# LOCAL MEMBER OBJECTION & PETITION

COMMITTEE DATE: 11/01/2017

APPLICATION No. 16/02561/MNR APPLICATION DATE: 25/10/2016

- ED: PONTPRENNAU/ST MELLONS
- APP: TYPE: Variation of conditions

APPLICANT: Mr & Mrs M Marogi LOCATION: PART OF LAND AT SOUTHLANDS, 33 MELVILLE AVENUE, OLD ST MELLONS, CARDIFF PROPOSAL: VARIATION OF CONDITION 2 TO SUBSTITUTE THE APPROVED PLANS TO COMPLY WITH STRUCTURE AS BUILT, PREVIOUSLY APPROVED UNDER 16/00015/MNR

**RECOMMENDATION 1**: That planning permission be **GRANTED** for the carrying out of the development in accordance with planning permission reference 16/00015/MNR without complying with condition 2 but subject to the following conditions:

- 1. The development shall be carried out in accordance with the following approved plans and documents:
  - 101 As built elevations
  - 102 As built ground and first floor plans
  - 104 As built loft and roof plans
  - 103 As built site plan
  - 101 Overlay Site Plan (received 19<sup>th</sup> December 2016)

Reason: For the avoidance of doubt as to the extent of the permission.

2. Prior to the occupation of the dwelling hereby approved a plan indicating the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed as approved before the building is occupied.

Reason: In the interests of visual and residential amenity, in accordance with policy KP5 of the Cardiff Local Development Plan.

- 3. The first floor windows on the side elevations shall be non-opening below a height of 1.8 metres above internal floor level and glazed with obscure glass and thereafter be so maintained. Reason : To ensure that the privacy of adjoining occupiers is protected.
- 4. Development on the site shall cease and shall not re-commence until a site assessment, including ground permeability testing as appropriate, has been undertaken to ascertain whether sustainable drainage

techniques such as soakaway drainage and permeable paving can be utilised for the disposal of surface water run-off and a drainage scheme for the disposal of both surface water and foul sewage has been submitted to and approved in writing by the local planning authority, which shall include sustainable drainage techniques if, as a result of the ground permeability tests, these have been found to be feasible. No part of the development shall be occupied until the drainage scheme is carried out and completed as approved.

Reason: In the interests of the proper drainage of the site, in accordance with policy EN10 of the Cardiff Local Development Plan.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking or re-enacting that Order), no structure or extension shall be placed within the curtilage of the dwelling hereby approved or any alteration made to the roof, nor shall any windows or other openings be made in the external walls of the dwelling other than those shown on the approved plans.

Reason: To ensure that adequate amenity space is retained for the development and in the interests of residential amenity and privacy, in accordance with policy KP5 of the Cardiff Local Development Plan.

 No part of the building above ground floor level shall be used as an external balcony or sitting out area at any time. Reason: So as not to detract from the amenities of neighbouring properties by reason of loss of privacy, in accordance with policy KP5 of the Cardiff Local Development Plan.

**RECOMMENDATION 2:** The developer is advised that no surface water/land drainage run-off shall be permitted to connect (either directly or indirectly) to the public sewerage network. The developer is advised to contact Dwr Cymru Welsh Water's Operations Contact Centre on 0800 085 3968 with regard to the position of a public sewer which crosses the application site. Under the Water Industry Act 1991, Dwr Cymru Welsh Water has rights of access to its apparatus at all times. No development shall be permitted within 3m either side of the centre line of the public sewer. The approximate position of the sewer can be seen on the Statutory Public Sewer Record. Some public sewers and lateral drains may not be recorded on maps of public sewers because they were originally privately owned. The presence of such assets may affect the proposal.

**RECOMMENDATION 3:** The applicant may need to apply to Dwr Cymru / Welsh Water for any connection to the public sewer under S106 of the Water industry Act 1991. If the connection to the public sewer network is either via a lateral drain (i.e. a drain which extends beyond the connecting property boundary) or via a new sewer (i.e. serves more than one property), it is now a mandatory requirement to first enter into a Section 104 Adoption Agreement (Water Industry Act 1991). The design of the sewers and lateral drains must also conform to the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains, and conform with the publication "Sewers for Adoption"- 7th

Edition. Further information can be obtained via the Developer Services pages of www.dwrcymru.com.

**RECOMMENDATION 4:** The applicant is advised that since 27<sup>th</sup> July 2015, the owners/developers of new residential properties are required to purchase the bins required for the new properties. Further information regarding waste/recycling and the types of bins required is available in the Supplementary Planning Guidance "Waste Collection and Storage Facilities", which can be found on the Council's website.

