Expiry Date -

Development Control – Delegated Officer Report

Application Number: **Recommendation – APPROVE**
AWDM/1128/13

Site: **184B Brighton Road**

Proposal: **Retention of decking and storage area adjacent to widewater lagoon.**

Neighbours checked: Y
Additional neighbour notifications: N

Proposal, Site and Surroundings

The proposal is retrospective, for decking in the rear garden of No. 184B Brighton Road (the details of which are shown on the submitted plans).

No. 184B belongs to a terrace of townhouses that back onto Widewater Lagoon. Each house has a rear garden leading out from the first floor living area onto the top of the secondary sea defence embankment, then stepping down to the lagoon.

Widewater Lagoon is designated a Site of Nature Conservation Importance, and the application site falls within Flood Zone 3a.

During the life of the application, revised plans were received. These do not show the situation before the decking was constructed. One shows the situation as it exists now, at the present time. The other shows the situation as it will be, if planning approval were granted.

Permission is required due to a condition of the planning approval for the terrace. The purpose of this condition is not to prohibit garden structures; it enacts Council control over such structures to avoid detrimental harm from occurring.

Relevant Planning History
ADC/0595/08
Demolition of existing buildings (184 and 186 Brighton Road) and erection of 5 no. dwellings (3 no. 3-bed and 2 no. 4-bed)
Approved Conditionally 10.03.2009

Consultations

Lancing Parish Council: *Objection. Over-sized and out of character with rest of rear gardens fronting onto Widewater Lagoon. Committee concerned about loss of privacy and light and decking was unsightly. Mr Baldwin of 184 Brighton Road addressed Committee. Mr Baldwin opposed the application on grounds of loss of privacy and natural light and distributed some photographs which showed clearly basis for his opposition. Said both neighbours suffering and decking was out of character and would set dangerous precedent for Widewater lagoon embankments.*

Representations

Objection received from occupier of No. 184A Brighton Road, content summarised: *Not proposal but retrospective planning. As decking constructed make comment to how seriously affects outlook and enjoyment of garden. Purchased property Nov 2012. Searches undertaken revealed no planning application. Also made aware of conditions imposed by developer and relevant restrictive covenant in deeds. Whilst no objection to neighbour erecting a decking area I would have thought appropriate planning should have been sought from the outset. Regard to overlooking, loss of privacy and light. Because of decking height it has created loss of light and privacy to my terraces. Up to construction of this decking area enjoyed privacy which has now been taken away from me. Elevated area of decking now allows neighbour full views into my garden, extremely intrusive. Trellising would only add height to fence excluding even more light. Fact they offering to erect trellis is admission they do overlook. Aware one of your officers visited and made recommendations to railing at end of storage area which has apparently been complied with. This area still used for leisure purposes. Open staircase represents Health and Safety hazard as no safety rail. Approx. 6 inches above my terrace and gives no privacy whatsoever. Because staircase is open my neighbour's dog continually stands on it barking which is obtrusive and unacceptable level of noise. Also he has jumped into my garden. In conclusion sincerely hope Council will recommend alterations to decking.*

Objection received from occupiers of No. 186 Brighton Road, content summarised: *This orientation enabled all of the occupants of enjoy their own external space in the privacy of their own property. By constructing the decked area, that standard approx. 1.8 meres above lowest level of our property, we have completely lost the quality of our 'residential amenity' and privacy that we should be permitted to enjoy. Instead of being individual positioned, the garden steps were joined before wooden fences were installed to provide privacy. Decked area excessively large. Consider Widewater Lagoon Nature Reserve to be 'residential amenity' and height detracts from our enjoyment of this, when Ralph (the dog) is out barks continually and unable to stand on area adjacent to lagoon as he above our heads. A barking dog, way above their head heights, is intimidating for our grandchildren (2 and 4) especially when no restraint. Loss of privacy and overlooking. Decked area extends over full width (from our boundary) to that of adjacent property (184a Brighton Road) for former terraced rear garden and covers original steps that provided access to lower areas adjacent to those constructed in tandem with ours; we no longer have privacy when anyone is stood on decked area. Fence used to provide privacy is only 1.3m above deck means anyone standing on deck not only look direct into garden but also direct into our lounge through 4panel bi-folding doors onto our patio. It would be unrealistic to fit a 1.8 metre fence on to the decked area as this would the final structure, although providing us with privacy that we have lost, would be way in excess of 1.8 metres in height on our side of it and in region of 3.5 metres which*

