Tuesday, 22 October 2024

**Objection to Application AWDM/1269/24**

**Site Address: Land Between 40 And 44 Brighton Road, Lancing, West Sussex**

**Description: Application for Approval of Details Reserved by Condition 16 (reduction in the ground levels of the rear garden and associated landscaping) of Application AWDM/0970/23.**

## Introduction:

This letter has been submitted on behalf of Mr Mark and Mrs Deb Kamis, of 44 Brighton Road, and Ms Sylvia Whelan and Mr Mike Mogré, of 40 Brighton Road, in relation to AWDM/1269/24, which is an application to discharge condition 16 of application AWDM/0970/23.

Committee members have previously concluded that the unlawful raising of the ground levels has caused significant unacceptable negative impacts on the neighbouring property. As such, a planning condition was attached to approval reference AWDM/0970/23, requiring the applicant to present an acceptable rear garden scheme.

Condition 16 of application AWDM/0970/23 states the following:

*16. Within one month of the date of this permission plans shall be submitted to the local planning authority for its written approval showing a reduction in the ground levels of the rear garden and an associated landscaping scheme, plus details of a retaining wall to the front garden boundary with No. 44 Brighton Road, to reduce the impact on the occupiers of No.44 Brighton Road to an acceptable level. The plans and scheme shall include a timetable for the implementation of the works. The works shall be carried out in accordance with the approved plans, scheme and timetable and completed prior to the occupation of the dwelling. Written notice must be given to the local planning authority to confirm that the garden works and landscaping have been completed in accordance with the approved plans, scheme and timetable prior to the occupation of the dwelling and the local planning authority must be permitted access to the development within 28 days of receipt of the written notice to check that the works have been completed in accordance with the approved plans. The dwelling is not to be occupied until the local planning authority has confirmed in writing that the garden works and landscaping have been completed in accordance with the approved plans, such confirmation to be provided within 14 days of the local planning authority's inspection of the development.*

*Reason: In the interests of visual and residential amenity and to prevent overlooking in accordance* ***with policy 15 of the Adur Local Plan.***

**Summary of objections**

***(i)*** ***Late submission of details***

The proposed details were submitted late, after the expiry of the one-month deadline set out in condition 16. Nothing of substance turns on this, however it is indicative of the applicant's general unwillingness to co-operate and to offer meaningful compromises.

***(ii) No reduction in ground levels***

Additionally, the current application is presented as seeking to reduce a small part of the garden by 500mm. The applicant's planning statement refers to "approved levels" however this is factually incorrect and misleading. It should be noted that no levels were ever approved, as previously outlined by Ben Garbett of Keystone Law. LPA's counsel has agreed. The presentation of any previous levels as "approved" is clearly wrong, and the proposal would not result in the reduction of any ground levels compared to what is lawful. Accordingly, the proposed plan would result in an increased ground level above those originally found on site. The description of the proposal should be revised to reflect this.

***(iii) Unacceptable loss of privacy/ harm to visual and residential amenity***

It is considered that the minor 500mm reduction on existing 'unapproved' levels, relating to a small section of the garden area, and which retains a significant portion of the garden sitting significantly higher than the garden levels of neighbouring properties. The resultant level is still significantly higher than the original ground level of the garden, and clearly results in harm to visual and residential amenity, as well as an unacceptable loss of privacy.

All this could have been avoided had the applicant been prepared to offer a more significant scale back of the existing ground height. As such the current proposal does not meaningfully address our client's grievances, and there are no good reasons to approve a partial compromise which still results in harm in conflict with the development plan policy and NPPF.

Indeed, significant concessions have been made by neighbouring occupiers during the development process, and it is not considered that further compromises on the garden levels would adequately mitigate the significant residential amenity impacts raised by the development.

