

ITEM NUMBER: 5b

22/02628/ROC	Variation of condition 2 (approved plans) attached to planning permission 21/03765/FUL (Construction of detached dwelling and associated access.)	
Site Address:	21A Hall Park, Berkhamsted, Hertfordshire, HP4 2NU	
Applicant/Agent:	Mr Andrew Lawson	Christian Olley
Case Officer:	Elsbeth Palmer	
Parish/Ward:	Berkhamsted Town Council	Berkhamsted East
Referral to Committee:	Due to contrary view of the Town Council	

1. RECOMMENDATION

1.1 That the application be **DELEGATED** with a view to **APPROVAL** subject to appropriate assessment in accordance with article 6(3) of the Habitats Directive and securing a mitigation package to avoid any further significant effects on the Chilterns Beechwood Special Area of Conservation (SAC) through financial contributions secured by legal agreement.

2. SUMMARY

2.1 Planning permission was previously granted for the construction of a detached dwelling and associated access.

2.2 The current proposal seeks a minor material amendment to planning permission ref. 22/03765/FUL for the construction of a detached dwelling with new access and will result in the grant of a new planning permission under Section 73 of The Town and Country Planning Act 1990 (As Amended). This application seeks to amend the approved plans. The amendments relate to the creation of a Juliette balcony serving bedroom 5 in the rear elevation of the loft space changes to the fenestration, a side passage and relocation of a light well.

2.3 The principle of development in terms of the overall layout, scale, massing and quantum of development has already been established via the approved scheme.

3. SITE DESCRIPTION

The application site used to comprise part of the side garden of the dwelling at No. 21 Hall Park, with a frontage to the eastern side of Hall Park and is located within an established designated residential area and forming part of the Hall Park character area. The immediate street scene consists of generally large detached dwellings, with a high variance in forms, proportions and external materials, whilst maintaining a spacious and verdant setting. Levels fall to the north and dwelling heights are consistent with this.

4. PROPOSAL

4.1 The main amendment to the approved scheme relates to the changing of an almost triangular window in the rear elevation at loft level into a set of 3 full window panes with a Juliette balcony set within the overhang of the roof.

4.2 Also the following fenestration changes are proposed:

- Addition of a velux roof light in the south – west roof slope;
- Removal of three windows in the south-west elevation at ground floor level;
- Removal of 3 full length vertical windows and replacement with two horizontal high level windows in the north – east elevation at ground floor level; and
- Change in the design of the ground floor window in the rear elevation;

4.3 Other minor changes include:

- The lightwell to the basement has been moved from the front elevation to the North East side elevation. A raised plinth has been retained in front of the bay window to prevent cars hitting the window when parking; and
- A side passage has been created by reducing the ground level along the South West boundary to the same level as the front drive. These changes requires a variation of condition 2 which relates to the drawings which were originally approved.

5. PLANNING HISTORY

Planning Applications :

21/02720/DRC - Details as required by condition 3 (finished levels) attached to planning permission 4/03286/16/FUL (Detached dwelling)
GRA - 19th August 2021

21/02722/DRC - Details as required by condition 4 (tree protection) attached to planning permission 4/03286/16/FUL (Detached dwelling).
GRA - 19th August 2021

21/03765/FUL - Construction of detached dwelling and associated access.
GRA - 17th January 2022

22/00493/DRC - Details as required by condition 3 (materials) attached to planning permission 21/03765/FUL (Construction of detached dwelling and associated access.)
GRA - 3rd August 2022

22/02510/DRC - Details as required by condition 4 (Hard and Soft Landscaping) attached to planning permission 21/03765/FUL (Construction of detached dwelling and associated access).
GRA - 7th November 2022

4/03286/16/FUL - Detached dwelling

REF - 18th October 2017

4/03255/16/FUL - Construction of 1 no. 3 storey house. Former ref. Previous application 4/00615/13/VOT
INSFEE -

4/03220/16/FUL - Erection of a new private Residence.
INSFEE -

4/00615/13/VOT - Construction of dwelling and alterations to existing house - variation of time limit of planning permission 4/00529/10/VOT
GRA - 15th October 2013