## 1. DESCRIPTION OF PROPOSED DEVELOPMENT

- 1.1 The application seeks to retain development that has already been carried out which is not in accordance with the plans that were approved under application reference no. 16/00015/MNR. That application was for full planning permission for the erection of a 2 storey detached 4 bedroom house with a family room and games room in a third storey within the roof space. The house is to have an integral double garage and two additional off street parking spaces. As originally approved, the building would measure approximately 14.5m wide x 11.8m deep and would be set back from the highway by between 3.3m and 8m, with a paved frontage containing a strip of landscaping. The existing stone boundary wall on the site frontage would be retained. The house would sit within a plot measuring 17 to 25m wide and approximately 28m deep. The rear garden would be around 9.5m to 11m long.
- 1.2 The house is to be finished in white render with grey fibre cement cladding panels to the upper parts of the gables and blue-grey roof tiles. There would be two gables to the front elevation and two to the rear, large areas of vertical glazing to the front and rear and large rooflights serving the third storey in the roof space.
- 1.3 The main differences between the building that has been erected and the approved scheme are as follows:
  - The main front elevation of the building is set around 0.46m further back into the plot;
  - The front gable does not project so far from the main front wall it is now around 1.6m deep rather than 2.4m. The closest part of the building to the road the gable is now 3.6m rather than 2.4m from the highway.
  - The eastern side elevation is now between 7.6m and 10m from the western side of 33 Melville Avenue, rather than around 7.1m to 9.7m.
  - To the rear, the eastern part of the house is 10m from the rear garden of Manordeifi at its closest point rather than 11.2m, and a single storey extension has been added to the eastern side of the rear elevation which is between 8.4m and 9m from the rear garden of Manordeifi.
  - The position of the boundary between the new house and 33 Melville

Avenue has been amended – it is now approximately 2m closer to the new house.

- Front elevation: rooflights are smaller, the garage door is narrower, the position of window transoms has been slightly altered, the gable on the western side is less deep.
- East elevation: The chimney has been omitted, windows and rooflights have been repositioned.
- West elevation: Windows and the side door have been repositioned.
- Rear elevation: Windows have been made slightly narrower and transom positions amended, a 5.3m wide single storey lean-to extension with rear-facing door and window has been added to the western side of the rear elevation.

# 2. **DESCRIPTION OF SITE**

2.1 The site was formerly part of the garden of a large, detached, two storey house (33 Melville Avenue) dating from the 1930s, and is located in an established residential area. The site, measuring approximately 570 square metres, lies to the west of the original house, which is located on a bend in the highway with road frontages to the north and the east boundaries. The application site has a single frontage to Melville Avenue. To the west is a garage and driveway serving a large detached house located to the south west of the site. Another large detached house with an extensive garden lies to the south. To the north, on the opposite side of Melville Avenue, is a row of detached bungalows, some with dormers.

# 3. SITE HISTORY

- 3.1 14/02242/MNR Two storey residential dwelling (outline application) approved.
- 3.2 16/00015/MNR Residential dwellinghouse approved.

## 4. **POLICY FRAMEWORK**

- 4.1 Cardiff Local Development Plan 2006-2021: KP5 (Good Quality and Sustainable Design); EN10 (Water Sensitive Design); T5 (Managing Transport Impacts); W2 (Provision for Waste Management Facilities in Development).
- 4.2 Following the adoption of the Cardiff Local Development Plan, many existing Supplementary Planning Guidance documents are no longer linked to adopted development plan policies. However, where existing SPG is considered consistent with the new LDP policy framework, it will continue to be material to the Development Management process. The following Supplementary

Planning Guidance is considered relevant to the determination of this application as it is considered consistent with LDP policies KP5, T5 and W2 and can be used to help inform the assessment of relevant matters –

Waste Collection and Storage Facilities (October 2016); Access, Circulation and Parking Standards (January 2010); Cardiff Residential Design Guide (March 2008); Infill Sites (April 2011).

#### 4.3 Planning Policy Wales (November 2016):

3.1.4: Factors to be taken into account in making planning decisions (material considerations) must be planning matters; that is, they must be relevant to the regulation of the development and use of land in the public interest, towards the goal of sustainability. The planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. When determining planning applications local planning authorities must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits.

4.4.3: In contributing to the Well-being of Future Generations Act goals, planning policies, decisions and proposals should (inter alia):

- Promote resource-efficient and climate change resilient settlement patterns that minimise land-take and urban sprawl, especially through preference for the re-use of suitable previously developed land and buildings, wherever possible avoiding development on greenfield sites
- Locate developments so as to minimise the demand for travel, especially by private car
- Ensure that all local communities both urban and rural have sufficient good quality housing for their needs, including affordable housing for local needs and for special needs where appropriate, in safe neighbourhoods

4.11.8 Good design is essential to ensure that areas, particularly those where higher density development takes place, offer high environmental quality, including open and green spaces. Landscape considerations are an integral part of the design process and can make a positive contribution to environmental protection and improvement, for example to biodiversity, climate protection, air quality and the protection of water resources.

4.11.9 The visual appearance of proposed development, its scale and its relationship to its surroundings and context are material planning considerations. Local planning authorities should reject poor building and contextual designs. However, they should not attempt to impose a particular architectural taste or style arbitrarily and should avoid inhibiting opportunities for innovative design solutions.

4.11.11: Local planning authorities and developers should consider the issue of accessibility for all.

4.11.12: Local Authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take.