## Relevant Planning Policy:

**National Planning Policy:**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide (NDG)

**Local Planning Policy:**

*Adur Local Plan 2017*

Policy 2 - Spatial Strategy

Policy 15 - Quality of the Built Environment and Public Realm

Policy 36 - Flood Risk and Sustainable Drainage

## Discussion:

**Design and Visual Amenity:**

Paragraph 135 of the NPPF states that planning decisions should ensure that all developments will add to the overall quality of the area over the lifetime of the development, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, are sympathetic to local character and history, including the surrounding built environment and landscape setting, establish and maintain a strong sense of place using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit, optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development. Paragraph 139 of the NPPF goes on to state that development that is not well designed should be refused.

Planning Practice Guidance (PPG) states that achieving good design "is about creating places, buildings, or places that work well for everyone, look good, and will adapt to the needs of future generations."

Policy 15 of the Adur Local Plan 2017 states that development should be of a high architectural quality and respect and enhance the character of the site, and the prevailing character of the area, in terms of proportion, form, context, massing, siting, layout, density, height, size, scale, materials, detailed design features and landscaping.

Of particular significance in this application in Paragraph 140 of the NPPF, which states that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

Condition 10 was added to the original application partially in the interests of visual amenity; the site is highly visible from the beach path behind the dwellings; historically, the garden levels of this group of houses along Brighton Road were at the same level, undulating to the ends, and lying low centrally.

The significant raising of ground levels would still make the garden appear as a discordant and alien element within the locality, **significantly raised above the levels of both neighbouring gardens**; the set back of the fencing from the site's boundary is a contrived feature, wrought by the unacceptable impacts caused by the raised ground levels.

This visual impact is exacerbated by the requirement for hard and soft landscaping at the boundaries, which would sit atop the walls of neighbouring dwellings. This means that the hard landscaping between the property and its neighbours would sit at around 3 metres in height as a result of the raised ground level, resulting in further visual harm through visual dominance.

As such, the proposed alterations would not be considered to comply with Policy 15 of the Adur Local Plan or the relevant provisions of the NPPF.

**Residential Amenity:**

Paragraph 135 of the NPPF sets out six criteria against which planning decisions should meet to deliver well-designed places. This includes criteria (f), which requires development to "create places … with a high standard of amenity for existing and future users."

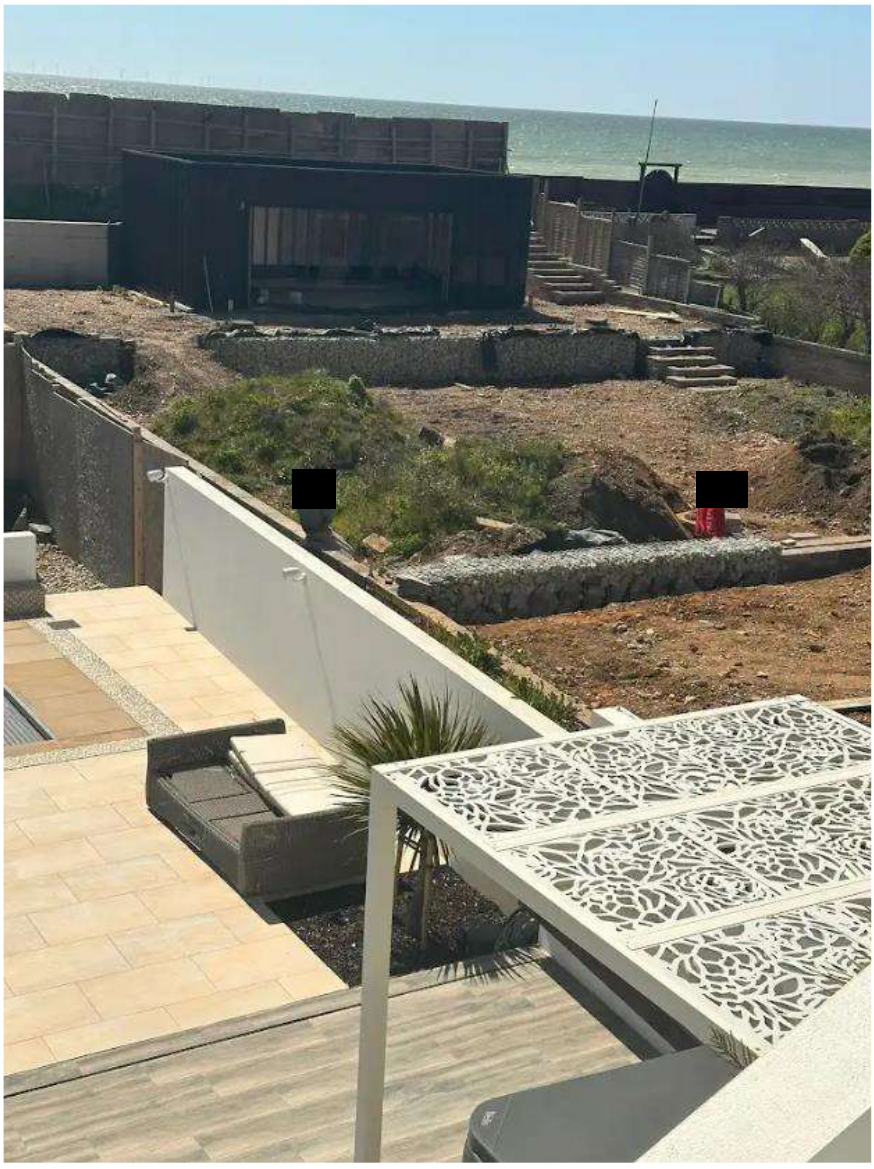
Planning Practice Guidance (PPG) states that achieving good design "is about creating places, buildings, or places that work well for everyone, look good, and will adapt to the needs of future generations."

