



Appeal Decision

Inquiry held on 9-12 and 16-17 November 2021

Site visit made on 19 November 2021

by Andrew McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2021

Appeal Ref: APP/P4415/W/21/3278557

Pitches Sports Club, Wickersley Road, Broom, Rotherham S60 3PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Newett Homes Limited against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2019/0539, dated 15 March 2019, was refused by notice dated 19 March 2021.
 - The development proposed is the erection of 116 dwellinghouses with landscaping, public open space and associated infrastructure on the land at the Pitches Sports Club, Wickersley Road, Broom, Rotherham S60 3PR.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the planning application was determined by the Council in March 2020, the Government published a revised National Planning Policy Framework (NPPF) on 21 July 2021. As a result, some references to paragraphs in the NPPF 2019, for example Paragraph 97 in the Council's second reason for refusal, have now changed. In this case, Paragraph 97 is now Paragraph 99 in NPPF 2021. For the avoidance of doubt, references to the NPPF in this decision refer to NPPF 2021, as amended from NPPF 2019, where necessary.
3. The proposed scheme was recommended for approval by Council officers but was refused by the Council's Planning Committee for the reasons specified on the Decision Notice. Planning obligations were submitted in a draft agreement, discussed at the Inquiry and subsequently finalised, agreed, signed and sealed at the close of the Inquiry. I have taken this into account in reaching my decision.
4. I have been referred to several appeal decisions, such as Coventry¹ and Bexhill² amongst others, as well legal judgements by the main parties in respect of particular points relating to their cases. I have noted these and taken the points raised into account. Notwithstanding this, each case must be determined on its own merits and whilst having had regard to the other cases referred to, I have determined this case principally on its own merits and circumstances taking into account all evidence before me.

¹ Core Document: CD8.1 - Appeal Ref: APP/U4610/A/12/2176169

² Core Document: CD8.11 - Appeal Ref: APP/U1430/W/18/3215252

5. I have visited the surrounding area of the site on two occasions. The first time was prior to the hearings. This did not include access to the site but did include the local area and the locations identified for proposed sports use mitigation. The second visit followed the close of the hearings. That included the site as well as two domestic gardens adjacent to it, the surrounding area and the identified mitigation locations. I also viewed the site from various points in the local area identified in the appellant's evidence on visual amenity as well as from other locations, such as between properties along Broom Avenue and Wickersley Road. Accordingly, in addition to the written and oral evidence, I have also taken account of observations made with regard to the main issues during my visits in my decision making.
6. The Council refused a planning application in 1997 for housing on the site. Having been referred to that refusal and considered it in relation to this appeal, I find that, although a considerable time ago, some parallels with this appeal case exist. Whilst the sports use of the site is not currently active, the site still provides a valuable asset in terms of being a large open and protected Green Space within a densely developed area of Rotherham. Furthermore, although the policy context differs from 1997 (Policy ENV5.1) to now (Policy SP38), I find the principal policy matter and its application in the protection of urban green space to be broadly consistent. Accordingly, whilst there are some differing circumstances between the 1997 case and this appeal and acknowledging that each case must be assessed on its own merits, I consider the 1997 refusal to be a material consideration in this appeal.

Main Issues

7. The main issues are:
 - 1) whether the proposed scheme would be contrary to Local Plan Policy SP38 with regard to the protection of designated Green Space;
 - 2) the effect of the proposed scheme on the provision of protected Green Space in the local area; and
 - 3) whether the proposed scheme makes adequate provision for any existing and additional need for Green Space and recreational facilities arising from the scheme with regard to its quantity, quality and suitable location.

Reasons

8. The site is triangular in shape and about 3.8 hectares in area. It consists largely of a sports ground, pavilion and social club known as Pitches Sports Club. In addition to an area of hardstanding for parking, there are playing pitches for football and cricket, tennis courts and a crown green for bowls. However, none of these have been in use in recent years and the land has become overgrown. The pavilion building has fallen into a poor state of repair due, it appears, to a lack of use and maintenance in recent times. The site is surrounded by residential development and is accessed by a narrow lane from Wickersley Road. Adjacent to the access lane, the appeal site boundary includes two semi-detached houses (122 and 124 Wickersley Road) and the proposed scheme seeks to demolish these to provide improved access to the site.

Whether the proposed scheme would be contrary to Policy SP38

9. The Council identifies one policy breach of the development plan in the reasons for refusal, that being Policy SP38 of the Rotherham Sites and Policies Document 2018 (the SAPD). Accordingly, Policy SP38 is the key policy in this case providing protection to the site as designated Green Space. It seeks to protect and improve the quality of green spaces available to the local community or neighbourhood

where they are found. As such, it is evident to me that the importance and protection of such Green Spaces is principally to be considered in a local context within the development plan. This is supported by the first paragraph of the explanatory text for Policy SP38 which states that Green Space can meet the recreational and leisure needs of a community.

10. Policy SP38 is a restrictive policy stating that existing Green Space, such as the site, should not be built upon unless an exemption, as set out within the policy, is met. Before those exemptions can be taken into account, the second paragraph of Policy SP38 has to be considered. The policy is clear that the exemption criteria will not apply to Green Space that performs an irreplaceable amenity or buffer function. Determining whether a Green Space is an irreplaceable amenity is a matter of planning judgement.
11. Policy SP38 was tested at the Examination of the SAPD and found to be sound by the sitting Examiner. From the evidence, it is clear that an assessment of the site was undertaken as part of the plan preparation process in relation to Policy SP38 and submitted to the Examination for consideration. Representations were made seeking to allocate the site for development. However, this was rejected by the Examiner based on the evidence before them.
12. The appellant says that the evidence at that time was inaccurate as the site was, in fact, not in active sporting use, nor was it publicly accessible. Notwithstanding this, I find that sufficient evidence was before the Examiner to enable them to decide whether the site was suitable for allocation for development rather than be designated as Green Space. This included the representations made for the allocation and development of the site. My view is supported by the Examiner's assessment and decision not to allocate the site for development and instead elect to designate and protect the site, and others, as Green Space in the SAPD.
13. Moreover, the SAPD has also released Green Belt land allocations for residential development to meet housing needs. Therefore, it is clear to me that the Examiner considered there to be 'exceptional circumstances' to do so. This demonstrates the importance afforded to the protection of Green Spaces, including the site, over potential development in the Green Belt in the terms set out in Policy SP38.

