

Parish:	Stow Bardolph	
Proposal:	Reserved matters application for proposed 2 storey dwelling	
Location:	Land Between 212-218 The Drove Barroway Drove The Drove Barroway Drove PE38 0AN	
Applicant:	FBI CAD & Design Solutions	
Case No:	21/00787/RM (Reserved Matters Application)	
Case Officer:	Lucy Smith	Date for Determination: 9 July 2021 Extension of Time Expiry Date: 14 January 2022

Reason for Referral to Planning Committee – At the discretion of the Assistant Director

Neighbourhood Plan: No

Members Update

Members will recall that this application was deferred at Committee in January 2022 . This was due to a late representation received from the IDB and associated queries over the ownership of the red line area. Further extensive consultation has been received from the Internal Drainage Board to clarify their position.

With regards to ownership, legal advice has been sought, and the advice is as follows:

"It is the responsibility of the applicant to submit the correct certificate. The Council is entitled to rely on the certificate that has been submitted, it is not under an obligation to investigate/confirm legal title for every planning application that is made. If an applicant submits an inaccurate certificate it could potentially affect the procedural legality of the application. That is a matter that is at the risk of the applicant. Whether or not a planning permission can actually be implemented is a matter of private civil law between the parties with legal control of the application site. That is not a material planning consideration. "

A revised plan has been submitted which clarifies annotations surrounding the piping of the ditch to the side of the proposed dwelling,

The IDB have raised no objection to the proposal in principle and have noted that ownership is a separate civil issue which would not prohibit the granting of byelaw consent. It is considered that this clarifies the previous reasons for deferral and that the application can now be considered by Members.

New additional text is set out in bold.

Case Summary

Reserved Matters consent is sought for the construction of a new dwelling on land between 212-218 The Drove, Barroway Drove.

The site is within Flood Zone 3 of the Borough Council's SFRA (2018).

Key Issues

Design and Form and Character
Impact on Neighbours
Flood Risk
Impact on Trees
Other Material Considerations

Recommendation

APPROVE

THE APPLICATION

Reserved Matters consent is sought for the construction of a new dwelling on land between 212-218 The Drove, Barroway Drove.

Outline permission was granted on 17th October 2017 for one dwelling. **All matters were reserved.**

The site comprises a parcel of land bound to the south east by agricultural fields, to the each side by residential dwellings and their curtilage. Access to the site is via The Drove which forms the North West boundary. A row of young maple trees, belonging to a third party, runs parallel to the north east boundary and a drain is proposed to be culverted along the South West boundary, maintaining access to blue land to the rear.

The site is within Flood Zone 3 of the Borough Council's SFRA (2018).

SUPPORTING CASE

As part of our resettlement plan for when I finally leave the Army, my wife and I made the decision to purchase a plot of land with approved outline planning permission to build our 'forever home'. A typical Forces family, we are currently in our 9th home. This is the opportunity to finally put down roots for our children and to be closer to our families. We completed the purchase of the plot May 21 and, after working with our architect since Jan 21, submitted our RM application. Deciding to delay my commissioning application, I extended for 1 year in my current role in Colchester to benefit the project; aiming to move into the completed build Summer 23. It is likely I'll spend my final assignment unaccompanied, but this is viewed as an acceptable sacrifice to gain stability prior to our eldest child starting secondary school.

We were distressed to see objections appear on the portal from the three neighbours. It was surprising, as we had enjoyed conversations with immediate neighbours whilst visiting the

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plot; no issues or concerns were raised (plans were public). As potential future neighbours for the next 30/40 years, it was upsetting to read. Viewing the comments, it is reasonable to assume one neighbour encouraged not only 210 to object (as stated 5 Jun 21), but also 218. We respected the objections and worked with the planning office in an attempt to resolve what was relevant. We submitted revised plans to appease the objections. One neighbour, despite the subject of his original objection being outside of the development boundary, continued to object. It became particularly unreasonable when the neighbour's son's newly employed agent started submitting objections. The language and tone used has since become personal, subjective and derogatory. Unnecessary demands were made. Regardless, we continued to appease the objections systematically by making reluctant and severe amendments to our plans; each time the planning department was satisfied. This was often difficult as the agent had submitted contradictory objections e.g. 1 Jul demanding an "extra high fence" (para 3) then on 12 Nov stating the fence is too high and "overbearing" (as applicants, we did not want a fence in the first place). This process repeated itself several times between May and Dec 21, at great cost and additional stress. Regrettably the hostility received is plain to see on the portal. The formal neighbour consultation expiry date was 9 Jul 21.

