



Report of the Chief Planning Officer

PLANS PANEL NORTH & EAST

Date: 20th December 2012

Subject: Enforcement Case 11/00975/UTW1 and Planning Application 12/00501/FU – Appeals by Mr J Townsend against:

- (i) an enforcement notice issued against the raising of ground levels to facilitate the erection of a detached house and associated works; and
- (ii) the refusal of planning permission for Variation of condition 2 (approved plans) of approval 09/03138/FU for minor material amendment relating to three 4 bedroom detached houses with integral garage to rear garden, at 10 Elmete Avenue, Scholes, LS15 4BL

The appeal against the enforcement notice was dismissed and the planning appeal was allowed.

Electoral Wards Affected:

Alwoodley

Yes Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

Members are asked to note the following appeal decisions.

1.0 BACKGROUND

- 1.1 These appeals concerned a residential development of 3 houses that was granted planning permission on appeal (the 2010 planning permission). One of the houses, plot 3 as identified on the plans approved 2010 but identified as plot 1 on drawing 11/06/ 011 of application reference 12/00501/FU, had been constructed on ground levels raised approximately 400 – 750mm above those shown on the approved plan. The council issued an enforcement notice against the unauthorised works and required the demolition of the house and the restoration of land to its former level and condition and infill the existing mature beech hedge. The Notice also required the removal of a retaining wall and fence from the eastern boundary and the restoration of ground levels. The house had also been sited closer to the common boundary with existing dwellings of Elmete Croft; plot 1 (as identified on drawing

11/06/ 011 of the 12/00501/FU application) is erroneously sited and is approximately 300mm – 500mm closer to the existing garage at No. 4 Elmete Croft than the original plans subject to the Inspectors decision in 2010.

- 1.2 A revised planning application was submitted to the council and this sought planning permission for the re-siting of the dwelling, the increase in levels and the amendment to the roof design of the house by changing from a house with gable ends to a hipped roof on both sides. In order to compensate for the hedge that has been removed, and which was supposed to be retained by planning condition, a replacement hedge in place of where the previous beech hedge was removed, adjacent to the boundary with Elmete Croft.
- 1.3 The planning application was recommended for planning permission by officers but the Plans Panel of 17th May 2012 resolved not accept that recommendation and that planning permission should be refused for reasons relating to the impact of the dwelling on the amenities of neighbouring residents.
- 1.4 The appellants also made an application for an award of costs against the council and all of these decisions are summarized in the following paragraphs.

2.0 ISSUES IDENTIFIED BY THE INSPECTOR

- 2.1 With regard to the enforcement appeal the Inspector concluded that the house as constructed was in breach of planning control and that the variations have had clear consequences for the neighbouring residents in terms of the physical presence of a gable elevation higher and closer than that approved. The Inspector considered that the additional height and proximity of the gable wall make it unduly overbearing when viewed from Nos. 4 & 5 Elmete Croft and must diminish the amount of daylight and sunlight by a measurable degree. The Inspector also considered that the boundary fence whilst ensuring a reasonable amount of privacy is itself harsh and visually dominant. With regard to concerns raised by residents about drainage the Inspector concluded that on completion it is likely that the site is to be adequately drained.
- 2.2 For the reasons set out above the Inspector dismissed the appeal and upheld the enforcement notice.
- 2.3 Turning to the planning appeal the Inspector set out that regard must be had in reaching a decision to the realistic fallback position of constructing plot 3 in accordance with the 2010 planning permission.
- 2.4 The proposal was to modify the roof of house from a gable to a hip style. The sole issue is the impact on the living conditions of nos. 4 & 5 Elmete Croft. On this point the Inspector concluded:

“...the lowering of the eaves height and the removal of the gable end as now proposed would, to my mind, result in an acceptable relationship. The new, hip roof design would result in far less masonry abutting the common boundary. It would appear far less imposing and would allow a noticeable increase the sunlight and daylight reaching no.4.
- 2.5 Moving on to the issue of the boundary treatment the Inspector set out:

“The boundary treatment remains of some concern in terms of the height of the

fence and whether it can be adequately softened by landscaping. I am satisfied that it provides adequate privacy for the neighbouring residents, and would so do even if reduced to 1.5m in height as proposed. Whether the reinstatement of a beech hedge is practical, given the present ground conditions, remains in some doubt. However, I am satisfied that a scheme could be devised to introduce suitable ground conditions for planting.”

2.6 Accordingly the Inspector allowed the appeal and granted planning permission.

3.0 THE COSTS DECISION

3.1 The appellant made an application for an award of costs against the council. The Inspector noted that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The Inspector noted that following negotiations between officers and the appellant that the application was recommended for permission. The Inspector set out that the Plans Panel were entitled to take a different view on the merits of the case but are required as part of any appeal to produce evidence to substantiate its decision. The council failed to do so in this case. The Inspector ordered that the council pay the appellants costs in respect of the planning appeal.

Comment:

3.2 It should be noted that this situation rose through an administrative error. The officer dealing with the appeal did prepare an appeal statement setting out the council's reasons and case for refusing planning permission. This was prepared within the appeal timeframe for the submission of evidence. However, due to a misunderstanding of the way the council administers such appeals the statement was not submitted in a timely manner. Consequently, in accordance with the appeal rules, the Planning Inspectorate returned the appeal statement to the council.