Irreplaceable amenity: visual amenity

14. Irreplaceable amenity in this context is not restricted to just visual amenity. It is a broad definition and, as such, all contributions that a Green Space makes to amenity must be considered when determining if it provides a function that is irreplaceable. Where the irreplaceability test is passed, the first paragraph of Policy SP38 can then be considered.
15. Reason for refusal 1 deals with the irreplaceability of amenity and paragraphs of Policy SP38 following criteria a, b and c. The site is an area of open space within an otherwise built-up urban area. At the Inquiry, I heard from several interested parties and residents how the open space at the site had been experienced and used by local residents and the community over many years for both formal and informal sport and recreation and general amenity. Based on the evidence and my observations, more than half of the residential properties surrounding, and adjacent to, the site have gates leading from their rear gardens directly onto the designated Green Space. Furthermore, I heard how the site has been considered by the local community and described as a 'green lung' within its status as a protected Green Space in an urban area.
16. It is clear that the site has provided a level of significant amenity to nearby residents and the local community for many years, whether formally or informally

used as an area of open space or Green Space. However, I acknowledge that just because a level of amenity provided to the local community may be incapable of being replaced due to it being location specific, it does not necessarily follow that any proposed development of a site should be refused. This is not, in my view, the intention of Policy SP38. The approach within the policy seems to be based on a particular level of amenity being so important as to warrant protection regardless of other material considerations. Therefore, a planning judgement on the amenity experienced and provided by the site is required.

17. The Council says that the cumulative private amenity benefits of the site for those residing around it form a collective public amenity benefit of such significance and value to the local community that would be substantively harmed by the site's loss as a protected Green Space. The appellant believes this to have little weight as it is considered inconsistent with the well held principle that private households have no right to a view or open outlook.
18. The appeal site is private land and public access to it has been prevented by the owner in recent years for reasons of security and public liability concerns. However, where a site, in this case a designated Green Space, is in private ownership and not publicly accessible, in my view, this does not prevent it from providing amenity benefit in its locality. Neither does this prevent such a space from providing irreplaceable amenity. I acknowledge that any informal recreational amenity previously taken on the site had no public right and may have been permitted at the previous owner's discretion. Moreover, the appellant says that this amenity use was, in any event, modest, localised and is no longer present. However, there is considerable evidence before me to indicate that this informal recreational amenity did happen. Irrespective of whether it was modest or localised, such activity provided significant amenity value to the local community.
19. The fact that the majority of adjacent properties have gates from rear gardens onto the site indicates how the Green Space site has operated and been used as a recreation amenity previously and been of clear benefit to the local residents and community. This is supported by the statements of local residents recounting their use of the site for 'ad hoc' games, dog walking, taking exercise and other amenity use including more formal sporting activities and social events at the sport pavilion and social club.
20. This use has clearly diminished over recent years. There are several reasons for this, such as reduced interest or demand in particular sports, economic viability in terms of the profitability of the business and the maintenance costs of the site. Moreover, I find that the removal of public access to the site for formal use by local clubs, including Whiston Wildcats JFC, and informal use by neighbouring residents has significantly contributed to this fall in use.
21. The site owner has stated that public access to, and activity on, the site is not likely return in the foreseeable future. Nonetheless, in my assessment, I find that this stance may change due to changing circumstances or indeed as a result of a change in ownership. The continued dilapidation and decline of the site is noted as a risk. However, I consider that such a course of action would not likely benefit any party and may result in greater liability and cost to the owner in the longer term.
22. There is significant community interest in retaining the site in its protected Green Space use as designated in the adopted SAPD. This is demonstrated by the number of interested parties wishing to engage with the planning application process, this subsequent Inquiry and also the application to identify the site as an Asset of Community Value (ACV). The ACV application, although initially successful, failed

- on appeal as a result of the owner's confirmation that the site is privately owned and would not be available for public access or use in the foreseeable future.
23. Notwithstanding this, I find there to be sufficient evidence before me to illustrate significant community interest and support for the site to be retained as protected Green Space. Whilst this support may not currently manifest itself as an organised entity capable of purchasing, maintaining and managing the site for its existing purpose and use, from what I have seen and heard, I am satisfied that this would be the case if given the time and opportunity.
24. The appellant states that the level of public visual amenity offered by the site is remarkably low and suggests it is easy to drive or walk past the site and not know it is there. Furthermore, the break in the urban environment and visual form of the local area created by the site is said to only really be appreciated on plan. It is also put forward that whilst very small parts of the site can be seen beyond the houses that surround it, this does not elevate visual amenity to a level of importance that warrants refusal.
25. The test in Policy SP38 is whether the site is of such amenity importance that it should be left undeveloped. There are points locally from where the site is not only visible but can be seen as an area free from development. This is identified in Viewpoints 4, 5 and 7 of Appendix 2 within the appellant's visual amenity evidence. From this, and my own observations around the local area and at Viewpoint 7 in particular, I find that the loss of the site as open Green Space would result in a significant change in how the site is viewed in its surroundings and therefore its visual amenity role in the locality.
26. The visible gap in the urban form when viewed from Viewpoint 7 would be lost to the rooftops of new dwellings, notwithstanding the cover which may be provided by existing and proposed trees. The visual amenity role of the site in its locality would be irrevocably changed by the proposed development which would be clearly seen from such locations. This is demonstrated and supported by the existing visibility of the pavilion and social club building on the site from Viewpoint 7.
27. Whilst the impact on visual amenity from other viewpoints, including Viewpoints 4 and 5, would be less than that experienced from Viewpoint 7, I find that the many glimpsed views of the site between existing properties, and which contribute to the visual amenity of the locality, would be changed permanently, resulting in harm to the existing viewed townscape and visual amenity of the area. This assessment is informed by the appellant's submitted evidence and supported by my observations of the site between existing dwellings along Broom Avenue in particular where there are some significant gaps between existing properties which provide clear views of the open nature of the site at various points along Broom Avenue.
28. Moreover, these views between existing properties are noted to be of greater prominence due to the site being at a slightly higher ground level than the dwellings along Broom Avenue. From my observations from the rear garden of a property on Broom Avenue during my site visit, I estimate the ground level of the site to be up to about 1.5 metres higher than the rear gardens of properties along Broom Avenue. I note also that the topography of the site appears to rise slightly from south to north. As a result, when experienced and viewed from various points in the local area, particularly along Broom Avenue and locations to the south, the site has, in my assessment, a more significant visual amenity role in the area than the appellant's evidence suggests in relation to the viewpoints they have identified.
29. The appellant accepts that the site provides a gap in the urban form of the local area on plan. However, there is dispute as to whether this role is experienced

