# 1.0 INTRODUCTION, BACKGROUND TO THE PROPOSALS AND APPEAL, ISSUES AND SCOPE OF EVIDENCE

* 1. This Appeal Statement of Case concerns a planning application (the ‘appeal application’) by ***Mr Appellant*** for an application to remove Condition 13 of Planning Permission NNNNN (see Appendix 1). The application was submitted on ….. and refused by decision notice on …. (see Appendix 2).

1.2 The site was originally granted full planning consent for ***lots of dwellings*** subject to 22 conditions.

1.3 The appeal application sought the removal of condition 13 from the original consent, which requires the submission of details of ‘specific acoustic walls’ to the site boundaries for the first 50m of the access road to either side to be submitted to and agreed by the LPA prior to commencement of development.

1.4 There are two reasons for refusal which state:

The applicant has failed to demonstrate that the noise levels arising from the development will not be increased over and above the ambient levels, a situation which it is considered will cause undue harm to the residential amenities of the adjoining residential properties. The proposal is therefore considered contrary to Part 8 of the National Planning Policy Framework 2012; Anywhere Town Local Plan Review Policies ST1 and HG5 and the Anywhere Town Publication Local Plan Policies SD1 and SD2.

The applicant proposes a poorly designed, shorter length fencing solution offering no specific acoustic properties. The omission of a walled treatment to the boundaries of the access road, with acoustic properties or not, will severely compromise the visual and environmental characteristics of this locality resulting in material harm to the visual amenity of the street scene and entrance to the development site and to the residential amenities of the adjoining residents. Accordingly, the proposal is considered to be contrary to Parts 7 and 8 of the National Planning Policy Framework 2012; Anywhere Town Local Plan Review Policies ST1 and HG5 and the Anywhere Town Publication Local Plan Policies SD1, SD2 and SD13.

# Planning Issues

1.5 Against this background and having regard to the matters alleged in the reason for refusal of the appeal application, it is considered that there are different matters that need to be addressed:

1. Whether the changes to the noise levels to the adjoining properties will ‘cause undue harm’ to the residential amenities of the adjoining residential properties’;
2. Whether the proposed design will ‘severely compromise’ the visual amenities of the locality and visual amenity of the street scene and entrance to the development site;

1. Whether the proposed design will ‘severely compromise’ the environmental characteristics of the locality;

1. Whether the proposed design will adversely affect the residential amenity from a visual or environmental aspect;

1. Whether the proposals are in accordance with or contrary to relevant National and Local Plan policies; and

1. Whether there are any other material considerations that should be taken into consideration in this case.

* 1. The appellant’s response to these issues is addressed within this Statement and the associated Statement addressing acoustic issues. The remaining sections of this Statement are structured as follows:

**Section 2**: provides brief details of the location of the site and a description of it together with its surroundings;

**Section 3**: refers to the relevant planning history of the site and other salient planning history;

**Section 4**: provides details of the proposed development;

**Section 5**: summarises the overall planning policy context against which this application should be determined;

**Section 6**: comprises an analysis of the proposals in relation to relevant policy; and

**Section 7**: sets out a brief summary and puts forward overall conclusions and recommendations.

* 1. Throughout this Statement, reference is made to a number of Appendices. These are separately bound.

# SITE LOCATION AND DESCRIPTION

2.1 This Section sets out brief details of the location of the application site and provides a description of the site and its surroundings.

# Location

2.2 The application site is located on the south western edge of Anywhere Town approximately 1.8 km to the south west of Anywhere Town Town Centre and 1 km to the south east of the settlement of Anywhere Village which adjoins Anywhere Town. The site sits adjacent to an established residential area of Anywhere Town.

# Description

2.3 The site comprises two fields that are currently used for agricultural purposes, divided north to south by an existing hedgerow. A plot of land, which was occupied by a residential dwelling that fronted onto Letsbe Avenue has been cleared to provide access to the site, and some initial works have been carried out. The site is fenced with temporary construction site fencing.

2.4 The site covers a total of 4.12 hectares, the main part being broadly rectangular in shape and slopes away gradually from east to west. The site plan is attached at Appendix 3.

# Surroundings

2.5 The site sits immediately adjacent to an established residential area of Anywhere Town. Some industrial and warehousing units sit behind the residential area to the east and over neighbouring fields to the west.