4.0 IMPLICATIONS

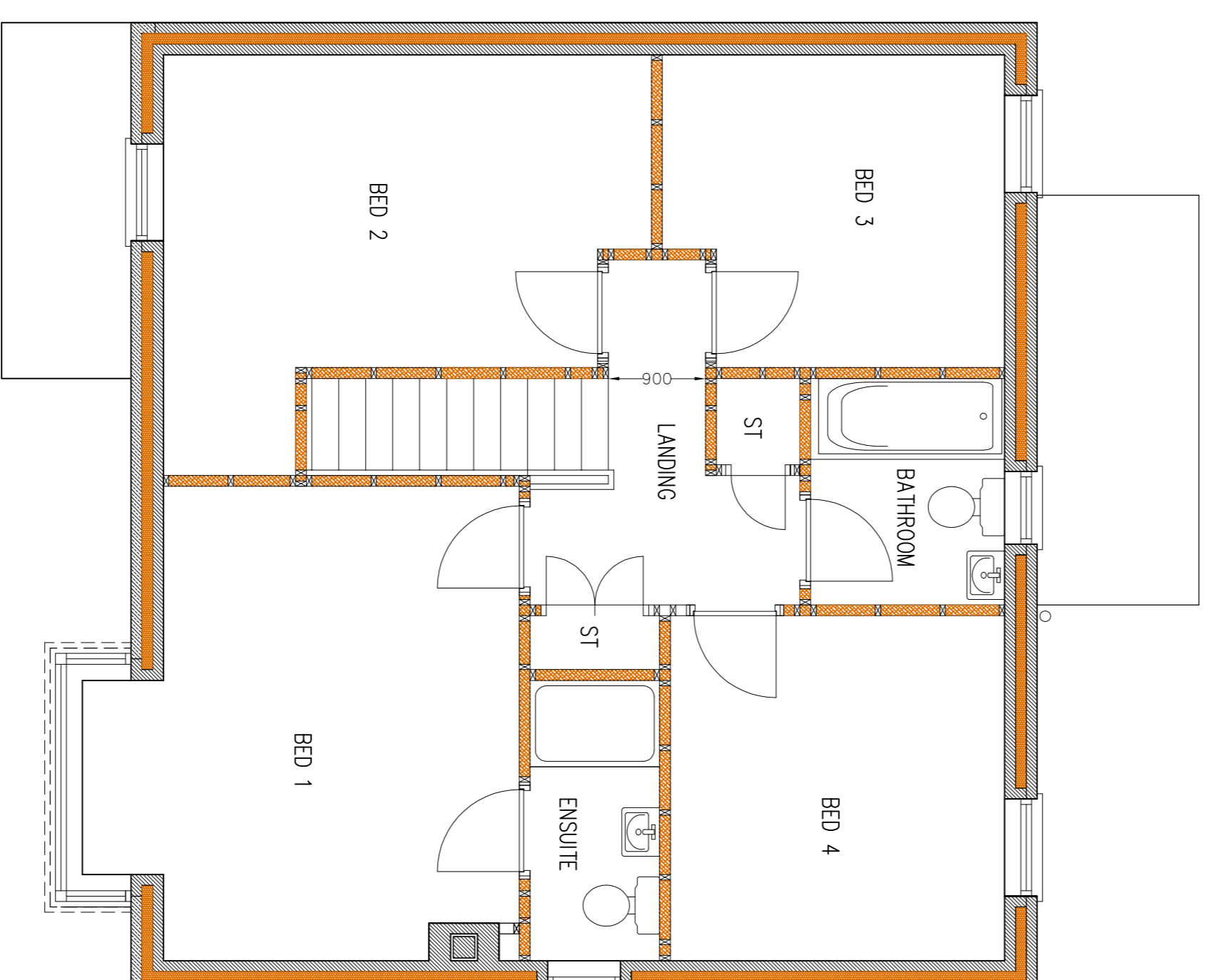
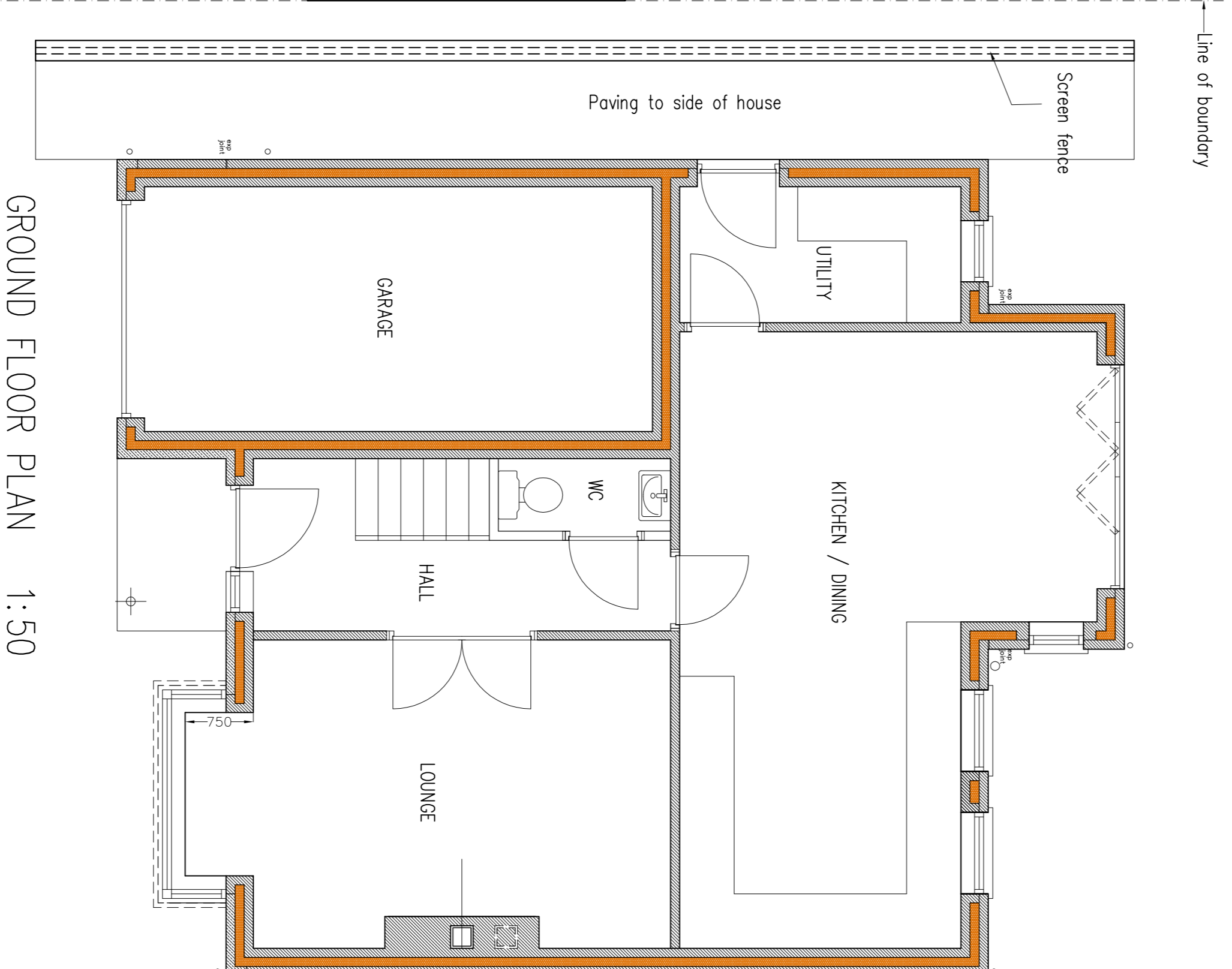
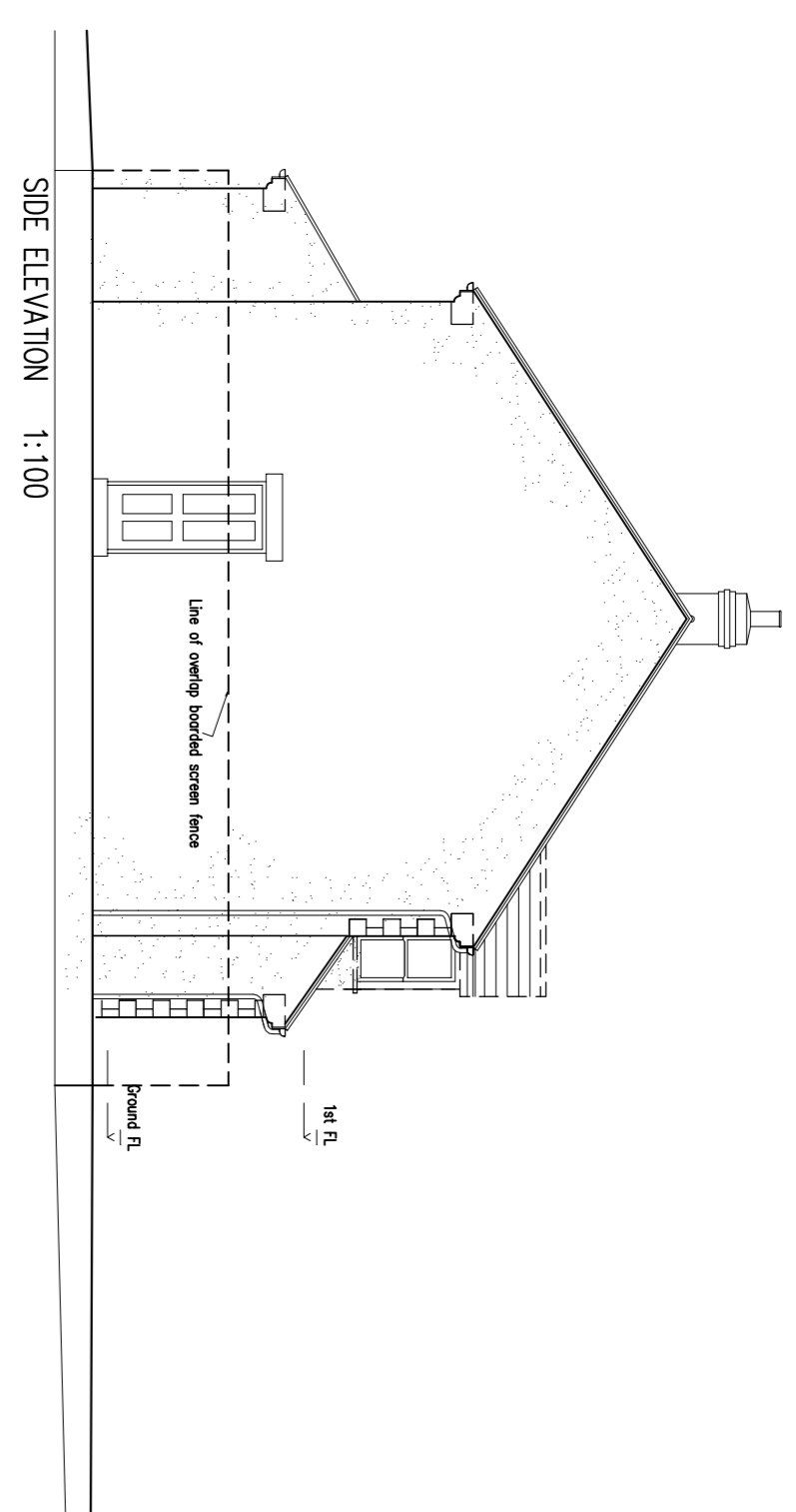
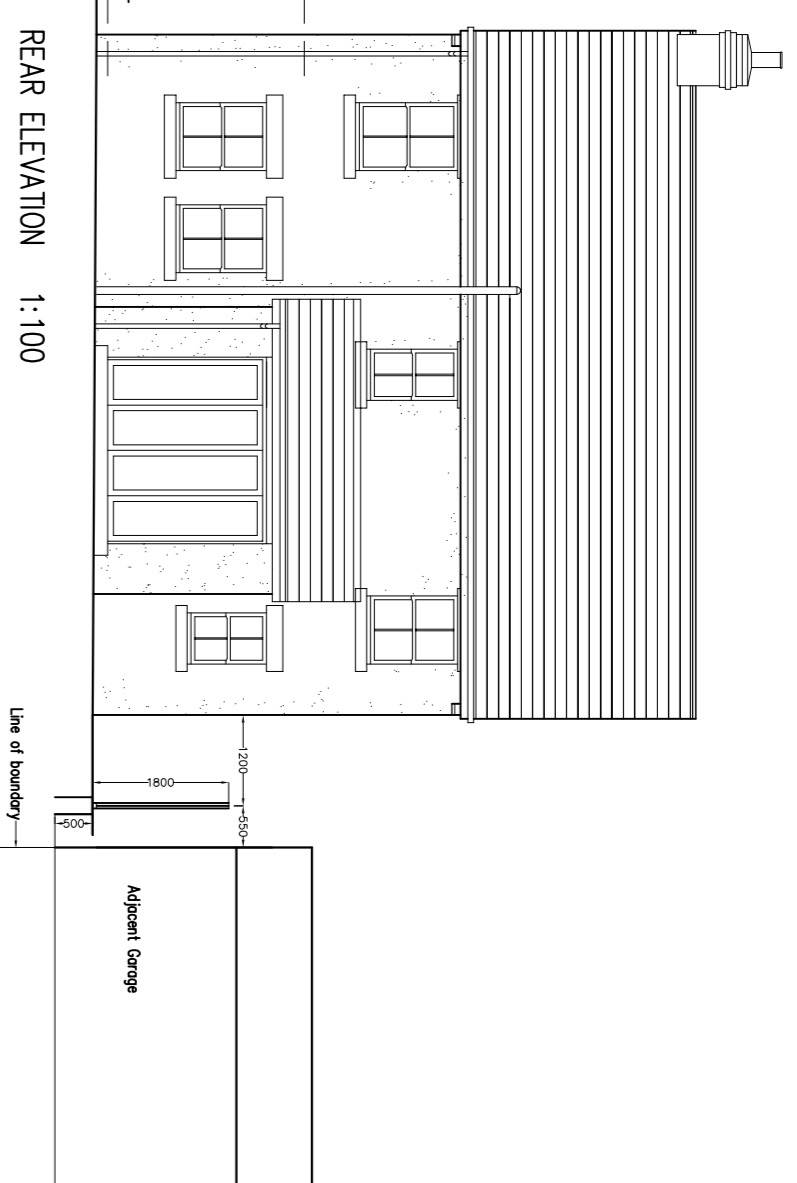
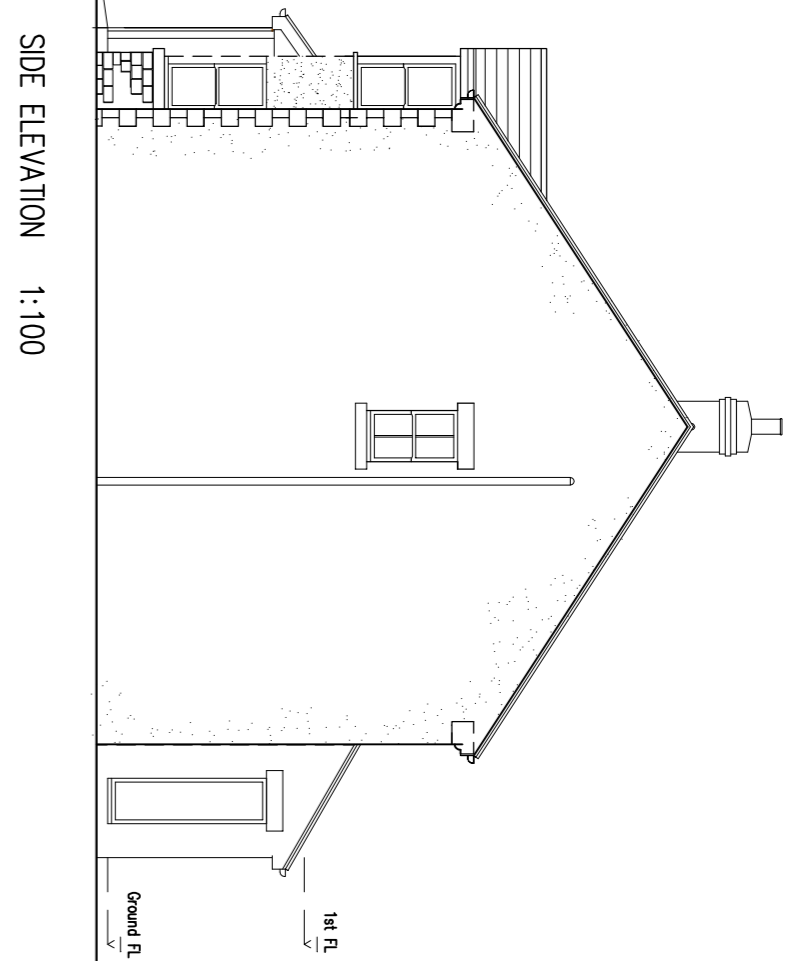
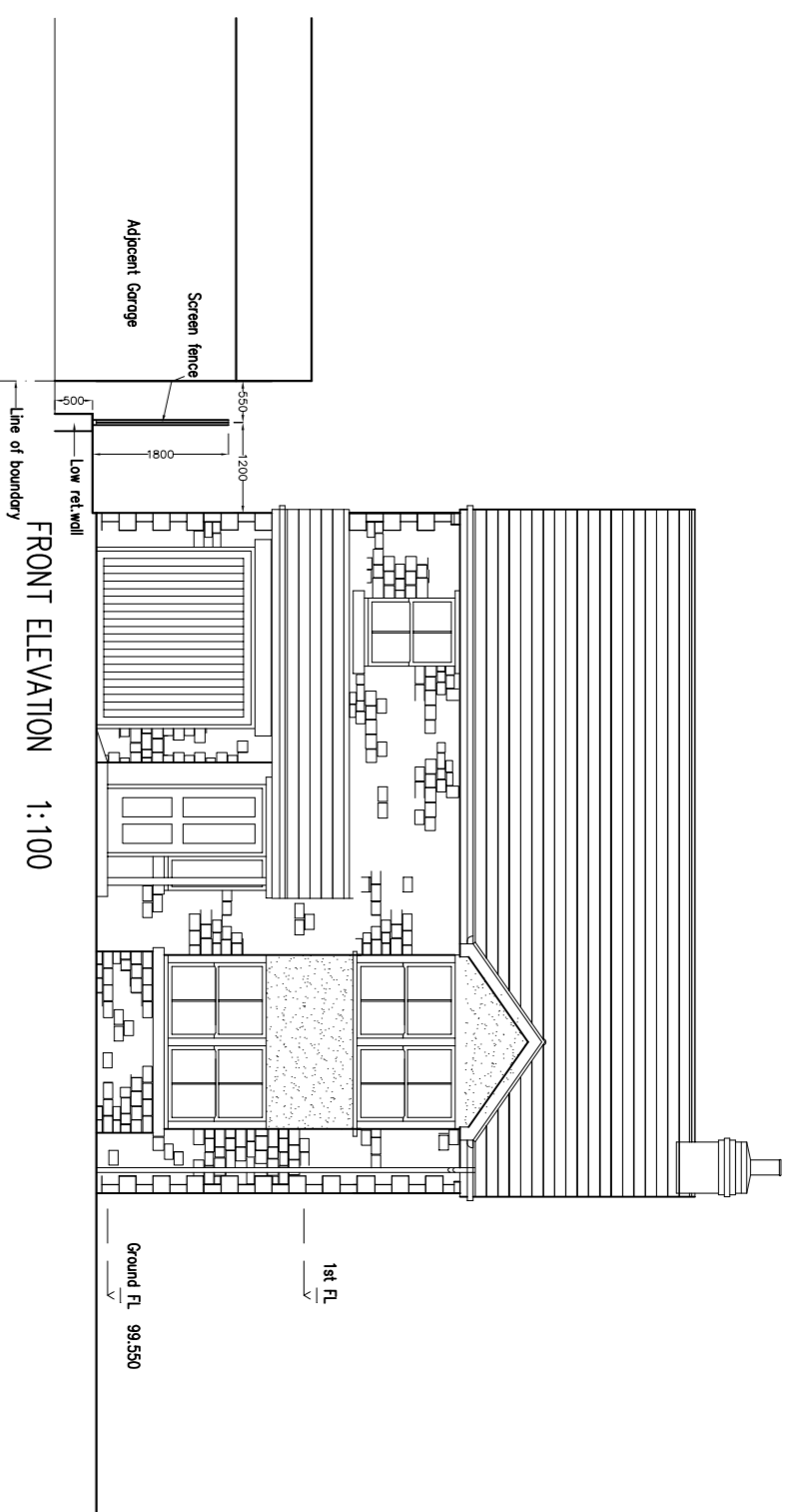
4.1 Within Planning Services there is a clear procedure in place for the submission of appeal statements and officers are aware of the need for them to be submitted within the timeframe set by the Planning Inspectorate. As a consequence of this case all officers have been reminded of internal processes in administering an appeal and the need to abide by the appeal timetable.

