

IN THE MATTER OF:

LAND AT FORMER GLOSSOPDALE COMMUNITY COLLEGE,
TALBOT ROAD, GLOSSOP SK13 7DR

APPELLANT'S CLOSING SUBMISSIONS

I. INTRODUCTION

1. The Council's position on this appeal has fundamentally reversed since the start of the inquiry. The Council now accepts that planning permission should be granted and it has withdrawn nearly all of its substantive evidence.
2. By comparison, the Appellant's position is steadfast and unchanged.
3. There is an indisputable imperative to deliver more homes in High Peak. That imperative is urgent and it cannot wait. It particularly cannot wait for some distant plan-making process. Rather, it is an imperative that must be addressed by granting planning permission for new residential development now.
4. To do this, the best starting point is to grant planning permission for the proposed development now. There is no more suitable site for major development in Glossop, a settlement at the top of the Council's settlement hierarchy and the main focus for housing growth. The appeal site is the best site in the best location for new residential development in this local area.
5. Accordingly, these closing submissions explain why planning permission should be granted for the proposed development urgently.
6. In so doing, these closing submissions proceed on the basis of the Council's revised position. Thus:

- 6.1. The Appellant's evidence is to be taken as read in its entirety. The Council has not sought to cross examine that evidence or otherwise undermine it through its own evidence.
- 6.2. Consistently with the Council's new position, it has withdrawn all of its evidence, save on the limited issues of the housing land supply calculation (Ms Wooddisee's Proof of Evidence ("POE") and Rebuttal Proof of Evidence ("RPOE")) and on the applicability of Policy HC7 of the NPPF (sections 2.3, 3.1, 3.2 and 3.3 only of Mr Hughes' POE).
- 6.3. As to the first of these matters, the Appellant is content for this appeal to be determined on the basis of a range, reflecting the parties calculations, namely 1.89 – 2.47 years' housing land supply ("HLS"). It is not necessary for this range to be narrowed any further in the determination of this appeal.
- 6.4. As to the second of these matters, the Appellant's position remains that Policy HC7 of the NPPF is not engaged. However, it also remains the Appellant's position (consistently with its Statement of Case and evidence) that even if this policy is engaged, it is satisfied, including through the package of sporting improvements that would be secured by the grant of planning permission.
- 6.5. In this latter regard, the only shift in the Appellant's position is that it has accepted the disapplication of the "blue pencil" clause in the legal agreement for the relevant planning obligation dealing with that package of sporting improvements. It follows that these improvements will be secured and delivered in any event if planning permission is granted.
- 6.6. Nevertheless, as these submissions will explain, it remains necessary to consider this issue in order that the appeal is determined on a lawful basis. Put simply, it must be determined whether these improvements are necessary, such that they can be taken into account as a material consideration in favour of the grant of planning permission; or, alternatively, whether they are not

necessary, such that they are not taken into account, but planning permission is still granted as the relevant protective policies are not engaged.

II. THE CHALLENGE: HOUSING SUPPLY AND DELIVERY IN HIGH PEAK

7. England is in the grip of a housing crisis that is both acute and entrenched. That is the clear view of the Secretary of State nine months ago and it holds good today.¹
8. High Peak is symptomatic of this housing crisis. The homes that the people of High Peak need have not been built; and there is little prospect of them being built in sufficient numbers any time soon.

Housing delivery crisis

9. High Peak has a persistently poor track record of housing delivery by any measure.
10. Housing delivery in High Peak has been behind the planned trajectory in each year for more than a decade.² Over that period there has been a cumulative under supply of more than 1,200 homes.³
11. This shortfall is measured against the unduly low housing requirement in the Local Plan (350 dpa) and ignores the considerably higher local housing need ("LHN") calculation (609 dpa) altogether. When LHN is taken into account – as it should be, given the age of the Local Plan and given it is accepted to be out of date – the position is much worse. There has been a cumulative under provision of more than 900 homes in the last three years alone by this measure alone.⁴
12. Given these matters, the Council's failure to deliver the required homes for its area is clearly entrenched. However, it is also acute. In the last three

¹ CD 5.16 at PDF p. 1.

² CD 11.2, Holliday POE at Table 1, final column on PDF p. 16.

³ CD 11.2, Holliday POE at Table 1, final column on PDF p. 16.

⁴ CD 11.2, Holliday POE at Table 2 on PDF p. 17.

monitored years housing delivery has more than halved to 202 dwellings.⁵ Only 202 dwellings in the last year alone. That bears repetition: only 202 dwellings. Housing delivery is in freefall.

13. The Council's delivery of affordable housing is even worse.
14. The delivery of affordable housing is rightly identified as a "key issue" in the Local Plan.⁶ The Local Plan identifies a need for 526 affordable homes per annum.⁷ This is self-evidently a significant need. However, the magnitude of the need is even greater when regard is had to other indicators. For example, as at 31 January 2024 there were more than 1,300 households on the housing register.⁸ Worse still, in the preceding monitoring year there were more than 350 homeless households.⁹
15. The Council has not come close to delivering the affordable housing that High Peak needs. Since the start of the plan period in 2011, only 684 affordable homes have been delivered in total over the whole fifteen years.¹⁰ In the last monitoring year, just 54 affordable homes were delivered.¹¹ Consistently with market housing, affordable housing is also in freefall and has halved in amount delivered per annum over the last three years.¹²
16. Taken in the round, the Council's failure to deliver the homes that the people of High Peak need is staggering. It is beyond doubt that there is a housing crisis in High Peak.
17. This is not a statistical crisis. It is a human crisis. The Secretary of State has recognised the '*detrimental consequences of this disastrous state of affairs*' at a national level: a generation locked out of homeownership; 1.3 million people languishing on social housing waiting lists; millions of low-income households forced into insecure, unaffordable and far too often sub-

⁵ CD 11.2, Holliday POE at Table 2, column 3, row 4 on PDF p. 17.

⁶ CD 6.1 at [5.149] on PDF p. 121.

⁷ CD 6.1 at [5.149] on PDF p. 121.

⁸ CD 11.2, Holliday POE at [8.19] on PDF p. 27.

⁹ CD 11.2, Holliday POE at [8.19] on PDF p. 27

¹⁰ CD 11.2 Holliday POE at [8.23] on PDF p. 28.

¹¹ CD 11.2 Holliday POE at Table 4 on PDF p. 28.

¹² CD 11.2 Holliday POE at Table 4 on PDF p. 28.

standard private rented housing; and 160,000 homeless children living in temporary accommodation.¹³ High Peak is not immune: the housing crisis in High Peak is causing exactly the same human consequences here.

The housing supply vacuum

18. There is no sign that the housing crisis in High Peak will abate any time soon. To the contrary, the Council's dire housing land supply position indicates that housing delivery is likely to get worse not better.
19. The parties have agreed that this appeal can be determined based on the range of 1.89 – 2.47 years' HLS. The difference is not material for the outcome of this appeal. First, the Council agrees that even when its higher figure (2.47) is used, planning permission should still be granted.¹⁴ Secondly, irrespective of that agreement, a figure of 2.47 HLS is objectively a substantial shortfall against the minimum five year figure. Moreover, it is a position which has been getting steadily worse over recent years.¹⁵
20. Again, this HLS shortfall is not a statistical failing. Rather, it is a shortfall that reverberates in the real world and is directly connected to the Housing Crisis. In particular, the number of housing starts in High Peak has been in steady decline over recent years, with only 110 starts being recorded in the last monitoring year, half of that three years ago.¹⁶ This is the consequence of the Council's supply failings: not only are fewer houses being delivered (the delivery failure), but even fewer homes are being started (the supply failure). Put simply, the housing land supply failure will perpetuate – and is perpetuating – the housing crisis in High Peak.

Plan-making paralysis

21. There is no realistic prospect of the Council arresting the declining housing delivery in High Peak any time soon.

¹³ CD 5.14

¹⁴ CD 15.9 generally and in particular at [38].