9.1.1 The Welsh Government will seek to ensure that: previously developed land is used in preference to greenfield sites; new housing and residential environments are well designed, meeting national standards for the sustainability of new homes and making a significant contribution to promoting community regeneration and improving the quality of life; and that the overall result of new housing development in villages, towns or edge of settlement is a mix of affordable and market housing that retains and, where practical, enhances important landscape and wildlife features in the development.

9.1.2 Local planning authorities should promote sustainable residential environments, avoid large housing areas of monotonous character and make appropriate provision for affordable housing. Local planning authorities should promote: (inter alia): development that is easily accessible by public transport, cycling and walking; attractive landscapes around dwellings, with usable open space and regard for biodiversity, nature conservation and flood risk; greater emphasis on quality, good design and the creation of places to live that are safe and attractive; the most efficient use of land; well designed living environments, where appropriate at increased densities.

9.2.13: Sensitive design and good landscaping are particularly important if new buildings are successfully to be fitted into small vacant sites in established residential areas.

9.3.3 Insensitive infilling, or the cumulative effects of development or redevelopment should not be allowed to damage an area's character or amenity. This includes any such impact on neighbouring dwellings, such as serious loss of privacy or overshadowing.

## 4.4 Technical Advice Note 12 - Design (2014):

6.7 The appearance and function of proposed development, its scale and its relationship to its surroundings are material considerations in determining planning applications and appeals. Developments that do not address the objectives of good design should not be accepted.

## 5. **INTERNAL CONSULTEE RESPONSES**

None.

## 6. EXTERNAL CONSULTEES RESPONSES

6.1 Old St. Mellons Community Council: The current retrospective application has been submitted because the present development is in breach of the original planning consent, for that reason the OSMCC is opposed to this application. Furthermore, the Community Council support the objections already registered by the local residents - The development is not in accordance with the permitted plans; the building currently under construction is much larger than permitted plans; the building being constructed is over-sized for the plot and the site. The application to regulate condition 2 should be refused, a stop notice issued and the builder instructed to remove the construction should be refused.

# 7. **REPRESENTATIONS**

- 7.1 The application has been advertised by neighbour notification. 6 representations and a petition of 64 signatures have been received from neighbouring residents, who object to the proposals on the following grounds:
  - 1) The building is larger and higher than was approved. It is oversized for the plot (which has become smaller) and more than twice the size of the outline permission given;
  - 2) Views of the tree line at the rear will be blocked;
  - 3) There is a problem with vehicles parking on the pavements;
  - 4) The building is so large it may become flats. This would cause parking problems;
  - 5) There is no point in having a planning system if people are allowed to ignore planning permissions and build whatever they like;
  - 6) Residents living opposite will lose privacy, particularly due to the balcony on the front elevation, and the neighbour's garden at the rear will be closely overlooked by windows;
  - 7) The house will have 3 floors, which is out of keeping with the single storey and two storey houses in the area;
  - 8) It will dominate the other buildings;
  - 9) Only two parking spaces are provided. Visitors will have to park on the road near a corner. This will be a nuisance to other drivers and could affect the use of the nearby house for people with disabilities who need 24 hour care;
  - 10) If the stone wall is removed, the house will become even more visible and will dominate the area;
  - 11) The application should be refused and the plans amended to comply with the original outline permission;
  - 12) The building appears to have been angled towards the north east, which is aesthetically unpleasing and makes it look crooked when viewed from 33 Melville Avenue. This makes no sense as the frontage of the new build is on a straight part of the avenue;
  - 13) There is a lack of measurement on the plans and the Site Plan shows a confusing "Approved Site Boundary" and an "As Built Site Boundary". In addition the direction 'North' on the Site location plan is actually East.
  - 14) The boundary wall between Baghdad house and no. 33 was built in the wrong place and will eventually be moved to the correct boundary which is some five inches closer to the new build. Thus the plot will be smaller along its entire southern boundary.
  - 15) The approval of the first full planning application ignored recommended guidelines of 15 metres between buildings.
  - 16) The existing house at no. 33 may be damaged over time as the new house is at a higher level than 33 with a very large concrete footprint.
  - 17) There is a lack of amenity land for such a large building,;
  - 18) The developer has not consulted neighbours, has used the neighbour's address inappropriately, caused damage to the neighbour's driveway, erected scaffolding on the neighbour's land without permission.
  - 19) Adjoining property has been devalued;
  - 20) It may not be valid to pursue these changes via a S73 application as the

site area has been significantly reduced over what was originally applied for;

- 21) The disproportionate scale, character and appearance of the building will set an unwelcome precedent.
- 7.2 Councillor Dianne Rees objects to the application and requests the matter be the subject of a site visit by the Planning Committee prior to determination. Her reasons for objection are:
  - The development is not in accordance with the permitted plans. The building currently under construction is much larger than permitted plans
  - The building being constructed is over sized for the plot and the site. It is too large. Even without the roof construction, it is far too tall and dominates the neighbouring properties at its rear, on both sides and is oppressively overbearing for the bungalow properties on the other side of this quiet residential area. It is overbearing in size and totally out of character with the neighbourhood.
  - The application to regulate condition 2 should be refused., a stop notice issued and the builder instructed to remove the construction which is not in accordance with permitted plans.
- 7.3 Councillor Georgina Phillips expresses serious concern, stating that many residents in the area are very unhappy about this application, and she would agree with all the views which have been expressed by them. Councillor Phillips requests that this application be taken to the Planning Committee for consideration, and requests a site visit.

