



Appeal Decision

Site visit made on 28 April 2026

by Andrew Fuller BSc (Hons), Dip TP, MA, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 June 2026

Appeal Ref: 6004626

59 Kennel Lane, Witherley, Leicestershire CV9 3LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Daniel Swift of Swift Homes and Developments against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref is 25/00019/FUL.
 - The development proposed is demolition of barn, construction of 2 no. 2 bed cottages with associated parking.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of barn, construction of 2 no. 2 bed cottages with associated parking at 59 Kennel Lane, Witherley, Leicestershire CV9 3LJ in accordance with the terms of the application Ref 25/00019/FUL, subject to conditions set out in the attached schedule.

Background and Main Issues

2. The Council does not object to the demolition of the barn. Accordingly, the main issues are
 - Whether the location of the proposed development would comply with the development plan; and
 - the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Location of development

3. The strategy for safeguarding the countryside within the Council area is set out in Policy DM4 of the Site Allocations and Development Management Policies DPD (2016) (SADMP). In order to protect its intrinsic value, beauty and character, the policy strictly limits new development across the open countryside, other than where it meets criteria against which exceptions can be made. Where the criteria allows for residential development this is limited only to accommodation for rural workers or there-use of existing buildings.
4. Whilst the appeal site is located adjacent to the settlement boundary of Witherley, it is located within the open countryside. As the proposed development is new build, open market housing it would not comply with the types of development supported by Policy DM4 and would therefore be contrary to it.

Character and appearance

5. The appeal site has a direct interface with the existing built form within the settlement boundary of Witherley. As such, houses faces it from the opposite side of Kennel Lane, as well as bounding it to its remaining side. The site itself consists of a vacant, two-storey, brick barn sat in an area of gravel and hardstanding, with access onto the lane and bounded by open post and rail fencing.
6. The surrounding agricultural land is broadly flat and comprises fields of low hedging with occasional groups of trees. Directly adjacent and parallel to the site, is a public right of way (T27) with nearby overhead power lines. The main A5 road passes the village through the landscape at a short distance beyond the appeal site.
7. The adjacent group of buildings to the side, including a pair of semi-detached cottages (No's 57 and 59 Kennel Lane), a residential conversion of historic stable and kennel buildings, and other new residential development, are together known as the Atherstone Hunt Complex. These buildings sit at different positions and orientations to one another and the road but are largely a brick-built group of mostly two-storey pitched roof structures.
8. The main part of the village is located on the opposite side of Kennel Lane. The immediate interface mostly consists of modern housing, some of which directly overlooks the site, whilst others are located along Hunt Lane, the junction of which is broadly opposite the appeal site.
9. The barn on the site has limited historic or architectural value by virtue of its utilitarian design, disconnected association with other nearby buildings and poor condition. This, along with the urban interface on two sides and the adjacent power lines on the other side, makes for a site of limited contribution to the intrinsic value of this part of the open countryside and its beauty. Therefore, the proposal for a modest single building, comprising a pair of traditionally designed, red brick, semi-detached houses with deep front gardens and a side access to rear parking would have a very limited impact on the openness of the countryside and its immediate landscape character.
10. The built form of the Atherstone Hunt Complex and the power lines would surround the proposed houses in views on the main approach from the A5 down Kennel Lane. Furthermore, sequential views of the houses along the public right of way would place an urban backdrop to them from across the surrounding open countryside. Therefore, I do not find the proposed development to harm key views across this area of countryside.
11. This proposed building would not disrupt the distribution of built form either side of Kennel Lane where it is strongly experienced along the approaches from both directions. Despite the slight change in the balance of development along the lane, it would still retain its character and function as a boundary between the settlement and open countryside.
12. In making my decision, I have had regard to the Hinckley and Bosworth Borough Landscape Character Assessment (2017) (LCA). It identifies the site as falling within the Sence Lowlands Landscape Character Area (LCA-G). Moreover, I note its location within the Witherley and Surroundings Landscape Sensitivity Area. Amongst other things LCA-G is characterised by rural dispersed settlement

patterns of linear villages, scattered farmsteads and barns, as well as the local vernacular of red brick. As such, the existence of the Atherstone Hunt Complex is not an isolated historic anomaly, but a key component to this landscape and the setting of this site. New built form is not excluded from this character area and the proposal would contribute a new building that broadly adheres to this local vernacular and materiality.