¹⁵ CD 12.1 at [6.13] – [6.14] on PDF p. 16.

¹⁶ CD 11.2, Holliday POE at Table 8 on PDF p. 31.

22. The Council can and should be progressing a new local plan with the utmost urgency. This is the only real mechanism that the Council has to improve the housing prospects of High Peak. It is also the mechanism that the Secretary of State has consistently identified as *the* priority action for local planning authorities.¹⁷
23. Yet the Council's plan-making is paralysed.
24. There has been plan-making stasis in High Peak for the last three years.
25. The last consultation on a new local plan occurred in 2023.¹⁸ Since then the Council has repeatedly missed its own deadlines for progressing a new local plan. Indeed, it is already many months behind the new timetable that it set itself in March this year.¹⁹
26. The Council's suggestion that a local plan will be submitted for examination before the end of the year is fanciful.²⁰ The delays will only get worse: the Council will inevitably need to prepare a plan under the new plan-making system and that will also be delayed further by impending local government reorganisation.

III. THE RESPONSE: THE BENEFITS OF THE PROPOSED DEVELOPMENT

27. In these dire circumstances immediate action is needed. That action can only take one form: planning permission must be granted for the delivery of more homes without delay. For this there is no better starting point than this appeal and the proposed development. Four key factors support that judgment.
28. First, available land in High Peak for residential development is constrained. Those constraints are well known and fairly acknowledged in the Local Plan: the Peak District National Park; the Green Belt; areas of significant flooding (Flood Zone 3); major infrastructure limitations on the

¹⁷ CD 5.27, PDF p.1, paragraph 2.

¹⁸ CD 11.2 at [2.18] on PDF p. 10. This was a Regulation 18 consultation.

¹⁹ CD 11.2 at [2.21] – [2.23] on PDF p. 11.

²⁰ CD 11.2 at [2.21] – [2.23] on PDF p. 11.

A6, A57 and A628 which the Council itself recognises will not be overcome before 2031 at the earliest.²¹

29. Secondly, as long ago as 2016 the Council recognised that there was insufficient previously developed land in High Peak to meet development needs, even when those needs were at the much lower requirement figure of 350 dpa in the Local Plan.²² Even then, greenfield release was unavoidable. It follows that the appeal site represents a rare opportunity to deliver major residential development on previously developed land in High Peak.
30. Thirdly, that opportunity is even rarer because it is within the identified settlement boundary of Glossop. Glossop is an identified market town at the top of the Council's settlement hierarchy.²³ As such, Glossop is identified as a '*main focus*' for housing growth in High Peak.²⁴ This is precisely the sort of highly sustainable location where housing needs to be delivered, but where it has not been delivered, across the plan period. The appeal site's particular characteristics exemplify what sustainable development should look like in High Peak: less than 10 minutes' walk to the train station, sustainable access to local employment opportunities as well as those in Manchester, and access to a range of local services without use of the private car.
31. Fourthly, there is no better site for major residential development in Glossop. The Appellant has appraised the available sites.²⁵ There is nothing remotely comparable. No other site is available or able to deliver a development of this scale.
32. Accordingly, the appeal site is fairly described as the best site in the best location for delivering housing now to meet housing need. This is all the more the case when consideration is given to the significant package of attendant benefits. There are (at least) 10 different components to that

²¹ CD 6.1 at [4.52 on PDF p. 39.

²² CD 6.1 at [4.51] on PDF p. 39.

²³ CD 6.1, Policy S2 on PDF p. 33.

²⁴ CD 6.1, Policy S2 on PDF p. 33.

²⁵ CD 11.1 at PDF p. 144 ff.

package, the majority of which are now agreed.²⁶ In summary: the delivery of an appropriate mix of housing on a sustainable previously developed site within a settlement boundary, making a substantial contribution to market housing need (70 dwellings), making a substantial contribution to affordable housing need (30 dwellings) whilst at the same time delivering economic and social benefits (112 direct jobs, 60 indirect jobs, over £2million of local spend),²⁷ biodiversity net gain over 10%, high quality design and drainage improvements.

33. Finally, there is no good reason to delay the delivery of the proposed development now in the hope that something else might come along.
34. The site is not allocated for development. The Local Plan does not otherwise require a specific type of development on the appeal site. There is no other policy trigger or mechanism requiring a particular form of development on the appeal site.
35. In 2018 the Council did seek to promote a development brief requiring a leisure centre to be delivered on the appeal site.²⁸ That brief was never adopted and rightly so. There was no consultation with the Appellant, much less joint working.²⁹ The design concept was poor.³⁰ The proposed leisure centre was hopelessly unviable.³¹ Attempts to obtain public funding failed decisively.³² Indeed, it was a facility that was at odds with the Council's own sporting strategy for the area.³³
36. In response to the Council's decision to refuse planning permission the Appellant also tested a hybrid residential/sports pitches development (leaving out the leisure centre). That too was likely to be unviable.³⁴

²⁶ CD 12.8 at PDF p. 3 – to be read with the Council's updated position in CD 15.9.

²⁷ CD 11.2 at PDF pp. 196 – 197. Cox POE Appendix 8.

²⁸ CD 6.10.

²⁹ CD 11.3 at [5.9] on PDF p. 18.

³⁰ CD 11.4a at [7.1] on PDF p. 48.

³¹ CD 11.1, Cox POE, on PDF p. 131 – a negative RLV before the BLV is even considered.

³² CD 11.3 at [5.11] on PDF p. 18.

³³ CD 11.3 at [5.5] on PDF p. 17.

³⁴ CD 11.1, Cox POE, at [2.25] on PDF p. 134.

37. Accordingly, any suggestion that delivery of the proposed development should be delayed for another development at the appeal site is not only unfounded on the evidence, but it would, in fact, be actively harmful to the interests of good planning in High Peak. The opportunity to deliver much needed housing now should be taken and it would be utterly and inexcusably wasteful not to do so.

IV. MAIN ISSUE 1 – THE EFFECT OF THE PROPOSAL ON PLAYING FIELD LAND (REASON FOR REFUSAL 1)

38. The proposed development will not result in any adverse effects on playing field land.
39. First, no part of the appeal site constitutes existing playing field land for the purpose of national or local planning policy. The protective provisions in local and national policy are simply not engaged.
40. Secondly, even if those protective provisions are engaged, they are satisfied on two independent grounds.
- 40.1. The school site – including the “fields” – are clearly surplus to requirements. This satisfies the first exception in the protective policies.
- 40.2. Ground 2 - Even if the “fields” are not surplus, they will be replaced by equivalent or better provision in terms of quantity and quality, in a location which offers comparable or improved accessibility for the community. This satisfies the second exception in the protective policies.
41. Thirdly, even if the protective policy provisions are engaged and are breached, neither of which is accepted, there is no real-world harm. Not a single member of the community has lost access to a playing field. No material weight can be afforded to any breach of the protective policies.

No existing playing field land

42. Policy HC7(1) concerns '*the loss of existing open space, sports and recreational buildings and land, including playing fields*' (emphasis added).³⁵
43. **Approach.** Three matters of approach are important.
44. First, the Council only alleged a breach of this policy on the basis that the appeal site included playing fields. The Council, rightly, did not allege that the policy was engaged on any other basis.
45. Secondly, not all playing fields are protected, only existing playing fields.
46. Thirdly, the Glossary to the NPPF (see Annex B) defines '*playing field*' for the purposes of Policy HC7(1) as:
- 'The whole of a site which encompasses at least one playing pitch as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015.'³⁶
47. Thus, for land to be a playing field, there must first be a playing pitch as defined in the DMPO (see paragraph 1(j)(ii) of Schedule 4), namely:
- 'a delineated area which, together with any run-off area, is of 0.2 hectares or more, and which is used for association football, American football, rugby, cricket, hockey, lacrosse, rounders, baseball, Softball, Australian football, Gaelic football, shinty, hurling, polo or cycle polo'³⁷
48. On this basis, no part of the appeal site constitutes existing playing field land for the purpose of national or local planning policy for two reasons.
49. **Reason 1:** The appeal site does not contain – and has never contained – a playing pitch within the definition of the DMPO.
50. It is agreed between the parties that:

³⁵ NPPF at PDF p. 79.

