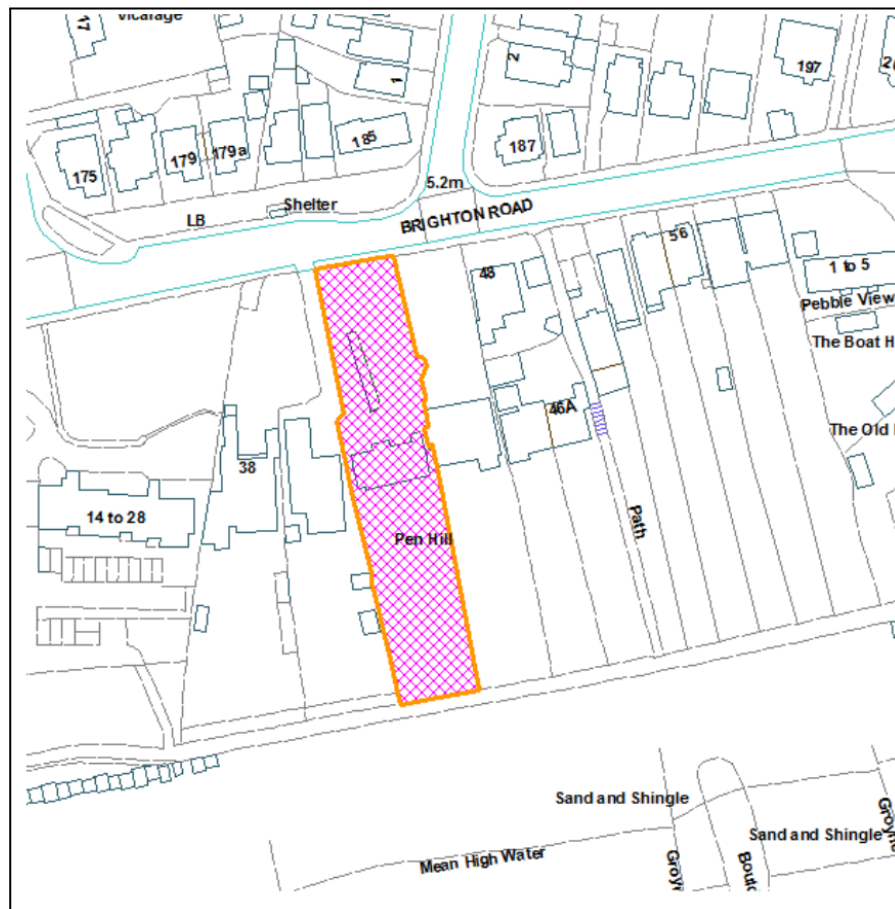


<b>Application Number:</b>	<b>AWDM/0163/24</b>	<b>Recommendation - REFUSE</b>
<b>Site:</b>	<b>42 Brighton Road, Lancing</b>	
<b>Proposal:</b>	Demolition of existing dwelling and construction of a 4-bedroom detached dwelling over 3 levels with rear terrace and associated works. New outbuilding with raised terrace to the south. New detached garage with guest bedroom over and cycle store to the north. Application to Vary Condition 1 (approved plans) of previously approved AWDM/0923/21. Amendments: Inclusion of a trellis/privacy screen along the area of terrace next to the sunken seating as part of proposed landscaping scheme	
<b>Applicant:</b>	Mr Mario Bernard	Ward: Widewater
<b>Agent:</b>	Domus Architecture Ltd	
<b>Case Officer:</b>	Peter Barnett	



**Not to Scale**

## Update since March 4th Planning Committee

This application was considered by the Planning Committee on 4th March where a decision was deferred to enable Officers to further investigate whether the ground levels are in accordance with those shown on the approved plans.

Since the Committee meeting, your Officers commissioned a site survey to be carried out by a professional surveyor.