13. National Planning Policy Framework (the Framework) and the National Design Guide (2020) (NDG) both advocate well-designed places that respond positively to prevailing character and setting. The building would be set back so as not to generate formal ribbon development. Instead, it would contribute to the informal group of the Atherstone Hunt Complex. Whilst not identified as a heritage asset, the complex would nonetheless be reflected in some of its design details and materiality. Moreover, the proposed size and scale of the houses would be subordinate to it.
14. The Council's Good Design Guide (2020) (Design Guide) only considers front dormer windows to be acceptable where this is a prevailing feature of the surrounding context. I noted on my site visit that whilst traditional dormer windows are not a common feature in the immediate area, the various complex pitched roofs of the Atherstone Hunt Complex would allow for the proposed dormers to assimilate with the various roof forms in the area. Moreover, on my site visit I saw the materials and architectural detailing to No's 57 and 59. This included red brickwork, brick arched window detailing, porch hoods, coloured window joinery, steep roofs and chimneys. The proposed houses broadly reflect these design components and would therefore contribute positively to local character and appearance.
15. Overall, I conclude that the proposed development would not harm the character or appearance of the surrounding area. As such, I find that the proposal would comply with policy DM10, which requires good design, and policy DM4, insofar as its requirements of new development in relation to character, appearance and separation between settlements.

Other considerations

16. Whilst the proposal does not include affordable housing or essential infrastructure, it does nonetheless attract a number of benefits. These benefits including the provision of two new dwellings in the district, together with associated economic benefits during the period of construction and once occupied. I attach moderate weight to these benefits in favour of the appeal.

Planning Balance

17. Whilst the housing would be well designed, the location of the proposed development would be in conflict with the development plan which seeks to strictly control new development in the countryside. It would therefore be contrary to the development plan as a whole.
18. The uncontested position of the appellant is that the Council has a housing land supply of 3.55 years. In these circumstances footnote 8 of the Framework advises that the policies that are most important for determining the application are out of date. Consequently, the Framework advises that planning permission should be granted unless any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

19. The scheme is well designed and would not cause material harm to the character of the settlement or countryside. It would make effective use of land and would contribute to addressing the shortfall in housing land supply in the District. The social and economic benefits that would result from the development attract moderate weight in favour of the scheme.
20. Taking all these matters into account, I find that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Consequently, the proposal constitutes sustainable development as defined in the Framework, and material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.
21. Due to the provisions of Schedule 7 of the 1990 Act and as none of the statutory exemptions apply in this case, the development may not be begun unless a biodiversity gain plan has been submitted to and approved by the local planning authority.

Conditions

22. The council has suggested a set of conditions in the event that the appeal is allowed. In imposing conditions, I have had regard to the tests within the National Planning Policy Framework, the Planning Practice Guidance, and relevant statute, and have accordingly amended the wording of certain conditions proposed by the Council without altering their aim.
23. In addition to the standard time condition (1), I have imposed a condition requiring that the development is carried out following the approved plans, in the interest of certainty (2).
24. A condition is necessary to address matters of potential contamination and its remediation (3). In the interest of enhancing local biodiversity, I have imposed a condition to secure a Biodiversity Enhancement Plan (4). To ensure that the proposed development acceptably assimilates with the character of the local area I have imposed a condition for materials (5). In the interest of satisfactory vehicular movement and parking I have imposed conditions (6) and (7). A condition to ensure that acceptable landscaping is secured has also been imposed (8). Finally, a condition is imposed to manage potential future overdevelopment on the site through the removal of permitted development (9).
25. The appellant has confirmed that the conditions, including the pre-commencement condition (C3) is acceptable.

Conclusion

26. For the reasons given above, I conclude that the appeal should be allowed.

Andrew Fuller

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 9842 03 (External Works Layout) and 9842 02 (Proposed Plans and Elevations)
- 3) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and
 - iii) a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

- iv) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - v) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 4) Prior to the commencement of any works above foundation level, a Biodiversity Enhancement Plan (in accordance with the measures stated within the Preliminary Bat Roost Assessment and Bird Survey Report (RICS on, October 2025) and drawing no 9842 03) shall be submitted to, and approved in writing by, the Local Planning Authority.

The Biodiversity Enhancement Plan shall include, but not be limited to, the make, model, and locations of at least:

- two woodcrete bat boxes;
- two woodcrete/integrated bird boxes;
- two bee bricks; and
- the planting of hedgerows and trees of native species of local provenance and species to attract pollinating insects as identified in the RHS 'Plants for Pollinators' database. Hedgerow mixes should include: 80% hawthorn (*Crataegus monogyna*), plus any one or more of the following: field maple (*Acer campestre*), dogwood (*Cornus sanguinea*), dog rose (*Rosa canina*) and holly (*Ilex aquifolium*).

All enhancement measures shall be implemented in accordance with the approved scheme and maintained thereafter.

- 5) No development above ground level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted 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 / samples.
- 6) The development hereby permitted shall not be occupied until the vehicular accesses, parking spaces and turning areas have been provided in accordance with drawing no 9842 03. Thereafter the access, parking spaces and turning areas shall be retained for the access, parking and turning of vehicles only.
- 7) The development hereby permitted shall not be occupied until the access drive and any turning area has been surfaced with tarmacadam, or similar hard bound material for a distance of at least 11 metres behind the highway boundary. Thereafter the surfacing of access and turning area shall be maintained in perpetuity.
- 8) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a statement setting out the design objectives and how these will be delivered;
 - earthworks showing existing and proposed finished levels or contours;
 - means of enclosure and retaining structures;
 - boundary treatments;
 - vehicle parking layouts;
 - other vehicle and pedestrian access and circulation areas;
 - hard surfacing materials;
 - an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be maintained for a period of five years from the date of planting. During this period, any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted at which time shall be specified in writing by the Local Planning Authority

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, AA, B, and E of Part 1 of Schedule 2 to the Order shall be undertaken.

