

Planning Statement






Application submitted under
Section 73 of the Town & Country
Planning Act – Removal of planning
condition restricting permitted
development rights to 'The
Cottage' at:

Cudham Frith
Cudham Lane South
Cudham
Kent TN14 7NZ

By:

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1. INTRODUCTION

- 1.1. We have been instructed by Mr & Mrs A Robson to prepare and submit an application under Section 73 of the Town and Country Planning Act. The application proposes the removal of a condition attached to a recent grant of planning permission which at present removes all permitted development rights concerning the annexe at Cudham Frith, Cudham Lane South, Cudham, Sevenoaks, Kent TN14 7NZ.
- 1.2. The condition was imposed on a grant of planning permission issued on the 24th of November 2023 (DC/23/03277/FULL1) which granted full planning consent for the conversion of the existing residential annexe (the Cottage) to form a separate detached three-bedroom dwelling with its own curtilage to be served by an existing single storey detached outbuilding. As part of this permission, the alterations to the existing building including the conversion of an integral garage to a bedroom and the provision of two modest dormers on the southeastern roof slope of the building.
- 1.3. This application seeks to remove condition 7 of the permission which at present removes permitted development rights for the dwelling 'The Cottage' under Schedule 2, Part 1, Classes A, B & E of the General Permitted Development Order.
- 1.4. This application seeks for permitted development rights to be restored with the property in the Green Belt and an Area of Outstanding Natural Beauty to enable a modest single storey rear extension to be added and for an outbuilding to be erected within the existing garden and within 20m of the house (as required by the GPDO) as permitted development. The application also seeks to remove reference to Class B which irrelevant as the dwelling is located within an Area of Outstanding Natural Beauty and is not afforded rights under Schedule 2, Part 1, Class B of the GPDO.

- 1.5. This statement therefore reviews the Council's decision and delegated report which accompanied the Council's approval of planning permission. In addition, it references all relevant planning policy along with the Government's guidance that has been published concerning the use of planning conditions. In addition, it references other case studies concerning similar properties within the Borough and in the Green Belt where permitted development rights have been restored on appeal.

2. THE APPLICATION SITE

- 2.1. The application property comprises an existing residential annexe know as ‘The Cottage’ along with the residential curtilage land that was formerly part of the garden of Cudham Frith, with the property located on the western side of Cudham Lane South and within the confines of the metropolitan Green Belt and an Area of Outstanding Natural Beauty. The western side of Cudham Lane South in this location is positioned within the London Borough of Bromley and the eastern side of the road is located within the District of Sevenoaks.
- 2.2. The existing building that has previously comprised an annexe known as The Cottage contains accommodation over two storeys with first floor accommodation served by two modest dormer windows on the north western elevation of the building. It would be served by an existing detached garage outbuilding (formerly used by Cudham Frith) that is positioned forward of the principal elevation of The Cottage.
- 2.3. The outbuilding that comprises the annex (The Cottage) was originally granted consent as a replacement for an existing outbuilding on the 23rd of December 2005 under Council reference DC/05/03927/FULL6. The building contains an integral garage.
- 2.4. At some point following this the building was then used for purposes ancillary to the house with it providing an annexe and occupied by the applicant’s daughter (Alison Robson).
- 2.5. In terms of the extant grant of planning permission to which this application relates, this granted full planning permission on the 24th of November 2023 (DC/23/03277/FULL1) for the conversion of the existing residential annexe (The Cottage) to form a separate detached three-bedroom dwelling with its own modest residential curtilage. The curtilage includes a single storey detached garage that has previously served Cudham Frith and the consent granted permission for the conversion of the existing integral garage within The Cottage at present to provide a bedroom and the provision of two additional dormers on the southeastern roof slope which are of modest proportions.

3. THE PROPOSAL

3.1. This application is submitted via section 73 of the Town & Country Planning Act. It seeks the removal of Condition 7 attached to the extant grant of planning permission DC/23/03277/FULL1 which granted permission for the conversion of the existing residential annexe (The Cottage) to form a separate detached three-bedroom dwelling with its own curtilage to be served by an existing single storey detached garage with alterations to include conversion of integral garage to a bedroom and provision of two dormers on the southeastern roof slope.