The planning department are recommending approval with conditions. From the planning department's view, and ours, all objections have been suitably appeased and/or mitigated. The following agencies are also in favour/have no objections to our application:

Environmental Agency 24 May and 30 Jun 21.
Stow Bardolph Parish Council 4 Jun 21.
Internal Drainage Board 22 Jul (formally submitted 18 Nov 21).
Council Arboricultural Officer* 16 Nov 21 and 9 Dec 21
Highways Agency* 19 Nov 21.

Despite all objections being suitably mitigated, the objector employed a solicitor Dec 21 to challenge our application directly with the Assistant Director (circumnavigating the process). None of the matters raised by the solicitor were new, relevant or considered 'planning reasons'. Some information provided was not valid (e.g. outdated covenants). Our planned build is inside the development boundary of approved outline planning permission 17/01730/O3, approved with no objections 17 Oct 17.

Finally, please may I request the Planning Committee consider the Armed Forces Covenant when deciding on this RM application. Thank you.

PLANNING HISTORY

17/01730/ETLCON: Application Permitted: 12/11/20 - CONFIRMATION OF EXTENSION OF UNIMPLEMENTED PERMISSION, REFERENCE (17/01730/O) TO (1st) MAY 2021 - Land Between 212 & 218 The Drove

17/01730/O: Application Permitted: 17/10/17 - Proposed Two Storey Dwelling - Land Between 212 & 218 The Drove

RESPONSE TO CONSULTATION

Parish Council: SUPPORT - no reasons given

Highways Authority: NO OBJECTION - subject to standard access/turning area conditions

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Internal Drainage Board: NO OBJECTION to amended plans - an application for Byelaw consent for in the infilling of the dyke has been submitted by the applicant

IDB Response to re-consultation

Following discussion of the application at Planning Committee in January, the Internal Drainage Board requested their comments dated 18th November are removed and updated their overall response as follows:

'In relation to the drainage matters relating to the site, our comments are:

The proposed piping of the ditch will require the consent of the Board under the Land Drainage Act 1991. This is separate to the planning process and the granting of planning permission does not guarantee the Board's consent. However, providing the applicant provides a technically sound proposal, a consent would be issued. It should also be noted that the surface water discharge from the site will require the Board's consent.

As stated in previous correspondence, there is a land drain pipe that discharges into the ditch to be piped. This drain provides drainage to neighbouring properties that have suffered from historic flooding problems. It is vital that this pipe is not impeded by the piping of the watercourse. The Board will not issue a consent unless the applicant can demonstrate a clear connection into the proposed new pipe.

The Board understands that there may be a land ownership issue in relation to the ditch. When determining consent, the Board will only look at the technical aspect of the application. Land ownership is a civil matter that we would not take into account. Equally, the granting of consent does not mean a person can undertake the work if they only owned part of the ditch or none of it.

If the watercourse remains open, the applicant will need to ensure that adequate access is left to maintain the watercourse.

I hope the above clarifies the Board's position in relation to this site. Could I please ask that the Board's comments dated 18th November 2021 be removed from the site as they were sent in error and related to a different site.'

Arboricultural Officer: NO OBJECTION - subject to conditions, stating the following comments:

'I've re-visited the above in light of new representations and I am still of the opinion that the proposals can be built.

The tree survey, submitted by the neighbour, and subsequent mitigation measures supplied by the applicant detail suggest that the use of mini piles/screw piles with a ring beam will enable the dwelling to be built in its current proposed footprint. As the trees are still in the first phase of their growth, they will be able to be pruned, and will respond well to pruning, to allow the trees to continue to grow in their location in conjunction with the new building.'