Policy 15 of the Adur Local Plan 2017 states that development should not have an unacceptable impact on adjacent properties, particularly residential dwellings, including unacceptable loss of privacy, daylight/sunlight, outlook or open amenity space.

The photographs below show the excessive increase in the height of the garden, and the residential amenity impacts that have ensued as a result; the revised plans are again a token offering, in recognition that the scheme results in **significant and unacceptable residential amenity impacts**; these ground levels photographed below would only be slightly reduced, and would not overcome the residential amenity impacts which have been continuously raised since the submission of the applications.

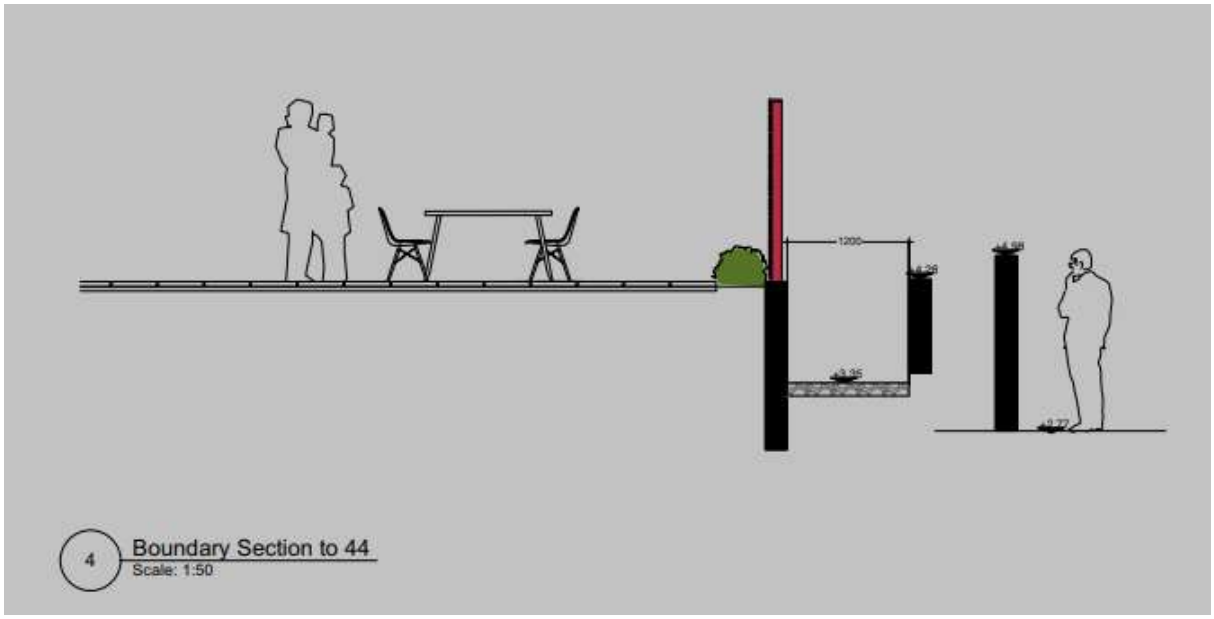
The plans presented show an **extremely minor reduction** of 500mm to a small part of the garden, retaining significant amounts of tall, closed boundary features directly next to the site's boundaries to reduce overlooking.

