

<b>Application Number:</b>	2022/0535	<b>Application Type:</b>	Householder
<b>Proposal:</b>	Householder: Retention of existing patio and decked area	<b>Location:</b>	10 Pendleton Avenue Constable Lee Rossendale BB4 8UX
<b>Report of:</b>	Planning Manager	<b>Status:</b>	For publication
<b>Report to:</b>	Development Control Committee	<b>Date:</b>	07/03/2023
<b>Applicant:</b>	Mr Timothy Crowley	<b>Determination Expiry Date:</b>	24/03/2023 (Extension of time agreed)
<b>Agent:</b>	Mr Steven Jackson		

<b>Contact Officer:</b>	Melanie Jackson
<b>Email:</b>	planning@rossendalebc.gov.uk

<b>REASON FOR REPORTING</b>	Rossendale Borough Council own part of the water edged in red on the location plan.
<b>Outside Officer Scheme of Delegation</b>	No
<b>Member Call-In</b>	No
<b>3 or more objections received</b>	No
<b>Other (please state):</b>	No

## 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

That members resolve to grant planning permission subject to the condition listed in section 10 of this report.

## 2. SITE

10 Pendleton Avenue is a detached house of natural stone and cream rendered construction under a concrete tiled roof. It is located to the south of Pendleton Avenue, approximately 95 metres northwest of the junction of Calder Road and Pendleton Avenue, in an area of residential development.

The rear garden of the property is flat and then tiered down towards the water's edge of the lodge known as Lee Clough Constablee Lodge, which is under the ownership of the Council.

The application site is located mostly within the urban boundary, except for a minor section which extends into the lodge. The lodge is located outside of the urban boundary in an area of countryside.

### **3. RELEVANT PLANNING HISTORY**

2020/0492 – Householder: First floor front extension – Approved

2003/302 – Single storey extension – Approved

### **4. PROPOSAL**

The proposal is for the retention of the existing patio and decked area constructed of mid grey wood grain composite decking with both grey ceramic tiles and reconstituted stone marshalite steps. Twin glazed green glass balustrades positioned within stainless steel clamp channels are also included to three levels of the rear garden area. The retaining walls at the lower two levels are finished with fluted cladding in limed teak. The upper retaining wall is finished with off white render.

The proposed works have been undertaken to replace the original wooden decking and the original wooden and metal balustrades that had deteriorated.

The application has been submitted as a result of an enforcement complaint received by the Council's Planning Enforcement Team.

### **5. POLICY CONTEXT**

#### **National**

##### National Planning Policy Framework (2021)

Section 2 Achieving sustainable development

Section 4 Decision making

Section 12 Achieving well-designed places

Section 15 Conserving and enhancing the natural environment

#### **Development Plan Policies**

##### Rossendale Local Plan

Policy SD1: Presumption in Favour of Sustainable Development

Policy SD2: Urban Boundary and Green Belt  
Policy ENV1: High Quality Development in the Borough  
Policy ENV4: Biodiversity, Geodiversity and Ecological Networks

### **Other Material Planning Considerations**

National Design Guide  
National Planning Practice Guidance  
RBC Alterations & Extensions to Residential Properties SPD (2008)

## **6. CONSULTATION RESPONSES**

<b>Consultee</b>	<b>Summary of Comments received</b>
Greater Manchester Ecology Unit	Have replied with no specific comments to make on this application.

## **7. NOTIFICATION RESPONSES**

To accord with the General Development Procedure Order neighbour letters were sent out to surrounding properties on 6<sup>th</sup> January 2023. A site notice was also displayed on 12<sup>th</sup> January 2023.

Two representations were subsequently received from neighbouring properties, raising the following issues:

- Protrusion, height and length of decking
- Out of keeping with the character of the surrounding area
- Overdevelopment
- Loss of privacy and overlooking to lower levels of garden.
- Close to adjoining properties
- Restricted views of the lodge
- Lighting
- Noise/Smell
- General dislike of the proposal
- Use of garden furniture and bbqs

In addition to the above, representations from local residents also raised the following issues. The comments from local residents and a response from the case officer is included below.