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REPRESENTATIONS

EIGHTEEN letters of **OBJECTION** total (on behalf of three addresses), including a third party's tree survey. The comments raise issues summarised as follows:

- Filling in of drainage dyke and flooding
- Loss of privacy from windows and patio doors on side elevations - obscure glazing and restricted opening requested
- Proposed boundary construction and implementation
- Impact on trees - including a tree survey and query over representation of mitigation measures on proposed site plans
- Query/concern raised over ownership of south west strip of land/dyke
- Impact of proposed staircase and screening
- Existing covenants on site
- Ability for visibility splays to be provided across third party ownership
- Query over suitability of 'prior to occupation' screening/staircase condition
- Comments outlining history of culverted drain which is partly within blue land to the rear of the site

ADDITIONAL REPRESENTATIONS RECEIVED

ONE additional letter was received querying ownership issues of the dyke to the south west of the plot which has previously been discussed

LDF CORE STRATEGY POLICIES

CS06 - Development in Rural Areas

CS08 - Sustainable Development

CS12 - Environmental Assets

SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016

DM3 - Development in the Smaller Villages and Hamlets

DM15 – Environment, Design and Amenity

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

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OFFICER ASSESSMENT

The key issues are:

- Design and Form and Character
- Impact on Neighbours
- Flood Risk
- Impact on Trees
- Other Material Considerations

Design and Form and Character

The principle of development on site has previously been established and this application seeks consent for the reserved matters which include scale, layout, appearance and landscaping.

The proposed design includes the construction of a two-storey dwelling with front gable projection comprising a garage at ground floor. The site will be sloped at the front to allow a level access to the garage and parking/turning area for cars however land levels are proposed to remain as existing to the rear of the dwelling. Proposed floor levels will be raised by a maximum of approximately 1.4m to 0.250AOD to accord with the approved FRA in line with a condition on the outline approval. Ground levels will be left as existing to the rear of the dwelling, with steps provided from the rear elevation.

With a maximum height of approximately 10.8m (including raised floor levels), the proposed dwelling's ridge height will extend above that of the existing dwelling to the immediate south. To the north, the dwelling approved under application ref 19/01133/RM has a total height of approximately 10.3m (including raised ground levels) and therefore, the total height of the proposed dwelling is not considered likely to lead to significant adverse impacts on the form and character of the street scene or amenity of the locality. The reduced height of the front garage projection and feature gable ends (8.3m and 7.2m to ridge) and eaves height of 5m from proposed ground level, further limits any significant impact and will soften the overall appearance of the dwelling when viewed from the wider street scene.

A high level of brick detailing is proposed, with eaves detailing, contrasting brickwork above windows and a brick plinth. Given the mix of dwelling types in the immediate vicinity, the overall design of the dwelling is therefore considered acceptable and complies with policies CS08 and DM15 of the Local Plan.

No material details were provided as part of this application and conditions and therefore recommended to ensure a suitable external appearance.

Impact on Neighbours

The dwelling is considered to be sufficiently distanced from the south west boundary of the site to mitigate any potential impact on the adjoining property.

To the north east, the neighbouring dwelling has extant planning permission for a new dwelling, which will also be raised by 1.4m from existing ground level (to a total height of approximately 10m). This neighbouring dwelling benefits from an unobscured sitting room window on the side elevation facing the site and has a patio to the rear for which 1.8m high screening is conditioned to limit any impact on the application site.

Proposed roof lights serving the guest bedroom in the eaves are considered suitably distanced from the dwelling to the south west of the site to limit any adverse impact.