³⁶ PDF p. 112.

³⁷ CD 7.6 At PDF p. 7 – paragraph 1(j) of Schedule 4 to the DMPO.

‘at the date of the PPS the site did not include any pitches as defined in paragraph 1(j)(ii) of Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015’³⁸

51. It follows inescapably that:

51.1. At the date of the PPS (i.e. January 2018, before closure of the school) the appeal site did not contain a playing pitch within the relevant definition of the DMPO; and

51.2. As such, at the date of the PPS, the appeal site did not contain a playing pitch for the purposes of the definition of ‘*playing field*’ in the NPPF; and

51.3. Accordingly, the appeal site did not (and could not) contain any playing field(s) for the purposes of Policy HC7 of the NPPF (applying the definition in the Glossary); and

51.4. Therefore the policy protection in Policy HC7 is not engaged.

52. For the avoidance of doubt, the fact that this agreement is tied to the date of the PPS does not undermine the Appellant’s case. At that time, the school was open and operational. Thus the agreement fairly captures the prior use of the appeal site. Plainly no playing pitch has been introduced since the school closed. Equally, there is no evidence of a playing pitch at an earlier point in time: the school operated in a consistent manner. Thus, even if the reference point (i.e. the date) is changed, the same conclusion applies: Policy HC7 is not engaged.

53. In circumstances where the protective provisions of Policy HC7 are not engaged, neither are the protective provisions of Policy CF4 of the Local Plan: these two are consistent (as would be expected, given the Local Plan was examined against an earlier iteration of the NPPF which adopted a consistent approach to this issue).

³⁸ CD 12.9 at [2.15] on PDF p. 4. This is also consistent with the description in the PPS: ‘*The site does not contain any dedicated playing pitches, but does contain a poor quality redgra surface in addition to generic grass playing field.*’ CD 6.5 at PDF p. 18, second paragraph.

54. **Reason 2:** Even if the appeal site contained a playing pitch, such that there was a playing field, nevertheless it is not existing playing field.
55. Policy HC7 is deliberately qualified. Not all or any playing field land is protected. Only existing playing field land. The reason is obvious: the policy is directed towards protecting land which currently performs, or is capable of performing, a sporting or recreational function. It is not expressed as a policy protecting land indefinitely because of a historic sporting association. Such an approach would sterilise redevelopment opportunities for no reason.
56. In this regard, it is established that land which was formerly a playing field may cease to be an existing playing field through a change in circumstances (including the passage of time): see *R. (Stoke Mandeville Parish Council) v Buckinghamshire Council* [2025] EWHC 1213 (Admin) at [30], [37] and [46];³⁹ and *WE Black Ltd v First Secretary of State* [2006] EWHC 1598; [2007] 1 P. & C.R. 7 at [17] – [19].
57. Importantly, in *WE Black*, land was not an ‘existing’ sports facility when it had been cleared and was incapable of use: see [17] and [19]. The absence of a lawful existing basis for carrying on that sports use could also prevent a site from being an existing facility: see [18].
58. The recent appeal decision relating to Land North of Rounds Gardens, Rugby illustrates this approach aptly.⁴⁰ The long period of non-use (DL 38) coupled with the ‘marked degradation of the site’ (DL 38) and ‘the prohibitive cost of reinstating the pitch’ (DL 39) all lead to the conclusion that a playing pitch was not ‘existing’.
59. Applied here, there are five key factors which (both individually and cumulatively) demonstrate that even if the appeal site contained a playing pitch, such that there was a playing field, nevertheless it is not existing playing field today.⁴¹

³⁹ CD 7.13

⁴⁰ CD 11.7, Cox RPOE, at Appendix A on PDF p. 9.

⁴¹ The assessment must be undertaken today: the appeal is to be determined de novo.

60. **Factor 1.** The appeal site is not currently in any sports use.
61. **Factor 2.** The appeal site has not been used for any sports use since 2018 – a continuous and uninterrupted period of 8 years without any use.
62. **Factor 3.** The appeal site is physically incapable of any sporting use. This status is obvious from an inspection of the site. In any event, it is confirmed by Ms Rixon’s specialist evidence.
63. Ms Rixon explains (amongst other matters) that:
- ‘The site is unusable in its current state due to demolition rubble, hazardous contaminants in previously built areas and deteriorated and overgrown historic recreational areas. In addition, drainage is inherently poor and there are long periods of time when the ground is saturated in winter and would be too wet for winter sports use.’⁴²
64. In particular, not only is the Redgra (which cannot be readily discerned on site) unplayable, but Ms Rixon also explains that this surface is outdated and cannot be restored.⁴³
65. Ultimately, Ms Rixon concludes:
- Significant earthworks would be required to bring the site into a usable and safe condition and create Sport England compliant playing field or pitches. Necessary works would be extensive, time consuming and likely cost prohibitive and include extensive and significant excavation, removal of material, importation of suitable material and earthworks and shaping. In addition, winter sports areas would require intensive drainage to be useable in the football/ rugby season.’
66. The likely cost of these works is at least £848,661.⁴⁴ Future maintenance costs are likely to be in excess of £20,000 per annum.⁴⁵

⁴² CD 11.6, Rixon POE at [2.29] on PDF p. 13

⁴³ CD 11.6, Rixon Poe at [2.14] on PDF p. 9.

⁴⁴ CD 11.6, Rixon Poe at [2.31] on PDF p. 14

⁴⁵ CD 11.6, Rixon Poe at [2.31] on PDF p. 14

67. There is no challenge to Ms Rixon's evidence. Not only is it specialist evidence but it is also clearly credible and correct to any lay person who has inspected the appeal site.
68. The upshot is the appeal site in its existing condition is entirely unplayable for sports and incapable of use, even with basic maintenance. This is one of the key factors identified in *WE Black* as illustrating the fact that a sports facility is no longer 'existing'.
69. **Factor 4.** The former school buildings and hardstanding areas have been lawfully removed under an express grant of prior approval.⁴⁶ The Council did not require restoration to a playing field or even restoration to grass. The Council expressly endorsed the Demolition Methodology Report which proposed only the grading of the surface with the crushed rubble.⁴⁷ That demolition and grading has lawfully occurred. This factor underscores both the incapability of the appeal site to support a sports use, but also the inherent improbability of a sports use resuming.
70. **Factor 5.** There is no realistic prospect of a resumed sporting use, even if the condition of the appeal site is ignored.
71. It is agreed that the sporting use of the site was only lawful because it was an ancillary use to the lawful education use of the appeal site.⁴⁸ The appeal site cannot be used for a primary sports use as a matter of law. Any sports use must be ancillary to the primary educational use otherwise it will be unlawful. There is no prospect of the educational use resuming: the school has been closed, all facilities have been reprovided elsewhere; and the appeal site is surplus to requirements.⁴⁹ It follows that there is no realistic prospect of the sports use lawfully resuming. This is another key factor identified in *WE Black*.

⁴⁶ CD 8.7

⁴⁷ CD 11.1, Cox POE, at [3.24] on PDF p.12

⁴⁸ For example, CD 9.1 at [1.9] on PDF p. 5.

⁴⁹ CD 11.3, Mr Shepherd's POE at [2.14] on PDF p. 8

72. The resumption of a sporting use is even more unrealistic when the condition of the appeal site is considered, as well as the extent of works required to make the appeal site usable.
73. Having regard to all of these factors – none of which are in dispute - even if the appeal site contained a playing pitch, such that there was a playing field at some point in time previously, nevertheless it is not existing playing field today.
74. Accordingly, for either or both of these reasons, no part of the appeal site constitutes existing playing field land for the purpose of national or local planning policy today. The protective provisions in local and national policy are simply not engaged.

