



## PLANNING STATEMENT

Certificate of Lawfulness for the use of land for residential garden in association with No. 7 Redhill Place for a continuous period in excess of 10 years and the lawful construction of a residential outbuilding under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

7 Redhill Place, Hunnington, B62 0JR

ON BEHALF OF:  
Mr Curt Myatt  
June 2023

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- F. Statutory Declaration – Mr Curt Myatt
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## **1.0 Introduction**

- 1.1. Zesta Planning Ltd has been appointed by Mr Curt Myatt (hereafter referred to as ‘the applicant’) to submit a Certificate of Lawfulness (Existing Use) application for the for the use of land for residential garden in association with No. 7 Redhill Place for a continuous period in excess of 10 years and the lawful construction of a residential outbuilding under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 1.2. The applicant purchased the land comprising the entire garden and curtilage of No. 7 Redhill Place in December 2009, as part of a wider land purchase, which also included additional land to the rear of Redhill Place.
- 1.3. This additional land to the rear has been used as a builder’s yard in association with the applicant’s business since June 2010, a use that was confirmed as lawful under a Certificate of Lawful Use (App Ref – 20/00966/CPE). Subsequently, planning permission has since been granted for two semi-detached dwellings on this land to the rear (App Ref – 21/00294/FUL).
- 1.4. Following the land purchase, the applicant achieved planning permission to convert a row of redundant garages into a dwelling under App Ref – 11/0137. This conversion scheme was implemented immediately and the dwelling, known as No. 7 Redhill Place, became occupied soon afterwards.
- 1.5. In May 2021, the applicant constructed a flat roofed detached outbuilding within the residential curtilage of No. 7 Redhill Place and originally this was used as a summer room for purposes incidental to the residential enjoyment of No. 7 Redhill Place. The applicant constructed this outbuilding on the basis that it complied with the criteria Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 1.6. Since November 2021, the outbuilding has been used as part of a home hairdressing salon, by the applicant’s partner, Stacey Chavda. Stacey Chavda has also lived at No 7 Redhill Place for over 10 years, alongside the applicant. We consider that this home hairdressing salon use remains a use incidental to the residential enjoyment of No. 7 Redhill Place.
- 1.7. There is a discrepancy between the Location Plan red line denoting the “approved” residential garden of No. 7 Redhill Place under App Ref – 11/0137 and the actual residential garden that has existed since the property was first occupied.

- 1.8. Whilst the aforementioned outbuilding has been constructed within the residential garden of No. 7 Redhill Place, and on land within the applicant's ownership, it is located outside the Location Plan red line of App Ref – 11/0137.
- 1.9. Due this discrepancy and uncertainty over the use of the outbuilding, Bromsgrove District Council first issued a Planning Contravention Notice (PCN) dated 3<sup>rd</sup> August 2022 (but not served until September 2022) alleging the following breach, "*Number 7 Redhill Place running a hairdressing business from outbuilding at rear of dwelling*". Zesta Planning Ltd provided an accompanying letter in response to this PCN, dated 5<sup>th</sup> October 2022 (**Appendix A**).
- 1.10. On 27<sup>th</sup> January 2023 (Investigation Ref – 22/00083/INV) a second PCN was issued expanding on the alleged breach to include the outbuilding structure itself stating, "*Without planning permission, the erection of an outbuilding and the use of the building for a hairdressing business*". This PCN, inclusive of the applicant's response dated 17<sup>th</sup> February 2023, is attached at **Appendix B**.
- 1.11. This Lawful Development Certificate (Existing Use) has therefore been submitted to regularise the situation in relation to the lawful residential curtilage and the construction and use of a residential outbuilding under Permitted Development Rights. It is supported by clear evidence to demonstrate these matters.
- 1.12. This submission also highlights the lack of evidence to the contrary. Finally, it demonstrates, on the balance of probabilities, that the evidence in favour of the use is sufficient and unambiguous to warrant the granting of a certificate. Section 3 summarises the evidence and section 5 analyses it in detail.
- 1.13. This Statement is structured as follows:
  - Section 2 – The application site and its planning history
  - Section 3 – The current application
  - Section 4 – Legislative and policy context
  - Section 5 – The evidence provided by the applicant
  - Section 6 – Whether there is evidence to contradict the applicant's evidence
  - Section 7 – Applying the Balance of Probabilities Test
  - Section 8 – Overall conclusions

