PELHAM PLANNING ASSOCIATES

TOWN PLANNING & PROPERTY DEVELOPMENT CONSULTANCY

# PLANNING STATEMENT

**CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT**

**MR J CHAPPELL**
**SUNCOT**
**SCHOOL ROAD**
**BARKHAM**
**Nr WOKINGHAM**
**BERKSHIRE**
**RG41 4TR**

**PREPARED BY**

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# SECTION 1 – INTRODUCTION

1.1 This planning statement sets out the detail and considerations relevant to an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD), which seeks to confirm that:

1. The land to the rear of Suncot has been used as residential garden within the residential curtilage of the dwellinghouse and has been continuously used as such for a period in excess of ten years.

Accordingly, the use of the land as detailed above constitutes a lawful use/development and is immune from enforcement action as the land forms part of the residential curtilage as confirmed in the title deeds and by the previous owner of the property as it has been lawfully used and occupied for a period in excess of ten years.

1.2 The proposal is submitted in the form of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD) under s.191 of the Town and Country Planning Act 1990 (as amended) (hereinafter referred to as "the Act".

1.3 Additionally, this statement considers the advice contained in National Planning Practice Guidance (NPPG) in relation to lawful development certificates and considers the evidence presented by the Applicant.

1.4 The land to rear of Suncot has formed part of the curtilage of the property since the 1930s when the property was built. This is a fact confirmed in the deeds. Furthermore, the previous owner of the property, [redacted] confirms that the land to the rear was only used a residential back garden from 1999 when they bought the property until the house was sold earlier this year.

1.5 The summary description of development proposes:

**"An application for a Certificate of Lawfulness of Existing Use to confirm that the land to rear of Suncot, School Road, Barkham, Wokingham, Berkshire, RG41 4TR has an established use a residential garden."**

1.6 The application is submitted on behalf of Mr J Chappell of Suncot, School Road, Barkham, Wokingham, Berkshire, RG41 4TR to Wokingham Borough Council under the provisions of the Town and Country Planning Act 1990 (as amended).

# SECTION 2 – SITE LOCATION AND DESCRIPTION

2.1 The application site is located on the south side of School Road, Barkham. The property was originally a bungalow set back from the road and has been extended and altered over time. It sits in row of linear development facing the road and is set back in line with other dwellings.

2.2 The surrounding area contains open fields/woodland and rural uses as well as dwellinghouses. The property is bordered to the north, west, east and south by other dwellings and their gardens.

2.3 The existing site contains the dwellinghouse, a number of low-rise outbuildings and extensive gardens stretching into the rear of the land.


Image 1 – Google Earth Approximate Site Location

# SECTION 3 – DESCRIPTION OF DEVELOPMENT

3.1 The application is submitted under Section 191 of the Act. It seeks confirmation that:

1. the land to the rear of Suncot, School Road, Barkham, RG41 4TR has been continuously used as residential garden for a period exceeding ten years, is beyond enforcement action and constitute a lawful use of the land.

3.2 The description of development is for:

"**An application for a Certificate of Lawfulness of Existing Use to confirm that the land to rear of Suncot, School Road, Barkham, Wokingham, Berkshire, RG41 4TR has an established use a residential garden**"

3.3 The application comprises this statement, appendices, accompanying documents and the following plans:

Drawing Number PL01 - Site Location Plan

Drawing Number PL02 – Block Plan

Drawing Number PL03 – Block Plan Site Areas Hatched

Letter of Confirmation from [redacted] (previous owner)

Title Deeds

Title Plan

Historic Aerial Photographs

Officer Report 210874

# SECTION 4 – PLANNING HISTORY

4.1 A double garage was approved in May 1975 (Reference 03403).

4.2 A further garage was approved in August 1980 (Reference 13682).

4.3 A two-storey rear extension was approved in March 1987 (reference 27185).

4.4 Single storey front and rear extensions and a replacement detached garage and store room were approved in May 2003 (Reference 030600).

4.5 The erection of single storey side and rear extensions to form granny annexe was refused permission (October 2008) and dismissed at appeal in August 2009 (Reference 082114).