## 8. ANALYSIS

- 8.1 Planning permission has already been granted for the construction of a detached dwelling house on this site. What must be considered are the differences between the approved scheme and the development that has been constructed, and whether these differences have a material, adverse impact on the amenities of neighbouring occupiers or on the character or appearance of the area.
- 8.2 At the time of the application for full planning permission for this development (16/00015/MNR) the scale of the proposed dwelling (which would be around 14.5m x 11.8m) was considered acceptable as it would not be out of keeping with the scale of other two storey houses in this area (e.g. 31 Melville Avenue is around 19m wide, 33 Melville Avenue is around 13m wide). The scale of the building, now around 14m x 11m (not including the single storey extension), is actually smaller than previously approve. It should be noted that if the house had been built in strict accordance with the approved plans, once it had been built it would have benefitted from permitted development rights which would have enabled the erection of the rear single storey extension without the need for planning permission. The maximum height of the building has also been reduced slightly and the chimney omitted. Therefore, the difference in scale between the house as approved and as built is considered acceptable as it has no additional impact on visual or residential amenity.

- 8.3 The approved house would have been around 7.5m from 33 Melville Avenue at its closest point. As built, the house is approximately 7.6m from no.33 at its closest point, therefore there is no adverse impact on the adjacent property resulting from the re-positioning of the new house as there has been a slight increase in the distance between the buildings. No new windows have been added to this elevation and privacy can still be maintained by obscurely glazing any upper floor windows in the side elevation of the new house, as was required by a condition of the original consent.
- 8.4 The house has been brought closer to the rear garden of Manordeifi to the south of the site. This garden is overlooked by first floor habitable room windows of the new house. The distance between these windows and the neighbour's garden in the approved scheme was no less than 10.5m, the distance normally considered appropriate, for privacy purposes, between a house and its rear boundary. This distance has been reduced to around 10m on the eastern side of the rear of the development. Although the single storey extension on the western rear side is within around 8.5m of the rear boundary, loss of privacy from this extension can be prevented by maintaining a suitable boundary structure.
- 8.5 Loss of privacy caused by overlooking from the upper floor rear windows in the eastern side of the rear elevation remains a concern, as 10m is below the distance stated in the Infill Sites SPG as the minimum required between the rear of a house and its boundary with another property. However, this can be overcome by requiring the first floor and loft windows in this part of the building to be obscurely glazed and non-opening below a height of 1.8m. This is not an ideal solution as it results in a lower level of amenity for residents of the new house but as the situation has been brought about by the new house being built closer to the rear boundary than approved, in this case it is considered to be acceptable.
- 8.6 With regard to the objections received:
  - 1) The building is narrower and slightly less tall than was approved and, although the width of the plot has also reduced, it is not considered to be oversized. The outline permission previously granted did not approve any specific size of building.
  - 2) There is no right to a view across someone else's land.
  - 3) Any problems caused by vehicles parking on the pavements is a Highways enforcement matter and is not a material planning consideration.
  - 4) Separate planning permission would be needed to convert the building to flats.
  - 5) Enforcement action can be taken against developments that do not have planning permission. However, developers have to be given the opportunity to obtain planning permission for the unauthorised development before such action is taken.
  - 6) There is no balcony proposed for the front elevation and the introduction of such a feature can be prevented by the imposition of a suitable planning condition. The windows in the front elevation will now be further away from the properties on the opposite side of the road.

The issue of the rear windows is discussed above.

- 7) There are no other 3 storey dwellings in the area; however, the third storey of the proposed dwelling is in its roof space therefore it is no taller than a large two storey house.
- 8) The scale of the building has been reduced since the original approval. It is not considered to be out of keeping with its surroundings.
- 9) The number of parking spaces accords with the SPG "Access, Circulation and Parking Standards". Dangerous or nuisance parking is controlled by other legislation and would be a matter for Highways enforcement.
- 10) It is not proposed to remove the stone wall but it would not be essential to keep it. The site is not within a conservation area. A condition can be used to control boundary treatment and ensure that the front boundary is appropriate to the development and in keeping with its surroundings..
- 11) The original outline application did not apply for approval of any reserved matters therefore no details of siting, scale, appearance, access or landscaping were approved. An indicative location for a house, which was smaller than the approved development, was shown on the outline plan but this was not included as a matter to be considered as part of that application. It would not therefore be possible to insist that the plans are amended to "comply with the original outline permission" as a) the original outline permission did not cover any details of the development and b) the planning permission for this house, which is now proposed to be amended by this application, was full planning permission and not a reserved matters approval, therefore it has no connection at all to the original outline consent.
- 12) The house is angled to align with the western boundary and has the same alignment as the house immediately to the West, and its garage, on Melville Avenue. 33 Melville Avenue itself is not in line with any adjacent building.
- 13) Additional information has been supplied by the applicant which shows the correct measurements on an overlay plan.
- 14) The amended alignment of the side boundary is shown on the additional plan. The reduction in the size of the plot is not so significant as to warrant the refusal of planning permission. There will still be an acceptable amount of outdoor amenity space for the development and the distance between the rear of the house and the neighbouring rear garden is not affected.
- 15) The distance between buildings was considered when the original full application was determined. The house as built is even further away from the neighbouring buildings.
- 16) Structural issues are dealt with separately under the Building Regulations.
- 17) Supplementary Planning Guidance (Infill Sites, 2011) states that amenity areas for houses and ground floor flats that will serve as family accommodation should measure at least 10.5m in depth or 50m<sup>2</sup> overall. This development provides around 128 square metres of private outdoor amenity space to the rear.
- 18) The applicant is under no obligation to discuss the proposals with