## 2.0 The Application Site and Planning History

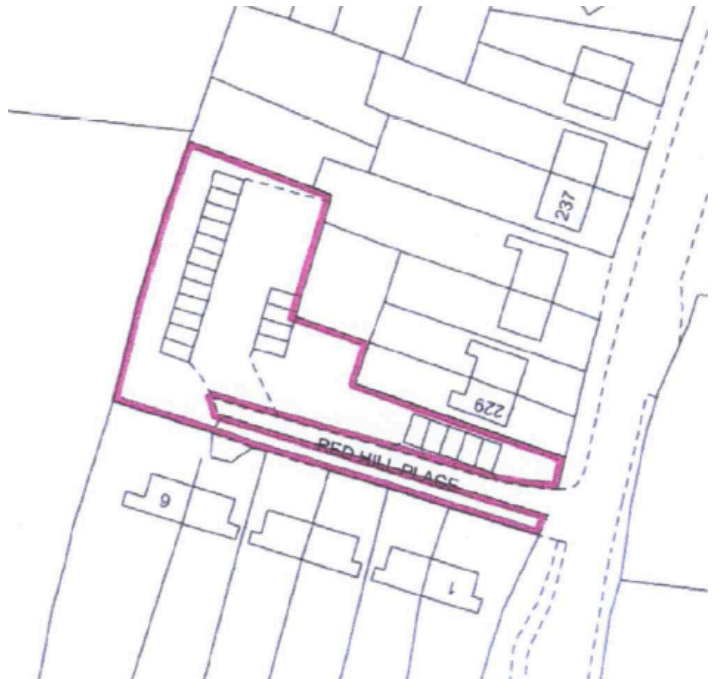
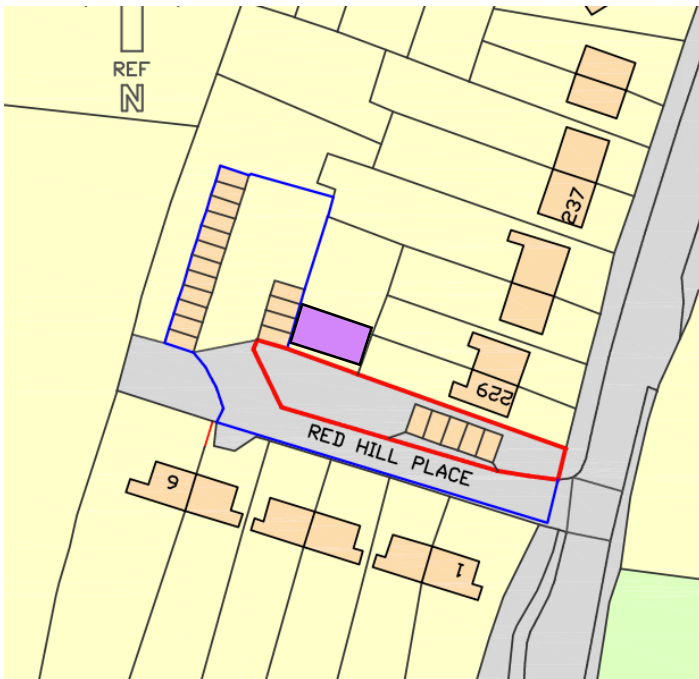
### The Application Site

- 2.1. The application site relates to a dwelling known as No. 7 Redhill Place and the associated land within its residential curtilage. The dwelling is a former garage block, which received permission to be converted to a dwelling under App Ref – 11/0137. Conversion works were undertaken immediately following permission and the building was occupied as a dwelling by the applicant, Mr Curt Myatt, and his partner, Stacey Chavda, soon afterwards.
- 2.2. The site is border to the rear (west) by a builder's yard, which the applicant also owns. To the north lies a number of residential dwellings fronting Bromsgrove Road and to the south lies a number of residential dwellings fronting Redhill Place. To the east lies wider agricultural land.
- 2.3. The applicant and his partner have occupied No. 7 Redhill Place for over 10 years and the residential garden are and its associated residential curtilage is the same today, as it was when they moved into the property.
- 2.4. The applicant constructed a single storey detached outbuilding in May 2021, within this residential curtilage and this was originally used as a summer room for purposes incidental to the residential enjoyment of No. 7 Redhill Place. The applicant constructed this outbuilding on the basis that it complied with the criteria Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 2.5. Since November 2021, the outbuilding has been used as part of a home hairdressing salon, by the applicant's partner, Stacey Chavda. This use is still considered to be incidental to the residential enjoyment of No. 7 Redhill Place, and this will be considered as part of this submission.
- 2.6. A photographic record of the site has been prepared, showing both the curtilage of the site over time and the present day outbuilding. This record is included at **Appendix C**.