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

Refusal of Planning Permission

Name and Address of Applicant

Mr Daniel Swift
Swift Homes and Developments
7 Willows Lane
Grendon
Atherstone
CV9 2QG

Name and Address of Agent (if any)

Tim Bailey
Bailey Design Limited
43A Mitchells Court
Lower Gungate
Tamworth
B79 7AS

Part I - Particulars of Application

Date of Application	Application No.
9 January 2025	25/00019/FUL

Particulars and location of development:

Demolition of existing barn and construction of two dwellings with associated parking.

Land To The South Of 59 Kennel Lane Witherley Atherstone Leicestershire

Part II - Particulars of decision

In dealing with the application, through ongoing dialogue and the proper consideration of the proposal in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the local planning authority have attempted to work with the applicant in a positive and proactive manner by offering a pre-application advice service and by seeking solutions to problems arising in relation to dealing with the planning application as required by the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). However, in this instance, it has not been possible to overcome the concerns raised and the proposal remains in conflict with the provisions of the Development Plan and therefore the application has been refused.

In pursuance of its powers under the Town and Country Planning Act 1990, the Hinckley and Bosworth Borough Council refuses to permit the carrying out of the development referred to in Part I hereof for the following reason(s):-

1. The scheme represents new residential development in the designated open countryside that fundamentally and detrimentally alters the rural character of the surrounding area through exacerbation of ribbon development in this location. By virtue of its size, scale, siting, layout, design, and architectural detailing, the development fails to preserve or respect the existing character of the site and the surrounding area, including the historic isolated character of the built form associated with the former Atherstone Hunt Complex, and the positive characteristics of Kennel Lane as a barrier between built form and the designated open countryside. The proposal therefore results in significant harm to the character of the site, the surrounding area, the intrinsic value, beauty, open character, and landscape character of the open countryside, as well as the Witherley and Surroundings Landscape Sensitivity Area, and the wider Sence Lowlands Landscape Character Area. This significant adverse impact is compounded by the visual prominence of the development from the public highway and Public Footpath T27.

As a result, the development is contrary to, and in conflict with, Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Chapters 12 and 15, and Key Policy Paragraphs 129, 135, and 139 of the National Planning Policy Framework (2024), the National Design Guide (2021) and the Good Design Guide (2020). The permanent and adverse impacts of the scheme significantly and demonstrable outweigh the potential benefits of the

IMPORTANT - PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

development in these site-specific circumstances and in accordance with Key Policy Paragraph 139 of the NPPF, the development is refused.

NOTES TO APPLICANT :-

1. The application has been determined in accordance with the following submitted details:

- | | |
|--|-------------------------|
| • Application Form | (submitted: 09.01.2025) |
| • Biodiversity Statement | (submitted: 09.01.2025) |
| • BNG Metric | (submitted: 07.02.2025) |
| • Design and Access, Planning Statement | (submitted: 09.01.2025) |
| • External Works Layout (9842 03) | (submitted: 11.11.2025) |
| • Existing Site Plan (9842 01A) | (submitted: 09.01.2025) |
| • Preliminary Roost Assessment & Bird Survey | (submitted: 14.10.2025) |
| • Proposed Plans (9842 02) | (submitted: 09.01.2025) |

C. Brown.

Christopher Brown MRTPI
Head of Planning

Date :17 December 2025

NOTES

1. It will be most helpful if the application number shown overleaf is quoted on all correspondence.
2. If you consider that this decision has been made invalidly through the Council failing to follow a procedure correctly, not having the legal power to make the decision in the way it did or through its decision being so unreasonable as no reasonable local authority would make the same decision based on the same facts, then you may enter a claim for judicial review to quash the decision. In order to proceed with a claim for judicial review an initial application for permission will need to be made to the Administrative Court, this application is required to be made "promptly and in any event within three months of the decision". The initial permission application will decide if you have an arguable case, whether you are sufficiently materially affected by the decision to bring the claim. If you are granted permission to bring the claim it will proceed to a full hearing at the Administrative Court. Although there is no requirement for you to do so it is highly recommended that you seek independent legal advice before bringing forward a claim for Judicial Review
3. If you are aggrieved by the decision of the Local Planning Authority to refuse permission you may appeal to the Planning Inspectorate in accordance with Section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice. If your appeal is against a Minor Commercial Development, we would advise you to view the guidance on the Planning Portal website under Procedure Guidance, to confirm the time frame for appealing. (Appeals must be made on a form which is obtainable from the Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, tel. 0303 444 5000 or online at <https://www.gov.uk/appeal-planning-decision>). You must use a Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the appeal form you require. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Local Planning Authority, (or could not have been so granted otherwise than subject to the conditions imposed by them,) having regard to the statutory requirements as set out in Section 78 of the Town and Country Planning Act 1990, to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him. Appeals- new time rules. Appeals relating to applications made to the Local Planning Authority on, or after, 14 October 2004 must be made within six months of the date of this notice. If you intend to submit an appeal that you would like examined by inquiry then you must notify your Local Planning Authority (planning@hinckley-bosworth.gov.uk) and the Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details can be found on [GOV.UK](https://www.gov.uk).
4. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application then, you must do so in accordance with the guidance found using the following link <https://www.gov.uk/appeal-enforcement-notice/>.
5. If permission to develop land is refused whether by the Local Planning Authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
6. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