meaningfully on the ground. From what I have seen, the site is of considerable size and area. As such, it provides a substantial break in the urban form of the locality. Whilst this may not be experienced as fully from certain locations around the local area, it is evident that for the significant number of those living adjacent to this substantial open Green Space, there is significant visual amenity value provided and experienced. As such, were the open space to be lost, it would result in a significant irreplaceable amenity loss both to the area immediately around the site and more widely in the locality.

30. There is no right to a view in planning matters and the Council accepts that the residential impacts of the appeal proposal are acceptable. From what I have before me in relation to these matters, I agree. However, other factors in this case are material when assessing amenity impact and whether the site provides an irreplaceable amenity. It is clear that the local community derives significant benefit from the open nature of the site which provides a physical, social, environmental and visual form of amenity. This amenity value to the local community is both historic and current and is recognised and supported by the policy protection that the site has been afforded for a significant period of time in the development plan and at least since 1997.
31. It is also evident both on plan and on the ground that were the site to be developed, there would be a large urban area bounded by the A618, A631, A6123 and A6021 main routes without any easily accessible open space or a physical or visual break in the dense urban form of the area. The identified roads are busy with limited designated crossing points and make Green Space elsewhere less desirable to reach. As such, the significant amenity benefit that the site has provided historically, albeit on private land, and continues to provide physically, environmentally and visually would be impossible to replicate or replace and its loss would significantly diminish the amenity of the local area as a result.
32. From submissions and my observations, it is clear to me that the site provides a significant visual amenity role for the local community and area. Accordingly, having taken all relevant matters into account, I find the broad amenity function that the site has provided in the past and continues to provide environmentally, physically and visually to the local community to be irreplaceable.

Table 16 sites

33. The appellant refers to the list of sites set out in Table 16 relating to Policy SP38 and makes the point that the appeal site is very different to those listed, the qualities of which are considered to indicate the level of amenity function that defines irreplaceability. The appellant identifies that the sites listed are highly visible and almost all are physically accessible. The rest of the sites are said to have a buffer function. In the appellant's view, the appeal site has none of these attributes and as such it is not included in the sites listed in Table 16.
34. Table 16 is not an exhaustive list of irreplaceable Green Space in Rotherham despite the Council's best efforts to make it comprehensive. Consequently, where a site does not appear in Table 16, it cannot fully be accepted that it has no irreplaceable qualities. Whilst each site listed may have certain similar attributes, each also has its own particular circumstances and characteristics. As such, in my view, Table 16 cannot be relied upon definitively in any such broad assessment of sites in this regard. It provides a reference point but not a complete checklist of where irreplaceable amenity can be defined and assessed. An actual assessment of the appeal site is needed to determine whether it is considered as an irreplaceable amenity and whether its loss as such is at risk by the proposed development.

Conclusion

35. Fundamentally, I must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. Having done so, I find that the site provides significant amenity value to the local community in terms of environmental and physical benefits. Whilst opportunities for its continuing use in this way have been restricted in recent years, the potential and desire of the local community is sufficiently evident to support the case for the site to remain as protected Green Space. The amenity benefits to the local community and its people, as I have heard and seen them, are location specific and cannot be replicated or reproduced elsewhere. As such, this overall amenity value provided through the site as I have set out is considered to be irreplaceable.
36. Although the site is private and there is currently no public access to it, this does not diminish the overall amenity value of the site as Green Space to the local people and the area that has been demonstrated to exist both historically and currently. Based on the evidence, the site has benefitted from an extensive period of policy protection dating back to at least 1997 which I note has not been disappplied or weakened in any way. It has never been proposed in any assessment before me to have its protection weakened. Furthermore, I find Policy SP38 to be up-to date with regard to the purposes of assessing this appeal. As a result, the site has strong and justified policy protection in the adopted development plan as a protected Green Space under Policy SP38 and therefore this is the starting point in determining this appeal.
37. Consequently, I conclude that the proposed scheme would result in the loss of a designated and protected Green Space. Furthermore, the loss of the site as such would result in the loss of an irreplaceable amenity which could not be appropriately and suitably replaced or recreated elsewhere. Therefore, it is contrary to Policy SP38 of the SAPD 2018.