### Planning History

- 2.7. The Council's online record of planning history shows that there have been several applications for both the residential dwelling at No. 7 Redhill Place and the wider land to the rear (west), which is also in the same land ownership.
- 2.8. **11/0137** – Conversion of an existing garages into a domestic dwelling – Approved 14<sup>th</sup> April 2011. Decision Notice, Location Plan and Proposed Block Plan attached at **Appendix D**. A few important points to note from this application, which also comprises part of our evidence base for this application:

- The applicant and landowner is noted as “Mr Kurt Mytt”. Although this is a typographical error, this clearly shows the landownership of the applicant at this time. Note that the applicant has owned the land as part of a wider land holding since December 2009.
- There is an error in **both** the red line and blue depicting the land ownership and the application land area to be associated with the dwelling within this application. See Location Plan submitted with App Ref – 11/0137 (left) and the Land Registry Title Plan (right). The key omission for the purposes of this application is the area outlined in purple (see Location Plan extract on left below), which does not even appear within the blue line, despite being clearly within the applicant’s ownership. It was always the intention for this “purple” land to form part of the residential garden and curtilage of No. 7 Redhill Place and it has done ever since it was first occupied more than 10 years ago. The original application therefore clearly contained an error.



- The Decision Notice for App Ref – 11/0137 includes a restriction on Permitted Development Rights under Condition 4, as follows:

*“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A to E shall be carried out without the prior approval of the local planning authority to an application in that behalf.*

*Reason: To protect the visual amenity of the area and the openness of the Green Belt in accordance with policy DS13 & DS2 of the Bromsgrove District Local Plan January 2004, policy CTC.1, D.38 & D.39 of the Worcestershire County Structure Plan 2001 and the guidance contained in PPG2" Green Belts."*

- Notwithstanding this, it is crucial to note that this restriction **only** relates to the proposals **within** the permitted Location Plan red line of App Ref – 11/0137. Given that the "purple" land outlined above is located **outside** the permitted red line, it is therefore not subject to the Condition 4 restriction.

2.9. **20/00966/CPE** - In 2020, a Certificate of Lawful Existing Use was submitted to the Council in respect of the land to the west of the curtilage of No. 7 Redhill Place. This Certificate was to confirm that the land in question had been lawfully used as a builder's storage yard for a continuous period of 10 years and that boundary walling, gates and blockwork storage bays had been in site for in excess of 4 years. This certificate was granted on 25<sup>th</sup> September 2020 and a copy of the Site Location Plan, Officer Report and Decision Notice is attached at **Appendix E**. The site location plan submitted with this Certificate confirms the westerly boundary of the curtilage of No. 7 Redhill Place, see extract below.



### 3.0 The Current Application

- 3.1. This Certificate of Lawfulness (Existing Use) application for the for the use of land for residential garden in association with No. 7 Redhill Place for a continuous period in excess of 10 years and the lawful construction of a residential outbuilding under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 3.2. This submission demonstrates that the land has been used for this purpose for over 10 years, but also on implementation of the planning application Ref – 11/0137 immediately following this permission dated 14<sup>th</sup> April 2011. It has therefore been used entirely as residential garden, forming part of the defined residential curtilage, for the enjoyment of No. 7 Redhill Place for a continuous period of in excess of 10 years.
- 3.3. The application also demonstrates that as the outbuilding is constructed on land within this curtilage (but **outside** the defined boundary where Condition 4 (PD Limitation) of App Ref – 11/0137 applies), it represents a lawful construction for purposes incidental to the residential enjoyment of No. 7 Redhill Place under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 3.4. As part of this, it has been demonstrated that the use of the outbuilding as a home hairdressing salon, remains an ancillary and incidental use to the enjoyment of No. 7 Redhill Place.
- 3.5. This application is accompanied by the following evidence to demonstrate the use:
  - Statutory Declaration from the owner of No. 7 Redhill Place and its curtilage, Mr Curt Myatt (**Appendix F**).
  - Statutory Declaration from Stacey Chavda, a resident of No. 7 Redhill Place along with her partner (Mr Curt Myatt) and sole operator of the home hairdressing salon (**Appendix G**).
  - Photographic Record of the site at regular intervals between 2010-2023.
  - Planning History of the site and adjacent site, as laid out in Section 2.0 of this report.
  - Planning Contravention Notice Letter prepared by Zesta Planning Ltd, dated 5<sup>th</sup> October 2022
  - Completed Planning Contravention Notice (dated 27<sup>th</sup> January 2023), prepared by Mr Curt Myatt, and submitted to the Council on 17<sup>th</sup> February 2023.



- Compliance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- This Planning Statement also comments on the lack of evidence to the contrary, which assists in corroborating the applicant's version of events on the overall balance of probability.