RNOTES (02/07/2014)

RESIDENTIAL DEVELOPMENT, LAND ADJACENT TO 59, KENNEL LANE, WITHERLEY.

The Builder is to check and verify all buildings and site dimensions, levels and sewer invert levels prior to commencement of work.

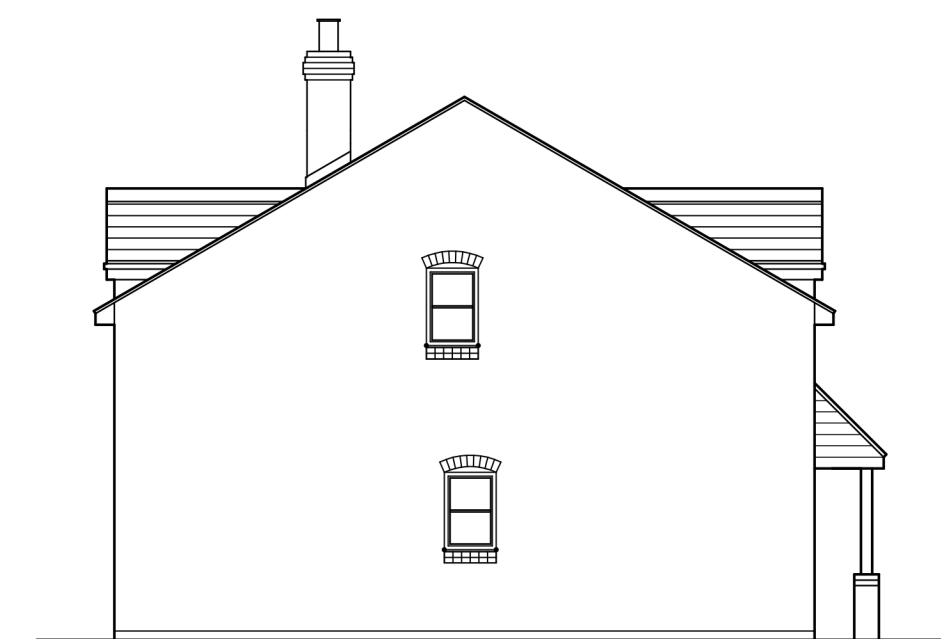
Do not scale off this drawing, work to figured dimensions only.

This drawing must be read and checked with all structural and relevant specialist drawings.