## Land Ownership

Comments from objectors':

- The red line on the plan in this application is incorrect as it goes beyond the water's edge.
- The wood decking extends beyond the boundary of the property.
- The lodge which we were informed belonged to the Council. I do not think my neighbour is the sole owner of the land that protrudes into the lodge.
- The wood decking and the new decking extend outside the land of number 10. The decking is supported by posts in the water of land in ownership of the Council.

Case officer's response:

Two residents have questioned who owns part of the land contained within the application site, and have claimed that the applicant is not the sole landowner. This issue has been raised with the applicant and land ownership Certificate B has since been signed, with notice served to the other landowner: Rossendale Borough Council.

Notwithstanding the above, it should be acknowledged that the planning system entitles anyone to apply for planning permission to develop any plot of land, irrespective of ownership, and therefore the application could be determined even if the matter of land ownership was unresolved.

## Constructed without planning permission

Comments from objectors':

- The planning application should have been submitted around 12 years ago before the start of the first alterations taking place i.e. changing the land profile, there has been no consultation with the neighbours. No planning application was submitted for the building of the wooden decking.

The above issue has been addressed in the Principle section of the report below.

## **8. ASSESSMENT**

The main considerations of the application are:

- 1) Principle
- 2) Visual Amenity
- 3) Neighbour Amenity
- 4) Ecology

### Principle

The proposal seeks retrospective planning permission for the erection of a patio and decked area to the rear garden of a residential property located within the Urban Boundary. As

noted above, the decking area also encroaches into the lodge to the south of the application site, which is located within an area of countryside outside the applicant's ownership.

The erection of decking into the lodge for residential use would constitute a material change of use normally requiring planning permission. However, based on satellite images of the site, the Council can confirm that a raised decking area has extended from the rear garden of 10 Pendleton Avenue and into the Lodge since 2012 (see images below).



Image 1:  
Satellite  
Image from  
2009  
(application  
site identified  
by star)

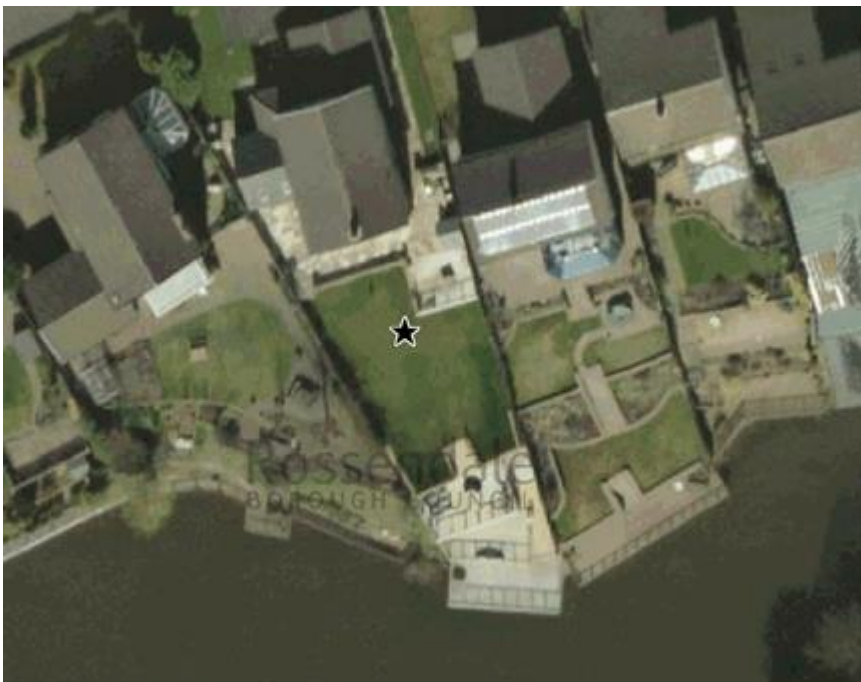


Image 2:  
Satellite  
Image from  
2012  
(application  
site identified  
by star)

The southern boundary of the application site identified on the submitted Location Plan corresponds with the footprint of the decking built in 2012, and the decking proposed to be

retained as part of this application has a similar footprint, appearing to not extend beyond what was previously in situ.