## 4.0 Legislative and Policy Context

### General Legislative provisions

- 4.1. The application is made under sections 171B(1) and 191(1) of the Town and Country Planning Act 1990 as amended. Section 191 of the Act makes provision for any person to apply for a certificate of lawfulness in respect of any existing use or development. Section 191(1) states that if any person wishes to ascertain whether:
- (a) any existing use of buildings or other land is lawful; and
  - b) any operations which have been carried out in, on, over or under land are lawful;
- they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
- 4.2. Section 171B sets out the time limits upon which a development becomes lawful and immune from enforcement action. The following categories relating to the immunity of enforcement action that are relevant to this application are:
- 1) Where there has been a breach of planning control consisting in the carrying out without planning permission of a building, no enforcement action may be taken after the end of a period of 4 years from the date that the works were substantially complete.
  - 2) In the case of any other breach of planning control, no enforcement action may be taken after a period of 10 years from the date of the breach.
- 4.3. In this way, the use of land and operational development can become lawful and immune from enforcement action if it can be demonstrated that the use has been continuous over a period of 10 years and 4 years in the context of the construction of operational development.
- 4.4. In considering the evidence provided in support of an application for a certificate of lawful use or development (LDC), the Courts have decided that the relevant test to be applied is whether ***“on the balance of probability”***, the land has been used for the said purpose for the requisite period of time, and whether the operational development had been constructed and completed for the requisite period of time. This is a lesser test than the stricter, criminal burden of proof, namely *“beyond reasonable doubt”*. As such, the decision-maker is often required to use pragmatism.

4.5. One of the most commonly cited authorities on this matter is that held by the Court in the case of *F W Gabbitas V SSE and Newnham LBC (1985)* which found that *“the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”*.

#### **Planning Practice Guidance**

4.6. The Government’s Planning Practice Guidance (PPG) reiterates the above-mentioned legislative provisions. Paragraph 002 states *“where local planning authorities are satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate”*.

4.7. Paragraph 005 of the PPG makes it clear that applications *“must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application”* and *“Without sufficient or precise information, a local planning authority may be justified in refusing a certificate”*. The burden of proof to demonstrate the lawfulness of the use therefore rests with the applicant.

4.8. However, paragraph 006 also makes it clear that *“if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probably, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”*.

4.9. In terms of consultation with third parties, paragraph 008 states *“There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application”*.

## 5.0 The Evidence provided by the Applicant

5.1. Section 39 of the Town and Country Planning (Development Management Procedure) Order (England) 2015 (as amended) sets out the level of information required in respect of an application for a certificate of lawful use or development. In addition to a completed application form, a plan identifying the land and the requisite application fee, the Order requires applications to be accompanied by such evidence necessary to verify the information included in the application.

5.2. The evidence submitted to corroborate these events accompanies the application and is analysed as follows. The evidence can be broken down into the following sections and will then be addressed in turn:

- Statutory Declaration from the owner of No. 7 Redhill Place and its curtilage, Mr Curt Myatt.
- Statutory Declaration from Stacey Chavda, a resident of No. 7 Redhill Place along with her partner (Mr Curt Myatt) and sole operator of the home hairdressing salon.
- Photographic Record of the site at regular intervals between 2010-2023.
- Planning History of the site and adjacent site, as laid out in Section 2.0 of this report.
- Planning Contravention Notice Letter prepared by Zesta Planning Ltd, dated 5<sup>th</sup> October 2022
- Completed Planning Contravention Notice (dated 27<sup>th</sup> January 2023), prepared by Mr Curt Myatt, and submitted to the Council on 17<sup>th</sup> February 2023.
- Compliance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

### **Statutory Declarations from Mr Curt Myatt and Stacey Chavda**

5.3. Statutory Declarations are legal documents signed in front of a solicitor under oath. Provided misleading or incorrect statements within them is an offence. As such, statements provided within a Statutory Declaration are something that should carry significant weight in determining applications.

5.4. This submission is accompanied by Statutory Declarations (**Appendices F & G**) from the applicant and owner of the site, Mr Curt Myatt who occupies the dwelling at No. 7 Redhill Place and, Stacey Chavda, Mr Curt Myatt's partner and also occupier and resident of No. 7 Redhill Place.

5.5. The Declaration of Mr Curt Myatt confirms the following:

- He purchased the land known as No. 7 Redhill Place ("the residential curtilage") as part of a wider parcel of land on 14<sup>th</sup> December 2009.
- The residential conversion work (permitted under App Ref – 11/0137) was implemented shortly after permission and works completed more than 10 years ago and he has occupied the property (No. 7 Redhill Place) since this time.
- The extent of the residential garden and curtilage of No. 7 Redhill Place remains the same today as it was when he first occupied the dwelling. The residential curtilage is confirmed as per the plan extract below.