4/00529/10/VOT - Construction of dwelling and alterations to existing house - variation of time limit to planning permission 4/01282/05/FUL
GRA - 10th June 2010

4/01282/05/FUL - Construction of dwelling and alterations to existing house
GRA - 21st October 2005

4/00271/05/FUL - Construction of new dwelling (amended scheme)
REF - 1st April 2005

4/01234/04/OUT - Dwelling
REF - 12th August 2004

4/01560/98/FHA - Front porch
GRA - 7th October 1998

Appeals :

4/03286/16/FUL - Detached dwelling

ALLOWED - 3rd September 2018

6. CONSTRAINTS

CIL Zone: CIL1

Parish: Berkhamsted CP

RAF Halton and Chenies Zone: Green (15.2m)

Residential Area (Town/Village): Residential Area in Town Village (Berkhamsted)

Residential Character Area: BCA1

Parking Standards: New Zone 3

Town: Berkhamsted

7. REPRESENTATIONS

Consultation responses

7.1 These are reproduced in full at Appendix A.

Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B.

8. PLANNING POLICIES

Main documents:

National Planning Policy Framework (2021)

Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)

Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies:

Core Strategy (2006-2031)

NP1- Supporting Development

CS1 - Distribution of Development

CS4 - The Towns and Large Villages

CS11 - Quality of Neighbourhood Design

CS12 - Quality of Site Design

CS17 – New Housing

CS29- Sustainable Design and Construction

CS31 - Water Management
CS32 - Air, Soil and Water Quality
CS35 - Infrastructure and Developer Contributions

Dacorum Borough Local Plan (Saved Policies) (1999-2011)

Policy 10 - Optimising the Use of Urban Land
Policy 18 - The Size of New Dwellings
Policy 21 - Density of Residential Development
Policy 51 - Development and Transport Impacts
Appendix 1 - Sustainability Checklist
Appendix 3 - Layout and Design of Residential Areas

Supplementary Planning Guidance/Documents

Planning Obligations (April 2011)
Roads in Hertfordshire, Highway Design Guide 3rd Edition (2011)
Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice (2011)
Parking Standards (November 2020)
Character Appraisal BCA1 – Hall Park

9. CONSIDERATIONS

Main Issues

9.1 The main issues to consider are:

- Principle of Development
- Quality of Design / Impact on Visual Amenity
- Impact on Residential Amenity
- Access, Parking and Highway Safety
- Other Material Planning Considerations

Principle of Development

9.2 The application site is located within an established residential area of Berkhamsted where in accordance with Policy CS4 of the Core Strategy (2013) the principle of residential development is acceptable.

9.3 The principle of development for residential purposes was accepted under 21/03765/FUL (Construction of detached dwelling and associated access) and there have been no changes in site circumstances or policy since that approval.

9.4 The principle of the development was also considered under application 4/03286/16/FUL (detached dwelling). This application was ultimately refused but an associated appeal decision (APP/A1910/W/18/3195643) was allowed. Therefore, the principle of a dwelling on site is established and this application must consider only the changes now proposed.

Quality of Design / Impact on Visual Amenity

9.5 The immediate street scene consists of generally large detached dwellings, with a high variance in forms, proportions and external materials, whilst maintaining a spacious and verdant setting. Levels fall to the north and dwelling heights are consistent with this.

9.6 The form, positioning, and spacing of the proposed dwelling is exactly the same as previously approved under application 21/03765/FUL and similar to application 4/03286/16/FUL, which was allowed on appeal.

9.7 In design terms, there would be minor amendments to the approved scheme in order to allow fenestration changes and some detail changes to the front ie. the relocation of a light well and creation of a side passage. There are no design changes to the front of the dwelling and the fenestration changes to the side elevations and rear elevation would not change the overall design of the dwelling. The dwelling would still integrate with the surroundings as the overall appearance of the dwelling is the same as approved.

9.8 The proposed amendments do not change the overall character appearance or visual impact of the dwelling. The proposed amendments would thus maintain a high quality of design that would preserve the attractive streetscape and contribute to local character in accordance with Policies CS12 and CS13, subject to the imposition of the materials condition.