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The proposed plans have been amended during the course of this application to change windows to high level and to alter the internal layout to ensure that there are no windows to habitable rooms proposed close to the shared boundary on this north east side elevation. Proposed conditions will limit windows on this elevation to be high level and/or obscure glazed in the interests of the amenities of the neighbouring dwelling. Living room windows are proposed on the ground floor side elevations of a feature gable to the rear of the dwelling, whilst located on side elevations, given the size of these windows and the distance to boundaries, 8m to the north and 9m to the south, the windows are considered unlikely to lead to any significant impact on the amenity of surrounding dwellings. It should be noted that application ref 19/01133/RM to the north was approved to include a similar window, also to a habitable room, approximately 4m to the shared boundary. The proposed windows are therefore considered unlikely to lead to any significant impact on the amenity of adjoining properties.

Proposed steps on the north east elevation are located forward of the front elevation of the approved neighbouring dwelling and therefore any loss of privacy would occur only to the front parking/driveway area. The angle between dwellings is such that, when combined with proposed screening, any window to window relation is unlikely, however it is recommended that the proposed steps and screening is conditioned to ensure that suitable details are provided for the avoidance of doubt to ensure that the doorways and raised platform on this elevation will not lead to any adverse impact on adjoining dwellings.

Sitting room windows are proposed on both side elevations of a central gable projection to the rear of the property. Whilst these windows may allow some viewpoint towards neighbouring dwelling, the proposed windows are suitably distanced from neighbouring dwellings to mitigate any significant adverse impact.

Windows on the front and rear elevations will not impact on the amenity or privacy of neighbouring dwellings.

Boundary treatments include close boarded fencing to side boundaries and hedging to the rear which is considered acceptable given the mix of materials in the immediate locality.

Overall subject to the aforementioned conditions, the proposal is considered to comply with para 130 of the NPPF (2021) and policy DM15 of the SADMPP (2016).

Flood Risk

Outline planning permission was granted subject to conditions ensuring that the proposed finished floor levels are no lower than 0.250m AOD, that no ground floor sleeping accommodation is proposed and that flood resilient measures are incorporated into the design. The application complies with this recommendation which results in raised land and foundations measuring a maximum of approximately 1.5m from ground level.

The ground is proposed to be raised in a gradual slope from the level of the adjacent highway to the front door of the property, leaving spaces to the side of the property at existing ground level to allow access to the culverted drain to the south and to ensure no damage to the roots of the adjacent trees to the north. Whilst the impact of raised ground levels on the overall height of the dwelling is noted, given the mix of dwellings in the immediate locality, including existing dwellings which have similar constraints, the proposed flood risk mitigation measures are considered acceptable. The dwelling will be safe for its lifetime and complies with the revised NPPF.

The raised floor level will increase the overall height of the dwelling and therefore has the potential to increase any impact on neighbouring dwellings, however proposed ground levels and distance to side boundaries (approximately 2m to the north and 5m to the south) are considered sufficient to limit any adverse impact on adjoining properties. The dwelling to the north is also subject to the same flood risk mitigation measures and so is also raised above existing ground level by approximately 1.4m which further limits the impact on the street scene.

The proposed raised external staircase on the north east elevation of the proposed will project in close proximity to the shared boundary, as a result of the tree mitigation measures and proximity to the boundary a condition it recommended to ensure that full details of this proposed staircase and side boundary treatment come forward prior to the occupation of the dwelling to ensure a suitable external appearance with limited impact on both the third party trees as well as on the amenity of the street scene. Grounds levels are not proposed to be raised to the south of the dwelling and so it is not necessary to condition proposed boundary treatments on this elevation.

Impact on Trees

A row of young maple trees is positioned directly adjacent to the shared north east boundary of the site (5 trees total). These trees are in third party ownership and, given their proximity to the boundary where foundations are proposed, may be impacted by the proposal if adequate mitigation measures are not in place.

A tree survey was submitted on behalf of a third party which outlined the impact to trees discussed above. The conclusions of the tree survey are noted however, following discussions with the Arboricultural Officer, the mitigation measures proposed (i.e. piling foundations and re-routing of services) which meet with the British Standards requirements are considered sufficient to overcome the issues raised. Conditions are recommended to ensure that the building is completed in full accordance with the proposed measures.

