

## **Planning for Results Ltd**

Specialist Planning Consultancy for all residential,  
social, environmental and commercial projects



## **Planning Statement**

**Section 73 application to remove / vary planning condition 6 (public  
open space) of decision notice PA22/07383 dated 20 September 2023**

**Land north of Orchard Cottage  
Hewaswater, St Austell, Cornwall, PL26 7JF**

On behalf of Mr Andrew Toms

AJT Developments Ltd

November 2023

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## **1.0 Introduction**

### **1.1 Appointment**

'Planning for Results Ltd' have been instructed to act on behalf of the Applicant 'Mr Andrew Toms of AJT Developments Ltd' in dealing with proposed new residential development on 'Land north of Orchard Cottage Hewaswater' hereinafter referred to as 'the site'. The Applicant retains the legal freehold ownership of the land and as such retains full control of the land.

### **1.2 Scope of application**

This application seeks to remove / vary planning conditions attached to planning permission PA22/07383. The scope of application, and consideration of such relates to the extent of planning condition 6 – public open space provision. Therefore, the assessment and determination of this application will focus on the issue of planning condition 6 only.

### **1.3 Context**

Planning application PA22/07383 with the description of 'Outline application for the construction of up to 8 open market dwellings with all matters reserved except access' was approved by the LPA via formal decision notice dated 20 September 2023.

The application was approved in conjunction with a Unilateral Undertaking legal agreement under section 106 of the Town and Country Planning Act 1990, and planning conditions have been attached to decision notice PA22/07383 by the LPA.

Planning condition 6 requires the provision of public open space within the approved development, and requires the submission of details on such to the LPA for approval.

Having now received the LPAs planning permission for the new residential development, and in taking all relevant, material factors into account, the Applicant is seeking the LPAs permission to remove the requirement to provide public open space on site.

As the matter of public open space is controlled by condition 6, but does not feature in any other plans or documents, and is absent from the legal agreement, a section 73 application is the appropriate procedure to revisit this issue.

For a number of material reasons, as set out in this application, the Applicant is of the firm opinion, that the LPA should allow the development to proceed without on site public open space.

## 2.0 The site

### 2.1 Site location

The site is located within the settlement of Hewaswater, which is around 800 metres from the larger settlement of Sticker. The land is located to the south of the main A390 public highway. The public highway provides street lighting and a pavement/footway, providing easy and safe pedestrian access into Sticker. Figure 1 below indicates the site location in context with the settlement of Sticker. Figure 2 over the page indicates the site location in context with the settlement of Hewaswater. Figure 3 over the page indicates the extent of the existing site, and figure 4 provides an aerial image of the site.