Given the area of decking within the lodge has been present for longer than 10 years, the Council considers the use of this land as residential garden to be lawful. As such, the breach of planning control is immune from enforcement action (in accordance with Section 171B of the Town and Country Planning Act 1990) and no longer requires planning permission.

Having regard to the above, it is considered that the erection of the patio and raised decking area is acceptable in principle.

### Visual Amenity

The garden is of a nature that in order to utilise the land in the best possible way it has been designed with tiered patio areas, and the new decking sits above the lower level of the tiered garden. It is noted that neighbouring properties in the area have similar tiered gardens leading to the water's edge of the lodge.

The objectors' comments are noted, however, the appearance, design and materials used for the decking area are considered to be acceptable and are akin to those you would expect to see in a residential setting. Whilst the decking is contemporary in style, and larger than the decking previously in situ, it is not considered that the decking in place is of a style, size and scale that would have a significantly adverse impact on the character and appearance of the local area. Furthermore, the visual impact of the development is localised to the rear of properties along Pendleton Avenue, with views of the decking from the public realm limited.

In terms of the section of decking located within countryside, it is not considered that the decking would have any adverse impact on the character and appearance of countryside in this area, given the decking replaces a previous area of decking and has a clear affinity to an urban area.

Overall, the scheme is considered acceptable in terms of visual amenity.

### Neighbour Amenity

Both national and local policies aim to protect the amenity of all existing and future occupants of land and buildings. Policy HS9 of the Local Plan and the Council's SPD states that new development should protect the amenity of residents ensuring that each resident has an acceptable level of privacy and satisfactory level of daylight. Important factors such as overlooking, outlook and privacy are taken into consideration below.

The site is open in character and both views into and out of the site are available from the occupiers of no. 10 Pendleton Avenue and nearby neighbours. The topography of the land results in a terracing formation consisting of three raised decking areas leading towards the water's edge of the lodge. Taking into account the open character of the area, and the height of the decking previously in place (as shown on photos provided by the applicant), it is not considered that the potential increase in height from the original decking to the existing decking has resulted in undue levels of overlooking or a loss of privacy substantiating a refusal of

planning permission in this case. The decking areas are positioned to the lower garden area of No.10 Pendleton Avenue and are more than 15 metres from the adjacent property's rear wall.

It is not considered that the scheme would reduce the amount of daylight and sunlight enjoyed by local residents, or harm the outlook of neighbouring properties. It should also be acknowledged that a loss of view and garden noise and smells from domestic activities are not material planning considerations that can be taken into account.

In view of the above, it is considered that the scheme is acceptable in terms of neighbouring amenity.

### Ecology

The concerns raised by objectors in respect of wildlife are noted, however, Greater Manchester Ecology have been consulted on the application and have not raised any objections to the development. It is not considered there would be any harmful impact on protected species or ecological interests as a result of this development.

## **9. SUMMARY REASON FOR APPROVAL**

The development is considered acceptable in principle and does not unduly detract from visual amenity, neighbour amenity or adversely impact wildlife in the local area. It is therefore considered that the development is in accordance with the National Planning Policy Framework and policies SD1, SD2, ENV1 and ENV4 of the adopted Local Plan.

## **10. CONDITION**

1. The development has been carried out in accordance with the following:

<u>Drawing</u>	<u>Drawing No.</u>	<u>Date Received</u>
Location Plan	TJ/001/01	19/01/2023
Site Plan	TJ/002/01	19/01/2023
Garden Plan	TJ/003/01	19/01/2023
Elevations	TJ/004/01	19/01/2023

*Reason: To define the permission and in the interests of the proper development of the site.*

## **11. INFORMATIVES**

1. The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority worked proactively and positively to issue the decision without delay. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.
2. Protected species can turn up in unexpected places and the granting of planning permission does not negate the need to abide by the laws which are in place to

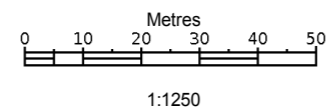
safeguard biodiversity. The applicant should be aware that they must seek ecological advice should they suspect that the proposals will impact on protected species.