3.2. The condition in question (Condition 7) currently reads as follows:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.

3.3. The reason given for the condition as listed on the decision notice was:

'In the interests of protecting the character of the area, the openness of the Green Belt, the setting of the Kent AONB, and residential amenity of neighbouring properties in accordance with Policies 37, 49, 51 and 76 of the Bromley Local Plan'.

3.4. This application seeks for the condition to be removed to enable permitted development rights to be restored for The Cottage. The condition is requested to be removed to enable the applicant to introduce a modest single storey rear extension to the house in accordance with Schedule 2, Part 1, Class A of the GPDO and having regard to the site's location within an Area

of Outstanding Natural Beauty. In addition, the applicant would like to erect a modest outbuilding within the rear garden of the house and within 20m of it (as required within the AONB) in accordance with Schedule 2, Part 1, Class E of the GPDO. The restoration of these rights would enable the modest extension and outbuilding to be introduced similar to those rights available to surrounding properties within this part of the Borough.

4. THE DELEGATED REPORT

- 4.1. A copy of the Council's delegated report which accompanied its grant of planning permission forms **APPENDIX 1** of this statement.
- 4.2. As can be seen from the Council's assessment in relation to Green Belt policy, the report confirmed that the two modest additional dormers that were proposed were ***'considered modest in their scale and would not significantly increase the floor area of the host building. On balance, it is considered that these dormers would not result in a disproportionate addition to the original building'***.
- 4.3. In addition, the report confirmed that the proposed development would reuse an existing building ***'which is of permanent and substantial construction'***. The change of use was therefore judged to not significantly alter the overall impact of the development on the Green Belt given that its use would not result in any significant additional domestic features compared to its current use as a residential annexe. The Council was therefore satisfied that the conversion to a dwelling would not conflict with the purposes of including land within the Green Belt and complied with the terms of the National Planning Policy Framework as a result. Permission was not therefore granted on a case of 'very special circumstances'.
- 4.4. The report went on to state that given the scale of the existing building and that its floor space and overall scale would be increased as part of the application and that the property would also benefit from a detached garage outbuilding it was considered appropriate to remove permitted development rights under Classes A, B & E in order to protect the visual amenities and openness of the Green Belt.
- 4.5. The Council was satisfied that the proposal would not harm the openness and character of the Area of Outstanding Natural Beauty but once again judged it fit to remove permitted development rights to preserve the setting of the AONB.

- 4.6. In relation to residential amenity there was no reasoning given for the imposition of the condition removing permitted development rights being required in that regard.

5. RELEVANT PLANNING POLICY CONSIDERATIONS

5.1. Relevant planning policy to the assessment of this application principally comprises those referenced within the reasoning given for Condition 7 as listed on the planning consent that are contained within the Bromley Local Plan.

5.2. In addition, the terms of the National Planning Policy Framework (2023) and the Governments guidance on the use of planning conditions (2014) are also of relevance to this application.

Bromley Local Plan (2019)

5.3. The reason given for the condition references Policies 37, 49, 51 and 76 of the Bromley Local Plan.

5.4. Policy 51 of the Local Plan concerns extensions and alterations to dwellings within the Green Belt and permits additions to the original dwelling. In terms of what comprises the original dwelling or building, paragraph 5.2.14 states that the original building in the context of this policy follows the definition of the original building in the National Planning Policy Framework. This prescribes that an original building will be that which existed on the 1st of July 1948 or, if the building was constructed after the 1st of July 1948, 'as it was built originally'.

5.5. In this case the Council's delegated report confirms that the existing building is original and that the only changes in terms of additions that were proposed to it as part of the application comprised the insertion of two modest dormers on the south-eastern roof slope of the building. In assessing their acceptability, the Council noted they were modest in scale and would not significantly increase the floor area of the host building. There was therefore no conflict with policy 51 of the Local Plan.