neighbours and this cannot constitute grounds for refusal of the application. Matters of damage and trespass are legal matters and are not material planning considerations.

- 19) The effect of development on the value of other properties is not a material planning consideration.
- 20) The reduction in the site area is not significant it is a decrease in the width of the site of around 2m. It would not be appropriate to deal with any increase in the size of the site via a S73 application but a reduction in size, with the new development site being entirely within the original red line site boundary as shown on the previously approved plans, is acceptable.

Welsh Government advice ("Approving Non-material Amendments to an Existing Planning Permission", July 2014) is that the submission of an application under Section 73 of the Town and Country Planning Act 1990 is one of three routes to securing permission for proposed "minor" material amendments to an extant planning permission.

- 21) All applications are determined on their own merits and the approval of these amendments, which are considered acceptable, would not set a precedent for allowing unacceptable development elsewhere.
- 8.7 In conclusion, it is considered that there would be no reasonable grounds for refusal of this application and it is recommended that permission is granted subject to the conditions set out above.

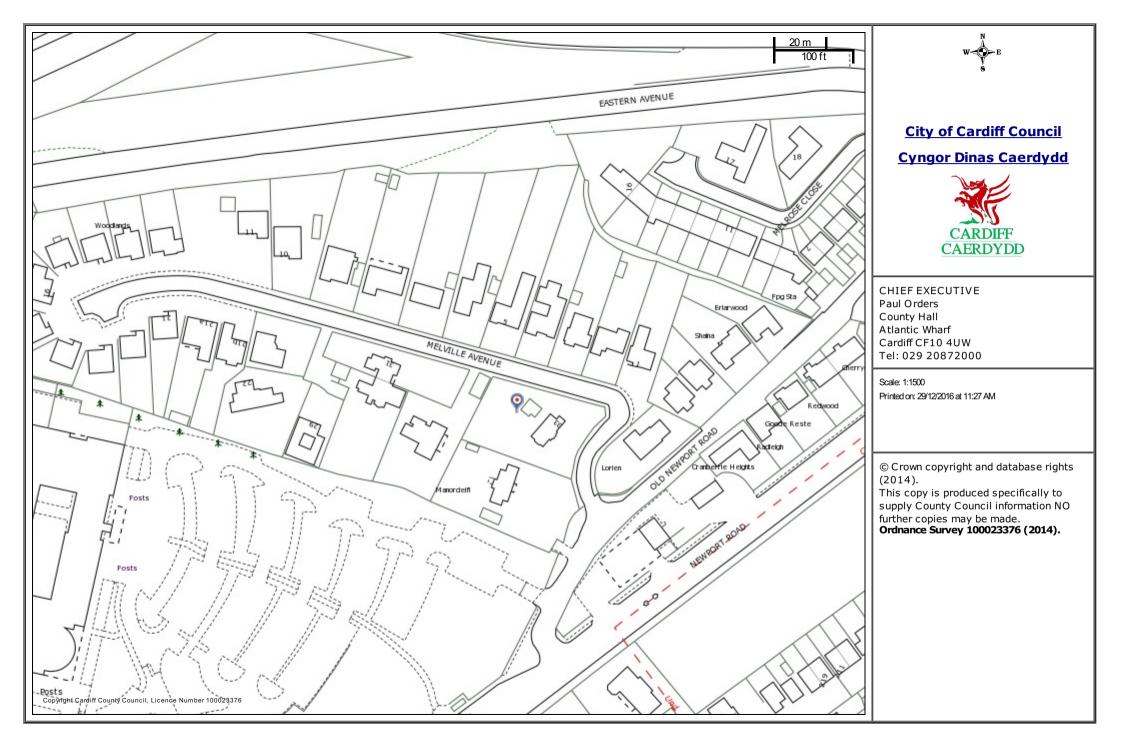
#### 9. OTHER CONSIDERATIONS

#### 9.1 Crime and Disorder Act 1998

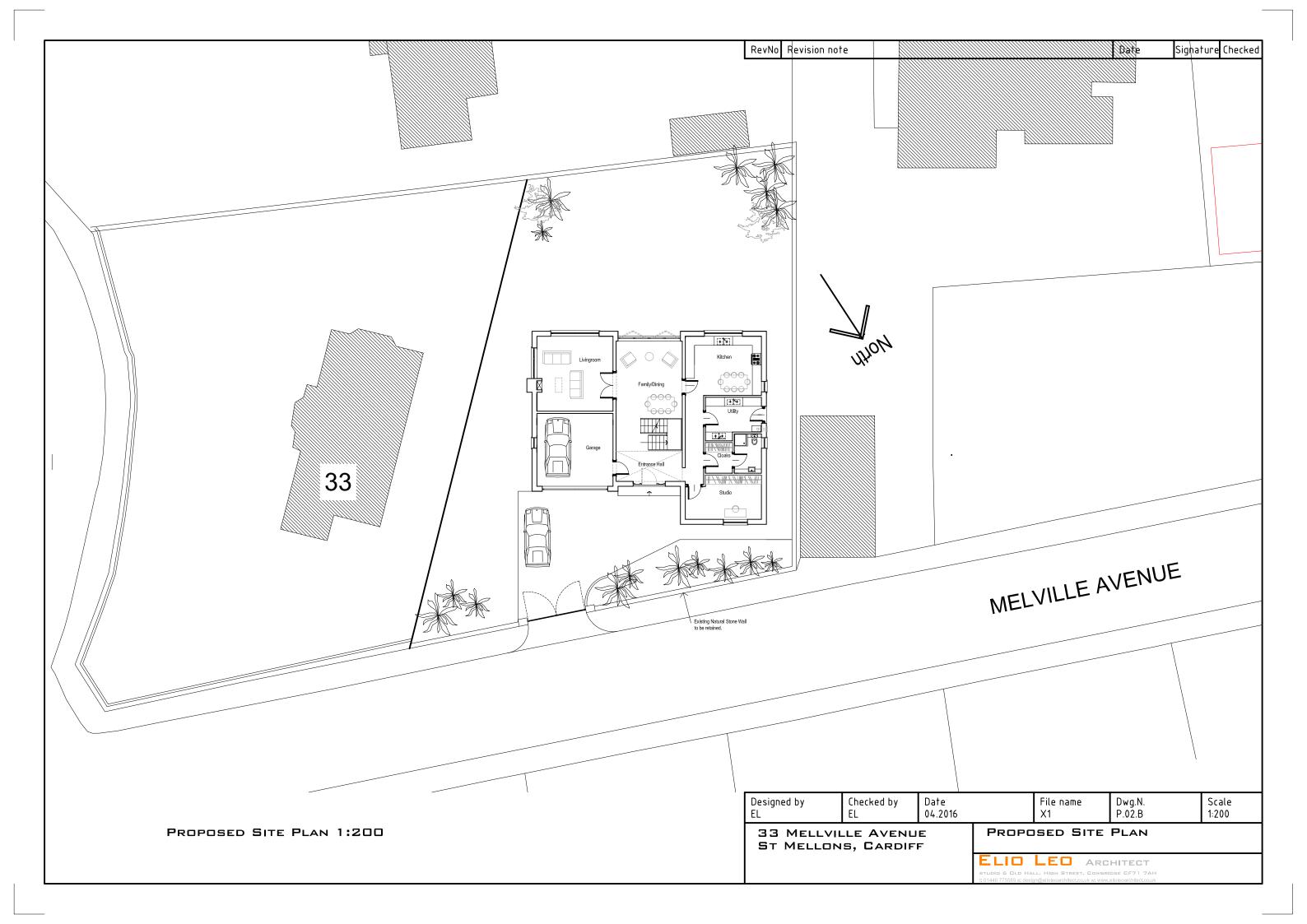
Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

