph 99. Furthermore, the Council's own assessments of need represented by its Built Facility Strategy and Playing Pitch Strategy completed early 2019 are both now considered by Sport England to be out of date and are not robust in accordance with its assessment guidance and Paragraph 98 (102) of the NPPF. (Sport England response ref: #1191960).

Conclusions

Within its Regulation 19 consultation submission Sport England recommended that the wording of Policy 28 be amended in relation to open space including playing fields and other land and buildings in sport and recreation use so that it is consistent with NPPF Paragraph 99.

The Council's proposed modification does not adequately address this matter as it does not separate the criteria clearly established by Paragraph 99 for assessing

the loss of open space including playing fields from the other criteria set by Policy 28 for determining proposals. Furthermore, the proposed modification is incomplete since it does not relate to other land and buildings in sport and recreation uses that are equally protected by Paragraph 99.

Sport England would recommend that references to open space including playing fields and all other sport and recreation uses are removed from the scope of Policy 28 and contained within a new separate policy that acknowledges the special protection that Paragraph 99 of the NPPF affords to them.

[REDACTED]
Planning Manager
Sport England

[REDACTED]

[REDACTED]
[REDACTED]

Sport Park, 3 Oakwood Drive, Loughborough, Leicestershire, LE11 3QF

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Annexes

1. Sport England's Playing Field Policy
2. Appeal Decision 11/08/2023 Ref: APP/G5180/W/23/3315293 Former Sports Ground, Worsley Bridge Road, Beckenham BR3 1RL
3. Appeal Decision 19/01/2024 Ref: APP/E3715/W/23/3322013 Coventry Stadium, Rugby Road, Coventry, CV8 3GP