is completely unacceptable as our right to light would be severely compromised. As already mentioned because of the height of decked are in relation to the original fence (that did provided privacy) we no-longer have any in either our garden or house, as anyone, either sitting or standing on the deck has an unobstructed view into our garden and house. Were 1.8 metre fence be constructed then it would be far in excess of that height on our side of it and would deny us other, basic, rights (light in particular). Overshadowing and loss of light. Although concede there is little 'loss of light' there is some overshadowing, as well as overlooking on the lowest level of our property due to height of decked area. Concerned about 'loss of light and overshadowing' would occur were any new fences constructed in order to provide privacy to which we are entitled. That said, with the extended depth of the enclosed storage area being over 1.7 metres above the lowest level of our garden and abutting our fence, there is already loss of light and overshadowing in that location. Any further additions to fence height would be completely unacceptable to us. Adverse impact on Widewater Lagoon Nature Reserve. It is fact that Widewater Lagoon is acknowledged 'as a site of high nature conservation important' and is deemed to be an important amenity for both residents and general public. In 1991 Lancing Parish Council purchased the lagoon and agreed that action needed to be taken to restore it. The excessive size of deck and underneath storage completely out of keeping with area and all other properties that back onto lagoon and feel that terraced decked areas, based on original terraced levels, would more than suffice, whilst replicating the rear gardens of all of other properties. Additionally Ralph, the dog, barks constantly at wildlife and the family of swans which causes swans to become aggressive toward him. Non-compliance with Planning Requirements. As constructed, the decked area requires planning permission as the decking is no more than 30cm above ground, together with other extension, the decking cover no more than 50 per cent of the garden rear. This is clearly not the case with the decked area as it covers in excess of 100% of original garden are since it extends beyond the garden and onto the lowest level of the rear garden's retaining wall, and is way in excess of 30cm when it was given a Habitation Certificate by the Building Inspector. If this the case then shouldn't building Regulations also apply, which must be subject to detailed structural plans on safety ground, if nothing else. This extensive use of decking, simply to create a level rear space ("I only wanted a bigger back garden" by our neighbour when she first attempted to justify the construction, followed by that of her friend who commented that "it's only a temporary structure so you don't need any planning permission") is only such development at any property on the lagoon, with all other owners respecting natural slope of embankment. A precedent will have been set and there can be no justification for refusal. Although the front balustrade of the deck has been moved back there is still nothing to stop the decked area from begin used again in future, as it has been on several occasions, as access is still available via the section of decking adjacent to the steps. Surely, no-one should be subjected to such intrusion, and unable to enjoy the privacy of their back garden. Our grandchildren are unable to enjoy our back garden as they are frightened by Ralph the dog. There is also the additional problem of his (Ralph's) faeces being blown along the decking and onto our property. The problem with 8 piles of differently-coloured faeces relating to the length of time that they have been produced and exposed to the atmosphere. Those (white in colour) being the oldest and driest and more easily blown onto our property. All the agent's comments on the situation are based after the development has taken place as opposed to the situation that existing before it had been completed. Description of works. "…the lower terrace has been altered so that it is same level as the middle terrace …" We would disagree with the first comment since the level of decked surface