The effect of the proposed scheme on the provision of protected Green Space in the local area

38. The Green Space amenity value of the site is, in my view, irreplaceable and the site is considered to be a key feature of the local area in terms of its role in providing significant open space in a substantial urban area. Were the site to be developed, then its loss as open space would have a significant adverse impact on the level of protected Green Space both in the local area and in Rotherham. The impact of this is clearly demonstrated on plan but also by observations made from certain locations around the site.
39. There is no substantive evidence to indicate that there is a surplus of protected Green Space in the area or that the loss of the site in particular is justified or acceptable. Moreover, there is no assessment to indicate whether the existing provision of protected Green Space is sufficient to meet the need of the area and no assessment as to whether sufficient provision of protected Green Space to meet additional need as a result of the proposed scheme is provided or required.
40. Notwithstanding this, it must be that where protected Green Space measuring about 3.8ha in area is lost to development and replaced by approximately 0.65ha of public open space, the overall provision of protected Green Space diminishes. It must also be the case that the proposed residential development, adding to the overall housing to be served by such a diminished level of protected Green Space in the locality increases. Irrespective of the quality of the provision of public open space and its equivalence or otherwise to what it replaces, I find that the overall

impact would clearly be detrimental to the amenity of the local area and those living there in terms of the provision of protected Green Space.

41. There is a substantial package of mitigation proposed with the appeal scheme. However, it is focussed principally on the mitigation or replacement of sports use, equipment and facilities rather than on the replacement or reconciliation of protected Green Space which is considered irreplaceable in any event. As a result, such mitigation as proposed does not, and cannot, equivalently replace the significant loss of protected Green Space in terms of its quantity or quality.

Conclusion

42. Consequently, I conclude that the proposed scheme would have a significantly adverse effect on the provision of protected Green Space in the local area. Furthermore, I find there to be no substantive material considerations before me which overcome the significant harm that would result in the loss of the protected Green Space on the local area and its residents. As a result, the proposed scheme and its proposed mitigation measures is therefore contrary to Policy SP38 of the SAPD 2018.

The adequacy of alternate provision with regard to equivalence, betterment, quantity, quality and suitable location

43. The appellant's case relies on exemption (b) of Policy SP38. It is agreed that this requires a judgment to be made about the quantity and quality of compensatory provision to be made, although it is noted that a 'like for like' replacement of both is not required. However, there is clear dispute between the main parties on the scope of what is required for replacement and what is meant by a suitable location.
44. The specific definition of open space within the NPPF states it as where all such spaces offer important opportunities for sport and recreation and can act as a visual amenity. Paragraph 99 of the NPPF, which has similarities with Policy SP38, considers only open space, sports and recreation land. In my reading of Policy SP38, the policy deals with Green Space including, but not limited to, open space, sports and recreation land. Therefore, in my view, the policy is plainly broader in its consideration of Green Space and its role than the parameters set out in Paragraph 99 of the NPPF. As such, this wider consideration is required in the determination of this appeal.
45. Policy SP38(b) clearly sets no restriction on its considerations to just sports land. Where a site provides both a sports and recreation purpose, then each factor needs to be replaced. Furthermore, whilst it is accepted that visual amenity cannot be replaced, the policy deals with more than just that and concerns amenity value more broadly. Accordingly, an assessment of the amenity value of a site should therefore identify what is to be replaced under exemption (b). If land were to perform an informal recreation use or role, then this would also need to be taken into consideration.
46. The appellant states that what would be lost due to the proposed scheme would be former sports facilities and nothing more and that these alone are the only elements that could be considered to be of public value and which offered important opportunities for sport and recreation. In the appellant's view, these matters reflect the definition of Green Space in the development plan. Moreover, it is stated that Policy SP38(a) does not seek to address visual or incidental amenity and therefore it would be illogical for SP38(b) to require the replacement of something that is not protected by part (a). It is, therefore, the appellant's case that amenity - whether visual or in some form of incidental access - does not fall

- within the category of matters for replacement. In my view, this is significant as such matters could therefore be reasonably considered as irreplaceable.
47. As such, the package identified in the final Section 106 document provides mitigation for the loss of sports use and facilities. However, from my reading, Policy SP38 does not deal solely with sports land and provision. It also concerns the impact of proposals on existing Green Space, open space and recreational land with its principal aim being the protection of Green Space. As I have determined, the site provides a wider amenity function than just sports use. As such, whilst financially substantial overall, in my view, the proposed scheme and the sports specific mitigation package clearly conflicts with Policy SP38.
48. Evidence that any replacement provision of Green Space and sport and recreational facilities would at least be equivalent in terms of quality and quantity is not clearly set out. However, existing protected Green Space would be substantively reduced as a result of the proposed scheme. In addition to that loss, the public open space proposed within the new scheme would clearly differ not only in area but also in its functional use. Whilst the quality of provision in terms of specific sporting equipment and facilities may be enhanced, the quantity of sporting facilities overall in terms pitches and playing areas available would be reduced.
49. This again is significant as the mitigation package does not propose to create any new sports land, such as pitches or courts, and is based solely on qualitative improvements to sports provision elsewhere in the Rotherham area. The alternate provision identified clearly differs from what exists or did exist on the appeal site and does not provide equivalent 'like for like' replacement of what would be lost. Again, Policy SP38 does not specifically require this. However, in the absence of a proper assessment, any appraisal of compensatory provision as an equivalence or betterment of existing or previous provision in terms of quality and quantity is difficult to judge.
50. Reference has been made to the requirement for funding for a Playing Pitch Strategy (PPS). The purpose of a PPS is to create a strategic framework for decision-making. The PPS would allow an informed assessment and decision to be made about the significance and necessity of a site, such as the appeal site, to the local community and the future provision of sports facilities in that local area. The Council has not produced an up-to-date PPS and the appellant, as part of their case, has not prepared any kind of equivalent assessment to inform the proposed mitigation package. Furthermore, there is no evidence before me to conclude that the designation of the appeal site as protected Green Space is no longer necessary. Neither is there an assessment identifying suitable locations for compensatory provision if the appeal site were to be lost.
51. During the Inquiry, the Council's position with regard to the PPS or funding for its provision as part of the appellant's mitigation package appeared to shift. Based on submissions made at the Inquiry, the Council wishes to have the PPS provided for by this proposed scheme. The appellant has made provision for the PPS within the finalised package of contributions set out in the signed Section 106 document. As such, were I to find the provision of a PPS necessary, I am satisfied that this could be included within the Section 106 planning obligations were I allowing the appeal.
52. Despite the lack of an appropriate assessment of appropriate compensatory provision being provided, I make the following observations on the evidence before me. The proposed mitigation does not include a new football pitch, cricket pitch, tennis courts or a bowling green. There is, therefore, no direct replacement provision of the facilities that are on the appeal site, irrespective of their condition, and which would be permanently lost to the proposed development. The appellant

