**APPEAL BY HARGREAVES PROPERTIES LTD**
**SITE F, HAMILTON BUSINESS PARK, BOTLEY ROAD, HEDGE END**

**GROUNDS OF APPEAL**

1. Circular 11/95 explains in paragraphs 86 and 87 of the Annex that, although conditions can be imposed to restrict changes of use that would not be regarded as development (where for example the change would not be material), there is a policy presumption against such conditions. They should be imposed only in exceptional circumstances where there is clear evidence that the uses excluded would have serious adverse effects on amenity or on the environment, there were no other forms of control and that the condition would serve a clear planning purpose. The imposition (or retention as in this case), of such a condition not meeting these requirements is regarded as unreasonable.

2. The planning permission for the development of the site authorises uses within Classes B1, B2 and B8 only. No condition is required to prevent the occupation of units within the site for any uses which would be materially different from those defined in the permission. Retail use as a shop would amount to a material change of use and would, irrespective of any condition, require to be authorised by a separate planning permission. Condition 6 is therefore not necessary to prevent retail use.

3. Paragraph 91 of the Annex to Circular 11/95 explains that conditions restricting ancillary or incidental activities can be burdensome and should not be imposed except where they relate to activities giving rise to hazard, noise or offensive emissions. No such potential harm would arise in this case. In the absence of such exceptional justification, the retention of condition 6 is unnecessary.

4. The term "Trade Counter" is not defined and a condition which purports to exclude such an element fails the test of precision set out in circular 11/95.

5. The retention of condition 6 would impose unnecessary and burdensome restrictions on the flexible operation of the business units permitted to be constructed at the site. In addition to being contrary to the policy set out in Circular 11/95, it would constrain the attractiveness of the units to the market, limiting the extent to which the development can contribute to the vitality and economic prosperity of the locality, contrary to the Council's Prosperity Strategy.

6. Retaining the condition would cause the benefits of regeneration and to the economic development of the locality, which would be brought about by the permitted development, to be lost or at least significantly delayed. This would be contrary to the Council's own policies , and the objectives set out in the government's "Plan for Growth" statement issued in March 2011.

7. The Council has accepted that at least the part of the condition preventing the inclusion of a “trade counter” element is not necessary, but has failed to reflect this acceptance in its decision on the application.

8. Condition 6 of the planning permission previously granted should be removed. Planning permission should therefore be granted for the development of the site, in the same terms as previously permitted, but omitting condition 6 of the earlier planning permission.