4.2 The attached plans show the house as originally proposed, as built and the development allowed on appeal.

Background Papers

Planning Application File

Inspector's Decision Letter



GROUND FLOOR PLAN 1:50

FIRST FLOOR PLAN 1:50

Revisions.

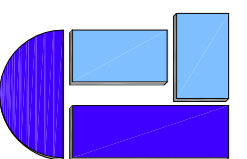
Date	Suffix	Description	Date	Suffix	Description
02/08/2011	A	Stone facing and render indicated. Area slightly indicated.			
20/07/2012	C	Small oval ridge towards Screen fence and wall to side boundary.			

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Project: PROPOSED HOUSE TYPE B (Plot 1)
 ELMETE AVENUE
 SCHOLES

Client: JMT DEVELOPMENTS

Date	Scale	Date	Scale
JULY 2011	1:50 & 1:100 @A1		
Drawn By:	Checked:		
Ref: 11/06	Dwg. No. 003		Rev. C



NOTES

PROTECTION OF EXISTING VEGETATION

Existing vegetation to be retained on site shall be protected where necessary during works by 2300mm high mesh panel fencing secured to a scaffold tubing framework with fluorescent tape to the top rail. Protective fencing shall be erected on the canopy drip line wherever possible. Laminated, waterproof A1 signs shall be fixed to the fence posts at 10m intervals bearing the words 'PROTECTED TREE ZONE - NO STORAGE OR OPERATIONS WITHIN FENCED AREA'. Tracking of machinery, storage of chemicals and building materials shall not be permitted within the protected area. Leaks or spills should be removed immediately and the contaminated soil replaced. No bonfires shall be lit within 5m of the canopy spread. Any excavation work beneath the canopy spread shall be carried out by hand. All works affecting trees within the development shall be subject to BS 5837:2005.

TREE SCHEDULE

SPECIES	Ht in m	NUMBERS REQUIRED		
		2.7-3.0	3.0-3.5	3.5-4.25
	Girth in cm	8-10	10-12	12-14
Betula Jaquesonii (Bj)		-	-	2
Carpinus betulus (Cb)		1	-	-
Prunus subhirtella 'Autumnalis' (Ps)		2	-	-
Sorbus aria (Sa)		3	-	-
Sorbus aucuparia 'Asplenifolia' (Saa)		-	-	1

All trees to have clear stems to 1.8m above ground level with well developed branching heads with a single, central leader and healthy, fibrous root systems. Trees shall be planted into pits of an appropriate size to accommodate the root system without restriction, backfilled with a 3:1 topsoil/compost mix and shall be secured to a machine rounded stake using 1 no. tree tie with rubber spacer. Finished height of stake shall not exceed 1/3 height of staked tree above ground. Foundation design of new buildings shall accommodate proposed tree planting in accordance with NHBC guidelines.

SHRUB PLANTING

A mix of evergreen and deciduous shrubs will be planted throughout the site to give enclosure and structure to the development. Medium/large species will be planted against screen fences and walls and medium/low mixes will be planted into front gardens. Species to be selected from: () density/m²

Berberis frikartii 'Amstelveen' (5), Berberis thunbergii 'Atropurpurea Nana' (5), Berberis cordifolia 'Silberlich' (6), Buddleia davidii 'Lochin' (2), Ceanothus thyrsiflorus repens (4), Chamaemelum superba 'Jit Trail' (4), Cornus alba 'Spaethii' (2), Cornus stolonifera 'Flaviramosa' (2), Cotoneaster conspicuus 'Decoratus' (6), Cotoneaster lacteus (2), Cydonia 'Algold' (4), Ebanus pungens 'Maculata' (3), Escallonia 'Apple Blossom' (4), Eucyrtus fortunei 'Emerald Gaiety' (6), Euphorbia griffithii 'Fireglow' (5), Festuca spp (6), Geranium 'Johnson's Blue' (4), Hebe albertana 'Red Edge' (4), Hebe 'Autumn Glory' (4), Hypericum x moserianum (4), Juniperus sabinna 'Tamariscifolia' (3), Lavandula 'Hidcote' (6), Lorocera 'Maygreen' (4), Lorocera 'Silver Beauty' (4), Nepeta faassenii (4), Perovskia 'Blue Spire' (6), Phormium var. Potentilla 'Red Ace' (5), Prunus laurocerasus 'Zabelliana' (3), Pyracantha 'Orange Chatter' (3), Rubus x 'Betty Ashburner' (4), Spiraea 'Gold Flame' (4), Spiraea 'Shirobana' (4), Viburnum thurii 'Eve Price' (3)

HEDGE PLANTING

The existing hedgerow on the eastern boundary will be gapped up and replanted as necessary to create a continuous garden boundary to match the existing. New 'Instant' Beech hedging shall be planted as screening to the bin store and to form a green frontage to Elmote Avenue.