Produced 26 Oct 2020 from the Ordnance Survey MasterMap (Topography) Database and incorporating surveyed revision available at this date.

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.



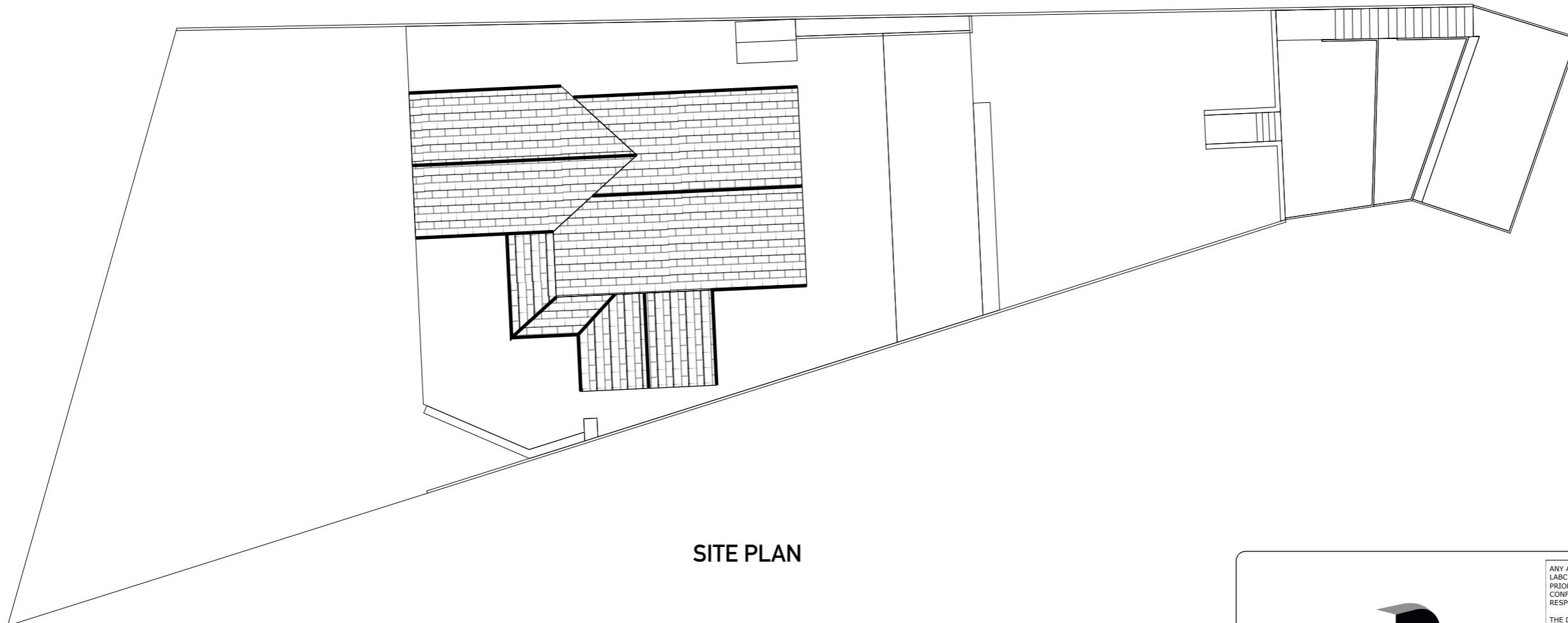
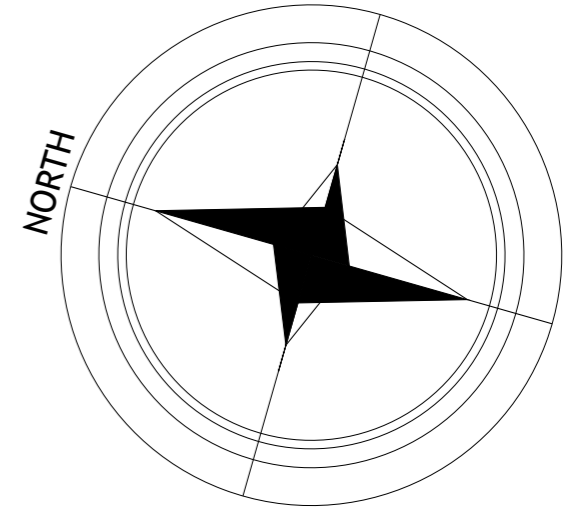
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10, Pendleton Ave, Constable Lee,  
Rossendale  
BB4 8UX