is above level of middle terrace. Question the reason for another 'storage area' being required when a garage has been provided with additional space for bicycle storage by the condition of the original planning application? "…the railing at end of storage area should be moved back from water's edge …" Unfortunately this comment is ambiguous as the decked area still exists beyond the railing and area beyond the railing continues to be used. No matter what assurances are given, has been the case since it was constructed. Local Plan Policy AH7. Simply statements of certain aspects of the Local Plan, but his subsequent comments are inaccurate. Amenity "there has always been a degree of mutual overlooking of the neighbours garden areas" We would ask where and when? What evidence does Mr. Antonious have to support this comment? Would add this only been the case since unauthorized development completed. All five properties were originally separated by wooden-plank fences 1. 8metres in height to comply with original permission. "the decking area has not however resulted in a significant change in land levels … however; the applicants are willing to put up trellising if the Council feels that this would be beneficial". Again, we would disagree. How can an extended level, way above our lowest and feet above our middle ground level not be deemed to be "significant change in land levels"? 'has not caused increased overlooking or loss of privacy' when it obviously has? How does the 1.3 metre area of unfenced decking adjacent to the Widewater Lagoon pass this comment? We, and our neighbours, are completely overlooked when this area of the decking is used, which it is. 'FENCING EXISTING' If the above comment is factual then why does he feel that it isn't necessary add. Is C100MM an appropriate height to provide privacy to which we are entitled? Any then why is there any need for trellising. Why should the Council be the final arbiter without any consideration for those who are affected by the structure? However were trellising to be installed then this would take the height fencing to in excess of 9 feet, which is completely unacceptable to us as it would have a severe impact on amount of natural light we received from the sun. Why should we be disadvantaged to the benefit of our neighbour? Had he submitted the appropriate plans illustrating the terraced gardens before the unauthorised development took place, the agent's comments are completed inaccurate and could influence the decision-making process. There is a definitive increased degree of overlooking some loss natural on the lowest level whilst the deck area and under storage does have a severe and overbearing effect. The deck is completely out of context with other rear garden structures is excessive large and dwarves any other rear garden development on entire lagoon. Why wasn't this style of development included in original application? Why would anyone purchase a property if it did not match their requirements? How can no fencing and people standing over 6 feet above ground level result in any harm to privacy?

2nd consultation in response to receipt of revised plans

Objection from occupiers of No. 184A Brighton Road, content summarised: *Clear no effort made to address issues raised – unacceptable overlooking, loss of light, overbearing, loss of character, loss of privacy. A higher fence would add insult to injury by taking even more of light, view and make illegal construction even more of eyesore. Breaches deeds. Giant structure is deviation from original layout of terraced garden. Decking should be no higher than original terrace and storage disproportionate to garden size. Had application been presented with current planning procedure would have been rejected!! If construction allowed makes complete mockery of planning laws and regulations.*

Objection from occupiers of No. 186 Brighton Road, content summarised: *Reasons for our continued objection. Lancing Parish Council has objected. The Parish, who are the lessees of Widewater Lagoon and responsible for all aspects of its continued maintenance. Typographical error in column headed 'comments'. Development also contravenes Condition 13 of Planning permission granted in March 2009. From scale drawings estimate the volume of storage area is 13.5 cubic metres, before taking the area beneath the decked area behind the storage section and land level of the original terraced garden, into consideration. Direct contravention of restriction. Would permission have been granted with the same areas of decked rear gardens and, if not then, why should it be any different now? The plans on which the decision will be based are inaccurate and give false impression of original situation which never existed. It is the responsibility of the application to ensure all drawings are accurate, particularly those showing dimensions. If the application includes inaccuracies then surely permission cannot be approved. The drawings labelled 'existing' never existed. Even in drawing 37-13A, he 'original Section A-A' never existed. When we returned home we faced with the 'existing Section A-A' as 'fait accompli'. Why has the actual 'original section A-A' never been illustrated as part of this and previous application? The development took place over weekend of June 8th/9th 2013, when the rear garden of 184b was transformed from how it was to what it is now and was a 'fait accompli' by Sunday evening. This included the storage area which is not shown in any of the existing plans but is event in the image of my standing in front of it. I will repeat again, the 'Existing Ground Floor Plan' shown in Drawing 37-13-01A NEVER existed! The garden area went from terraced rear garden to decked area with storage underneath in period of two days. The delegated officer report confirmed the original rear garden layout. The plans are therefore inaccurate and give false impression of the existing situation which, as I have always stated, and continue to maintain, never existed in reality. How can you agree inaccurate plans of non-existent situations for use in the decision-making process? Who do none of the existing plans show the actual terraced rear gardens as they existing, on the morning of Saturday June 8th 2013, before the complete unapproved development was finished? Loss of privacy and overlooking our property. As originally constructed, with terraced rear gardens, we (And occupants of four other properties) enjoyed privacy. The construction of the decked area has reduced the height of the boundary fence in garden property (184B) being constructed above the ground levels on which the height of the privacy fencing was originally based. It is now possible for anyone standing on the decked are to look directly into our private internal living space thereby invading our right to privacy. This is in contravention and is non-compliant with Adur and Worthing Development Standard 3 which states alterations should not result in direct overlooking of rooms in neighbouring properties, or excessive overlooking of garden areas. It is Excessively large. With 184B already having a garage with additional space for the storage of two bicycles, why is such an additional and exceptionally-large external decked and storage area required? The agent has commented subjectively that the terraces were narrow and their use. Very restrictive. Would permission have been granted for the original development of the rear gardens of the properties with such decked rear gardens and storage units? If not then, why should it be any different now? The delegated officer report contradicts the agent's comments and stresses that the garden is well above the 65 dqm identified in the DC standard. Why is such an excessively large decked area required when the size of the original garden are was known at the time that the property was purchased and is (objectively and professionally) deemed to be 15 sqm larger than the Council's minimum standard? This is especially relevant when the gardens of the other four*