The agent has, in response to the tree survey, submitted a method statement and amended plans to clarify that piling foundations are proposed (as recommended by the British Standard BS5837 - 2012) and all services are to be run under the floor of the dwelling rather than underground along the site boundary. This limits the amount and type of works that are to take place within the root protection area of these trees. The Arboricultural Officer has raised no objections to the scheme on these grounds, subject to conditions relating to a detailed methodology of works.

Other material considerations

An existing drain runs along the south west boundary of the site and is proposed to be culverted/piped. This process will require additional consent from the IDB under separate legislation.

Contradictory land ownership certificates and information have been provided by the applicant/agent and the neighbouring dwelling. The issues raised around land ownership (in particular the ownership of the drain to the south of the site) are noted, however this application is for reserved matters consent based on the approved outline planning permission's red line area. **Ownership of the land was not challenged at Outline stage however notwithstanding this, following the deferral of the application, legal advice was sought. This advice is as follows:**

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“In regards to ownership, it is the responsibility of the applicant to submit the correct certificate. The Council is entitled to rely on the certificate that has been submitted, it is not under an obligation to investigate/confirm legal title for every planning application that is made. If an applicant submits an inaccurate certificate it could potentially affect the procedural legality of the application. That is a matter that is at the risk of the applicant. Whether or not a planning permission can actually be implemented is a matter of private civil law between the parties with legal control of the application site. That is not a material planning consideration.”

Comments have also been received in relating to existing covenants on site which restrict potential nuisances. Covenants are a civil matter do not restrict this granting of this current application.

A neighbour representation noted the existing visibility splay condition on the outline and queried how this could be secured given the applicants have no control of surrounding plots. These comments are noted however this condition states that the splays shall be provided across the whole of “the site’s” roadside frontage and therefore does not require the control or ownership of any land other than that which is within the red line area. This condition has been recommended again as part of the LHA’s response to this application however it is not considered reasonable or necessary to re-impose this condition given compliance with the outline consent is also required. Other conditions recommended by the LHA are recommended to ensure that suitable access and parking/turning arrangements are implemented and thereafter retained.

Conditions have been recommended as part of the approval relating to detailed foundation plans and tree mitigation details which will allow the submission of additional detail prior to construction commencing on site – this enables suitable mitigation measures to be put in place in conversation with a structural engineer and for these details to be agreed by the Arboricultural Officer.

Comments surrounding the wording of conditions and details of screening prior to the occupation of the dwelling are noted – the wording of this condition (Condition 4) allows revisions to the proposed screening and steps once the positioning and type of proposed foundations have been confirmed under Condition 3. This condition is in place to ensure the privacy of neighbouring dwellings.

The IDB replied to comment on the 18th November 2021 (in response to revised plans) and removed their initial objections/concerns raised to the scheme. No changes have been made to the culvert on the plans since this response was received. Comments then received on 23rd December refer to ownership and raise concern over the ownership issues noting that if the ditch is not wholly within the control of the applicant then the dwelling could restrict access.

Following discussion of the application at Planning Committee in January, the Internal Drainage Board requested their comments dated 18th November are removed and updated their overall response as discussed in the Consultations section above. The IDB note that ownership is not a relevant matter for their consent process and therefore raise no objection to the application, however noting that Byelaw consent would be required under a separate process. In the event that byelaw consent is not granted for the current proposed plans, planning permission would need to be sought for any new amendments.

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Comments relating to the existing culvert to the rear of the site relate to works outside of the red line area which cannot be controlled by this consent and the Board's consent would be required under a separate process.

The Armed Forces Covenant was mentioned both within the Applicant's supporting statement and within a response from a third party representation. The Armed Forces Covenant relates to fair and equal treatment for members of the armed forces however as a covenant this is not considered to form a material planning consideration.

In reference to lack of consultations to neighbours further to the north of the site, as these properties are not immediately adjacent to the site, no neighbour consult letters were sent out, a site notice was however displayed on the site for the required period and this complies with the necessary procedures.