2.6 The northern boundary of the site is marked by a hedgerow beyond which is a small rectangular field and an extensive area of open space. Numerous footpaths run through the open space and the adjacent woodland area.

2.7 In the north eastern corner, the application site extends between existing residential properties that front onto Letsbe Avenue. The rear and side boundaries of the dwellings form the site boundary. The large detached property to the north sits fairly close to Letsbe Avenue and has an extensive garden to the rear. The bungalow properties to the south of the proposed access location also sit reasonably close to Letsbe Avenue, however they do not benefit from such a large curtilage.

2.8 The rear boundaries of the residential terraced properties and public house that front onto Letsbe Avenue form the eastern boundary of the application site. A private drive sits between the site boundary and the properties that provides rear access to the dwellings and car parking for the public house. These properties front directly onto Letsbe Avenue and have reasonably sized rear gardens for their size and type.

2.9 The southern boundary of the site consists of hedgerows, beyond which are further agricultural fields that are being promoted for residential development through the emerging Local Plan process.

2.10 A further hedgerow marks the eastern boundary of the site, beyond which is an agricultural field, which sits adjacent to a large area of industrial, business and warehousing buildings. These buildings sit at a lower level than the application site, a minimum of approximately 180 m to the west.

2.11 Residential development in close proximity to the site is varied in typology and appearance, although the predominant building materials include red brick and render with a combination of standard flat tiled and pan tiled roofs. Boundary treatments are varied, with picket fences, close boarded fencing, hedges and walls all in evidence in the vicinity of the appeal site.

# 3.0 RELEVANT PLANNING HISTORY

3.1 ***[The history is described]***

# 4.0 DETAILS OF THE PROPOSED DEVELOPMENT

4.1 This Section sets out details of the specific development proposals for the site which will enable it to fit well into its setting and surroundings.

# Description of the appeal proposals

4.2 This appeal seeks permission to vary Condition 13 to allow a fence as opposed to a wall to be used as the boundary detail for the first 50m of the boundary to the entrance of the development site.

4.3 As part of the appeal proposals it is proposed that the specification of the fence is amended so as to provide a close boarded fence (see Appendix 6) together with amended landscaping which will take the form of an extension to the existing hawthorn hedge along the northern boundary to the site. This will provide a consistent boundary feature to either side of the access way. Experience from other sites indicates that the best way to ensure good growth and longterm health of the hedge is to plant as whips, against a wire fence which will provide support and prevent egress by pedestrians. Once established, this new landscape feature will provide a prickly hedge that will deter access to the fence area from the public road, and which will provide a good extension to the existing hedge, benefiting wildlife as well as looking attractive.

**5.0 PLANNING POLICY CONTEXT**

# Introduction

5.1 This Section sets out the planning policy context in which the application should be considered.

5.2 The National Planning Policy Framework (NPPF), published on 27th March 2012 and amended in July 2018, has as its central theme at Paragraph 11 a presumption in favour of sustainable development. It does not change the statutory status of the Development Plan as the starting point for decision making as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990. Paragraph 2 confirms that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise and states that proposed development which accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise (Paragraph 12).

5.3 Paragraph 2 indicates that the NPPF must be taken into account in the preparation of Local and Neighbourhood Plans and that planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements.

5.4 Accordingly, Paragraph 213 makes it clear that plans may need to be revised to take into account the policies of the NPPF, which should be progressed as quickly as possible through a partial review or preparing a new Plan. In this respect, at the time of publication of the NPPF, there were three 'contingencies':

1. for 12 months from the date of publication (of the NPPF), decision makers may continue to give full weight to relevant policies adopted since 2004, even if there is a limited degree of conflict with the NPPF (Paragraph 214);

1. in other cases, and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given) (Paragraph 215); and

1. from the day of publication of the NPPF decision makers may also give weight to relevant policies in emerging Plans according to the stage of preparation, the extent to which

there are unresolved objections to relevant policies and the degree of consistency with the NPPF (Paragraph 216).

* 1. In this case, the Statutory Development Plan comprises the saved policies of the Anywhere Town Local Plan. The Emerging Local Plan has been published and gone through the examination process but is not yet adopted.