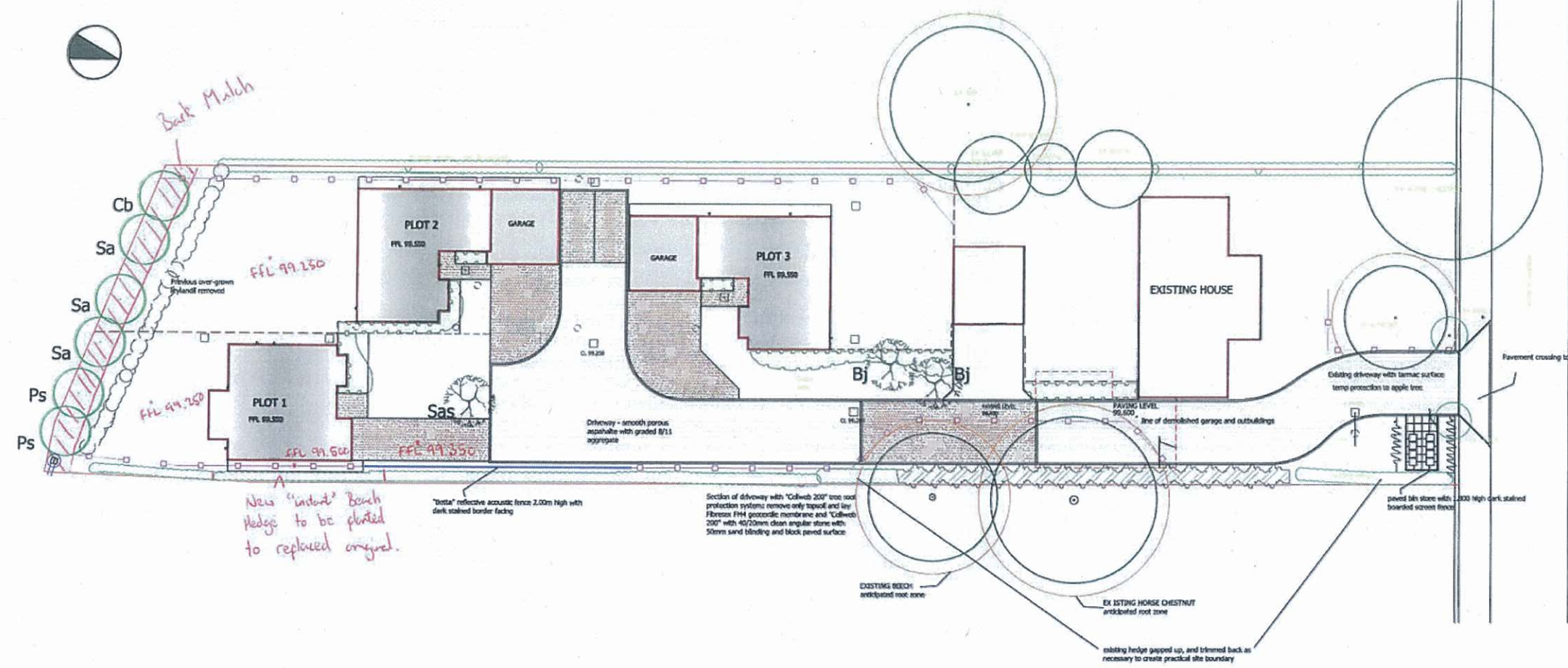
DRIVE CONSTRUCTION

The section of drive beneath the RPA's of the off site existing trees shall be surfaced using a Cellweb 200, no-dig construction method and surfaced with a porous block pavior to be approved.

Rev.A: Addition of tree codes and schedule

Jan 2012

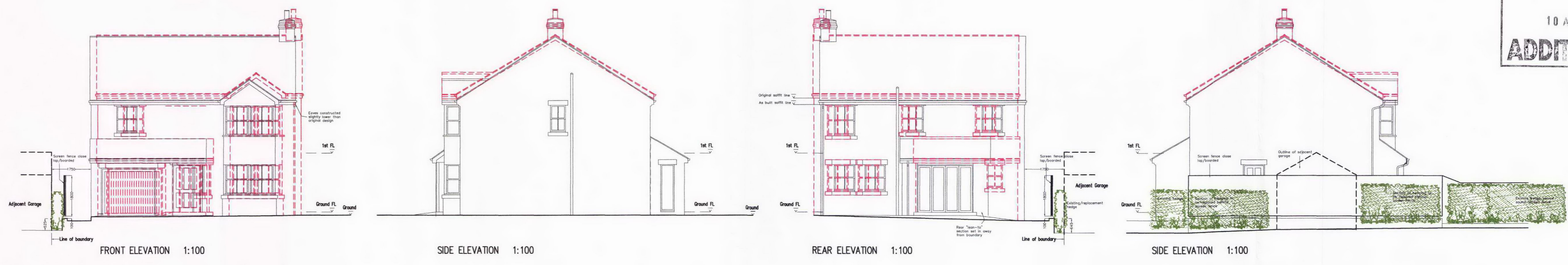
<p>Westleigh Hall Walsfield Road Derby Dale Middensfield HD8 8QJ Telephone 01430 86444 Fax 01430 86444 tdd 01430 86699 email info@fdalandscape.co.uk www.fdalandscape.co.uk</p>	client	JWT Developments Ltd
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drawing title	LANDSCAPE DETAILS	
scale	date	drawn by
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		drawing no
		R/1285/1A



