

Application Number:	2021/0675	Application Type:	Full
Proposal:	Change of use and remodelling of former agricultural land to form individual rear gardens serving no. 4 dwellings with associated retaining structures, boundary treatments, earthworks and associated works (Retrospective)	Location:	Land To Rear Of 8,10, 12 -& 14 Anderton Close Cowpe Rossendale Lancashire BB4 7DW
Report of:	Planning Manager	Status:	For Publication
Report to:	Development Control Committee	Date:	24/05/2022
Applicant:	Mike Yates and Andrea Whiteley and Sheila and Duncan Clement and Dave Barnes	Determination Expiry Date:	27/05/2022
Agent:	Richard Gee (Roman Summer Associates Ltd.)		

Contact Officer:	Storm Grimshaw	Telephone:	01706 252411
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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	N/A
Member Call-In Name of Member: Reason for Call-In:	N/A
3 or more objections received	N/A
Other (please state):	In the public interest

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

Refusal.

APPLICATION DETAILS

2. SITE

The application site relates to a parcel of land to the rear of four properties, nos. 8 – 14 Anderton Close, in Cowpe. The land is countryside designated as Green Belt and has been incorporated into the existing rear gardens of each property. Each individual garden is delineated by boundary treatments of different styles including timber fencing with concrete panels and posts, and artificial stone walling. The topography of the site slopes to the west meaning the height of some of the boundary treatments is staggered. The boundary treatment for the extended garden of no. 8 Anderton Close includes a significant retaining walls of artificial stone with a height reaching 3.32 metres in parts.

Public footpath 640 previously ran across the site immediately behind the existing gardens of each property, but the route of this footpath has since been formally diverted to run behind the extended gardens of each property. According to the submitted planning statement the site previously contained a natural gully which has since been filled with inert materials and top soil.

The agricultural field the site previously formed a part of is a hillside which at the time of the case officer's site visit was used for sheep grazing. The surrounding landscape beyond the edge of the urban boundary is open and rural in character with agricultural fields and playing fields.

3. RELEVANT PLANNING HISTORY

None

4. PROPOSAL

The applicants seek retrospective planning permission to change the use of the land from agricultural use to private gardens falling under use class C3 (dwellinghouses). Each garden (as existing) is delineated by boundary treatments of various styles and sizes, although following discussions between the case officer and the planning agent, a revised scheme for the proposal has been submitted. The revised scheme would involve replacing all boundary treatments (except the retaining structures bounding the garden of no. 8 Anderton Close) with new sheep netting fence 1.2m high and new native hedgerows – it is unclear if the hedgerows would be situated in front or behind the proposed fencing. The revised scheme also includes reducing the height of the retaining wall supporting the extended garden of no. 8 Anderton Close to 2m in height with new native hedgerow planting and hanging plants from top of the walls of the garden in order to screen the walls.

5. POLICY CONTEXT

National Planning Policy Framework

Section 2 Achieving sustainable development
Section 4 Decision-making

Section 9	Promoting sustainable transport
Section 11	Making effective use of land
Section 12	Achieving well-designed places
Section 13	Protecting Green Belt land
Section 14	Meeting the challenge of climate change, flooding and coastal change
Section 15	Conserving and enhancing the natural environment

Development Plan

Rossendale Local Plan 2019 to 2036

Strategic Policy SS: Spatial Strategy

Strategic Policy SD1: Presumption in Favour of Sustainable Development

Strategic Policy SD2: Urban Boundary and Green Belt

Strategic Policy ENV1: High Quality Development in the Borough

Strategic Policy ENV3: Landscape Character and Quality

Policy ENV4: Biodiversity, Geodiversity and Ecological Networks

Policy ENV6: Environmental Protection

Policy ENV9: Surface Water Run-Off, Flood Risk, Sustainable Drainage and Water Quality

Other material considerations

National Planning Practice Guidance

National Design Guide

6. CONSULTATION RESPONSES

LCC Rights of Way	No comments received
Environmental Protection (Contaminated Land Officer)	No objection, subject to condition.
RBC Building Control	Comments received

7. REPRESENTATIONS

To accord with the General Development Procedure Order a site notice was posted and neighbour letters were sent out.

One representation was received from the public and their comments are summarised below:

- Support the change of use of the agricultural land to gardens, but objects to the erection of the wall bounding the garden of no. 8 Anderton Close which is considered to be detrimental to the character and appearance of the area;
- Concerns relating to the stability of the wall and the potential implications for health and safety.