properties in the development are deemed to the adequate by their owner despite those of 186 and 1986A are 18 sqm and 11 sqm, and 184A is 6 sqm less than the Council's minimum standard stated in the same paragraph of the delegated office report. Overshadowing and loss of light. A degree of loss of has already been experienced by virtue of the storage area being constructed. However were additional fencing erected above the original boundary fence then this would have a far greater impact on our amenity space, as it would appear to extend to the edge of the Lagoon. The fencing which exists at present is 2860mm in height above our concrete landing, yet only 1100mm above the decked area. Originally it was 1800mm in height, thereby providing us with privacy. To increase the height by another 700mm, making it 3560mm in height, and extending it to the water's edge would mean that we would be in constant shadow on our lowest level. This is completely unacceptable to us as well as Lancing Parish Council. Increasing the height of the fence would not provide the privacy that we enjoyed before the development occurred. It is also worthwhile noting that whilst 'new screen fencing' is shown, no dimensions are provided. Why not? By not so-doing, carte blanche could be given to our neighbour to erect whatever height of fence that they desire, which is completely unacceptable also. No reference is made to the proposed 'new screen fencing'. Is no 'new screen fence' to be erected adjacent to our property? If there is to be 'no access to the storage roof' then why is 'new screening fencing', which have a severe impact on our amenity space, as well as our 'right to light' required? The shadow cast even before any 'new screen fence' is erected. This situation is far worse in mid-winter when we would lose sunlight far earlier. To take a fence of an indeterminate height to the edge of the concrete landing is completely unacceptable to us. Even a fence that is 2860mm above the landing is unacceptable to use, let alone one that could be higher. We must be given the opportunity to comment when the actual height is known. Why should be suffer? The relevance of the use of 2860mm above our concrete landing (on which my wife is standing on evening of June 9th) is that 2860mm is the current height of the boundary fencing above the concrete landing, although it is only 1100mm in height above the newly-decked area. The 'Berlin Wall' was only 3600mm in height, before it was demolished, yet a fence of indeterminate height could create a similar situation adjacent to our property. By permitted such a development, despite inadequate knowledge of the proposed height of the 'new screen fencing' it would not only affect the two adjacent properties but also 184 and 186A. Furthermore it would also affect other properties on both sides of the development. How can a decision of such importance are taken without the owners of these properties being denied the opportunity to pass comment bearing in mind the devastating effect that it would have on their residential amenity? The development, as it currently stands, has already been criticized by Lancing Parish Council as being oversized and out of character with other gardens fronting Widewater Lagoon and yet the applicant wants to increase its size yet again in this revised submission. How can anyone make an objective and reasoned decision, or how can I pass comment on critical aspects of the development when incomplete details and inaccurate drawings have been provided? Does the comment 'no access to storage roof' also preclude its use for other purposes such as the placing of planter tubs and dog kennels on it. Does it also mean that Ralph (the dog) who barks continuously at anything that moves from his 'high 'point' on the decked area, would be denied access also? My reason for asking is illustrated in the opposite image, where his unsecured go kennel blew off the decking and onto our lower concrete landing causing damage to our property. Had my wife, I, our children or our grandchildren been on the landing at the time then it could have caused severe injury or even, in the case of our grandchildren, death. Adverse impact on the Widewater Lagoon