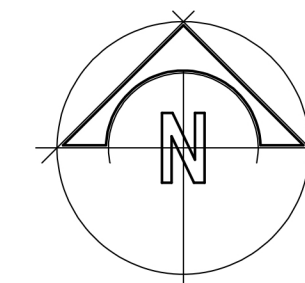
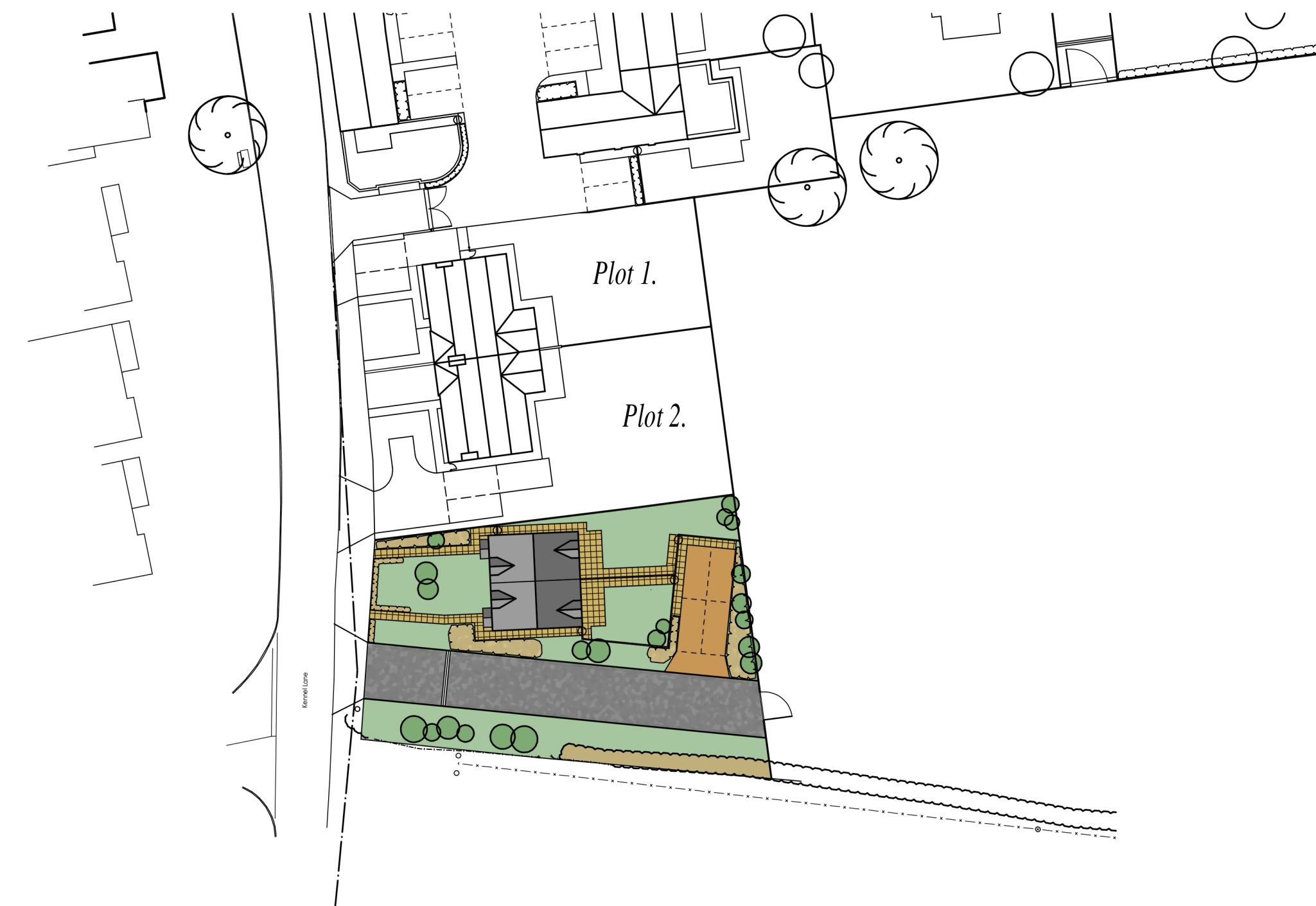
The Builder is to comply in all respects with the current Building Regulations and latest Codes of Practice.



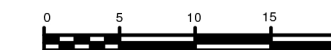
Plot 1. Plot 2.
FRONT ELEVATION - facing Kennel Lane.



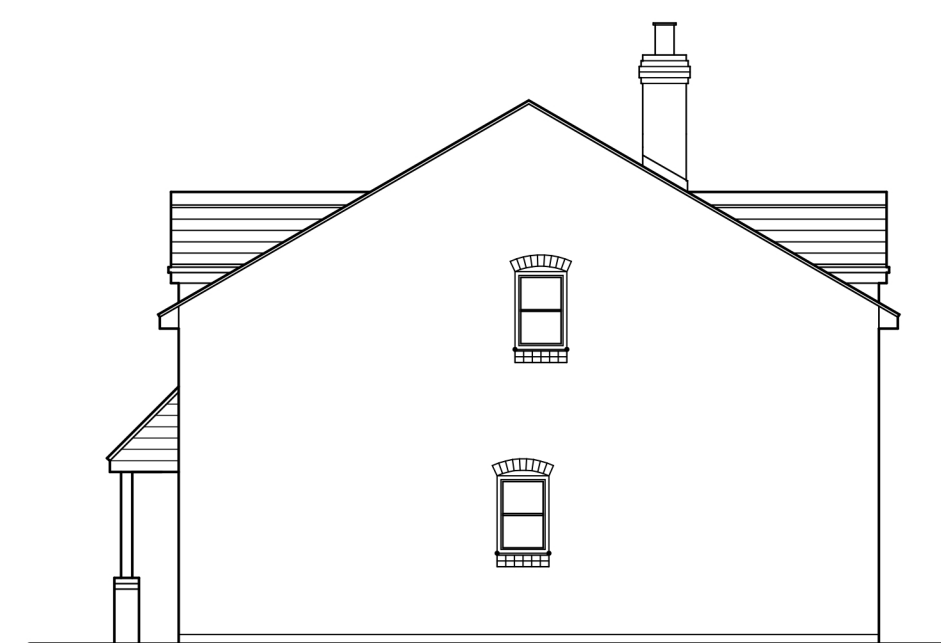
Plot 1.
SIDE ELEVATION - facing 59, Kennel Lane.



SITE LAYOUT.
Scale 1/500.