**Figure 1 – Site location – Sticker context**



Figure 2 – Site location – Hewaswater Context

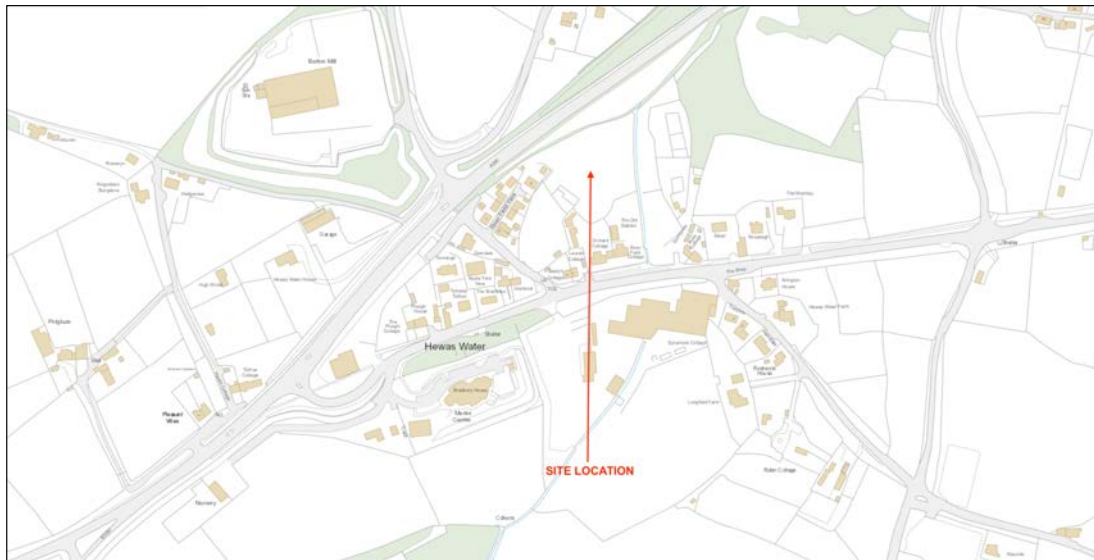
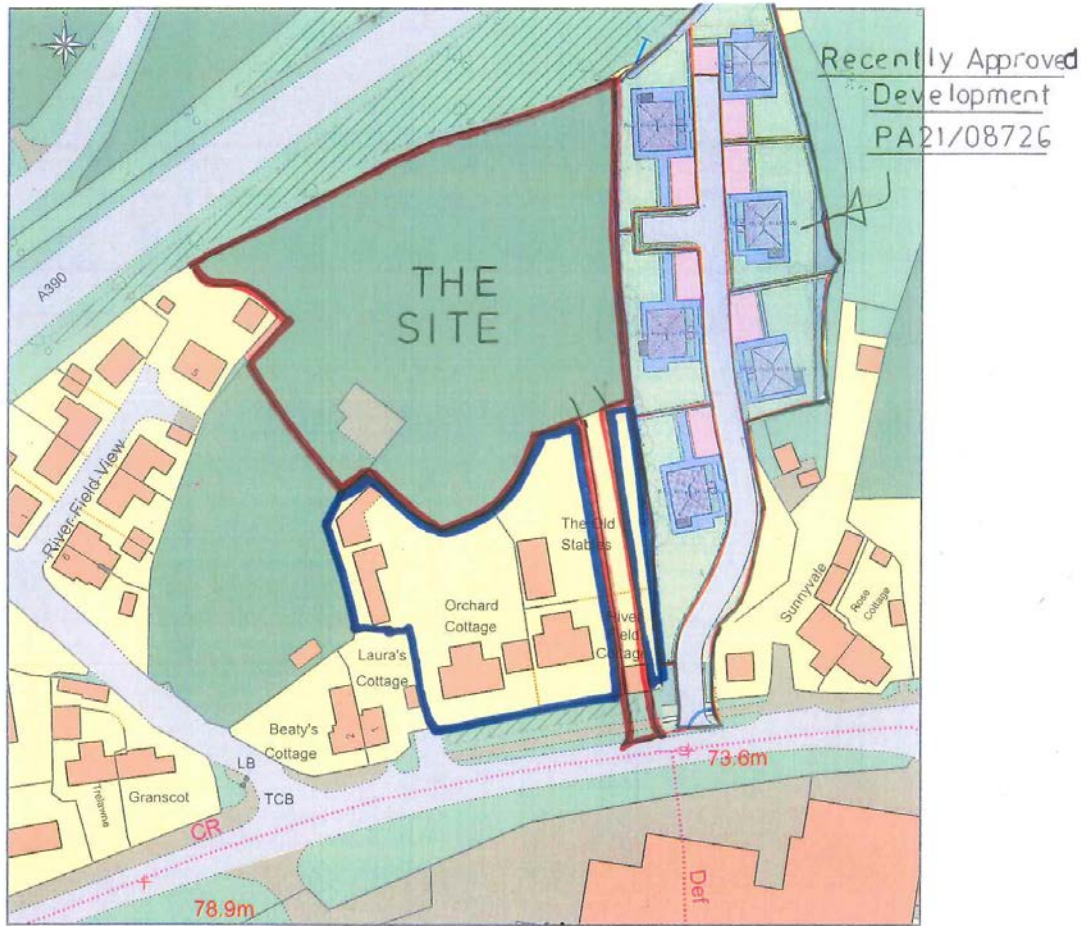


Figure 3 – Extent of site



**Figure 4 - Site location - Aerial image**



## 2.2 Existing development and extent of site

There are currently no buildings on the application site, however, the land is surrounded by existing open market residential development and the public highway to all four sides. The application site area extends to approximately 4440.00 square metres. The red line application area is sloping downhill from north to south.