The school site – including the “fields” – are clearly surplus to requirements.

75. The first exception in Policy HC7(1)(a) is where the playing fields are clearly surplus to requirements. This is a matter of planning judgment.
76. Importantly, it is open to the decision maker to conclude that a particular playing field is of such poor quality that it adds nothing to meeting local need and thus it is surplus to requirements: see *TV Harrison CIC v Leeds City Council* [2022] EWHC 1675 (Admin) at [58].
77. The “fields” at the appeal site are clearly surplus to requirements for the purposes of Policy HC7(1)(a) of the NPPF (and thus also Policy CF4 of the Local Plan) for the following reasons.
78. **Reason 1.** The “fields” are of such poor quality that they add nothing to meeting local need. This is precisely the sort of case envisaged in *TV Harrison*. As already explained, the unchallenged (and obviously correct) evidence of Ms Rixon is that the “fields” are incapable of sports use: the gradient, topography, drainage and, above all, condition, all render the “fields” incapable of sports use.⁵⁰ They are of such poor quality that they add nothing to meeting local need and thus are surplus to requirements.

⁵⁰ Above as ‘Factor 2’.

The extended period of non-use confirms this conclusion. So too does the Council's own PPS which did not count the site as part of its calculations of supply/demand balance.⁵¹

79. **Reason 2.** The "fields" are also clearly surplus to requirements when their actual use is considered.
80. The "fields" have only ever been used for sports use which is ancillary to the school use. There has never been any community use of the "fields", as the Council has belatedly accepted.⁵² Critically, all of this former use has been adequately accommodated at the new school at Hadfield, as the Council expressly accepts.⁵³ This is also confirmed through Mr Allen's unchallenged analysis.⁵⁴
81. Accordingly, the "fields" are clearly surplus to requirements: the one requirement that they did meet (sports use ancillary to the educational use) has been entirely reprovided; the school site is surplus to requirements (which the Council does not dispute);⁵⁵ there is no unmet need arising from the loss of these "fields"; and there is no other contribution that these fields could make towards future supply (without significant, expensive, betterment, which is not required under planning policy).
82. It follows that the "fields" at the appeal site are clearly surplus to requirements for the purposes of Policy HC7(1)(a) of the NPPF (and thus also Policy CF4 of the Local Plan).

⁵¹ CD 12.3 at [2.16] on PDF p. 4.

⁵² CD 15.9 at [19] on PDF p. 6.

⁵³ CD 12.9 at [2.14] on PDF p. 3.

⁵⁴ CD 11.5, Allen POE at Table 3 on PDF p. 14 and analysis at [3.15] on PDF pp. 15 – 16, in particular his conclusion that 'in addition to the [new] facilities meeting curricular need, they now offer significant community benefit. In my view this represents clear added value and consequently clear betterment.'

⁵⁵ Indeed, the Development Brief expressly accepted this point. CD 6.10 at [1.4] – [1.8] on PDF pp. 3 – 4.

Even if the “fields” are not surplus, they will be replaced by equivalent or better provision in terms of quantity and quality, in a location which offers comparable or improved accessibility for the community.

83. The second exception in Policy HC7(1)(b) of the NPPF is where the loss of the “fields” will be replaced by equivalent or better provision in terms of quantity and quality, in a location which offers comparable or improved accessibility for the community.
84. **Approach.** Importantly, it is well established that the replacement provision does not need to be equivalent or better in terms of quantity and quality. Both quantity and quality must be considered. However, the overall requirement – the policy test – is that the open space land lost must be made up for, and whether or not that requirement is met is a matter of planning judgment, having regard to both the quantity of what is to be provided and the quality, but allowing (in an appropriate case) for one to be set off against the other: see *Bromell v Reading Borough Council* [2018] EWHC 3529 (Admin) at [28].⁵⁶
85. Applying this approach, the Appellant submits that the exception in Policy HC7(1)(b) is met for two independent reasons.
86. **Reason 1.** Equivalent or better provision has already been secured through the new school development.
87. Mr Allen has provided a comprehensive assessment of the “before and after” position comparing the sports facilities provided across the relevant sites in 2018 with the position today (including the new school site at Hadfield).⁵⁷
88. This is the proper basis for comparison as the Appellant views its educational estate in Glossop as a whole. As Mr Shepherd has explained, this is the proper approach given the statutory duties on the Appellant.⁵⁸

⁵⁶ CD 7.9 at PDF p. 11.

⁵⁷ CD 11.5, Allen POE at Table 3 on PDF p. 14.

⁵⁸ CD 11.3, Shepherd POE at [2.2] – [2.13] on PDF pp. 5 – 8.

89. The upshot of this analysis is that equivalent or better provision has already been secured without the further measures now proposed in this appeal. In particular:
- 89.1. AGP provision, Sports Hall provision and MUGA provision has clearly improved. Modern facilities have been delivered which deliver a clear uplift in quality and functionality.⁵⁹
- 89.2. Playing fields/grassed areas (across Newshaw Lane, Talbot Road, Cemetery Road and Fauvel Road) has reduced slightly in quantity through the reduction of 1.55 ha at the appeal site (including the redgra). However, this area was largely unusable for pitch sport as Ms Rixon has explained. Further, the redgra offered no match equivalent sessions for community use.
- 89.3. Set against this reduction is a significant quality uplift. In particular, the grant of a lease to Glossop North End Football Club for Cemetery Road has enabled the club to secure grant funding which has delivered investment into new 3G AGP, grass pitch improvements and ancillary provision.⁶⁰ The new 3G addresses the deficiencies in 3G AGP identified in the PPS, whilst pitch quality improvements have increased site capacity generally.⁶¹
- 89.4. Added to this qualitative uplift there has also been a significant uplift in community access.⁶² The new college site has been designed to support community use, incorporating separate entrances to facilitate daytime and evening access. All the new community facilities, 3G, sports hall, fitness suite and dance studio are managed under The Place Community Hub and available to the public. This means that in addition to the facilities meeting curricular need, they now offer significant community benefit.

⁵⁹ CD 11.5, Allen POE at [3.15] , bullet points 1 and 2 on PDF p. 15. See also the final column of Table 3.

⁶⁰ CD 11.5, Allen POE at [3.15] , bullet points 4 on PDF p. 15.

⁶¹ CD 11.5, Allen POE at [3.15] , bullet points 4 on PDF p. 15.

⁶² CD 11.5, Allen POE at [3.16] on PDF p. 16 – this reference applies to the remainder of this paragraph as well.

90. **Reason 2.** Equivalent or better provision has been secured through this appeal.
91. The Appellant has offered a tripartite mitigation package consisting of:
- 91.1. Implementation of PitchPower recommendations to improve quality of top field at Glossopdale Community School site.⁶³ These improvements would not otherwise be funded or delivered. The recommendations will include pest management, regenerative mowing, scarification, in-season renovation through top dressing, out of season renovation through overseeding and biannual decompaction and fertilising.⁶⁴ Ms Rixon's professional judgment is that these measures will deliver '*a marked improvement in the natural grass playing surfaces*'.⁶⁵
 - 91.2. Provision of new rugby pitch (including drainage works, surface works and equipment) at Glossopdale Community School site. The specification is explained by Ms Rixon.⁶⁶
 - 91.3. Provision of new community MUGA at Fauvel Road.⁶⁷ The need for these improvements is obvious: the existing tennis courts are not properly usable, particular given the degradation in surface quality and the presence of self-seeded trees on the courts. The Appellant has already made an application for planning permission for these works. That application is progressing towards a positive determination: the parties are discussing conditions.
92. This package of improvements has substantial support from key stakeholders, including: Glossopdale Community College;⁶⁸ Derbyshire Football Association;⁶⁹ Tintwistle Athletic Football Club (who wish to use

⁶³ See CD 14.3.