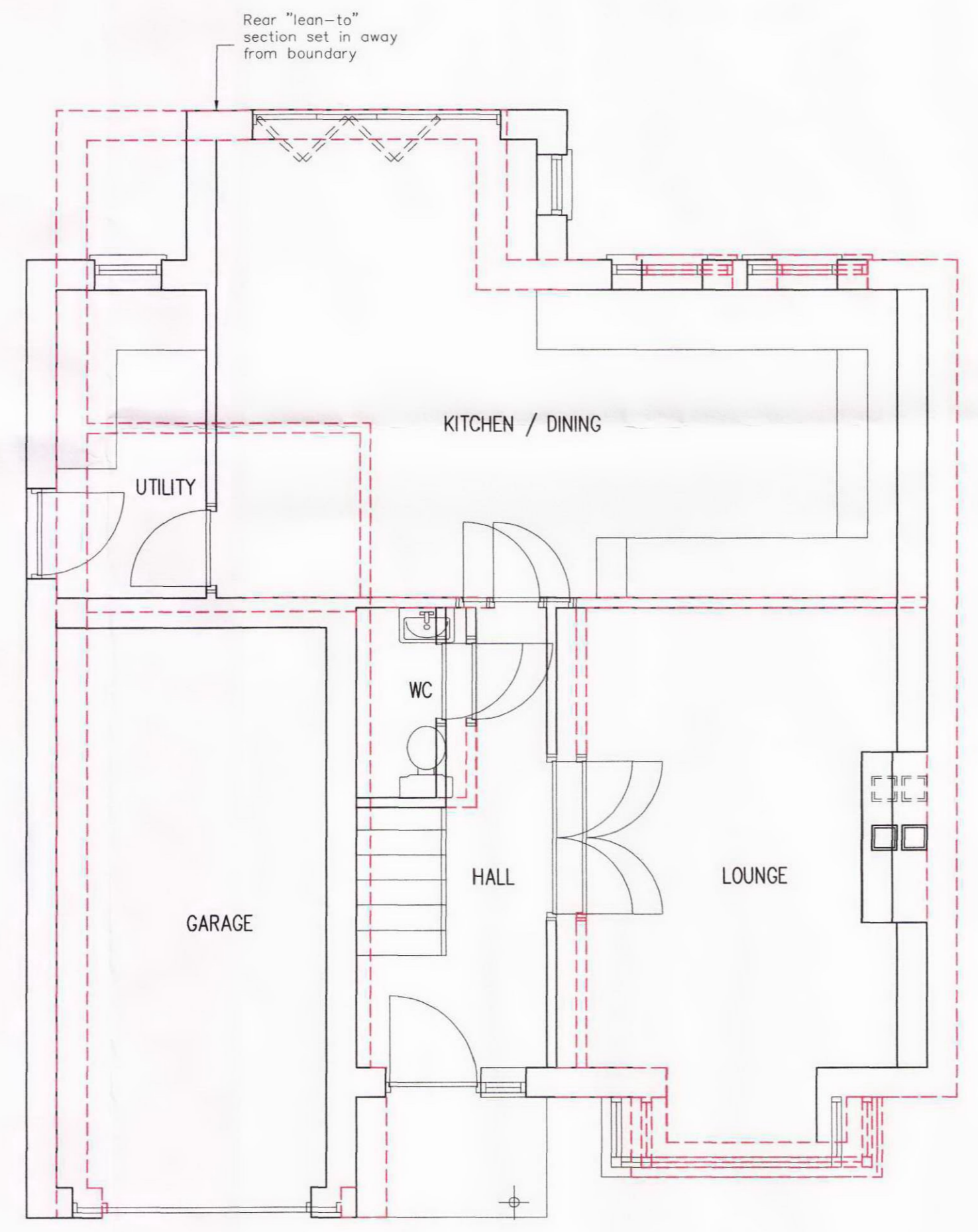
KEY

- Existing vegetation to be retained (orange circle denotes Root Protection Area)
- Proposed heavy standard (12-14cm girth) tree
- Proposed select standard (10-12cm girth) tree
- Proposed ornamental shrub planting
- Proposed turf to gardens
- Proposed hedge to match existing
- Proposed Laurel hedge to screen bin store
- Proposed porous paving with no-dig construction within existing tree's RPA
- Proposed block paving
- Proposed 1800mm close boarded fence stained dark brown
- Proposed tree protection fence (see Notes)

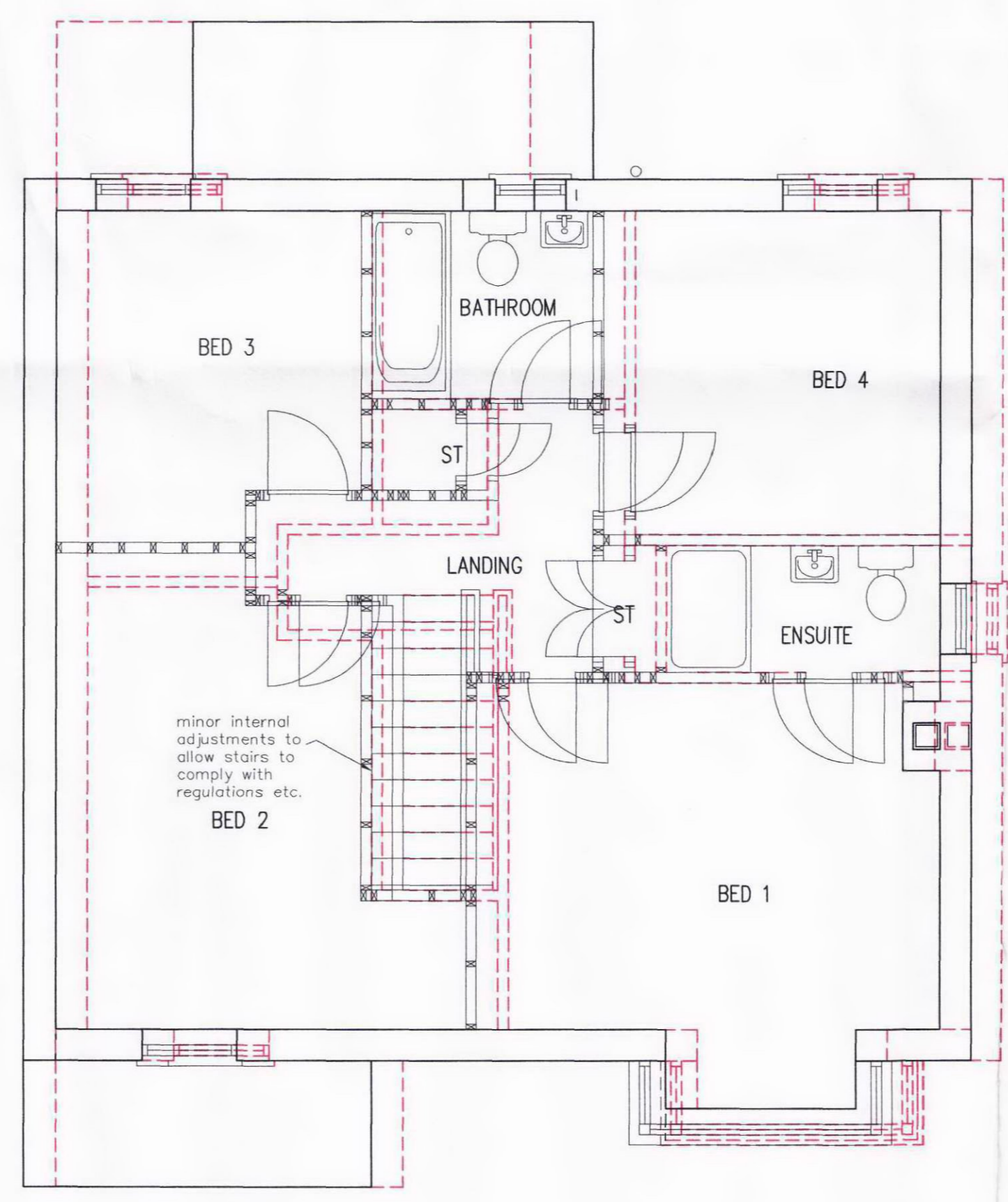
LEEDS CITY COUNCIL
10 APR 2012
ADDITIONAL



OF ORIGINAL APPROVAL



GROUND FLOOR PLAN



FIRST FLOOR PLAN

Additional

LEEDS CITY COUNCIL
10 APR 2012
ADDITIONAL

LEEDS CITY COUNCIL
10 APR 2012
ADDITIONAL

TJ BUILDING DESIGN LTD 1A, Oxford Drive, Kippax, Leeds LS25 7JE tel: 0113 2863617 mobile: 07802771692 e-mail: tjbuildingdesign@btinternet.com	
Project: PROPOSED HOUSE TYPE B (Plot 1) ELMETE AVENUE SCHOLLS	Client: JWT DEVELOPMENTS
Drawing Title: ORIGINAL & AS BUILT PLANS AND ELEVATIONS TYPE B	Date: APRIL 2012 Drawn By: Ref: 11/06 Scale: 1:50 & 1:100 @A1 Checked: Dwg. No. 012A Rev.