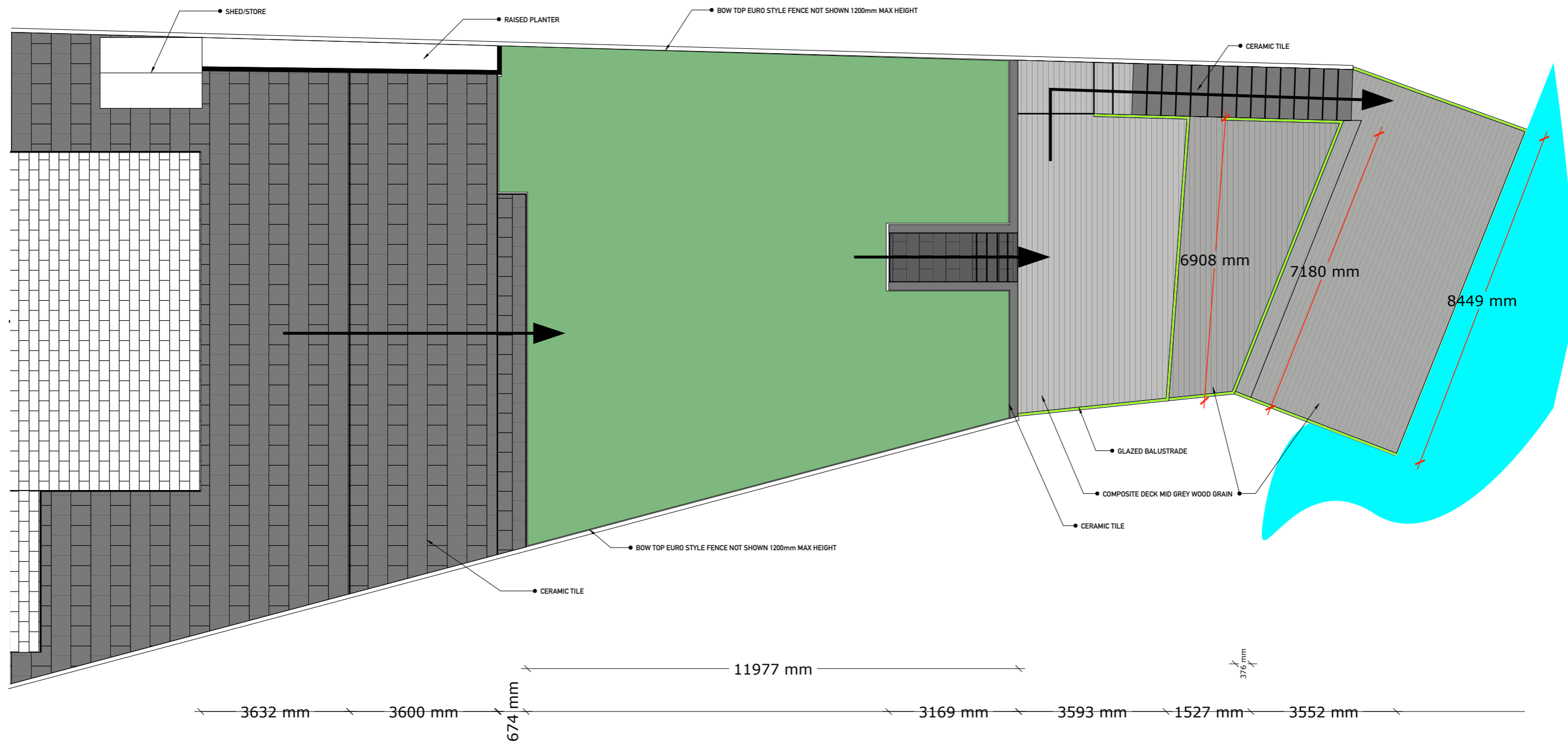
**LOCATION PLAN**

 <b>SOLUTIONS</b> Elevating Life Through Great Design	ANY ALTERATION OR DEVIATION MUST BE CONFIRMED WITH THE ARCHITECT/ENGINEER/LPA/LABC PRIOR TO ANY WORKS BEING CARRIED OUT. IT IS THE CONTRACTORS SOLE RESPONSIBILITY TO CONFIRM ALL SITE MEASUREMENTS PRIOR TO ANY ORDERING OR COMMENCEMENT AS NO RESPONSIBILITY IS ACCEPTED OR IMPLIED BY THE ARCHITECT/ENGINEER ETC.  THE DRAWINGS AND INFORMATION HERIN IS AND REMAINS SOLELY THE PROPERTY OF THE ARCHITECT ANY UNAUTHORISED USE/COPYING/SHARING/PUBLICATION/SUBMISSION ETC WILL NOT BE PERMITTED UNDER COPYRIGHT LAW/INTELLECTUAL PROPERTY. THIS USE ALSO EXTENDS TO THAT OF THE LPA/LABC AND CHECKS MUST BE MADE TO SATISFY THE SOURCE OF THE DOCUMENT PRIOR TO USE.	
	<b>PROJECT/JOB/DWG NO/</b> <b>TJ/001/01/</b>	<b>CLIENT</b> <b>MR &amp; MRS. CROWLEY</b>
Archtech Design Solutions Steve Jackson Dip con Dip arch 14 Maitland Place, Rossendale, Lancs BB4 6AT..... TEL 07792183353 archtech-design@icloud.com Archtech-design.co.uk		<b>PROJECT</b> PROPOSED RETROSPECTIVE WORKS UNDER LPA ENFORCEMENT AT 10 PENDLETON AVENUE, RAWTENSTALL.