⁶⁴ CD 14.3 at PDF p.6 ff.

⁶⁵ CD 11.6, Rixon POE at Appendix B on PDF p. 18, second paragraph.

⁶⁶ CD 11.6, Rixon POE at Appendix B on PDF p. 30.

⁶⁷ CD 15.2.

⁶⁸ CD 11.5, Allen POE, Appendix A.

⁶⁹ CD 11.5, Allen POE, Appendix B.

the improved football pitches);⁷⁰ the Rugby Football Union;⁷¹ and Glossop Rugby Union Football Club (which wish to use the newly created rugby pitches).⁷²

93. The fact that end users have already been identified, consulted and are supportive of these measures is a key indicator of their likely effectiveness in meeting local need.
94. Mr Allen has taken this package of mitigation measures into account and repeated his “before and after” analysis with these measures included.⁷³ His conclusion is that equivalent or better provision has been secured, both when the whole education estate is assessed, and also when a narrower focus on the appeal site alone is adopted.⁷⁴
95. That conclusion is obviously right given the scale and quantity of the proposed mitigation. However, it is also robust having regard to the following specific considerations:⁷⁵
 - 95.1. The new four court hall directly replaces the previous small halls. The increased size offers greater flexibility and quality is significantly higher – the facility is fully available for community use and has been designed to support community activity. The additional fitness studio provides a further uplift in the facilities offered
 - 95.2. Some replacement playing field land (3.71ha) has already been provided on the site of the new school. The qualitative improvements to this playing field that will be delivered as part of the appeal proposals (over and above what has previously been delivered or secured and which is only coming forward because of the proposed development) will increase weekly capacity for football (by 6 MES) and rugby (by 1.5 – 2.5 MES). More matches can

⁷⁰ CD 11.5, Allen POE, Appendix C.

⁷¹ CD 11.5, Allen POE, Appendix D.

⁷² CD 11.5, Allen POE, Appendix E.

⁷³ CD 11.5, Allen POE, Table 5 at PDF p. 29.

⁷⁴ CD 11.5, Allen POE at [4.43] on PDF P. 35 and [4.48] – [4.50] on PDF p. 36.

⁷⁵ All CD 11.5 at [4.4] on PDF p. 35.

therefore be hosted than is currently the case. The increased capacity will enable pitches to support community use. Community use has never been available at the appeal site and 0 MES are (or ever have been) available at the appeal site.

95.3. A new high quality replacement MUGA has been provided on the new school site – unlike the facilities that were historically available, this meets with Sport England’s design specifications and is high quality. A second MUGA providing 3 courts was also delivered subsequently. The new MUGA to be provided at Fauvel Road will further increase the resources available, offering free access for local residents. Provision is clearly of higher quality and quantity than historically available.

96. In addition, the appeal mitigation is in an appropriate location for the purposes of Policy HC7.⁷⁶ In particular:

96.1. The proposals at Hadfield Road consolidates all sporting provision onto one site for the school and creates a community sports hub for Glossop. From both a sporting and curricular perspective, this is better than smaller facilities spread out across several sites. It also focuses investment at a key centre site as defined in the PPS.⁷⁷

96.2. The new MUGA at Fauvel Road is well located to meet informal recreation needs in very close proximity to the appeal site. This provides a direct uplift in provision for local people who never had access to the appeal site for sport in any event.

97. For either or both of these reasons the exception in Policy HC7(1)(b) is met whether all of the relevant sites are considered or if a narrow focus on the appeal site is adopted. The Council now agrees that this exception is met.⁷⁸

⁷⁶ CD 11.5, Allen POE at [4.46] on PDF p. 36.

⁷⁷ CD 6.4 on PDF p. 59 – entry 29 – Site hierarchy tier

⁷⁸ CD 15.9 at [21] – [23] on PDF pp. 6 – 7.

Even if the protective policy provisions are engaged and are breached, neither of which is accepted, there is no real-world harm.

98. Finally, even if there is a breach of the protective policy provisions there is no real-world harm.
99. There has never been any community sports use of the appeal site. Accordingly, no community sports use has been displaced, lost or otherwise harmed.
100. All of the curriculum sports use has already been relocated to the Hadfield Road site. Better facilities have been delivered for that curriculum use. It is agreed that all curriculum sports use has been reprovided.⁷⁹
101. There has been no loss of an opportunity for future sports use (whether community use or otherwise) at the appeal site. Quite simply, no such opportunity exists. The resumption of a sports use is entirely unrealistic: such a use would be a breach of planning control unless the educational use also resumed, which is itself unrealistic. More than that, very substantial and expensive improvement works would be required. No funding exists for those works.
102. It follows that there is simply no real-world harm. Indeed, despite its initially fervent opposition to this appeal, the Council has never been able to identify any real-world harm. The alleged harm was always entirely theoretical and unfounded.
103. Accordingly, even if the protective policies are engaged and are breached, no material weight can be afforded to that breach.

The Council's revised position

104. The Council now accepts that the exception in Policy HC7(1)(b) is met for the second reason given above. To facilitate this acceptance and address third party concern, the Appellant has agreed for the relevant planning obligation in the legal agreement not to be the subject of the "blue pencil"

⁷⁹ CD 12.9 at [2.14] on PDF p. 3.

clause. This means that the mitigation package will be delivered if planning permission is granted, even if the DL concludes that it is not necessary (for example, because Policy HC7 is not engaged or is otherwise satisfied, i.e. the surplus or prior satisfaction arguments).

105. Nevertheless, it is still necessary to determine whether those enhancements are necessary because it is only if they are necessary that they can lawfully be taken into account: see regulation 122(2)(a) of the Community Infrastructure Levy Regulations 2010. If those enhancements are necessary then they should be taken into account and planning permission granted on that basis. If those enhancements are not necessary then they should not be taken into account (notwithstanding the planning obligation), but planning permission should still be granted as the relevant policies will either not be engaged or will otherwise be satisfied.
106. It is for the purposes of this narrow dispute that the Council has not withdrawn sections 2.3, 3.1, 3.2 and 3.3 only of Mr Hughes' POE. However, those sections are obviously wrong for the following headline reasons.
107. First, paragraph 2.16 of Mr Hughes POE is incorrect. In particular:
 - 107.1. Mr Hughes ignores the agreed contrary position in the SOCG, reflecting his own PPS, that there was no playing pitch at the appeal site. That (correctly made) agreement is fatal: it is the end point of the Council's argument as the definitions in the DMPO and the NPPF simply cannot be satisfied on that basis.
 - 107.2. In addition, Mr Hughes relies on athletics use as a qualifying sport but that is not one of the specified sports in the definition of '*playing pitch*'. Mr Hughes has misunderstood the relevant definition in the DMPO.
 - 107.3. Accordingly, his argument rests on the redgra but (1) this was not a formal pitch, as the PPS itself noted; and (2) it was not a delineated area for football (or indeed any other sport in the DMPO definition),

rather it was a multi-use surface for curriculum PE. That is not a playing pitch, as defined.

108. Secondly, Mr Hughes' later consideration of the factors relied on by the Appellant (his paragraphs 3.7 – 3.25) is flawed.

108.1. Mr Hughes ignores the proper approach derived from case law: see *Stoke Mandeville* and *WE Black*, above. Mr Hughes takes the purist view of "once a playing field, always a playing field" unless abandoned as a matter of planning law (e.g. his paragraphs 3.8, 3.12, 3.13, 3.19 and 3.21). This is incorrect. The policy question is whether there is existing playing field land. This requires a consideration of the factors identified by the Appellant. Mr Hughes never contemplates that a former playing field may no longer be existing.

108.2. Mr Hughes' evidence is unrealistic and appears to have no regard to the condition or topography of the appeal site.