Impact on Residential Amenity

9.9 The impact on residential amenity of neighbouring properties was fully assessed for the previously approved scheme and was found to be acceptable.

9.10 The amendment of the fenestration in the rear elevation at loft height from a window to a Juliette balcony set back within the overhang of the roof needs to be assessed in terms of loss of privacy for neighbours.

9.11 The neighbour to the south No. 23 Hall Park is located on higher ground and set back from the rear elevation of the proposed new dwelling. No. 23 is also some distance from the proposed new dwelling with a detached garage in between. The main garden area used for outdoor amenity space for No. 23 is the patio area to the south of the main dwelling and the garden area immediately to the rear of the dwelling. They also have a greenhouse and planting area at the end of their garden.

9.12 The neighbour to the north of the subject site No 21 is currently being extended. They will have their immediate outdoor amenity space just beyond their new extension to the rear of the dwelling.

9.13 Due to the Juliette balcony being set back within the overhang of the roof there would be no loss of privacy when compared to the approved windows. The balcony would permit oblique views towards the neighbour's rear gardens only. The side roof would prevent direct views to the sides such that only views to the rear would be possible and these would as stated be at an oblique angle. It is not considered that there would be a loss of privacy for either of the neighbours in their immediate amenity areas or for windows in the rear elevations.

9.14 It should be noted that the creation of a Juliette Balcony in the rear elevation of a dwelling would normally be permitted development and this is indicative that such balconies are not generally considered to be harmful to neighbouring properties and are comparable in privacy terms to standard windows. The set-back balcony will not permit any additional views than the as approved scheme.

9.15 There are other fenestration changes to the approved scheme. The changes at ground floor in the north east side elevation will actually reduce the potential for overlooking by changing three full length vertical windows to two high level horizontal windows. The fenestration changes in the south west side elevation include the addition of one velux window – to add light to the proposed ensuite bathroom and the removal of 3 ground floor windows. These changes will not result in overlooking for the neighbour to the south west.

9.16 The condition placed on planning permission 21/03765/FUL stating “The window(s) at first floor level in the north east elevation of the development hereby permitted shall be permanently fitted with obscured glass unless otherwise agreed in writing by the Local Planning Authority” will need to be replicated on this consent to ensure privacy is maintained. .

9.17 There are no changes to the proposed development that would give rise to significant concerns in terms of residential amenity.

9.18 The previous approval set a condition removing Class A Permitted Development rights. It is considered that this condition should remain - Schedule 2, Part 1, Class A Permitted Development Rights should be removed from the proposed dwelling, noting the existing rear projection beyond number 21A that is included in the proposal.

Levels

9.19 As per the comments made by the Town Council the existing ground level dotted line shown on the previously approved plans is higher than the current plans under consideration.

9.20 In order to construct a side passage along the southern side of the dwelling additional excavation is required hence the change in the existing ground level line along the side elevation plans (south west/ section) as proposed.

9.21 It is not considered that the proposed side passage will result in a loss of amenity for neighbours and the safety aspects of any required retaining wall will be covered by building regulations. The resulting building is no higher but additional excavation is now proposed.

Access, Parking and Highway Safety

9.22 The Council’s Parking Standards SPD (2020), makes clear that parking assessments for dwellings over 4 bedrooms in size should be conducted on a case to case basis. The development would result in a 5 bedroom dwelling and provide four parking spaces on the front drive. When considering that 3 spaces are required for 4 bedroom dwellings, it is considered that the provision of 4 spaces is adequate to serve a dwelling in this location.

9.23 Furthermore, while the proposed garage does not specifically meet the SPD’s dimensions (3m x 6m) to formally be considered an extra parking space, this area could potentially be used for the parking of a vehicle if an extra space is specifically required by future occupants. It is also considered that Hall Park does not exhibit high levels of parking stress whereby any potential overflow of parking from the dwelling onto the street would lead to significant safety/operational concerns relating to the road.