Legal advice was also sought from Counsel on the interpretation of Condition 10 which states:

*“There shall be no alteration to ground levels within the site unless and until details have been submitted to and approved in writing by the local planning authority. These details shall include proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed levels to existing. Any such works shall be carried out in accordance with the agreed details and completed prior to occupation of the dwelling or in accordance with an implementation programme approved in writing by the Local Planning Authority.”*

There are two competing interpretations:

- a. that condition 10 requires the approval of ground levels within the site notwithstanding the reference to such levels within the plans approved in condition 1, or
- b. that condition 10 only applies if the developer proposes to alter the levels within the plans approved in condition 1.

The barrister's opinion supports the views of your Officers that the first interpretation is the correct one for the following reasons:

Although condition 1 expressly approves the plans it lists, it also states that the approval of those plans is subject to any “subsequent condition imposed on” the permission. Furthermore, the latter interpretation (b) in effect involves reading into condition 10 the words “the approved”, so that it reads “There shall be no alteration to **the approved** ground levels...”. Without these words being read in, the natural meaning of the words in the condition is that they apply to the ground levels within the site as they existed prior to implementation of the permission. This is supported by the reference in the condition to the need to show the relationship of proposed levels to existing.

Your Officers are therefore of the view that the works have been carried out in breach of Condition 10. Consequently, while the ground levels appear to have been constructed to a similar level to that shown on the plans submitted with the current application, no levels were specified with the original application and, in accordance with the interpretation above, the applicant should have provided explicit detail of the levels increase prior to commencement of the development. Had such detail been available to Officers it would have been made clear that the increase in height would have resulted in an unacceptable relationship with No.44 and a lower ground level would have been sought.

By carrying out the work without the benefit of receiving details showing the relationship of proposed levels to existing, the Council did not have the opportunity to assess the impact. The works that have been carried out are therefore considered to be unlawful and the Council would be justified in taking enforcement action to seek a reduction in levels and other mitigation to reduce the extent of overlooking to No. 44.

### **Proposal, Site and Surroundings**

The application site is on the south side of Brighton Road backing onto the beach. Planning permission was granted in 2022 for the demolition of an original bungalow on the site and the construction of a 4-bedroom 2 storey flat roofed dwelling (when viewed from Brighton Road) with a lower ground floor at the rear, resulting in three storeys at the rear. At the rear, there was to be a raised terrace adjacent to the house with a lower garden level beyond, leading to a sunken garden room sited towards the southern end of the garden. At the front a two storey detached garage with guest accommodation above was proposed (AWDM/0923/21). Work is well underway on the construction of the new house and garage/guest accommodation and it has become apparent that the development is not being built in accordance with the approved plans. A separate application considered the amendments to the house and garage only and was determined at the March 4th meeting (AWDM/0970/23) subject to the first floor patio doors at the front of the dwelling being replaced with fixed glazing. Plans have been received showing this with the inclusion of a restricted opening side light.

This application seeks approval for the landscaping only. However, as discussed in the update above, the levels themselves have not been approved.

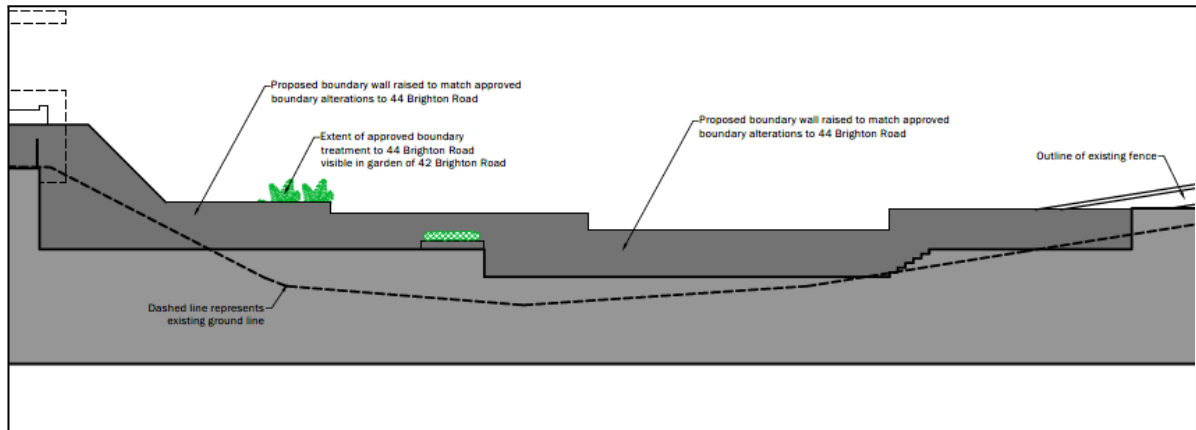
The most significant impact from the approved plans is from the increased level of the rear garden. The approved plans under AWDM/0923/21 did indicate that the levels were to be altered as there had previously been a steep drop in ground level at the rear before it rose up again towards the beach. While an indicative line showing the new level was included on the approved plans, the planning permission also included a condition which stated:

*“There shall be no alteration to ground levels within the site unless and until details have been submitted to and approved in writing by the local planning authority. These details shall include proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed levels to existing. Any such works shall be carried out in accordance with the agreed details and completed prior to occupation of the dwelling or in accordance with an implementation programme approved in writing by the Local Planning Authority.”*

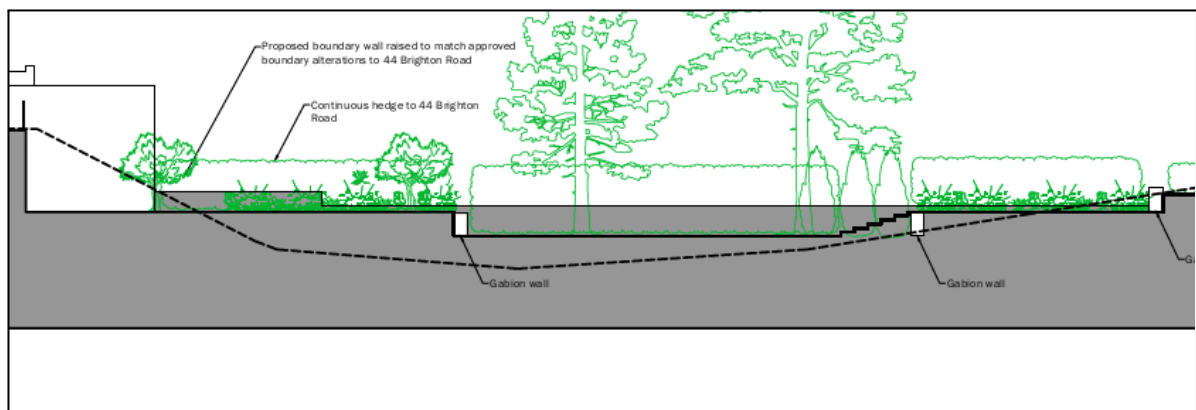
The works that have been carried out were done so without the submission of further details and originally appeared to be far more extensive than originally shown. The images below show the proposed garden levels relative to the boundary wall with 44 Brighton Road to the east. The approved plans suggested that the garden level at No. 42 would sit between 1.3m - 1.7m lower than the top of the wall on the boundary with No.44. However, the wall at No.44 was not built to the height shown on the

original plans and, as a consequence, as constructed, the garden level is almost at the top of the wall, allowing clear views down onto the rear garden and pool at No. 44.

## AWDM/0923/21



## As constructed



The approved plans were misleading and gave the impression that there would not be significant overlooking of the neighbours' garden. In this respect the approved drawing included a note that the boundary screen would be at the same height as the neighbours when in fact as indicated on the current cross section it is a lot lower. In cases such as this where there is a significant change in levels a planning condition was imposed requiring details of levels to be submitted prior to the commencement of development on site but this condition was not discharged prior to the rear terrace being formed.

Unfortunately, the impact on the neighbouring property to the east is far more significant than originally anticipated.

The photographs below show the raised garden levels in relation to the neighbouring property.



