

SECTION '2' – Applications meriting special consideration

**Application No :** 13/00477/VAR

**Ward:**  
**Darwin**

**Address :** Cudham Frith Cudham Lane South  
Cudham Sevenoaks TN14 7NZ

**OS Grid Ref:** E: 545370 N: 158056

**Applicant :** Mr Alan Robson

**Objections :** NO

**Description of Development:**

Variation of condition 3 of application reference 05/03927 (demolition of existing outbuilding and erection of detached garage) for all the building to be used as ancillary accommodation to the main dwelling.

Key designations:

Area of Outstanding Natural Beauty  
Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area Multiple (Spatial)  
Green Belt  
London City Airport Safeguarding Multiple (Spatial)  
Local Distributor Roads  
Sites of Interest for Nat. Conservation

**Proposal**

Permission is sought for the variation of condition 3 of application ref. 05/03927, which granted permission for the demolition of existing outbuilding and erection of detached garage, to all for the building to be used as ancillary accommodation to the main dwelling.

**Location**

The application site is located to the western edge of Cudham Lane South and features a large two storey detached dwelling. The site is within the Green Belt.

The building is set to the rear of the main dwelling, Cudham Frith, and features a garage, bathroom, living/dining area and fully equipped kitchen on the ground floor, with two bedrooms and a bathroom on the first floor. There is access to the building through the garage, but the main external door leads onto a small paved patio area, bounded by a low box hedge but with direct access onto the lawn.

**Comments from Local Residents**

Nearby owners/occupiers were notified of the application and no representations were received.

### **Comments from Consultees**

No technical consultations were undertaken.

### **Planning Considerations**

The application falls to be determined in accordance with the following policies of the Unitary Development Plan:

BE1 Design of New Development  
H8 Residential Extensions  
G1 The Green Belt  
T3 Parking

The National Planning Policy Framework (NPPF)

### **Planning History**

The “demolition of existing outbuilding and erection of detached garage” was granted planning permission under application ref. 05/03927, where condition 3 requires the garage to be used solely for the accommodation of private motor vehicles and for purposes incidental to the dwelling and shall not be converted to living accommodation.

Enforcement action was instigated (ref. 10/00775/OPDEV) on 14th December 2010 for the use of the outbuilding as a residential dwelling in breach of condition 3 of application reference 05/03927. A Breach of Condition Notice was served on 17th June 2011 and a Certificate of Lawfulness was invited.

Application ref. 11/02295/ELUD sought a determination that the outbuilding in residential use was lawful. It was refused on the grounds that:

“The residential use has not subsisted, on the balance of probabilities, for more than ten years continuously and as such is not considered to be lawful development.”

This determination was subsequently appealed with the Inspector dismissing the appeal.

### **Conclusions**

The main issues relating to the application are the effect that it would have on the character of the area and the impact that it would have on the amenities of the occupants of surrounding residential properties and the character and openness of the Green Belt.

The 2011 Certificate of Lawfulness was refused on the basis that no actual change of use had occurred and the existing residential use of the outbuilding is subject to the 10 year rule under section 171B(3) in accordance with Secretary of State for Communities & Local Government and another v Welwyn Hatfield Borough Council (2011) UKSC 15. However, given further evidence submitted at appeal, namely that the building was used for a short time for storage purposes prior to the change of use occurring together with physical alterations, this was not pursued. Rather it was the Council's alternative position that the building has not been in use as a single dwellinghouse (and therefore subject to the 4 year rule), but as accommodation ancillary to the enjoyment of the main dwelling at Cudham Frith (therefore subject to the 10 year rule).

It is important to note the findings of the Inspector in the recent appeal relating to the outbuilding, its use and function. The Council's position that the outbuilding was not a single dwellinghouse was upheld by the Inspector, who comments that such a use would require effective physical and functional separation and that given the size of the rear garden, the building is not particularly distant from the main dwelling and is within a cluster with the double garage, the level of privacy afforded and the occupant being the daughter of the applicant the building is in use as living accommodation ancillary to the main dwelling and its location is within the residential curtilage of the main residence.

