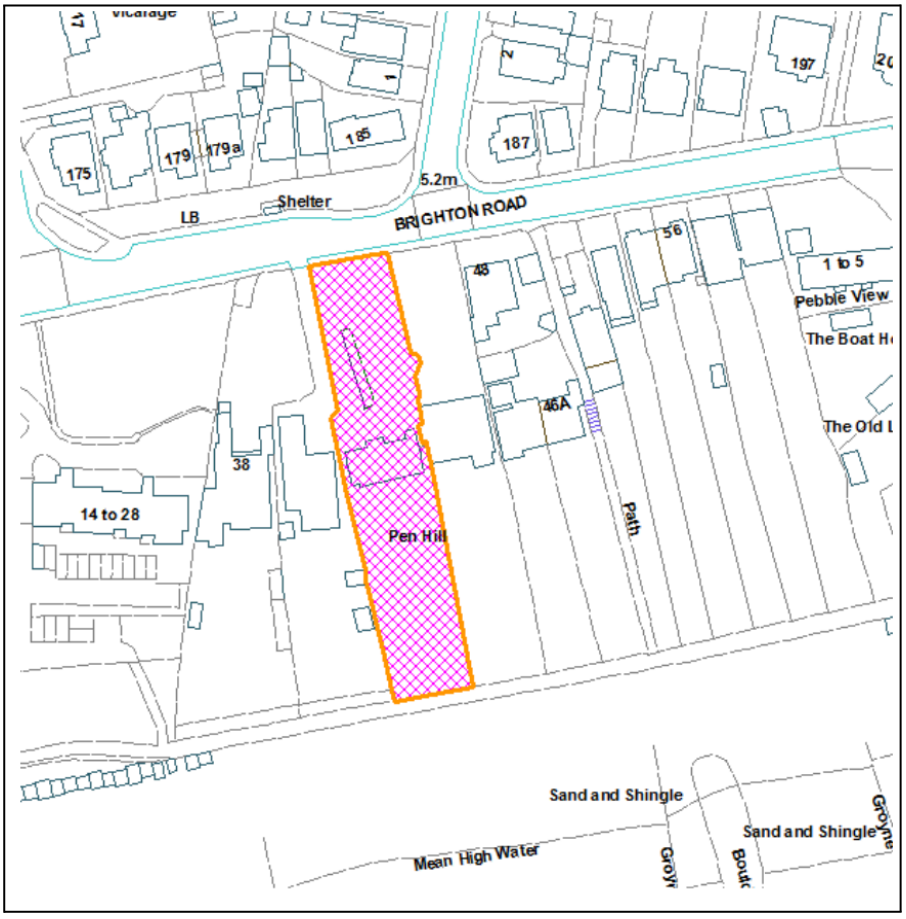
Application Number:	**AWDM/0163/24**	**Recommendation - APPROVE**
Site:	**42 Brighton Road, Lancing**	
Proposal:	**Demolition of existing dwelling and construction of a 4-bedroom detached dwelling over 3 levels with rear terrace and associated works. New outbuilding with raised terrace to the south. 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: Lowering of ground level on upper terrace adjacent to the eastern boundary by 1m and erection of 1.5m high fence; lowering of lower garden level by 0.4m**	
Applicant:	Mr Mario Bernard	Ward: Widewater
Agent:	Domus Architecture Ltd	
Case Officer:	Peter Barnett	



Not to Scale

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Update since March 4th and July 1st Planning Committees

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 that 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, 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 clearer that the increase in height would have resulted in an unacceptable relationship with No.44 and a lower ground level would have been sought.

The works that have been carried out are therefore considered to be unauthorised 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.

However, prior to the meeting on 1st July the applicants submitted plans showing a lowering of the garden level by 1m on the eastern boundary of the upper terrace up to the outer line of the sunken seating area. As these were submitted close to the date of the Committee meeting, neighbours had not been given an opportunity to formally comment so Members deferred a decision to enable this consultation to take place, while also requiring a further compromise on ground levels to improve the relationship with neighbouring properties.

Amended plans have now been received which maintain the 1m lowering of the garden level on a 1.6m-1.7m wide strip on the eastern boundary. A 1.5m high solid timber fence is proposed on the inner edge of the lowered level, in line with the edge of the sunken seating area, with a hedge shown planted on its west side. A blockwork retaining wall will be constructed within the lowered area with a set of steps for access at the north end, via a solid, locked timber gate in the same design as the solid fencing.

