DELEGATED DECISION REPORT

SMD/2020/0350 **Valid 01/07/2020**	**NEW CLOSE FIELDS** **ADDERLEY** **CHEADLE**	**APPLICATION FOR LAWFUL DEVELOPMENT EXISTING USE OR OPERATION - RESIDENTIAL USER IN BREACH OF AN AGRICULTURAL OCCUPANCY CONDITION** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

The application is for a Certificate of Lawfulness relating to a breach of an occupancy condition which can only be granted in the circumstances where the breach (on the date of the application) can be considered to have a lawful status that is immune from enforcement action. A breach of condition can be lawful through the passage of time (a 10 year continuous period). The application is to be decided on the basis of a legal determination with only consideration of evidence relating to either of those factors.

The report will set out the following considerations:

• Is the occupancy condition currently breached?

• Has that breach taken place continuously for at least 10 years prior to the date of the application?

DESCRIPTION OF SITE

Large detached bungalow, isolated location within the Green Belt accessed via a surfaced farm lane that has a junction with Trimpos to the east and to the west ends with the large working Newclose Fields Farm. Immediately to the west, sharing a boundary, there is a large brick barn that has a Class Q approval.

THE APPLICATION

The applicant declares that he has lived in the dwelling for more than 10years and has only ever been employed as a plumbing and heating engineer. He says that he moved into the dwelling in 2007 without complying with the agricultural occupancy condition. He has lived there ever since and seeks a certificate to confirm that his occupancy of the dwelling is now immune from enforcement action. The application was submitted with the following evidence:

 The applicant Mr Peter Heath has submitted a statement explaining the history of the bungalow, when he bought the property and his employment history.

 A short statement from the applicant's acountant

 A statement from the applicant's previous employer from 2005 to 2013

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
8830 Outline permission for bungalow. Approved 15th Feb 1972
8830 Reserved Matters for bungalow. Approved 7th June 1973

RELEVANT PARTS OF THE ACT
s.72 *Conditional grant of planning permission.*
s.171A *Expressions used in connection with enforcement*
(1)(b)failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
s.171B *Time limits*
(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.
171BA *Time limits in cases involving concealment*
191 *Certificate of lawfulness of existing use or development.*
(1) If any perosn wishes to ascertain whether- (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 LPA describing the matter.
(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that affect; and in any other case they shall refuse the application.

CONSULTATIONS

Publicity
Site Notice expiry date: 18/09/2020
Neighbour consultation period ends: 18/09/2020
Press Advert: N/A

Public Comments
None

Town / Parish Comments
Dilhorne Parish Council: No Objection. No further comment or observation.

OFFICER COMMENTS
The bungalow was built with an outline planning permission granted in 1972 followed by reserved matters approval granted in 1973. The permission was granted subject to an agricultural occupancy condition that reads:

The occupation of the dwelling shall be limited to a person employed or last employed locally in agriculture as defined in section 221(1) of the Town and Country Planning Act 1962 or a dependent of such a person.

The application seeks to demonstrate that the current occupation and breach of that condition is now immune from enforcement action because it has been continuous for more than 10 years. An approval in this case would not have the effect of removing the occupancy condition and it would not confirm that a different occupier's breach of the condition would also be immune, the condition could still therefore have implications in respect of marketing the dwelling or the point of resale.

A breach consisting of a failure to comply with a planning condition will become immune from enforcement action and thereby lawful after a period of 10 years. In this case where a person's occupation and use of a dwelling is said to have breached a condition that limits its occupancy to an agricultural worker, their breach will become immune if they have used the property as their sole residence for 10 years or more and have not within that period had any employment in agriculture. The determination therefore, is whether on the 'date of the application' the applicant's breach was immune from action and therefore lawful.

The applicant's statement explains that the dwelling was a family property, the bungalow was built and occupied by the applicant's grandparents, his grandfather passed in 1982 and his grandmother lived there until her death in 2001. The applicant's father allowed employees who helped him run and develop the adjacent Blake Hall fishing pools live in the bungalow until the applicant moved into the property in 2007.

The applicant declares in his statement that he has never been employed in agriculture. He started work as an apprentice plumber with 'John Griffiths of Rugeley until 2005 and then worked for Ridgeway Plumbing and Heating until 2013. He then set up his own business and has worked as a sole trader PJH Plumbing and Heating ever since. To substantiate his employment history the application includes a statement from Carl Murphey of Ridgeway Plumbing, a former employer, and Peter Firman, his business accountant since 2013.

There is no counter evidence available or any other reason to believe that the applicant's evidence is less than probable. It seems clear that the applicant is currently breaching the occupancy condition but his breach is immune from enforcement action because he has lived there since 2007. It is not considered that the circumstances of this case would meet the tests of 'deliberate concealment', simply the breach has passed without notice and an application for an 'enforcement order' would seem unjustified.

CONCLUSION

There is no reason to think or counter evidence to suggest that the applicant's current breach of the occupancy condition is not immune from enforcement action. The breach should therefore be considered lawful.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst
Recommendation Date: 29/10/2020

X B.J. Haywood

Signed by: Ben Haywood
On behalf of Staffordshire Moorlands District Council