- He confirms that the single storey detached flat roofed outbuilding within the curtilage of No. 7 Redhill Place was constructed in May 2021 and that it measures 4.5m in depth, 5.4m in width and a maximum of 2.5m in height from external ground level. It was originally constructed and used as a summer room for purposes incidental to the residential enjoyment of No. 7 Redhill Place.
- He confirmed that he constructed the outbuilding under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- He also confirmed that since November 2021, the outbuilding has been used as a home hairdressing salon solely by his partner, Stacey Chavda. He also confirms that Stacey Chavda has also occupied No. 7 Redhill Place for the same period as himself.
- He confirms that the home hairdressing salon is operated on an appointment-only basis, with on average 2-3 customers per day, primarily in day time hours Monday – Friday (with limited appointments on Saturday and Sunday mornings and no appointments on Bank Holidays), with only 1 customer and 1 staff member (Stacey Chavda) maximum at any one time. It has been made clear that Stacey is the only employee in this homeworking business and the majority of customers are family, friends and associated referrals.
- He confirms that as this is run on an appointment-only basis, full control is retained over when and who visits the property. Any car parking required (only 1 car at any one time) is provided off-road on the existing driveway for No. 7 Redhill Place.
- Finally, he states that, No. 7 Redhill Place and its residential curtilage is still primarily occupied as a private residential dwelling and I consider that the use of the outbuilding as a home hairdressing salon since November 2021, operated in the manner outlined, would not result in any material change of use. In Mr Curt Myatt’s view, the outbuilding would therefore be occupied incidental to the enjoyment of the dwellinghouse and would continue to benefit from permitted development rights.

5.6. The Declaration of Stacey Chavda confirms the following:

- She confirms that she has occupied No. 7 Redhill Place for over 10 years. This corroborates Mr Curt Myatt’s Statutory Declaration.
- As with Mr Curt Myatt’s Statutory Declaration, the same residential curtilage has been confirmed by Stacey Chavda and has also been confirmed that the residential garden and curtilage has been in place for over 10 years.

- She also corroborates the previous evidence in relation to the construction of the single storey flat roofed outbuilding and that it was originally used as a summer room for purposes incidental to the residential enjoyment of No. 7 Redhill Place.
- She also states that the building was originally constructed under Permitted Development rights.
- In relation to the use of the building as a home hairdressing salon, Stacey Chavda, corroborates the evidence provided in Mr Curt Myatt's Statutory Declaration in terms of how the home business operates and that in her view, the use of the outbuilding remains for purposes incidental to the enjoyment of the dwellinghouse and that it would continue to benefit from permitted development rights.

5.7. This Statutory Declaration evidence is very clear, precise and unambiguous and provides a very clear explanation of the use of the site and timeline of events. We consider that these declarations should be afforded substantial weight, particularly given that they have been sworn under oath.

**Site photographs and web-based aerial view imagery – April 2010 – May 2023**

- 5.8. The submission contains a detailed Photographic Record, including site photographs and web-based aerial view imagery from Google Earth and photos on the ground taken directly by the applicant, Mr Curt Myatt over the course of the last 10 years.
- 5.9. All photographs taken clearly show the entirety of the land within the red line has been in continuous use for over 10 years as residential curtilage associated with No. 7 Redhill Place. The aerial view images are consistent with those taken on the ground, which corroborates the evidence in question.
- 5.10. It is noted that the images span the time from when the Mr Curt Myatt originally purchased the land, through to the conversion of the building that became No. 7 Redhill Place, as well as post conversion.
- 5.11. The most recent photographs taken of the single storey detached outbuilding provide a documented record of the external and internal arrangement of the building, which corroborates the evidence provided throughout this submission.

5.12. Overall, the site photographs and aerial view image assists in highlighting the continuous use of the land for residential curtilage for a period in excess of 10 years and also demonstrates the scale and use of the single storey detached outbuilding. The images are taken at regular intervals over the past 13 years and demonstrate that, on the balance of probability, the use has been continuous. The timescales shown within these images are completely consistent with the other evidence provided within this submission.

### **Planning History**

5.13. A detailed assessment has been undertaken within Section 2.0 of this Planning Statement, which highlights the relevant planning history associated with this Lawful Development Certificate submission.

5.14. Importantly, it is clear that given that the land upon which the single storey detached outbuilding is sited is outside of the Location Plan red line originally permitted under App Ref – 11/0137, this land would not be subject to the conditions outlined within this application. As a result, Condition 4 (Permitted Development Restriction) of App Ref – 11/0137 would not be relevant.

5.15. In this scenario, given that the entirety of the land outlined in red on the Location Plan submitted with this current Lawful Development Certificate, has been evidenced to have been part of the residential curtilage of No. 7 Redhill Place for a continuous period in excess of 10 years, it is clear that the land (highlighted purpose – Page 5 of this Planning Statement) would benefit from residential permitted development rights. To confirm, Condition 4 (Permitted Development Restriction) of App Ref – 11/0137 would not apply to this “purple” land.