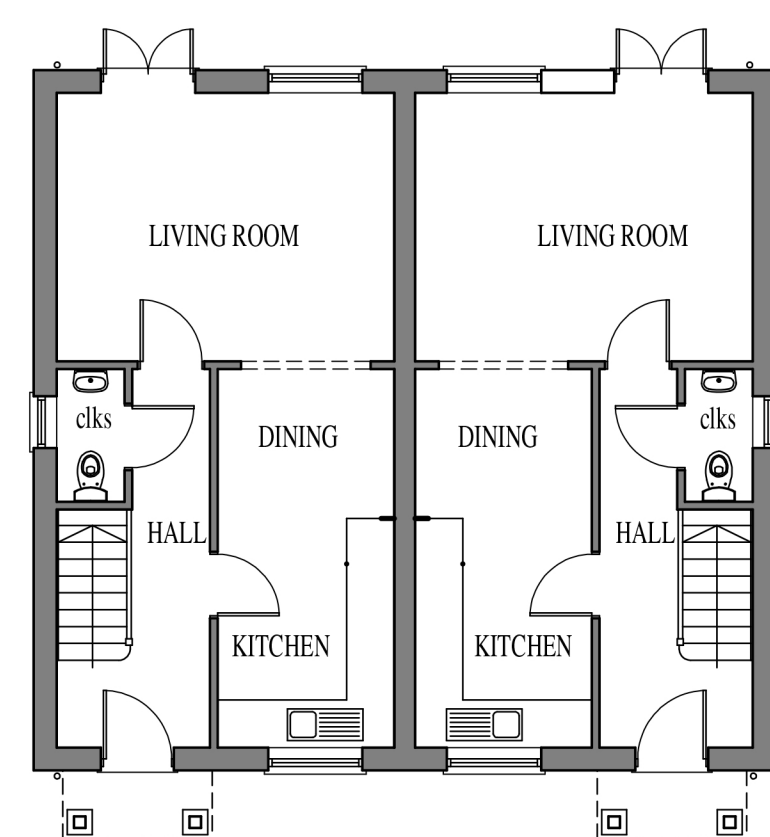


Plot 2. Plot 1.
REAR ELEVATION.



Plot 2.

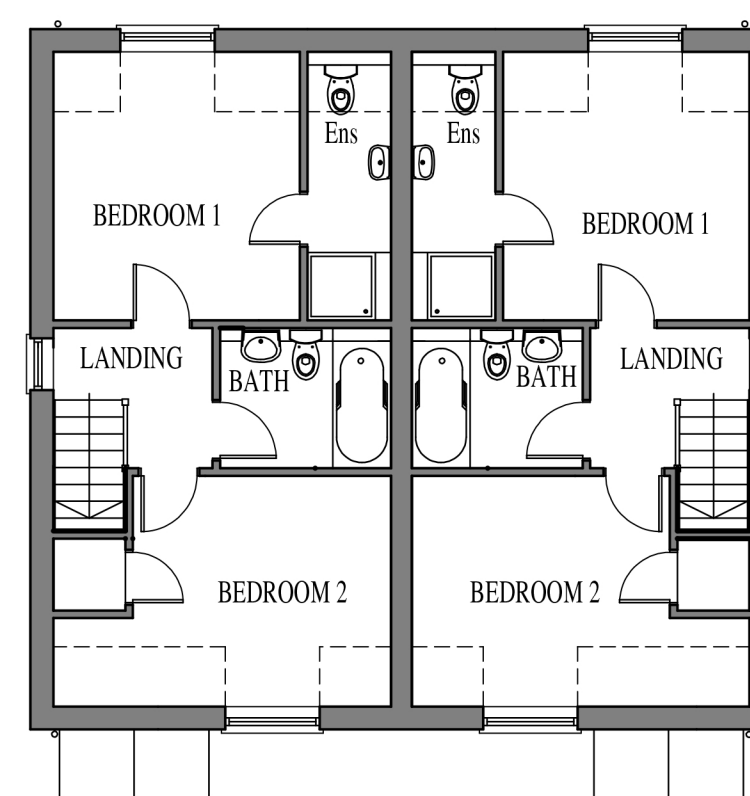
SIDE ELEVATION - facing field access.



Plot 1. Plot 2.