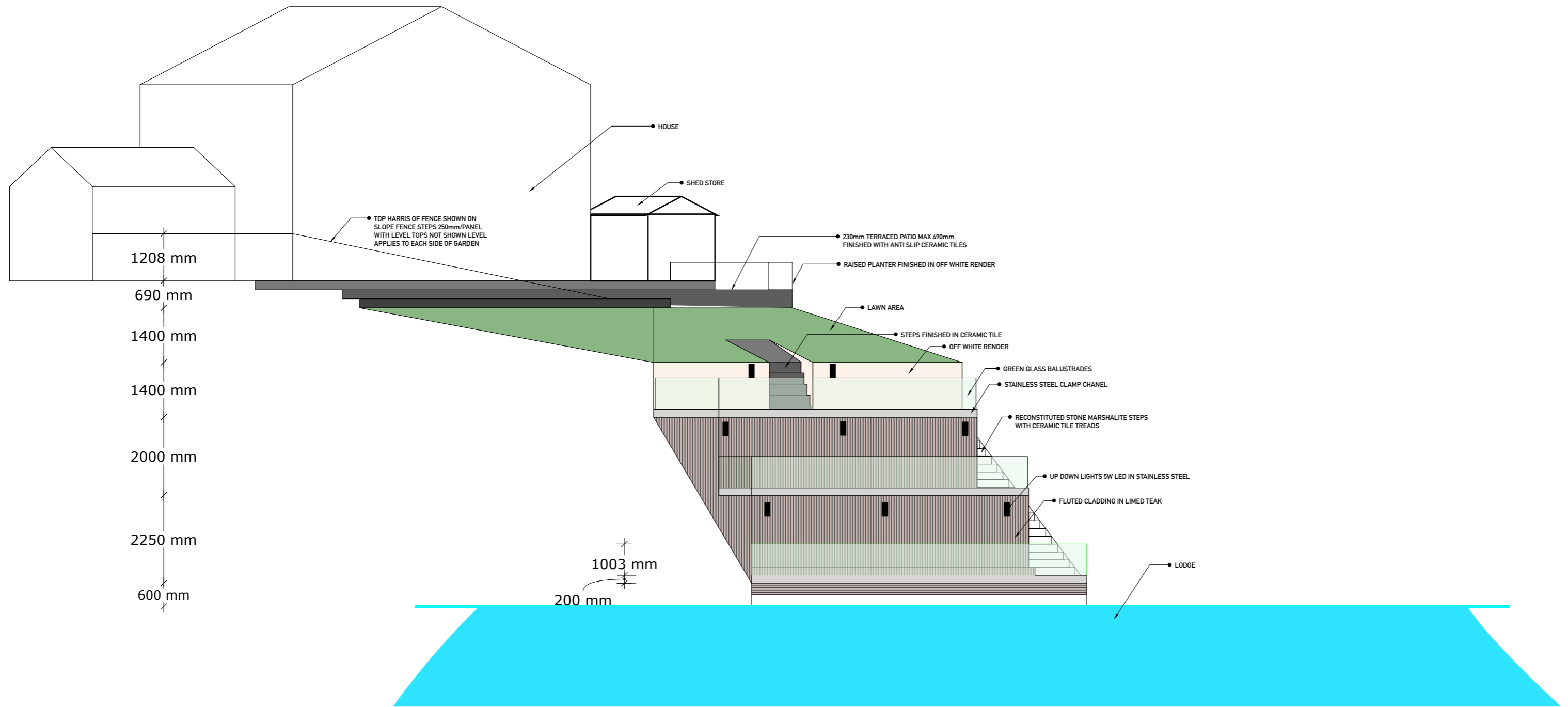
**SITE PLAN**

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	<b>PROJECT/JOB/DWG NO/ TJ/002/01/</b>	
<b>CLIENT</b> <b>MR &amp; MRS. CROWLEY</b>	<b>SCALE</b> 1:200	
<b>PROJECT</b> PROPOSED RETROSPECTIVE WORKS UNDER LPA ENFORCEMENT AT 10 PENDLETON AVENUE, RAWTENSTALL.		
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GARDEN PLAN AS EXISTING/PRIOR TO CURRENT UNAPPROVED ALTERATIONS

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	<p><b>PROJECT</b> PROPOSED RETROSPECTIVE WORKS UNDER LPA ENFORCEMENT AT 10 PENDLETON AVENUE, RAWTENSTALL.</p>	



FOR PLANNING PURPOSES PROPOSED PERSPECTIVE ELEVATION

WORKS CARRIED OUT AS NOW EXISTING  
ELEVATION FROM LODGE PARALLEL TO BOTTOM DECK

 <b>SOLUTIONS</b> Elevating Life Through Great Design	<small>ANY ALTERATION OR DEVIATION MUST BE CONFIRMED WITH THE ARCHITECT/ENGINEER/LPA/LABC PRIOR TO ANY WORKS BEING CARRIED OUT. IT IS THE CONTRACTORS SOLE RESPONSIBILITY TO CONFIRM ALL SITE MEASUREMENTS PRIOR TO ANY ORDERING OR COMMENCEMENT AS NO RESPONSIBILITY IS ACCEPTED OR IMPLIED BY THE ARCHITECT/ENGINEER ETC.</small> <small>THE DRAWINGS AND INFORMATION HERIN IS AND REMAINS SOLELY THE PROPERTY OF THE ARCHITECT ANY UNAUTHORISED USE/COPYING/SHARING/PUBLICATION/SUBMISSION ETC WILL NOT BE PERMITTED UNDER COPYRIGHT LAW/INTELLECTUAL PROPERTY. THIS USE ALSO EXTENDS TO THAT OF THE LPA/LABC AND CHECKS MUST BE MADE TO SATISFY THE SOURCE OF THE DOCUMENT PRIOR TO USE.</small>	
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