In response to Members' request for a lowering of the middle part of the garden, the applicant has confirmed that he proposes to reduce that area by 0.4m with all spoil removed from the site. A hedge is shown planted along the eastern boundary.

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 (AWDM/0970/23) considered the amendments to the house and garage and at the March 4th meeting it was felt that this could probably be approved in the future, 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.

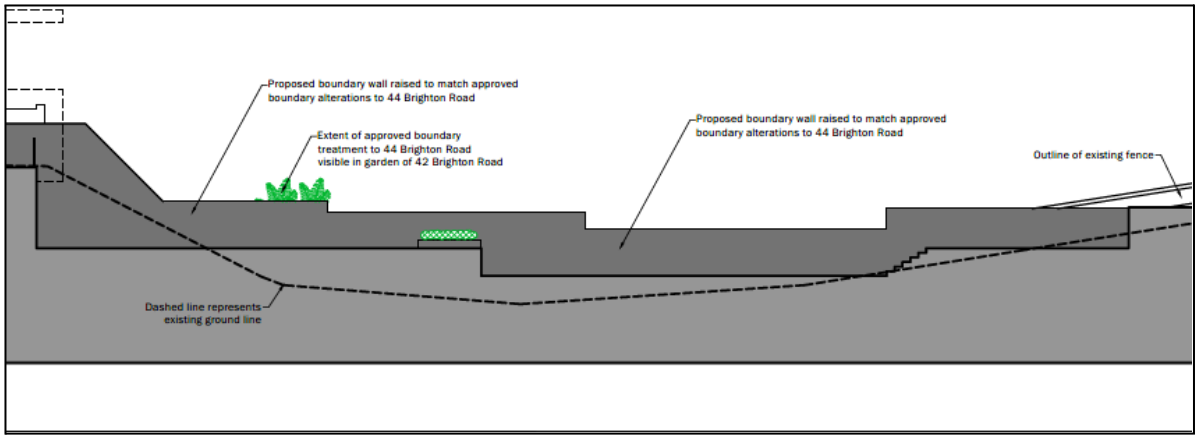
The most significant impact from the approved plans is from the increased level of the rear garden. The approved plans under AWDM/0923/21 did indicate that the levels were to be altered as there had previously been a steep drop in ground level at the rear before it rose up again towards the beach. While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

also included condition 10 which stated:

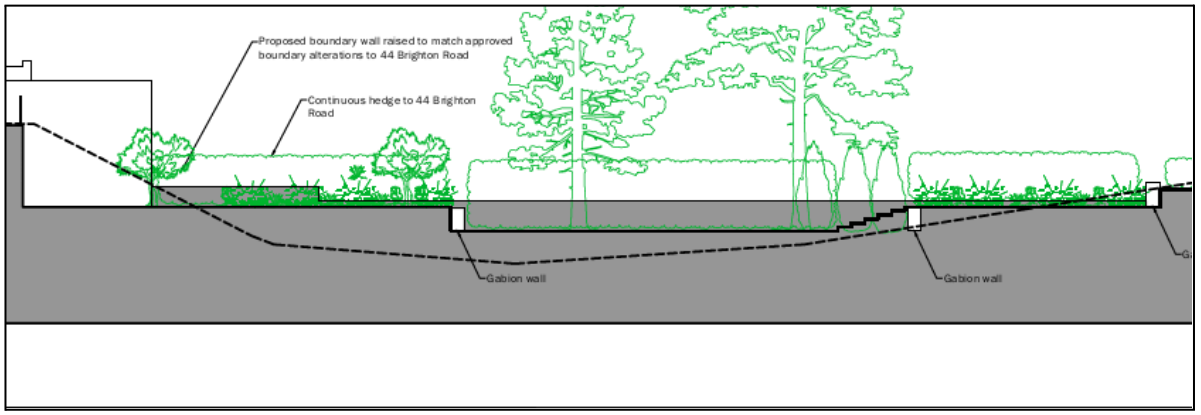
"There shall be no alteration to ground levels within the site unless and until details have been submitted to and approved in writing by the local planning authority. These details shall include proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship 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, following discussions with the applicant, the latest amendments set out above aim to mitigate this impact.