9.24 The ROC application does not propose any changes to the approved parking arrangements and as such there would be no harm to the safety or operation of the adjacent highway.

Other Material Planning Considerations

Impact on Trees

9.25 The proposals as now amended would not give rise to any tree issues. Tree concerns were raised on one of the previous applications related to a protected Birch tree located on number 23’s plot but close to the boundary. As such, the inspector included a condition on the permission seeking tree protection details which included the foundational design of the dwelling. There were no other concerns relating to any other trees.

9.26 However, this tree has now been removed under permission 19/02823/TPO and therefore it is considered a tree protection condition is no longer required.

9.27 Taking all of the above into account, it is concluded that there would be limited impact on existing vegetation in accordance with saved Policy 99 and new trees would be provided in as per Policy CS29.

Landscaping

9.28 The proposed site plan details planting around the site, which should help to soften the visual impact of the development and create an attractive site. The boundary treatment (1.8m timber fencing) and surfacing materials (block paving and paving slabs) are considered acceptable.

9.29 Full details of landscaping were requested by condition.

Application 22/02510/DRC provided details as required by condition 4 (Hard and Soft Landscaping) attached to planning permission 21/03765/FUL (Construction of detached dwelling and associated access) and was granted on 7th November, 2022.

Community Infrastructure Levy (CIL)

9.30 Policy CS35 of the Core Strategy (2013) requires all developments to make appropriate contributions towards infrastructure required to support the development. These contributions will normally extend only to the payment of CIL where applicable. The Council's Community Infrastructure Levy (CIL) was adopted in February 2015 and came into force on 1st July 2015. The application is not CIL liable.

Contamination

9.31 The Environmental and Community Protection Team have confirmed that they have no objection to the variation of Condition 2 (approved plans).

Response to Neighbour Comments

9.32 An objection has been received. The issues are addressed in the section on residential amenity above.

Conditions

9.33 If the application is approved, a new planning permission would be granted such that the previous conditions would need to be replicated, except where the conditions for which details have already been submitted have been approved. Condition 3 (materials) and condition 4 (Hard and soft landscaping) have been discharged under 22/00493/DRC and 22/02510/DRC applications. The conditions for these will refer to the relevant discharge of condition applications.

9.34 As the development has begun there is no requirement for a time condition.

10. CONCLUSION

10.1 The proposal seeks to vary the approved plans condition attached to planning permission ref. 21/03765/FUL. The principle of development is acceptable. There would be some minor design amendments, which are considered acceptable in terms of their visual impact. The fenestration changes would have no significant impact in terms of residential amenity, which would be comparable to the approved scheme. No changes regarding highway safety, parking and access are proposed. It is considered that the amended proposal is acceptable in all aspects.

11. RECOMMENDATION

11.1 That the application be **DELEGATED** with a view to **APPROVAL** subject to appropriate assessment in accordance with article 6(3) of the Habitats Directive and securing a mitigation package to avoid any further significant effects on the Chilterns Beechwood Special Area of Conservation (SAC) through financial contributions secured by legal agreement.

Condition(s) and Reason(s):

1. **The development hereby permitted shall be carried out in accordance with the following approved plans/documents:**

Site Location Plan HPL21 110A
Site Plan as proposed HPL21 220D
Front and side (north east) elevations as proposed HPL21 210R
Rear and side (south west) elevations as proposed HPL21 211M
Basement and Ground floor plans as proposed HPL21 500 DD
First floor and loft plans as proposed HPL21 501L

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

2. **The development hereby approved shall be carried out in accordance with the materials approved under application reference 22/00493/DRC - granted 3rd August, 2022.**

Reason: To ensure satisfactory appearance to the development and to safeguard the visual character of the area in accordance with Policies CS11 and CS12 of the Dacorum Borough Core Strategy (2013).

3. **The development hereby approved shall be carried out in accordance with the landscaping details approved under application reference 22/02510/DRC on 7th November, 2022.**

The planting must be carried out within one planting season of completing the development.

Any tree or shrub which forms part of the approved landscaping scheme which within a period of 5 years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a similar species, size and maturity.