## 2.3 Adjoining development and land uses

The application site is constrained by various existing land uses and development. To the north is the main A390 public highway, to the east is a recently approved new residential development of open market dwellings, to the west is a recent new development of open market dwellings, and to the south is existing residential development and the public highway. Close by to the application site is the Andrew Toms Used Car Sales Garage, Griggs Country Store and related restaurant/café, Hewaswater Engineering and the Merlin Centre. There are a number of businesses and companies within the immediate and wider area.

#### 2.4 Streetscene and wider character of the area

The streetscene and wider character of the area is extremely varied. Existing development consists of both commercial and residential land uses. Residential development comprises a mixture of vernacular Cornish cottages, more modern bungalows, and also modern two-storey houses. There are also a number of commercial uses within Hewaswater such as Griggs Country Store which includes a builders and agricultural supply yard, extensive clothing and retail area, general agricultural supplies, large two-storey purpose built restaurant café. Hewaswater Scaffolding and Engineering across the road from the application site. Andrew Toms Car Sales and vehicle repair yard. The Merlin Centre has also been constructed a few years ago.

#### 2.5 Landscape context

The application site and wider surrounding area are undesignated, therefore the landscape context for new development has a starting point of 'low sensitivity'.



### **3.0 The approved development**

Planning permission has been granted for 'Outline application for the construction of up to 8 open market dwellings with all matters reserved except access'.

The approved plans are in outline form only, with the reserved matter of access having been included, and so the approved plans show the means of vehicular access into the site.

The approved development is for open market residential development, of a scale up to 8 new dwellings.

The LPA approved the application on the basis of the following considerations in terms of the general principle:

CLP policy 3 also allows for 'other' exceptions including rounding off of settlements and infill of gaps in an otherwise continuously built frontage. Further guidance is provided in the CPOAN Rounding off/Infill. After negotiation it was agreed that the site can be considered as rounding off, as there are built developments on at least two sides of the plot and the adjacent road to the north forms a barrier to future development.

If the site was assessed without reference to the made neighbourhood plan purely in terms of the CLP it is acknowledged that, in spatial terms, the site could be viewed as representing rounding off to the settlement at Hewas Water however the neighbourhood plan sets clear and defined boundaries and the site is outside of this.

The LPA discussed these issues with the agent and have received representations from the applicant's legal representatives which have cited various other decisions and appeals within the LPA area where developments beyond boundaries set within made neighbourhood plans have been consented (or allowed at appeal).

The representations note that the proposal is consistent with the CPOAN as it is substantially enclosed on three sides and has the road as a further barrier, it would not result in creation of any further sites for rounding off and makes the point that NDP policy 1 does not allow for development outside the defined settlement boundaries 'other than in circumstances within this Neighbourhood Development Plan and the Cornwall Local Plan', which would include Local Plan policy 3 for rounding off. The LPA have accepted these views and concur that the NDP does make allowances for developments which are outside the settlement boundary but which conform to CLP policy 3 rounding off.

Therefore, the benefits of allowing for new housing development are considered to outweigh the harm of the loss of a relatively modest parcel of agricultural land given that it is substantially enclosed by urban development without a contiguous link to other agricultural land and is relatively inaccessible for agricultural vehicles.

As this is an outline application the main issues for the principle relate to the spatial situation of the site and its suitability for residential development however access is not a reserved matter and is assessed below in relation to CLP policy 27 Transport and Accessibility.

#### **4.0 The proposal**

This application is made under section 73 of the Town and Country Planning Act 1990, and seeks to remove / vary planning conditions on a procedural basis. The planning condition in question is condition 6 of decision notice PA22/07383, which relates to public open space provision.

Planning condition 6 states the following:

No works shall commence on site until details of the open space provision within the application site has been submitted to and approved in writing by the Local Planning Authority. The details shall include:

1 A minimum of 500 square metres of levelled open space, shown in plans with drawings including cross-sections and spot levels (existing and proposed)

2 An open space delivery plan, including detailed design specifications alongside associated long-term maintenance requirements, details of the management and maintenance regime, and estimated costs

3 Drainage details

The open space area/s shall be provided on site in accordance with the approved details prior to the occupation of the seventh dwelling on site.