- 5.6. Policy 37 refers to the general design of development and requires all proposals to be of a high quality and also seeks for new development to not cause harm to the residential amenities of surrounding properties.
- 5.7. Policy 49 refers to the Green Belt and outlines what forms of development will be policy compliant in such locations. This includes the extension and alteration of a building that does not result in a disproportionate addition over and above the size of the original building with compliance with this element of the policy achieved by the application. It also confirms that the reuse of existing buildings is acceptable within the Green Belt provided they have permanent and substantial construction. Once again, in assessing the application, the Council was satisfied that compliance with this element of policy 49 was achieved.
- 5.8. The policy also sets out that very special circumstances, where they exist, and are demonstrated by an applicant can justify development in the Green Belt that might otherwise be unacceptable in principle. In this case, the application did not involve another case being made of very special circumstances with the proposal judged by the Council to be fully compliant with the terms of green belt policy.
- 5.9. Policy 76 – Kent Downs Areas of Outstanding Natural Beauty specifies that the Council will protect, conserve and enhance the AONB and its setting from development considered to have a detrimental impact on the landscape.

National Planning Policy Framework (NPPF 2023)

- 5.10. In relation to Planning Conditions, paragraph 53 of the Framework states that conditions should be kept to a minimum, and only imposed where they are necessary, relevant to planning and for the development as permitted.
- 5.11. In addition, paragraph 54 clearly specifies that **'planning conditions should not be used to restrict National Permitted Development Rights unless there is clear justification to do so'**.

National Planning Practice Guidance (NPPG) – Planning Conditions (2014)

- 5.12. Paragraph 17 of this document states that conditions restricting the future use of permitted development rights will rarely pass the tests of necessity and should only be used in exceptional circumstances.
- 5.13. The guidance goes on to state that the blanket removal of freedom to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. It is therefore reasonable to conclude that the removal of permitted development rights should only occur in **'exceptional circumstances'**.

6. PLANNING ASSESSMENT

6.1. In granting planning permission for the conversion of The Cottage to a separate dwelling house, the Council was satisfied that the proposal complied with the terms of Green Belt policy. In this regard, it accepted that the conversion of the existing building to a dwelling represented an appropriate form of development within the Green Belt with it being of sound and permanent construction and already in residential use. In addition, the two modest dormers that were proposed were noted to not noticeably increase the floor area of the building and did not amount to disproportionate additions to it.

6.2. In proposing the planning condition, the Council’s reasoning given within its delegated report and decision notice were to protect the openness of the Green Belt and Area of Outstanding Natural Beauty and to also preserve residential amenity. These points are therefore reviewed below:

Green Belt

6.3. In assessing whether permitted development rights can be restored, it is important to note the guidance in relation to the imposition of planning conditions that is contained within the National Planning Policy Framework and the Governments National Planning Practise Guidance concerning the use of planning conditions. Both of these documents confirm that the removal of permitted development rights should only occur in exceptional circumstances such as where an application involves a case of very special circumstances on Green Belt land. Furthermore, paragraph 54 of the NPPF states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

6.4. In this case as the application was judged to full comply with the terms of Green Belt policy, there were no exceptional circumstances advanced by the application to justify planning permission to be granted. It is therefore requested for it to be removed accordingly.

- 6.5. It is acknowledged that as part of the application, the conversion of The Cottage to a dwelling incorporated utilising and existing outbuilding that was previously used as a garage in association with Cudham Frith to serve the new dwelling. However, once again this is a building that is in existence today and is lawful and the transferring of this from one property to another did not amount to substantive grounds to justify the removal of permitted development rights under Class E. It comprised an appropriate form of development within the Green Belt.
- 6.6. On the basis that this application is approved and permitted development rights restored the house would be no different to any other dwelling within the Green Belt and an Area of Outstanding Natural Beauty with permitted development rights afforded to homes on such land. Had the government wanted to reduce or restrict permitted development rights for householder developments in the Green Belt it would have done so as it has done with other locations such as Conservation Areas and National Parks. The fact that it has not removed these rights in the Green Belt is evidence that it considers the implementation of permitted development rights such as those which is sought to be restored by this application as being acceptable in a Green Belt location. Furthermore, given the modest nature of the existing cottage and the limitations imposed within an Area of Outstanding Natural Beauty the house could only be modestly extended as permitted development and it would not be unreasonable for the applicants to extend their home in a similar manner afforded to their neighbours.
- 6.7. This view expressed in relation to permitted development extensions to residential properties being acceptable within the Green Belt is supported by Inspectors' decisions on recent comparable cases involving dwelling within the Green Belt in the London Borough of Bromley. In the cases referenced, the Council has continued to refuse applications which have sought to restore permitted development rights to existing homes and the appeals referenced below that are all within the Borough have all been allowed.