Reason: To improve the appearance of the development and its contribution to biodiversity and the local environment, as required by saved Policy 99 of the Dacorum Borough Local Plan (2004) and Policy CS12 (e) of the Dacorum Borough Council Core Strategy (2013).

4. **The window(s) at first floor level in the north east elevation of the development hereby permitted shall be permanently fitted with obscured glass of at least Level 3 on the Pilkington scale.**

Reason: In the interests of the residential amenities of the occupants of the adjacent dwellings in accordance with Policy CS12 (c) of the Dacorum Borough Council Core Strategy (2013) and Paragraph 130 (f) of the National Planning Policy Framework (2021).

5. **The roof area of the single storey flat roof rear protrusion hereby permitted on the development shall not be used as a balcony, roof garden or similar amenity area. The roof can be used to escape in an emergency.**

Reason: In the interests of the residential amenities of the occupants of the adjacent dwellings in accordance with Policy CS12 (c) of the Dacorum Borough Council Core Strategy (2013) and Paragraph 130 (f) of the National Planning Policy Framework (2021).

6. **Prior to occupation of the development hereby approved, full details of the layout and siting of Electric Vehicle Charging Points and any associated infrastructure shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until these measures have been provided and these measures shall thereafter be retained fully in accordance with the approved details.**

Reason: To ensure that adequate provision is made for the charging of electric vehicles in accordance with Policies CS8, CS12 and CS29 of the Dacorum Borough Core Strategy (2013) and the Car Parking Standards Supplementary Planning Document (2020).

7. **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out without the prior written approval of the Local Planning Authority:**

Schedule 1, Part 2, Class A.

Reason: To enable the Local Planning Authority to retain control over the development in the interests of safeguarding the residential and visual amenity of the locality in accordance with Policy CS12 of the Dacorum Borough Core Strategy (2013) and Paragraph 130 of the National Planning Policy Framework (2021).

8. **The platform area beyond the Juliette balcony shall not be used as a balcony, roof garden or similar amenity area.**

Reason: In the interests of the residential amenities of the occupants of the adjacent dwellings in accordance with Policy CS12 (c) of the Dacorum Borough Council Core Strategy (2013) and Paragraph 130 (f) of the National Planning Policy Framework (2021).

Informatives:

1. Planning permission has been granted for this proposal. The Council acted pro-actively through positive engagement with the applicant during the determination process which led to improvements to the scheme. The Council has therefore acted pro-actively in line with the requirements of the Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2015.
2. AN 1) Works within the highway (section 278): The applicant is advised that in order to comply with this permission it will be necessary for the developer of the site to enter into an agreement with Hertfordshire County Council as Highway Authority under Section 278 of the Highways Act 1980 to ensure the satisfactory completion of the access and associated road improvements. The construction of such works must be undertaken to the satisfaction and specification of the Highway Authority, and by a contractor who is authorised to work in the public highway. Before works commence the applicant will need to apply to the Highway

Authority to obtain their permission and requirements. Further information is available via the County Council website at:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/development-management/highways-development-management.aspx> or by telephoning 0300 1234047.

3. AN 2) Storage of materials: The applicant is advised that the storage of materials associated with the construction of this development should be provided within the site on land which is not public highway, and the use of such areas must not interfere with the public highway. If this is not possible, authorisation should be sought from the Highway Authority before construction works commence.

Further information is available via the County Council website at:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

4. AN 3) Obstruction of highway: It is an offence under section 137 of the Highways Act 1980 for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway or public right of way. If this development is likely to result in the public highway or public right of way network becoming routinely blocked (fully or partly) the applicant must contact the Highway Authority to obtain their permission and requirements before construction works commence.

Further information is available via the County Council website at:

<https://www.hertfordshire.gov.uk/services/highways-roads-and-pavements/business-and-developer-information/business-licences/business-licences.aspx> or by telephoning 0300 1234047.