stated during the Inquiry that what currently exists on the overgrown appeal site does not equate to useable sporting facilities which were previously used. As such, they do not constitute current provision and do not need to be replaced by something equivalent or better.

53. In my view, the potential for those facilities on the site to be used again, regardless of any reinstatement or maintenance work and cost that may be needed, is sufficient justification to ensure that such provision is at least equivalently compensated for in quantitative and qualitative terms. Moreover, it should be provided in a suitable location, in accordance with the requirements of Policy SP38. The proposed mitigation package does not achieve this.
54. The Council's concern in Reason for Refusal 2 is that it has not been possible to judge whether there is adequate replacement proposed for the loss identified within the terms of Policy SP38(b) due to the lack of a PPS. As a result, there is concern as to the adequacy of the mitigation proposed. Based on the evidence, I share this concern. The appellant now proposes an increased sum of money for specific sports purposes in specific locations as well as funding for a PPS. Despite this, as there is still no PPS in place, the Council's concern remains as to the adequacy of the increased sums, the detail of the mitigation now proposed and whether it is appropriate, equivalent or better than what exists and is to be replaced.
55. The total sum offered in the final Section 106 document is noted as being less than what was indicated in evidence to the Inquiry it would cost to reinstate the appeal site. I note also that the cost of that site reinstatement has increased during the Inquiry. Notwithstanding this upward shift in compensatory value, the mitigation now proposed cannot provide equivalence in financial terms when judged against the identified cost of reinstating what would be lost at the appeal site. This financial position adds to the overall mismatch and difficulty with assessing whether the mitigation package offered provides equivalence or betterment of the existing provision in quantity and quality. In my view, it does not.
56. The mitigation package has not been calculated based on an assessment of the site and what would be lost were it to be developed. The appellant does not present any 'before and after' comparison evidence against which the question of whether there is quantitative and qualitative equivalence or betterment can be reasonably assessed. Rather, as acknowledged by the appellant, it is based on what sport governing bodies and associated plans and strategies advise would improve participation in sport in Rotherham. The appellant states that research and liaison with relevant sports clubs, governing bodies, the local authority and Sport England identified that the need for such provision was not evident. As a result, the proposed mitigation package was devised in accordance with the advice provided with the aim of increasing participation in sport across Rotherham.
57. Notwithstanding this, this Inquiry is not engaged in a sports funding exercise. It is concerned principally with the application of development plan policies and material considerations about land use consequences and impacts. As such, contributions within the Section 106 agreement can only be relied on in the planning balance if they are ones that arise directly from the appeal proposal. There must, therefore, be a clear link between the contributions and the consequences of the proposed development.
58. Having regard to the advice provided by sports clubs and the governing bodies, including Sport England, I find that the proposed mitigation in a number of respects, including the provisions of maintenance machinery and the funding of a sports development officer, is not directly related to the loss of facilities at the

appeal site. The correlation between the loss of pitches at the site in Broom and the maintenance machinery in Wath for example is, in my view, difficult to reconcile and justify. Whilst some benefit from the proposed scheme, such as improvements to existing pitches, would be provided relatively nearby at Rotherham Town Cricket Club and Herringthorpe Playing Fields, the overall package does not provide appropriate replacement of facilities in equivalence or quantity. It is a package that has not been developed with the requirements of Policy SP38 in mind or has any direct reference to facilities at the appeal site.

59. Consequently, whilst the quality of the compensatory provision of some new sports equipment and facilities through the mitigation package may be considered as enhancement or betterment, the quantity of that provision, in terms of land available and the amount of playing pitches, courts and greens for football, cricket, tennis and bowls respectively is not increased. In fact, the quantity of pitches, courts and greens would be reduced by the permanent loss of those on the appeal site. Accordingly, the quantitative equivalence or betterment of the alternate provision to that which would be lost is not demonstrated.

Suitable locations

60. Several mitigation sites are identified for compensatory provision in the wider Rotherham area. The closest to the appeal site are Herringthorpe Valley Park (1.6km), Herringthorpe Playing Fields and Rotherham Town Cricket Club (both 1.7km). From the evidence and my assessment, not all sites where such provision is proposed are in a suitable location relative to the appeal site. At least nine of the sites are more than 2km or a 20-minute walking distance away.
61. Many sites are considerably outside the locality of the appeal site. Indeed, some are significantly distant. This is most starkly demonstrated with Wath Cricket Club, about 12km from the site. Similarly, Thorpe Hesley and High Green Cricket Club is more than 10km from the site and also lies beyond the Rotherham Metropolitan Borough boundary. Other proposed mitigation is noted as being distant from the appeal site such as at Upper Haugh Cricket Club, 8.5km away and at Treeton Cricket and Football Pavilion, 6.1km away.
62. I acknowledge that access to the mitigation sites from the appeal site has been assessed using driving times rather than simply distance. Nonetheless, having driven from the appeal site to these sites, in my assessment, many of these locations are found to be distant both in terms of travel time and distance.
63. Many sites have little or no geographical or physical connection or relationship to the appeal site. Policy SP38 is concerned with protecting Green Space that serves a local community. It is not a general sporting use and provision policy. From my assessment, it is simply the case that the proposed mitigation at locations such as Wath, Upper Haugh and Thorpe Hesley and High Green Cricket Clubs would not provide suitably located alternate amenity benefit of equivalent or better provision to serve the same local community and area around the appeal site. Moreover, there is no compelling evidence before me to indicate that they would.
64. Several mitigation locations are at privately run sports clubs. As such, access to and the use of the proposed mitigation measures by the local community around the appeal site may well be dependent on membership of those clubs. Therefore, access to and the use of the replacement measures by those most affected by the proposal cannot be guaranteed.
65. The alternate provision in the proposed sports mitigation package would be distributed across a substantial area at several different sites, some of which it has been established are significantly distant from the appeal site and the local