Nature Reserve. The decked area is excessively large and out of character with the Widewater Lagoon, which is a local Nature Reserve as well as being a West Sussex (County Council) Site of Nature Conservation importance. Inappropriate developments which are out of keeping with such protected areas should not be permitted and I believe that my view is supported by Lancing Parish Council. Restrictive Covenants agreed by all purchasers of the properties in the development. On completing the purchase all purchasers agreed not to cause permit or suffer to be done in or upon the property anything which may be or become a nuisance annoyance danger or detriment to the Retained Land or any part thereof. An excessively large decked area and dog kennel are nuisance, annoyance and danger and contravene the above Covenant. Trust you will take all of our comments into consideration before making a decision and also request that accurate drawings and comments are submitted before a final decision is taken on this matter, whilst still giving us adequate time for our right to respond. In conclusion, we would have no objection whatsoever to a revised scheme with decked areas that respect the natural lay-of-the land along with Widewater Lagoon and those that existing in the rear gardens of the other properties in the development as they were originally planned and constructed, i.e. terraced decked areas, like every other terraced rear garden of every other property which has gardens backing onto the 1500 metre-long Widewater Lagoon but note the revised application that has been submitted for the following reasons: Lancing Parish Council has objected, the development contravenes Condition 13 of the planning permission, the plans are inaccurate and give a false impression of an original situation which never existed, loss of privacy and overlooking, overshadowing and loss of light, adverse impact on wide water lagoon nature reserve, contravention of covenants. A 'vanity project' with no concern for the local environment.

Relevant Planning Policies and Guidance

Adur Local Plan: AG1, AH7, and allied planning documents
National Planning Policy Framework

Planning Assessment

Principle

Saved Adur Local Plan policies support the principle of upgrading existing housing stock, subject to usual amenity considerations.

Visual amenity

Widewater Lagoon makes for a pleasant setting for the terrace, which is a new development visible to the public from the seafront promenade south of the lagoon.

It is not unexpected to see decked storage structures at the bottom of properties along this waterfront as, conventionally, the watermark is the place to store equipment for water-borne activities.

If a passer-by were to linger their view on the terrace, the decking can be seen from the promenade. However the terrace is not an isolated development. It

forms part of a long row of residential properties of varying design which face the lagoon. Against the backdrop of this wider vista, the decking is no more obtrusive than other structures and domestic garden paraphernalia evident at the rear of these properties.

Within the immediate context of the terrace, the decking material is built of a sympathetic timber material that sits comfortably against the white rendered exterior of the buildings. It is a large piece of construction in itself but from public views across from the lagoon, the decking is not out of scale with the entirety of the terrace; its design sufficiently reflects the horizontality and overall proportionality of the terrace, retaining the stepping down of the rear garden to the lagoon, so as to ensure it is not out of keeping, visually.

For these reasons, no visual harm would arise from this development. This conclusion would equally apply if the suggested balustrade and additional screen fencing shown on the submitted plans were installed.

Flood Risk and Ecology

The development accords with Environment Agency standing advice on flooding, and has not put human health at any greater risk.

The decking is contained within the curtilage of the residential property, and has not impacted on the ecological value of Widewater Lagoon whatsoever.

Residential amenity

It is the immediate neighbours to either side who are principally impacted upon by this development (the structure is sufficiently removed from the remainder). Both of these neighbours have objected, along with the Parish Council in their support.