Revisions.					
Date	Suffix	Description	Date	Suffix	Description

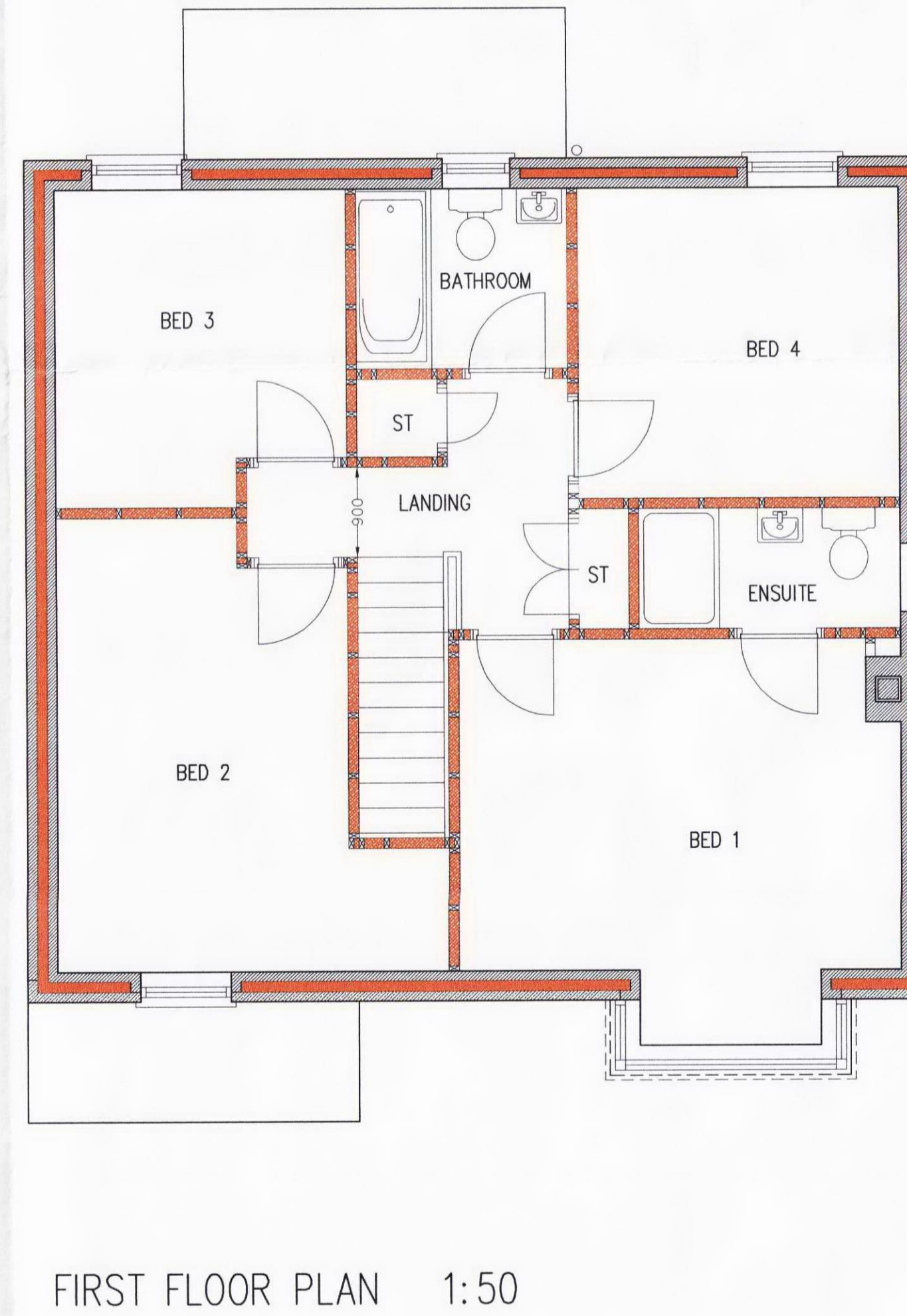
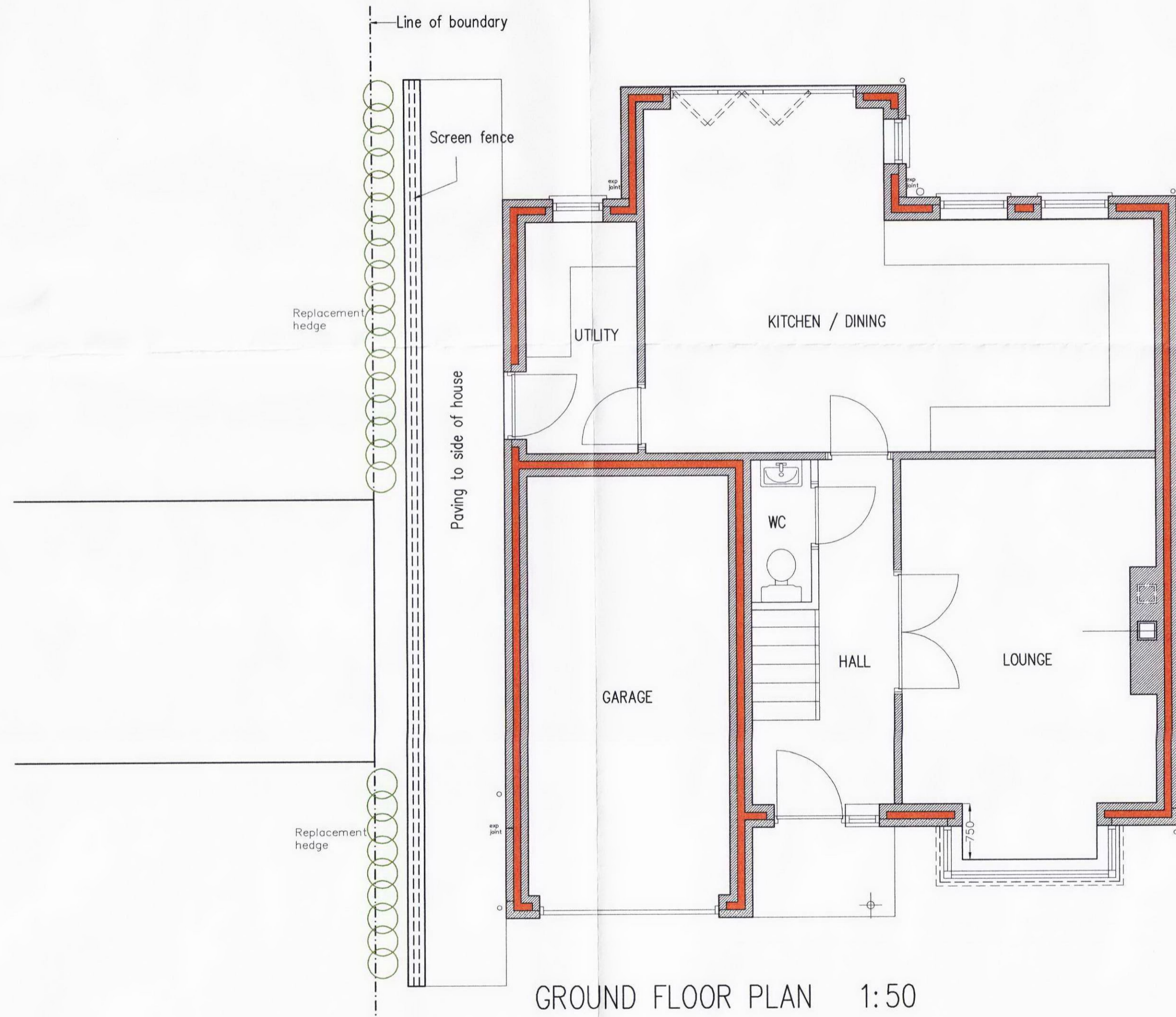
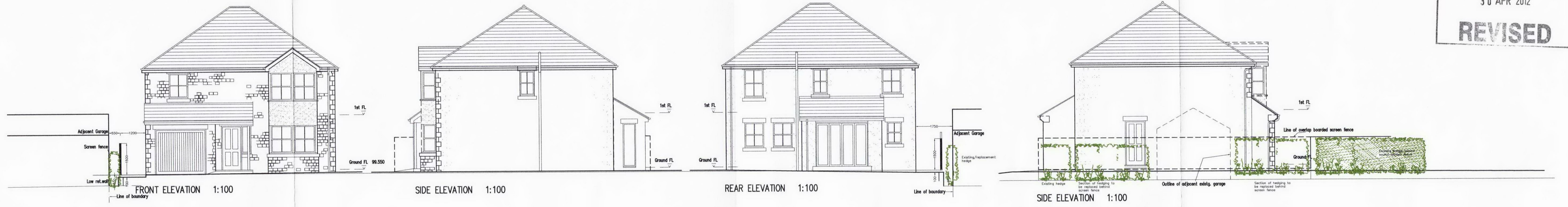