8. OTHER MATTERS

After the case officer had conducting their visit to the application site, the planning agent and applicants said that they would welcome the opportunity to meet with the case officer to discuss matters further. It was also noted in the letter submitted by the planning agent (dated 2nd March 2022):

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“My clients are also very keen to engage with you, and ideally to meet discuss matters face to face. They have apparently been made aware that you have held recent discussions with the objector, and my clients would be grateful to be given a similar opportunity to present their own side of the argument if you are agreeable.”

It should be noted that the case officer’s meeting with the objector was to discuss their concerns relating to the retaining wall supporting the extended garden of no. 8 Anderton Close. Although the case officer was open to meeting the agent and applicants, unfortunately due to lack of time and work constraints, it has not been possible to arrange a further visit to the site to discuss the proposal with the agent and applicants. In any case, the application has been independently assessed by the case officer and the submitted details in support of the application are comprehensive in detail.

9. ASSESSMENT

The main considerations in this case are as follows:

1) Principle; 2) Visual Amenity and Countryside / Landscape Impact; 3) Neighbour Amenity; 4) Contaminated Land; 5) Stability of Retaining Walls 6) Planning Balance

Principle

The scheme relates to a change of use of the land from agricultural use to residential garden land (which would constitute use class C3 – Dwellinghouses) within an area of countryside designated as Green Belt.

The Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and one of the purposes of the Green Belt is *“to assist in safeguarding the countryside from encroachment”*.

The Framework goes on to state:

“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.”

The Planning Statement originally submitted in support of the application stated that the change of use constituted “appropriate development” in respect of paragraph 149 b) of the Framework. However, the exceptions of development listed under paragraph 149 of the Framework are not relevant in this instance given the exceptions listed relate specifically to the construction of new buildings in the Green Belt.

In reference to the other forms of appropriate development within the Green Belt, the Planning Statement commented that the works completed constituted “appropriate development” in respect of parts b) and part e) of paragraph 150 of the Framework:

b) Engineering operations;

e) *Material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).*

The proposed material change of use of the agricultural land is for private garden space for up to four residential properties, which would be categorised as use class C3 (dwellinghouses), and such a use is not considered to meet the definition of outdoor recreation. In any case, the proposed material change of use of the land would have to preserve the openness of the Green Belt and not conflict with the purposes of including land within it. In this instance, it is considered that the material change of use of the land would fail to preserve the openness of the Green Belt and would conflict with the following purpose of including land within the Green Belt.

- *To assist in safeguarding the countryside from encroachment.*

Images 1 and 2 below demonstrate the development's encroachment into the countryside and the disruption the boundary treatments around each garden have had on the openness of the Green Belt.



Image 1



Image 2

In response to the local planning authority's concerns regarding openness and encroachment, the planning agent has provided a revised Proposed Elevations / Details plan which proposes to replace the existing boundary treatments with post and rail fencing up to 1.2m high and native hedgerows. The existing retaining walls supporting the extended garden of 8 Anderton Close would also be reduced in height to 2m, with native hedgerow planting and hanging plants on top of the wall.

The local planning authority accepts that the proposed amendments to the existing boundary treatments would be more sympathetic to the rural context of the site, yet the amendments would fail to overcome the significant harm resulting from the encroachment of each domestic garden extension into this area of countryside and the cumulative impact such encroachment would have on the openness of the Green Belt.

While permitted development rights could be removed for each property in question so no outbuilding could be built within the extended gardens, the local planning authority would not be able to prevent other structures that do not constitute development from being erected such as garden paraphernalia and recreational equipment including trampolines and swings for example. Taken as a whole, the extension to each residential garden represents a significant encroachment of development into countryside and the potential cumulative impact on the openness of the Green Belt is considered to be material irrespective of whether a planning condition removing permitted developments right is imposed.

Owing to the development's inappropriateness, very special circumstances would have to be demonstrated to justify the proposed development. For very special circumstances to exist, the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, must be clearly outweighed by other considerations. The planning agent has also provided a further letter dated 2nd March 2022 which sets out what they consider are the very special circumstances justifying the proposal and members are recommended to read this section in full. Nevertheless, the case for very special circumstances is summarised below:

- 1) Through the amended scheme there will be no material harm to openness.
- 2) While a very limited extent of encroachment is acknowledged, the revised details indicates that the domestic extensions will be barely read within the landscape, but will offer a

naturalistic appearance of a simple rural boundary fence and hedge, and a far 'softer' and greener interface with the countryside than the overwhelming majority of rear fence lines that are common place in this part of Rossendale.