5.16. As a result, given that we have demonstrated that the single storey detached outbuilding would meet the criteria of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the building must be considered to be a lawful structure.

5.17. We believe that this represents substantial evidence that should be afforded significant weight in determining the lawfulness of the outbuilding on the balance of probability.

### **Planning Contravention Notice Details**

5.18. The below evidence has been supplied by the applicant in support of this Lawful Development Certificate:

- Planning Contravention Notice Letter prepared by Zesta Planning Ltd, dated 5<sup>th</sup> October 2022



- Completed Planning Contravention Notice (dated 27<sup>th</sup> January 2023), prepared by Mr Curt Myatt, and submitted to the Council on 17<sup>th</sup> February 2023.

5.19. The Planning Contravention Notice Letter prepared by Zesta Planning Ltd (dated 5<sup>th</sup> October 2022) was written and circulated to Bromsgrove District Council following the circulation of the first Planning Contravention Notice served on No. 7 Redhill Plan in September 2022.

5.20. This letter was prepared by Zesta Planning Ltd on behalf of Mr Curt Myatt, the applicant and recipient of the Planning Contravention Notice.

5.21. Within this letter, it is confirmed that Zesta Planning Ltd were approached in October 2021 and asked by the applicant whether planning permission would have been required to use the outbuilding for a home hairdressing salon. The use explained by the applicant at that time does not differ from the use as outlined in the Statutory Declarations prepared by Mr Curt Myatt and Stacey Chavda. The letter outlines that it was the professional view of Zesta Planning Ltd that a material change of use would not occur by using the outbuilding as a home hairdressing salon. The use commenced in November 2021, as outlined in the evidence.

5.22. The letter outlines that there is no statutory definition of “material change of use” and that planning case law determines that whether a change of use has occurred is linked to the significance of the change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is therefore a matter of fact and degree and determined on the individual merits of the case.

5.23. The letter also outlines that the Government’s Planning Practice Guidance (PPG) notes that in relation to home working (PPG Paragraph: 014 Reference ID: 13-014020140306) states:

*“Planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms), provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house....”*

*“...Issues which they may consider include whether the home working or a business leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations”.*

5.24. The letter outlines that No. 7 Redhill Place is still used as a private residence first and foremost. This is corroborated by evidence provided within the Statutory Declarations, acknowledging that only Stacey Chavda is operating the business and No. 7 Redhill Place is her sole dwelling, where she has lived for over 10 years.

- 5.25. The home working salon is operating primarily in daytime hours Monday – Friday, with an average of 2-3 customers per day and there are limited appointments on weekends. The salon operates on an appointment only basis, so that Stacey Chavda can retain control over when and who visits the property. Due to this, parking is always available for clients on the site itself.
- 5.26. Given the nature of the use, there is no significant noise nuisance, smells or neighbour disturbances and we are not aware of any noise abatement orders or complaints from neighbours in this regard.
- 5.27. The letter also confirms that the outbuilding forms well below 5% of the overall floor area of the residential property, which is a clear indicator that the overall primary use of the property remains as a residential dwelling. This is “de-minimus” in the context of the overall property which further points to the fact that no material change of use has occurred.
- 5.28. The detail outlined in this letter is fully corroborated by the Statutory Declarations of Mr Curt Myatt and Stacey Chavda, as well as the answers set out in Completed Planning Contravention Notice (dated 27<sup>th</sup> January 2023), prepared by Mr Curt Myatt, and submitted to the Council on 17<sup>th</sup> February 2023.
- 5.29. As a result of the above, and as a matter of fact and degree, it is clear that the home working hairdressing salon use of the outbuilding would be considered an incidental use to the enjoyment of the dwelling house at No. 7 Redhill Place. There is no contrary evidence that would suggest otherwise in this instance.

**Compliance with Class E ‘buildings etc incidental to the enjoyment of a dwellinghouse’**

- 5.30. The legislation governing permitted development rights for domestic outbuildings is set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.
- 5.31. The relevant part of Class E permits “The provision within the curtilage of the dwellinghouse of—
- (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or”
- 5.32. This Lawful Development Certificate is for an existing detached outbuilding, currently being used as a home hairdressing salon, and originally constructed as garden summer room.