4.6 The erection of single storey side and rear extensions to form granny annexe was approved in January 2009 (Reference 080067)

4.7 The proposed subdivision of the site and erection of 4 no. detached dwellings following demolition of existing outbuildings, with alterations to the existing access serving Suncot, provision of parking, boundary treatment, surface water attenuation measures and hard and soft landscaping was refused permission in May 2021 (Reference 210874).

4.8 An application for a certificate of lawfulness for the proposed erection of single storey outbuilding was refused in August 2025 (Reference 251485).

# SECTION 5 – PLANNING POLICY/LAW

5.1 The relevant planning law in relation to an application is contained in s.171B and s.191 of the Act. This form of application does not rely on the interpretation of planning policies. However, advice in the National Planning Practice Guidance has to be given full weight.

**Town and Country Planning Act 1990 (as amended)**

5.2 Section 55

Meaning of "development" and "new development"

(1)Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A)For the purposes of this Act " building operations " includes—

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

(2) ….

5.3 Section 171B

Time Limits

**(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—**

(a)in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(b)in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.]

(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of—

(a)in the case of a breach of planning control in England, ten years beginning with the date of the breach, and

(b)in the case of a breach of planning control in Wales, four years beginning with the date of the breach.]

(2A)There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

**(3)In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.**

(4)The preceding subsections do not prevent—

(a)the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b)taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

**The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024**

**Transitional provision: time limits for enforcement**

**5.** The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

(a)in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (1) (time limits), the operations were substantially completed, or

(b)in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

**(NB – there are changes due to s.171B that took effect on the 25th April 2024. However, they do not impact on previous four-year rule regarding operational development and the use as a dwellinghouse and there are transitional arrangements in place for breaches which took place before this date as per reg.5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452.**

5.4 Section 191

Certificate of lawfulness of existing use or development.

(1) **If any person wishes to ascertain whether—**

(a) **any existing use of buildings or other land is lawful;**

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the M1Caravan Sites and Control of Development Act 1960 [F4or section 7(1) of the Mobile Homes (Wales) Act 2013;]

(b) section 5(2) of the M2Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3Environmental Protection Act 1990.]

5.5 Section 336

Interpretation

…..

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building;

"buildings or works" includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly and references to the removal of buildings or works include demolition of buildings and filling in of trenches;

"building operations" has the meaning given by section 55; …..

**National Planning Practice Guidance**

5.6 Paragraph 002 Reference ID: 17c-002-20140306 states:

"…. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application…."

5.7 Paragraph 006 Reference ID: 17c-006-20140306 of the NPPG states:

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, 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 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."

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."

5.8 Paragraph 009 Reference ID: 17c-009-20140306 states:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask, "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented."

5.9 Paragraph 010 Reference ID: 17c-010-20140306 states:

"Details of what must be included in each type of lawful development certificate can be found in section 191(5) or 192(3) of the Act. The prescribed form can be found in Schedule 8 to the Town and Country Planning (Development Management Procedure) (England) Order 2015. Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is important to note that:

- a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter

so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class" (i.e. "sui generis" use); and

- where a certificate is granted for one use on a "planning unit" which is in mixed or composite use, that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use."

# SECTION 6 – PLANNING CONSIDERATIONS

6.1 The application is submitted in order to demonstrate that the land to rear of the site forms part of the residential curtilage and use of the dwellinghouse known as Suncot, School Road, Barkham, Berkshire, RG41 4TR. This issue arises as the Local Planning Authority (LPA) refused a Certificate of Lawfulness of Proposed Development to erect an outbuilding on the land to rear. As part of the reason for the refusal the LPA state that the land does not form part of the residential garden or residential curtilage of the subject dwelling.

6.2 This application will demonstrate:

a) The property was built in the 1930's and therefore the land does not require permission for its use as it existed on the appointed day.

b) The title deeds show that the property is held under one title and forms a single residential curtilage.

c) The historic aerial photographs show that the land to the rear has been maintained as lawned garden, contains a vegetable garden and a children's trampoline has been stationed on the land. Also, there is no subdivision between the rear of the house and the rear garden in the form of fencing or hedging or other means of enclosure.

d) The former owner confirms the use of land as residential garden since 1999.

e) The LPA previously accepted and state in their officer reports dating to a 2021 (reference 210874) planning application for housing that the land forms part of the residential curtilage of the property.