- 3) The very special circumstances as described in points 1-3 of page 2 of the letter.
- 4) The diverted PROW is of superior quality and usability than the previous arrangement which boggy, undrained and commonly used for fly-tipping.
- 5) Groundworks have resolved a longstanding drainage issue.
- 6) Enforcement action would serve little public interest and it has been queried if enforcement action could be taken.

The case of very special circumstances existing to justify the proposal will be addressed as part of the planning balance below.

Visual Amenity and Countryside / Landscape Impact

Paragraph 130 of the Framework states *"planning decisions should ensure that developments:*

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)."*

Strategic Policy ENV1 of the Rossendale Local Plan states:

"All proposals for new development in the Borough will be expected to take account of the character and appearance of the local area..."

Policy ENV1 lists criteria which new development should take into account and the following are considered to be relevant in this case:

- i) Providing landscaping as an integral part of the development, protecting existing landscape features and natural assets,*
- k) There is no adverse impact to the natural environment*

Policy ENV3 of the Rossendale Local Plan states:

"The distinctive landscape character of Rossendale, including large scale sweeping moorlands, pastures enclosed by dry stone walls, and stonebuilt settlements contained in narrow valleys, will be protected and enhanced.

The Council will expect development proposals to conserve and, where possible, enhance the natural and built environment, its immediate and wider environment, and take opportunities for improving the distinctive qualities of the area and the way it functions...

In order to protect and enhance the character and quality of the landscape, development proposals should take into account views into and from the site and surrounding area, retaining and, where possible, enhancing key views."

The site is set within an agricultural field to the north of a residential estate. The agricultural field the site forms part of is inherently rural and open in character which is currently used for sheep grazing. Despite the site's location to the rear of the residential estate, the site occupies a prominent position within the landscape of the surrounding area and is visible from nearby public footpaths and longer distances views from across the valley.

The unauthorised use of the application site as a private gardens for nos. 8 – 14 of Anderton Close, alongside the associated engineering works, retaining structures and varied boundary treatments surrounding the site and partitioning each garden, has significantly eroded the site's open and rural character, resulting in undue harm to the character and appearance of the countryside and the quality of the landscape in this area. While it is acknowledged that the proposed amendments to the boundary treatments included within the site would improve the site's overall appearance, it is still considered that the change of use would be out of keeping with the rural character of the area and would lead to unacceptable urban development in this area. The change of use and associated engineering works and operational development have significantly and fundamentally changed the character and appearance of this area of countryside and would fail to respect the character and appearance of this rural area.

Owing to the open nature of the site and the surrounding landscape, the visual impact of the development is not localised and its impact on the distinctive landscape in this area is considered to be unduly harmful. Consequently, it is considered that the development is visually intrusive (and would be visually intrusive even with the amendments proposed) and fails to protect the character and quality of the distinctive landscape of the local area.

Having regard to the above, it is considered that the development is not acceptable in terms of visual amenity and landscape impact within this area of countryside designated as Green Belt.

Residential Amenity

It is not considered the proposal would result in undue harm to the amenity of any neighbouring residents in the local area.

Contaminated Land

The submitted details have stated that the land prior to the unauthorised development taking place was frequently used as an area for fly-tipping (this is noted in both the planning statement and the letter dated 2nd March 2022), yet no details on the nature of the waste illegally left on site has been provided. Further, the unauthorised change of use of the site involved engineering operations which included importing materials for filling, levelling and drainage. The planning statement dated 28th November 2021 states *"we are advised no new materials / fill was introduced onto the land... the works comprised minor reconfiguring / reshaping of the land, utilising soils already in place, slightly raising parts of the land, with an offsetting reduction in height on other parts of the land."* Nevertheless, the proposal is for a sensitive residential end use and the lack of clarity in regards to the site's history of fly-tipping and the imported materials could be addressed by a planning condition, in the event that planning permission was granted.

Stability of Retaining Walls

Concerns were raised over the stability of the retaining walls supporting the garden of no. 8 Anderton Close. The Council's Building Control department have been consulted on the scheme and have confirmed that the retaining walls would not be controlled by the Building Regulations, given they do not form part of a controlled structure. Nevertheless, based on the drawings and the

structural letter provided by the applicant, the Council's Building Control department confirmed they would accept the design as fit for purpose (if the wall was controlled).