The LPAs stated reason for planning condition 6 is as follows:

To improve the health and wellbeing of the community and residents in accordance with policies 12, 13, 16 and 28 of the Cornwall Local Plan Strategic Policies 2010-2030.

The proposal is to remove or vary condition 6, to remove the Applicant's requirement to provide physical, on site public open space.

## **5.0 Planning and site history**

A search of the planning register has been carried out to uncover any relevant site or planning history, which could materially inform the development. The following relevant planning history has been identified:

**Application PA22/07383** – Outline application for the construction of up to 8 open market dwellings with all matters reserved except access. Approved 20 September 2023

**PA20/00366/PREAPP** – pre-application advice for proposed construction of up to 9 dwellings. LPA issued advice decision 2 April 2020.

**PA18/01452/PREAPP** – pre-application advice for proposed construction of 3 dwellings. LPA issued advice decision 22 June 2018

**Application PA16/04849** – Demolition of existing commercial buildings and replacement with new residential development consisting of nine dwellings, associated estate road, drainage, surface water runoff scheme, provision of gardens and garages. Approved 22 July 2016.

## **6.0 Planning policy and guidance**

A thorough examination of planning policy and guidance has been undertaken in order to inform the proposed development, and ensure that the proposal remains in accordance with the Cornwall Local Plan November 2016 (CLP) and national planning policy guidance in the form of the National Planning Policy Framework July 2021 (the Framework), and subsequent Planning Practice Guidance. Additionally to this, a detailed examination of a range of other applications, relating to similar proposals have also been appraised to allow consideration of the established decision-making process of the LPA, and the type and nature of such applications which have been approved by the LPA. This is considered critical to ensure consistent decision making when dealing with new development right across Cornwall.

Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions on applications for planning permission and appeals must be taken in accordance with the development plan, unless there are material considerations that indicate otherwise.

### **6.1 National Level Planning Policy and Guidance**

The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

The Framework states that Local planning authorities should approach decisions on proposed development in a positive and creative way. LPAs should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

The following sections of the Planning Policy Framework July 2021 are relevant to the application site and proposal:

Section 2	Achieving sustainable development
Section 3	Plan-making
Section 4	Decision-making
Section 5	Delivering a sufficient supply of homes
Section 6	Building a strong, competitive economy
Section 8	Promoting healthy and safe communities
Section 9	Promoting sustainable transport
Section 11	Making effective use of land
Section 12	Achieving well-designed places
Section 15	Conserving and enhancing the natural environment

## 6.2 County level planning policies and guidance

The Cornwall Local Plan (CLP) provides the most up-to-date and relevant planning policy for Cornwall. The Cornwall Local Plan was formally adopted by Cornwall Council during November 2016, under Section 38(6) of the Planning and Compulsory Purchase Act 2004 the Development Plan is now the Cornwall Local Plan.

The following CLP policies are considered relevant:

Policy 1	Presumption in favour of sustainable development
Policy 2	Key targets and spatial strategy
Policy 3	Role and function of places
Policy 6	Housing mix
Policy 10	Managing viability
Policy 12	Design
Policy 13	Development standards
Policy 16	Health and wellbeing

Policy 21	Best use of land and existing buildings
Policy 23	Natural environment
Policy 27	Transport and accessibility
Policy PP9	St Austell & Mevagissey Community Network Area

### 6.3 Other guidance

The Cornwall Design Guide December 2021 sets out design guidance relating to the whole of Cornwall for new developments.

In terms of the Community Infrastructure Levy (CIL), the Applicant has paid due attention to this recent procedure and national based framework. The appropriately completed CIL forms have been included within the application submission.

Chief Planning Officer's Advice Note: Infill/rounding off December 2017

### 6.4 Neighbourhood Development Plan

Neighbourhood Planning allows people to come together through a local parish or town council and say where they think new houses, businesses and shops should go, and what they should look like. These Neighbourhood Plans can be very simple, or go into considerable detail.

At local level, communities may wish to develop their own planning policies to reflect the priorities of local people and to provide an additional level of detail than those developed by Cornwall Council. Those policies would be set out in a Neighbourhood Plan.

A NDP exists for the area, the application site is situated within the area of the St Mewan NDP.