5. AN 4) Debris and deposits on the highway: It is an offence under section 148 of the Highways Act 1980 to deposit compost, dung or other material for dressing land, or any rubbish on a made up carriageway, or any or other debris on a highway to the interruption of any highway user. Section 149 of the same Act gives the Highway Authority powers to remove such material at the expense of the party responsible. Therefore, best practical means shall be taken at all times to ensure that all vehicles leaving the site during construction of the development and use thereafter are in a condition such as not to emit dust or deposit mud, slurry or other debris on the highway. Further information is available by telephoning 0300 1234047.

APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments
Berkhamsted Town Council	<p>Objection</p> <p>The Committee previously objected to the upper rear balcony on the grounds of loss of amenity to the neighbour by way of overlooking and this objection stands. The Committee also noted the loss of the hedge and boundary with adjacent neighbour at No 23, and, given the excavation to the new level, this raised concern about the need for suitable reinforcement structure to safeguard the property of the adjacent neighbour. In addition, the remainder of the application sets out proposals for a new structure, which is an overdevelopment of the site.</p>

	CS12
Hertfordshire Highways (HCC)	<p>OTHER</p> <p>The variation of conditions are as stated in the cover letter;</p> <ul style="list-style-type: none"> - Basement and Ground Floor as Proposed - Drwg No. HPL21 500CC - First and Loft Floors as Proposed - Drwg No. HPL21 501H - North East Side and Front Elevations as Proposed - Drwg No. HPL21 210L - South West Side and Rear Elevations as Proposed - Drwg No. HPL21 211G <p>None of these are in relation to the previous application Highway matters (Reference 21/03765/FUL).The changes are regarding the previously approved design to the rear elevation, a balcony has been added at loft floor level. Therefore, we would like to draw attention to our previous response and the conditions within that response.</p>
Hertfordshire Highways (HCC)	<p>Recommendation</p> <p>OTHER</p> <p>Recommendation</p> <p>OTHER</p> <p>The variation of conditions are as stated in the cover letter;</p> <ul style="list-style-type: none"> - Basement and Ground Floor as Proposed - Drwg No. HPL21 500CC - First and Loft Floors as Proposed - Drwg No. HPL21 501H - North East Side and Front Elevations as Proposed - Drwg No. HPL21 210L - South West Side and Rear Elevations as Proposed - Drwg No. HPL21 211G <p>None of these are in relation to the previous application Highway matters (Reference 21/03765/FUL).The changes are regarding the previously approved design to the rear elevation, a balcony has been added at loft floor level. Therefore, we would like to draw attention to our previous response and the conditions within that response.</p>
Berkhamsted Town Council	<p>Objection</p> <p>The Committee noted the amendments, which include a Juliet balcony, which it was agreed could still lead to overlooking to the neighbour and resulting loss of amenity.</p> <p>In its previous objection, the Committee had an issue about the degree of excavation that had been adopted. The further additional drawings</p>

	<p>introduce a new aspect to the ground levels to what were originally consented. The slab level as shown on 211L is best part of 2m below the line showing existing ground level: the consented 211A shows depth of less than 40cm.</p> <p>The plan does not detail the nature of the retaining wall that is required to reinstate the boundary or to safeguard the property of the adjacent neighbour.</p> <p>The proposal materially affects the stability of the structure of the adjacent property.</p> <p>CS12</p>
Environmental And Community Protection (DBC)	Having reviewed the application submission and the ECP Team records I am able to confirm that there is no objection to the variation of Conditions 2 (approved plans).
Berkhamsted Town Council	<p>Objection</p> <p>The Committee objected to this application on the grounds of loss of amenity to the neighbour by way of overlooking.</p> <p>CS12</p>

APPENDIX B: NEIGHBOUR RESPONSES

Number of Neighbour Comments

Neighbour Consultations	Contributors	Neutral	Objections	Support
6	1	0	1	0

Neighbour Responses

Address	Comments
23 Hall Park Berkhamsted Hertfordshire HP4 2NU	<p>The applicant is putting in a second higher balcony overlooking properties. Existing balconies are all on first floor level and a second balcony will reduce residential amenity for neighbours and mean that all other properties in proximity will be unreasonably overlooked.</p> <p>A second balcony will be out of keeping with local vernacular.</p>