6.8. In the case of Jesmond, Single Street, Berry's Green, permitted development rights were restored for the dwelling by appeal decision dated 2 July 2019 under Inspectorate reference APP/G5180/D/19/3225328. Paragraph 7 & 8 of this decision reach the following conclusions:

'Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. The Planning Practice Guidance (the PPG) says that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.

Permitted development rights to extend dwellings under the Town & Country Planning (General Permitted Development) Order 2015 (the GPDO) apply in the Green Belt. Had the Government wanted to withdraw or restrict permitted development rights for householder developments in the Green Belt it could have done so, as it has done with other locations such as Conservation Areas and National Parks. The fact that it hasn't is evidence that it considers the implementation of permitted development rights to be acceptable in a Green Belt location'.

6.9. A copy of the appeal decision concerning Jesmond can be seen in **APPENDIX 2** of this statement.

6.10. In the case of Landway House, Petleys Farm, Downe, permitted development rights were restored for a detached house (that was originally granted as a barn conversion) by appeal decision dated 14 October 2020 under Inspectorate reference APP/G5180/W/20/3249637.

6.11. In allowing the appeal, the Inspector formed the view that the condition removing permitted development rights was not in accordance with paragraph 55 of the Framework.

6.12. In paragraph 7 of the appeal decision the Inspector noted that:

‘Any extensions or alterations to the dwelling would be no larger than could be permitted at any other similar sized houses within the Green Belt. There is no reason to consider that the extensions here would be more harmful to the Green than they would at any other dwelling’.

A copy of the appeal decision concerning this case forms **APPENDIX 3** of this statement.

- 6.13. In the case of Argovia, Cudham Lane South, Cudham TN14 7QA, the London Borough of Bromley refused an application which sought to restore Class E (Outbuildings) permitted development rights to the existing house that had been removed via a planning condition. This application was refused. In allowing the subsequent appeal on the 8th of August 2019 under APP/G5180/D/18/3218571 (**APPENDIX 4**) the Inspector concluded in paragraph 11 of their decision that;

‘The GPDO places no restrictions on permitted development rights in Green Belts as it does with other designated areas such as National Parks. The fact that the GPDO places no specific restriction on dwellings within Green Belts suggests that development carried out under permitted development will not necessarily be inappropriate or harmful to openness. Paragraph 145 of the Framework is only applicable to development that requires planning permission as is the need to demonstrate very special circumstances. The site being located within the Green Belt therefore does not represent an exceptional circumstance envisaged by the NPPG.’

- 6.14. All of these highly comparable appeal decisions support the case for the condition to be removed for The Cottage.

Area of Outstanding Natural Beauty

- 6.15. Similar to the case made above, the Government does not remove permitted development rights for properties within an Area of Outstanding Natural Beauty but restricts these to a single

storey rear extension, a porch, rooflights and the erection of modest outbuildings that would be incidental to the enjoyment of a house and sited behind the property and within 20 metres of it. The Government therefore accepts that such works would not be harmful to the Area of Outstanding Natural Beauty and represent an appropriate form of development as a result.

- 6.16. Were such works introduced to serve The Cottage, they would not cause demonstrable harm to the openness of the AONB and in granting planning permission for the conversion of the building to a dwelling the Council was satisfied that no harm to the Area of Outstanding Natural Beauty would be caused.
- 6.17. The condition at present also removes permitted development rights under Class B but this did not need to be referenced within the Council's decision notice as these rights are not afforded to properties within Areas of Outstanding Natural Beauty.

Residential amenity

- 6.18. The Council's decision notice also references a need for the condition in the interest of residential amenity but does not expand upon this within the delegated report.
- 6.19. It is evident that in this case a modest single storey rear extension or an outbuilding incidental to the enjoyment of the Cottage and sited behind it would not cause any harm to the residential amenities of any surrounding property, including Cudham Frith.
- 6.20. There would therefore be no conflict with policy 37 of the Local Plan were this application to be approved and permitted development rights restored.
- 6.21. Taking these material considerations into account, it is requested for planning permission to be granted and for the condition to be removed accordingly.