## **7.0 Material considerations**

### **7.1 Consultation comments**

During the determination of application PA22/07383, the Council's Principal Open Space Officer returned the following consultation comments in response to the application:

REQUIREMENT: A MINIMUM OF A 500SQM OF USABLE RECREATIONAL OPEN SPACE ON-SITE IN LINE WITH LOCAL PLAN POLICY 13.2. This response relates to public open space (POS) provision only. For matters relating to biodiversity, trees, or landscape please request separate consultations. The National Planning Policy Framework 2021 (para 98) requires that planning policies should be based on robust & up to date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. Whilst this assessment was done for larger settlements including St Austell it has not been undertaken in St Mewan Parish. There is now an adopted methodology for Cornwall: <https://www.cornwall.gov.uk/parks-leisure-and-culture/parks-and-open-spaces/open-space-strategy-and-standards>, which should be followed. In the meantime, as Cornwall's Local Plan Policy 13.2 expects all new development to achieve the provision of public open space on-site, in proportion to the scale of the development and providing for different types of open space based on local need, we apply general open space standards, unless the developer carries out this assessment, and can demonstrate that there is an existing provision that is satisfactory in quantity, accessibility and quality terms.

From a quick assessment the nearest open space to the development is up to 860m away at the Scouts Field St Stephen Road. Whilst this might be adequate for some formal functions, this is too far for the more informal requirement to ensure access to 'playable space'. For more information see above strategy. Unfortunately, the development site doesn't even appear to have access to any public rights of way that go anywhere. So, unless they could deliver a safe, pedestrian footpath to link up with some decent countryside access route(s) or demonstrate alternative POS nearby, an open space of a minimum of 500sqm is required on or adjoining the site, which is usable for recreation and play.



This should be made a condition of approval. The steep slope across the site (1:6) will make this very difficult/costly though, as a gradient of more than 1:20 really prevents most general use, especially informal ball games. So, some ground re-profiling will be necessary, whilst maintaining adequate drainage. Providing the on-site POS is adequate, no further contribution would be required in line with Local Plan Policies 13.2 & 28.2. In line with Local Plan Policy 25.6, any development creating open space should prepare an open space delivery plan prior to commencement for approval by the planning authority. This includes detailed design specifications alongside associated maintenance requirements & estimated costs. Essentially, it must describe how this will be sustained in the long term and involve residents in the governance arrangements. It should also outline how the phased delivery of open space will align with house occupancy, and that all of the POS will be fully completed and available for use prior to occupation of 75% of the dwellings.

## 7.2 Response to consultation comments

The consultation comments of the Council's Principle Open Space Officer are noted, however, for accuracy and completeness, it is necessary to respond with corrections.

The Council has stated that 'Unfortunately, the development site doesn't even appear to have access to any public rights of way that go anywhere.' This statement is obviously incorrect, as there is a footway that goes all the way from the settlement of Hewaswater to the nearby neighbouring settlement of Sticker, which provides a continuous footway for pedestrians and cyclists. This footway is to the same side of the public highway as the application site.

The existence of the footway linking Hewaswater with Sticker is in stark contrast to the comments of the Council above.

### 7.3 Neighbouring schemes

There has been some new residential development in the neighbouring area, some of which immediately adjoins the application site. Having checked the LPAs planning register, it is noted that the new residential development immediately to the west of the application site, comprising nine new open market dwellings was not required by the LPA to provide on site public open space, nor is there any planning conditions or a legal agreement relating to such. The new development was also not required to make any financial off-site contribution towards public open space.

Likewise, the new residential development immediately to the east, comprising of six large detached open market properties, approved by the LPA during 2023 and now being built out on site, was not required by the LPA to provide on-site public open space, nor is there any planning conditions or a legal agreement relating to such. The new development was also not required to make any financial off-site contribution towards public open space.

### 7.4 Financial viability

The application site is situated in an area of low land and property values, hence the application site is classified within CIL Zone 4 of the Council's CIL Charging Schedule. The LPAs requirement for a large area of land, to the extent of 500 sq metres is clearly unviable for a site within CIL Zone 4, demonstrating lower land values.

### 7.5 Site conditions

The application site comprises an area of heavily sloping land, the land slopes downhill, dropping in height from north to south.