* 1. Policy ST1, cited in the reasons for refusal, states:

DEVELOPMENT WILL BE PERMITTED WHERE: -

* + 1. IT WILL NOT CONFLICT WITH OTHER POLICIES IN THIS LOCAL PLAN,
    2. IT WILL NOT ADVERSELY AFFECT THE CHARACTER, QUALITY, AMENITY OR

SAFETY OF THE ENVIRONMENT,

* + 1. IT WILL NOT ADVERSELY AFFECT HIGHWAY SAFETY, OR THE CAPACITY OF

THE TRANSPORT SYSTEM,

* + 1. IT WILL NOT PREJUDICE THE COMPREHENSIVE DEVELOPMENT OF AN

AREA,

* + 1. IT WILL NOT CONFLICT WITH AN ADJOINING OR NEARBY LAND USE.

* 1. Paragraph 2.30 elaborates about the landscape setting:

The landscape treatment of the site should be one of the main considerations in any development proposal. Developers should take into account the landscape characteristics of the area, significant landscape features of the site and the potential of the site to contribute to the character and appearance of the area. Sympathetic and effective boundary treatment together with good quality landscaping can improve the setting and appearance of new developments and make them more acceptable. This should include the retention of valuable existing features and habitats, wherever possible, and the use of native and other complementary species.

* 1. Policy HG5, cited in the reasons for refusal, sets out development parameters for new housing sites:

POLICY HG5 RESIDENTIAL DEVELOPMENT WILL BE PERMITTED WHERE: a) THE AMENITY OF NEIGHBOURING PROPERTIES IS PROTECTED,

* + 1. THE DESIGN AND LAYOUT OF DWELLINGS MINIMISES POTENTIAL OVERLOOKING AND PROVIDES A REASONABLE DEGREE OF PRIVACY AND

SECURITY,

* + 1. ADEQUATE PRIVATE GARDEN SPACE IS PROVIDED,
    2. BOUNDARY TREATMENT PROVIDES AN ACCEPTABLE STANDARD OF

PRIVACY AND VISUAL AMENITY,

* + 1. ACCESS FOR VEHICLES, PEDESTRIANS AND CYCLISTS AND PUBLIC TRANSPORT WHERE APPROPRIATE, IS SAFE AND CONVENIENT AND

INTEGRATED WITH EXISTING PROVISION,

* + 1. PARKING FACILITIES ARE PROVIDED IN ACCORDANCE WITH COUNCIL STANDARDS, AS OUTLINED IN APPENDIX 7.
    2. ITS DESIGN IS ACCEPTABLE IN TERMS OF APPEARANCE, SCALE AND

SITING, AND

* + 1. LANDSCAPING COMPLEMENTS AND ENHANCES ITS APPEARANCE.

* 1. Paragraphs 5.81 and 5.82 provide further guidance on the implementation of this policy:

It is essential that all new residential developments are designed to protect both those features worthy of retention and the amenity of neighbouring properties. The Authority will resist any development which has a seriously detrimental effect on neighbouring properties by reasons of overlooking, massing or overbearing impact. These effects can normally be overcome by the re-siting, reduction or re-orientation of the development.

The design and layout of dwellings should reduce the likelihood of overlooking, ensure a degree of privacy, provide a reasonable outlook, and help in minimising the risk of crime as advised in PPG1 and Circular 5/94 ‘Planning Out Crime’. In this respect consultation will be carried out with the Architectural Liaison Officer of the Nottinghamshire Constabulary. The provision of satisfactory boundary treatment can help to create private areas and, with the use of good quality materials and sensitive design, provide interest in the street scene.

Emerging Local Plan

* 1. In this case, the Anywhere Town Local Plan has reached publication stage and has been taken through the examination process. It is therefore nearing adoption and its policies should be given significant weight.

* 1. Policy SD1 (cited in the reasons for refusal) sets out ‘good design considerations for development’. This includes sections on development form, movement, public realm and open space, safety and standards. Extracts include:

The Council will expect all new development to be of a high quality sustainable design. Proposals must successfully integrate with and enhance their surroundings, be innovative where appropriate, and be adaptable to the evolving effects of climate change.

2. Development proposals should demonstrate that account has been taken of the following factors:

a) The character of the area, including local materials (where deemed appropriate), architectural style and detailing, landscape features and boundaries;

h) Opportunities to enhance gateways;

4. The public realm elements of a development proposal must complement the proposed building/s and seek to enhance its surroundings. Proposals must apply an appropriate balance of hard and soft landscape that contributes to the overall design of the scheme.