community. The appellant says that the mitigation package and the various locations identified to provide it are the most appropriate and suitable. It is also stated that there are no closer opportunities to the appeal site missed and neither Sport England nor the sport governing bodies want new pitches. The sites identified are therefore the closest opportunities for the works to be done.

66. In my assessment, given the appellant's argument above, I find it hard to see how at least some of the more distant locations can be more suitable for mitigation measures in relation to compensating the loss that would be experienced by the local community around the appeal site. Whilst no doubt required at the identified sites, based on the evidence provided, I am not satisfied that the provision of, for example, maintenance machinery at Wath Cricket Club could not be provided to benefit a more suitable venue closer to the appeal site and its local community.
67. I now turn to proposed mitigation sites closer to the appeal site, such as Herringthorpe Playing Fields and Herringthorpe Valley Park. Although the most publicly accessible and closest of the identified locations to the appeal site, there is no substantive evidence to indicate that such provision at these places would increase participation in sport for those in the area of the appeal site.
68. The appellant is correct in that there is no policy requirement for mitigation sites to be local to the appeal site. Nonetheless, amongst other things, sites do need to be considered as suitable in terms of location. This is a matter of planning judgement. In my judgement, I find a significant proportion of mitigation sites are not in suitable locations in terms of their proximity and relationship to the appeal site, its local residents and community. Furthermore, the private nature of the sports clubs identified in terms of membership requirements, likely future access to the compensatory facilities and the associated benefits for local residents and people generally raises concern about the suitability of some locations.

Delivery of mitigation

69. The deliverability of the sports mitigation package is a concern of the Council with regard to land ownership and control issues and the need for planning permission in some cases relating to specific proposals, such as in relation to the setting of listed buildings and Green Belt. Whilst at this stage, there may be uncertainty as to whether planning consent would be gained where required, there is nothing before me to indicate that planning consent would be a significant obstacle to delivery.
70. It is noted that the proposed mitigation elements have the support of all parties involved, including those clubs and organisations where the measures are to be located. With such proposals, additional facilities and equipment offered, this support is to be expected. However, taking all matters into account, I note that there is equally no evidence to indicate that planning consent is in place where required to deliver the relevant elements of the mitigation package. Creating flexibility in provision within the Section 106 document, as the appellant has done, does not satisfactorily address this uncertainty. Certainty of delivery is crucial in compensating for the loss identified at the appeal site. As such, if delivery cannot be achieved, for whatever reason, then the loss would not be compensated. Accordingly, I find it reasonable and justified for the Council to have some uncertainty and concern at this stage in terms of delivery.

Conclusion

71. To attach weight to the compensatory elements that make up the S106 package, I must be satisfied that they are material planning considerations. The provision of machinery, such as a sit on roller for a cricket pitch or to temporarily fund a development officer to promote participation in sport are not, in my view, directly

related, appropriate or satisfactory to mitigate land use matters or deficiencies resulting from the proposed development.

72. Policy SP38(b) is concerned with the replacement of what is lost from the appeal site in a suitable location. As I have set out, a connection needs to exist between mitigation sites and the appeal site and what is being proposed in order for this policy objective to be met. From the evidence, it is clear that the sports bodies have led and influenced the provision and location of the mitigation package. Whilst in principle this is a reasonable and legitimate approach, this Inquiry is concerned with making a planning decision in relation to the impact on the appeal site, its surroundings, those directly affected by the proposal and the mitigation of the harms resulting from the proposed scheme. It is a site-specific decision.
73. The sports bodies and organisations have no responsibility for making that judgement. Put simply, solely being a sports pitch or site capable of providing compensatory facilities or equipment is not sufficient justification to bring a site, whether near or far, within the remit of what Policy SP38 is concerned with in that regard. Where mitigation sites are not in a suitable location, of which a high proportion are not, and where the mitigation proposed is not directly relatable to, or representative of, the equivalent replacement of facilities at the appeal site in quantity or quality, then there is clear conflict with Policy SP38. The significant concern and doubt raised about the deliverability, nature and location of the sports mitigation package results in uncertainty as to whether the mitigation package is reasonable, appropriate, sufficient, justified and deliverable.
74. The impact of the loss of wider amenity benefits for the local community, including visual amenity, is not identified or suitably addressed in the proposed mitigation package, the focus of which is largely on sports equipment and facilities. This lack of such an assessment is likely due to the appellant's view that in Policy SP38, amenity is considered as not being replaceable and is therefore irreplaceable.
75. Consequently, taking the above matters into account, I find that the impact of the proposed scheme on amenity in the local area, its residents and the loss of existing sport and recreation facilities at the appeal site would not be appropriately and adequately addressed and mitigated overall. I find this to be the case in terms of the lack of equivalence or betterment in quantity and quality. Furthermore, a significant proportion of the proposed mitigation package would not be provided in suitable locations. As a result, I conclude that the proposed scheme and its identified mitigation package does not meet the requirements of Policy SP38.