108.2.1. Ms Rixon has set out in detail why the site is unplayable and not capable of being brought into use without prohibitively expensive works of betterment. The Council's own agronomy evidence endorses her conclusions.⁸⁰ Mr Hughes ignores these matters.

108.2.2. In particular, at paragraph 3.22 Mr Hughes suggests that '*a playing field of this size (2.6 hectares) has the potential to contribute meaningfully to addressing the issues identified in the PPS through appropriate marking*'. This ignores the topography: 2.6 hectares is neither flat nor usable, as Ms Rixon explains. Such land simply does not exist within the appeal site. Further '*appropriate marking*' is ridiculous. This suggests that one need only paint on the white lines. As Ms Rixon explains, the reality is very far from this. Mr Hughes has simply misunderstood or ignored the baseline position.

⁸⁰ CD 10.4b, [3] on PDF p. 12, first paragraph.

109. Thirdly, at paragraph 3.14 Mr Hughes seeks to rely on the Council's own agronomy evidence. This is flawed. The Council's evidence endorses Ms Rixon's conclusions, as explained. Its only attempt to counter those views is by suggesting that '*a detailed design of the site should be developed*' which would (amongst other matters) '*establish an adoptable drainage outfall arrangement*' and on this basis '*a public access green space within the built environment*' could be delivered'.⁸¹ Properly understood, this is not evidence of how the appeal site can be used as a playing field now, even with general maintenance; rather this is a recommendation to redevelop the appeal site to deliver sports provision. That is a fatal misunderstanding of the relevant protective policies. There must be existing playing fields. Policy does not require them to be created. This infects the entirety of Mr Hughes' evidence: he proceeds on the assumption that the Appellant is obliged to undertake expensive works of redevelopment to deliver playing fields. That is obviously wrong when the policy framework is correctly understood.
110. Fourthly, in paragraph 3.28 and Table 8 of his POE Mr Hughes seeks to contend that the existing provision of sports facilities by the Appellant across its educational estate has not made good the alleged "loss" of "fields" at the appeal site. That analysis is flawed in two respects.
- 110.1. The analysis is unduly narrow. It considers only Hadfield Road and ignores other delivery, in particular the new 3G pitch at Cemetery Road.
- 110.2. In any event, even if the focus is only on Hadfield Road, Mr Hughes' evidence is methodologically flawed because it insists on the same quantity and quality of land, rather than recognising (per *Bromell*) that one can offset the other. For example, in his Table 8, row 1, he rejects the provision of a 3G pitch in place of the redgra as it '*is not a quantitative uplift*', clearly ignoring the qualitative uplift. So too in row 3 on grassed areas: he alleges that the reprovision '*does not constitute a qualitative uplift*', totally ignoring quality improvements. Further, in row 2, considering the MUGA, he rejects this provision

⁸¹ CD 10.4b at [3] on PDF p. 12, final paragraph.

as '*not a net gain*'. However, the test is equivalent or better: equivalence satisfies the policy test – net gain is not required.

111. It follows that the Appellant's position should be preferred on all issues, as explained above.

Conclusion on Main Issue 1

112. For the reasons above, the Appellant submits:

112.1. It is agreed that the key policies for Main Issue 1 are Policy HC7 of the NPPF and CF4 of the Local Plan.⁸² This approach is obviously correct as these are the only protective policies.

112.2. Neither of these key policies is engaged because the appeal site does not contain playing field land for the purposes of these policies.

112.3. Even if these policies are engaged, they are satisfied. The appeal site is clearly surplus to requirements. Even if it is not surplus to requirements, equivalent or better provision has already been delivered. Even if not already delivered, equivalent or better provision will be delivered through this appeal.

112.4. Finally, even if the protective policies are engaged and are breached, no material weight can be afforded to that breach.

113. For completeness, it is important to note that satisfaction of Policy HC7 of the NPPF and CF4 of the Local Plan – the agreed key policies – carries with it satisfaction of the other policies cited in Reason for Refusal 1. In particular:

113.1. The other cited policies in the development plan are less onerous. It is difficult to see how they are breached on their own terms as Ms Cox explains, as they are essentially spatial policies with general references to the environment and/or infrastructure.⁸³ However,

⁸² CD 12.9 at [2.18] on PDF p. 4, updating the reference for the new NPPF.

⁸³ CD 11.1, Cox POE, at [5.86] – [5.102] on Pdf pp. 31 - 33

they are certainly not breached in circumstances where Policy CF4 is satisfied.

113.2. Sport England's policy is not development plan policy and it is not national policy. The Council appears to have relied on it at the application stage because of its apparently more prescriptive approach to some aspects of playing field protection. The Council rightly no longer pursues such an argument. The short answer is that Sport England's policy cannot conceivably form a basis for refusing to grant planning permission when there is compliance with the relevant policies in the NPPF and Local Plan. In such a scenario, even if there is a breach of Sport England's policy (which is not accepted) it would be obviously inconsistent with the NPPF and Local Plan and could only be given very limited weight. No refusal could be founded on such an approach.

114. For all of these reasons, the proposed development is acceptable in respect of Main Issue 1.

V. MAIN ISSUE 2 - WHETHER A HIGH QUALITY DESIGN COULD BE ACHIEVED WITH ACCEPTABLE LIVING CONDITIONS FOR NEARBY OCCUPIERS AND THE INTENDED FUTURE OCCUPIERS (REASON FOR REFUSAL 2)

115. The proposed development will be high quality. Acceptable living conditions will be provided for nearby occupiers and future occupiers of the appeal site.

Reason for Refusal 2

116. In approaching this issue, it is important to note that the Council never alleged that the appeal site could not be developed acceptably for 100 homes. Rather, the Council's allegation has only ever been that insufficient information was provided to support the application. Reason for Refusal 2 was expressly presented on this narrow basis.⁸⁴

⁸⁴ CD 4.3

117. Importantly:

117.1. The Council has accepted from the outset that the proposed development would not harm or be detrimental to the character of the local and wider area.⁸⁵

117.2. The Council has also accepted from the outset that the proposed development would not harm any designated heritage asset.⁸⁶

117.3. The Council has never identified (or even alleged) a material defect in the parameters plan (either as submitted or as revised).

118. Indeed, the Council has never identified a specific and unacceptable harm which would arise from the development of 100 homes at the appeal site.

119. On the most benevolent reading of the Officer's Report ("**the OR**") the Council was concerned (in very general terms) about a lack of detail on site levels⁸⁷ and amenity standards.⁸⁸

120. The Appellant is particularly aggrieved by the Council's reliance on these points. Specific levels information was provided when requested.⁸⁹ The case officer never indicated that this was insufficient and gave this information only the most cursory assessment in the OR. Further, the case officer simply ignored the information on the original concept plan which indicated (with measurements) that acceptable separation distances could be achieved within and around the appeal site.⁹⁰

121. Thankfully, it is not necessary to traverse this history in detail. This appeal is to be determined de novo, on the material now available. On that basis, the Council agrees that there is sufficient information to address this main issue. The Council also agrees that this information is sufficient to demonstrate that a high quality design could be achieved with acceptable

⁸⁵ CD 4.1 at [7.57] on PDF p. 51.

⁸⁶ CD 4.1 at [7.69] – [7.73] on PDF p. 54.

⁸⁷ OR 7.55

⁸⁸ OR 7.58

⁸⁹ CD 2.3

⁹⁰ CD 1.7

living conditions for nearby occupiers and the intended future occupiers. Those concessions are correctly made.