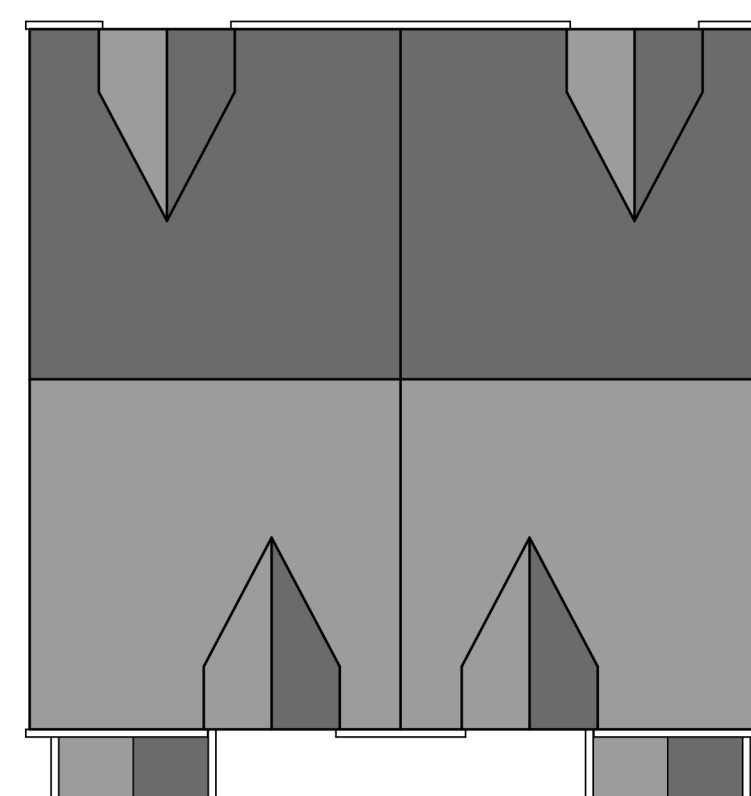
GROUND FLOOR PLAN.

Scale 1/100.



Plot 1. Plot 2.

FIRST FLOOR PLAN.



Plot 1. Plot 2.

ROOF LAYOUT.