6.3 The LPA will be aware that under the provisions of the Act the time limit in which a Local Planning Authority can take enforcement action recently changed. However, under the transitional provisions, as set out in the "reg.5 of The Planning

Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452", development substantially completed before the implementation of the changes is subject to the previous rules. Therefore, it is for the Applicant, in this instance, to demonstrate, on the balance of probability, that the use was existing for more than ten years prior to the date of the submission of the application.

6.4 The Act at s.191(1)(c) allows for an application to made to the LPA to determine whether any uses that have been carried out are lawful. This application demonstrates that the use of the rear garden is over ten years old. The use began when the property was built in the 1933 and continued unabated to present. The historic aerial photographs, taken from Google Earth Pro, submitted as Appendix 1, clearly show that the land has been used as part of the garden as per the requirements of s.171(3) of the Act.

6.5 The courts have held, in Gabbistas vs Secretary of State for the Environment (1985) JPL 630, that the onus of proof is based on the lesser of the test of "balance of probability" rather than "beyond all reasonable doubt", as being the relevant test in law. Furthermore, the applicant's evidence does not need to be independently corroborated in order to be accepted. Therefore, if the Local Planning Authority (LPA) has no evidence of its own, or from others, there is no good reason to refuse the application, as long as the evidence provided is sufficiently precise and unambiguous.

**Curtilage and Lawfulness of Use under Section 171B of the Town and Country Planning Act 1990**

6.6 The Officer's Report (OR), to application reference 251485, erroneously concludes that the outbuilding is situated outside the curtilage of the dwellinghouse and on land held under a separate title, thereby asserting that planning permission is required for its use as garden land associated with the dwelling. This conclusion is fundamentally flawed in both fact and law.

**Legal Context: Section 171B TCPA 1990 and Lawful Use**

6.7 Under Section 171B(3) of the Town and Country Planning Act 1990, no enforcement action may be taken after the expiration of ten years from the date of a material change of use of land. In this case, the use of the land to the rear of "Suncot" as residential garden land has been continuous and uninterrupted for well over ten years, as evidenced by aerial imagery dating back to at least 2003 and confirmed by the previous owner [redacted] (letter dated 1st December 2025). Accordingly, even if a change of use had occurred, it would now be immune from enforcement and therefore lawful by operation of law.

6.8 Furthermore, the original Town and Country Planning Act 1947 deemed all uses existing on the appointed day (1 January 1948) to be lawful. The Title Deeds confirm that the property, including the land in question, was conveyed as a single freehold unit in 1933. There is no evidence of any intervening subdivision or change in use that would sever the curtilage or alter its lawful status.

6.9 Part A of the Title Deeds clearly states that the land shown edged red on the title plan forms the freehold of the property. Therefore, the allegation that the use of the rear of the property as curtilage/garden requires consent is clearly wrong. Planning permission was not, and is not, required for its use in association with the dwellinghouse. Otherwise, every house and garden built before the appointed day would be unlawful.

**Procedural Unfairness: Failure to Engage with the Applicant**

6.10 The Local Planning Authority (LPA) failed to adhere to the guidance set out in the National Planning Practice Guidance (NPPG), Paragraph: 006 Reference ID: 17c-006-20140306, which requires LPAs to share evidence with applicants and provide an opportunity to respond. Had the LPA complied with this guidance, in the determination of application reference

251485, the Applicant would have submitted the Title Deeds and associated plan demonstrating that the entire site outlined in red on the location plan forms part of the curtilage of the dwellinghouse.

**Evidence of Curtilage: Title, Use, and Physical Characteristics**

6.11 The following must be taken into account:

- Title Deeds: The land is held under a single freehold title, with no evidence of subdivision. The title plan clearly shows the land edged red as forming part of the property.
- Historic Use: Aerial photographs from 2003 onwards show the land in continuous use as garden, including lawn, vegetable plots, and domestic paraphernalia such as a trampoline.
- Physical Continuity: There is no boundary fence or physical demarcation separating the land from the rest of the property. The lawn is mown uniformly, and the land functions as a single domestic garden. This is clearly demonstrated in the historic aerial photographs.
- Functional Association: The land is used in a manner incidental to the enjoyment of the dwellinghouse, consistent with Use Class C3.
- Previous Owner: The previous owner confirms the use of land as residential garden dating back to 1999.