In its present form, the decking is un-neighbourly. It has resulted in material harm to the residential amenities of either neighbour by reason of unacceptable overlooking and intrusive loss of privacy. Planning approval would not be forthcoming if the decking were to be retained in its current state.

This is because the decking consists of a level platform which is set higher than existing boundary fencing, and at an elevated height to the patio areas of either neighbour. Recreational use of this level platform, and to a lesser extent the set of open sided steps on the west boundary, has afforded users of it intrusive views into the private patios and living rooms of both neighbours, with accompanying unacceptable loss of privacy, alongside some exacerbation of noise and disturbance.

In mitigation against this harm it is proposed to put up a balustrade to prohibit access onto the area of level platform that sits higher than the existing boundary fencing (shown hatched on the plans). It is also suggested to install fencing to follow the incline of the steps to the west boundary to provide more privacy. Since it is only the use of this part of the platform that enables the intrusive views

(the remainder of the decking is screened from neighbours by existing boundary fencing), restricting access onto it would negate the harmful overlooking onto the neighbours and restore privacy to the situation prior to the decking's construction. Generated noise and disturbance would not be untypical of a domestic situation.

As the current situation is unacceptable, any planning approval would be made conditional that the balustrade and fencing following the incline of the steps, is installed in a timely manner.

With these changes, the overlooking that would remain would be largely oblique views onto the lowest section of each neighbour's garden, nearest to the watermark. Prior to the construction of the decking these areas already experienced marked inter-visibility between neighbours.

It is also suggested to install additional fencing to both the west and east sides of the decking. However both neighbours to either side have objected to this, believing it to be un-neighbourly. As the issues of overlooking and loss of privacy would be adequately resolved through the restriction of access onto the platform alone, there is no requirement for this additional fencing. To condition as such is therefore unnecessary.

The elevation of the decking does make it very noticeable to either neighbour when standing on the lowest section of their gardens, nearest to the watermark. At this point the decking structure does overbear. It also casts some shadow reducing light onto this part of the garden.

However the determinate factor to whether overbearing and overshadowing is adverse or not, is the impact onto the living conditions of a neighbouring property. The fact is no overbearing impact and/or overshadowing has occurred onto the habitable rooms of either property, and the patios coming off from these are equally unaffected. It is only a small proportion of each garden overall that has been affected, and in both cases this is the area less actively used.

Recommendation

APPROVE for the reason:-

The development has not detracted from the local environment and, subject to full compliance with the conditions imposed on this decision notice, would take place without resulting in unacceptable detriment to the amenities of neighbouring properties. It would consequently not conflict with the 'saved' policies of the Adur Local Plan (AG1, AH7) and the planning policies set out in the National Planning Policy Framework

Subject to Conditions:-

1) The development hereby permitted shall be carried out in accordance with the following approved plans:-

Drawing Nos. 37-13-01 Rev A, 37-13-02 Rev A, 37-13-03 Rev A titled Retrospective Storage 10m3 with decking over date received 26-10-2013

Reason: For the avoidance of doubt and in the interests of proper planning.

2) Within 2 months of the date of this permission, the balustrade and screen fence to the west boundary, shall be installed on the site in full accordance with the approved plans and retained thereafter in a manner to the satisfaction of the local planning authority.

Reason: In mitigation against the current unacceptable overlooking and intrusive loss of privacy onto neighbours in the interests of safeguarding their residential amenities in accordance with Saved Adur Local Plan policy AH7 and the planning policies set out in the National Planning Policy Framework

3) The area of decking shown as hatched on the approved plans shall not be used as a terrace or accessed at any time other than for maintenance purposes

Reason: In mitigation against the current unacceptable overlooking and intrusive loss of privacy onto neighbours in the interests of safeguarding their residential amenities in accordance with Saved Adur Local Plan policy AH7 and the planning policies set out in the National Planning Policy Framework

Informative:

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Is recommendation contrary to any representations? Y

Case Officer signed: Matthew Porter Date: 18-11-2013

Authorised and signed by: Peter Barnett Date: 18 November 2013