5.12 Policy SD2 (cited in the reasons for refusal) seeks to ensure a good level of amenity:

To safeguard conditions for users or occupants of adjoining or nearby properties, and future occupants or users of new development, the Council will take into consideration the following factors in assessing the impact of all development proposals:

* + 1. Protection from over massing and overshadowing;
    2. In the case of residential care homes, the outlook from bedrooms and communal rooms is adequate, and the site has level access to a garden or sitting out area;

* + 1. In respect of all residential development, access to open space and adequate garden space;

* + 1. Overlooking that would result in loss of privacy;

* + 1. Potential for pollution, including air quality, light spillage, noise and disturbance, and contamination of land, groundwater or surface water;

* + 1. The effect of traffic movement to, from and within the site;

* + 1. Appearance, scale and siting, including resultant physical relationships being oppressive or overbearing;

* + 1. Acceptable boundary treatment in terms of privacy and visual amenity; and

* + 1. Minimising the extent to which people feel at risk from crime by:

* + - incorporating elements of Secured By Design or similar standards;

* + - enabling passive surveillance of public spaces and parking;

* + - distinguishing clearly between public and private areas; and

* + - incorporating appropriate security measures, such as lighting, CCTV and hard and soft landscape treatments.

* 1. In relation to boundary treatments, paragraph 12.30 elaborates:

The provision of satisfactory boundary treatment can help to create and maintain amenity. Where screening is necessary to provide adequate standards of privacy, or to preserve the street scene, and sited adjacent to the public highway, the Council will normally expect such boundary treatment to take the form of either brick walling and fencing or appropriate hedge planting in combination with temporary fencing. Walling and fencing should be no more than two metres high and be in place prior to occupation.

* 1. Policy SD8 (not cited in the reasons for refusal) deals with environmental protection and requires development that has the potential for significant impact (as suggested by the reasons for refusal) to be mitigated against. Section 2 of this policy requires mitigation to be incorporated so that measures ‘bring levels of emissions to an acceptable level’. Section 7 of the policy deals with noise disturbance in greater detail:

Development proposals will be required to demonstrate that:

* + 1. The proposal does not have a detrimental impact on the indoor and outdoor acoustic environment of existing or planned development. This includes the potential impact on areas important for recreation, biodiversity, and conservation or where it could have a significantly detrimental welfare impact on livestock;

* + 1. The occupiers of the proposed development will not be subject to detrimental noise levels from the existing or potential future operations of adjacent uses; and
    2. The proposed development does not cause a significant increase in the background noise level to nearby existing noise sensitive land uses.

5.15 Policy SD13 (cited in the reasons for refusal) covers ‘designing out crime and the fear of crime’.

It states:

1. The Council will expect major developments and all proposals within A3, A4, A5,

C2 & C4 use classes to effectively demonstrate that they will not undermine the quality of life or community cohesion of their surroundings. In doing so, applicants will need to demonstrate that:

* + 1. The development proposed will not lead to increased levels of vandalism, antisocial behaviour and/or the fear of crime;

* + 1. The design of the proposal has acknowledged and appropriately applied urban design and Secure by Design principles to create a development that reduces the potential for crime and anti-social behaviour; and

* + 1. For Homes of Multiple Occupation, via a Management Plan, how the proposal is to align with the Management of Houses in Multiple Occupation (England) Regulations 2006.

* + 1. Development proposals in a Partnership Plus Area that in whole or part, fall within the A3, A4, A5, C2 & C4 use classes must submit a Crime Impact Assessment that effectively demonstrates that their proposal will not exacerbate the crime and antisocial behaviour issues that have led to the Partnership Plus Area designation.

* + 1. The Council will not support developments where, through consultation with the Police and other relevant bodies, it is considered the development may have the potential to exacerbate these issues. In exceptional circumstances, a temporary permission may be granted.

National Planning Policy Framework

* 1. The National Planning Policy Framework (NPPF) has been revised. Paragraph 11 confirms that development proposals that accord with an up to date development should be approved without delay.

* 1. Paragraphs 54 and 55 deal with the use of planning conditions. They state:

* + 1. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

* + 1. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

* 1. The section on design is now at Section 12 ‘Achieving well-designed places’. This confirms the importance of design as part of sustainable development. It suggests that ‘being clear about design expectations, and how these will be tested, is essential for achieving this’ (paragraph 124). Paragraph 125 suggests that design policies should be used to reflect local aspirations and based upon an evaluation of defining characteristics. Paragraph 126 recommends the use of design guides and codes as part of plans or supplementary planning documents. These ‘should allow a suitable degree of variety where this would be justified’.