- 5.33. As highlighted through the suite of evidence provided within this Planning Statement, including the Statutory Declarations and the Planning Contravention Notice Details, it is considered that it is unambiguous that the use of the outbuilding as a home hairdressing salon would be for purposes incidental to the enjoyment of the dwellinghouse and the outbuilding therefore falls to be considered as Class E permitted development, subject to compliance with the individual limitations and conditions of the Class, which is demonstrated in the following analysis.
- 5.34. It has also been identified that the land upon which the outbuilding has been constructed benefits from permitted development rights, having been part of the residential curtilage for over 10 years and being outside the scope of Condition 4 (Permitted Development Restriction) of App Ref – 11/0137.

#### **Compliance with Class E limitations**

- 5.35. Class E is subject to the following limitations, which are considered in turn.

##### ***E.1 Development is not permitted by Class E if—***

***(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);***

- 5.36. The application host dwellinghouse was constructed as a single dwellinghouse and has not been formed from a change of use.

***(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);***

- 5.37. The total area of the curtilage is c. 500 sqm and the total area of the house at No. 7 Redhill Place is c. 106 sqm. This gives a curtilage area of  $500 - 106 = 394$  sqm.

- 5.38. The total external area of the outbuilding is 24.3 sqm, which represents 6% of the curtilage area. This is well below the 50% requirement.

***(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;***

- 5.39. The proposed outbuilding is entirely situated behind the dwellinghouse in the back garden area.

***(d) the building would have more than a single storey;***

5.40. The proposed outbuilding comprises of a single-storey.

***(e) the height of the building, enclosure or container would exceed—***

***(i) 4 metres in the case of a building with a dual-pitched roof,***

***(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or***

***(iii) 3 metres in any other case;***

5.41. The outbuilding is located within 2 metres of the boundary of the curtilage of the dwellinghouse and is a maximum of 2.5 metres in height to its tallest point. Therefore, its height is in compliance with (e)(ii).

***(f) the height of the eaves of the building would exceed 2.5 metres;***

5.42. The height of the eaves of the proposed outbuilding is no higher than 2.5 metres.

***(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;***

5.43. The application host property is not a listed building.

***(h) it would include the construction or provision of a verandah, balcony or raised platform;***

5.44. The outbuilding does not incorporate any of the features listed in (h).

***(i) it relates to a dwelling or a microwave antenna;***

5.45. The outbuilding does not relate to a dwelling or a microwave antenna.

***(j) the capacity of the container would exceed 3,500 litres; or***

5.46. The proposal does not relate to an oil tank and therefore this limit is not applicable.

***(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).***

5.47. The host dwelling was not built under Part 20 and therefore benefits from Part 1 Class E permitted development rights subject to compliance with other limitations of the Class.

***E.2 In the case of any land within the curtilage of the dwellinghouse which is within—***

***(a) an area of outstanding natural beauty;***

***(b) the Broads;***

***(c) a National Park; or***

***(d) a World Heritage Site,***

***development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.***

- 5.48. The land is not located within any of the areas mentioned above and therefore the 20 metre/10 sqm limitation is not relevant.

***E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.***

- 5.49. The land is not located within article 2(3) land.

#### **Compliance with Class E Summary**

- 5.50. To summarise, the foregoing analysis demonstrates that the detached outbuilding, which is required for purposes incidental to the enjoyment of the dwellinghouse falls within permitted development limits, and as a result is compliant with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015. We therefore conclude that the proposed development is compliant with GPDO legislation and a Certificate of Lawfulness should be granted in this respect.

## **6.0 Whether there is any evidence to contradict the Applicant's version of events**

- 6.1. The Government's Planning Practice Guidance (PPG) advises that it is reasonable for a local planning authority to make its own enquiries and seek evidence from other sources when considering applications for a Certificate of Lawful Use.
- 6.2. However, paragraph 006 of the PPG states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probably, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.
- 6.3. We are not aware of any evidence at this point that contradicts the information set out in the applicant's submission. A search of the Council's online planning files has been undertaken but there is no information which challenges the lawful extent of the residential curtilage of No. 7 Redhill Place, nor is there any evidence to challenge that the outbuilding would fall under permitted development rights.
- 6.4. Ultimately, there is no available evidence to contradict the information and version of events provided by the applicants. Set against this, the evidence submitted by the applicant and other parties, is sufficiently precise and unambiguous and should therefore be afforded substantial weight.