Clearly, this has resulted in an unacceptable situation in respect of overlooking and discussions have taken place with the applicant and their planning agent to seek some form of amendment to mitigate the impact on the occupiers of No. 44. The current application proposes the introduction of a 0.7m wide strip of hedge planting adjacent to the boundary for a length of approximately 15m with a 1.5m high vertical timber trellis. However, Members did not consider that this was adequate and required further investigation into the levels themselves.

### **Relevant Planning History**

AWDM/1288/20 - Demolition of existing bungalow and construction of 2 detached 4 bedroom dwellings over 3 storeys each with detached garages and associated landscaping works - approved but not proceeded with.

AWDM/0923/21 - Demolition of existing dwelling and construction of a 4-bedroom detached dwelling over 3 levels with rear terrace and associated works. New outbuilding with raised terrace to the south. New detached garage with guest bedroom over and cycle store to the north - approved

AWDM/0776/22 - Application for Approval of Details Reserved by Condition 6 (Drainage) of previously approved AWDM/0923/21 - approved

AWDM/0970/23 - Demolition of existing dwelling and construction of a 4-bedroom detached dwelling over 3 levels with rear terrace and associated works. New outbuilding with raised terrace to the south. New detached garage with guest bedroom over and cycle store to the north. Application to Vary Condition 1 (approved plans) of previously approved AWDM/0923/21. Amendments: Increase in height of house by 0.85m, addition of first floor balconies to front elevation, addition of lightwells to front. Increase in height to garage block by 0.37m; addition of cladding to garden room - under consideration

## **Consultations**

**Drainage consultant:** We request further information on the proposed drainage strategy for the new plans. The applicant should provide a new drainage strategy drawing for the proposed changes. Therefore, we would recommend the objection of the application until further information is received that addresses the above point.

**Drainage consultant second response:** If there are no changes to drainage, then we are happy to remove our objection

**Lancing Parish Council:** Not received

## **Representations**

The following representations were submitted in connection with application AWDM/0970/23, considered elsewhere in the agenda, but relate to the rising of ground levels. Any additional representations on this application and the latest landscaping scheme will be reported verbally at the meeting.

- Rear garden sits significantly higher than that of No.44
- Question whether garden levels comply with approved plans
- A new wall is required, set 1m from the boundary with No. 44, in order to reduce overbearing impacts and to prevent overlooking
- Increase in height of house results in significant overbearing and overshadowing impacts on No.44, particularly to patio area of that property
- No boundary treatment proposed between site and No. 44
- Landscaping to rear likely to lead to loss of light
- Drainage strategy not approved prior to work commencing
- Levels have not been approved by LPA
- Landscaping works not approved prior to commencement
- Concerns at increased flood risk

## **Relevant Planning Policies and Guidance**

Adur Local Plan 2017 polices 15, 30, 36

'Supplementary Planning Guidance' comprising: Development Management Standard No.2 'Extensions and Alterations to Dwellings'

National Planning Policy Framework (December 2023)

## **Relevant Legislation**

The Committee may grant planning permission for development carried out before the date of the application in accordance with Section 73A of the Town and Country Planning Act 1990 (as amended).

Save that the development will have already commenced, this is a conventional planning application, and the Committee should consider the planning circumstances existing at the time of the decision in accordance with:

Section 70 of the Town and Country Planning Act 1990 (as amended) provides that the application may be granted either unconditionally or subject to relevant

conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

### **Planning Assessment**

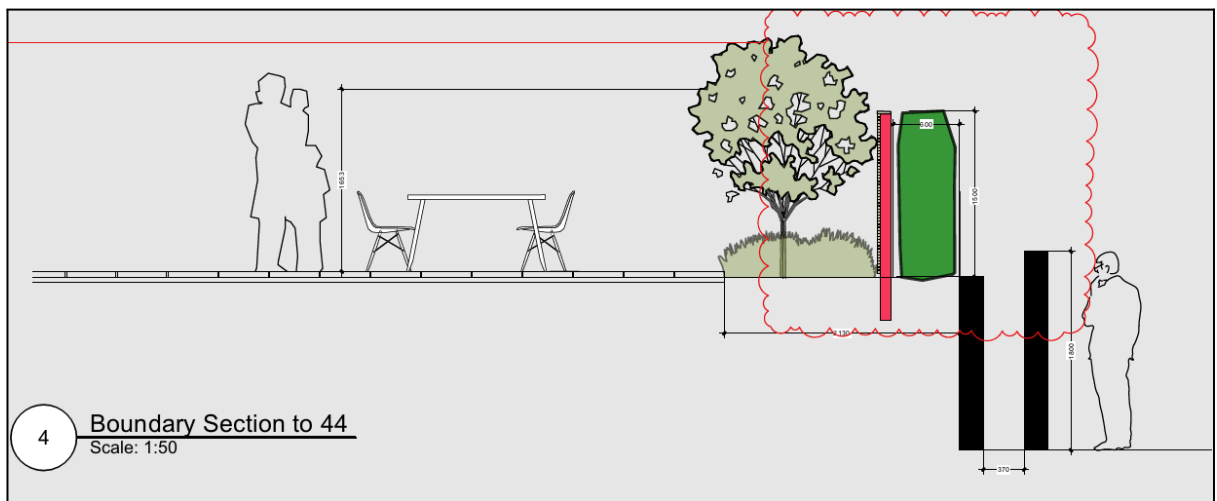
The rear garden and the changes to the ground levels has resulted in the greatest impact to neighbours, particularly the occupiers of No.44 to the east. That property underwent its own development recently which included changes to ground levels and the construction of new boundary walls. However, the changes to the rear garden level at No.42 has resulted in an increase in the height of the garden, particularly in the area adjacent to the rear of the house where it is possible to stand at almost the same height as the top of the boundary wall with clear views down onto the neighbours' patio and pool area.





The plans for the rear garden of No. 42 show a sunken seating area close to the boundary with an outdoor dining area on higher ground beyond that. There is a swimming pool on the west side of the garden. The garden then steps down to a lower central area before stepping up again to a garden room and pergola at the end of the garden.

The landscaping plans show a new hedge being planted along the boundary with a new 1.5m high trellis and then an area of landscape planting between the raised dining area and the boundary to prevent people from standing right up to the boundary.



Hedge planting is proposed along the entire length of the boundary with both No. 44 and No. 40 and the landscaping scheme overall has been designed to prevent



people from getting too close to this boundary.

At the front, a new hedge is shown being planted on the boundary with No. 44. The ground levels have also been raised in the front, resulting in a small step in height between No. 42 and 44. This does not have a significant amenity impact but will necessitate the construction of a low retaining wall or some other means of preventing soil from falling into No. 44.

The concerns and objections of the adjoining residents are understandable as the raising of the garden level has resulted in significant overlooking. While the landscaping scheme proposed, including new hedge planting and trellis, will provide some mitigation in overlooking the disparity in ground levels between 42 and 44 is such that any structures or planting on the higher ground will increase the overbearing nature of the development and a reduction in ground level in the area around the sunken patio on the boundary with No. 44 is essential.

### **Flood Risk and Drainage**

The Environment Agency has assessed the works as carried out and has no objection subject to compliance with the previously approved FRA. The surface water drainage details have been approved under a separate application for approval of details reserved by condition (AWDM/0776/22). However, the extent of change in levels was not fully appreciated due to the failure to submit details as required by Condition 10. Further details should therefore be submitted to demonstrate that there will be no surface water run off onto neighbouring land.

### **Recommendation**

#### **A. Refuse for the following reasons:**

1. The raising of the ground levels in the rear garden has been carried out in breach of Condition 10 of AWDM/0923/21 and has resulted in an overbearing and unneighborly development which causes unacceptable overlooking and loss of privacy of 44 Brighton Road, contrary to policy 15 of the Adur Local Plan
2. It has not been demonstrated to the satisfaction of the Local Planning Authority that the raising of the ground levels will not result in a worsening of surface water flooding for neighbouring properties. The application is therefore in conflict with policy 36 of the Adur Local Plan, the PPG on Flood Risk and Coastal Change and the NPPF

#### **B. That enforcement action is authorised should the applicant breach proposed condition 17 under AWDM/0970/23**