In this regard the Inspector concluded:

"Overall, I consider, as a matter of fact and degree, that the use of the appeal building to provide residential accommodation for a family member, even on the reasonably independent basis claimed, is use for a purpose incidental to the enjoyment of the dwellinghouse at Cudham Frith. It is not necessary to invoke the concept of the planning unit, but in effect the appeal building is part of the same planning unit as Cudham Frith, which is occupied by the Robson family for domestic residential purposes. I conclude that the use of the appeal building by Ms Robson does not involve development as described in s55(1) of the 1990 Act. For this reason I consider that the granting of an LDC for its use as a separate single dwelling house is not warranted."

It has therefore been established by the Inspector that the outbuilding is in use as an ancillary form of accommodation to Cudham Frith, but has not been for 10 years or more. In this regard the residential use of the building is contrary to Condition 3 of ref. 05/03927 which restricts the building to being used as a garage and prohibiting any residential function.

The building itself has been agreed and as such the harm to the openness and character of the Green Belt has been accepted in principle. Consideration must therefore be given to the impact the residential use that has subsisted since 2006 has upon the openness and character of the green Belt and its acceptability as further residential development within the curtilage of the main dwelling in regard to parking provision and the residential amenity of neighbouring residents.

The reason given for condition 3 reads:

“The storage of other vehicles (e.g. vans, lorries etc) or use for other purposes would conflict with Policy T.15 of the adopted Unitary Development Plan and Policy T3 of the second deposit draft Unitary Development Plan (Sept 2002), would be detrimental to the amenities of the neighbourhood, and conversion of the garage to living accommodation would deprive the property of adequate parking facilities.”

The property benefits from a large driveway to the front and side of the main property with good levels of parking provision and since this 2005 permission a separate detached garage has been erected close to the application building. It is also noted that the outbuilding retains a single garage. Given the level of parking provision present to the site it is considered that the loss part of the approved garage to residential accommodation has not led to an unacceptable loss of adequate parking. Further, the application site is relatively isolated in relation to neighbouring properties with the application building being well screened to the boundaries. Taking into consideration the length of time the residential use has been in place at the building, it is considered that the residential function ancillary to the main dwelling is acceptable in terms of the impact upon the amenities of the surrounding area.

Background papers referred to during production of this report comprise all correspondence on files refs. 11/02295 and 13/00477, excluding exempt information.

## **RECOMMENDATION: APPROVAL**

subject to the following conditions:

- 1      ACK01      Compliance with submitted plan  
         ACC01R      Reason C01
- 2      The single storey detached outbuilding shall only be used as residential accommodation incidental to the residential use of the main dwelling ‘Cudham Frith’ and shall not be severed either physically or functionally to form a separate self-contained unit and shall be permanently retained within the residential curtilage of Cudham Frith.

**Reason:** In order to comply with Policies BE1 and H8 of the Unitary Development Plan and to ensure that the residential use permitted is not used separately and unassociated with the main dwelling and so to prevent an unsatisfactory sub-division into two dwellings.

- 3      AJ02B      Justification UNIQUE reason OTHER apps

Policies (UDP)