CONCLUSION

The application site has extant outline consent for the construction of one new dwelling and therefore the principle of development on site is considered acceptable. The proposed dwelling is considered to be sufficiently distanced from side boundaries and suitably designed to have minimal impact on the overall form and character of the area. Conditions are recommended to ensure that obscure glazing is implemented in accordance with the approved plan and to ensure that full details of the proposed external screen are supplied prior to the first occupation of the dwelling to protect the amenity of adjoining properties.

The application is therefore recommended approval subject to the following conditions.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition: The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing 1 Rev 8
 - Drawing 2 Rev 8
 - Drawing 3 Rev 8
 - Drawing 4 Rev 7
 - Drawing 5 Rev 10
 - Drawing 6 Rev 8
 - Drawing 8 Rev 4
 - Drawing 10 Rev 8
 - Drawing 11 Rev3
 - Drawing 12 Rev 6
 - Drawing 14 Rev 7
 - Drawing 15 Rev 1

- 1 Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 Condition: The development hereby permitted shall be completed in accordance with the Proposed Mitigation measures and Method Statement for foundations and services within Tree T1, T2 & T3 RPA's received via email on 5th December 2021 and in accordance with the details shown on the approved plan, dwg No. 10 Rev 7. In particular, the report states:

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- Service trenches and waste water to be routed through floor
 - Surface water, guttering downpipes outside of RPAs
 - Existing grounds levels retained adjacent to trees
 - Dwelling and adjacent external staircase to be constructed using sleeved bore mini piles or screw piling foundations of smallest practical size possible to prevent striking roots
- 2 Reason: To ensure that third party trees are suitably protected in accordance with the NPPF (2021) and to protect the amenities of the locality in accordance with Policy DM15 of the SADMP (2016).
 - 3 Condition: Prior to the commencement of groundworks, full details of the proposed piling method and location of the proposed ring beam as noted in Part B, para 4,5,6,7 of the submitted Proposed Mitigation Measures and Method Statement, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.
 - 3 Reason: To ensure that third party trees are suitably protected in accordance with the NPPF (2021) and to protect the amenities of the locality in accordance with Policy DM15 of the SADMP (2016).
 - 4 Condition: Notwithstanding the details shown on the approved plan, prior to the first occupation of the development hereby permitted, full details of the proposed external staircase and staircase screening and north east boundary treatment shall have been submitted to and approved in writing by the Local Planning Authority. Details shall include the type, height and materials of the proposed screen and fencing. The screening and boundary treatment shall be constructed in accordance with the approved details prior to the first occupation of the dwelling and retained and maintained in accordance with these details thereafter.
 - 4 Reason: In the interests of the amenities of the locality in accordance with the NPPF.
 - 5 Condition: Prior to the first occupation of the dwelling hereby permitted, the windows shown on north east elevation shown on dwg No. 18 Rev 3, serving the Kitchen, Dining Area, Utility Room, Gym, Main Bathroom and Hallway/Play Room shall be fitted with obscured glazing and any part of the window(s) that is less than 1.7 metres above the floor of the room in which it is installed shall be non-opening. The window(s) shall be permanently retained in that condition thereafter.
 - 5 Reason: In the interests of the amenities of the locality in accordance with the NPPF.
 - 6 Condition: Prior to the first occupation of the development hereby permitted the access shall be constructed in accordance with the highways specification TRAD 5 and thereafter retained at the position shown on the approved plan. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.
 - 6 Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.
 - 7 Condition: Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order (2015), (or any Order revoking, amending or re-enacting that Order) no gates/bollard/chain/other means of obstruction shall be erected

across the approved access unless details have first been submitted to and approved in writing by the Local Planning Authority.

- 7 Reason: In the interests of highway safety in accordance with Policy DM15 of the SADMP (2016).
- 8 Condition: Prior to the first occupation of the development hereby permitted the proposed access / on-site car parking / turning area shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 8 Reason: To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety.
- 9 Condition: No development shall take place on any external surface of the development hereby permitted until details of the type, colour and texture of all materials to be used for the external surfaces of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9 Reason: To ensure a satisfactory external appearance and grouping of materials in accordance with the principles of the NPPF.