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 received 23rd February 2024: 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

Since the deferral on 1st July, a further letter of objection has been received from the planning consultant representing the occupiers of 44 Brighton Road, making the following points:

- The raising of the garden levels is unlawful as Condition 10 of the original planning permission has not been discharged
- Token lowering of ground levels proposed which will not overcome residential and visual amenity impacts
- Garden will still sit significantly higher than the garden levels of neighbouring properties
- Proposals should still be viewed as an increase rather than a decrease due to unlawful nature of the works carried out to date
- Levels make the garden appear as a discordant and alien element within the locality
- Set back of fencing is a contrived feature

- Hard landscaping at the raised height would result in further harm through visual dominance
- Proposals are a remedy to the breach of planning control rather than an enforcement of the original condition
- Clear views into neighbouring garden will still be possible
- New flood risk assessment is required based on proposed alterations
- Stability of boundary wall is a concern
- Ground level should be returned to the same level as neighbouring gardens

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

Section 73 of the Town and Country Planning Act applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
(b)if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

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 latest landscaping plans show a strip of land on the boundary on the upper terrace being lowered with a new fence erected, positioned 2.3m from the boundary

wall at No. 44, with a hedge planted on the inside edge of the fence. The combined effect of these proposed landscaping features is to ensure that people are prevented from standing right on the boundary at that higher level. With the features proposed in place, there will be a reasonable distance between the closest point where a person could freely stand and the boundary, thereby reducing the opportunities for overlooking from that upper terrace. The positioning of the fence away from the boundary will ensure that it does not appear overbearing when viewed from No.44 and will not reduce light to any significant extent.



For the middle garden, which is at a lower level, the applicant is proposing to reduce the level by 0.4m. This will make it 1.3m lower than the upper terrace. Hedge planting is proposed along the boundary with No. 44 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. However, the

landscaping scheme now proposed, including lowering of ground levels, fencing and hedge planting, will provide some mitigation in overlooking.

It must also be noted that the original ground levels, prior to this development commencing, included a higher area where the upper terrace is now (see below photo). The boundary between Nos 42 and 44 was also very open enabling clear intervisibility. Overlooking was possible from balconies and from the seafront path to the south. Mutual overlooking from the balconies at both Nos 42 and 44 is possible now.



On balance, taking into account that the levels are as shown on the original plans (notwithstanding that no further details were submitted prior to commencement, in breach of the condition), it is considered that the latest landscaping scheme is an acceptable compromise which reduces the level closest to the boundary on the highest part of the garden, as well as across the whole of the lower middle part of the garden, and it can be supported provided the works to reduce levels as shown on the latest plans are completed within a timescale to be agreed by condition.

Flood Risk and Drainage

The Environment Agency has previously assessed the works as carried out and had no objection subject to compliance with the previously approved FRA. The Council's drainage consultant has also advised that they have no objection provided there has been no change to the drainage.

The surface water drainage details were approved under a separate application for approval of details reserved by condition (AWDM/0776/22). The recent survey has revealed that the ground levels are as shown in the approved FRA and no further details are therefore required.

The area to be lowered on the upper terrace is to have a gravel/pebble base, with water captured by a land drain that connects into the drainage for the sunken seating area to the west.

Recommendation

APPROVE subject to the following conditions:

1. Approved Plans.

2. Car parking to be provided.

3. Cycle parking to be provided.

4. EV charging to be provided.

5. Drainage scheme to be implemented as approved.

6. Construction Management Plan to be adhered to at all times.

7. The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref: Flood Risk Assessment Prepared by Ambiental 42 Brighton Road, Lancing, BN15 8JB July 2021 6339) and the following mitigation measures it details:-
   Sleeping accommodation is to be located on the ground floor and above.
   These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements.
   The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

8. Removal of PD Class A, AA, B.

9. Balcony screens to be installed prior to first use.

10. Obscure glaze side windows.

11. Noise assessment for guest accommodation to be completed prior to occupation.

12. To be carried out in accordance with previously approved energy statement and water efficiency statement.

13. Garage and guest accommodation to be used ancillary to dwelling.

14. No access to planted flat roof areas at first floor at front of dwelling at any time other than for maintenance.

15. The house shall not be occupied until the patio doors at first floor level at the front of the house have been replaced with fixed glazed panels and restricted side opening lights, in accordance with the details shown on drawing no.A2-03 Rev. O received 26th April 2024, and in accordance with further details to be submitted and approved by the LPA clarifying the extent of the opening of the side opening lights.

16. The garden works and landscaping shall be carried out in accordance with the approved plans; A1-08 C, A3-12 A and A3-13 C. Within one month of the date of this permission a timetable for the implementation of the garden works and landscaping shall be submitted to the local planning authority for its written approval. The works shall be carried out in accordance with the approved 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 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.