



Appeal Decision

Site visit made on 13 February 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2025

Appeal Ref: APP/Z1510/W/24/3351702

Land Rear of 1-6 Dowches Cottages, Church Road, Kelvedon CO5 9JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Messrs J and D Smith (H P Smith & Sons) against the decision of Braintree District Council.
 - The application Ref is 24/00584/OUT.
 - The development proposed is described as 'outline application for up to five dwellings with all matters reserved'.
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Decision

1. The appeal is allowed and planning permission is granted for up to five dwellings at Land Rear of 1-6 Dowches Cottages, Church Road, Kelvedon CO5 9JE in accordance with the terms of the application, Ref 24/00584/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by the appellant against Braintree District Council. This application is the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was published in December 2024 and is applicable to this appeal. Both parties have had the opportunity to comment on any implications for their cases and I have taken their comments into account.
4. In the decision above, I have omitted wording on the application form which describes the outline nature of the application, since that is not part of the proposed development. As stated in the banner heading, the application was in outline with all matters reserved and therefore details of access, appearance, landscaping, layout and scale would be for later consideration.
5. A proposed site plan was provided, showing a layout of five dwellings. This is marked as being indicative only and I have considered it on that basis. Although access is reserved for later consideration, in those circumstances an application for outline planning permission must state the area or areas where access points to the development proposed will be situated¹. The site plan shows that access would be from the existing cul-de-sac and turning head to the north of the site.

¹ Paragraph 5(3) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

6. A revised Location Plan was submitted while the application was under consideration, a copy of which was included with the appeal. This excluded an area of land described by the Council and Highways Authority as publicly maintainable highway across one corner of the site, edging that area in blue. However, I have been provided with correspondence between the parties in which the Council confirmed that an earlier Location Plan submitted on 30 April 2024 was accurate and that the application could proceed on the basis of that plan.
7. The earlier Location Plan included the area of publicly maintainable highway within the red line defining the application site. Certificate A was provided, confirming that the land in question is within the appellant's ownership, although the appellant acknowledges the existence of highway rights across it. I have considered the appeal on that basis and, for convenience, I have referred to the area as 'the highway land' in this decision.

Main Issues

8. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, including the effect on existing trees,
 - the effect on the significance and setting of designated heritage assets, with particular regard to the setting of the Kelvedon Conservation Area,
 - whether suitable living conditions would be provided for occupiers of the proposed dwellings, with regard to outlook, and
 - the effect on highway safety or accessibility, with particular regard to the effect on the highway land.

Reasons

Character and Appearance

9. The appeal site is a parcel of undeveloped land, currently laid to rough grass. It has two frontages to Dowches Gardens, from where it is currently open to view. The other two boundaries adjoin the gardens of neighbouring dwellings.
10. The existing dwellings in Dowches Gardens and Church Road are varied in character. They include bungalows on shallow, wide plots, such as those directly opposite the appeal site. In contrast, to the rear of the site are three pairs of semi-detached houses known as Dowches Cottages, which are on long, narrow plots. There is also a relatively recent development of two-storey terraced houses and a slightly taller block of flats at the corner with Church Road. Within these surrounding streets, some dwellings stand in modest gardens, enclosed with clipped hedging. However, there are also several unenclosed paved areas for car parking, with more limited soft landscaping.
11. The indicative site plan shows one way that five dwellings could be accommodated. In this layout, the dwellings would be on significantly narrower plots than the bungalows opposite. However, they would be comparable to the layout of Dowches Cottages at the rear. These are themselves well integrated into the varied street scene and do not look cramped or out of place. On that basis, while wide plots similar to those opposite may not be achievable, up to five

dwellings could in principle be accommodated in a manner which responds to the existing characteristics of the surrounding residential area.