It is noted that the Principal Public Open Space Officer's consultation comments include the following statement 'The steep slope across the site (1:6) will make this very difficult/costly though, as a gradient of more than 1:20 really prevents most general use, especially informal ball games. So, some ground re-profiling will be necessary, whilst maintaining adequate drainage.'

As a result of the sloping nature of the red line application site area, extensive ground profiling and re-contouring would be required to provide a level public space area, to accord with how the Council expect such a space to be laid out. Extensive retaining walls would also be required to facilitate the changes in levels. Provision of public open space on this site given the site constraints is simply unviable, impractical and should not have required by the Council during the outline application stage.

#### 7.6 Environmental aspect

Massive regrading, recontouring and earth moving works would be required in order to provide a large, flat, useable public open space on this site. The huge amount of ground works would come with a sustainability cost, a cost that, in our opinion weighs heavily in favour of approval of this application.

#### 7.7 Scale of development

The approved development description on the planning permission is 'Outline application for the construction of up to 8 open market dwellings with all matters reserved except access'. Given that the description states 'up to 8 open market dwellings' the scale of development is not certain at this stage, and is to be determined via the reserved matters application stage.

An eight dwelling scheme, or indeed a scheme of a lower number of dwellings does not qualify or justify a requirement for a large (500 sq m) public open space area. A development of this size, simply does not warrant a public open space area, as requested by the LPA, the LPAs requirement for such is both excessive, unjust and inconsistent with other planning permissions issued and their established decision making.

## 7.8 Policy

The Council's Principle Open Space Officer refers to Policy 13.2 of the Cornwall Local Plan – Policy 13.2 is entitled 'Development Standards' and states the following:

'Public open space on-site, in proportion to the scale of the development and providing for different types of open space based on local need. Where there is access to alternative facilities that would meet the needs of the new development, contributions to the ongoing maintenance and management of these alternative facilities may be required as part of a reduced requirement on site'

Firstly, as the scale of new residential development has not yet been set, i.e. the description of development is 'up to eight open market dwellings' the LPA should not have imposed the public open space requirement at the outline planning application stage, as how can the level of public open space be determined when the scale is not yet fixed.

Secondly, even if the Applicant were to achieve reserved matters approval for eight new open market dwellings, a public open space area of 500 sq m is massive, and out of proportion with the size and scale of both the red line application site and the scale of new residential development as a whole.

## 7.9 Visual appearance / streetscene

The redline application site area is sloping from north to south, dropping down hill from the north to a significantly lower level to the south. The public open space area that has been requested by the LPA to cover an area of 500 sq m, of level surface area, due to the site constraints will require the land to be re-contoured, excavated with significant level changes, and then supported with large retaining walls. The implications of this, on what is a relatively small site, will be huge in terms of the visual impact, streetscene and wider character of the area. I myself, in terms of my Planning Consultancy Practice have not seen such a public open space area, constructed into a site using such excessive ground works and retaining walls before.

#### 7.10 Size and role of settlement

The application site is situated within the settlement of Hewaswater, a small rural settlement. Not only is the public open space area requested by the LPA excessive in size in comparison to the scale of development and extent of the red line application area, but is also not commensurate with the size and role of the settlement in general.

Essentially, the LPA have requested a very large, public open space area, be built into a small development of up to 8 new dwellings, in a small rural settlement. The LPAs request for such is untenable, and therefore the LPAs position on this should change to a more sensible and logical outcome.

#### 7.11 Existing public open space provision

There are a number of public open space areas, existing within the immediate and wider area, which the potential future residents of the new residential development will have access to.

Examples of such include:

##### **Trewoon –**

Large recreation ground

##### **Sticker –**

Large play area at St Stephens Road

Playing field at Modus Lane

Sticker AFC football field

##### **Polgooth with Trelowth –**

St Mewan Park Charlestown AFC football ground

Large recreation ground

## **8.0 Conclusions and recommendations**

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply.

The submissions within this planning statement unequivocally confirm that the LPAs imposition of planning condition 6 fails to accord with the 6 above tests and as such should, the application to remove condition 6 should be approved.

## **9.0 Appendices**

### **Appendix 1 Decision notice PA22/07383**