revisions		JOB No.
No.	Description	Date

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RESIDENTIAL DEVELOPMENT,
LAND ADJACENT TO 59, KENNEL
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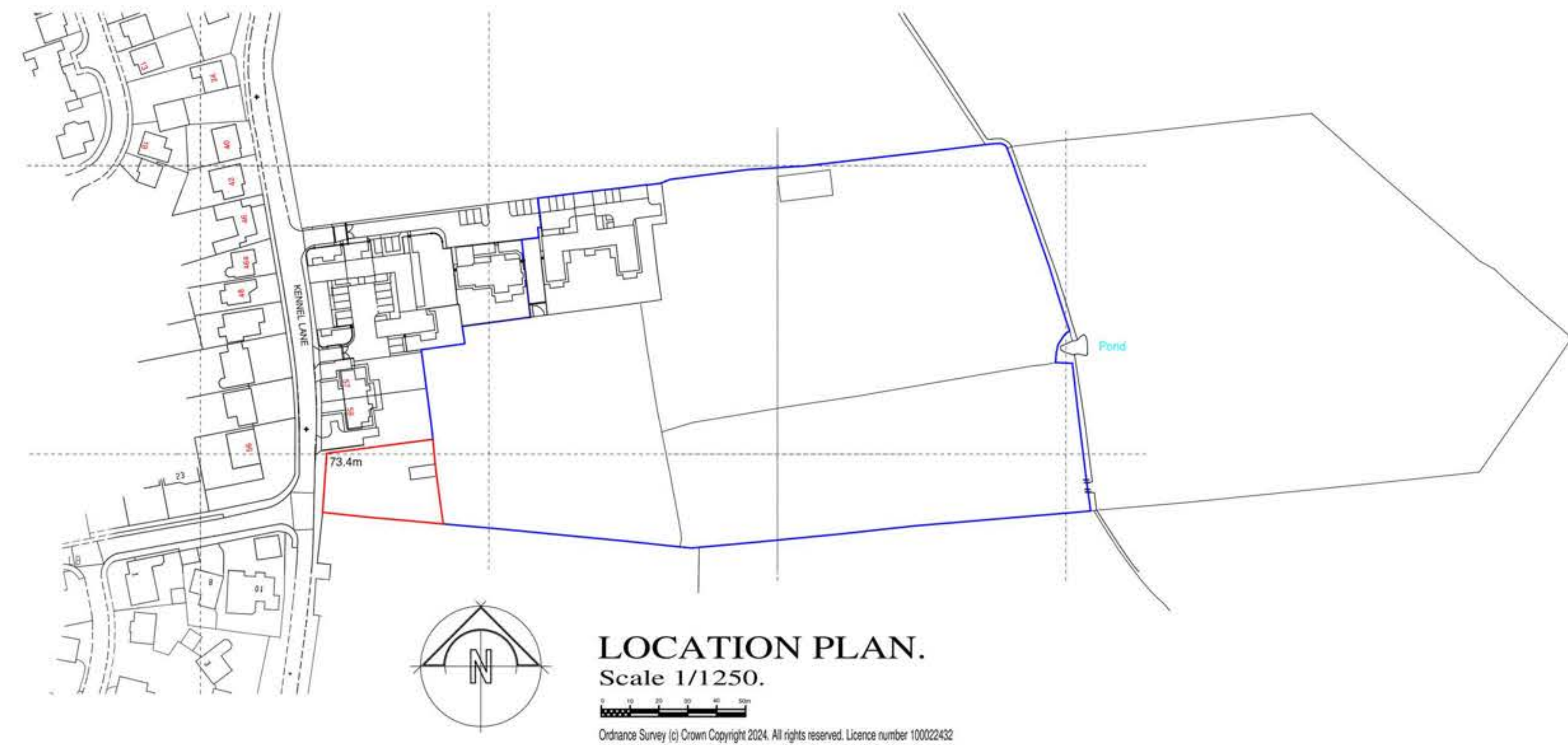
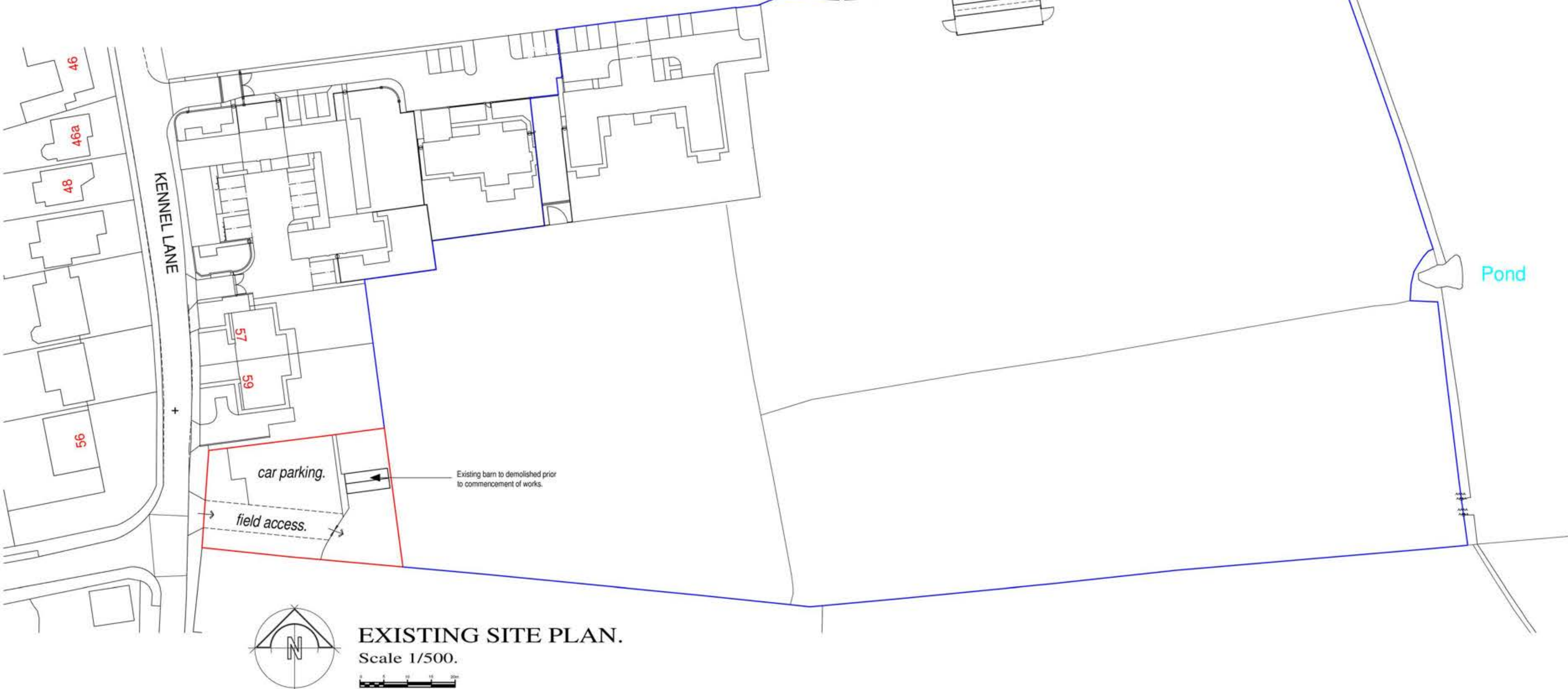
PROPOSED PLANS AND ELEVATIONS.

SCALE	DATE	DRAWN	JOB No.
1/100, 1/500.	October 24.	tb.	9842.02

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The Builder is to check and verify all buildings and site dimensions, levels and sewer invert levels prior to commencement of work.
Do not scale off this drawing, work to figured dimensions only.
This drawing must be read and checked with all structural and relevant specialist drawings.
The Builder is to comply in all respects with the current Building Regulations and latest Codes of Practice.



revisions			JOB No.
No.	Description	Date	
A.	Note and photographs added.	18/12/24.	

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**RESIDENTIAL DEVELOPMENT, LAND
ADJACENT TO 59, KENNEL LANE,
WITHERLEY.**

LOCATION & EXISTING SITE PLAN.

SCALE	DATE	DRAWN	JOB No.
1/500, 1/1250.	Sept. 24.	tb.	9842.01

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