12. Based on the indicative layout, it is unlikely that front gardens could be fully enclosed by hedges, like some of the bungalows opposite, as that space would be required for access and parking. However, there could be private gardens, planting around and between front driveways and soft landscaping along at least part of the Dowches Gardens frontage. Driveways with limited landscaping are already part of the established street scene, particularly along Church Road and within the Moores Lane development. Subject to consideration of the detailed layout and landscaping, a comparable balance between hard and soft landscaping could be secured, in which parked cars would not be excessively dominant.
13. To the southeast of the appeal site there are a few detached houses in more substantial plots, backing onto the site. There are several mature trees here, including a horse chestnut and oak in a garden adjacent to the appeal site. These are protected, in one case by a tree preservation order and the other by virtue of its position within the Conservation Area. Both are substantial mature specimens, which contribute positively to the street scene, providing a leafy backdrop to one side of the site. As such, in order to avoid harm to the character and appearance of the area, works which would jeopardise the retention or long-term health of these trees should be avoided.
14. Root protection areas (RPAs) for both trees include land within the site. However, although the indicative layout implies that one dwelling may encroach into the RPA of the horse chestnut, the level of encroachment would be marginal and could potentially be avoided by means of a slightly altered layout. Furthermore, the Arboricultural Report² includes proposals for further investigation of the presence of roots within the RPA as shown, with an expectation that a bespoke foundation design could be implemented if necessary to accommodate the protection and retention of tree roots. This could be secured through conditions requiring approval and implementation of measures for protecting existing trees, alongside approval of the reserved matters. On that basis, based on the evidence before me, the trees could be suitably protected, maintaining their positive function in the street scene.
15. For the reasons given above, I conclude that the proposed development would not have a harmful effect on the character and appearance of the area, including with regard to the effect on existing trees. It would not conflict with relevant requirements in Policy LPP52 of the Braintree District Local Plan Section 2, adopted 2022 (Section 2 Local Plan), which include that new buildings should reflect or enhance the area's local distinctiveness and be in harmony with the character and appearance of the surrounding area. Nor would it conflict with relevant requirements in Policy LPP65, including the requirement that planning conditions will be applied to protect trees during development.

Conservation Area

16. The Kelvedon Conservation Area takes in the built-up frontages to either side of the High Street, including the detached houses to the southeast of the appeal site. The significance of the Conservation Area appears to derive from the evolution of the settlement along a historic transport route, which is now manifested in a varied streetscape of surviving historic buildings, including a high number of listed

² Andrew Day Arboricultural Consultancy, Arboricultural Report dated 6 March 2024

buildings along the High Street. Generally, the High Street itself feels enclosed, with buildings often close to, or directly abutting, the street. However, the larger plots around the detached houses open up some limited views through the gardens.

17. The setting of the Conservation Area already includes some significant areas of modern housing to either side of the High Street. Within the limited available outward views, the roofs of modern dwellings can be glimpsed behind the historic street frontage. The existing relationship between the Conservation Area and the modern housing in adjacent streets is also revealed from the footpath which connects the High Street with Church Road, near the appeal site.
18. The application form indicates that two and three bedroom dwellings are proposed and there is no indication that this would involve a particularly tall building form. In any case, the scale and appearance of the dwellings would be reserved for future consideration. The Council would retain control over matters such as external materials, detailing and roof heights, and would be able to ensure that any buildings visible from the CA are of appropriate scale and design. Supporting evidence, including a Heritage Statement, could be provided at that point to inform and justify the proposed design approach. A small increase in the number of dwellings adjacent to the CA would not result in a harmful increase in noise, taking into account the character of the High Street, which is a main transport route.
19. Although the reasons for refusal did not allege any harm to the setting of any individual listed buildings, I have had regard to the effect on other designated heritage assets, notably the nearest listed buildings at 131 and 133-139 High Street, in accordance with the statutory duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
20. The Council's historic environment consultee advised that the site in its current, undeveloped form is not a contributing element in the settings of those nearest listed buildings, due to their distance from the site and the intervening development. Having considered the evidence and visited the site, I concur with that view. The listed buildings date originally from the 18th century, with modern alterations, and they form a continuous terrace of modest two storey scale. Their significance derives from their age and some surviving detailing, and they directly abut the High Street frontage, which provides the setting in which their modest scale and historic character is most readily understood.
21. There are other buildings between the listed buildings and the appeal site and little prospect that housing on the appeal site would be seen in conjunction with them or that it would be conspicuous within their outlook. Nor would the proposed development be harmful to their wider setting within the Conservation Area, subject to consideration of the reserved matters, for the reasons previously given. On that basis, the setting of the relevant listed buildings would be preserved.
22. For the above reasons, I conclude that the provision of up to five dwellings on the appeal site would not, in principle, be harmful to the significance and setting of designated heritage assets, with particular regard to the setting of the Kelvedon Conservation Area. There would be no conflict with relevant requirements in Policy SP7 of the Braintree District Local Plan Section 1, adopted 2021 (Section 1 Local Plan) or Policies LPP47 and LPP53 in the Section 2 Local Plan. These policies, amongst other things, require that new development respects and responds to

local character and context, especially in historic areas, and that the character and appearance of Conservation Areas and their settings is preserved and enhanced, having regard to the effect of built development on views into, out, from and within the designated area.

