DELEGATED DECISION REPORT

SMD/2019/0748 **Valid 07/01/2020**	**LAND TO THE EAST OF CHEADLE ROAD FORSBROOK**	**LAWFUL DEVELOPMENT CERTIFICATE TO MAINTAIN EXISTING USE TO STORE VEHICLES, EQUIPMENT & LOGS.** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES
Would the Council be out of time to take planning enforcement action in respect of the land use described by the applicant which he says is his existing use of the land (s.171B and 191 of the Act)?

DESCRIPTION OF SITE
Former linear colliery site strung along a section of the old Cheadle branch railway route. The site has an access with the lane that is just to the east of Draycott Cross. The site is in open Green Belt countryside, rather isolated and secluded from public vantage.

The whole unit of ownership is quite extensive, but it appears likely, from the submitted evidence and aerial photographs, that the described uses relate to a smaller part of this site, an old colliery parking area to the north.

THE APPLICATION
The existing use of the land is described by the applicant as the storage of a garden landscaper's vehicles, equipment & logs. The submission is that the authority is out of time to take enforcement action because the use began more than 10 years before the date of the application.

It is said that this use began in 2016 and there appears to be an assumed reliance on his previous use of the land since 2008/2009. He would also appear to place some relevance on the previous owner's use of the land.

The submitted evidence includes:

- A statement on the application form relating to a sequence of events and land uses
- A statement from the previous owner's daughter
- A statement or covering letter from the applicant; and
- An old letter from the previous owner to the applicant offering the land for sale

The previous owner's land use is described by his daughter in her statement, there is no other evidence relating to that. The way the applicant has used the land since 2008/2009 is set out in his covering letter and on the application form.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
86/00500/OLDDC surface facilities for colliery. Approved.
87/00353/OLD coal screening plant/bunkerage. Approved.

CONSULTATIONS

Publicity
Site Notice expiry date: 17th Feb 2020
Press Advert: N/A

Public Comments

1 comment:

I object as I do not think it is in keeping with the area, as we are in a very rural area surrounded my fields and green belt area. Also the written notification advertising this application has been removed, preventing people in the area from viewing it.

Town / Parish Comments
Draycott in the Moors PC have no objection to the application. They do not offer any evidence that might assist the determination.

OFFICER COMMENTS
According to the submitted evidence:

(Late) Mr Bettaney and Ms Winkle bought the land from the coal board [*date not provided?*] and they used the land in association with Mr. Bettaney's haulage business, where his daughter, in her statement, explains that he "on occasion parked his lorry there, he also had storage containers plus other items that would be in use with his haulage business". It appears that Mr Bettaney's use of the land ceased and it became occupied by Mr Brassington before Mr. Bettaney's death [*date that Mr. Bettaney's business use ceased and his demise not provided?*]

Mr Brassington began renting the land from (late) Kathleen Gillian Winkle in 2008/2009 using it as a yard for his X-Cavate business - registered, now dissolved, as "freight transport by road" and Mr. Brassington says in his cover letter that he stored diggers, lorries and cars with storage units [*presumably units used for storage, associated with X-Cavate Ltd, not a different use in its own right. Type and number of diggers, lorries and cars not specified but obviously plural*]. In 2016 Mr. Brassington became a landscape gardener and began using the land in association with that to store "vehicles, equipment and logs" [ref. covering letter].

It is not said when the previous owner's haulage use of the land began, or exactly when it ended, but the evidence does say that this use amounted to the occasional storage of one lorry and some associated storage in relation to the parking and use

of that lorry (daughter's evidence). Mr. Brassington's evidence however, is that he started using the land for his business registered as X-Cavate Ltd and stored diggers and lorries, both plural so more than one digger and lorry. The statement from the previous owner's daughter and from Mr. Brassington tell us that from 2008/2009 the land was used for something quite different and more intensely than the occasional storage of one lorry.

But on Mr. Brassington's evidence this 'more intense' use stopped around 6 or 7 years later, short of the requisite 10 year period, when the scale and intensity of the use apparently dropped and became something different when he became a landscape gardener in 2016 and began to use the land to store his gardener's vehicles and equipment and some logs.

The written evidence from the previous owner's daughter explains that her father used the land to "on occasion" park his lorry. However, she does not say when this began or indeed when he no longer parked his lorry there. In any event, since that time, it is apparent, from the written evidence, that the applicant began to use the land differently in 2008/2009 when he started to store his diggers and lorries there. According to the applicant this use only lasted for around 7years because he then, in 2016, started to use it to store vehicles, equipment and some logs in association with his new garden landscaping business. It seems clear then that the existing use of the land, as described by the applicant, to provide storage for a garden landscaping business did not occur more than 10 years prior to the date of the application and can not be lawful because the authority would still be in time to take planning enforcement action.

CONCLUSION / PLANNING BALANCE

The land use described by the applicant, and said to be the existing use of the land, can not be lawful because, on the applicant's own evidence, it began in 2016. That was less than 10 years before the date of the application and the authority therefore, would still be in time to take enforcement action. That use is described as being different to previous uses that pre date 2016, and, in any event, the evidence does not demonstrate that any one of those previous uses had established any lawful status before the use changed again.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Ben Hurst
Recommendation Date: 3rd March 2020

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council