## 7.0 The Balance of Probabilities Test

- 7.1. As set out in Section 4 of this Statement, it has been established through the Courts that the relevant test is one of the *"balance of probabilities"*, when considering whether land has been used for the said purpose for the requisite period of time. This is a lesser test than the stricter, criminal burden of proof, *"beyond reasonable doubt"*.
- 7.2. This is the appropriate test in recognition of the fact that it is not always possible to provide absolutely conclusive evidence to substantiate a lawful use. As such, the balance of probabilities test requires a degree of pragmatism and reasonableness from the decision maker. It requires the decision maker to weigh all the evidence in the overall balance and decide whether the balance of the evidence suggests that the said use is likely to be lawful.
- 7.3. In this regard, substantial evidence has been submitted that demonstrates that the land within the defined red line at No. 7 Redhill Place has been used solely as ancillary residential amenity space associated with and for the enjoyment of No. 7 Redhill Place for a period exceeding 10 years.
- 7.4. The substantial evidence that has been submitted also demonstrates that the erection of a residential outbuilding within this defined curtilage benefits from permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As part of this evidence submission, it has been clearly assessed that the use of the outbuilding as a home hairdressing salon would remain as a use incidental to the enjoyment of the dwellinghouse at No. 7 Redhill Place.
- 7.5. The application is accompanied by Statutory Declarations from the applicant, Mr Curt Myatt, who owns the dwelling and associated curtilage land, and Stacey Chavda, the applicant's partner, who also lives at No. 7 Redhill Place. Stacey Chavda is able to corroborate Curt Myatt's Statutory Declaration in relation to the lawful residential curtilage due to her residing at No. 7 Redhill Place for the same period of time. Furthermore, Stacey Chavda, operates the home hairdressing salon and can corroborate its form and type of use.
- 7.6. The submission also includes photographs and aerial view imagery showing the site at various intervals between 2010 and 2023, which shows the site being continuously used as residential curtilage across the time period assess and corroborate with other evidence. Photographs are also supplied showing the outbuilding as it exists in the present day. This all corroborates the applicant's version of events and is certainly enough to meet the *"balance of probability"* test.

- 7.7. The submission also outlines the relevant planning history for the site, which corroborates the site boundary location and also confirms that the outbuilding is not located on land subject of Condition 4 (PD Limitation) of App Ref – 11/0137. This helps to corroborate the applicant's version of events.
- 7.8. Further evidence has been provided through the information submitted via the Planning Contravention Notices, by both Zesta Planning Ltd, on behalf of the applicant, and by the applicant himself. This information further corroborates the position in relation to the residential curtilage and the use of the outbuilding.
- 7.9. Finally, it has been demonstrated that the outbuilding would meet all of the relevant criteria under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 7.10. All of this evidence provided by the applicants is clear, consistent and unambiguous. In this regard, it is highly significant that there does not appear to be any evidence that contradicts the evidence provided. A review of the Council's online planning files has **not** unveiled any evidence that would indicate that the residential curtilage use and the outbuilding have been used and erected unlawfully.
- 7.11. We conclude, on the balance of probabilities, that a certificate of lawful use should be granted. The relevant test is the balance of probabilities in reflection of the fact that it is not always possible to prove a lawful use beyond any doubt. The balance of the evidence that has been provided overwhelmingly indicates that the use of land and associated operational development is indeed lawful.



## 8.0 Conclusions

- 8.1. The purpose of this Planning Statement has been to clearly set out the evidence that substantiates the claim that the land has been used as part of the residential garden of No. 7 Redhill Place (and forms part of its residential curtilage) continuously for over 10 years, and the lawful construction of a residential outbuilding has occurred and complies with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In doing so, it has also sought to balance this evidence against any evidence that may counter the applicant's version of events.
- 8.2. The relevant test is the one of the '*balance of probabilities*', which requires a judgement to be made by considering the strength of the evidence provided by the appellant, against any other evidence. In this case, there is substantial evidence to warrant the granting of a certificate of lawful use, which includes the submission of:
- Statutory Declaration from the owner of No. 7 Redhill Place and its curtilage, Mr Curt Myatt.
  - Statutory Declaration from Stacey Chavda, a resident of No. 7 Redhill Place along with her partner (Mr Curt Myatt) and sole operator of the home hairdressing salon.
  - Photographic Record of the site at regular intervals between 2010-2023.
  - Planning History of the site and adjacent site, as laid out in Section 2.0 of this report.
  - Planning Contravention Notice Letter prepared by Zesta Planning Ltd, dated 5<sup>th</sup> October 2022
  - Completed Planning Contravention Notice (dated 27<sup>th</sup> January 2023), prepared by Mr Curt Myatt, and submitted to the Council on 17<sup>th</sup> February 2023.
  - Compliance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- 8.3. This evidence conclusively indicates that the land has been used for a continuous period in excess of 10 years and that the associated construction and subsequent use of a residential outbuilding has been undertaken via Permitted Development rights. Furthermore, we are unable to find any evidence that contradicts the substantial evidence that indicates the use is lawful.

8.4. At this stage all evidence points to the likelihood that the existing residential use and the outbuilding are lawful. The evidence available is clear, consistent and unambiguous. On the balance of probabilities, we respectfully suggest that the Council should find that a lawful development certificate should be granted



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