**Image of rear garden showing ground level at height of boundary wall (29th April 2024):**

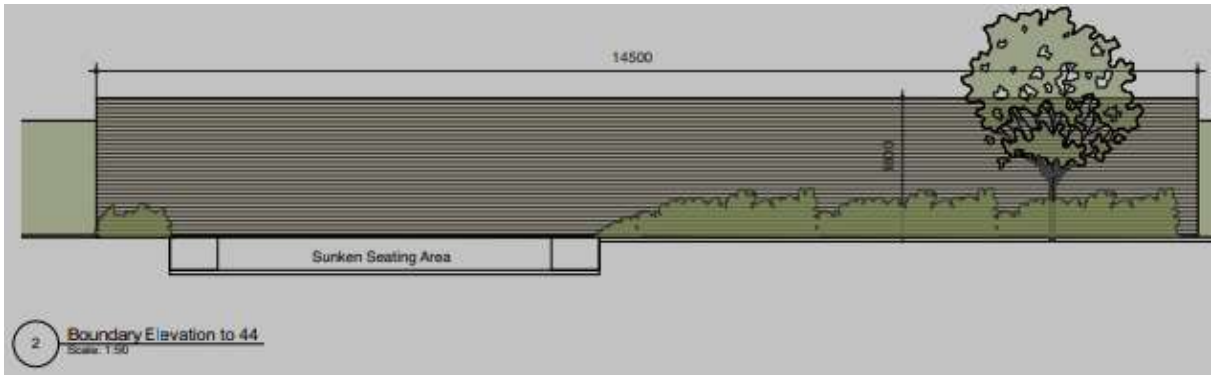


In this instance, it is clear that the ground levels as altered result in **unacceptable residential amenity impacts**, as agreed by the committee.

The boundary features between the sites would be excessive in height when viewed from No. 44, sitting significantly above the existing boundary wall of No. 44, resulting in **significant residential amenity impacts through enclosure, overbearingness and overshadowing.** The images below show the relationship between the sites, and the height of the boundary fencing required to reduce overlooking; it is clear that the provision of another boundary at the new, raised ground level would result in significant overbearing and loss of light impacts to the residents of No. 44.




The boundary elevation to No. 44 would be taken up by a tall, and fence, whose base sits above the ground level of No 44; this would have further enclosing and overbearing impacts on the residents of No. 44, resulting in additional residential amenity harm.




There are also concerns relating to the ability for the Council to require that any fencing between the sites remains in situ, as the condition does not require any boundary treatments to be retained in perpetuity. As such, any future owners could remove the fence, exposing occupiers of No. 44 to high levels of overlooking and loss of privacy. This issue is raised **solely by the unlawful increase to the garden levels**, and the only way to mitigate this harm is through the return of the garden levels to the original level.

It is considered that the significant residential amenity impacts would remain, and as such, the proposed alterations would not comply with Policy 15 of the Adur Local Plan 2017 or Paragraph 127 of the NPPF and as such, should be refused.

**Conclusion:**

The unlawful increase in garden levels have clearly led to visual and residential amenity impacts which have not been adequately mitigated by this application. It is felt that the Council have ample reason to refuse this application and to serve an enforcement notice, or breach of condition notice, in order to ensure that the ground levels are reduced to an acceptable level (in this instance, the same level as that of neighbouring gardens). This would ensure that the visual amenity of the area, and the residential amenity of neighbouring properties is protected.