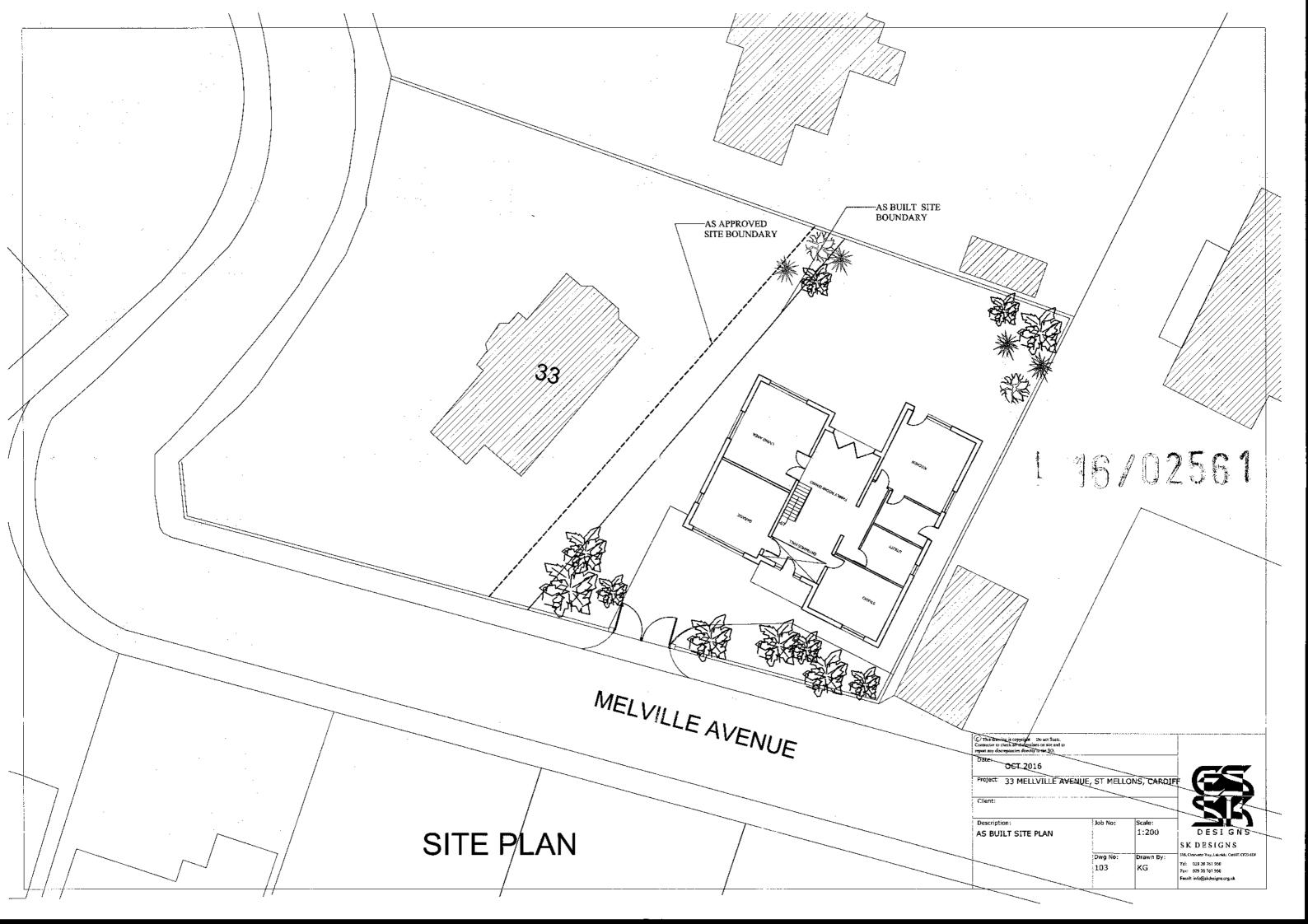
#### 9.2 Equality Act 2010

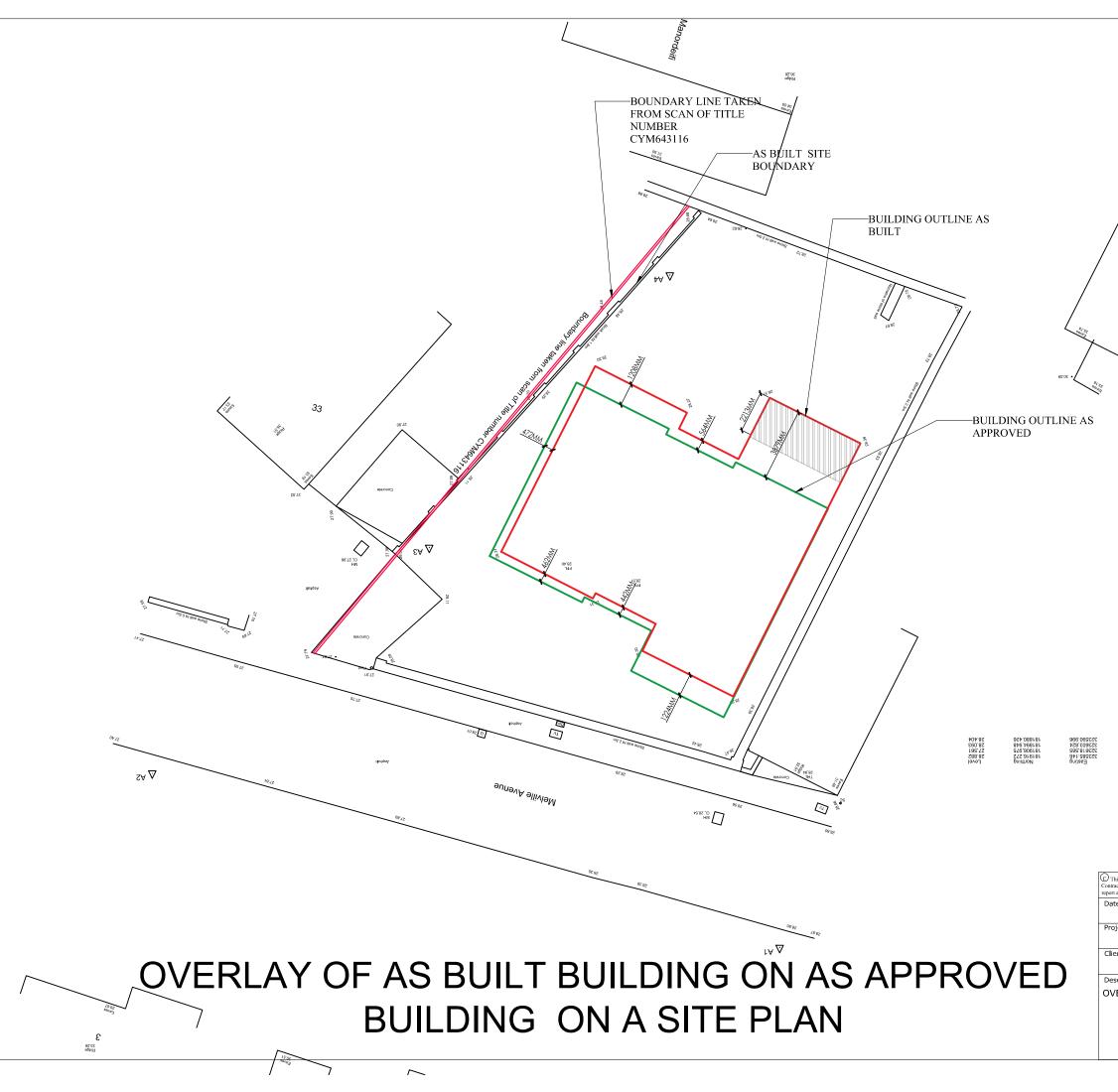
The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.