Amendments to the parameters plan and consideration of additional material

122. The Appellant reviewed the parameters plan on receipt of the Council's decision notice.⁹¹ That review resulted in the production of the new parameters plan.⁹²
123. As Mr Crawford explains, the original parameters plan was capable of leading to an acceptable development.⁹³ However, the opportunity was taken to increase the flexibility for potential developers to develop the optimum scheme at the reserved matters stage.⁹⁴ To that end the quantum of development was reduced slightly to 100 dwellings and minor amendments were made to the parameters plan.
124. It is agreed that this appeal should be determined by reference to the amended parameters plan.⁹⁵ The Appellant has explained why that is appropriate in its Statement of Case, especially bearing in mind the further consultation undertaken by the Appellant.⁹⁶ Those submissions are not disputed by any party and as such are not repeated.
125. Shortly before the commencement of the inquiry, the Council raised concerns about the material presented in Mr Crawford's POE and in the draft legal agreement. Those concerns were entirely unfounded. Nevertheless, the Appellant agreed to facilitate the additional consultation requested by the Council given the good prospect that, following review, the Council would change its position. That consultation has been undertaken. The Council has changed its position. The end result is that there is no procedural ground to considering the entirety of the Appellant's evidence in the determination of this appeal.

⁹¹ CD 1.29

⁹² CD 8.16

⁹³ CD 11.4A, Crawford POE at [3.2.2] on PDF p. 13

⁹⁴ CD 11.4A, Crawford POE at [3.2.2] on PDF p. 13

⁹⁵ CD 9.1 at [4.11] on PDF p. 19.

⁹⁶ CD 8.1 at [7.3] – [7.17] on PDF pp. 41 – 42.

Approach at the outline stage

126. In considering this main issue, it is critically important to recall that the Appellant seeks outline planning permission with all matters reserved, except for the principal points of access.
127. Detailed plans of the principal points of access have been provided. The local highways authority has no objection to these plans (including after two consultations). Access is no part of the reasons for refusal. There have been no credible third party objections to the proposed accesses, particularly bearing in mind the former use of the site as a school.⁹⁷
128. Accordingly, the key question is whether the proposed development is capable of coming forward in an acceptable form at the reserved matters stage. This question must be considered within the context of the proposed framework conditions.
129. The clear – and now agreed – answer to that question is that the proposed development can come forward acceptably at the reserved matters stage. Mr Crawford’s evidence provides a gold-standard package of supporting evidence to demonstrate that acceptability.

The acceptability of the proposed development

130. The acceptability of the proposed development is explained in detail and at length in Mr Crawford’s evidence.
131. Mr Crawford has developed an exemplary illustrative layout.⁹⁸
132. The illustrative layout shows a context-led residential development. This has been shaped by a detailed analysis of the local area, as well as express consideration of the key contextual factors: the relationship with surrounding built form; topography; existing trees; drainage, including the culvert; the surrounding highway network; and pedestrian permeability.⁹⁹

⁹⁷ See Transport Technical Note appended to Mx Cox’s POE.

⁹⁸ CD 11.4a, Appendix 2. See also the supporting drawings in Appendix 3.

⁹⁹ CD 11.4a, Crawford POE, at [4.1.1] on PDF p. 14.

133. The illustrative layout sets the residential development within a strong network of green infrastructure, high-quality public open space, and well-connected streets.¹⁰⁰ In particular: a large area of open space to the south forms an attractive green/blue focal point whilst also delivering sustainable drainage; a green street extends through the heart of the development, including enhanced planting and an attractive pedestrian route; and a series of open spaces around the boundaries of the site, which can each be designed with their own identity and character, providing space for informal recreation and play alongside habitat creation/enhancement.
134. Residential development is primarily arranged within two building blocks, comprising detached, semi-detached and terraced dwellings organised around an internal loop road aligned along the contours.¹⁰¹ This layout establishes a clear street hierarchy and a coherent perimeter block form. Adjacent to the primary access, an apartment building marks a distinctive arrival point.
135. The relationship with neighbouring properties has been carefully considered within the layout.¹⁰² Development parcels with homes facing into the site are positioned along the western and eastern boundaries, providing active frontages onto streets and open spaces and back-to-back relationships with neighbouring properties. Development parcels overlook the public open spaces to ensure natural surveillance, improving safety and creating attractive outlooks for residents.
136. Existing landscape assets are retained wherever possible, with significant trees and hedgerows preserved around the site perimeter and incorporated into open space areas and green buffers.¹⁰³ All the most valuable trees are retained, along with many of lesser value. Together with extensive planting of new trees, these retained features soften the

¹⁰⁰ CD 11.4a, Crawford POE, at [4.3.4] – [4.3.5] on PDF p. 17.

¹⁰¹ CD 11.4a, Crawford POE, at [4.3.7] on PDF p. 17. Same reference for the whole of this paragraph.

¹⁰² CD 11.4a, Crawford POE, at [4.3.8] on PDF p. 18. Same reference for the whole of this paragraph.

¹⁰³ CD 11.4a, Crawford POE, at [4.3.9] on PDF p. 18. Same reference for the whole of this paragraph.

development edge, enhance biodiversity, and help integrate the scheme with the neighbouring residential areas.

137. The residential development utilises building footprints which reflect floorplans widely used by developers for 2, 3 and 4 bedroom detached, semi-detached and terraced houses. The apartment block adjacent to Talbot Road, which accommodates four flats on each storey, is based on typical floorplans for 1 and 2 bedroom apartments.
138. Finally, to ensure that an acceptable form of development is brought forward at the reserved matters stage, Mr Crawford has articulated 16 site-specific design principles which will be the subject of a bespoke condition.¹⁰⁴

Site levels

139. The Appellant has undertaken extensive technical appraisal of the appeal site's topography, resulting in the levels strategy developed by Campbell Reith in collaboration with LDA Design. This was a detailed and iterative process.¹⁰⁵ The ultimate strategy is exemplary in all respects. In particular:¹⁰⁶
- 139.1. The strategy ties the proposed development into the appeal site's boundaries and access points without retaining walls.
- 139.2. The strategy avoids any intrusion or adjustment in levels within the root protection areas of retained trees, tree groups and hedges.
- 139.3. The strategy maintains a maximum longitudinal gradient of 1:20 along roads.
- 139.4. The strategy maintains maximum gradients of 1:40 on footways and driveways where practicable, with a maximum of 1:20 where necessary.

¹⁰⁴ CD 11.4a, Crawford POE, at [4.4.3] on PDF p. 18.

¹⁰⁵ See, for example CD 11.4b, Crawford Apx, at PDF p. 40, (b) – (f)

¹⁰⁶ DC 11.4a, Crawford POE, at [5.6.2] on PDF p. 24

- 139.5. The strategy accommodates significant level changes within rear gardens, whilst retaining a maximum average gradient of 1:15. This enables a flat patio area to be provided immediately to the rear of homes, with a maximum gradient of 1:12 in rear gardens beyond this level area.
- 139.6. The strategy provides retaining walls along rear garden boundaries where level changes cannot be fully accommodated within rear garden gradients, whilst seeking to minimise the height and extent of retaining walls.
140. This is an inherently conservative approach. The County Council's guidance (as local highways authority) allows flexibility to increase gradients up to 1:12.¹⁰⁷ The Council has also taken a flexible approach on other sites in High Peak.¹⁰⁸ Despite all this, 1:20 gradients are utilised by the levels strategy, representing a conservative approach which is beyond criticism.
141. Ultimately, the levels strategy enables the appeal site's topography to be modified to accommodate the proposed development, whilst avoiding adverse effects on neighbouring properties and existing vegetation, and also creating a characterful development and pleasant living environment for future residents. Significant adjustments to levels are relatively limited in extent: the Preliminary Bulk Earthworks (Option B) drawing in Mr Crawford's evidence shows that the majority of the site would experience either no level change or a change of less than +/- 0.5m.¹⁰⁹
142. It follows that the Appellant has amply demonstrated how the proposed development could be brought forward whilst maintaining acceptable levels across the appeal site and also being tied into the local area.

¹⁰⁷ CD 11.4b at [1.3(a)] on PDF p. 39.

¹⁰⁸ CD 11.4b at [1.3(g)(vi)] on PDF p. 41.

¹⁰⁹ CD 11.4a, Crawford POE, at [5.6.6] on PDF p. 26.