Planning Balance

The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to advise that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

In reference to the other considerations set out in the planning agent's case for very special circumstances, the view that the amended scheme would result in no material harm to the openness of the Green Belt in this area is contested by the local planning authority, given the development would still result in significant domestic encroachment into this area of countryside, leading to an urbanised and domesticated appearance of the site as a whole.

The agent notes that one of the applicants contacted the local planning authority before the works were completed and claims they were told in no uncertain terms that planning permission was not required. While the local planning authority has no reason to suggest this statement is untrue, and would not question the integrity and honesty of each applicant, it should be acknowledged that no evidence in the form of written confirmation from the local planning authority has been provided to substantiate this statement. In any case, undertaking unauthorised development is at each applicant's own risk and confirmation from the local planning authority that a form of development does not require planning permission, can only be obtained through submitting an application for a Lawful Development Certificate.

It is noted that an order was granted by Lancashire County Council to relocate public footpath 640 beyond the application site and this application was determined on 28/09/2016. The planning agent notes that as part of the application to relocate the public footpath, concerns were raised by LCC and for that reason one of the applicants contacted the local planning authority to confirm if planning permission would be required. Again, confirmation from the local planning authority that a form of development does not require planning permission can only be obtained through submitting an application for a lawful development certificate, and, in any case, the granting of an order to relocate a public footpath is a separate matter outside of the development management process.

Based on the submitted details it would suggest that the previous location of the public footpath was poor and suffered from drainage issues. The local planning authority has no evidence before them to suggest otherwise and therefore it is considered the public benefits of diverting the public footpath can be given moderate weight.

In reference to the enforceability of the works, limited weight should be given to this matter, as Central Government planning policy attaches great importance to Green Belts and national policy states local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Furthermore, the boundary treatments do not constitute operational development immune from planning enforcement action after four years because they are associated to the change of use of the land.

Having regard to the above, the other considerations put forward by the planning agent do not clearly outweigh the substantial weight given to the harm to the Green Belt, by reason of inappropriateness, harm to openness and the other harm identified in terms of visual amenity and

landscape impact. Consequently, the very special circumstances necessary to justify the development do not exist.

In addition to the above, Policy SD2 of the Local Plan states:

“All new development in the Borough will take place within the Urban Boundaries, defined on the Policies Map, except where development specifically needs to be located within a countryside location and the development enhances the rural character of the area.”

The proposed scheme seeks retrospective planning permission for the enlargement of four private gardens into an area of countryside designated as Green Belt. Significant harm in terms of visual amenity and landscape impact have been identified and it has been determined that the development would fail to enhance the rural character of the area as required by Policy SD2. As such, the development is not considered to be appropriate in principle and is recommended for refusal.

9. REASONS FOR REFUSAL

1. The development results in significant harm to the Green Belt, by reason of inappropriateness, harm to openness and the harm to the character and appearance of the countryside and the local landscape. It is not considered that the other considerations put forward by the applicants clearly outweigh the substantial weight afforded to the harm to the Green Belt and therefore, the very special circumstances necessary to justify the development do not exist. As such, the development fails to accord with Section 13 of the National Planning Policy Framework.
2. The development constitutes a form of urban development in a countryside area. It is not considered that the development specifically needs to be located in a countryside location, nor does the development enhance the rural character of the area. It is not considered that the revised scheme proposed would enhance the rural character of the area either, given the development results in significant encroachment into a countryside area. As such, the development is inappropriate in principle and would conflict with Policy SD2 of the Rossendale Local Plan 2019 to 2036.
3. The development introduces an unacceptable form of urban development to a prominent countryside location, harming the essentially open and rural character and appearance of the countryside. The harm is exacerbated by the prominence of the site when viewed from the surrounding area and across the valley. Furthermore, the development is considered to be visually intrusive within its immediate and wider environment and as a result fails to protect the character and quality of the distinctive landscape of the local area. It is not considered that the revised scheme proposed would mitigate the significant harm to the character and appearance of the countryside. Accordingly, the development conflicts with the aims of Section 12, Section 13 and 15 of the National Planning Policy Framework and Policies SD2, ENV1 and ENV3 of the Rossendale Local Plan 2019 to 2036.

10. INFORMATIVES

1. The proposal would not comply with the development plan and would not improve the economic, social and environmental conditions of the area. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local

Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.