Living Conditions

23. The Essex Design Guide (EDG) includes recommended minimum garden sizes for new dwellings. Gardens of the required area are shown on the indicative site plan and the Council's Officer Report acknowledges that this requirement would be met. However, the length of the gardens as indicated on the plan would be below the 15m minimum recommended in the EDG.
24. Although Policy LPP52 of the Section 2 Local Plan requires that regard is had to the standards in the EDG for outdoor amenity space, the supporting text confirms that the EDG is to be used flexibly. In this case, the relevant neighbouring dwellings are relatively modest two storey cottages and the indicative plans show that a separation distance of 25m could be maintained, even though the gardens within the appeal site may be slightly below the required length. That being the case, the existing cottages would not be unduly prominent or enclosing within the outlook from the proposed dwellings.
25. Although the EDG advocates a 15m minimum garden length where new dwellings back onto existing ones, the purpose of that recommendation is to protect the privacy of existing neighbouring occupiers. In this case, the Council concluded that there would be an acceptable relationship with neighbouring properties and no contrary view has been expressed by any interested party. Based on the evidence before me I have no reason to reach a different view.
26. I therefore conclude that suitable living conditions would be provided for occupiers of the proposed dwellings, with regard to outlook. The proposal would not conflict with relevant requirements in Policy LPP52, including the requirement that residential development shall provide a high standard of accommodation and amenity for all prospective occupants.

Highway Safety

27. No dimensions are given for the highway land within the appeal site, but it is illustrated at paragraph 4.27 of the appellant's statement of case and the Highways Authority has confirmed that the relevant area is identified. On the illustrative site plan, no building, boundary enclosure or similar physical obstruction is indicated on the highway land although the access drive to Plot 1 may encroach slightly into it. If necessary, that could be avoided through adjustment of the layout of the driveways and parking areas, at the reserved matters stage. In any case, there is no clear evidence that rights for members of the public to access, pass or repass over the highway land would be impeded by the provision of a hard surface and nor is there any apparent need for the area to be physically enclosed.
28. Otherwise, the indicative plans include a proposed footway around the outer perimeter of the site which would occupy much of the highway land. That would provide for separation between vehicle and pedestrian movements, to the benefit of future occupiers of the development and those walking to and from nearby dwellings. Provision of a footway could be secured through an appropriate condition and would be an effective way of maintaining accessibility.

29. For the above reasons, taking account of the outline nature of the application, the area of highway land would not constrain the development to the extent that five dwellings could not be accommodated. Nor does the evidence before indicate that there would be any physical obstruction of the highway resulting in harm to highway safety or accessibility. The detailed layout could be resolved through the reserved matters and completion of any agreement under s278 of the Highways Act 1980, to enable any necessary alterations to the highway, would be a separate process outside the scope of this appeal.
30. I therefore conclude the proposed development would not be harmful to highway safety or accessibility, with particular regard to the effect on the highway land, subject to the conditions imposed. The reasons for refusal did not allege any conflict with the development plan associated with the effect on highway land. Nor would the development conflict with Essex County Council supplementary planning guidance entitled Development Management Policies 2011, including the general requirements in Policies DM1 and DM7 that the highway network should be protected for the safe and efficient movement of people and goods.

Other Matters

31. While the Council has provided evidence indicating a housing land supply of over five years and a healthy housing delivery rate, the provision of additional housing is nevertheless a benefit of the proposal. The proposed dwellings would be in a location where the development plan supports new housing in principle. The application demonstrates that they are capable of complying with the Nationally Described Space Standards, albeit the detailed design may include at least one dwelling which is not designed for the maximum occupancy in those standards.
32. For the reasons given, I have concluded that the proposal would not conflict with any relevant development plan policies and it would as such be in accordance with the development plan as a whole. In those circumstances, paragraph 11c of the Framework indicates that the development should be approved without delay.
33. The appeal site lies within defined Zone of Influence for the Dengie Special Protection Area (SPA) and Ramsar Site, the Blackwater Estuary SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). These are among several European Sites on the Essex Coast, which are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding bird species. They have been identified by Natural England as being vulnerable to harm from recreational disturbance, which would be exacerbated by an increase in population resulting from new residential development, including through the cumulative effect of small-scale developments.
34. On that basis, the proposed development would have a likely significant effect on the qualifying features of the European Sites, in combination with other development. As such, it is necessary for me, as the competent authority, to conduct an appropriate assessment in relation to the effect of granting permission on the integrity of those Sites.
35. The European Sites are covered by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). In partnership with other relevant local

planning authorities, the Council has adopted a RAMS SPD³, which sets out measures for the avoidance and mitigation of recreational disturbance. These include arrangements for financial contributions to be sought in connection with new residential development, to fund avoidance and mitigation measures on a strategic basis. The Council has arrangements in place for contributions to be made by direct payment, in advance of an application being determined. I have been provided with evidence confirming that the required contribution was made when the planning application was submitted, secured by means of an agreement under s111 of the Local Government Act 1972 and that the appropriate amount was paid at that time.