12/00501

LEEDS CITY COUNCIL

30 APR 2012

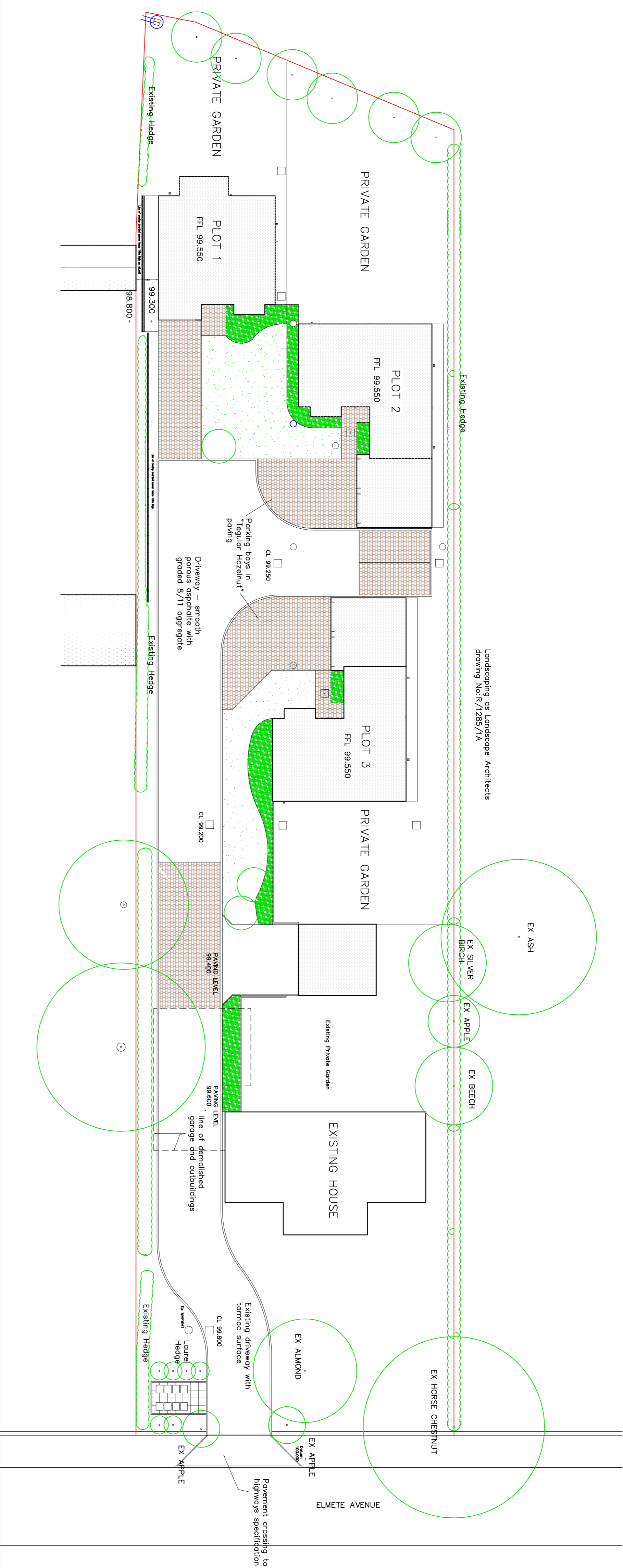
REVISED



Revisions.			Date	Suffix	Description	Date	Suffix	Description
02/08/2011	A	Stone facing and render indicated						
04/08/2011	B	cavity between outer leaf and flue / exp joints indicated						
30/01/2012	C	Eaves and ridge lowered. Screen fence and wall to side boundary.						
APRIL 2012	D	Main Gables removed and "Hipped Roof" introduced. Screen fence lowered						

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Project: PROPOSED HOUSE TYPE B (Plot 1) ELMETE AVENUE SCHOLES	Client: JWT DEVELOPMENTS	
Drawing Title: PLANS AND ELEVATIONS TYPE B	Date: APRIL 2012	Scale: 1:50 & 1:100 @A1
Ref. 11/06	Dwg. No. 003	Rev. D





Landscaping on Landscape Architects Drawing No: 11/250/1A

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Project: **PROPOSED HOUSE TYPE B PLOT 1, ELMETE AVENUE SCHOLES**

Client: **JWT DEVELOPMENTS**

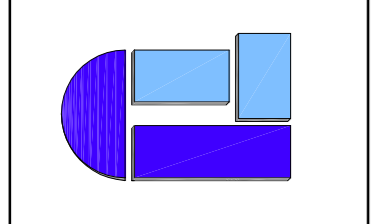
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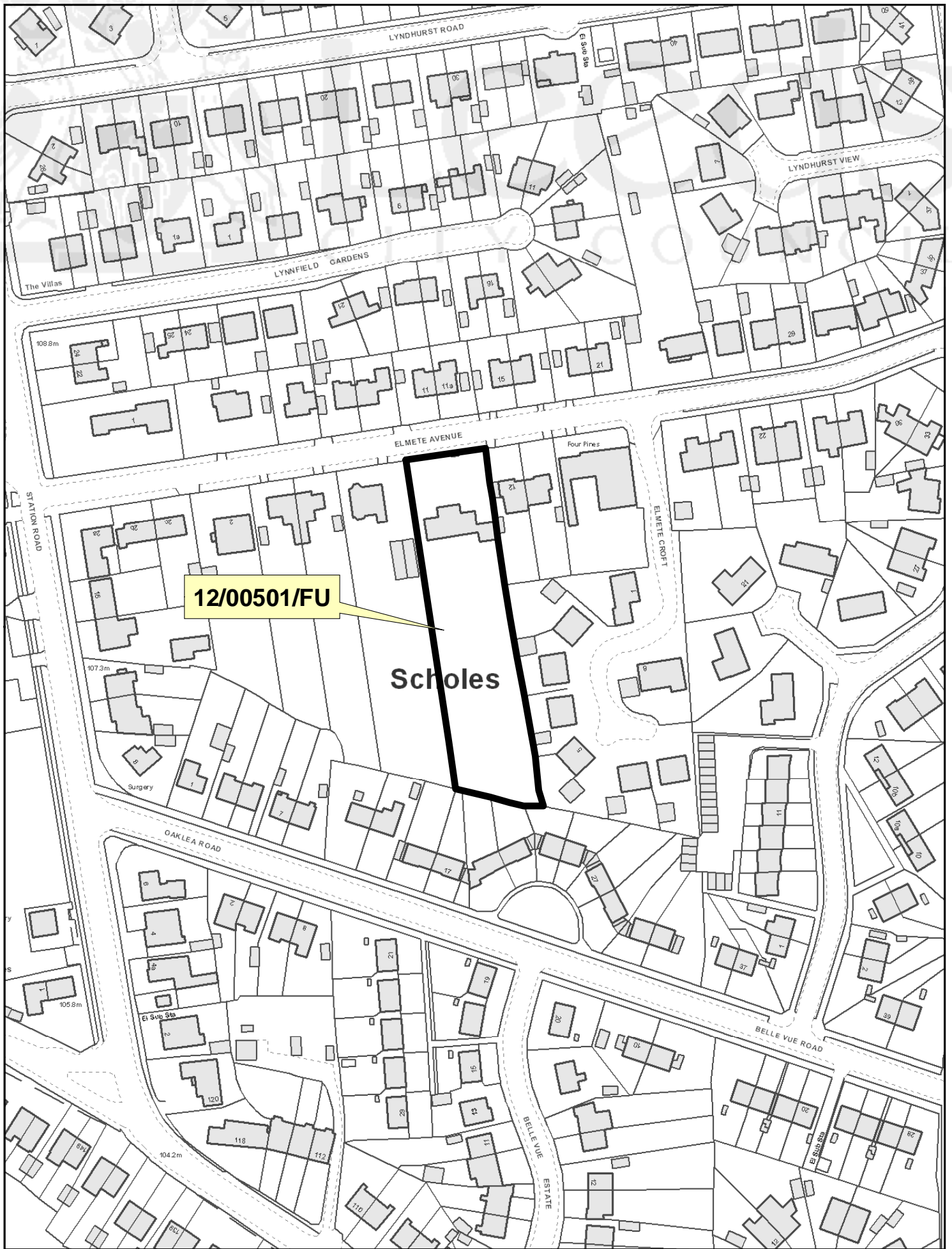
Date: **JANUARY 2012** Scale: **1:200 @A1**

Drawn By: _____ Checked: _____

Ref: **11/06** Dwg. No: **011** Rev: _____

Revisions.			
Date	Suffix	Description	





12/00501/FU

Scholes

EAST PLANS PANEL