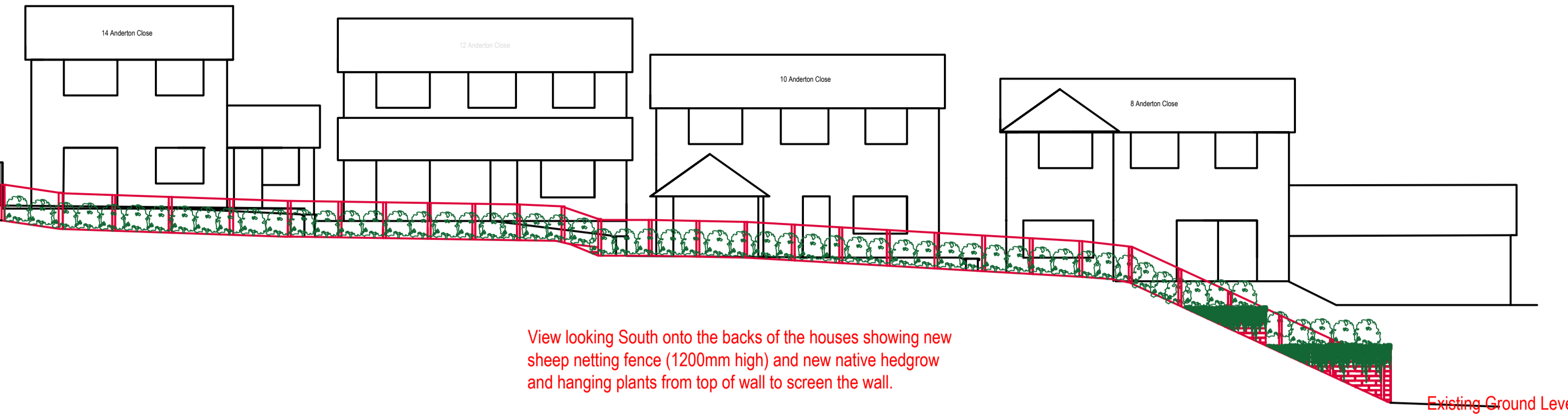








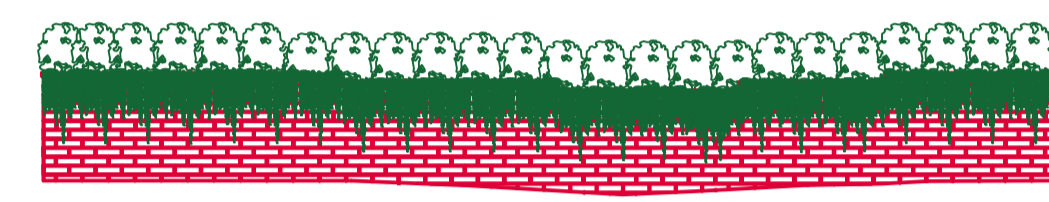




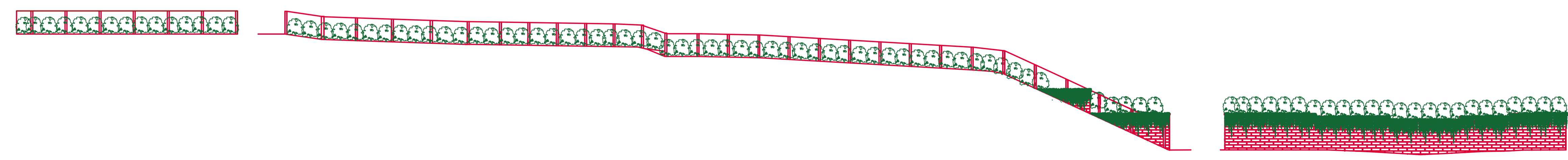
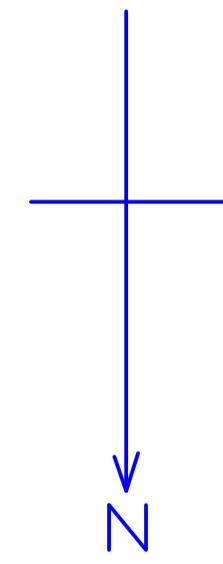
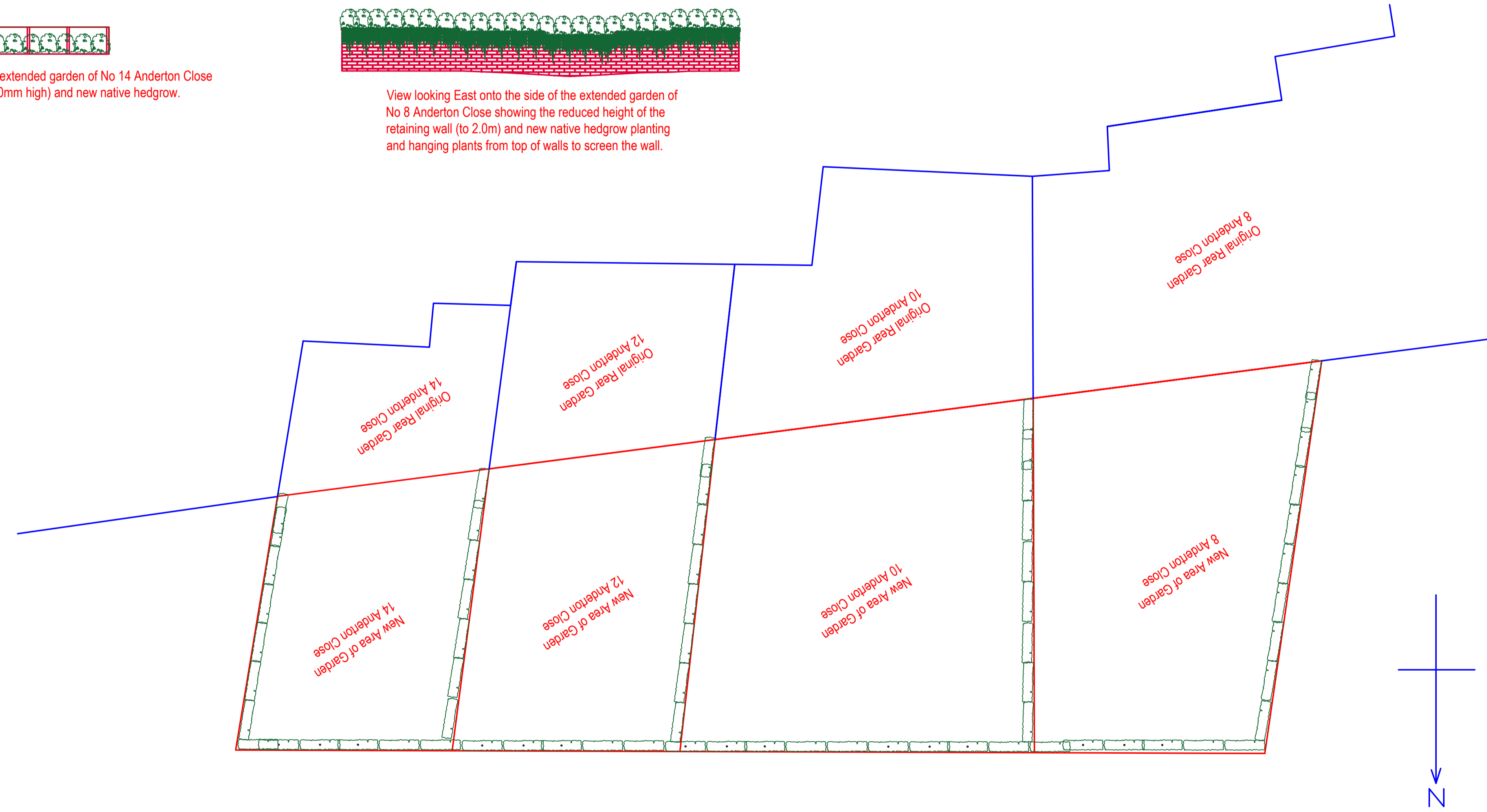
View looking South onto the backs of the houses showing new sheep netting fence (1200mm high) and new native hedgrows and hanging plants from top of wall to screen the wall.



View looking West onto the side of the extended garden of No 14 Anderton Close showing new sheep netting fence (1200mm high) and new native hedgrows.



View looking East onto the side of the extended garden of No 8 Anderton Close showing the reduced height of the retaining wall (to 2.0m) and new native hedgrows and hanging plants from top of walls to screen the wall.



Planning Application and for change of use from Agricultural Land to Domestic Gardens.
 10 Anderton Close,
 12 Anderton Close ,
 14 Anderton Close ,
 8 Anderton Close.

Title - Proposed Elevations / Details.
 Scale approx 1:20 @ A1
 February 16 - 2022