Thursday, 18 July 2024

Objection to Application AWDM/0163/24

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

Description: 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 (AMENDED PLANS AND DESCRIPTION)

Introduction:

This objection letter relates to 42 Brighton Road and seeks to amalgamate previous letters to the Council relating to the raised ground levels at 42 Brighton Road, Lancing, West Sussex, BN15 8ET, and add new information based on further submissions and legal advice.

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.

Further revised plans were submitted relating to the garden levels on 10/07/2024, in response to concerns raised by committee members. The plans show the lowering of the installed ground level on the upper terrace adjacent to the eastern boundary by 1m and the erection of a 1.5m high fence, plus the lowering of the lower garden level by 0.4m.

It should also be noted that the description of this application lists amendments to the application as:

"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 (AMENDED PLANS AND DESCRIPTION)"

This is not considered to be an accurate description of the amendments to the scheme; the ground levels were never agreed, and the proposal would not result in the reduction of any ground levels; the proposed plan show an increased ground level above those originally found on site. The description should be revised to reflect that the ground levels would be raised as a result of the proposal, and not lowered.

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:

Lawfulness:

The raising of the garden levels is clearly unlawful; Condition 10 (ground levels) of Application AWDM/0923/21 states that:

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.

Reason: In the interests of visual amenity and the environment and to ensure there is no change to the flood defences and to comply with policies 15, 30, and 36 of the Adur Local Plan.

This condition has not been discharged; Application AWDM/1764/23 to discharge this condition was withdrawn, and as such, it is clear that the ground levels have not been agreed in writing. Legal advice has been sought from Ben Garbett of Keystone Law, which corroborates this conclusion.

Other issues with application AWDM/0923/21 have been raised by Ben Garbett, including whether it remains valid; however, these are separate issues to the material planning issues to be outlined within this letter and have been submitted separately.

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 token lowering of the ground levels as built, which still sit significantly higher than the garden levels of neighbouring properties clearly fails to make the proposal acceptable in visual terms, only lowering the ground level from the unlawfully increased level, still significantly higher than the original ground level of the garden (around 1.59m higher at the upper level next to the dwelling .8m taller at the middle level, and 2.11m at the end). The alterations should still be viewed as an increase to the ground levels, rather than a decrease, as the current ground level is unlawful, and clearly results in harm.

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.

Revised plans at the site seek to alter the ground levels and boundary features. The committee report for AWDM/0163/24 specifically outlines that the garden levels as built result in residential amenity impacts to the occupiers of No. 44, stating that "the garden level is almost at the top of the wall, allowing clear views down onto the rear garden and pool at No. 44", and that "the approved plans were misleading and gave the impression that there would not be significant overlooking of the neighbours' garden", further stating that "unfortunately, the impact on the neighbouring

property to the east is far more significant than originally anticipated" and that "clearly, this has resulted in an unacceptable situation in respect of overlooking".

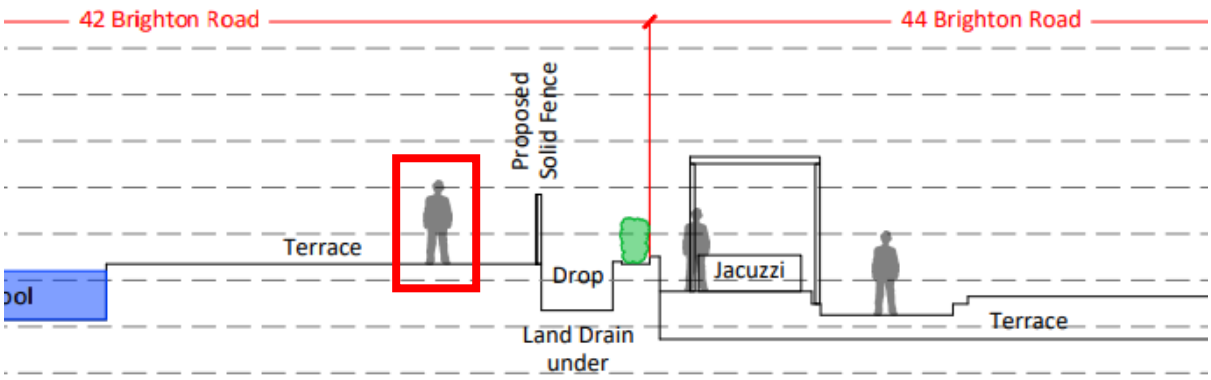
The photographs below show the excessive increase in the height of the garden, and the residential amenity impacts that have ensued as a result; the revised plans are a token offering, in recognition that the scheme results in significant and unacceptable residential amenity impacts; these ground levels 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.