36. On the basis that the RAMS is a well-established mitigation strategy, endorsed by Natural England and involving several local authorities working in partnership, I am satisfied that appropriate arrangements are in place to ensure that adequate funds are collected at a strategic level and that they are directed towards implementation of the mitigation set out in the RAMS. Consequently, I conclude that, with the above mitigation measures in place, the proposal would not adversely affect the integrity of European Sites, either alone or in combination with other development.

Conditions

37. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. I have amended some of them for precision and clarity and have omitted others. Where the conditions differ in any material respect from those suggested by the Council, the parties have had the opportunity to comment. In some cases, I have adjusted the wording to clarify where details should be included with the reserved matters, rather than separately in advance of commencement, on the basis that would be less onerous while also ensuring that the reserved matters encompass the details in question.
38. I have imposed a condition requiring compliance with the approved plans. In this case, that would comprise only the relevant Location Plan, which I have specified in the interests of clarity. The illustrative site plan is not listed, since the details on that plan are not submitted for approval within the scope of the outline application.
39. Conditions 5, 6 and 7 are necessary to secure agreement and implementation of appropriate archaeological investigations, mitigation and reporting, as the appeal site is within an area with high potential for archaeological remains.
40. I have imposed condition 8 to secure the inclusion of the proposed footway around the outer perimeter of the site and its implementation prior to occupation of the dwellings. I am satisfied that requirement meets the tests in the Framework, having regard to the reasoning set out above. The precise width and layout would be determined through the reserved matters.
41. Although the site is fairly level, the height of the dwellings in relation to their surroundings will be pertinent to the effect on the setting of the Conservation Area. Therefore, Condition 9 is necessary to ensure that the details of scale and appearance include sufficient information for this to be assessed.

³ Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, May 2020

42. Although landscaping is a reserved matter, Condition 10 is necessary to ensure that the submitted details are suitably comprehensive, in the interests of the character and appearance of the area. Any specific requirements relating to hard surfacing materials and implementation of the landscaping could be covered by conditions on the reserved matters, if necessary. Conditions 11 and 12 are required to mitigate any potential effects on biodiversity and secure the biodiversity enhancement measures detailed in the Ecological Survey and Assessment, if not included within the landscaping details. I have modified the wording slightly to refer more precisely to the relevant mitigation and enhancement measures. The mitigation measures are straightforward and a specific requirement for an Ecological Clerk of Works to be present would be disproportionately onerous.
43. Condition 13 is necessary to ensure that trees T1 and T2 are adequately protected from root disturbance. The wording has been amended in consultation with the parties, to refer more precisely to the relevant trees, since they are not within the appeal site, and the requirement for specific mitigation measures if the layout includes any encroachment into root protection areas.
44. Although the site is currently vacant, there is reference in the evidence to a history of fly tipping. Condition 14 is therefore both reasonable and necessary to secure an appropriate and proportionate investigation of any ground contamination, and implementation of remediation works if required. Conditions 15 to 17 are necessary to safeguard living conditions for the occupiers of neighbouring properties. Since any issues relating to asbestos would be encompassed by Condition 14, there is no need to specify that as an element of dust control.
45. I have not included conditions requiring submission of external material samples or specifying the surface materials for vehicular accesses, since both matters are within the scope of the reserved matters. Should the reserved matters not include adequate details on either matter, additional conditions could be imposed at that stage, provided they directly relate to the matters being approved.
46. I am mindful that the Framework states that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so. No clear justification has been provided and the scale and appearance of the dwellings would be for later consideration. While recognising that the plots are likely to be modest, the evidence does not indicate that they would be so restricted as to justify restricting future occupiers' exercise of permitted development, within the limitations imposed by The Town and Country Planning (General Permitted Development) (England) Order 2015. Although upward extensions might, in principle, be harmful to the setting of the Conservation Area, the relevant Class (AA) is not applicable to dwellings constructed after 28 October 2018.