Amenity

143. The Council's concerns about "amenity" (which have been adopted by third parties) relate to the separation distances between new homes on the appeal site and existing homes around its edges.
144. HPBC's pre-application response sets out guidance for separation distances between habitable rooms.¹¹⁰ This is the same guidance in the Development Brief.¹¹¹ The guidance, which emphasises the importance of flexibility based on design principles, advises that a distance of 21m will provide an acceptable level of amenity, increasing by 1m for every 0.5m difference in height. The illustrative layout meets that standard for all separation distances to neighbouring properties, without having to rely on any flexibility of approach.¹¹² Whilst views from and to existing properties may change, that change will never be unacceptable.
145. The Council's concerns have never focussed on intra-site amenity levels, but, for completeness, the proposed development is acceptable in this regard as well. In particular:
- 145.1. There would be no road gradients greater than 1:20 and no retaining walls or steps. Accordingly, there would be no amenity issues to the front of dwellings.¹¹³
- 145.2. To the rear of properties, the illustrative layout allows for a level area of 2m immediately behind each house, with a maximum gradient of 1:12 beyond this area, giving an overall maximum average gradient of 1:15.¹¹⁴ The Council found such an approach to be acceptable at Dinting Vale.¹¹⁵ It would be acceptable here too: such gradients would not compromise the ability of most people to use and move freely around their gardens. Moreover, this is a worst case position: several gardens have significantly shallower

¹¹⁰ CD 4.4, Appendix A.

¹¹¹ CD 6.10 at [4.21]

¹¹² CD 11.4a, Crawford POE, at [6.4.9] – see the table – on PDF p. 42.

¹¹³ CD 11.4a, Crawford POE, at [6.4.2] on PDF p. 39.

¹¹⁴ CD 11.4a, Crawford POE, at [6.4.3] on PDF p. 39

¹¹⁵ CD 7.3.

gradients, making them suitable for residents with impaired mobility.¹¹⁶

145.3. Where retaining walls are within rear gardens, they never exceed 2 meters.¹¹⁷ As the site falls from north to south, the exposed face of the retaining walls would generally be south-facing. Therefore, the retaining walls would not cast shade onto gardens and would provide a good location for growing climbing plants etc to be secured at the reserved matters stage.¹¹⁸ Again, this is comparable to Dinting Vale.

145.4. Finally, the arrangement of houses within the proposed development, as shown on the illustrative layout would ensure that future occupiers had adequate privacy, both within the site and externally.¹¹⁹

146. It follows that the Appellant has amply demonstrated how the proposed development could be brought forward whilst maintaining acceptable levels of amenity for existing and future residents.

Quantum

147. Given the detailed design work undertaken to support the illustrative layout, as well as the robust response to the Council's concerns on site levels and amenity, the Appellant has robustly demonstrated how the proposed quantum of development could be accommodated acceptably within the appeal site. In particular, through Mr Crawford's evidence the Appellant has demonstrated that the proposed density (36.6 dph) is acceptable; and so too is the integration of the proposed development into the urban grain.¹²⁰

¹¹⁶ CD 11.4a, Crawford POE, at [6.4.3] on PDF p. 39

¹¹⁷ CD 11.4a, Crawford POE, at [6.4.4] on PDF p. 39

¹¹⁸ CD 11.4a, Crawford POE, at [6.4.4] on PDF p. 39

¹¹⁹ CD 11.4a, Crawford POE, at [6.4.6] on PDF p. 40

¹²⁰ Cd 11.4a, Crawford POE at PDF p. 35 (see B1) and PDF p. 33 (see C1) respectively.

Conclusion on Design quality

148. Drawing these matters together, a high quality design could be achieved. In particular:

148.1. Mr Crawford has undertaken a detailed appraisal of the revised parameters plan and illustrative layout against the relevant parts of the National Design Guide.¹²¹ The appraisal concludes that the proposed development is acceptable in all respects.

148.2. Mr Crawford has also explained, in detail, why there is compliance with Policy EQ6 of the Local Plan, being the key design policy.¹²²

148.3. The other cited policies under this reason for refusal are clearly secondary. Indeed, some do not appear to be relevant at all. Satisfaction of Policy EQ6 must carry with it satisfaction of those policies as well. In any event, Ms Cox explains that there is full compliance with those policies.¹²³

149. It follows that on this main issue the proposed development is acceptable in all respects.

VI. PLANNING BALANCE

150. The starting point is that the proposed development accords with the development plan, read as a whole. Accordingly, the statutory presumption in section 38(6) PCPA 2004 indicates that planning permission should be granted.

151. The other material considerations outside of the development plan are consistent with that statutory presumption.

152. The key other material consideration is the NPPF, in particular the presumption in Policies S3 and S4. The proposed development benefits from the presumption in those policies for the following reasons.

¹²¹ CD 11.4a, Crawford POE at [6.3.3] on PDF p. 33.

¹²² CD 11.4a, Crawford POE at [6.6.8] on PDF p. 44.

¹²³ CD 11.1, Cox POE, at [5.159] – [5.182] on PDF pp. 40 – 43.

153. Pursuant to paragraph 1 of Policy S4, development proposals within settlements - which is the case here - should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework.
154. In this case, the benefits are not substantially outweighed by the adverse effects.
155. Ms Cox has identified 10 planning benefits.¹²⁴ The summary of these is repeated: the delivery of an appropriate mix of housing on a sustainable previously developed site within a settlement boundary, making a substantial contribution to market housing need (70 dwellings), making a substantial contribution to affordable housing need (30 dwellings) whilst at the same time delivering economic and social benefits (112 direct jobs, 60 indirect jobs, over £2million of local spend),¹²⁵ biodiversity net gain over 10%, high quality design and drainage improvements.
156. National policy directs that the delivery of market and affordable housing are each given substantial weight: see Policy HO7 of the NPPF.
157. National policy also directs that the re use of previously developed land is given substantial weight: see Policy L2 of the NPPF.
158. Set against this package of benefits, the Council initially relied on just three alleged harms: the loss of playing fields; design quality; and impact on amenity. The Council now agrees that the proposed development is acceptable in all three respects. The Council is right to do so, for the reasons already explained at length.
159. Accordingly, there are no identified unacceptable adverse effects of the proposed development at all, much less a package of adverse effects sufficient to substantially outweigh the benefits of the proposed development.

¹²⁴ CD 12.8, PDF p. 3. See also her POE at [5.372] – [5.391] and [6.8] – [6.20].

¹²⁵ CD 11.2 at PDF pp. 196 – 197. Cox POE Appendix 8.

160. It follows that the benefits outweigh the harms and the presumption in paragraph 1 of Policy S4 applies. This is an important material consideration of significant weight in favour of the grant of planning permission.
161. In addition, none of the above submissions have relied on the positive effect that the proposed development will have on the Appellant's funding arrangements for the provision of the new school.
162. Those arrangements have been explained at length by Mr Shepherd. The receipts from the sale of the appeal site with the benefit of planning permission will be used – and can only be used, as a matter of law – to repay the monies borrowed to fund the new school (which has already been delivered and which is, itself, delivering substantial public benefit). This is all part of a carefully planned and executed estate management strategy which is in the public interest.
163. Given the nature of these funding arrangements, this direct financial benefit is, a material planning consideration. The *Newbury* criteria are satisfied and there is no legislative provision which prevents it being taken into account.
164. Accordingly, whilst it is not necessary to take this benefit into account, when it is properly taken into account it only strengthens the case for granting planning permission.
165. Returning to the statutory framework:
- 165.1. there is compliance with the development plan read as a whole;
- 165.2. the proposed development benefits from the statutory presumption;
- 165.3. the other material considerations, including the policy presumption in Policy S4 of the NPPF, also support the grant of planning permission; and

165.4. accordingly, the Appellant submits that planning permission should be granted for the proposed development without any further delay.

MATTHEW HENDERSON

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10th September 2026