Other Matters

Housing land supply

76. The Council can demonstrate that it has a five-year housing land supply and there is no dispute about that in this case. From the evidence, I find the housing land supply to be considerably healthy at around 9.5 years. Notwithstanding this, the appellant points out that the Council has, in the most recent three years since 2019, had to adopt and publish action plans in response to its performance against the Housing Delivery Test (HDT), falling below 95%. The Council's response on the diminished housing delivery in recent years is stated as being a result of limited allocated sites for housing being available in the period between an out-of-date development plan being exhausted of allocated sites for housing and the SAPD being prepared, examined and adopted in 2018.
77. The HDT figure for the Council is based on a rolling three-year average of housing delivery and is assessed against the development plan's annual delivery target. Given the time it takes for housing delivery to come through the system from

planning consent to completion and based on the evidence before me, I am satisfied that the Council has both a comfortable five-year supply of housing land and is performing reasonably on housing delivery in the circumstances set out and explained in the latest HDT Action Plan (2021).

Affordable housing

78. The proposed scheme would provide policy compliant affordable housing. However, the dispute between the main parties on affordable housing concerns the weight to be attached to its provision. It is clear that the delivery of affordable housing is a significant matter and there is a substantial under delivery of it in Rotherham and nationally. The appellant accepts that the development plan accords with the NPPFs affordable housing provisions and that the Plan makes sufficient provision for it. Moreover, as set out in evidence, it is agreed that there is no requirement in national policy for a stand-alone five-year land supply for affordable housing. Indeed, the mechanism by which national policy seeks to provide affordable housing is primarily through contributions from large sites and this is what the development plan and its policies is seeking to do in this case.
79. In evidence, the appellant refers to a figure of 716 as being the annual affordable housing need in Rotherham. However, local housing need calculated by the standard methodology identifies a figure of 556 dwellings per annum. In my view, this provides a 'sense check' to the 716 figure as the affordable housing need cannot reasonably exceed total housing need. Therefore, it is my view that the use of the appellant's affordable housing need figure is unreliable, unrealistic and unachievable when considered in the wider housing need and delivery context. As a result, its practical application in this case is considered to be limited.
80. Moreover, I note that when the 25% affordable housing contribution was decided upon as being appropriate, the SHMA housing need in Rotherham was even greater than the appellant's assessment figure. The Council refer to the Examiner's Report for the Rotherham Core Strategy 2014 where the SHMA at that time estimated an annual need for 1,155 affordable units with 19,493 households seeking social housing. This latter household figure is about 12,000 higher than the number of households identified on the current waiting list. Even allowing for a change in how the waiting list is calculated, the appellant accepted in cross examination that the figures before the Core Strategy Examiner were clearly greater than those put forward now. Faced with evidence of a higher affordable housing need than put forward here, the Examiner found the Council's approach reasonable and should be supported. Consequently, based on this evidence, I find the same.

Other considerations

81. Several other matters were raised through representations by parties who were opposed to the proposed scheme. However, as I am dismissing the appeal, I have not considered these matters in great detail in this decision as it is unnecessary. Nonetheless, these related to ecology, noise, air quality and pollution, drainage, residential privacy, highway safety and traffic congestion. Having had regard to these other considerations in my determination of the appeal, I find that each of the concerns raised in relation to the matters identified above have either been addressed reasonably and satisfactorily through the relevant evidence provided to the appeal or could be through suitably worded conditions were the appeal allowed.

Planning Balance

82. For the avoidance of doubt, in ascribing weight I have used the following scale: limited, moderate, significant, substantial.

83. The development and delivery of 116 dwellings and all associated infrastructure at the site would contribute to overall housing supply and delivery in Rotherham and in terms of the Government's commitment to significantly boost the supply of housing in the country, this scheme has great benefit in contributing to the overall aim. However, the Council can demonstrate a very strong position in terms of housing land supply. Whilst its housing delivery performance has slightly fallen in recent years, evidence suggests that this now appears to be on an upturn. This is particularly demonstrated through the provision and development of housing allocations in the SAPD 2018 now likely to come forward. As a result, the need for the development of a non-allocated site for housing is limited. Nonetheless, on balance, I give the provision of new housing moderate weight.
84. Similarly, the provision of 29 policy compliant affordable housing units is a clear and positive benefit of the proposed scheme. It is evident that there is an acute need for affordable housing in Rotherham and across the country generally. Given this, the provision of 29 units would, however, make only a relatively small contribution to the greater overall need for affordable homes in Rotherham, as set out in the appellant's evidence. On that basis, it is difficult to find anything other than a positive benefit. As such, I find that the proposed affordable housing attracts significant weight in this case.
85. The sports mitigation package would provide benefit to the wider Rotherham area at various locations around and outwith the Borough. The range and amount of proposed equipment and facility improvements identified would certainly be beneficial to those able to use them. However, notwithstanding the significant amount of proposed mitigation identified, as set out earlier, that sport focussed provision would only replace part of the permanent loss which would be experienced as a result of developing the appeal site. Much of the proposed mitigation would not directly benefit local residents and the community around the appeal site and, in some cases, it would reduce the overall quantity of provision in the local area and across Rotherham in terms of land for sports use. As a result, despite the size and scope of the mitigation package in terms of finance and provision, I give the proposed replacement of sports facilities moderate weight.
86. Other benefits stated as a result of the proposed development are the provision of construction and supply chain jobs during the construction phase of the scheme, an increase in local spending, new homes bonus and Council Tax due to the arrival of new residents and new public open space on site. Having given consideration to each of these, I find that jobs relating to construction and the supply chain have little weight as these benefits are achieved to some extent in every development scheme. Similarly, I find the same in relation to increases in local spending, the new homes bonus and Council Tax.
87. Whilst the proposed scheme would provide a new area of public open space on the development site, in my view, its use and function would be markedly different to the appeal site as it has been used and exists now. Moreover, whilst I note the appellant's point that access to the proposed public open space would be open to all, including those adjacent to it with rear garden gates, in my view, this would not happen in reality due to the nature, use and character of the site being changed so markedly from the existing. As a result, I find these other benefits identified to have only limited weight.
88. The proposed scheme would result in the permanent loss of open space, sport and recreation facilities and their potential future use. It would also result in the loss of a designated area of protected Green Space in the SAPD and, as such, it would be contrary to the adopted development plan. As the resulting loss of the site would

be contrary to the development plan and therefore significantly harmful. I give significant weight to it in this respect.