Conclusion

47. The proposed development would accord with the development plan and no material considerations indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, the appeal should be allowed.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout and scale (hereinafter referred to as "the Reserved Matters") shall be submitted to and approved in writing by the Local Planning Authority before any development commences and the development shall be carried out as approved.
- 2) Application for approval of the Reserved Matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the Location Plan submitted 30 April 2024.
- 5) No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation (WSI) which has first been submitted to and approved in writing by the Local Planning Authority.
- 6) No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the WSI defined in condition 5 above and the submission to, and approval in writing by, the Local Planning Authority of a mitigation strategy detailing the proposed excavation/preservation strategy. The development shall be carried out in accordance with the agreed details.
- 7) The applicant will submit to the Local Planning Authority a post excavation assessment for approval, in writing, by the Local Planning Authority. This shall be done within 6 months of the date of completion of the archaeological fieldwork unless otherwise agreed in advance in writing by the Local Planning Authority. This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.
- 8) The layout details required by Condition 1 of this permission shall include details of a footway along the south-east side of Dowches Gardens between Church Road and existing turning head in front of 12 Dowches Gardens. The approved details shall be completed prior to occupation of the development and thereafter retained.
- 9) The details of appearance and scale required by Condition 1 of this permission shall include:
 - A full topographical site survey showing existing levels including: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals; and levels of adjoining buildings and their gardens;
 - Full details of the proposed finished floor levels of all buildings, proposed garden levels, proposed levels along all site boundaries, and proposed levels for all hard and soft landscaped surfaces.

The development shall only be carried out in accordance with the approved details.

- 10) The landscaping scheme required by Condition 1 of this permission shall incorporate a detailed specification of hard and soft landscaping works for the whole site. This shall include plant/tree types and sizes, plant numbers and distances, and written specifications including cultivation and other operations associated with plant and grass establishment, together with a strategy for the watering and maintenance of the new planting, colour and type of material for all hard surface areas and method of laying, and an implementation programme.
- 11) The development hereby permitted shall be carried out in accordance with the ecological mitigation measures contained in Section 9 of the Ecological Survey and Assessment (Essex Mammal Surveys, March 2024).
- 12) Prior to the first occupation of the dwellings hereby approved, a Biodiversity Enhancement Layout for biodiversity enhancements outlined in Section 10 of the Ecological Survey and Assessment (Essex Mammal Surveys, March 2024), shall be submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Layout shall include the following:
 - a) detailed designs or product descriptions for bespoke biodiversity enhancements; and
 - b) locations for bespoke biodiversity enhancements on appropriate drawings.

The enhancement measures shall be implemented in accordance with the approved details prior to occupation and all features shall be retained in that manner thereafter.

- 13) No development, including site clearance, preparatory works or construction, shall commence until details of the means of protecting Common Oak tree T1 and Horse Chestnut tree T2, as identified in the Andrew Day Arboricultural Report and Tree Protection Plan dated 6 March 2024, from damage during the carrying out of the development have been submitted to and approved in writing by the Local Planning Authority. In the event that the proposed layout necessitates the digging of foundations, trenches or excavations of any kind within the root protection areas of trees T1 and T2 as identified on the Tree Protection Plan, the submitted details shall include all proposed measures to protect the root systems of trees T1 and T2, in accordance with the method statement included in section 2.4 and Appendix 3 of the Arboricultural Report. The approved means of protection shall be implemented prior to the commencement of any other building, engineering works or other activities on the site and shall remain in place until after the completion of the development.

With the exception of any measures approved by the Local Planning Authority in accordance with the details required by this condition, no works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges. No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

- 14) Prior to the commencement of the development hereby permitted, a preliminary contaminated land risk assessment shall be submitted to and approved by the Local Planning Authority to determine whether further risk assessment or remediation is necessary. Assessment shall be in accordance with Code of Practice and the Environment Agency's Guidelines for the Land Contamination: Risk Management (LCRM 2020). The development shall be carried out in accordance with the approved details.

Notwithstanding the above, should contamination be found that was not previously identified or not considered in any remediation scheme agreed in writing with the Local Planning Authority, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be re-assessed in accordance with the above and a separate remediation scheme shall be submitted to and agreed in writing with the Local Planning Authority. Such agreed measures shall be implemented and completed prior to the first occupation of any parts of the development.

Following completion of any remediation works required under the terms of this condition, a validation report undertaken by competent person shall be submitted to the Local Planning Authority for approval. There shall be no residential occupation of the site until the Local Planning Authority has approved the validation report.

- 15) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times: Monday to Friday 0800 - 1800, Saturday 0800 - 1300, Bank Holidays & Sundays - no work.
- 16) A dust and mud control management scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and shall be adhered to throughout the construction process.
- 17) No piling shall be undertaken on the site in connection with the construction of the development until details of a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the Local Planning Authority. The approved details shall be adhered to throughout the construction process.

END