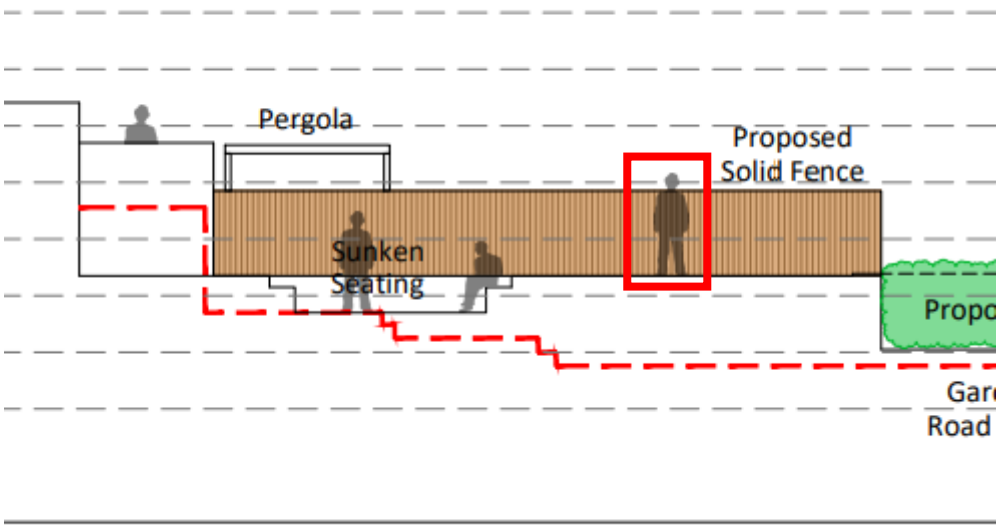
Image of rear garden showing ground level at height of boundary wall (29th April 2024):



Rather than seek to enforce the condition attached to the original application to protect the local environment, the Council are allowing the applicant to remedy the breach of planning control through the imposition of soft and hard landscaping at the site's boundary; this is wholly unacceptable, and would result in significant overbearing and overshadowing impacts, due to the height of the resultant boundary features.

The provided plans also show that even with the revised ground levels and boundary features, clear views into the garden area of No. 44, including direct views into the most private areas such as the swimming pool and jacuzzi would be possible, resulting in extreme overlooking impacts.





In this instance, it is clear that the ground levels as altered result in unacceptable residential amenity impacts, and that the serving of an enforcement notice, or breach of condition notice would be expedient; a breach has been clearly defined and works continue to raise the ground levels. The

draft conditions attached to the committee report for the recent Section 73 applications do not contain any conditions relating to the confirmation of finished ground levels, and no reasoning has been given in the committee reports for the removal of this condition. The removal of this condition would result in unacceptable residential amenity impacts, in contravention of Policy 15 of the Adur Local Plan 2017 and the relevant sections of the NPPF.

Flood Risk and Drainage

Paragraph 165 of the NPPF states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

Policy 36 of the Adur Local Plan 2017 states that the Council will work with relevant bodies to ensure that flood risk in Adur is reduced. It goes on to state that a site-specific flood risk assessment must be submitted with planning applications for all development or changes of use to a more vulnerable use in Flood Zones 2 and 3.

The site sits in Flood Zone 3, which has a high probability of flooding from rivers and the sea.

Condition 6 of the original application required the submission of a drainage strategy prior to development. Works had commenced on site prior to this condition being discharged; this condition was discharged during the section 73 process.

The Council have stated that the Flood Risk Assessment was based on the raised ground levels, and therefore, is acceptable. However, recently further alterations have been made to the scheme, including the provision of trees and hedges at the boundary and now, further alterations to the ground levels; it is considered that these alterations would alter the requirements of the flood risk assessment, and as such, the flood risk assessment previously submitted would no longer relate to the development on the site.

As such, it is not considered that the proposal complies with Policy 36 of the Adur Local Plan 2017 or Paragraph 167 of the NPPF.

Other Matters:

The residents of No. 44 have significant concerns relating to the stability of the boundary wall; it is not believed that this was built as a retaining wall, and there is now a significant amount of ground pushing against it, as a result of the raised ground level at No. 42. The owners of No. 44 are commissioning an independent consultant to look into this.

Conclusion:

It is considered that the works to raise the land are unlawful, due to the imposition of a condition on the original application to require there 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. Ground garden levels have been significantly raised on the site, without this condition being discharged. These have clearly led to visual, residential amenity and flood risk impacts, as outlined within the committee report previously referenced; it is felt that the Council have ample reason 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, and that concerns relating to flood risk and stability have been properly considered.