89. Notwithstanding the private ownership and restricted access to the appeal site currently, it remains capable of providing amenity benefit to a significant number of local residents and the local community in terms of its open nature, providing an open space in the dense urban form of the locality. Whilst the loss of a private view is not a legitimate planning consideration, the proposed scheme would clearly have a significant adverse impact on visual amenity for those living adjacent to the site in terms of a substantive change in the character and nature of the locality. Accordingly, given the significant adverse impact I have found that would result from the proposed scheme, I give this significant weight to this consideration
90. Visual amenity with regard to the site in the wider area would be significantly changed and harmed for those who live in, and pass through, the surrounding area. Views of the site in a number of locations would be adversely affected permanently. In addition, the site has a significant visual amenity role in the local area as it provides a physical and visual break within its urban context. The loss of the site to development in terms of this role would be significantly detrimental to visual amenity. As such, I find that the visual amenity experience of the site in the wider area would be significantly harmed and I attach significant weight to this.
91. I have determined that the amenity benefit or value resulting from the existing site is irreplaceable to the local community. Consequently, it cannot be adequately or appropriately replaced by any compensatory measures or proposals. As such, I find the loss of the site as an irreplaceable amenity would be significantly harmful to the amenity of residents and the community and this attracts significant weight.
92. The proposed mitigation package would not directly benefit local residents and the community around the appeal site in an equivalent or better way in terms of the quantity of provision. In many cases, the proposed mitigation is identified to be located a significant distance from the site. As such, in my view, these are not considered to be suitable locations for compensatory measures. Although the proposed mitigation will bring benefits to some areas around Rotherham, the area most affected by the proposed scheme around the appeal site would gain unknown but likely limited benefit. Accordingly, I consider this harmful impact of the proposed scheme to attract moderate weight in the balance.
93. Whilst the potential for the site not to be developed is said to likely result in its condition continuing in a relatively poor and overgrown state of decline, I find that the impact of this in terms of harm to the local community likely to be limited. Moreover, I find it would likely be in the interest of the owner to keep the site in a reasonable state of maintenance. Therefore, I give this consideration of harm only limited weight.
94. Having considered the benefits and harms relating to the proposed scheme in the planning balance, I find that whilst there are a number of benefits, some of which attract significant weight, all are outweighed by the weight given to the significant harm identified which would result from the loss of designated and protected Green Space and the sporting and recreational amenity at the appeal site. The appeal proposal and its proposed mitigation do not meet the requirements of Policy SP38 and therefore are in conflict with the development plan. Moreover, as the sports mitigation package is not in compliance with Policy SP38, it cannot therefore, in its own right, sufficiently overcome the policy harm which that failure creates.
95. The Council has a robust housing land supply, identified as being about 9.5 years, and has an up to date adopted site allocations plan to provide the appropriate

framework for housing delivery in Rotherham. Based on this and the evidence before me, I find that these matters also clearly weigh against the proposed development.

96. Overall, I conclude that there are no identified benefits of the proposed scheme or any other material considerations, either collectively or individually, which would justify or outweigh the harm I have identified in the planning balance.

Conclusion

97. Consequently, for the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

Richborough Estates

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He called

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Interested parties

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Local resident

Cllr Wendy Cooksey

Rotherham Metropolitan Borough Council (RMBC)

James Pink

Chair, Whiston Wildcats Junior Football Club

Andrew Fellowes

Representative of The Friends of the Pitches

Steve Gillatt

Local resident

Sam Humphries

Local resident

Michael Mason

Local resident

Rachael Moss

Local resident

Wendy Stead

Local resident

Philip Woodward

Local resident

INQUIRY DOCUMENTS

- ID1** Opening Statement for the Appellant
- ID2** Opening Statement for the Council
- ID3** Statement of Dr Tom Humphries
- ID4** Statement of Alexander Stafford MP
- ID5** Statement of Councillor Wendy Cooksey
- ID6** Statement of James Pink
- ID7** Statement of Andrew Fellows
- ID8** Statement of Steve Gillatt
- ID9** Statement of Elizabeth Hanson (read out by Steve Gillatt)
- ID10** Statement of Mick Johnson (read out by Steve Gillatt)
- ID11** Statement of Sam Humphries
- ID12** Statement of Michael Mason
- ID13** Statement of Rachael Moss
- ID14** Statement of Wendy Stead
- ID15** Statement of Philip Woodward
- ID16** Summary of Balance Sheet (not trading account): The Pitches (1993-2015)
- ID17** Herringthorpe Playing Fields Floodlighting Application & Appeal Documents
- ID18** Corrected and revised Appendix 5 of Philip Harrabin's Proof of Evidence (dated 11 November 2021)
- ID18.1** Email from Mr Harrabin explaining the reason for his corrected Appendix 5
- ID19** Email trail setting out communications between Mr Nicholls and Mr Davis with regard to the cricket mitigation package and strategic development plans (concluding on 8 November 2021).
- ID20** Agreed amended wording to describe mitigation for Bowling for inclusion in the S106 agreement
- ID21** Revised Draft Conditions (Appellant) submitted to PINS (15 November 2021)
- ID22** Closing Submissions for the Council
- ID23** Closing Submissions for the Appellant
- ID24** Agreed Draft Landscaping Condition (17 November 2021)
- ID25** Agreed, Signed and Sealed S106 Agreement (24 November 2021)