6.12 Case law such as *Burford v Secretary of State for the Environment* [1976] and *Dyer v Dorset CC* [1989] confirms that curtilage is a matter of fact and degree, considering physical layout, ownership, and use. In this case, all three factors support the conclusion that the land forms part of the curtilage. The physical layout of the site has not changed, as shown in the aerial

photographs, the ownership of the land is set out in one title deed/plan, and the use as garden has not altered for over ten years.

**LPA's Own Acknowledgement of Residential Use**

6.13 In the Officer's Report (OR) for planning application reference 210874, the LPA explicitly acknowledged that the land to the rear of "Suncot" formed part of the residential curtilage. The report described the site as being accessed via the frontage of "Suncot" and forming part of its residential garden. It further classified the proposal as backland development within a residential garden.

6.14 The site was also accepted as backland development within the OR. It cites development plan policies which deal with the new residential development in private gardens. The OR states, in the last paragraph of page 8, "The proposal being within the rear curtilage of Suncot property is considered to be 'backland' development. ….".

6.15 The OR goes onto accept the rear of Suncot is residential garden. The last paragraph, on page 12 of the OR, states "…. It has been noted that there are no other examples of tandem or backland development in the immediate vicinity; this unusual arrangement will appear as an incongruous form of development fitted into a site located at the back of a residential garden, detrimentally affecting the character and appearance of the locality. ….".

6.16 Accordingly, the LPA have accepted that this land forms part of the residential garden of dwellinghouse. This is a material consideration that must be given full weight as it is set out in a formal OR and sets the opinion of the LPA. Therefore, the land must be considered to form part of the residential garden and curtilage of Suncot.

**Misinterpretation of Mapping and Historic Applications**

6.17 The LPA's reliance on internal mapping and the red line boundaries of historic applications (2003 and 2008) is misplaced. The absence of the rear land from those applications does not negate its status as curtilage, particularly when the land has remained in single ownership and continuous residential use. Mapping anomalies cannot override factual evidence of use and physical integration.

6.18 The aerial images clearly indicate that the site has been a contiguous part of the dwelling from at least the earliest historic photograph, available via Google Earth Pro, dated 2003. This also helps to show that at the time of the 2003 householder application the rear of the site was being used as part of the residential curtilage. These photographs show areas of lawn, a vegetable garden and a trampoline contained in the rear of the property. The lawned areas in particular stretches from the rear of the dwellinghouse, into the rear of the site and is clearly mown in the same fashion as the areas closest to the dwellinghouse. There is also no boundary fence, or other form of division, delineating a change in use of land or separate ownership or title.

6.19 The definition of a curtilage does not need to be controversial as it can be seen and determined by site visits, and links to the dwellinghouse. Land ownership, although not determinative in itself, is a useful guide as is the presence of the boundaries of a private garden. Curtilage can also be defined on the ground by physical features, such lawn, vegetable gardens, domestic paraphernalia, outbuildings etc, and by the function of the land as a matter of fact and degree.

6.20 In this case the land is not detached from the dwellinghouse. It forms a continuous parcel of land that has been used as garden and has been in single title since the 1930s. Therefore, there is no difficulty defining this curtilage as part of the overriding use of the property in Use Class C3. Whilst it is located in a low-density housing area, the garden is not detached,

it is not used as paddock or smallholding and there is physical separation from the dwelling. There is an intimate association of this land with house and it obviously part and parcel of the residential curtilage.

**Conclusion**

6.21 The cumulative evidence—legal, documentary, photographic, and functional—demonstrates on the balance of probability that the land in question forms part of the curtilage of the dwellinghouse known as "Suncot." The land to the rear is therefore lawful and is used for purposes incidental and ancillary to the enjoyment of the dwellinghouse as residential garden. It complies with the relevant limitations and conditions of permitted development rights, including height and absence of raised platforms.

6.22 Accordingly, the LPA's assertion that planning permission is required is unfounded in law and fact. The proposal is lawful under Section 171B of the Town and Country Planning Act 1990 and consistent with established case law and national planning guidance.