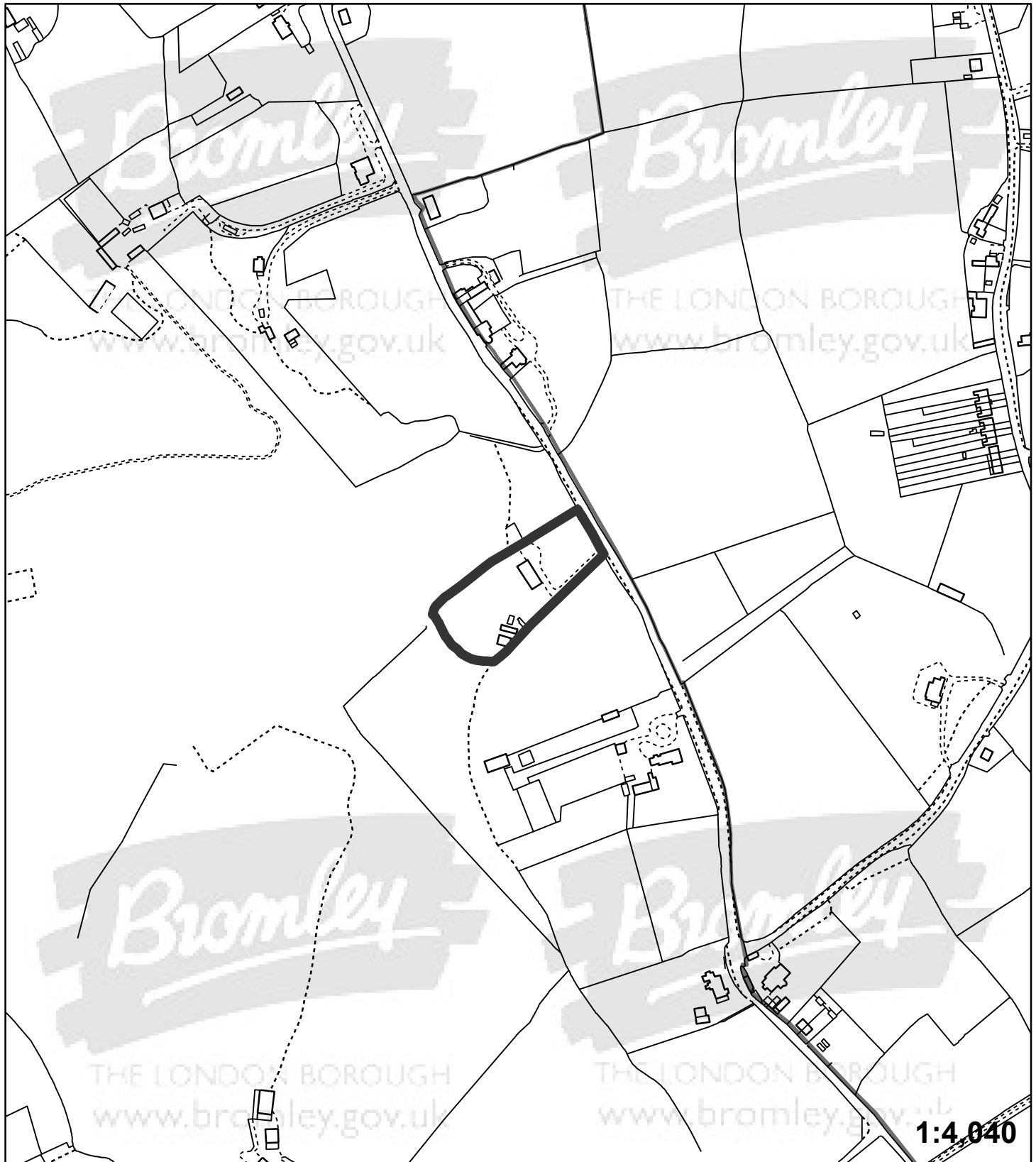
- BE1      Design of New Development
- H8      Residential Extensions
- G1      The Green Belt
- T3      Parking

The National Planning Policy Framework (NPPF)

**Application:**13/00477/VAR

**Address:** Cudham Frith Cudham Lane South Cudham Sevenoaks TN14 7NZ

**Proposal:** Variation of condition 3 of application reference 05/03927 (demolition of existing outbuilding and erection of detached garage) for all the building to be used as ancillary accommodation to the main dwelling.



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

© Crown copyright and database rights 2013. Ordnance Survey 100017661.