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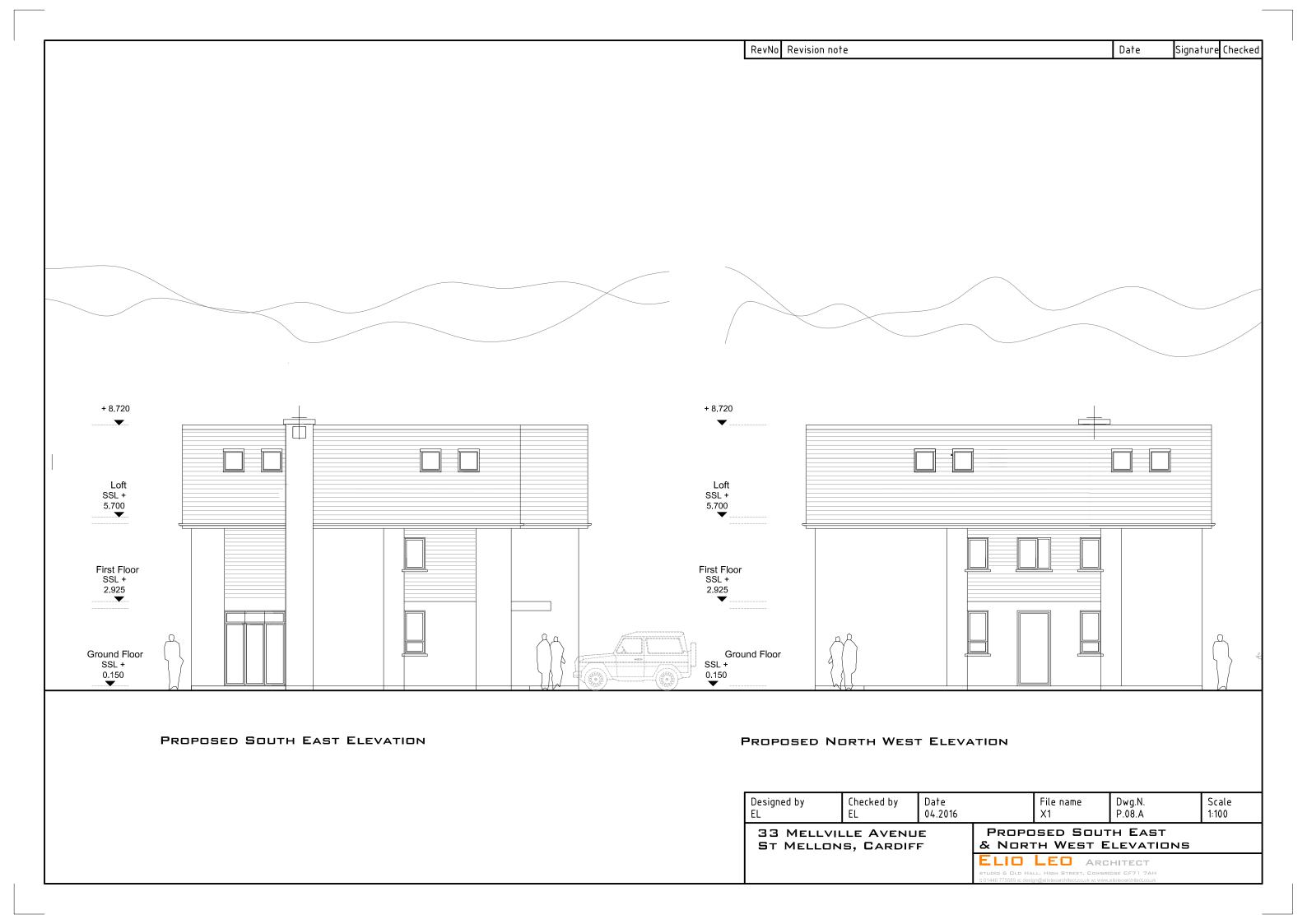
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