* 1. Paragraph 127 states:

Planning policies and decisions should ensure that developments:

* + 1. will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

* + 1. are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

* + 1. are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

* + 1. establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

* + 1. optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

* + 1. create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

This last matter relating to safety and fear of crime is cited in the Reasons for Refusal, although at that stage was in Section 8 of the NPPF, which related to the promotion of healthy communities (Paragraph 69 of the original NPPF).

5.20 Paragraph 130 states:

Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

# Planning Practice Guidance (March 2014, updated June 2018)

5.21 The Planning Practice Guidance is an online resource that aims to provide additional guidance to the policies contained within the NPPF. It contains a specific chapter relating to the use of planning conditions

5.22 Paragraph 005 includes guidance on the use of conditions:

For non-outline applications, other than where it will clearly assist with the efficient and effective delivery of development, it is important that the local planning authority limits the use of conditions requiring their approval of further matters after permission has been granted. Where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application (e.g. provision of car parking spaces).

Where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed. The local planning authority should ensure that the timing of submission of any further details meets with the planned sequence for developing the site. Conditions that unnecessarily affect an applicant’s ability to bring a development into use, allow a development to be occupied or otherwise impact on the proper implementation of the planning permission should not be used. A condition requiring the re-submission and approval of details that have already been submitted as part of the planning application is unlikely to pass the test of necessity.

5.23 Paragraph 006 includes:

Any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. Specific circumstances where conditions should not be used include….

5.24 Paragraph 012 considers if conditions should be used to modify plans and other details submitted with an application:

If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application.

Depending on the case, it may be possible for the local planning authority to impose a condition making a minor modification to the development permitted. A condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used.

5.25 Paragraph 007 indicates that

Care should be taken when considering using conditions that prevent any development authorised by the planning permission from beginning until the condition has been complied with. This includes conditions stating that ‘no development shall take place until…’ or ‘prior to any works starting on site…’.

Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission (and from 1 October 2018 the applicant has given written consent to such a condition – see below).

5.26 Paragraph 19 considers the best way of dealing with conditions between the Local Planning Authority and applicant:

It is best practice for a local planning authority to agree proposed conditions with an applicant before a decision is taken, and as early in the planning application process as possible. It is equally open to both the local planning authority and the applicant to initiate discussions about conditions. Agreeing conditions early is beneficial to all parties involved in the process. It can increase the certainty of what is proposed and how it is to be controlled, including highlighting any condition requirements that may impact on the implementation of the development.

# Anywhere Town Residential Design Guide SPD

5.27 This design guide was prepared to help to ensure high quality residential developments are achieved in the District. Section 2 sets out the qualities of the character of Anywhere Town, considering the history and resultant typical building materials used.

5.28 Section 3 identifies how to integrate the scheme into the existing neighbourhood.

Paragraph 3.7 notes that ‘boundary treatments should be handled sensitively and privacy should be maintained.’

5.29 Section 4 considers public spaces, green infrastructure, landscape and biodiversity.

Paragraph 4.4 identifies the importance of green spaces. New streets:

“should be designed to be safe, attractive and useable by many people with different needs. General aspects to consider include: local character, existing landscape and wildlife features, the size and type of space, location and prominence, connections to the wider area, circulation patterns and desire lines… Boundary treatments should enhance public space, streets and public space should be well-lit, avoiding dark corners…”

5.30 Section 5 promotes design that takes crime and the fear of crime into consideration and suggests that the Police Architectural Liaison Officer will be consulted early in the application process.

# 6.0 ANALYSIS OF PLANNING ISSUES

6.1 As set out at Paragraph 1.5 above, the key issues to be addressed are:

1. Whether the changes to the noise levels to the adjoining properties will ‘cause undue harm’ to the residential amenities of the adjoining residential properties’;

1. Whether the proposed design will ‘severely compromise’ the visual amenities of the locality and visual amenity of the street scene and entrance to the development site;

1. Whether the proposed design will ‘severely compromise’ the environmental characteristics of the locality;

1. Whether the proposed design will adversely affect the residential amenity from a visual or environmental aspect;

1. Whether the proposals are in accordance with or contrary to relevant National and Local Plan policies; and

1. Whether there are any other material considerations that should be taken into consideration in this case.

These are addressed in turn below.